

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
(ADJUDICATION ORDER NO: Order/AS/VC/2024-25/30975)**

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.**

**In respect of  
Ankur Jain (Proprietor: Winway Research)  
(PAN: AGFPJ5226N)  
(SEBI Registration Number: INA000007492)**

**In the matter of Ankur Jain (Proprietor: Winway Research)**

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**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received the following complaints in SCORES against Ankur Jain, Proprietor of Winway Research:

<b>Table 1</b>			
<b>Sr. No.</b>	<b>SCORES Complaint Number</b>	<b>Date of receipt of complaint</b>	<b>Name of Complainant</b>
1	SEBIE/MP23/0000064/1	December 24, 2022	Padam Singh
2	SEBIE/MP22/0000840/1	November 23, 2022	Kundan Kumar
3	SEBIE/MP22/0000775/1	October 21, 2022	Amit Kumar Kadian
4	SEBIE/MP23/0000357/1	February 02, 2023	Shyam Kumar Kandukuri

2. Subsequently, SEBI conducted examination in the matter of Ankur Jain, Proprietor of Winway Research (hereinafter referred to as “**Noticee/ Winway/ Company / IA**”). The main findings of the examination are summarised as under:

- A) Noticee did not apply for registration as a non-individual Investment Adviser.
  - B) Noticee insisted the clients to make payments from bank account of relatives and seeking payments in their bank account, taking money from its clients in different personal bank accounts belonging to other persons. Noticee charged fees from the complainant (i.e. Shyam Kumar Kandukuri) for same product for overlapping durations.
  - C) Noticee issued invoices for various payments but has not mentioned the same in the agreements entered into with the complainants and Noticee did not enter into agreement with the client with respect to various fees charged from its clients.
  - D) Noticee failed to submit records sought by SEBI and failed to maintain call records.
  - E) Noticee promised assured returns to client and induced the client fraudulently to subscribe to its service packages.
  - F) Noticee did not resolve the SCORES complaints and did not file the ATRs submitting reasons that the procedures and guidelines have been complied with.
3. Based on the findings of examination of Winway, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of the SEBI Act, 1992 for alleged violation of the following provisions of law:
- 3.1. Paragraph 2(v)(a) and 2(v)(c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Clause 8 of Code of Conduct for Investment Advisers specified in Third Schedule of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”).
  - 3.2. Regulation 3(d), 4(1) and 4(2)(o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A(c) of SEBI Act, 1992; Regulation 15(1), Regulation 15(9) of IA Regulations read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers. Violation

of Regulation 15(2) of IA Regulations by IA by receiving funds from the relatives of its clients.

- 3.3. Paragraph 2(ii)(a) and 2(ii)(c) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with terms and conditions specified in Annexure of the said SEBI circular read with Regulation 19(1)(d) of IA Regulations read with Clause 1 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.
- 3.4. Paragraph 2(vi) of SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19(2) and Clause 8 of Code of Conduct specified in the Third Schedule read with Regulation 15(12) of IA Regulations.
- 3.5. Regulations 3(d), 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992. Regulation 15(1) and Clauses 1, 2 and 8 of the Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations.
- 3.6. SEBI circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022, regarding resolution of investor grievances through SCORES platform and Regulation 21(1) of IA Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 read with Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as “**SEBI Rules**”), the Competent Authority appointed Shri Amar Navlani as Adjudicating Officer (“**AO**”) vide order dated December 22, 2023 to inquire into and adjudicate under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992, for the aforesaid alleged violations of the Noticee. Subsequently, on re-

allocation, the matter was transferred to Mr. Shashi Kumar Valsakumar by Competent Authority vide order dated March 14, 2024. Further, pursuant to transfer of erstwhile AO, undersigned was appointed as the AO in the matter vide order dated July 22, 2024.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/19556/1-2/2024 dated June 13, 2024 (hereinafter referred to as “**SCN**”) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Rules read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15A(a), 15C, 15EB and 15HA of SEBI Act, 1992 for the alleged violations. I note that the SCN issued to Noticee was duly served upon the Noticee and it was acknowledged by the Noticee. Thereafter, vide e-mail/ letter dated July 11, 2024, Noticee submitted his reply to the SCN. Noticee also made the additional submissions in the matter vide e-mail dated September 22, 2024.
  
6. In the interest of natural justice, an opportunity of hearing on August 20, 2024 was granted to the Noticee vide Hearing Notice dated August 01, 2024. On August 20, 2024, Authorized Representative of the Noticee attended the hearing through video-conferencing over WebEx platform and reiterated the submissions made by the Noticee vide e-mail/ letter dated July 11, 2024.

### **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:
  - I. Whether the Noticee has violated the provisions of the SEBI Act, 1992, SEBI Regulations and Circulars as indicated in para no. 3 hereinabove?

- II. Does the violation, if any, attract monetary penalty under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992?
  - III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Rules?
8. Before proceeding further, it is pertinent to refer to the relevant provisions of SEBI Act, 1992, SEBI Regulations and Circulars which are alleged to have been violated. The said provisions are reproduced hereunder for ease of reference:

***Paragraph 2(v)(a) and 2(v)(c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020:***

*2. In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:*

*(v) Registration as Non Individual Investment Advisor*

- a. As per Regulation 13(e) of the amended IA Regulations, an individual IA shall apply for registration as non-individual investment adviser on or before reaching 150 clients.*
- c. Once number of clients reaches 150 and till grant of registration as a non-individual IA, Individual IA shall not on-board fresh clients. However, during the period of examination of application by SEBI, individual IA shall continue to service existing clients. In case the aforesaid IA does not get registration as non-individual IA, such IA shall continue the advisory activities as an Individual IA while ensuring that the numbers of clients does not exceed 150 in total.*

***Regulation 3(d), 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations:***

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*

- (d) Engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

#### **4. Prohibition of manipulative, fraudulent and unfair trade practices**

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative fraudulent or an unfair trade practice in securities markets. [Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income.

(s) mis-selling of securities or services relating to securities market;

Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer

#### **SEBI Act, 1992:**

#### **Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.**

**12A.** No person shall directly or indirectly –

.....

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities

which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;

### **THIRD SCHEDULE**

#### **SEBI (Investment Advisers) Regulations, 2013**

**[See Sub Regulation (9) of regulation 15]**

#### **CODE OF CONDUCT FOR INVESTMENT ADVISER**

**Clause 1, 2, 6 and 8 of Code of Conduct for IA, Third Schedule of IA Regulations:**

##### **1. Honesty and fairness**

*An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*

##### **2. Diligence**

*An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*

##### **6. Fair and reasonable charges**

*An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

##### **8. Compliance**

*An investment adviser including its partners, principal officer and persons associated with investment advice shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.*

##### **General responsibility.**

##### **Regulation 15(1) of IA Regulations:**

*An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

**Regulation 15(2) of IA Regulations:**

*(2) An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided*

**Regulation 15(9) of IA Regulations:**

*(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.*

**Regulation 15(12) of IA Regulations:**

*(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.*

**Paragraph 2(ii)(a) and 2(ii)(c) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020:**

*2. In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:*

*(ii) Agreement between IA and the client*

*a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.*

*c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.*

**Regulation 19(1)(d) of IA Regulations:**

*19.(1) An investment adviser shall maintain the following records,-*

*d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board.*

**Paragraph 2(vi) of SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020:**

**Maintenance of record**

*Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:*

a. IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:

- i. Physical record written & signed by client,
- ii. Telephone recording,
- iii. Email from registered email id,
- iv. Record of SMS messages,
- v. Any other legally verifiable record

b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.

c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

**Regulation 19(2) of IA Regulations:**

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

**Web link of SEBI circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022:**

[https://www.sebi.gov.in/legal/master-circulars/nov-2022/master-circular-on-the-redressal-of-investor-grievances-through-the-sebi-complaints-redress-system-scores-platform\\_64742.html](https://www.sebi.gov.in/legal/master-circulars/nov-2022/master-circular-on-the-redressal-of-investor-grievances-through-the-sebi-complaints-redress-system-scores-platform_64742.html)

**Regulation 21(1) of IA Regulations:**

The Investment Adviser shall redress investor grievances promptly but not later than twenty-one calendar days from the date of receipt of the grievance and in such manner as may be specified by the Board.

Note: For detailed/ complete text of the provisions, relevant Acts, Regulations, Circulars etc., may be referred.

9. Based on perusal of the material available on record, submissions of the Noticee and giving regard to the facts and circumstances of the case, I record my findings hereunder:

**Issue I. Whether the Noticee has violated the provisions of the SEBI Act, 1992, SEBI Regulations and Circulars as indicated in para no. 3 hereinabove?**

10. I note that multiple allegations have been levelled against the Noticee, thus for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs. I find the following major alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

- A) Allegations w.r.t. not applying for registration as a non-individual Investment Adviser,
- B) Allegations w.r.t. insisting the clients to make payments from bank account of relatives and seeking payments in their bank account, taking money from its clients in different personal bank accounts belonging to other persons and charging fees from the complainant (i.e. Shyam Kumar Kandukuri) for same product for overlapping durations,
- C) Allegations w.r.t. issuing of invoices for various payments but not mentioning the same in the agreements entered into with the complainants and not entering into agreement with the client with respect to various fees charged from its clients,
- D) Allegations w.r.t. failure to submit records sought by SEBI and failure to maintain call records,
- E) Allegations w.r.t. promise of assured returns and inducing the client fraudulently to subscribe to its service packages, and
- F) Allegations w.r.t. non resolution of SCORES complaints and filing ATRs submitting reasons that the procedures and guidelines have been complied with.

**A. Allegations w.r.t. not applying for registration as a non-individual Investment Adviser:**

11. The SCN alleges that vide emails dated July 30, 2023, IA submitted that it had 544 clients during the FY 2020-21 and vide email dated August 06, 2023, IA submitted the list of 544 clients along with service start date and service end date. As per the data submitted by the IA, it was observed that the IA had less than 150 clients as on September 30, 2020. IA was not eligible to onboard new clients after reaching the limit of 150 clients. However, IA crossed the limit of 150 clients on October 30, 2020, but the IA did not apply for registration as a non-individual IA as per his submission vide email dated July 27, 2023.

**Reply of Noticee**

12. With respect to allegations of not applying for registration as a non-individual Investment Adviser, Noticee *inter alia* submitted that the allegations are false and frivolous as the IA did not have active clients more than 150 at any point of time, these details were submitted earlier also to BASL, further even it can be verified that the 544 clients had different period of service and company never had more than 130 active clients at any point of time. For example, a client makes payment for 7 days service and he is given his service if he again makes payment for 1 month service after 20 days of first payment he will get 1 month service, however for the period of 14 days in between he was not an active client. Thus IA has never served more than 130 clients at any given point of time.

**Findings**

13. SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 provides that as per Regulation 13(e) of the amended IA Regulations, an individual IA shall apply for registration as non-individual investment adviser on or before reaching 150 clients. Once number of clients reaches 150 and till grant of registration as a non-individual IA, Individual IA shall not on-board fresh clients. However, during the period of examination of application by SEBI, individual IA shall continue to service existing clients. In case the aforesaid IA does not get registration as non-individual IA, such IA shall continue the advisory activities as

an Individual IA while ensuring that the numbers of clients does not exceed 150 in total.

14. In response to allegations of not applying for registration as a non-individual Investment Adviser, Noticee submitted that he never had more than 150 active clients at any point of time. Noticee further submitted that 544 clients had different period of service, for example, if a client makes payment for 7 days service and he is given his service, if he again makes payment for 1 month service after 20 days of first payment he will get 1 month service, however for the period of 14 days in between he was not an active client, thus IA has never served more than 130 clients at any given point of time. I find from the data of clients available on records that Noticee had a total of 1068 clients (Out of these 1068 clients, 3 clients availed services of IA for 2 different periods) during the period of March 03, 2020 to November 18, 2022. The service period of these clients varied from minimum of 1 day to maximum of 399 days and most of clients availed the services from IA for shorter period of time ranging from 1 day to 91 days. Therefore, considering the aforesaid and submission of the Noticee that many clients avail services for shorter durations, the data of clients of the Noticee was analysed. As per SCN, Noticee had less than 150 clients as on September 30, 2020 and crossed the limit of 150 clients as on October 30, 2020. However, from the analysis of data of clients for the period of March, 2020 to November, 2022, I observe that Noticee had a maximum of 109 active clients on March 12, 2021 and March 18, 2021, and he did not have more than 150 active clients as alleged in the SCN.
15. Therefore, I hold that the allegation that Noticee violated the provisions of Paragraph 2(v)(a) and 2(v)(c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Clause 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations, does not stand established.

**B. Allegations w.r.t. insisting the clients to make payments from bank account of relatives and seeking payments in their bank account, taking money from its clients in different personal bank accounts belonging to**

**other persons and charging fees from the complainant (i.e. Shyam Kumar Kandukuri) for same product for overlapping durations:**

16. SCN alleged that one of the complainants (i.e. Shyam Kumar Kandukuri) submitted that the IA insisted him to make payments from different bank accounts which did not belong to the complainant and as per the bank transaction details submitted by the complainant and bank account of the IA (SBI account), it was observed that funds were transferred from bank accounts of the relatives of the complainant to the bank account of the IA. Further, it was alleged that IA has also charged fees from the complainant (Shyam Kumar Kandukuri) for same product for overlapping durations.
17. Complainant Amit Kumar Kadian had submitted in his complaint that he made payment in bank accounts of Sakat Singh Yadav and complainant Padam Singh submitted that he made payments to Priyansh Kasliwal and Sumit Duran. The payments made by these complainants have been found in the bank statements of Sumit Duran, Priyansh Kasliwal and Sakat Singh Yadav.
18. SCN further alleged that several credits from Winway Research in the bank accounts of Sakat Singh Yadav and Sumit Duran were observed which indicates that there was a nexus between Sakat Singh Yadav and Winway Research & Sumit Duran and Winway Research, and Winway Research, in connivance with Sakat Singh Yadav and Sumit Duran, was taking money from the clients of Winway Research in personal bank accounts of Sakat Singh Yadav and Sumit Duran.
19. The abovementioned acts of the IA are in disregard to the responsibility entrusted on him under IA Regulations to act in fiduciary capacity and in the best interest of its clients and keeping his own interest ahead of his client's interest. The above observations show that a scheme is knowingly employed by the IA to defraud its clients in connection with their dealings in the securities and to maximize its revenue generation at client's expense. Thus, the above discussed deceptive activities of IA are allegedly fraudulent and are covered under the definition of "fraud" under Regulation 2(1)(c) of PFUTP Regulations. Thus, it was alleged that

the Noticee through its fraudulent act / scheme as discussed above, has violated the provisions of Regulation 3(d), 4(1) and 4(2)(o) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992.

20. It was further alleged that the Noticee has failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under Regulation 15(1) of IA Regulations and failed to abide by Code of Conduct as specified under Regulation 15(9) read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers in Third Schedule of IA Regulations. It was also alleged that the Noticee has also violated Regulation 15(2) of IA Regulations by receiving funds from the relatives of its clients.

### **Reply of Noticee**

21. With regard to allegations of receiving funds from the relatives of the complainant (Shyam Kumar Kandukuri) to the bank account of IA, Noticee submitted that the allegations are false and frivolous as the client filed a complaint after more than 2 years of subscribing his services, further the allegations are unsubstantiated and there is no proof adduced to support these claims. The client has referred his friend/relative to subscribe the services of the company to Mr. Vishal Vishnu Gawde, to whom all compliance formalities were followed that is KYC, RPM, suitability, invoices and welcome mails were sent to this third party reference. Further, client has himself accepted, vide email dated May 26, 2021, that the said payment was made by third party by his reference and thus the allegations being afterthought deserve to be dropped.
22. In response to allegations of fees charged from the complainant (Shyam Kumar Kandukuri) for same product for overlapping durations, Noticee submitted that the allegations with regards to stock options is due to lack of understanding of the invoicing system before the amendment of 2020, at that point of time a combined bill was raised for all the services, as the client subscribed for a combination of services thus stock option was also written in the invoice, however it did not mean that the client was charged for overlapping period.

23. With respect to allegations that Noticee was taking money from the clients of Winway Research in personal bank accounts of Sakat Singh Yadav and Sumit Duran and payments made by complainant Padam Singh in account of Priyansh Kasliwal, Noticee *inter-alia* submitted that some employees of the company have committed breach of trust and have operated unregistered investment advisory activity, for example Astha Singh, where Noticee has filed a complaint to SEBI. In the present case, Astha Singh, Sakat Singh Yadav, Sumit Duran, have committed criminal breach of trust & have operated an unregistered investment advisory business but the Noticee cannot be held accountable for their acts. It is a settled principal that there is no concept of vicarious liability in case where employee commits a breach of trust or an act without the knowledge of the employer.
24. Mr. Sakat Singh Yadav was an ex-employee of the company. He had already left his job in November 2021, whereas he has taken payment from client in June 2022 and thus the company cannot be held responsible for such acts. The alleged link between Noticee and Mr. Yadav is false and frivolous as the company cannot be held responsible if client has made any payment in any individual's account specially when the agreement unequivocally and clearly states these terms, point number 16 (d)(e)(f)(h)(i) are absolutely clear in these terms, that company does not accepts payment in any personal account, and if invoice is not issued, company will not take any responsibility of such payments. Despite this if the client has made any payment in an individual's account SEBI shall, if it deems fit, prosecute Mr. Yadav under competent sections for operating unregistered investment advisor activity.
25. Sumit Duran left his job in December 2021 and since then, there has been no engagement or response from his end. Mr. Sakat Singh Yadav and Mr. Sumit Duran were ex-employees of the company and thus Noticee made them payments of their salaries along with incentive and that is the reason for payments made by company during the beginning of the month. After the last drawn salary aforesaid employees did not come to office, Noticee tried to communicate with them but they

did not reply to Noticee's phone calls. Their unauthorized absence from work simply means that they are not associated with Winway and the same can be verified through the last salary credited to them. Further, there is no connection what-so-ever with Priyansh Kasliwal, and thus the Noticee cannot be held liable for their acts that have been done by them in isolation. Noticee had no knowledge that Mr. Sumit Duran has taken payment in his personal account and in account of his accomplice Mr. Priyansh Kasliwal.

26. Noticee also submitted that there have been payments made by Noticee to aforesaid employees but there is not a single payment received from these persons by the Noticee and thus this itself makes it clear that Noticee had no knowledge of their acts, further the complaint by Noticee also bears witness to his innocence as he only knew about Astha Singh, and he gained knowledge about the other two employees only through the SCN.
27. Noticee further submitted there is no concept of vicarious liability in such cases and the company shall not be held responsible for the acts of these individual which have been done in isolation without any connivance and nexus of Noticee. These individuals were ex-employees of the company, who abused and misused their information and relationship with company and client and thus their act is a criminal breach of trust, but it does not depict any nexus of the company with these individuals.
28. In response to allegations of fraudulent scheme/ activities of IA and violations of PFUTP Regulations, Noticee submitted that the allegations are false and frivolous as there is no nexus of the company with the said individuals. In all agreements the company mentions that the company does not accepts amounts in any account other than in the authorised accounts, further if invoices are not issued than the deposits will not be considered valid and thus the said allegations are sufficiently disproved.

## Findings

29. As per IA Regulations, investment adviser shall act in a fiduciary capacity towards its clients and investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised. IA Regulations also provides that investment adviser shall act honestly, fairly and in the best interests of its clients. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.
  
30. As per SCN one of the complainants (i.e. Shyam Kumar Kandukuri) submitted that the IA insisted him to make payments from different bank accounts which did not belong to the complainant and as per the bank transaction details it was observed that funds were transferred from bank accounts of the relatives of the complainant to the bank account of the IA. With regard to this, I find that the complainant, vide email dated May 26, 2021, has informed Winway Research and SEBI that '*others payment are from separate entity that I have referred to them*'. Thus, in view of the reply of the Noticee that the payments were received from clients whom complainant has referred the services of Winway and for whom all compliance formalities were followed and abovementioned reply of the complainant, I am inclined to accept the submissions of the Noticee in this regard.
  
31. With regard to allegations of fees charged from the complainant (Shyam Kumar Kandukuri) for same product for overlapping durations, Noticee submitted that the allegations with regards to 'Stock Options' is due to lack of understanding of the invoicing system before the amendment of 2020, at that point of time a combined bill was raised for all the services, as the client subscribed for a combination of services thus stock option was also written in the invoice, however it did not mean that the client was charged for overlapping period. I note that 'Stock Option' was included in both the invoices dated November 19, 2020 (Period of service - November 20, 2020 to December 31, 2020) and November 23, 2020 (Period of service - November 24, 2020 to January 05, 2021) issued to complainant (Shyam Kumar Kandukuri). Thus, I observe that 'Stock Option' was part of both aforesaid combination of services, hence fee was charged from the complainant for same

product for overlapping durations with the objective of extracting higher amount of fees from the client. Thus, the act of the Noticee is in disregard to the responsibility entrusted on it under IA Regulations to act in fiduciary capacity and in the best interest of its clients and Noticee kept its own interest ahead of its client's interest. Therefore, I hold that Noticee has violated Clause 1, 2 and 6 of Code of Conduct as specified in Third Schedule of IA Regulations read with Regulation 15(1) of IA Regulations.

32. With respect to allegations that Noticee was taking money from the clients of Winway Research in personal bank accounts of Sakat Singh Yadav and Sumit Duran, Noticee submitted that he made the payments of salaries along with incentive to these employees, who later on left their jobs, and there is not a single instance of payment received from these employees. Noticee further submitted that these ex-employees of the company abused and misused the information and their relationship with company and clients and he had no knowledge of their acts, thus their act is a criminal breach of trust and there was not any nexus of the IA with these individuals. Noticee also submitted that there is no concept of vicarious liability in such cases and the company is not responsible for the acts of these individual which they did in isolation without any connivance and nexus of the Noticee.
  
33. I observe from the bank account statements of Sakat Singh Yadav that there were credits in his account from Winway at the beginning of the month from January 2021 to November 2021. After November 2021, no transactions between Winway and Sakat Singh Yadav have been observed. In this regard, Noticee stated that the payments till November 2021 were pertaining to his salaries along with incentives, thereafter, he left his job and there has been no engagement or response from his end. Therefore, considering the material available on record and submissions of the Noticee, I am inclined to accept the submission of the Noticee that Sakat Singh Yadav left his job in November 2021. Since, the payment of Rs. 95,000/- by the complainant (Amit Kumar Kadian) to Sakat Singh Yadav was made on June 17,

2022, apparently after Sakat Singh Yadav left his job at Winway. Hence, the allegation is therefore dropped in favour of the Noticee.

34. Further, I note from the bank account statements of Sumit Duran that there were several credit transactions in his account (most of them being credited at the beginning of the month) from Winway during November 2020 to December 2021. Noticee submitted that these credit transactions were related to payment of salaries along with incentive to Sumit Duran. He left his job in December 2021 and since then there has been no engagement or response from his end. I observe from the records that a payment of Rs. 10,000/- was received in account no. 9180100\*\*\*\*\*17 of Sumit Duran from complainant Padam Singh on August 05, 2021. Further, I also observe the credits of Rs. 50,000/- and Rs. 15,000/- on August 04, 2021 in the bank account no. 15900\*\*\*\*\*19 of Sumit Duran, the payment screenshots / bank transaction statement of which were submitted by the complainant Padam Singh. Therefore, I note that the said payments were received by Sumit Duran from the complainant Padam Singh in his bank accounts when he was employed at Winway. Hence, I hold that Noticee is responsible for the said acts of its employee, Sumit Duran and there appears to be a collusion and nexus between Winway and its employee, Sumit Duran for taking money from the client in his personal bank account. Accordingly, I hold that Noticee's submissions that there is no concept of vicarious liability in such cases and the company is not responsible for the acts of these individual which they did in isolation without any connivance and nexus of the Noticee are not acceptable.
35. In response to the allegations that complainant Padam Singh made the payments in bank account of Priyansh Kashliwal, Noticee submitted that there is no connection whatsoever with Priyansh Kasliwal, thus Noticee cannot be held liable for his acts that were done by him in isolation. I note that no connection between Noticee and Priyansh Kashliwal has been brought out and alleged in the SCN. Hence, the allegations in this regard are dropped.

36. In view of the above, I hold that the Noticee has failed in his responsibility to act in fiduciary capacity to its client which is entrusted upon him under Regulation 15(1) of IA Regulations and failed to abide by Code of Conduct as specified under Regulation 15(9) read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified in Third Schedule of IA Regulations.

37. With regard to allegations of fraudulent scheme/ activities of IA and violations of PFUTP Regulations, I would like to refer to the definition of “fraud” as given in Regulation 2(1)(c) of the PFUTP Regulations, which provides as under:

*“(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled*

*even though they did not rely on the statement itself or anything derived from it other than the market price.*

*And “fraudulent” shall be construed accordingly.....”*

38. I am of the view that the definition of “fraud” under Regulation 2(1)(c) of the PFUTP Regulations is very wide in nature. In the matter at hand, the payments were taken from client in the account of employee of IA is a violation of the provisions of the IA Regulations and the Code of Conduct. However, I am of the view that there is not enough material on record to show that these acts fall within the definition of “fraud” under the PFUTP Regulations. Allegations of fraud in the instant matter are not supported by other evidences that such actions induced another person or his agent to deal in securities.

39. In this regard, I find it pertinent to refer to the observations of the Hon’ble Supreme Court in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, which are as under-

*“The definition of ‘fraud’, which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a ‘fraudulent act’ or a conduct amounting to ‘fraud’. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”..... to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.”*

40. I note that the Hon’ble Supreme Court while interpreting the definition of “fraud” held that to constitute fraud under definition of fraud only “inducement” while

dealing in securities is required. There is no proof to show that Noticee has committed fraud while “dealing in securities” as contemplated under the PFUTP Regulations. Hence, in view of the aforesaid and the prudent view that the allegation of fraud is serious offence which requires high level of proof, I find that the material available on record is insufficient to establish the violation of Regulation 3(d), 4(1) and 4(2)(o) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992 by Noticee.

**C. Allegations w.r.t. issuing of invoices for various payments but not mentioning the same in the agreements entered into with the complainants and not entering into agreement with the client with respect to various fees charged from its clients:**

41. It was observed from the SCORES complaints that though the IA has issued invoices for various payments but he has not mentioned the same in the agreements entered into with the complainants viz. Padam Singh, Amit Kumar Kadian and Kundan Kumar (These complainants were issued invoices by the IA after April 01, 2021).
42. Thus, it was alleged in SCN that the Noticee, by not entering into agreement with the clients with respect to various fees charged from its clients and not mentioning the amount of fees charged in the agreement entered into, has violated the provisions of Paragraph 2(ii)(a) and 2(ii)(c) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with terms and conditions specified in Annexure of the said SEBI circular read with Regulation 19(1)(d) of IA Regulations read with Clause 1 and 8 of Code of Conduct for Investment Advisers as specified in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

**Reply of Noticee**

43. With regard to above allegations, Noticee *inter alia* submitted that the allegations that agreement was only for 5000/- rupees is unsubstantiated due to lack of understanding of accounting and business method, as the company sold its

services for 6 months for Rs. 1,08,750/-, but as the client chose to make payments in instalments the agreement was drawn for Rs. 5000/- as the first payment was made for Rs. 5000/- and the agreement states that it will be valid for all future services, unless changed by consent of both parties.

44. Noticee further submitted that the allegations are false and frivolous as the IA has mentioned in the agreement in point number 16(b) that the client shall pay an amount of Rs. 5000/- as advance and the remaining amount in instalments. Thus, it is clear that the amount of Rs. 5000/- was only paid as advance and the remaining amount was to be paid in instalments. Had the intention of the IA been to either cheat the client, IA would not have entered into any agreement, or if IA had any intention to violate the SEBI Guidelines, IA would not have issued invoices for further amount. These things indicate to only one possible outcome that the services were sold for full amount and Rs. 5000/- was only advance given by the clients.

### **Findings**

45. I note that SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 provides that Regulation 19(1)(d) of the amended IA Regulations, IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client. Further, as per Regulation 19(1)(d) of IA Regulations an investment adviser shall maintain records of copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board.
46. I find from the agreements signed by IA with the clients that it is provided in point number 16(b) that *“the client shall pay an amount of Rs. 5000/- as advance and the remaining amount of Rs. \_\_\_\_\_ in instalments. The detailed fee schedule is annexed with this agreement in Annexure A.”* Further, Annexure A to the agreement provides the ‘Product Pricing’, where details of fees of various services provided by the IA is given. Hence, in view of the said findings and Noticee’s

submissions that the amount of only Rs. 5000/- was paid as advance and the remaining amount was to be paid in instalments by the clients, thus for accounting and business purpose the agreement was drawn for Rs. 5000/-, I hold that Noticee was disclosing the details about the fees of services provided by him to clients and the lapse is only procedural and technical in nature.

47. Therefore, I am inclined to accept the submissions of the Noticee and hold that the allegation that Noticee has violated the provisions of Paragraph 2(ii)(a) and 2(ii)(c) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with terms and conditions specified in Annexure of the said SEBI circular read with Regulation 19(1)(d) of IA Regulations read with Clause 1 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations, does not stand established.

**D. Allegations w.r.t. failure to submit records sought by SEBI and failure to maintain call record:**

48. For the resolution of SCORES complaints lodged by Kundan Kumar, Amit Kumar Kadian and Padam Singh, IA was, *inter-alia*, advised in SCORES on to provide call recordings of these clients beginning from the first interaction. It was observed that these complainants were issued invoices by the IA after January 01, 2021 and therefore, it was mandatory for IA to maintain call records of these clients, as per SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.
49. IA submitted call records of Amit Kumar Kadian on January 20, 2023 and Kundan Kumar on January 20, 2023 in SCORES. However, upon listening to the call records, it was observed that the recordings were not from the first interaction with these clients and thus, IA has not submitted complete call records of these clients which suggests that the IA has selectively provided call records to SEBI so as to hide the interactions held with its clients.
50. With respect to complaint of Padam Singh, on March 17, 2023, IA had submitted the following with regard to call records, in SCORES:

*“Sir this is to request you that while shifting my machine to the new address some machine is mishandled by the shifting person. When I try to run the machine it got sparked. I call to vendor to access the call recording but he told me that the Hard disk has been crashed and data cannot be recoverable. We tried a lot to recover the data but we are not able to recover it, so I am unable to give the call recording.”*

51. In view of reply submitted by the IA and its failure to maintain and submit call records, it was alleged in the SCN that the Noticee has violated the provisions of paragraph 2(vi) of SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19(2) and Clause 8 of Code of Conduct specified in the Third Schedule read with Regulation 15(12) of IA Regulations.

#### **Reply of Noticee**

52. With respect to above allegations, Noticee *inter alia* submitted that the allegations are false and frivolous as IA had maintained call recordings and the same were provided to the SEBI on SCORES portal, however the data got corrupted and the IA was unable to provide the complete call records which were requisitioned at a later stage.
53. Noticee further submitted that SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 has made provisions in regulation III that in case due to technical failure the call records are not provided broker can prove his case by other things like post confirmation, payment etc. Similarly, in case of IA if calls are not provided the disputes can be settled by looking at the agreements, RPM, Invoice, e-mails etc. where all details of the service are provided, if the procedure does not account of such an eventuality in hardware failure the entire procedure becomes unconstitutional.
54. An example is MCX having some of the best servers and technical experts faced server issue on February 13, 2024 and the trading began at 01:00 PM instead of 09:00 AM. None of the media reports or SEBI termed it as a wilful default, to the best of the knowledge of the respondent. if MCX with such advanced servers can

face technical issues, surely respondent with limited resources and simple server systems can face server issues, these are not uncommon, and as the respondent submitted all documents related to those clients.

55. Further, Noticee relied upon the observations of AO in the matter of M/s JM Morgan Stanley Securities Pvt. Ltd dated October 27, 2005 and the Hon'ble SAT in the matter of UPSE Securities Ltd. v/s SEBI. Noticee further submitted that in the matter of Nestra Capital, the Hon'ble AO has accepted the aforementioned submissions and held that no penalty shall be levied in that case.

### **Findings**

56. As per SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 the IA shall maintain records with respect to his activities as an investment adviser. IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of physical record written & signed by client, telephone recording, email from registered email id, record of SMS messages, and any other legally verifiable record. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client. All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years, provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.
57. Submission of Noticee that he had maintained call recordings and the same were provided to the SEBI on SCORES portal, however the data got corrupted and the IA was unable to provide the complete call records is not acceptable as Noticee has just made the bald statement and not provided any evidence in support of his contention. I note that it is responsibility of the Noticee to maintain the records with respect to his activities as an investment adviser. Specially, in the instant case, considering the gravity of allegations levelled against Noticee, he should have provided the complete call records of said clients, which he failed to do so.

58. With regard to Noticee's contention that the SEBI circular dated March 22, 2018 provides that in case due to technical failure the call records are not provided broker can prove his case by other things like post confirmation, payment etc., similarly, in case of IA if calls are not provided the disputes can be settled by looking at the agreements, RPM, Invoice, e-mails etc., I note, *firstly*, that the provisions of SEBI circular dated March 22, 2018 are only w.r.t. prevention of unauthorised trading by stock brokers and *secondly*, in brokers case the purpose of the provisions is to prove the order placement done by clients which can be done by other things like post confirmation, payment etc. as provided in circular. However, in case of investment adviser, the purpose of said provisions of regulations/ circular is different as records of interactions with the clients and any conversation related to advice is to be maintained *inter-alia* to ensure fairness in dealings of IA and to safeguard the interests of clients, which cannot be supplemented by agreements, RPM, Invoice, e-mails etc. as claimed by the Noticee. Thus, the above contentions of the Noticee are not tenable.
59. With respect to submission of the Noticee that MCX faced a server issue on February 13, 2024 and none of the media reports or SEBI termed it as a wilful default, I note that the matter of server issues at MCX is a different case as the facts and circumstances of that case were different. Hence, Noticee cannot correlate his case with the case of server issues at MCX and it cannot be a justifiable reason and an excuse for the Noticee for his failure to maintain and furnish the call records.
60. With respect to reliance placed by the Noticee on the observations of AO in the matter of M/s JM Morgan Stanley Securities Pvt. Ltd, observations of the Hon'ble SAT in the matter of UPSE Securities Ltd. v/s SEBI and further contention that in the matter of Nestra Capital, the AO has accepted these observations and no penalty was levied in that case, I find that facts and circumstances of the present case is different from the facts and circumstances of the cases relied upon by the Noticee. Also, the allegation of violations that were established in the cases relied

upon by Noticee are different from the violations that have been established in the present case of the Noticee. Hence, I note that the said cases do not stand on the same footing as the given case of the Noticee. Thus, the contentions of the Noticee cannot be accepted.

61. In view of the above, I hold that the allegation that Noticee violated the provisions of Paragraph 2(vi) of SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19(2) and Clause 8 of Code of Conduct specified in the Third Schedule read with Regulation 15(12) of IA Regulations, stands established.

**E. Allegations w.r.t. promise of assured returns and inducing the client fraudulently to subscribe to its service packages:**

62. Vide email dated December 19, 2022, complainant Kundan Kumar provided call recordings of conversation between him and representative / employee of the IA. From the conversation between IA and the complainant, it was observed that the IA promised assured returns to the complainant, despite fully knowing that all the investments in securities market are subject to market risk and that such returns cannot be assured. Therefore, it was alleged in the SCN IA has made false and misleading representation to his clients. From the said conversation, it was also noted that IA induced the client fraudulently with objective of enhancing his income.
63. It was alleged in SCN that by making / promising assured profits and inducing the client to subscribe to service package, the IA has tried to deceive its client. Knowing fully well that assured profits in securities market is practically impossible, IA was knowingly misrepresenting the truth. Such misrepresentation is therefore allegedly fraudulent and is covered within the definition of 'fraud' as defined under Regulation 2(1)(c) of PFUTP Regulations. Hence, it was alleged that the Noticee has violated the provisions of Regulations 3(d), 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992.

64. Moreover, by promising its client of assured profits and not making the clients aware that their investments in the securities market is subject to market risk where there is possibility of loss of capital, shows that the IA has not been honest and has not taken due care in its dealings with its clients. Thus, it was alleged that the Noticee has failed to act in a fiduciary capacity towards its clients, thereby it has violated the provisions of Regulation 15(1) and Clauses 1, 2 and 8 of the Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations.

### **Reply of Noticee**

65. With respect to above allegations, Noticee *inter alia* submitted that the allegations are false and frivolous as *firstly*, that the Noticee or any of his representative has never had any communication with any client wherein any sort of profit assurance is given.

66. *Secondly*, the documents provided by the Noticee have been clear and unambiguous in point number 17 *“That, Investments in stocks and commodity (Financial) markets is subjected to market risks. We do not offer any guaranteed return service, Demat service, sure shot calls, jackpot calls or any other service which is not mentioned on our website www.winwayresearch.com, if any person tries to sell any such service kindly report us on customer care number 9131398660 or mail us at info@winwayresearch.com.”*

67. *Thirdly*, it is no more a Res-Integra that call recordings cannot be relied upon unless they are coupled with a certificate under section 65B of Evidence Act, it is important that their veracity be verified by a government officer if not through Forensic Science Laboratory Report. Thus any such call recordings unless coupled with a Certificate under section 65B of evidence Act and verified with a FSL report cannot be relied upon.

68. *Fourthly*, none of the call recordings have any number in the file name and thus it cannot be verified that the calls have been made by the employee of the company

or not further there is no method to verify whether the calls are genuine or fake and thus they cannot be held against Noticee. as the call recordings provided do not show any phone number from which such purported and forged call recordings have been made, it is a matter of common knowledge that even on a 1000/- mobile phone when a call is automatically recorded, the default file name shows mobile number, however in the present case the customer has sent recordings where no number is displayed in the call recording file name, thus the number from which the purported calls have been made cannot be verified and thus without verification of call details the said recordings cannot be held against the Noticee. The date of file creation is also of 2023 and thus the file is created on a later date and is forged and false.

69. Noticee further submitted that the Board in matter of Star World Research and other matters has held such recordings to be unreliable and dropped such charges.
70. Even in case of Whatsapp chats it is no more a Res-Integra that WhatsApp chats cannot be relied upon unless they are coupled with a certificate under section 65B of Evidence Act because there are a number of applications of play store and apple store wherein fake WhatsApp chats can be created and they look completely like original ones. For the aforesaid reasons of creation of fake WhatsApp chat it is important that their veracity be verified by a government officer if not through Forensic Science Laboratory Report. Thus any such chat unless coupled with a Certificate under section 65B of Evidence Act and verified with a FSL report cannot be relied upon. These fake WhatsApp chat applications work exactly like original ones and any fake chat including attachments, photos etc. can be created and thus unless the veracity is verified they cannot be held against the Noticee. Furthermore, none of the phone numbers belong to the Noticee or any of its serving employee.

### **Findings**

71. I note that the call recordings are not supported by any further examination such as forensic verification and hence they are not verifiable. Further, the Noticee has also denied the allegations made in the SCN that the calls can be attributed to the

Noticee. In view of the same, I am inclined to accept the contentions of the Noticee and as there is no material to show that the calls were made by Noticee, I am unable to rely on these call recordings to arrive at a finding that the Noticee has made the promises of assured profit to its clients, induced the client to subscribe to his service package and failed to act in a fiduciary capacity towards its clients, as alleged.

72. In view of the above, I hold that the allegation that the Noticee violated the provisions of Regulations 3(d), 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992, and Regulation 15(1) and Clauses 1, 2 and 8 of the Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations, does not stand established.

**F. Allegations w.r.t. non resolution of SCORES complaints and filing ATRs submitting reasons that the procedures and guidelines have been complied with:**

73. With respect to all the pending complaints (4 as on date as mentioned hereinabove in paragraph 4.1), IA had only submitted documents and was giving reasons that he has been following all the procedures and complying with rules and regulations. However, various violations were observed from the documents submitted by the IA himself, which indicates that the IA has not been functioning in accordance with the provisions of SEBI Act, Regulations and Circulars, and thus merely filing of ATR by the IA and submitting reasons that the procedures and guidelines have been complied with, does not constitute resolution of complaints and therefore, even after filing of ATRs by the IA, these complaints have not been disposed of in SCORES.
74. Therefore, it was alleged in the SCN that by not resolving the complaints of its clients, Noticee has violated provisions of the SEBI circular no. SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022 regarding redressal of investor grievances through SCORES platform and has also violated Regulation 21(1) of IA Regulations.

## Reply of Noticee

75. With respect to above allegations, Noticee submitted that the allegations are false and frivolous as the circular dated December 18, 2014 in point number 13 state that *“Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.”* Thus only non-filing of ATR can be considered as violation of said circular and the company cannot be forced to refund the fees and/or resolve the matter within 30 days.
76. Noticee further submitted that the judgement of Hon'ble Supreme Court in the case of State of Rajasthan and Anr Vs. Shamsheer Singh 1985 (supp) - SCC – 416, lays down the doctrine of the impossibility of performance which indicates that however mandatory the provision may be, where it is impossible of compliance, that would be sufficient excuse for non-compliance particularly when it is a question of the time factor. This has been again upheld in the case of Raj Kumar Vs. Tarapada (1987) 4 SCC 398, a similar view was held which reads as follows:

*“..... The law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities and the administration of laws must adopt that general exception in consideration of all particular cases. the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full favour in the facts of this case .....*”

Noticee submitted that thus it would be unfair to penalise him for such non-compliance.

## Findings

77. As per SEBI circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022 the listed companies, SEBI registered intermediaries and SEBI recognized MIs to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint from the complainant within thirty days of receipt

of such complaint. The listed companies, intermediaries and MIs shall keep the complainant duly informed of the action taken thereon. Further, Regulation 21(1) of IA Regulations also provide that the Investment Adviser shall redress investor grievances promptly but not later than twenty-one calendar days from the date of receipt of the grievance and in such manner as may be specified by the Board.

78. Noticee's contended that non-filing of ATR can only be considered as violation of SEBI circular and the Noticee cannot be forced to refund the fees and/or resolve the matter within 30 days. I note that SEBI circular dated November 07, 2022 provides that intermediaries shall take immediate efforts on receipt of a complaint from the complainant within thirty days of receipt of such complaint and mere filing of ATR by a listed company or intermediary or MI with respect to a complaint will not mean that the complaint is not pending. However, in the present matter, I note from the material available on record that Noticee had only submitted documents and was giving reasons that he had been following all the procedures and complying with rules and regulations, thus, merely filing of ATR by the IA and submitting reasons that the procedures and guidelines have been complied with, does not constitute resolution of complaints and therefore, even after filing of ATRs by the IA, these complaints were not disposed of in SCORES.
79. Here, I would like to rely on Hon'ble SAT order dated September 06, 2023, in the matter of **Pinnacle Market Investment Advisory Pvt. Ltd. Vs. SEBI**, wherein it was held that, *"With regard to the failure of the appellants in redressing investor grievances forwarded to them on SCORES platform, admittedly the appellants delayed redressing the complaints for more than 60 days. Some of the complaints remain unaddressed till date. Needless to say this is a serious deficiency on the part of the Appellants and the Appellants have violated Regulation 21 of the IA Regulations."* Similarly, in this case, the Noticee was required to redress the complaints on the SCORES portal within one month which he failed to do.
80. Noticee's placed his reliance on the observations of Hon'ble Supreme Court in the case of State of Rajasthan and Anr Vs. Shamsher Singh 1985 (supp) - SCC – 416,

and Raj Kumar Vs. Tarapada (1987) 4 SCC 398. I note that the said cases are different from the instant matters as there appears to be no impossibility of any performance in the present matter as observed in the said matters. Any kind of impossibility for Noticee to resolve the complaints within time bound manner is neither apparent from the records nor stated by the Noticee. Thus, the contentions of the Noticee are not tenable.

81. In view of the above, I hold that the allegation that the Noticee violated the provisions of SEBI circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022, regarding resolution of investor grievances through SCORES platform and Regulation 21(1) of IA Regulations, stands established.

**Issue II. Does the violation, if any, attract monetary penalty under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992?**

82. In the light of the findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions of SEBI Regulations and Circulars on account of charging fees from the client for same product for overlapping durations, taking money from its client in personal bank account belonging to other persons, failure to submit records sought by SEBI & failure to maintain call records and non-resolution of SCORES complaints.
83. I find from the observations made against the Noticee and other material available on record that the Noticee has failed to comply with the regulatory provisions and also failed to adhere to high standards of services to its clients. The aforesaid violations make the Noticee liable for monetary penalty under the provisions of Sections 15A(a), 15C and 15EB of the SEBI Act, 1992.
84. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) wherein it was *inter-alia* observed that: "*In our considered opinion, penalty is*

*attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.”*

85. Therefore, the aforesaid violations make the Noticee liable for penalty under Sections 15A(a), 15C and 15EB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

**SEBI Act, 1992:**

**15A: Penalty for failure to furnish information, return, etc.**

*If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

**15C: Penalty for failure to redress investors' grievances**

*If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

**15EB: Penalty for default in case of investment adviser and research analyst.**

*Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

**Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Rules?**

86. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, which reads as under: -

**SEBI Act, 1992**

***Factors to be taken into account while adjudging quantum of penalty***

**15J** *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

*[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*

87. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SEBI Regulations and Circulars

is not available. With respect to the repetitive nature of the default, I do not find anything on record.

88. I note that the role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs shows that it has failed in its fiduciary duties owed to its clients. The violations by the Noticee are serious, therefore, should be dealt with by imposing monetary penalty as effective deterrence.

#### **ORDER**

89. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15-J of the SEBI Act, 1992 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Rules, I hereby impose the following monetary penalty, under Sections 15A(a), 15C and 15EB of the SEBI Act, 1992, on the Noticee:

<b>Sr. No.</b>	<b>Penalty Provisions</b>	<b>Amount of penalty (in ₹)</b>
1	Section 15A(a) of SEBI Act, 1992	₹ 2,00,000/- (Rupees Two Lakhs Only)
2	Section 15C of SEBI Act, 1992	₹ 2,00,000/- (Rupees Two Lakhs Only)
3	Sections 15EB of SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakhs Only)
<b>Total amount of penalty</b>		<b>₹ 7,00,000/- (Rupees Seven Lakhs Only)</b>

In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

90. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**

91. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
92. In terms of Rule 6 of the SEBI Rules, copy of this order is sent to the Noticee and also to the SEBI.

**Place: Mumbai**

**Date: November 14, 2024**

**ASHA SHETTY**

**ADJUDICATING OFFICER**