

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
INTERIM EX PARTE ORDER**

**Under Sections 11(1), 11(4), 11B (1) and 11D of the Securities and Exchange Board of India
Act, 1992 and Regulation 35 of Securities and Exchange Board of India (Intermediaries)
Regulations, 2008**

**In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
and**

**Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade
Practices Relating to Securities Market) Regulations, 2003**

In respect of:

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

In the matter of Sai Proficient Research Investment Advisory

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1. Sai Proficient Research Investment Advisory (hereinafter referred to as the “**Sai Proficient**”) is registered as an Investment Adviser (“**IA**”) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations**”) with effect from December 29, 2014 under SEBI registration number INA000002504. Sai Proficient is a proprietorship firm and its proprietor is Ms. Meeshika Vishwakarma. The registered office of Sai Proficient is at UG-69, Trade Centre, South Tukoganj, Indore, Madhya Pradesh-452001. It’s website address is www.saiproficient.com.
 2. SEBI has received complaints in SCORES against Sai Proficient. The complainants *inter alia* alleged that the IA was taking hefty fees from clients by guaranteeing assured returns, huge loss incurred by clients due to inappropriate advice given by Sai Proficient; pressurizing the clients to buy multiple products and pay more amount, etc. In view of the complaints received,

SEBI conducted an examination in relation to the affairs of Sai Proficient. The website of the entity www.saiproficient.com is not active currently. Hence, the details of the website are taken from the archive pages available on www.archive.org and placed on record. Further, Risk Profiling Form (“RPF”), KYC, Invoices/Receipts issued to clients, Suitability Policy, etc., were sought from the entity. However, Sai Proficient failed to submit any document till date. Hence, the examination was conducted based on analysis of the details available on the archives of website of Sai Proficient, complaints filed by the complainants against Sai Proficient and documents attached with complaints, etc. Based on the examination of documents / information, SEBI *prima facie* observed the following:

- 2.1. Sai Proficient had offered assured/expected returns to its clients and violated provisions of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”);
- 2.2. Sai Proficient did not resolve investor grievances as per prescribed timelines and did not cooperate with SEBI for inspection.
- 2.3. Sai Proficient has also triggered violation of the Code of Conduct for Investment Advisers by virtue of the above activities

Sai Proficient, proprietor Ms. Meeshika Vishwakarma had *prima facie* violated the provision of IA Regulations read with clauses of Code of Conduct for Investment Advisors and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”)

CONSIDERATION & PRIMA FACIE FINDINGS

3. I have perused the material available on record regarding assured returns and pending investor complaints. In this context, *prima facie*, the following issues arise for determination:

- 3.1. **Issue No. 1: Whether Sai Proficient has *prima facie*, violated any provisions of IA Regulations?**

- 3.2. **Issue No. 2:** *Whether Sai Proficient has prima facie, violated any provisions of SEBI Act read with PFUTP Regulations?*
- 3.3. **Issue No. 3:** *If the answer to Issue No. 1 or 2 is in the affirmative, who is responsible for the violations?*
- 3.4. **Issue No. 4:** *If the answer to Issue No. 1 or 2 is in the affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?*
4. Before moving forward, it is appropriate to refer to the relevant provisions of SEBI Act, IA Regulations and PFUTP Regulations:

IA REGULATIONS:

Regulation 15(1) *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(9) *An investment adviser shall abide by Code of Conduct as specified in Third Schedule:*

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

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.*

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.*

Redressal of client grievances.

Regulation 21 (1) *An investment adviser shall redress client grievances promptly.*

Regulation 25(i): *It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the Regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purpose of inspection.*”

Regulation 25(ii): *It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.*”

SEBI Act, 1992

“Section 12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

PFUTP REGULATIONS

Regulation 2(1)(c):

- “(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 ... ”

Regulation 3. No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (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.

ISSUE No. 1: Whether Sai Proficient has prima facie, violated any provisions of IA Regulations?

5. Promising Assured Returns to its Clients

5.1. It is noted from the complaints that Sai Proficient was promising assured/expected profit /returns on the investments made by the clients and luring them to avail its services. It is noted that huge returns were promised to the clients. Further, the following features of various products are noted from the archives of website of Sai Proficient:

Service/Product name	Service/Product's feature
Stock Cash	<i>We are proud to say that we offer stock cash options that are more than 95% accurate and end up in sure profits for our clients. <u>Benefits of our service:</u> ➤ We could assure 80-90% accuracy with all our stock cash tips under this plan, consistently.</i>
Stock Cash HNI	<i>We have dedicated research analyst who watch the market very carefully and deliver trading tips to book sure profits to our investors.</i>
Index Options	<i>We consistently maintain 90% above accuracy with our trading tips which are revealed with our past results.</i>
Index F&O; HNI	<i>Through this way, we are able to maintain 85-90% accuracy with all our tips.</i>

From the above it is noted that Sai Proficient induces clients to buy its services/products by claiming “sure profits”.

5.2. It is noted from the e-mail communication between IA and its clients that Sai Proficient was promising assured/expected returns on the investments made by the clients on the call/tips given by IA. Some examples of assured/expected returns/profit offered to its clients are as under:

5.2.1. E-mail communication of IA with Mr.Sameer Mahawar (complainant) wherein it is stated as follows:

“Total paid amount Rs.525001/-, Total remaining Rs.1000000/-

.....

What we will provide:-

-Focused to consistent profit

-maintain risk reward ratio...

As in offer...

As per conversation with our executive Join our (COMMETMENT PLAN + VOLUME + OFFER FOR SALE) services We will give you good Total profit (expected 88,00,000). You also know that thereof 4 MONTHS trading season COMPANY PROVIDING TO YOU, So You HAVE TO pay 50% amount of remaining amount 5,00,000/- INR , after paying this amount (5,00,000/-) only than you will get expected profit 14,00,000 , after getting this profit then you have to pay whole remaining amount. ”

5.2.2. E-mail communication between IA and Mr. Shyamsundar Virmani (Complainant):

Vide complaint dated January 07, 2019 Mr. Virmani stated that he had paid Rs.5 lacs to Sai Proficient but never got promised return. He has submitted copy of email and service proposal received from email id *saiproficientinvestment@gmail.com* dated August 13, 2018 wherein it is stated as follows:

“Equity service charge:- 500000(inclusive GST)

As in offer...

.... Join our equity commitment services only in 500000/-. You will get 90-95% accuracy in our levels rest is in installment after profit. We will give you good profit (depends upon market). You also know that there of 90 trading session. In this service we give approx. INR 8 lac profit and which we will give all support required. ”

5.3. From the above communication, it is *prima facie*, noted that Sai Proficient is claiming expected profit on the investment amount, and in some cases sure profit, if the client avails IA’s services. Sai Proficient, being a SEBI registered intermediary, is well aware that any form of returns, whether probable/ expected, cannot be committed or indicated for any investment service/ product since all investments in the securities market are subject to market risks. There may be a scenario where the capital deployed by the investor gets eroded as the investment advice provided by the IA turns out to be incorrect due to market risk. Even if there are disclaimers, its conduct of claiming “expected/ sure profits” reveal its actual intent of luring investors to avail its services. If its objective was not to mislead investors, it should not have made such reckless and careless claims.

5.4. It is further observed that the company has claimed that its accuracy is more than 90% in providing stock market tips. The same is *prima facie* not supported by any evidence as available on the webpages of the company. Even if it were true, it is *prima facie* observed that the conduct of the company in claiming that its accuracy is more than 80% in providing stock market tips and it has best growth in capital on consistent basis is not a full disclosure and is an active concealment of the material fact that past performance is not a guarantee of future result. In other words, historical performance, even if true, when presented, is purely for reference purposes and it is inaccurate to simply assume that these will extend into the future. Every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that is put out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment. This act of the IA *prima facie* appears to be an attempt to induce the client to subscribe to its advisory service by claiming profit numbers, which *prima facie* is an act to mislead the client as full disclosure is not made by the IA that the proposed investment of the client may incur loss. This act, *prima facie*, appears to have been done with an intention to bring in more customers and thereby increasing the income of the IA.

5.5. The above conduct shows that Sai Proficient acted in a dishonest manner and did not act in the best interest of the clients. In view of the above, Sai Proficient and its Proprietor Ms. Meeshika Vishwakarma, *prima facie*, (a) failed in their responsibility to act in fiduciary capacity for their clients which is entrusted upon her under regulation 15 (1) of IA Regulations and (b) failed to abide by clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15 (9) of IA Regulations. Thus, Sai Proficient and its Proprietor Ms. Meeshika Vishwakarma have, *prima facie*, violated regulation 15(1), clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

6. **Non Redressal of Investor Grievances and Non Cooperation:**

6.1. Regulation 21 of IA Regulations mandates that IA shall redress clients' grievances promptly. Further, SEBI, has vide Circular CIR/OIAE/2014 dated December 18, 2014 regarding Investor grievances through SCORES platform has advised that all SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The SEBI registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, the said circular has stated that in case of failure by SEBI registered intermediaries to file Action Taken Report (hereinafter referred to as "ATR") under SCORES within thirty days of date of receipt of the grievance, it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance.

6.2. It is observed from the data obtained from SCORES that 28 complaints are pending against Sai Proficient as on February 2021. Out of these complaints, it is seen that in 08 complaints, IA has failed to file ATR within prescribed timeline of 30 days, violating the directions given in the SEBI Circular CIR/OIAE/2014 dated December 18, 2014.

6.3. The details of pending complaints in which IA had filed ATR after 30 days and complaints in which Sai Proficient has not yet filed any reply from the date of last communication (as on February 03, 2021) are as follows:

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to IA (X)	Date of Final ATR (Y)	Excessive time above 30 days *
1	<u>SEBIE/MP19/0003195/1</u>	Kulwinder Singh	24/12/2019	01/01/2020	Not Submitted	399
2	<u>SEBIE/MP19/0003078/1</u>	Gyan Shankar Shukla	23/12/2019	26/12/2019	Not Submitted	405
3	<u>SEBIP/MP19/0000406/1</u>	Jitendra Kumar Yadav	31/10/2019	05/11/2019	29/01/2020	55
4	<u>SEBIE/MP19/0002096/1</u>	Hardev Singh	29/08/2019	07/10/2019	30/01/2020	85
5	<u>SEBIE/MP19/0002003/1</u>	Ajim Sattar Patave	21/08/2019	04/10/2019	29/01/2020	87

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to IA (X)	Date of Final ATR (Y)	Excessive time above 30 days *
6	<u>SEBIE/MP19/0001894/1</u>	Sumit Kumar	04/08/2019	07/08/2019	Not Submitted	546
7	<u>SEBIE/MP19/0000421/1</u>	Ramkesh Sharma	16/01/2019	19/02/2019	11/04/2019	21
8	<u>SEBIE/MP18/0004611/1</u>	Arun Mandal	20/11/2018	20/11/2018	14/01/2019	25

6.4. I am of the view that investor grievance redressal mechanism is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it under SEBI Act. One of the most important objects of SEBI is to protect the interest of investors and the same undoubtedly includes timely redressal of grievances of investors. Since, the IA has not submitted the ATR in a time bound manner as prescribed by SEBI and has also not resolved investors' grievance, *prima facie* it is held that the IA has failed to comply with SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21(1) of IA Regulations. Thus, Sai Proficient has *prima facie* violated the provision of Regulation 21 (1) of IA Regulations and SEBI Circular CIR/OIAE/2014 dated December 18, 2014.

Non-cooperation by Sai Proficient

6.5. As per Regulation 25 (1) and (2) an Investment Adviser is mandated to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as required by the inspecting authority for the purposes of inspection. An Investment Adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser is mandated to give to the inspecting authority all such assistance and extend all such co-operation as required in connection with the inspection and furnish such information as sought by the inspecting authority in connection with the inspection.

6.6. I note that SEBI, vide letter dated January 15, 2020, informed Sai Proficient that an inspection of its books of accounts/ records and other documents pertaining to its

registration as an investment advisor would be carried out by SEBI. As part of the said inspection, IA was advised to provide the information sought vide questionnaire. In response, Sai Proficient vide letter dated January 27, 2020 *inter alia* informed that due to personal reasons the working of the business was stopped and office had closed since December 31, 2019 and no new client was offered service since January, 2020 and they are providing only services to the existing clients and they focus on the complaints pending in SCORES. Vide the said letter the IA sought extension of time to furnish the required information to SEBI.

- 6.7. Subsequently, SEBI, vide letter dated February 04, 2020 once again informed Sai Proficient that inspection of the books of accounts and other records shall commence from February 17, 2020 onwards and sought information as per the questionnaire. SEBI also informed Ms. Meeshika Vishwakarma that if she is unable to be present during SEBI inspection, she is advised to depute a person to represent Sai Proficient during inspection. However, I note that Sai Proficient did not co-operate with SEBI nor furnished any information sought by SEBI as part of the inspection which is *prima facie* found to be violative of Regulation 25 (1) and (2).
- 6.8. Though Ms. Meeshika Vishwakarma informed that they are providing proper services to the existing clients and focus on the complaints pending in SCORES, I note that currently, 28 investor complaints are pending against Sai Proficient in SCORES. The said fact belies the claim of Ms. Meeshika Vishwakarma that she is providing proper services to its clients. I also note that Ms. Meeshika Vishwakarma had stated that the office of Sai Proficient is closed. Therefore, investors have no means to physically approach Sai Proficient for any reasons arising out of their agreement with the IA, including for seeking their redressal of grievances. Moreover, from a regulatory perspective, functioning of office of IA is *prima facie* important as SEBI undertakes inspection of books of accounts, records and documents of registered intermediaries which can be done at the office premises. It brings to light whether IA is conducting its affairs within the confines of IA Regulations which are framed for investor protection. Any deficiencies / irregularities observed during the inspection enables the IA to improve its functioning and serve the clients, professionally and competently apart from the possible enforcement actions against them. However, in

the present matter, Sai Proficient has *prima facie* not cooperated with SEBI's examination/inspection. The same not only *prima facie* demonstrates that Sai Proficient is trying to evade SEBI's jurisdiction despite pending investor complaints.

6.9. I note that the inspection of Sai Proficient was ordered during January-February, 2020 which is prior to the declaration of lockdown due to Covid-19 Pandemic. Further furnishing of information sought vide questionnaire could have been done especially after considerable period of time has elapsed and normalcy has largely resumed. Hence I am of the view that nationwide lockdown due to the Covid-19 Pandemic cannot be cited as reason for the non-cooperation by Sai Proficient by not providing the information.

6.10. I note that the certificate of IA has been issued to Sai Proficient. As per regulation 13 of IA Regulations, the certificate granted under regulation 9 of IA Regulations, *inter alia* is subject to the condition that the IA shall abide by the provisions of IA Regulations. Thus, the liability is on Sai Proficient to comply with the provisions of IA Regulations which Sai Proficient has *prima facie*, failed to comply as noted in the preceding paragraphs.

6.11. In view of the above, it is *prima facie* found that Sai Proficient has failed to furnish information relating to its activity as an IA for Inspection as required by the Board and not cooperated with SEBI for carrying out the objectives of inspection. Thereby Sai Proficient and its Proprietor Ms. Meeshika Vishwakarma has *prima facie* violated Regulations 13(a), 25(i) and (ii) of IA Regulations read with clause 8 of Code of Conduct for IA as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

ISSUE No. 2: Whether Sai Proficient has, *prima facie*, violated any provisions of SEBI Act read with PFUTP Regulations?

7. In the instant matter, it is *prima facie* found that:

7.1. Sai Proficient has been giving assurance regarding expected returns/sure profits from securities markets to clients and luring them to buy its services.

7.2. Sai Proficient has not resolved the investor grievances as per SEBI prescribed timelines and not cooperated with SEBI during the examination/inspection.

8. As per Regulation 3 of PFUTP Regulation, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud in connection with dealing in securities; or engage in any act, practice, course of business which operates as fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules and the regulations made there under.
9. The modus operandi adopted by IA discussed hereinabove, *prima facie*, shows that IA was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/ her financial situation, risk appetite, financial goal, etc. However, it is *prima facie* found that IA is knowingly and in a deceitful manner promising expected returns/sure profit to its clients.
10. It is also noted that the IA is not resolving clients' grievances as per prescribed timelines and not cooperated with SEBI for inspection.
11. The above activities, *prima facie*, are the devices adopted by the IA to defraud its clients in connection with their dealings in the securities. Hence, IA is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.
12. Thus, the findings of the preliminary examination and the overall modus operandi discussed in this order, *prima facie*, shows that a scheme is knowingly employed by Sai Proficient to defraud its clients in connection with their dealings in the securities and to maximize its revenue generation at clients' expense. Thus, the above discussed non-genuine and deceptive activities of IA are, *prima-facie* fraudulent and are covered under the definition of "fraud" under regulation 2(1)(c) of the PFUTP Regulations. Thus, Sai Proficient through its fraudulent act / scheme as discussed above, has *prima facie* violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

ISSUE No. 3: If the answer to Issue No. 1 or 2 is in the affirmative, who is responsible for the violations?

13. I note that Ms. Meeshika Vishwakarma is the sole proprietor of Sai Proficient. I note the legal status of the proprietary firm from the judgment of the Hon'ble Supreme Court of India in *Ashok Transport Agency vs. Awadhesh Kumar & another*, [(1998) 5 SCC 567] that "... A proprietary concern is only the business name in which the proprietor of the business carries on the business. . A suit by or against a proprietary concern is by or against the proprietor of the business...". Therefore, I find that Ms. Meeshika Vishwakarma is liable for the acts of Sai Proficient.

ISSUE No. 4: If the answer to Issue No. 1 or 2 is in the affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?

14. An IA has to comply with all the provisions of IA Regulations which enables the IA to effectively discharge its functions in the interest of the investor. IA is mandated to furnish all the information sought from the IA as required under the IA Regulations. In all the aforesaid, Sai Proficient has fallen short of requirements as envisaged under IA Regulations. Further, the intermediary should not abuse the certificate of registration granted to it, in any manner.
15. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he/she/it operates and it ill behooves the intermediary to be non-compliant with the provisions of IA Regulations. The intermediary should not abuse the certificate of registration granted to it, in any manner. As discussed in preceding paragraphs, the conduct of the IA has been *prima facie* found to be fraudulent in nature and is also in violation of IA Regulations. Thus, I am of the *prima facie* view that by allowing Sai Proficient to continue to act as an IA, there will be a serious threat to the integrity of the market as well as it will be harmful to the interest of the investors. In the present matter it is noted that the IA is not cooperating with SEBI during examination/inspection. Further, the

IA stated that it had closed its office which shows that the investors has no means to physically approach Sai Proficient and seek their redressal of grievances. Moreover, from a regulatory perspective, functioning of office of IA is *prima facie* important as SEBI undertakes inspection of books of accounts, records and documents of registered intermediaries which can be done at the office premises. Any deficiencies / irregularities observed during the inspection enables the IA to improve its functioning and serve the clients, professionally and competently, apart from any possible enforcement actions. The conduct of Sai Proficient as discussed above not only *prima facie* demonstrates that Sai Proficient is trying to evade SEBI's jurisdiction but its actions are in contravention of IA Regulations which is prejudicial to the interest of its clients.

16. It is noted that permitting an investor to receive a service from Sai Proficient which is *prima facie* not in compliance with the IA Regulations, is not in the interest of those investors.
17. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of Sai Proficient and its proprietor Ms. Meeshika Vishwakarma, mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and the fraudulent scheme, plan, device and artifice as *prima facie* found in this case, I am convinced that this is a fit case where effective and expeditious preventive and remedial action is required to be taken by way of ad interim ex - parte order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to the existing investors but also to new / prospective investor.
18. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by Sai Proficient has been found to be *prima facie* fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing Sai Proficient and its proprietor Ms. Meeshika Vishwakarma to continue its services to its clients, regardless of whether they have complained against Sai Proficient or not, would tantamount to allowing the *prima facie* fraudulent investment advisory activity to continue, which will be

inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations.

19. It is noted that permitting an investor to receive a service from Sai Proficient and its proprietor Ms. Meeshika Vishwakarma is *prima facie* not in consonance with the IA Regulations. Availing of Sai Proficient service is detrimental to the existing investors as Sai Proficient is not acting in the best interest of its client but is only maximizing its revenue / income through fee. The acts of Sai Proficient and its proprietor Ms. Meeshika Vishwakarma are not honest and fair towards its clients. Exposing investors to such service also has the effect of interfering with the development of securities market, as victim of such services tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an “irreparable injury”. The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.
20. Further if an ex-parte order is not passed, many prospective investors may have to part with large fees and investment resulting into irreparable injury to themselves as the advice given by Sai Proficient may not be as per their risk tolerance and the product offered to them may not be suitable as per their investment objectives and investment time horizon. However, if an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. It may be noted that one of the underlying differences between the exparte orders in the case of private suits and ex-parte public enforcement actions, is the identification of the injured party. In private damage suits, the injured individual, as “whole”, is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. The potential loss of the investors by following the advice of Sai Proficient and its proprietor Ms. Meeshika Vishwakarma and resultant loss of investor’s confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, Sai Proficient and its proprietor Ms. Meeshika Vishwakarma is permitted to carry out its irregular investment advisory service. Therefore, I consider the balance of convenience is also not in favour of the entity.

21. I, therefore, find that pending conclusion of enquiry in the matter, in view of the prima facie evidence against Sai Proficient, it is essential to take urgent steps to prevent Sai Proficient and its proprietor Ms. Meeshika Vishwakarma from acting as an investment advisor and representing through any media as an investment advisor and securities market activities and alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous..
22. Considering the above, in my view, the balance of convenience lies against Sai Proficient and immediate steps need to be taken against Sai Proficient and its proprietor Ms. Meeshika Vishwakarma, to protect the investors / clients from freshly subscribing to or continuing to get such prima facie fraudulent / inappropriate / unsuitable investment advisory service by Sai Proficient.

ORDER:

23. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B (1) and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby direct by way of this *interim ex-parte order*, the following directions, which shall be in force until further orders: -

23.1. *Sai Proficient and its Proprietor Ms. Meeshika Vishwakarma are directed:-*

- 23.1.1. *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever or on behalf of any of its clients through their accounts;*
- 23.1.2. *to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;*

- 23.1.3. *not to divert any funds raised from investors, kept in bank account(s) and/or in their custody;*
- 23.1.4. *to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order;*
- 23.1.5. *not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI;*
- 23.1.6. *to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;*
- 23.2. *If Sai Proficient or its proprietor Ms. Meeshika Vishwakarma have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. Sai Proficient and its proprietor Ms. Meeshika Vishwakarma are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order*
- 23.3. *The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by Ms. Meeshika Vishwakarma either individually or jointly.*
- 23.4. *The Registrar and Transfer Agents are directed to ensure, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by (a) Sai Proficient and (b) Ms. Meeshika Vishwakarma either individually or jointly.*
24. *The prima facie observations contained in this Order, are made on the basis of the material available on record. In this context, Sai Proficient or its proprietor Ms. Meeshika Vishwakarma may, within 21 days from the date of receipt of this Order, file their reply/objections, if any, to*

this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.

25. The above directions shall take effect immediately and shall be in force until further orders.
26. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Sai Proficient or its proprietor Ms. Meeshika Vishwakarma in accordance with law.
27. A copy of this order shall be served upon Sai Proficient and its proprietor Ms. Meeshika Vishwakarma, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

Date: February 09, 2021

Place: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**