WTM/AS/MIRSD/MIRSD-SEC-3/31786/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27(5) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of

Sr. No.	Name of the Noticee	PAN	SEBI Registration No.
1.	Capital Vraddhi Financial Services, Proprietor- Mr. Raju Jhariya	AQKPJ9329B	INA000005291

In the matter of Capital Vraddhi Financial Services

1. Capital Vraddhi Financial Services, Proprietor- Mr. Raju Jhariya (hereinafter referred to as the '**Noticee**') is registered as an Investment Adviser (hereinafter referred to as "**IA**") with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"). The present proceedings have emanated from the Enquiry Report dated October 23, 2024, submitted by the Designated Authority (hereinafter referred to as "**DA**"), in terms of the applicable provisions of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred as "**Intermediaries Regulations**").

2. SEBI had conducted a comprehensive inspection of the Noticee for the period from April 01, 2020 to March 31, 2022 (hereinafter referred to as "**inspection period**" / "**IP**"). The focus of the inspection was to look into the possible violations by the Noticee, if any, of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations**), SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as '**IA Regulations**') and Circulars framed thereunder. Pursuant to the Inspection conducted by SEBI, and the

response of the Noticee dated January 02, 2023, certain non-compliances were observed. The summary of violations alleged to have been committed by the Noticee and the corresponding regulatory provisions are given in the table below:

Table No. 1.

S.No	Alleged violations	Regulatory provisions
1	Lack of Requisite Qualification	Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of the Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations (hereinafter referred to as "Code of Conduct").
2	Non-Compliance with Fee Structure	Regulation 15A of IA Regulations read with Clause 2(iii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 6 of the Code of Conduct
3	Agreement with Clients	Clause 2(ii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 1 (Honesty and fairness) and 2 (Diligence) of the Code of Conduct
4	Non-Maintenance of Records	Clause 2(vi) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the IA Regulations
5	Not carrying out Risk Profiling and Suitability assessment	Regulation 16 and 17 of the IA Regulations read Clause 1, 2 and 8 of the Code of Conduct
6	Similar Products sold for the concurrent Period	Regulation 15 (1) of IA Regulations and Clause 1 and 2 of Code of Conduct Regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act, 1992
7	Providing free trials to 116 clients	Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct
8	Employees using personal phone number for pitching advisory services	Clauses 1 and 2 of the Code of Conduct
9	Fake Reviews about IA through blog	Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a),(b) and (c)

S.No	Alleged violations	Regulatory provisions
		of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct and Regulation 6(f) of IA Regulations.
10	Fees charged more than investment amount and faulty suitability Assessment	Regulation 15(1) and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct
11	Profit Guarantee and advising clients to trade without stop loss	Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k), (s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992. Regulations 15(1) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct Clause 2(ii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations
12	Receipt of Fees before entering into any agreement with client	Regulation 19(1)(d) of the IA Regulations read with Clause 2(ii) of Circular No. SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct
13	Misrepresentation to clients by employees of IA	Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct and Regulation 6(f) of IA Regulations

3. Based on the findings of the said inspection, a DA was appointed to inquire into and to submit a report pertaining to the aforesaid allegations. The DA issued a show cause notice dated April 04, 2024 to the *Noticee* under Regulation 25(1) of the Intermediaries Regulations for the violations alleged to have been committed by the Noticee, as mentioned above at Table No. 1. The Noticee was advised to submit his reply, if any, within 21 days of receipt of the said notice.

4. The *Noticee*, vide his letter dated June 26, 2024 submitted a detailed reply to the aforesaid show-cause notice. Pursuant to the receipt of the said reply, an opportunity of personal hearing was granted to the *Noticee* by the DA on

September 26, 2024, which was availed by the Authorized Representatives (ARs) of the Noticee. Thereafter, the Noticee, vide email dated October 01, 2024, made additional submissions.

5. After considering the allegations levelled in the show cause notice, reply filed by the *Noticee* and the material available on record, the DA, submitted the Enquiry Report and made the following recommendation:

   "In view of the above observations and the violations committed by the Noticee, in terms of Regulation 26 of the Intermediaries Regulations, I hereby recommend that the Noticee (SEBI Registration No. INA000005291) may be prohibited from on boarding new clients for a period of 12 months(sic)."

6. The DA report was forwarded to the Noticee in terms of Regulation 27(1) of the Intermediaries Regulations vide a post-enquiry Show Cause Notice dated November 04, 2024 (hereinafter referred to as "**SCN**"). The Noticee was called upon to show cause as to why the measures recommended by the DA or any other action as contemplated in the Intermediaries Regulations should not be taken against him. It was stated in the said SCN that if the Noticee wishes to file any submission/information along with any supporting documents, he may do so within 21 days from receipt of the said SCN and pursuant thereto, the matter would be proceeded with in accordance with Regulation 27(5) of the Intermediaries Regulations.

7. The SCN was delivered to the *Noticee* and pursuant to the same, the *Noticee*, vide his email dated November 21, 2024 sought extension of two months to submit his response. Thereafter, vide email dated November 27, 2024, the Noticee was advised to file his reply by January 01, 2025. The Noticee filed his reply vide letter dated December 21, 2024.

8. Subsequently, an opportunity of personal hearing was also provided to the Noticee on March 04, 2025 which was attended by the AR of the Noticee. During the personal hearing, the AR of the Noticee reiterated the submissions

made vide letter dated December 21, 2024. Pursuant thereto, additional documents were submitted by the Noticee vide email dated March 06, 2025.

CONSIDERATION AND FINDINGS:

9. I have carefully perused the Enquiry Report issued to the Noticee along with the SCN and his reply and other material available on record. In the instant proceedings, the DA in the Report had observed that the Noticee has violated the legal provisions on all the counts mentioned in Table No. 1.

10. The Noticee, vide its reply dated December 21, 2024 to the SCN, has *inter alia* submitted the following.

    a) The extra judicial confession made by the Noticee on April 21, 2022 and April 22, 2022 during the inspection period were extracted from Noticee by coercion and threat exercised by one SEBI Officer and his team and thus, the same shall not be relied upon. Further, it is submitted that the said SEBI Officers also threatened the Noticee that if he refuses to sign the documents they would file a false complaint against him in local police stations. In support, one CCTV footage is attached. It can be seen from the video clip that the said SEBI Officer is forcefully pushing the representative of Noticee out of his office where all his employees were kept in custody. Even otherwise, the extra judicial confession is inadmissible because if the officer wanted to record the statement, it ought to have recorded in compliance with Section 11C(5) of the SEBI Act under oath.

    b) The employees had nothing to do with the investment advice which was given through SMS via CRM software and the research was done by the proprietor himself. The role of the employees was restricted to coordinating with the clients and had nothing to do with investment advice or any of its procedure.

    c) The Noticee has not received any fees in excess of the allowed cap of ₹1,25,000. The amount shown in excess in the SCN is the GST charged from the client. The amendment in 2020 which set the cap on fee at ₹1,25,000 per annum does not specify that the cap is inclusive of taxes.

Further, to support this submission, Noticee vide his email dated March 06, 2025 provided copies of his GST returns for the said period.

d) Due to the Covid-19 pandemic, the Noticee was unable to get a system in place where the agreement with clients could be executed online and thus lenient view may be taken.

e) Noticee has maintained call records but the same could not be provided at the time of inspection as the data got corrupted and call records could not be retrieved. In support, Noticee has relied on observation of SEBI's Adjudicating Officer in the matter of *JM Morgan Stanley Securities Ltd.* Further, technical glitch cannot be termed as willful default. SEBI in its Circular dated March 22, 2018 has made provisions that in case due to technical failure the call records are not provided, brokers can prove their case by other things like post confirmation, payments, etc.

f) The Noticee also relied on observation of Hon'ble SAT in the matter of *UPSE Securities Ltd.* wherein it was observed that the object of carrying out inspection of the books of accounts and records of any intermediary is to ensure compliance with provisions of the Act, Rules, Regulations, Bye-laws, etc.

g) The requisite documents relating to risk profiling and suitability assessment have been provided. It is submitted that the same documents were made available in response to earlier Show Cause Notice also but the same were not considered. The complaints filed by the clients on SCORES were appropriately resolved. None of the complainants has complained that he/she did not receive the documents.

h) The Noticee has provided the invoice sent to all the clients to prove that he has not sold the service to any client with overlapping period.

i) No free trials are provided; only sample calls were shared which meant that whenever any client had asked about it then only such references through the sample calls were shared and the clients were instructed to not trade on such references. No such evidence is being made available which suggests that free trails were provided.

j) No employee has ever used his personal mobile for any call. No documentary evidence has been made available in this regard.

k) There is no investigation into the fact that who hosted the website www. capitalvraddhi.in. There is not a single complaint amongst the 52 complaints on SCORES where the complainant has stated that he / she has visited or was misled by the said website. Noticee has also filed a complaint against the said website and one more similar website. However, since no criminal offence has been committed and there is no registered trademark, police has not taken any action.

l) Earlier, there was no cap on the amount of fee that could be charged. If the client and the Noticee have agreed on some arrangement and there is no limitation from SEBI, the said fee cannot be said to be unreasonable. In other similar matter of 'Star World', the company had taken fees of ₹ 34 Lakhs whereas, in the present matter, maximum fees charged was only ₹4,72,000 that too from a client whose annual income was ₹ 5 Lakhs.

m) None of the clients whose call recordings have been used in isolation have filed any complaint that he / she has been assured any return. The Noticee is also unable to comment on call records since he is unaware of the contents of the call records. The submissions of the Noticee during inspection were taken under duress and thus the same cannot be relied upon. Unless the entire context of call is taken into consideration, isolated calls cannot be said to be misleading. If the clients were misled they would have filed a complaint on SCORES. The inspection team has selected certain calls which suit their agenda.

n) Due to Covid-19 pandemic, the agreements with clients were entered in some cases on later date after receipt of fees.

o) The conversation based on which the charge of misrepresentation by employees of Noticee is being levied is only based on SEBI' s interpretation. The meaning of said conversation is only that the process of conducting risk profiling is approved by SEBI as per the IA Regulations, but the SEBI officer in the examination report made his own interpretation. It is settled principle of law that when two interpretations are possible, the one that favors the accused shall be adopted.

11. At the outset, it is pertinent to discuss the submission made by the Noticee relating to the conduct of one of the SEBI Officer. It is submitted that extra judicial

confession made by the Noticee on April 21, 2022 and April 22, 2022 and other submissions made by the Noticee during the inspection period were extracted from Noticee by coercion and threat exercised by one SEBI Officer and thus, the same shall not be relied upon. In support, one CCTV footage has been submitted by the Noticee.

12. On perusal of the CCTV footage, I note that in the clip, a person who is '*stated to be SEBI Officer'* is seen to be taking the representative of the Noticee' out of the office. The clip is just over one minute and without any audio. Notwithstanding the same, even if the persons appearing in the video were those as described by the Noticee, no inference can be drawn from such video as the context of the video is unclear and what transpired before and after the video is also unclear. The argument that his employees were kept in custody seems far-fetched as the employees are seen to be working normally. Notably, this clip is from the office premises of the Noticee where a small team from SEBI had gone for a regulatory inspection. Further, no police complaint was made by the Noticee against such conduct.

13. Further, I note that the Hon'ble Supreme Court in many such cases has held that a statement does not simply become unworthy of credit just because it has been retracted by the maker after considerable time. In this regard, reference is made to judgment of Hon'ble Supreme Court in *K.T.M.S. Mohd. and Ors. Vs. Union of India*[1], wherein while dealing with the issue of retracted statements, *inter alia*, the following was held:

> *"33. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine quo non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi*

[1] AIR 1992 SC 1831

manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing..."

14. Similarly, on the evidentiary value of retracted statements by the accused, Hon'ble Supreme Court in *Periyasami and Ors. Vs. State represented through the Inspector of Police, 'Q' Branch CID, Tiruchirappalli, Tamil Nadu and Ors*[2]., *inter alia* held the following:

"23. We must now come to the retraction. It is argued however that A1-Senthilkumar has retracted his confession and, hence, it has no evidentiary value. It cannot be relied upon. It is not possible to accept this submission. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement. Quite often retraction is an afterthought. It could be the result of legal advice or pressure exerted by those whose involvement may be likely to be disclosed or confirmed by the confessional statement of the accused. Therefore, in each case, the court will have to examine whether the confession was voluntary and true and whether the retraction was an afterthought..."

15. Furthermore, I note that at no point during the proceedings before the DA, including in its reply before the DA, the Noticee raised any such claim of coercion. The purported letters were signed over three years ago on April 21, 2022 and April 22, 2022, and the allegations of coercion and duress have been raised for the first time before me. The Noticee's failure to raise this issue at any earlier stage, including in its reply to the DA, despite having ample opportunity, clearly

[2] 2014 (6) SCC 59

undermines the credibility of its claims. The related submission that he was threatened by the SEBI officials with a false police complaint also seems to be an afterthought. He could have escalated the issue to the higher officials of SEBI at the relevant point of time.

16. Without prejudice to the above, it is clarified that for the purpose of this order unless there is a corroborating evidence, no such statement/confession made by the Noticee will be solely relied upon for the determination of issues and/or establishing any such misconduct or infraction by the Noticee.

17. Having observed as above, I shall now deal with the allegations leveled against the Noticee in light of the submission made by him.

Non - Compliance with the qualification Requirement

18. It is alleged that 36 employees of the Noticee, who were associated with him and were dealing with the clients, did not possess the requisite qualification in violation of Regulation 15(13) read with Regulation 7 of IA Regulations and Clause 1, 2 and 8 of the Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

19. Regulation 7 of the IA Regulation, *inter alia,* provides that an individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser, shall have the minimum prescribed qualification at all times. As per Regulation 15(13) of the IA Regulations, it is the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times. In this regard, from the material available on record, the DA has observed that on April 08, 2022, 36 out of 40 employees of the Noticee were involved in providing investment advisory services to his clients. These 36 employees did not have the requisite NISM Certification(s) and out of these 36, 19 employees were still continuing to provide investment advisory services and were acting as a *client facing person* and were engaged in the process related to risk profiling of clients,

suitability of clients, agreement with clients and payment procurement from clients.

20. In his defense, the Noticee has contended that these employees had nothing to do with the investment advice which was given through SMS via CRM software and the research was done by the Noticee himself. As argued, the role of the employees was restricted to coordinating with the clients and had nothing to do with investment advice or any of its procedure.

21. In this regard, I draw reference to Regulation 2(r) of the IA Regulations which defines the expression '*persons associated with investment advice'*, which reads as under:

> *"(r) "persons associated with investment advice" shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser;*
>
> *Explanation. — All client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called shall be deemed to be persons associated with investment advice, but do not include persons who discharge clerical or office administrative functions where there is no client interface."*

22. The above definition of the expression '*persons associated with investment advice' (hereinafter referred to as '**PAIA**')* was added to the IA Regulations in 2020 as a substitution for the expression '*representative'* in order to bring clarity regarding the roles performed by different types of employees of an IA (i.e., client-facing, clerical, administrative, etc.). The explanation to the aforesaid definition categorically brings out a deeming identification as '*PAIA'* of all client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called. In the present case, the allegation levelled is that 36 out of the 40 employees of the Noticee were in a role as

identified in the above mentioned explanation. Thus, even if Noticee's arguments that his employees were only communicating with the clients and the final investment advice was being provided by him through the CRM software, were to be accepted, all his employees, who were in client facing roles, would fall within the contours of the definition of '*PAIA*. Consequently, all such employees of the Noticee would be required to have relevant NISM certification at all times.

23. Without prejudice to the above, it is also necessary to highlight that the Noticee has merely made an unsubstantiated averment that his employees were not involved in the investment advice. Nothing has been brought on record by the Noticee to show that the investment advice was being provided through a software only (completely managed by the Noticee himself) and the employees were only performing clerical/administrative functions and were not in client-facing roles. Advisory services, whether directly provided or indirectly communicated through employees or representatives amount to rendering of investment advice. The IA Regulations do not draw any distinction between giving advice personally and providing it/coordinating through employees. If the employees are interacting with clients in a manner that conveys, explains or recommends investment advice even if on the instructions of the registered investment advisor, the same would tantamount to engaging in investment advisory activities. The regulatory framework casts a duty upon the registered investment advisor to ensure that the investment advice is rendered in accordance with the IA Regulations. Allowing unregistered employees to be the medium of dissemination of advice undermines the purpose of registration requirements which are designed to ensure competence, accountability and investor protection.

24. Thus, the defense put forth by the Noticee is untenable and the violation of Regulation 15(13) read with Regulation 7 is established against the Noticee. Further, violation of Clause 1, 2 and 8 of Code of Conduct which *inter alia* provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and in the integrity of the market and shall comply with all applicable regulatory requirements also stands established against the Noticee.

Non-Compliance with Fee Structure

25. It is alleged that for 1355 instances, Noticee had charged fees in excess to ₹1,25,000 on annual basis from its clients in violation of the applicable legal provisions.

26. In terms of Regulation 15A of IA Regulations read with Clause 2(iii) of SEBI Circular dated September 23, 2020, the maximum fees that may be charged by an IA under fixed fee mode shall not exceed ₹1,25,000 per annum per client across all services offered by IA. From the material available on record, the DA has noted few instances (mentioned below in the Table) from the client master of April 1, 2020 to March 31, 2022, where the Noticee has charged more than ₹1,25,000 on annual basis from its client:

Table No. 2.

S. No	Date Of Payment	Client's Name	PAN	Services	Payment (in ₹)	Service Start Date	Service End Date
1	21-Apr-21	Tilak Raj	AXTPR 9559B	Wealth Management	125000	22-Apr-2021	19-Sep-2021
	19-Apr-21	Tilak Raj	AXTPR 9559B	Wealth Management	5500	20-Apr-2021	26-Apr-2021
Total					**1,30,500**		
2	14-Dec-21	Mr. Vicky	AEAPV 4790G	Wealth Management	114000	15-Dec-2021	30-Apr-2022
	13-Nov-21	Mr. Vicky	AEAPV 4790G	Wealth Management	5500	14-Nov-2021	20-Nov-2021
	15-Dec-21	Mr. Vicky	AEAPV 4790G	Wealth Management	27500	16-Dec-2021	18-Jan-2022
Total					**1,47,000**		
3	03-Sep-21	Binay Kant Sharma	AOFPS 4968C	Wealth Management	100300	4-Sep-2021	2-Jan-2022
	04-Sep-21	Binay Kant Sharma	AOFPS 4968C	Wealth Management	41700	5-Sep-2021	25-Oct-2021
Total					**142000**		
4	21-Jun-21	Abbu Hasan ansari	AHVPA 8553A	Wealth Management	97350	22-Jun-2021	16-Oct-2021
	18-Jun-21	Abbu Hasan ansari	AHVPA 8553A	Wealth Management	8500	19-Jun-2021	29-Jun-2021

S. No	Date Of Payment	Client's Name	PAN	Services	Payment (in ₹)	Service Start Date	Service End Date
	21-Jun-21	Abbu Hasan ansari	AHVPA 8553A	Wealth Management	41850	22-Jun-2021	11-Aug-2021
Total					**147700**		
5	02-Jul-21	Rahul lahanu Sonawane	ESHPS 9358L	Wealth Management	90300	3-Jul-2021	19-Oct-2021
	28-Jun-21	Rahul lahanu Sonawane	ESHPS 9358L	Wealth Management	5500	29-Jun-2021	5-Jul-2021
	01-Jul-21	Rahul lahanu Sonawane	ESHPS 9358L	Wealth Management	10000	2-Jul-2021	14-Jul-2021
	03-Jul-21	Rahul lahanu Sonawane	ESHPS 9358L	Wealth Management	41700	4-Jul-2021	23-Aug-2021
Total					147500		

27. In this regard, the Noticee has submitted that exclusive of the Taxes, he has not received any fees in access of the allowed cap of ₹1,25,000. The amount shown in excess to the said amount in SCN is the GST charged from the client. Further, to support his argument, Noticee vide email dated March 06, 2025 provided copies of his GST returns for the said period.

28. The Noticee has not disputed the instances wherein he had charged the fees in excess of ₹1,25,000 on annual basis from his clients. His defense though is that the fee charged was inclusive of the taxes applicable and to substantiate it further he has shared the GST Returns filed by him. In this regard, I note that the Noticee has not provided any documentary evidence in the form of Invoice/ Bill of Supply, etc., to demonstrate or provide the bifurcation of fees charged and the applicable GST. On perusal of the GST Returns filed by the Noticee, I note that he has shared forms GSTR-3B for the relevant months which, *inter alia,* provide the consolidated value of taxable supplies, supplies made to unregistered persons, eligible input tax credit, etc. and does not provide any client specific bifurcation of the GST amount. Thus, the GST Returns submitted by the Noticee do not substantiate his argument. On perusal of the instances of excess fee charged by the Noticee mentioned above in Table 2, it is clear that the Noticee has undisputedly charged fees in excess of ₹1,25,000 per annum per client in violation of the express mandate of Regulation 15A of IA Regulations read with Clause

2(iii) of SEBI Circular dated September 23, 2020. His argument that the excess fee charged was in respect of GST amount remains unsubstantiated in absence of any evidence / details as details of the percentage and amount of GST collected from the clients. Since the violation of Regulation 15A of IA Regulations read with Clause 2(iii) of SEBI Circular dated September 23, 2020 is established, violation of Clause 6 (regarding Fair and Reasonable Charges) of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 also stands established against the Noticee.

Not entering into agreement with Clients

29. It is alleged that during the inspection period, for 29 out of 1980 clients, the Noticee had received fees without executing any agreement with them in violation of Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 1 and 2 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

30. In terms of the SEBI Circular dated September 23, 2020, a registered IA is required to enter into an investment advisory agreement with its clients. Further, the IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the agreement and been provided with a copy of signed agreement. Further, as required under the said Circular, the IA had to enter the agreement with existing clients latest by April 01, 2021 and submit the report to SEBI by June 30, 2021.

31. I note that the DA in the Enquiry Report has from the client master submitted by IA that there were 29 clients in client master who were availing services post April 1, 2021. The date of agreement entered for these 29 clients was mentioned as NA. The details of the clients are as under.

Table No. 3.

S. No.	Client's Name	Payment date	Agreement
1	Akash Suman	April 07, 2021	NA
2	Jayram Shiv Kumar Singh	April 08, 2021	NA
3	Ravendra Patel	April 17, 2021	NA
4	Amar Purushottam Nimje	April 27, 2021	NA
5	Mr. Sanjay Kumar Gupta	April 06, 2021	NA
6	Ovesh Mahammadhushen Luhar	April 29, 2021	NA
7	Subhash Mahaveer Gupta	May 04, 2021	NA
8	Sunil Kumar	May 12, 2021	NA
9	Akram Gunga Kadam	May 20, 2021	NA
10	Patel Nausikumar Pravinbhai	May 31, 2021	NA
11	Mr. Raghujee Gowardhan Patil	June 25, 2021	NA
12	Amritesh Kumar Dubey	May 04, 2021	NA
13	Bansilal Menariya	May 14, 2021	NA
14	Ranjeet Kumar	April 23, 2021	NA
15	Rishikant Nirala	May 12, 2021	NA
16	Kishan Sureshbhai Chavda	April 16, 2021	NA
17	Rahul Kumar Pandit	April 18, 2021	NA
18	Jaswant Singh	April 21, 2021	NA
19	Ladoo Singh	April 22, 2021	NA
20	Rafik jaynuddin Sayyad	April 26, 2021	NA
21	Pratik Dineshbhai Dholariya	April 27, 2021	NA
22	Vijay Tukaram Shete	April 29, 2021	NA
23	Jayesh Kanabhai Chetariya	April 29, 2021	NA
24	Uttam Kumar	May 16, 2021	NA
25	Rishabh Mahesh Bhosale	May 19, 2021	NA
26	Deepak Mangla	May 21, 2021	NA
27	Rajendra Bandgar	June 15, 2021	NA
28	Deepak Singh	June 25, 2021	NA
29	Rohit Kumar Mahato	June 30, 2021	NA

32. In its defense, the Noticee has submitted that these clients belonged specifically to the Covid Period 2nd wave and due to extreme pandemic and work from home mode, he could not comply with the said Requirement. Further, he was unable to get a system in place where the agreement with clients could be executed online and thus, a lenient view may be taken. I note that the Noticee has admitted to infraction of the regulatory requirement. His only submission is that lenient view may be taken considering the Covid Period and his inability to execute the agreement online. I note that the language and intent of the SEBI Circular dated September 23, 2020 is clear that no client can be on-boarded by the IA without execution of the agreement. The Noticee had the option to not on-board the client

altogether if he was unable to execute the agreement. While onboarding the clients, the Noticee was fully aware that it is impermissible to provide the investment advisory services without entering into an agreement with them, yet he provided the services, ignoring the express mandate of the Circular. His clients may not have been aware about such requirement. It was the responsibility of the Noticee to ensure that the agreements with clients were duly executed before providing them the services. Thus, the violation of SEBI Circular dated September 23, 2020 is established against the Noticee and consequently violation of Clause 1 and 2 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations is also established which, *inter alia,* require the IA to act with Honesty, fairness with due skill, care and diligence in the best interests of the clients.

Non-Maintenance of Records

33. It is alleged that the Noticee has not maintained the call recordings of its clients and thereby failed to comply with Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the IA Regulations. Clause 2(vi) of the said SEBI Circular provides that IA shall, *inter alia,* 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 records, telephone recording, emails, record of SMS or any other legally verifiable record. These records are required to be maintained by the IA for a period of five years.

34. In this regard, the Noticee has submitted that he had maintained the call records but the same could not be provided at the time of inspection as the data got corrupted and call records could not be retrieved. Also, it is submitted that technical glitch cannot be termed as willful default. Further, SEBI in its Circular dated March 22, 2018 has made provisions that in case due to technical failure the call records are not provided, brokers can prove their case by other things like post confirmation, payments, etc. Similarly, as argued, in case of IA, if calls were not provided the disputes can be settled by looking at agreements, Invoices, emails, etc.

35. I note that the Noticee has only made a plain statement that he had maintained the call records but the data got corrupted and call records could not be retrieved. The said Circular provides many options to the IAs in the form of physical records, telephone recording, emails, record of SMS, any other legally verifiable record for preservation and/or maintenance of data. The IA could not produce even a single evidence of preservation and/or maintenance of data. Further, even if his argument of corruption of data were believed, he could have produced some supporting material such as technical log and report of technical support, which could have substantiated his arguments. Further, he has sought to rely on SEBI Circular dated March 22, 2018 related to '*Prevention of Unauthorised Trading by Stock Brokers'* which also requires the Stock Brokers to keep evidence of clients placing the trade Order. The said Circular states that in case of a dispute between broker and client and exceptional cases of technical failure, if the call records are not provided, brokers can prove their case by other things like post confirmation, payments, etc. An unsubstantiated assertion that the relevant data got corrupted would not absolve the Noticee of his obligations as a Registered Investment Advisor for preservation of data. Thus, the violation of Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the IA Regulations stands established against the Noticee.

Not carrying out Risk Profiling and Suitability assessment

36. During inspection, it was observed that for 5 out of sample 40 clients, Noticee had provided services without carrying out KYC process, Risk Profiling and suitability assessment and thus it was alleged that he failed to comply with the provisions of Regulation 16 and 17 of IA Regulations read Clause 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

37. Regulation 16 of the IA Regulations, *inter alia,* provides that the IA is required to ensure proper risk profiling of its clients by obtaining from the clients, such information as is necessary for the purpose of giving investment advice. Further, Regulation 17 of the IA Regulations, *inter alia,* provides that IA shall ensure that

all investments on which investment advice is provided are appropriate to the risk profile of the client.

38. Noticee in his response has provided some documents which are stated to be related to risk profiling and suitability assessment. It has been submitted that the same documents were made available in response to earlier Show Cause Notice also but the same were not considered. The complaints filed by the clients on SCORES were appropriately resolved and none of the complainants have complained that they did not receive the documents.

39. The DA has observed that the Noticee did not submit the documentary evidence related to four of the clients (Deepak Ramchandra Kulakarni, Kaushik Kundu, Madan Kumar Sahoo and Dharmaveer Sahore). For one client i.e., Kaizar Yunus Kagalwala, the Noticee submitted before the DA that he was not the client of the Noticee. It is noted that there have been some inconsistencies between the observation of the DA who has observed that no documents were provided and the Noticee who has submitted that the documents were made available. Nonetheless, I have perused the documents provided by the Noticee and note that he has submitted that Mr. Kaizar Yunus Kagalwala was not his client, whereas for the other four clients, the Noticee has provided KYC document(s), Risk Profiling Statement(s), Investment Suitability Report(s), Investment Advisory Services Agreement(s) and Invoice(s) of services related to these four clients (i.e., Deepak Ramchandra Kulakarni, Kaushik Kundu, Madan Kumar Sahoo and Dharmaveer Sahore). From the material available on record, it is not possible to check whether Mr. Kaizar Yunus Kagalwala had indeed obtained any services from the Noticee. For the remaining four clients, since the Noticee has provided the documents, I am inclined to give the benefit of doubt to the Noticee and find that violation of Regulation 16 and 17 of IA Regulations for not carrying out the Risk Profiling and Suitability assessment is not established against the Noticee.

Similar Products sold for the concurrent Period

40. During inspection, it was observed that the Noticee had sold similar products for the concurrent period and thus, it was alleged that he had defrauded his client(s) and had failed to act in a fiduciary capacity towards his clients in violation of Regulation 15 (1) of IA Regulations and Clause 1 and 2 of Code of Conduct, Regulations 3 (a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a),(b) and (c) of SEBI Act, 1992. The DA observed that the Noticee was selling same advisory products/services multiple times with overlapping subscription periods with the objective of extracting maximum amount of fees/ commission from the clients in violation of Regulation 15 (1) of IA Regulations and Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations. However, the charge of fraud was not made out against the Noticee based on insufficiency of evidence.

41. On perusal of the Enquiry report, I note that the DA has observed that during FY 2020-21, Noticee had sold overlapping services to 10 clients and during the FY 2021-22, Noticee had sold the overlapping services to 11 clients. Some of the sample clients to whom overlapping services were sold as provided in the Enquiry Report are as mentioned below:

Table No. 4.

Payment Date	Client Name	PAN	Services	Service in Days	Service Start	End Date
24-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	19	25-Dec-2021	13-Jan-2022
08-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	9-Dec-2021	21-Dec-2021
10-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	11-Dec-2021	23-Dec-2021
14-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	15-Dec-2021	27-Dec-2021
17-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	18-Dec-2021	30-Dec-2021
11-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	8	12-Dec-2021	19-Dec-2021
22-Nov-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	23-Nov-2021	30-Nov-2021
09-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	10-Dec-2021	17-Dec-2021
18-Nov-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	19-Nov-2021	25-Nov-2021

Payment Date	Client Name	PAN	Services	Service in Days	Service Start	End Date
1-Jan-22	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	6	2-Jan-2022	8-Jan-2022
6-Oct-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	33	7-Oct-2021	8-Nov-2021
22-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	32	23-Sep-2021	24-Oct-2021
18-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	29	19-Sep-2021	18-Oct-2021
20-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	24	21-Sep-2021	15-Oct-2021
24-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	24	25-Sep-2021	19-Oct-2021
15-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	22	16-Sep-2021	7-Oct-2021
10-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	7	11-Sep-2021	18-Sep-2021
06-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	7	7-Sep-2021	13-Sep-2021

42. In his response, the Noticee has provided the invoice(s) sent to all the clients to prove that he has not sold the service to any client with overlapping period. I have perused the invoice(s) provided by the Noticee for some of its clients and note that for these clients, the period of services provided by the Noticee is not overlapping. For the client, Kundan Sagar Loniya, the Noticee has submitted various invoices for the wealth management services provided by him in various tranches. The period covered in these invoices is from November 19, 2021 to January 31, 2022. The service days in these invoices were ranging from 1 day to 12 days. However, none of the service periods for which invoice has been raised are overlapping. Similarly, for Sayyad Mohd Shabbir Maula Hussain, the period of service is not overlapping. Thus, based on the material available on record, it would be difficult to say that the Noticee had provided services to his clients for overlapping period. Thus, I am of the view that violation of Regulation 15(1) of the IA Regulations which *inter alia* requires the IA to act in fiduciary capacity towards its clients is not established against the Noticee.

Providing free trials to clients and Employees using personal phone number for pitching advisory services

43. During inspection, it was observed that the employees of Noticee had provided free trials to 116 clients and allegedly failed to comply with Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct. Further, it was observed that Noticee's employees were involved in providing tips/ recommendations to clients using their personal numbers in alleged violation of Clauses 1 & 2 of Code of Conduct as specified in Schedule III read with Regulations 15(9) of IA Regulations.

44. It is noted that the DA has relied on the letter dated April 21, 2022 submitted by the Noticee to the Inspecting Authority that contained an admission of providing free trial services to clients and his employees being involved in providing personal recommendations/tips to clients using their personal numbers to establish the charges against the Noticee.

45. The Noticee in his response has submitted that no such free trials were provided by him and only sample calls were shared. Also, his employees had not used their personal mobile for any call. No documentary evidence has been made available.

46. I find that there is no material available on record which may suggest that free trials were indeed provided or involvement of Noticee's employees in using their personal mobile phones. The DA has relied on confessionary statement from the Noticee which was provided to the Inspection Team vide letter dated April 21, 2022. Other than the letter dated April 21, 2022, no evidence has been relied upon by the DA to conclude that the Noticee had provided free trials to his clients and his employees had used their personal mobile phones. Thus, the charges of providing free trials to clients and employees using personal phone number for pitching advisory services are not established against the Noticee.

Fake Reviews about Noticee through blog

47. It was observed during the inspection that the Noticee had produced a fake review of itself in his website by creating a blog, which mislead clients to onboard and avail the services from the Noticees. The DA observed that the Noticee is in violation of Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations read with Section 12 A(a), (b) and (c) of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) and Regulation 6(f) of IA Regulations.

48. In this regard, the Noticee has submitted that no investigation was done into the fact as to who hosted the website www.capitalvraddhi.in. There is not a single complaint amongst the 52 complaints on SCORES where the complainant has stated that they have visited or misled by the said website. Noticee has also filed a complaint against the said website and one more similar website.

49. The DA observed that while the Noticee claimed that the website www.capitalvraddhi.in was neither owned by him nor used for conduct of business, but he did not take any legal action for making such (positive) reviews on the website. Further, the DA also relied on the letter dated April 21, 2022 from the DA confessing that he had published fake reviews. Thus, the submission of the Noticee was not accepted by the DA.

50. It is alleged that the fake review by the Noticee was posted on the website www.capitalvraddhi.in which the Noticee is claiming to be not belonging to him and in support he has provided one police complaint dated May 01, 2022 made by him against the website, www.capitalvraddhi.in. One more complaint dated September 15, 2018 against the website www.capitalvradhi.com has also been provided. I note that the complaint made by the Noticee against the website www.capitalvraddhi.in is dated May 01, 2022 which is post the inspection period. Thus, it is unclear if the police complaint is indeed genuine or an afterthought by the Noticee. The other police complaint dated September 15, 2018 is irrelevant for the present proceedings as no allegation has been imputed against the

Noticee for the usage of the website www.capitalvradhi.com. Notwithstanding the same, I note that there is no material available on record which may suggest that the website www.capitalvraddhi.in on which the positive review was uploaded belonged to the Noticee. Without any evidence directly linking the said website with the Noticee, the charge against the Noticee for posting fake reviews is not established against the Noticee.

Fees charged more than investment amount and faulty suitability Assessment

51. During inspection, it was observed that for 23 out of sample 35 clients, Noticee had charged the fee which was more than the proposed investment amount and had done improper risk profiling and suitability assessment of his clients in alleged violation of Regulation 15(1) and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

52. The DA noted that the Noticee had charged fees more than the proposed investment mentioned by clients in their respective risk profiling form:

Table No. 5.

S. No	Client Name	PAN Number	Proposed investment	Total fees received from client (₹)	Service Name
1	Deepak Kumar Sharma	DMAPS4313F	50000 to 200000	291500	WEALTH CASH
2	Amiya Anand	AKMPA4787G	<100000	472000	Wealth Management
3	SUMIT CHHUGANI	ANXPC2656E	<100000	98000	Stock Cash
4	Muniya Aishpunani	BASPM8544C	<100000	228000	WEALTH CASH

53. The DA observed further noted that the Noticee charged fees from the following clients fees which was even more than the annual income disclosed in Risk Profile form of the respective clients:

Table No. 6.

S.no	Client Name	PAN Number	Annual income of the Client	Total fees receipt from client (₹)	Service Name
1	Deepak Kumar Sharma	DMAPS4313F	2-5 Lacs	291500	Wealth cash
2	Amiya Anand	AKMPA4787G	1-5 Lacs	472000	Wealth Management
3	Muniya Aishpunani	BASPM8544C	1-5 Lacs	228000	Wealth cash

54. In this regard, the Noticee has submitted that at the relevant point of time, there was no cap on the amount of fee that can be charged. If the client and the Noticee have agreed on some arrangement and there is no limitation from SEBI, the said fee cannot be said to be unreasonable. In other similar matter of 'Star World', the company had taken fees of ₹ 34 Lakhs whereas in the present matter, maximum fees charged was only ₹4,72,000 that too from a client whose annual income was ₹ 5 Lakhs. Further, as per the request, ₹2,33,000 were refunded to the client, Amiya Anand.

55. Regulation 15(1) of the SEBI IA Regulations, *inter alia,* requires the registered IA to act in a fiduciary capacity towards its clients. Regulation 17(b) requires the IA to have a documented process for selecting investments based on client's investment objectives and financial situation. Regulation 17(d) of the IA Regulations provides that the IA should have a reasonable basis for believing that a recommendation or transaction entered into by the IA (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance; (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction. Further, Regulation 17(e) of IA Regulations provides that the IA shall ensure that whenever a recommendation is given to a

client to purchase a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

56. SEBI had vide Circular dated September 23, 2020 introduced the concept of maximum fee that can be charged by the IA from its clients. Vide the said Circular, the maximum fees that could be charged by IA under [(Assets under Advice (AUA) mode] was fixed at 2.5% of AUA per annum per client and under Fixed Fee Model the maximum fee that could be charged by the IAs was capped at ₹1,25,000 per Annum. Before the said Circular, although it is correct to say that that there was no upper limit which could have been charged by the IA from its clients, the requirement and responsibility of the IA to charge fair and reasonable fee was always applicable which was specified in the Code of Conduct. *Clause 6 of the* Code of Conduct *inter alia provides that the investment adviser shall ensure that fees charged to the clients is fair and reasonable.* The test of "reasonableness" of the fee, does not mean, the same has been "agreed to and paid" by the client. Just because the client has signed on the payment receipt and the client has agreed to and paid the same, the same would not render the fees as reasonable. The reasonableness of the fee has to be seen in the context of various factors such as proportionality, uniformity, etc. The IA Regulations always provided for principle based determination of fees. What is fair and reasonable has to be seen from the facts and circumstances of the case.

57. In the instant case, for the client, Mr. Deepak Kumar Sharma, the Noticee had charged fees of ₹2,91,500 when the client had mentioned his proposed investment as ₹50000-200000 and his annual income between 2-5 Lakhs. Thus, the Noticee charged his client more than his proposed investment, which appeared to be very high in comparison to his annual income also. Similarly, in case of other clients mentioned in the Table above, the Noticee had charged fee which seemed exorbitantly high as compared to their proposed investment(s) and range of annual income(s). Charging fee of ₹4,72,000 from a client with annual income of ₹5,00,000 cannot by any stretch termed as fair and reasonable. The Noticee had mentioned that in some matter, ₹34 Lakhs fees was charged by an IA which is more than the maximum fees charged by the Noticee. The said

argument of the Noticee is without any context as no details related to the risk profile of the said client, suitability assessment, details of the investments and annual income have been provided and thus, no fair comparison can be made with the details provided by the Noticee. Thus, the contention of the Noticee is untenable.

58. Regulation 15(1) of the SEBI IA Regulations, *inter alia,* requires the registered IA to act in a fiduciary capacity towards its clients. The term fiduciary relationship has been discussed by Hon'ble Supreme Court in the case of *Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay*[3] *and Ors*. wherein, Hon'ble Supreme Court referred various authorities to ascertain the meaning of the term *fiduciary relationship* and observed thus:-

> "*21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party..."*

59. In light of the above understanding of the terms 'fiduciary' and 'fiduciary relationship', in my view, the Noticee had a duty to act for the benefit of his clients who had reposed faith in his services in regard to the investment advisory services. The Noticee was expected to use good faith and fairness in dealing with

[3] () 8 SCC 497

the clients. The Noticee should have ensured that the services he is going to provide and the accompanied fees charged by him was based upon a reasonable assessment of the clients' risk appetite and capacity for absorbing losses. The Noticee had charged fees from his clients which was more than their proposed investment and, in certain case, more than their annual income. Accordingly, I am of the view that the Noticee by charging unfair and unreasonable fees has failed in his fiduciary duty towards his clients. Thus, the violation of Regulation 15(1), 17(1)(b), 17(1) (d), 17(1) (e) of the IA Regulations is established against the Noticee.

Profit Guarantee and advising clients to trade without stop loss:

60. It was observed during the inspection that the Noticee by promising assured profits and unrealistic returns has tried to deceive his clients and thereby alleged to have violated Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k) and (s) of PFUTP Regulations read with Section 12A (a),(b) and (c) of SEBI Act, 1992. Regulation 15(1) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct for IA as specified under IA Regulations and Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations.

61. In this regard, the Noticee has submitted that none of the clients, whose call recordings have been used in isolation, have filed any complaint that they were promised assured returns. It has been submitted that the Noticee is unaware of the contents of the call records and his submissions / confession were taken under duress and thus the same cannot be relied upon. Further, unless the entire context of call is taken into consideration, isolated calls cannot be said to be misleading. As argued by the Noticee, If the clients were misled they would have filed a complaint on SCORES.

62. I note that in his response, the Noticee has made incongruous statements. On one hand, he has submitted that the call recordings were taken from him by coercion and on the other hand, he has submitted that the inspection team has

selected certain calls to suit their agenda. In this context, I find it pertinent to highlight that these call recordings were gathered by SEBI from Noticee's own records. It is not the Noticee's case that the call recordings were not from his systems. Even if it is assumed that the call recordings were obtained by coercion, the same would not vitiate the contents of the call recordings.

63. Further, the claim by the Noticee that the call recordings were used in isolation and have been interpreted out of context, is a mere assertion devoid of any contextual justification. During the inspection process, the call recordings were reviewed in their entirety and the portions of the conversation that were suggestive of assuring profits to clients were taken and based on the same, the violations of the IA Regulations and PFUTP Regulations were alleged. The Noticee has not backed his claim / statement by providing any demonstration as to what is the correct context in which the call recordings ought to have been viewed. Thus, the argument that the call recordings were used in isolation is devoid of any merit and cannot be accepted.

64. I note that the DA in her report has noted that during inspection, Noticee had provided call data records for the period March 9, 2022 to April 19, 2022. Few samples of the conversation (between Noticee's executive and client) along with the findings of the DA are reproduced hereunder.

Table No. 7.

Sr. No.	**Name of the PAIA**	**Unique ID of call/ whats app**	**Conversation with Executive**	**Findings**	**Call**
1	Ashok Mer	Call recording +9170*****4_220106_****15.m4a Call time: 1:00 to 1:20	Executive: mai jaha se bol rahi hoon vo capital vraddhi research firm hai yah ape aapko totally research based calls provide kiye jaate hain jisme aapko daily basis pe aapke investment ke accordingly agar **maan ke chale ki**	IA is promising the guaranteed return. As envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or	Call -1

Sr. No.	Name of the PAIA	Unique ID of call/ whats app	Conversation with Executive	Findings	Call
			aapka agar Rs. 10000/- ka bhi investment rahe to daily ka Rs. 1500/- se Rs. 2000/- ka investment pe return nikalta hai thik hai. Profit aap daily ka nikal te hain.	target return to the clients or prospective clients.	
2	Ashwani Mishra	Whats app details attached.	"ye karwa do….to jackpot call milega sir……single day par aapka **profit kahi nh gaya uski surety mai de rahi hu aapko**….phone to uthao sir ab aa aap…"	IA is promising the guaranteed return. As envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	Whats app chats
3	Kalandar khan	Call recording Capital Vraddhi Md Jalish_211126_1***** Call time: 06:32 to 06:44	Executive: Sir mereko 5 minute ka time dedo, sir mere number se call karke aapko koi bank nifty, nifty me trade karwa rahi hoon, **aur usme profit hoga sir.**	IA is promising the guaranteed return. As envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	Call -2
		Call recording Capitalvraddhi	Executive: 2nd December ka lena hai sir,	**From the conversation it is observed that IA is advising client to**	Call -3

Sr. No.	Name of the PAIA	Unique ID of call/ whats app	Conversation with Executive	Findings	Call
		Vibhothi_211126_***** Call time: 1:08 to 2:24	Client: ha 2nd December ka pachaso che rupay chal raha hai Executive: Ha to thik hai le lijiye **Client: aur madam isko stop loss kuch nahi laganeka** **Executive: Ha mat lagana** Client: Ha thik hai aapke bharose ke upar kar. Client: Madam ek lot lena ya do lot lena Executive: Ek lot lelo ab to, le liya? Client: Ha le liya. Executive: Kitne ka hua Client: 57.50	**trade without stop loss.**	
		Call recording Neha Capital Vraddhi_211113_1***** Call time:1:30 to 2:14	Executive: Mere suggestion se aapko pehle hi saal me 12-15 lakh ka profit ho jaaye to sir aapka hi kuch accha hoga, kam se kam aap mujhe yaad to karenge ki itna profit de diya. Aapki jo bhi jaroorat hai vo puri hogi sir. Jyada kuch nahi to dua to denge aap. Aapka future bright hoga	IA is convincing client that he/she would get 12-15 lakh rupees profit in a year.	Call -4
4	Vaibhav Gaekwad	Call recording +9191******2_211012_*****	**2:30 to 2:55** Executive: Aur agar aap Rs. 10000/- ka bhi investment karte ho humaare saath to **hum market se**	IA is promising the guaranteed return. As envisaged in the Circular SEBI/HO/IMD/DF1/CI	Call -5

Sr. No.	Name of the PAIA	Unique ID of call/ whats app	Conversation with Executive	Findings	Call
		AETrim1635386242224 Call time: 2:30 to 2:55 Call time: 3:45 to 3:60	**aapko Rs. 3000/- se Rs. 4000/- ka profit aaraam se nikaal kar denge sir. Per day ka profit aapka Rs. 3000/- se Rs. 4000/- kahi nahi jaanewala aapka.** **3:45 to 3:60** Executive: **Humare saath judiye Rs. 10000/- ka investment kijiye. Rs. 10000/- ke fund par hi mai daily aapko mai Rs. 3000/- se Rs. 4000/- ka profit nikaal kar dungi.**	R/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	
		Call recording Share Neha Dhakad_211015_***** AETrim1635387372740 Call time: 1:20 to 1:45	Executive: Rs. 20000/- par bhi agar unke saath rehke working karoge aur aap mere saath working karoge **to daily ka Rs. 5000/- se Rs. 6000/- ka profit nikaal ke dungi hi dungi.**	IA is promising the guaranteed return. AS envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	Call -6
5	Surjeet	85******8-4012-20****4-17***9-profit guarantee at 2min	**2:00 to 2:20** Executive: 36000 aapko investment karna hi nahi hai, aap 8000/- to 10000/- bhi investment karoge na to **yaha pe Rs. 2500/- Rs 2000/- to aaram**	IA is promising the guaranteed return. AS envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020,	Call -7

Sr. No.	Name of the PAIA	Unique ID of call/ whats app	Conversation with Executive	Findings	Call
		Call time: 2:00 to 2:20 Call time: 3:35 to 3:55 Call time: 7:45 to 8:10	**se profit nikal ke aayega.** **3:35 to 3:55** Executive: Yadi agar market me aapko trade lagate bhi nahi aayega na to vo bhi hu, aapko batayenge sir. Sirf dmat me aapko daalna hai Rs. 10000/- , **Rs 10000/- ke behalf pe ek mahine me aapko Rs. 30000/- se Rs. 40000/- ka profit nikal ke aayega daily ka 1500/- se 2000/- ka profit bhi hoga sir.** **7:45 to 8:10** Executive: abhi mujhe batao agar aapke savings account me 10000/- rakhe hai to ek mahine ke baad 40000/- ho jayenge kya? Rakhe rakhe. **Lekin sir itne samay me 10000/- bhi aap laga doge to ek mahine me mai aapko 30000/- se 40000/- ka profit nikaal ke de rahi hoon.** Meri company me jo aapka working hoga vo SIP plan me kaam hoga sir Systematic Investment Plan matlab jo aap	IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients. Further, IA observed to be convincing client in the name of SIP where in IA is convincing saying there will not be single rupees loss.	

Sr. No.	Name of the PAIA	Unique ID of call/ whats app	Conversation with Executive	Findings	Call
			investment karenge na usme ek rupaye ka bhi loss nahi hoga sir.		

65. On perusal of the aforesaid, I note the DA has clearly mentioned the names of the executives, the phone numbers from which these calls/whatsapp recordings have been taken, the exact time stamp of the call recording where assured profits have been promised along with the transcription and the related violations. I note the Noticee has not disputed the existence of these details like the names of the employees and the phone numbers. Also, the complete call recording along with the whatsapp screenshots were provided by the Noticee himself, and as already observed, he has failed to demonstrate how these recordings have been taken out of context. As noted above, only those parts of the call recordings/whatsapp screenshots which are related to assurance of promised returns have been highlighted by the DA; the same does not mean that they have been taken out of context. On perusal of these conversations, it is clear that the employees of the Noticee were promising assured / guaranteed returns to the clients e.g. convincing the client on one occasion that they would get ₹12-15 Lakh Rupees assured profit in a year and convincing the client in the name of SIP plan wherein client will not incur any loss, etc. Even without taking into account the confession / admission by the Noticee, there is enough evidence available on record which demonstrates that the Noticee along with his employees was involved in the practice of assuring guaranteed profits to his clients.

66. There cannot be any doubt about the fact that the promise of assured returns and profits is inherently misleading as it runs contrary to the fundamental principles of the securities market i.e., *all investments are subject to market risks.* Such misleading promises induced the clients/investors to invest in the services/products offered by the Noticee. Therefore, the guarantee of assured profits, in any manner, is fraudulent as it misleads and deceives clients.

67. Accordingly, the allegations w.r.t. violation of provisions of Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k), (s) of PFUTP Regulations read with Section 12A (a),

(b) and (c) of SEBI Act, 1992, Regulations 15(1) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct and Clause 2(ii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations are established against the Noticee. Further, non-filling of any complaints by the clients would not absolve the Noticee of the liability for the violation of these provisions.

Receipt of Fees before entering into any agreement with client;

68. It was observed during the inspection that for 209 out of 1793 clients, Noticee had received fees and provided services before entering into any agreement with them in alleged violation of Regulation 19(1)(d) of IA Regulations and Clause 2(ii) of Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of the Conduct for IAs.

69. I note that Regulation 19(1)(d) of the IA Regulations requires the IA to maintain, *inter alia,* the records of copies of agreements with clients, incorporating the terms and conditions as provided in Annexure A of the SEBI Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020. Further, in terms of the said Circular it is obligatory for the IAs to ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the said agreement and provided a copy of signed agreement to the client.

In his defense, the Noticee has submitted that due to Covid-19 pandemic, the agreements with clients were entered in some cases after the receipt of fees. DA, based on the material available on record, has noted that the Noticee had collected fees and provided his services to 209 clients out of his 1793 clients even before entering the agreement with the clients. Some of the sample clients as noted by the DA are mentioned below:

Payment Date	Client Name	PAN	Date of Agreement	Services	Service in Days	Amount
13-Apr-21	Govinda Kumar	BT******5A	26-Jun-21	Stock Cash	19	5500

29-May-21	Renuka Sumit Jain	BF******0H	30-Jul-21	Stock Cash	19	5500
31-Jul-21	Vikas Jangra	AL*****7C	24-Sep-21	Stock Cash	19	5500
30-Jul-21	Mr. Balister Singh	BX*****0A	18-Sep-21	Stock Cash	11	3000
28-Apr-21	Ritesh Kumar Harendrabhai Thakor	AS******0E	10-Jun-21	Stock Cash	19	5500

70. The Noticee has not disputed the observations made by the DA. In his support, the Noticee has only made a statement that due to Covid-19, some of the agreements with clients were entered after receipt of fees. It is not the Noticee's case that he had failed to enter into agreement with his clients on few occasions. It is undisputed that for 209 clients out of his 1793 clients (more than 10%), he had collected fees from his clients before entering into agreement(s) with them. As observed in paragraph 32 above, I note that the language and intent of the SEBI Circular dated September 23, 2020 was clear that no fees could be collected by the IA without execution of the agreement. The Noticee had the option to not charge the client altogether if he was unable to execute the agreement. It was the responsibility of the Noticee to ensure that the agreements with clients are duly executed before collecting fees from them. Thus, the violation of Regulation 19(1)(d) read with SEBI Circular dated September 23, 2020 is established against the Noticee and consequently violation of Clause 1 and 2 of Code of Conduct for IAs read with Regulation 15(9) of IA Regulations is also established which, *inter alia,* require the IA to act with honesty, fairness with due skill, care and diligence in the best interests of the clients.

Misrepresentation to clients by employee of IA

71. During inspection, it was observed that an employee of the Noticee has misrepresented and misled a client by saying that the client's risk profile was approved by SEBI and has solicited payment from client, which allegedly amounted to fraud in violation of Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) and Regulation 6(f) of IA Regulations.

72. The Noticee has submitted that the conversation in question on which the charge of misrepresentation by employees of Noticee is being levied is only based on SEBI' s interpretation. The meaning of said conversation is that the process of conducting risk profiling is approved by SEBI as per the IA Regulations.

73. I note that the DA has established the charge against the Noticee primarily based on the admission of Noticee made vide letter dated April 21, 2022. Further, the transcript of the call has not been stated in the Enquiry Report. Other than the isolated call, there is no evidence available on record to suggest that the Noticee's employees had misrepresented his clients in believing that the risk profiling is approved by SEBI. Based on the same, I am inclined to give benefit of doubt to the Noticee and find that the charge of misrepresentation is not established against the Noticee.

74. Thus, to conclude, I note that the following violations have been established against the Noticee.

    i. Regulation 15(13) read with Regulation 7 of the SEBI IA Regulations read with Clause 1, 2 and 8 of Code of Conduct for Non - Compliance with the qualification Requirement;
    ii. Regulation 15A of IA Regulations read with Clause 2(iii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 6 of the Code of Conduct for non-compliance with fee structure;
    iii. Regulation 15A of IA Regulations read with Clause 2(iii) of the SEBI Circular dated September 23, 2020 and Clause 6 of Code of Conduct for Investment Advisers for not entering in agreement with Clients;
    iv. Clause 2(vi) of the SEBI Circular dated September 23, 2020 read with Regulation 19 (1) of the IA Regulations for non-maintenance of records;
    v. Regulation 15(1), 17(1)(b), 17(1) (d), 17(1) (e) of the IA Regulations for charging fees more than the proposed investment amount and improper suitability Assessment read with Clause 1 and 2 of the Code of Conduct of IAs;
    vi. Regulation 19(1)(d) of the IA Regulations read with SEBI Circular dated September 23, 2020 and Clause 1 and 2 of Code of Conduct for IAs for receipt of Fees before entering into any agreement with the client.

vii. Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k), (s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992, Regulations 15(1) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct and Clause 2(ii) of Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations for promising assured returns.

75. Having observed as above, the issue that needs determination is what should be the appropriate enforcement action against the Noticee. The DA has recommended that the Noticee be prohibited from on boarding new clients for a period of 12 months. I note that the DA had found violation on 13 counts against the Noticee as mentioned above at Table 1 However, after consideration of the reply filed by the Noticee and the material available on record, as discussed in preceding paragraphs, I am of the view that the evidence is inadequate to establish the violation on 6 counts out of the said 13. Nonetheless, the violation is established against the Noticee on 7 counts. Further, in respect of the proceedings pertaining to the same subject matter, Adjudicating Officer, SEBI vide Order dated October 22, 2024 has also imposed a penalty of ₹ 40,00,000 on the Noticee.

76. On a consideration of the above factors, I am of the view that prohibiting the Noticee from onboarding new clients for a period of 12 months would be disproportionate. Thus, I deem it appropriate to reduce the prohibition period to six months, which, in my opinion, would be apt and commensurate with the violations that have been established against the Noticee.

Order

77. In view of the above, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 27(5) of the Intermediaries Regulations, prohibit the Noticee from on boarding new clients for a period of six months.

78. A copy of the Order shall be served on the Noticee and the concerned Market Infrastructure Institutions for their information and record.

AMAR JEET SINGH
Digitally signed by AMARJEET SINGH
Date: 2025.11.14 18:53:20 +05'30'

DATE: NOVEMBER 14, 2025 **AMARJEET SINGH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA