WTM/MB/WRO/WRO/13178/2021-22

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

CONFIRMATORY ORDER

Under Sections 11, 11B (1) and 11D of the Securities and Exchange Board of India Act, 1992 and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
In respect of:

S. No.	Name of the Entity	PAN
1	Ms. Meeshika Vishwakarma, Proprietor Sai Proficient Research Investment Advisory	AVBPV2205J

In the matter of Sai Proficient Research Investment Advisory

1. Sai Proficient Research Investment Advisory (hereinafter referred to as the **"Sai Proficient"**) is registered as an Investment Adviser **("IA"**) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the **"IA Regulations"**) with effect from December 29, 2014 under SEBI registration number INA000002504. Sai Proficient is a proprietorship firm and its proprietor is Ms. Meeshika Vishwakarma. The registered office of Sai Proficient is at UG-69, Trade Centre, South Tukoganj, Indore, Madhya Pradesh-452001. It's website address is *www.saiproficient.com*.

2. SEBI received complaints in SCORES against Sai Proficient. The complainants *inter alia* alleged that the IA was taking hefty fees from clients by guaranteeing assured returns, huge loss was incurred by clients due to inappropriate advice given by Sai Proficient, pressurizing the clients to buy multiple products and pay more amount, etc. In view of the complaints received, SEBI conducted an examination in relation to the affairs of Sai Proficient. The website of the entity *www.saiproficient.com* was not active. Hence, the details of the website were taken from the archive pages available on *www.archive.org* and placed on record.

3. Vide letter dated January 15, 2020, notice of inspection of books of accounts/records and other documents pertaining to registration as IA, was sent to Sai Proficient which *inter alia* included to provide Risk Profiling Form ("RPF"), KYC, Invoices/Receipts issued to clients, Suitability Policy, etc. Sai Proficient replied vide letter dated January 27, 2020, that, due to personal reasons i.e. pregnancy of the Ms. Meeshika Vishwakarma, the working of the business was stopped and the office was closed since December 31, 2019. It was also stated that no new client was offered service since January, 2020 and they are only providing services to the existing clients and focused on the complaints pending in SCORES. Subsequently, vide letter dated February 04, 2020, inspection notice for production of information/documents and commencement of inspection from February 17, 2020, was again sent. Ms. Meeshika Vishwakarma was also advised in the notice to depute a person if she is unable to be present during inspection. However, Sai Proficient did not co-operate and failed to submit any documents/information. Therefore, the preliminary examination was conducted based on analysis of the details available on the archive pages of website of Sai Proficient, complaints filed by the complainants against Sai Proficient and documents attached with complaints, etc. Based on the preliminary examination of documents / information available on record, the following *prima facie* findings were observed:

3.1. Sai Proficient had offered expected/sure profits to its clients and violated provisions of SEBI (Investment Advisers) Regulations, 2013 (***hereinafter referred to as "IA Regulations"***);

3.2. Sai Proficient did not resolve investor grievances as per prescribed timelines and did not cooperate with SEBI for inspection.

3.3. Sai Proficient has also triggered violation of the Code of Conduct for Investment Advisers by virtue of the above activities

4. In view of the *prima facie* violations of the provisions of securities laws and the findings against the IA, Interim Order dated February 09, 2021 (*hereinafter referred to as* ***Interim Order***) was passed against Sai Proficient and its proprietor Ms. Meeshika Vishwakarma (*hereinafter collectively referred to as "****Noticee"***) for violation of SEBI Act 1992 (hereinafter referred to as ***SEBI Act****)*, IA Regulation and SEBI (PFUTP) Regulations (hereinafter referred to as ***PFUTP Regulations****)*

5. **Service of the Interim Order, inspection, submissions and personal hearing to the Noticees:**

Service of Interim Order

5.1. The Interim Order was served vide speed post dated February 10, 2021, which was delivered on February 11, 2021, to Ms. Meeshika Vishwakarma on her residence address. The Interim Order sent on registered office address returned undelivered.

5.2. The Interim Order was also served to the Noticee vide email dated February 09, 2021.

5.3. In reply to the Interim Order vide email dated February 17, 2021, the Noticee submitted the statement of assets and properties owned by Ms. Meeshika Vishwakarma proprietor of Sai Proficient.

Inspection

5.4. Vide email dated March 01, 2021, the Noticee requested for inspection of the relied upon documents and the same was granted on March 08, 2021. During the inspection of the relied upon documents, all the relied upon data and records were provided to the authorised representative.

Preliminary replies and submission by Noticee

5.5. Vide email dated March 12, 2021, Noticee requested extension of time for submission of detailed reply by three weeks. Subsequently vide email dated March 19, 2021, Noticee requested time for submission of the detailed reply upto April 05, 2021, due to Covid 19 exigencies and personal reasons and also requested to grant stay on the directions issued vide Interim Order. Noticee vide email dated April 07, 2021, made preliminary submissions attaching letter dated April 05, 2021, and subsequently made additional submissions vide letter dated July 22, 2021.

Personal Hearing to the Noticee

5.6. In the submission dated April 05, 2021, Noticee also requested opportunity for personal hearing and to make additional submission in the matter. Acceding to the request of the Noticee, hearing opportunity was granted on May 04, 2021. Noticee vide email dated May 03, 2021, requested for adjournment of the hearing and rescheduling the hearing, due to the Covid 19 lockdown restrictions in her state and her inability to seek professional advice. The request of the Noticee was acceded and the hearing was rescheduled to May 27, 2021.The Noticee vide email dated May 24, 2021, again requested rescheduling of personal hearing and time to file additional reply/rejoinder, citing Covid 19 lockdown extension in her state. Considering the Covid 19 situation the request of the Noticee was again acceded and personal hearing was rescheduled to June 16, 2021. Subsequently, the Noticee vide email dated June 14, 2021, again requested for additional weeks' time to attend the

personal hearing and submit additional reply. This request for rescheduling of the hearing was not acceded and the hearing was held and concluded on June 16, 2021.

5.7. During the personal hearing on June 16, 2021, the authorised representative reiterated the submissions dated April 05, 2021. During the personal hearing on the request of the authorised representative, the Noticee was granted four weeks' additional time to make additional submissions on merit on the findings of the Interim Order, if any, and was also advised to provide the following information:

5.7.1. Log of changes in the website of the entity M/s Sai Proficient Research Investment Advisory, date of changes, details of changes, URL of the new website and the snapshot of the all the pages of the new website.

5.7.2. Documentary evidence with respect to the averments made in the website on 80-90% accuracy in the services and tips and the sure profits.

5.7.3. Affidavit specifying that Noticee is not associated or has any interest, directly or indirectly with any entity/individual who is associated, related or using the email ids referred in the Interim Order or complaints on SCORES.

5.7.4. Details of the complaints lodged on SCORES where it is contented that the complainants are not clients of the Noticee and certain employees/individuals/entities have deceived the clients in the name of Noticee/IA and money has been collected in the Noticee's bank account. The details in this respect may contain the clients name, date of complaint, date of payment, mode of payment, amount paid, documents submitted in respect to the complaint, refund if any made and any other details as may be relevant.

5.7.5. List of all suspicious employees/individuals/entities along with details of Name, PAN, Contact No, Address, who have been using the name of the Noticee/IA or representing themselves as associated or employees of the Noticee/IA for the investment advisory activities.

5.7.6. Action taken in respect to all these suspicious employees/individuals/entities by Noticee.

5.7.7. Affidavit with respect to the complaints lodged on SCORES (as claimed 5 complainants), where it is contented that the complainants are not clients of the Noticee/IA along with details of the clients, due diligence made and supporting evidence.

5.7.8. Details of the Clients of the Noticee

6. I shall now proceed to examine the written and oral submissions made by the Noticee vis-à-vis the findings of the Interim Order.

7. **Replies and Submissions by Noticee**

The Noticee vide letters dated April 05, 2021 and July 22, 2021, *inter alia* made the following submissions:

7.1. *Noticee mentions that, the allegation made in the order that Risk Profiling Form ("RPF"), KYC, Invoices/Receipts issued to clients, Suitability Policy, etc., were sought, and IA failed to submit any document till date, is partially untrue and no complete facts were placed to show the truth of the said statement.*

7.2. *Noticee disagrees on the findings in para no 03 stating that without investigation into details it is alleged that from the material available on record regarding assured returns and pending investor complaints the conclusion was drawn that Sai Proficient has prima facie, violated IA Regulations, provisions of SEBI Act read with PFUTP Regulations.*

7.3. *With respect to para 05.01, 05.02 and 50.4, the details placed is not correct and not tenable in eyes of law, as it is based on the website which was old and the new website which is active from 2017 onwards was not relied upon by SEBI, which had no such service/product's feature. Noticee has furnished snapshot of the webpages of the new website published since 2017. Noticee also denies the allegation of promising assured/expected returns on the investments to the clients through email communication, stating that no such*

email id belongs or was created by Sai Proficient. An affidavit provided on the email ids used for official communication and mentioning that Noticee changed the wordings with respect to 80-90 % accuracy which was based on past performance till December 2017.

7.4. *The email id mentioned in para 5.03 does not belong to the Noticee and hence no conclusion can be prima facie made that Sai Proficient is claiming expected profit on the investment amount and in some cases sure profit. Noticee has also mentioned that, no such details were mentioned in its new website since 2017. Noticee also states that, no evidences were adduced on the email ids i.e. saiproficientinvestment@gmail.com being used by IA, where the complainants i.e. Mr. Sameer Mahawar and Mr Shaymsunder Virmani have alleged communication by Noticee on assurance of expected profit of Rs.14 Lakh and 90 to 95% accuracy in services.*

7.5. *Noticee has also submitted that, in both complaints refund process has been initiated of Rs. 50,000/- to Mr. Shyamsunder Virmani and Rs.7,50,000/- to Mr. Sameer Mahawar. Since only complaints by these two complainants have been provided for inspection, no conclusion can be drawn that the communication from the email id belongs to IA. Therefore, the finding on the claims of IA on expected profit on the investment amount and in some cases sure profit is not true. Noticee states that nothing is mentioned on accuracy in tips in the website since 2017 onwards and as both these complaints and all other pending complaints were lodged 2019 onwards, there is no question of the finding that "expected/sure profits reveal its actual intent of luring investors to avail its services. If its objective was not to mislead investors, it should not have made such reckless and careless claims".*

7.6. *Regarding the findings in para No 06.01, 06.02, 06.03 and 60.04 Noticee had appointed dedicated person to redress and handle clients' grievances promptly and entrusted with responsibility to address the concerns and complaints. The said person did not act diligently and performed his duty honestly and that is the reason for delayed submission of ATR within prescribed timeline of 30 days in the 8 complaints. In respect to the complainant Mr. Ajim Sattar Patave full*

refund of Rs.20,000/- was given and ATR filed on score portal, yet the complaint was not closed.

7.7. *Noticee has mentioned that, in case of 5 complaints, ATR was submitted on scores portal stating, non receipt of the alleged amount in Noticee's account. However, even after passing the Interim Order the complaints are pending and not closed. Noticee has filed an Affidavit stating that these five persons are not its clients nor any amount has been received in Noticee's account.*

7.8. *Noticee has submitted that, it is purely engaged services of Investment Advisory on fair basis and never misguided or mislead any client to influence their decision in fraudulent or unfair trade manner. The matter referred to is only related to delay in resolving of few complaints of the clients.*

7.9. *Regarding para 06.06 and 06.07, Noticee submits that, it received SEBI letter dated January, 15, 2020, for inspection and in reply submitted letter dated January, 27 2020, inter alia, informing that the working of the business was stopped. It further stated that office had been closed since December 31, 2019 and no new clients were offered service since January, 2020 as the services to the existing clients was given and focus was on complaints pending in SCORES. The Noticee specified that the reasons for non-furnishing of the information is due to maternity leave and her 7th month pregnancy and all relevant records and documents for inspection could not be provided by 31st January, 2020. Therefore, she Noticee requested extension of time till June 2020. Thereafter, Noticee received SEBI's notice dated February 04, 2020. In response which an undated letter was submitted to SEBI citing earlier reasons and further stating that that the documents could be provided till June 2020. Therefore, there was no need to provide any justification for the period of January, 2020 to March, 2020, and thereafter the reason for non-submission of information was due to lock down till July 2020.*

7.10. *Regarding para No 06.08 and 6.10, Noticee submitted that she was providing proper services to the existing clients and focussed on the complaints pending in SCORES. Noticee also states that 28 investor complaints are pending against Sai Proficient in SCORES, out of which in case of 5 complaints the Noticee has not received the alleged amount in its account nor the*

complainants are its clients. In case of one complaint the Noticee has refunded the whole amount taken and submitted reply in ATR along with requisite documents. However, the compliant is not closed by SEBI. This clearly depicts that Noticee is ready to fulfil the commitment to provide resolution to the complainants. Hence the finding is not justifiable that Noticee has prima facie not cooperated with SEBI's examination/inspection and Noticee is trying to evade SEBI's jurisdiction despite pending investor complaints.

7.11. *Regarding para no. 06.09, Noticee mentions that only two SEBI letters were received and no further communication was received seeking inspection of documents from the Noticee. Moreover, Noticee submitted copy of bank statement. Therefore, question of non-cooperation does not arise.*

7.12. *Regarding para no 06.11 Noticee denied the finding that Sai Proficient and Proprietor Ms. Meeshika Vishwakarma has prima facie violated Regulations 13(a), 25(i) and (ii) of IA Regulations read with clause 8 of Code of Conduct for IA as mentioned in Schedule III read with regulation 15(9) of IA Regulations in view of the reply/submissions and also submitted that Mr. Meeshika Vishwkarma has not received any benefit or undue gain as a consequence of the alleged violations.*

7.13. *Noticee has stated that, the allegation of guaranteed return is misconceived by customers, the word 'expected' or 'projected' return is misconstrued and misconceived as guaranteed returns by the customer.*

7.14. *Noticee has vehemently denied all the allegations in the Interim Order.*

8. ***Additional submissions vide letter dated July 22, 2021, as advised during personal hearing inter alia contained the following:***

8.1. *New website was uploaded in the month of December 2017, and domain was booked from godaddy.com. Email dated July 12, 2021, seeking log of changes i.e. date of changes, details of changes, etc. in website of Sai Proficient was sent. However, no details in reply were provided till July 22, 2021.*

8.2. *Noticee has provided screenshot of webpages of the website from December 2017 onwards*

8.3. *Track sheets for the averments on 80-90% accuracy in the services, tips and sure profits made during May 2016 till December 2017, based on the past performance was provided. Noticee mentions that, the wordings in the website on 80-90% accuracy in services, tips and sure profits, was suo-motu changed when the same came to its knowledge.*

8.4. *Noticee gave the details of the three suspicious employees who might have deceived clients and collected money from clients. With respect to action against the suspicious employees the Noticee has mentioned that, no action has been taken on these employees due to the apprehension on these employees that they might have created other email ids and because of the fact that the complaints with respect to 5 complainants handled by them had come up only after they absconded from job. The Noticee has further mentioned that, the fact regarding fake email ids came to its knowledge only after receipt of the Interim Order.*

8.5. *Noticee has submitted that, refund process has been initiated in case of 4 complainants which involved miscommunication by the three employees, in spite of delivery of whole services.*

8.6. *Noticee has mentioned that, during the visit to SEBI office regarding resolution of one complaint, it informed SEBI during inspection, the suspicious activity in Noticee's name and using fake email id which resembles with their email id.*

8.7. *Noticee has also mentioned that it is under process of resolving the 6 other complaints by making refund to complainant clients*

8.8. *Ms. Meeshika Vishwakarma proprietor of Sai Proficient has also submitted an affidavit dated July 23, 2021, which inter alia contains the following:*

8.8.1. *E-mail ids used for official communications with clients, personal mail id: Meeshika.mv@gmail.com; official ids: info@saiproficient.com; support@saiproficient.com;saiproficient@gmail.com;saiproficient.kyc@gmail.com;saiproficient.offer@gmail.com;kyc.saiproficient@gmail.com.*

She is not aware to the best of her knowledge having observed due care and attention, of any other email Ids used, as alleged in the order from which alleged communication on behalf of M/s Sai Research Investment Advisory was made.

8.8.2. *She had no malicious or dishonest intention to the detriment of any client as acted in a bona fide manner and the averment made in the website on 80-90% accuracy in the services and tips and the sure profits was made on basis of past performance i.e. Track sheets available since May 2016 to till December 2017 and removed the wordings on its own with respect to 80-90% accuracy as soon as it was brought to her attention. The website was changed and the changed website hosting was uploaded on the domain purchased from godaddy.com.*

8.8.3. *Five complainants out of the total complainants are not clients of the Noticee and provided names and scores registration no. along with payment receipt, of the complainant.*

8.9. *The Noticee denied to have dealt in securities. The Noticee further stated that no finding to that effect is given in the order. It collects fee from the clients who deal with the securities. In recommending investment advisory services for a particular script, it stated that it has no interest other than earning fees purely for investment advisory services.*

8.10. *Section 11(4)(e) of the SEBI Act, 1992 stipulate that the SEBI should take an approval from Judicial Magistrate First Class before passing such directions. The same is not done in this case.*

8.11. *Direction to freeze my account are not based on any single legal evidence. This action of SEBI causes the damage and destruction of the individual rights. The action of freezing of the bank account causes suffering to the Noticee including her family members. After freezing of bank account, it is difficult to fulfill the basic needs of Noticee and her family members due to non-availability of fund. This direction causes the question of survival.*

8.12. *Interim Order is discriminatory, unfair, unjust, unreasonable and untenable to have stopped our major source of revenue as Investment Advisor in total violation of the most basic principles of natural justice.*

9. In view of the above, the Noticee sought the Reliefs mentioned in the submissions.

10. **Consideration of Issues:**

10.1. I have considered the oral and written submissions made by the Noticee. The issue to be considered at this stage is as follows:

Whether in light of the facts and circumstances of the case, the findings of the Interim Order and the submissions of the Noticee in response thereto, the directions issued against the Noticee vide the Interim Order need to be confirmed, revoked or modified in any manner?

11. The consideration of the issues in light of the written and oral submissions made by the Noticee is contained in subsequent paragraphs.

12. **<u>Promising assured returns to the clients</u>**

Based on the email communication and content available on the website of Noticee, it was *prime facie* observed in the Interim Order that Noticee was promising assured/expected profit /returns on the investments made by the clients and luring them to avail its services and therefore is in violation of the IA Regulations

Changes in Website:

12.1. The Noticee has contended that the website of the IA was changed in December 2017 and subsequent to the changes in website the averments of 80-90% accuracy in services and tips and sure profits was removed. An affidavit to this effect is also submitted vide affidavit dated July 23, 2021. The Noticee has also provided the snapshot of the new website vide submission dated July 22, 2021

12.2. Based on the affidavit and the submission by the Noticee, it is observed that, the Noticee has admitted that prior to December 2017, the claim of 80-90% accuracy in services and tips and sure profits was indeed made. The Noticee claims that the website has been changed in December 2017, but is not able to produce any documentary evidence on the dates and details of the changes made in the website. I also note that, in support to the contention of the Noticee on changes in the website, the Noticee was advised during the hearing dated June 16, 2021, to produce, *Log of changes in the website, date of changes, details of changes, URL of the new website and the snapshot of the all the pages of the new website.* For additional submission, the Noticee was granted 4 weeks' time i.e. by July 16, 2021, subsequent to which, on the request of Noticee additional weeks' time was further granted for the submission. I note that even after having ample time after Interim Order and also post hearing, the Noticee has only produced an email dated July 12, 2021, sent to domain registration seeking information of the changes, but, has not been able to provide the supporting evidence on the changes made in the website. Therefore, the contention of the Noticee that changes in website were made in December 2017 is not sustainable.

12.3. I note that even if the website changes were made in December 2017, still the violation for the prior period continues to hold. Even otherwise the assurances contained in the website prior to December 2017 continue to appear in the website as per the snapshot available in achieve.org dated January 18, 2021, therefore the violation is continuing in nature.

12.4. I note that, Noticee has submitted that the averment of 80-90% accuracy in services and tips was based on past performance for the period May 2016 till December 2017, which on coming to its knowledge was suo-moto changed in the website subsequent to 2017. However, it is noted from the new website snapshot provided by the Noticee itself with the submission dated July 22, 2021, that the website content in the 'About Us' section still contains the following;

……..“*Through our meticulous market approach we have so far attained, 90% accuracy in Forex trade, 95% accuracy in trading equity and 86% accuracy in trading commodity*”.

Further, it is observed from the latest snapshot available on archive.org dated January 18, 2021, that, the averment of 80-90% accuracy in services and tips and sure profits in the product features tab are continuing to appear as contained in the Interim Order. It is also noted that the Noticee has conveniently provided the snapshot of the webpage containing products offered list but has not provided the product feature webpage. Therefore, the Noticee has not produced any material which can sustain the *prima facie* findings made in the Interim Order regarding the aspect of claiming accuracy in services/tips, etc.

12.5. The Noticee has provided track-sheet for its claim of 80-90% accuracy in services and tips made for the period from May 2016 till December 2017, but has not presented or produced any documentary evidence or supporting documents with respect to the accuracy of the averments made such as, SMS, messages, advisory/tips based on the track sheet, stock prices, etc. Further the Noticee has also not presented any documentary evidence or supporting material for the accuracy claim in services/tips, etc. which is continuing on the website post December 2017 too. This violation is continuing as per the latest snapshot available of the website dated January 18, 2021, on archieve.org.

12.6. It is also noted that, the Noticee has submitted that, *the allegation of guaranteed return is misconceived by customers, the word ‘expected’ or ‘projected’ return is misconstrued and misconceived as guaranteed returns by the customer.* The Noticee admits that expected and projected returns has been projected to the investor/clients. By this submission the Noticee also confirms that the statements and phrase being made to the investors/clients are liable to be misinterpreted by the investors/clients. In this respect, the Noticee has not presented any documentary evidence making any clarification in this respect to the investors/clients or the efforts made to avoid such vague and leading statement/phrase. I also note that, an investment adviser is required to comply

with applicable Regulations. The IA knowing fully well that any assurance of any *'expected' or 'projected'* profits/returns in securities market is practically impossible, is knowingly misrepresenting the truth. Further, such statements which are misleading to an investor are designed to influence the decision of investors dealing in securities. Every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment This act of the IA is nothing but *prima facie* appears to be an attempt to induce the client to subscribe to its advisory service by showing projected and expected return/profit, which *prima facie* is an act to mislead the client as full disclosure is not made by the IA that the proposed investment of the client may incur loss. This act *prima facie*, appears to have done with an intention to bring in more customers and thereby increasing the income of the IA.

Email id denial:

12.7. The Noticee has submitted that the email ids referred in the Interim Order through which assurance/promise of profit/returns to clients was given by the employees does not belong to the Noticee. In this respect the Noticee has also provided an affidavit on all the email ids in use by the IA for communication with the clients, which does not contain the email ids in the complaints referred in the Interim Order. It is noted from the website snapshot provided by the Noticee itself that an email id complaince@saiproficient.com is in use by the Noticee and provided as contact details under the tab compliance, but the same has not been referred in the affidavit as official communications email id. Therefore, the reliability of the statements affirmed in the affidavit becomes questionable.

12.8. I also note that the Noticee was advised to produce an affidavit "*specifying that Noticee is not associated or has any interest, directly or indirectly with any entity/individual who is associated, related or using the email ids referred in the Interim Order or complaints on SCORES*". I note that the Noticee has avoided any affirmation regarding this in the affidavit.

12.9. I note that in one of the two complaints brought out in the Interim Order, personal email id of Ms. Meeshika Vishwakarma (official email id for communication with clients as per affidavit) was also marked CC for necessary information and escalation, yet, she has not taken any action in this respect or produced any reply or revert, clarifying its position to the complainant, countering the allegations being made on the assured return and profit, email id status or association with the email id, etc. even though the complainant was a client of the Noticee. Further, I also note that the email trail is dated December 25, 2018 and May 01, 2019, which is much before the Interim Order which was passed on February 09, 2021. Therefore, the Noticee's contention that *fact came to its knowledge regarding the emails only after receipt of Interim Order is also not acceptable.*

12.10. In view of the above facts and circumstance, the two complainants are admittedly clients of the Noticee and Ms. Meeshika Vishwakarma was personally marked in the complaint email trail on December 25, 2018 and May 01, 2019, way before that Interim Order, therefore the Noticee was very well aware of the details of the complaints and the misrepresentation by the employees on the assurance of profit/returns to the clients, etc. Moreover, it is noted that the email id referred in the complaint by the clients of the Sai Proficient are used by the employees of the Noticee itself and Ms. Meeshika Vishwakarma, proprietor of Sai Proficient is also marked in the email trail.

12.11. The Noticee has stated that its employees might have deceived the clients and collected monies and therefore refund has been initiated to the complainants. The Noticee has provided names of three suspicious employees. In respect to

the action against these employees, the Noticee has submitted that, no action has been taken on these employees because it apprehends that other emails may also be in use, and also that the complaints of the 5 complainants handled by them have come to its knowledge after they absconded from job and the email id in use only on receipt of the Interim Order. I note here that the Noticee has not provided any information/documentary evidence of these employees' appointment and cessation. Further, on perusal of these 5 complaint details on SCORES, it was observed that the complaints mention employees' names of Sai Proficient, which has not been named as suspicious employees in the submission by the Noticee dated July 22, 2021. I also note that, it has already been brought out in above paragraphs that the email was escalated to Ms. Meeshika Vishwakarma during December 25, 2018 and May 01, 2019, and the respective complaints were lodged during 2019, much before the Interim Order. In view of the above facts and circumstances, the submission by the Noticee that it had no knowledge of the deceiving actions of the employees and the emails on the misrepresentation of the assurance of profit/return, is not acceptable. I also note that, the Noticee has admitted to the fact that the fees charged to the clients/complainants stiltedly deceived and misrepresented by the suspicious employees of the Noticee, has been received in the Noticee's bank account for which they have arranged refund to the clients. It is interesting to observe that if the suspicious employees wanted to misrepresent and deceive the amount/fees from the client/complainant should probably have been received in the suspicious employees account rather than Noticee's bank account which invariably is the beneficiary. Further, I also note that the Noticee has also not provided any documentary evidence making any clarification or warning or disclaimer in this respect to either to employees or to the clients/investors. Further, I also note that, since the Noticee has apprehensions on the actions of employees and emails, as a prudent and diligent IA this calls for even more proactive and stringent action being taken by the Noticee in the interest of its clients/investor against the employees and being reported to the appropriate authority. However, no action has been taken at all. In any event, if the deceptive action was taken by employees directly their employment

entity/company is responsible for their action and conduct. Moreover, the fees was paid by these clients/complainants to the Noticees account only and the Noticee was directly benefitted.

12.12. The Noticee has further submitted that on a telephone call from SEBI for resolution on one complaint it visited SEBI office and informed of suspicious activity and use of email which resembles with their email id. In this respect it is noted that as per the visitors record the Noticee did visit SEBI on August 19, 2019 and August 26, 2019. However, I note that this submission of the Noticee is completely contrary to its other submission that, complaints on misrepresentation to the 5 complainants'/clients by the suspicious employees came after they absconded from job and the fact of the email id in use came to its knowledge only after receipt of Interim Order dated February 09, 2021. This only suggests that the Noticee's claim on the fake e-mail is only an afterthought and therefore there is no merit in the submission regarding the fake email id.

12.13. I further note here that, being Registered Investment Adviser (RIA) it is the responsibility of the IA to ensure that the employees are acting within framework of the IA Regulations, code of conduct and if there is any diversion/non-compliance, necessary action be taken by the IA. Being the proprietor Ms. Meeshika Vishwakarma cannot neglect or be unconcerned of its responsibility and accountability, knowing that the acts and conduct of its employees are its responsibility. It is the responsibility of the Noticee to ensure imparting necessary training and apprising the employees on the product, features, do and don't, etc. and keep track/check on the acts and functioning of the employees. I note that, code of conduct clause 9 read with regulations 15 (9) of IA Regulations, specifies responsibility of senior management, which states that, *the senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.* In view of the above, the Noticee is

responsible for the acts of all the employees and denial and abrogation of responsibility is not acceptable.

12.14. Therefore, Noticee has not provided any acceptable evidence to un-sustain the *prima facie* finding that the Noticee offered/promised assured returns/profit to the clients and therefore failed (a) in its fiduciary responsibility to its clients and (b) to abide by the code of conduct, of IA Regulations as found in the Interim Order. Therefore, the contentions of the Noticee are devoid of any merit and not acceptable and thus the Noticee continues to be held *prima facie* in violation of respective IA Regulations, PFUTP Regulations and SEBI Act.

13. **Non Redressal of Investor Grievances:**

As per the findings in the Interim Order Noticee has not redressed the investor grievances within the stipulated time prescribed by the SEBI.

13.1. The Noticee has submitted that, out of 28 complaints pending on SCORES, in five (5 nos) complaints the alleged amount has not been received in their account. The Noticee has also provided affidavit stating that these five complainants are not clients of the Noticee and the payment receipts representing that the amounts as alleged has not been received in their accounts, SEBI shall consider this claim and the possible resultant closure of ATR and do the necessary in accordance with law.

13.2. In respect of one complaints i.e. Mr. Ajim Sattar Patave the Noticee has mentioned that, the Noticee has done everything in respect to closure of the complaint, yet the complaint is still pending in SCORE and not closed. I note that, as per the complaint filed on SCORES, the complainant has not only sought for refund but has also complained misuse his demat account by the Noticee. Therefore the complaint is still pending for necessary resolution.

13.3. With respect to other pending complaints, the Noticee has submitted that in case of six (6 nos) complaints, they are in process of resolving the complaints by making refunds to the clients and also in process of resolving other complaints.

13.4. The Noticee has submitted that a dedicated person was appointed for handling and redressal of clients' grievances, but, said person did not act diligently and performed his duty honestly. It has also submitted that only in case of eight complaints it has not filed ATR within prescribed timeline of 30 days, due to the fault of the dedicated person. I note here that as per the findings of the Interim Order, out of the eight complaints, in case of three complaints there was no ATR filed by the Noticee and in respect of five complaints there was delay in filing ATR within 30 days. Therefore, the submission by Noticee that there was only delay in filing ATR is not correct as for few complaints ATR itself has not been filed.

13.5. I note that, as per the website snapshot provided by the Noticee itself, the compliance officer details provided contains name of Ms. Meeshika Vishwakarma and email id complaince@saiproficient.com and the same details has also been provided with SEBI and available on SCORES. Further Ms. Meeshika Vishwakarma is also the proprietor of the IA. Therefore, Ms. Meeshika Vishwakarma being compliance officer and proprietor of the IA is responsible for *monitoring the compliance of the requirements of the Act, rules, regulations, notifications, guidelines, circulars and orders made or issued by the Board or the Central Government, or the rules, regulations and bye-laws of the concerned stock exchanges, or the self-regulatory organization*. In view of the above facts, the contention of the Noticee that the lapse was by the dedicated person handling client grievances, is not acceptable in terms of code of conduct clause 9 read with regulations 15 (9) of IA Regulations. The Noticee is responsible for resolution of the complaints as per the framework prescribed by the SEBI.

13.6. I also note that the 28 complaints pending (as on February 03, 2021) as brought out in the Interim Order are still continuing to be pending for necessary resolutions on SCORES. I note here that even if the case of the Noticee that five (5) complaints as contended by the Noticee are not clients of the Noticee and the alleged amount from them was not received in the Noticee's bank accounts, is accepted, still there is continuing violation of non redressal on investor grievances with respect to the remaining pending complaints i.e. 23 (nos) out of the total 28 complaints

13.7. In view of the above facts and also admitted by Noticee, ATR has not been filed within thirty days of receipt of grievances and the complaints are pending for resolution, in violation of the SEBI circular and IA Regulations.

13.8. In view of the above, as per the findings in the Interim Order, the Noticee is in violation of regulation 21 of the IA Regulations and SEBI circular CIR/OIAE/2014 dated December 18, 2014.

14. **Non Cooperation**

As per the findings in the Interim Order, Noticee has not cooperated with SEBI during the examination/inspection

14.1. As admitted by the Noticee, inspection notice dated Jan 15, 2020, along with inspection questionnaire and reminder notice dated February 04, 2020, informing the inspection date was received by the Noticee. In response to which the Noticee has replied that the information and documents as required could not be provided because of Ms. Meeshika Vishwakarma's maternity which resulted in closure of the business since December 31, 2019. It also stated that no new client was offered service since January, 2020 and they were providing services to only existing clients focussing on the complaints pending in SCORES.

14.2. I note that, Inspection of any registered intermediary is undertaken to ensure that the books of account, records and documents are maintained in compliance with the regulations and to ascertain that intermediary are in compliance with the Act, regulations, etc. It may be noted during the validity of SEBI registration, the intermediary is required to abide by the rules, regulations, circulars, etc. Therefore, denying/avoiding inspection reasoning that no new clients being undertaken and only the advisory services is rendered to existing clients is not justified. I also note that the inspection questionnaire forwarded along with the two SEBI letters were also not replied back with the requisite information and data, except bank statement. Providing only bank statement without the other relevant information and documents as desired for the inspection does not constitute necessary compliance by the IA of the rules, regulations, circulars, etc. As per regulation 24(3) of IA Regulation, "*during the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25."*

14.3. The Noticee has mentioned that the finding in the Interim Order that, IA failed to submit documents sought i.e. Risk Profiling Form ("RPF"), KYC, Invoices/Receipts, Suitability Policy, etc., is partially untrue and complete facts were not presented. With respect to this, the Noticee has failed to demonstrate the basis of this statement or any counter facts with any documentary evidence. I note that information/documents based on the inspection questionnaire which inter alia also contained details with respect to RPF, KYC, Suitability Policy, sample copies of invoices for different strategies/products offered, etc. has not yet been produced by the Noticee except bank statement, till date. Therefore, the contention of the Noticee is not sustainable.

14.4. I also take into account that Ms. Meeshika Vishwakarma was in her maternity phase and due to medical reasons could not be present for the inspection. Accordingly, taking into her medical requirements she was never insisted on

being present for the inspection and was advised to depute a person during inspection if she is unable to attend.

14.5. The Noticee has submitted that, it has replied and cooperated to the SEBI notices and had sought time till June 2020 for submission. It stated that therefore, justification for the period of January, 2020 to March, 2020 and thereafter due to COVID lockdown till July 2020 is not required. It is further stated that subsequently, no SEBI communication on inspection was received. I note that the inspection of Sai Proficient was ordered during January-February, 2020, which is prior to the declaration of lockdown due to Covid-19 Pandemic. Further furnishing of information sought vide questionnaire could have been done especially after considerable period of time has lapsed and normalcy has largely resumed. However, till date the Noticee has not provided the documents/data/information as per the SEBI Notice and inspection questionnaire. Hence, it only shows that the Noticee is only citing the nationwide lockdown due to the Covid-19 Pandemic as a pretext for non-cooperation by Noticee, for not providing the information. I also note that two notices were already issued to the Noticee and therefore the contention of the Noticee that it has not received any further communication from SEBI does not justify continued noncompliance. It is also noted that even after post passing of the Interim Order and post hearing, where the Noticee was advised to make submissions and granted 4 weeks' time and further an additional one-week time at its request, the information sought through questionnaire has not been submitted till date, in support of its claim of co-operation.

14.6. In view of the above, the contention of the Noticee is devoid of merit and cannot be accepted.

15. The Noticee has mentioned that the *Interim Order is misdirected, too harsh, oppressive and grossly disproportionate, and be withdrawn having regard to the facts and circumstances. Further it has mentioned that Interim Order is discriminatory, unfair, unjust, unreasonable, and untenable to have stopped major*

source of revenue as Investment Advisor, in total violation of the most basic principles of natural justice and is contrary to equity, good conscience and requested to be allowed to render services as Investment Advisor. I note that the very nature and conduct of the investment advisory activity being practiced by the Noticee is, *prima facie*, in violation of the provisions of the PFUTP Regulations and the IA Regulations, by promising assured returns to its clients, non redressal of investor grievances and non co-operation for inspection. Therefore, the balance of convenience is not in favor of permitting the Noticee to provide investment advisory services, either to new clients or to existing clients. I note here that clients have been lured to deal in securities based of assurances and misrepresentation of return/profit and if the Noticee is permitted to continue its services, clients/investors are at risk of losing their capital/savings while acting under the assurances/ misrepresentations and non-compliance of code of conduct by the Noticee. Further Noticee is also in non-compliance to the IA Regulations, code of conduct and also lacks due diligence in its activities. Therefore, there is impending threat and urgency that they should be prevented from further committing breach of securities laws in securities market. The imminent threat is further compounded by the fact that the violation is committed by a registered Investment Adviser of SEBI which is required to abide by the rules, regulation and the code of conduct prescribed and the Noticee is in violation of the same. I note that, the securities market provides for various avenues of investment. Making of such investment by buying securities and liquidation of the same by selling securities needs to be undertaken in compliance of various securities laws relating to the dealing in securities. Since there is *prima facie* violation of securities laws, there is further urgent requirement that investors be insulated from the undesirable effects of further breach of securities laws and the code of conduct of the IA. Further the Interim Order has been passed in order to maintain the status quo, so that on final adjudication after granting fair opportunity of hearing on merits, if the liability to repay is established, the possible direction in the final order does not become infructuous. Therefore, based on the facts and circumstance of the case, I find that the balance of convenience is not in favour of the Noticee. In view of the above, the request of the

Noticee to consider allowing to continue rendering services as IA cannot be considered as this stage.

16. The Noticee has prayed for de-freezing of its bank accounts and to allow using the funds from bank accounts. It has stated that it has caused damage and destruction of the individual rights and maintenance of family. I note here that as per the statement of asset and properties owned by Ms. Meeshika Vishwakarma dated February 16, 2021, the balance in the bank accounts as produced only shows Rs. 1,298/-. I note the negligible amount and that the objectives of freezing the bank account is to stop the credit of investors' money. However, if there are any extraordinary situation given the current facts and circumstances of the case, Noticee is allowed to file separate application to SEBI, giving the necessary proof for release of money. SEBI, shall consider the same, on verification of the claim based on the request and any further information to be sought from the Noticee, and appropriately communicate its decision to the Noticee. However, in the present case justifiable reasons or materials have not been placed to modify the direction in this regard.

17. Noticee has also contented that *Section 11(4)(e) of the SEBI Act, 1992, stipulate that the SEBI should take an approval from Judicial Magistrate First Class before passing such directions*. SEBI is empowered to attach bank accounts by following a procedure which is precisely covered under provisions of Section 11(4)(e) of SEBI Act, and requires prior approval of a Judicial Magistrate of the first class having jurisdiction. In this regard, I note that section 11(4)(e) of the SEBI Act requires an approval of the Judicial Magistrate of the first class only for the purpose of attachment of "bank account(s)". Further, it is to be noted that section 11(4)(e) of SEBI Act, 1992, applies to the attachment of the bank accounts. SEBI has powers under section 11(B) of the SEBI Act to impose restriction on debits/credit in bank accounts and demat accounts. The legal effect of this direction is different from the legal effect of attachment. Thus, neither any direction of attachment of the Noticee bank accounts has been issued vide the Interim Order nor have any of the bank accounts of the Noticee been attached pursuant to SEBI's Interim Order.

Therefore, the requirement of prior permission of Judicial Magistrate under section 11(4)(e) of the SEBI Act, does not arise and SEBI has acted well within its scope and powers. Hence, in view of the above, I do not find any merit in the contention of the Noticee.

18. Noticee has contended that *action of SEBI is against the Article 21 of the Constitution of India and the Interim Order has deprived it from the Right of Livelihood*. I note that defending an action on the basis of violation of constitutional rights needs to be raised before appropriate Competent Authority. Without prejudice to this, I note that SEBI Act provides for procedures and measures on the reasonable restrictions of right conferred under Article 21. Interim direction contained in paragraph 23 were imposed in the interest of securities market and interest of investors, under Sections 11(1), 11(4) and 11B of SEBI Act. Therefore, I do not find any merit in the contention of the Noticee that action taken by the SEBI against Article 21 of the Constitution of India

19. In view of the considerations made above, based on the submission made by Noticee, and also the observations and reasons recorded in the Interim Order, I find the Noticee has not been able to contradict with materials, the findings in the Interim Order. Hence, I find that the Noticee is, *prima facie*, in contravention of various provisions of the SEBI Act, the IA Regulations and the PFUTP Regulations**.** Hence, there is no justifiable reason to revoke or modify the directions issued against Noticee vide the Interim Order.

20. Accordingly, necessary directions in this regard are issued in the following paragraphs.

Order:

21. In view of the foregoing paragraphs, pending enquiry, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11B and 11D thereof, hereby confirm the directions issued vide ex-parte ad

Interim Order dated February 09, 2021, against Sai Proficient Research Investment Advisory and its proprietor Ms. Meeshika Vishwakarma.

22. This order shall come into force with immediate effect. A copy of this order shall be served upon all the Noticee, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

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Date: August 27th , 2021 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA