

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/53492	Date: August 30, 2022
Circular Ref. No: 115/2022	

To All NSE Members

Sub: SEBI Order in the Matter of Money Secure Investor (Proprietor - Alka Shrivastava)

SEBI vide its order no. WTM/AB/WRO/WRO/18823/2022-23 dated August 30, 2022, has hereby debarred entity Money Secure Investor (Proprietor Alka Shrivastava) – (PAN:- CBPPS2075D) from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/completion of refunds to complainants as directed in para 6.1.1 of the order, whichever is later.

The Order shall come into force with the immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Abhishek Goenka (Extension: 23449), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of



National Stock Exchange of India

National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

Annexure

SEBI Order in the Matter of Money Secure Investor (Proprietor - Alka Shrivastava)

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11 (4), 11B (1) and 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations

In the Matter of Money Secure Investor (Proprietor- Alka Shrivastava)

In respect of –

Sr. No.	Noticee	PAN
1.	Money Secure Investor (Proprietor- Alka Shrivastava)	CBPPS2075D

1. Background –

- 1.1. The present matter emanates from multiple complaints received against Money Secure Investor (Proprietor- Alka Shrivastava), a SEBI registered Investment Adviser bearing registration no. INA000008817 (the “**Noticee**”).
- 1.2. Pursuant to the receipt of the said complaints, the matter was examined to verify the veracity of the information brought out in the complaints and ascertain whether there had been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (the “**SEBI Act**”), the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (the “**SEBI IA Regulations**”) and any other Rules or

Regulations. Consequent to the completion of examination in the matter, a Show-cause Notice bearing No. SEBI/WRO/P/OW/2021/39364/1 dated December 29, 2021 was issued to the Noticee, based on the findings of the said examination (“SCN”). It is in this background that the present proceeding, which is to consider the allegations made in the SCN, is before me.

2. The Show-cause Notice

2.1. As stated above, the SCN has been issued to the Noticee based on the findings of the examination. In this regard, the SCN has *inter alia* alleged that the Noticee –

- a. had failed to provide material information to SEBI;
- b. was promising assured returns to its clients;
- c. obtained the trading account details of the clients and executed trades on their behalf;
- d. had carried out improper risk profiling of its clients and failed to abide by the principles of suitability;
- e. imposed arbitrary and unreasonable fees on its clients;
- f. violated the SEBI Circular on not accepting cash deposits; and
- g. had not redressed the complaints of investors.

2.2. Accordingly, the SCN has called upon the Noticee to show cause as to why suitable directions under Sections 11(1), 11 (4), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations should not be issued against the Noticee.

3. Service of SCN, Personal Hearing, and Replies and Written Submissions from the Noticees –

3.1. The SCN along with the annexures has been served on the Noticee. Consequent to the service of the SCN, the Noticee has by way of its reply dated March 21, 2022 and email

dated July 15, 2022 provided its response to the SCN. It is further stated that the Noticee was also provided an opportunity of hearing on July 08, 2022, and the Noticee entered appearance through its authorised representative on the scheduled date of hearing and made submissions.

3.2. I note that the Noticee by way of its reply dated March 21, 2022 and email dated July 15, 2022 has filed its response against the allegations made in the SCN. After perusing the written replies filed by the Noticee and oral arguments made by it before me during the personal hearing, the submissions and arguments are summarised hereunder::

- a. The alleged material information regarding an FIR being registered against the Noticee was already with SEBI's local office in Indore.
- b. SEBI had allowed the Noticee to change its address, and the registration of FIR was neither fundamental change in information provided earlier nor material change in the same.
- c. The High Court (High Court of Madhya Pradesh, Indore Bench) had quashed the FIR lodged against Alka Shrivastava and any further proceeding in furtherance of the FIR would amount to contempt of court. The urgency shown by officers of SEBI to enquire into the complaints which had already been resolved to the satisfaction of SEBI, and seeking the Noticee to file her reply amounted to contempt of court.
- d. The Noticee, Alka Shrivastava was a nursing mother at the relevant point with an infant child and had to avoid arrest to seek justice.
- e. There was no disruption in providing investment advisory services during the period in which the Noticee's premises were sealed.
- f. The call recording annexed to the SCN did not reveal the phone number and also whether the call had been with an employee of the Noticee. Also, the said recording was not from an independent professional source.
- g. The allegation that the Noticee was promising assured returns was without substance as the Noticee had not guaranteed or assured any profit. To make this allegation SEBI

had relied on the specific pieces of the service agreement overlooking the other parts of the said document. It was a settled principle of law that a document cannot be relied upon in parts and the entire document had to be read as a whole. The service agreement contained the disclaimer “ *Kindly note that it is only on the basis of past performance. It does not assume or provide any kind of guarantee to any subscriber of services in any regards that the same may happen in future.*”

- h. SCORES complaints, based on which the allegations had been made in the SCN, had been cleared on the SCORES portal to the satisfaction of the investor as well as SEBI. So, the same could not be held against the Noticee. A complaint resolved on the SEBI portal meant the same had been resolved to the satisfaction of SEBI, so re-examining already resolved complaints would be barred by the doctrine of Res-Judicata and Double Jeopardy.
- i. Also, clients bought services from different companies at the same time. In such a case, it could not be said that the IP address showing that the trades were effected from Bhopal was that of the Noticee, as the Noticee never had an office in Bhopal. Further, the IP address showing that trades were effected from Indore could not be attributed to the Noticee as Indore was a city of 30 lakh people and the said IP address could belong to anybody.
- j. The client, Bhaveshkumar Bhatt had already stated, by way of an email dated October 18, 2019, that it was his brother who had wrongfully lodged the complaint. Also, the invoice mentioned that the Noticee only provided services through SMS and execution was left to the clients. The Noticee did not provide any execution services.
- k. The Risk Profile Form (“**RPF**”) of the Noticee would clearly show that relevant questions were put to the client for assessment of their risk profile. Each question has a mathematical number assigned to it and based on the cumulative number, the client would be categorised into low risk, medium risk and high risk.
- l. The RPFs would be filled by the clients and thereafter the same would be analysed by the investment adviser so as to determine the risk profile of the client. This was a

standard process followed by the industry. Also, SEBI had not prescribed any specific procedure for RPF.

- m. Clients were required to first fill the online RPF and once the same was done, the clients completed the KYC process.
- n. There was no cap on the fee that could be charged. Also, the fees were charged for services over a period of seven (7) months and the client had made payments only after being satisfied with the services. The services offered could be attributed to the RPF of the client as the client wanted regular income and was willing to take higher risks for higher returns.
- o. The Noticee had not charged fees for overlapping periods but the fees charged were paid by the client in installments and the invoices were raised as and when the amounts were paid by the client. Also, the service period was pre-decided and the service amount was also agreed between the parties.
- p. At times, on special request of a client, a special mix of services as suited to the client's risk profile were suggested, as in the case of Satish Kumar.

3.3. The Noticee has, in its replies, relied on the following case laws/orders:

- a. *Palvinder KUR V. Rup Singh*, AIR 1952 SC 354; *Hanumant Govind Nargunkar V. State of Madhya Pradesh*, AIR 1952 SC 343; *Dadaraao V. State of Maharashtra*, AIR 1974 SC 388 to contend that a document should not be dissected and considered only in part when that part is inextricably connected with the other part which is not taken into consideration.
- b. Order of the ITAT, Pune Bench, Pune, dated June 06, 2011 in *Ranka Jewellers and Ors V. Addl. CIT Cen. Range –I and Ors.*, to contend that a seized document should be read as a whole and should be relied upon or rejected in its entirety.
- c. Order of SEBI dated January 20, 2017 in *the matter of CapitalVia Global Research Limited*, WTM/GM /IMD/08/JAN/2017 to contend that in the matter of CapitalVia Global Research Limited more severe violations than the present SCN

were alleged, but no conclusions as drawn in the present SCN were drawn in CapitalVia Global Research Limited.

- d. Order of the Securities Appellate Tribunal dated October 22, 2002, in Appeal No. 20 of 2001, *Sterlite Industries (India) Ltd. V. SEBI*, to contend that proving the fact on the basis of preponderance of probability was not sufficient to establish a serious offence of market manipulation.

4. Issue –

4.1. In view of the submissions made, I see that the issue for consideration to be:

- I. Whether Money Secure Investor (Proprietor- Alka Shrivastava), a registered investment adviser with SEBI, has —**
 - a. failed to provide material information to SEBI;**
 - b. was promising assured returns to its clients;**
 - c. obtained the trading account details of the clients;**
 - d. carried out improper risk profiling of its clients and had failed to abide by the principles of suitability;**
 - e. imposed arbitrary fees on its clients;**
 - f. violated the SEBI Circular which prohibited acceptance of cash deposits; and**
 - g. not redressed the complaints of its clients ?**

5. Consideration and findings –

Issue I- Whether Money Secure Investor (Proprietor- Alka Shrivastava) was carrying out investment advisory activities in violation of the prevailing provisions of law ?

5.1. The SCN has brought out that the Noticee carried out its investment advisory activities in digression and contravention of the obligations cast upon an investment adviser registered with SEBI. The specific actions based on which such allegations have been made in the SCN have been enumerated above, and, as such, do not require reiteration here.

5.2. In view of the above-referred actions of the Noticee, the SCN has stated that the Noticee has *prima facie* violated the following provisions of law –

- a. Regulation 13(b) of the IA Regulations;
- b. Sections 12 A (a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c) of the PFUTP Regulations along with Regulation 15 (1) of the IA Regulations and Clauses 1 and 2 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations;
- c. Regulation 15 (3) of the IA Regulations along with Clause 1 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations, and Regulation 22 of the IA Regulations;
- d. Regulation 16 (b) and Regulation 17 read with Regulation 15 (1) of the IA Regulations and Clauses 1, 2, 4, 5 and 8 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations;
- e. Regulation 15 (1) of the IA Regulations and Clause 1 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations along with Sections 12 A (a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c) of PFUTP Regulations;

- f. Clauses (iii) and (iv) of SEBI Circular SEBI/HO/IMD/DFI/CIR/P/2019/169 dated December 27, 2019; and
- g. SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 along with Regulation 21 (1) read with Regulation 28 (f) of IA Regulations.

5.3. I note that the SCN contains multiple allegations against the Noticee, and for the purpose of convenience and clarity, I shall deal with each of the allegations independently. In considering these allegations, I shall take into account the submissions/defences put forth by the Noticee in its replies.

5.4. However, before I proceed with the examination of the individual allegations made against the Noticee, I find it appropriate to, at the outset, deal with the preliminary objection raised by the Noticee with respect to the present proceeding in light of the Order dated September 22, 2020 of the Hon'ble High Court of Madhya Pradesh. In this regard, it has been submitted by the Noticee that the FIR lodged by the Madhya Pradesh Police against Alka Shrivastava, the Noticee in the present proceeding, had been quashed by the Order of the Hon'ble High Court of Madhya Pradesh, and so any further proceeding in furtherance of the FIR would amount to contempt of court. The Noticee has further contended that enquiry by the officers of SEBI into the complaints received from the investors and seeking the Noticee to file its reply amounted to contempt of court.

5.5. In this regard, I find it relevant to peruse the Order dated September 22, 2020 of the Hon'ble High Court of Madhya Pradesh. I find that there is no ambiguity with respect to the quashing of the FIR registered by the Madhya Pradesh Police against the Noticee. However, what is of importance to note is the reason cited by the Hon'ble Madhya Pradesh High Court. The Hon'ble High Court has held that “ *In view of the fact that the aforesaid establishment namely Money Secure Investor Investment Adviser was registered with SEBI, if the establishment was being run in breach of SEBI Regulations, Rules or Provisions of SEBI Act, 1992, only SEBI Board was authorized to file a complaint before a competent Court and without there being such step taken, no Court could take cognizance in such cases.*” The Hon'ble High Court has further stated that “*What the police could have done was to bring to the notice of the SEBI Board the alleged*

violation being committed by the applicant Company. After providing vital information and inputs to the SEBI Court, the matter would have been looked into by the SEBI Board only and appropriate complaint could have been filed by SEBI Board before the competent Special Court. However, instead of doing so, the police has embarked upon registration of FIR in such a case and by doing so, has travelled beyond the scope of it is competence and jurisdiction”.

- 5.6. It is abundantly clear from the above that the Hon’ble High Court has in no place brought out a finding that SEBI did not have jurisdiction in the matter. On the contrary, the Hon’ble High Court has emphasised the jurisdiction of SEBI in the matter.
- 5.7. In this context, the submission made by the Noticee (through its Advocate) that enquiry by the officers of SEBI into the complaints and further proceeding in the matter by SEBI amounted to contempt of court (of the Hon’ble High Court’s Order), is nothing short of an absolute distortion and misrepresentation of the Order of the Hon’ble High Court, and is mischievous and intended to mislead.
- 5.8. Having dealt with this preliminary issue, I shall now proceed to deal with the specific allegations made in the SCN against the Noticee.

Failure to provide material information to SEBI

- 5.9. The SCN has stated that the Noticee vide an email dated August 10, 2020, informed SEBI that the Crime Branch of Indore Police had seized the office premises where documents were kept. It was also informed, by way of the said email, that an FIR had been filed against Money Secure and its proprietor, Ms. Alka Shrivastava on March 04, 2020, *inter alia* under Sections 418, 419, 420, 406, 109, 120 B of India Penal Code, 1860. I note that Sections 418, 419, 420 respectively relate to Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect; Punishment for cheating by personation; and Cheating and dishonestly inducing delivery of property. Similarly, Section 406 prescribes the punishment for criminal breach of trust, Section 109 prescribes punishment for abetment if the act abetted was committed as a consequence and when no express provision was provided for its punishment; and Section 120B prescribes the punishment for criminal conspiracy. It is noted that the above information

was only provided by the Noticee when certain documents were sought by SEBI with respect to SCORES complaints pending against the Noticee. As per the SCN, SEBI was corresponding with the Noticee through SCORES portal up to August, 2020 for resolution of complaints, but the Noticee was merely seeking more time stating that its office was closed due to the COVID pandemic.

5.10. It has further been stated in the SCN that as the office premises had been sealed by the Police, the investment advisory activities of Money Secure had been temporarily discontinued. This, as per the SCN, was drawn from the fact that there were no credit transactions in the bank account accounts of the Noticee (ICICI Bank Ltd., A/C No.: 657205500406 and HDFC Bank Ltd., A/C No.: 50200028592922), as regards advisory services, subsequent to the police raid of March 04, 2020.

5.11. So, the SCN has alleged that the Noticee failed to inform about material change regarding FIR registered by Police, sealing of premises and equipment including computers, servers, telephones etc. which had affected its business activities thereby violating Regulation 13(b) of the IA Regulations.

5.12. In this respect, it has been stated by the Noticee that the information regarding the filing of the FIR was with SEBI as the same had been intimated by the Police by way of letter dated March 05, 2020. Further, it has also been submitted by the Noticee that there was no disruption in the conduct of business contrary to the allegation made in the SCN.

5.13. I note from Regulation 3 of the IA Regulations that no person shall act as an investment adviser or hold itself out as an investment adviser unless he obtains a certificate of registration from SEBI. I further note that FORM-A in Schedule- I to the IA Regulations provides a specified format for making an application for grant of certificate of registration as an investment adviser. The said Form-A requires a prospective investment adviser to provide a host of information based on which the application would be considered by SEBI. The Noticee, at the time of seeking registration from SEBI as an investment adviser, had also provided the requisite information in Form-A.

5.14. It is essential to point out that Form-A at Sl. No. 4 requires an applicant to provide details of infrastructure. The said part is reproduced hereunder for reference:

“4. DETAILS OF INFRASTRUCTURE

- 1. Details of office space, office equipment, furniture and fixtures, communication facilities, research capacity, research software for undertaking investment advisory services.*
- 2. Declaration that the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser.”*

Similarly, Sl. No. 6 of Form-A requires an applicant to provide other additional information relevant to the application. The said part is reproduced hereunder for reference:

“6. OTHER INFORMATION/DECLARATIONS/ REGULATORY ACTIONS

- (a) Details of all settled and pending disputes in the last 5 years.*
- (b) Whether any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by the Board; If yes, provide details of the same.*
- (c) Whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected with the applicant under the Act or the regulations made there under in the last 5 years. If yes, provide details of the action.*
- (d) Whether the applicant/directors/promoters/ partners have been indicted/involved in any economic offence in the last 5 years. If yes, provide details of the same.*
- (e) A credit report/ score from CIBIL for the applicant.(For applicants other than financial institutions & banking companies)*
- (f) Declaration that the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;*
- (g) Declaration that the applicant shall not obtain any consideration by way of remuneration or compensation or any other form whatsoever, from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided to the client.*
- (h) Any other information considered relevant to the nature of services to be rendered by the applicant.”*

5.15. So, from the above, it is clear that Form A that is filed by an Investment Adviser requires it to provide information regarding the infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities and also regarding

regulatory actions taken against it and economic offences that it may have been charged with.

5.16. It is reiterated that based on the information provided in Form A, an investment adviser is granted a certificate of registration. Once a certificate of registration is granted, the same is subject to the stipulations contained in Regulation 13 of the IA Regulations. In this regard, it would be relevant to place here the stipulations contained in Regulation 13 (b) of the IA Regulations. Regulation 13 (b) of the IA Regulations provides that –

“13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(a) ...

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted’

So, it is clear that the certificate of registration provided to an investment adviser by SEBI is subject to the conditions enumerated in Regulation 13 of the IA Regulations, which includes *inter alia* the obligation to inform SEBI of any material change in the information already submitted by it. In view of the above, I draw reference from the email dated August 10, 2020 addressed by the Noticee to SEBI. In the said email, the Noticee has stated that – “...I, Alka Shrivastava, Proprietor of M/s Money Secure Investor- Investment Advisor would like to inform your good office that due to unprecedented issues (that) happened in the month of March, 2020, am not able to submit documents sought by your good office. Further, I would like to inform you that FIR bearing crime number 05/2020 at police Station Crime Branch Indore, lodged against Money Secure Investor – Investment Advisor on basis of false information provided by person who is not client, employee or vendor of the Firm. The Crime branch has also seized our office premises where documents were kept.” (emphasis supplied)

5.17. Thus, from the above it is clear that an FIR had been lodged against the Noticee in March of 2020 and the Crime Branch had also seized the office premises of the Noticee. In any application for registration as an investment adviser, as stated above, an applicant has to give a declaration that it has the necessary infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities and also regarding regulatory actions taken against it and economic offences that it may have been charged

with. Similarly, the Noticee had also disclosed to SEBI the above information. However, considering the events of March 2020, which resulted in an FIR being lodged against the Noticee and its office premises being seized, the information earlier provided to SEBI by the Noticee about the details of regulatory actions/offences and infrastructure in its possession has undergone material change. That being the case, it was incumbent upon the Noticee to forthwith inform SEBI in writing about such change. However, the information regarding the events of March 2020 and their impact on the functioning of the Noticee was brought to the notice of SEBI only in August of 2020, and that too when specific information was sought by SEBI. Accordingly, I find that the Noticee has violated Regulation 13 (b) of the IA Regulations for the reasons stated above.

5.18. I take note of the argument made by the Noticee that the information regarding the filing of the FIR was already with SEBI as the same had been intimated by the Police by way of letter dated March 05, 2020. While that may be the case, it is emphasised that the present proceedings are with respect to the obligation cast under Regulation 13 (b) and whether such obligation had been fulfilled by the Noticee. Regulation 13(b) is quite emphatic in its stipulation that an investment adviser should forthwith inform SEBI in writing about any material change in information earlier provided. Thus, there was a clear obligation on the Noticee under Regulation 13 (b) to forthwith inform SEBI; which was not done. The fact that SEBI had prior information from the Police is of little relevance to the present proceedings.

Improper Risk Profiling and failure to abide by Principles of Suitability

5.19. The SCN has alleged that the Noticee did not have a process in place to assess the risk-taking ability of a client. Also, the Noticee did not have any system in place for suitability assessment to identify the products/ services which were appropriate for the clients.

5.20. It has been submitted by the Noticee that the RPFs of the Noticee contained relevant questions for assessment of risk profile of the clients. Each question has a mathematical score assigned to it and based on the cumulative score, a client would be categorised into low risk, medium risk and high risk. The RPFs were required to be filled by the clients

and thereafter the same would be analysed by the investment adviser to determine the risk profile of the client. SEBI had not prescribed any specific procedure for RPFs.

5.21. In this regard, it is stated that even though SEBI does not prescribe any specific questionnaire to examine and assess the risk profile of a prospective client, there is nonetheless clear guidance provided in Regulation 16 of the IA Regulations, which deals with risk profiling. Regulation 16 (a) states that an Investment Adviser is to ensure that *“it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:- (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/ borrowing details.”* Similarly, Regulation 16 (d) requires an Investment Adviser to ensure that *“any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that: (i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand; (ii) questionnaire is not structured in a way that it contains leading questions.”* Keeping the above in mind, it is specified in Regulation 16 (b) that an Investment Adviser shall ensure that *it has a process for assessing the risk a client is willing and able to take, including: (i) assessing a client’s capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.*

5.22. I note from the KYC of one of the Noticee’s clients i.e, Mr. Mohammed Salahuddin that he was more than 70 years old, had more than 5 dependants and had no emergency funds, had an annual income between INR 5 to 10 lakh and wanted to invest above INR 5 lakh. These were clear red flags and any reasonable person assessing the RPF of this client would have gathered that his risk appetite was limited. However, the Noticee in fact sold him a High net worth Individual package promising a return of about INR 23 lakh for which a fee of INR 4.8 lakh was charged. This exhibits non-existence of a process for appropriately assessing the risk profile of the clients. This finding is further buttressed by the fact that the RPF dated May 20, 2019 and KYC dated May 17, 2019 of Mr. Mohammed Salahuddin, show his Annual Income differently. In the KYC his annual income is mentioned as INR 1-5 lakh, whereas the Annual income mentioned in the RPF is INR 5-10 lakh. It has been claimed by the Noticee that the RPFs were analysed by the

investment adviser to determine the risk profile of the client. However, in light of the above facts, it does not appear any analysis was done of the RPFs, for if the same had been carried out the anomaly would have clearly emerged.

5.23. Thus, I find that the Noticee had not ensured a proper process for the assessment of risk profile of the clients, and as such it has violated Regulation 16 (b) of the IA Regulations.

5.24. The SCN has also alleged that the Noticee has violated Regulation 17 of the IA Regulations which stipulates that the Investment Adviser should ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client and there has to be a documented process for selecting investments based on client's investment objectives and financial situation. Thus, there is a clear onus on the Investment Adviser to reasonably satisfy itself of the efficacy of his investment advice as regards the client, keeping in mind the factors stated above.

5.25. I note from the record that the same Mr. Mohammed Salahuddin mentioned above had already been given investment advice, as would be evident from the dates of the invoices of payments made which are of May 15 and 16 of 2019, even before his risk profiling was carried out (the RPF is of May 20, 2019). So, instead of giving investment advice which was appropriate to the risk profile of the client, in the present case the Investment Adviser had not even taken the effort to undertake the risk profiling of the client. Further, since no risk profiling was carried out prior to giving investment advice, the investment adviser would not have had any reasonable basis to examine if the investment advice given by the Noticee would meet the client's investment objectives and whether the investment advice was suitable in terms of the risk taking ability of the client. It has also been brought out above that Mr. Mohammed Salahuddin was sold a High Networth Individual package and an amount of INR 4.80 lakh was taken from him as fees; when his total intended investment amount was INR 5 lakh. So, it is evident that no reasonable assessment was done by the Investment Adviser in assessing the suitability of the client for the investment advice given to him. Lastly, I note that the Notice has not produced any documented process by way of which investments were selected for clients, based on client's investment objectives and financial position. Considering the above, I find that the Investment Adviser has violated Regulation 17 of the IA Regulations.

5.26. It has also been alleged in the SCN that the Noticee has violated Regulation 15 (1) of the IA Regulations and clauses 1, 2, 4, 5 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations. As already stated, Regulation 15 (1) of the IA Regulations mandates that an investment adviser shall act in a fiduciary capacity towards its clients. In this regard, reference is made to the judgment of the Hon'ble Supreme Court of India in the case of *Dale and Carrington Invt. (P) Ltd. and Ors. V. P.K. Prathapan and Ors.*, (2005) 1 SCC 212. The SC in the matter, while deciding that the Directors of a company had to act in a fiduciary capacity towards the company, elucidated on the specific duties that are enjoined on a director, owing to their fiduciary capacity vis-à-vis a company. The SC has held that “*The fiduciary capacity enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company.*” In the context of Investment Advisers and its clients, the same principles as elaborated upon by the Supreme Court in the above mentioned case shall also apply. In this regard, I also refer to the case of *Securities And Exchange Commission V. Capital Gains Research Bureau, Inc., Et al.*, 375 U.S. 180 (1963) decided by the US Supreme Court with respect to the fiduciary standard of an investment adviser in respect of the Investment Advisers Act of 1940, which regulates investment advisers in the United States much like the SEBI Act and IA Regulations in India. The court while considering the question of fiduciary duty owed by an investment adviser in respect of the Investment Advisers Act has stated that the said Act “*reflects the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not disinterested.*” Further, it was held by the US Supreme Court that it has been “*imposed on a fiduciary an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients.*”

5.27. So, upon a consideration of the principles enunciated by the Hon'ble Supreme Court of India as well as the US Supreme Court, I find that the fiduciary capacity within which an investment adviser works enjoins upon it a duty to act on behalf of its clients with utmost good faith, care and skill and due diligence, and in the interest of the clients it represents.

5.28. In the present matter, it is evident that the Investment Adviser has exhibited a cavalier approach towards risk profiling of its clients thereby completely abandoning proper due diligence and care that a person acting in a fiduciary capacity is duty bound to ensure. Also, the Investment Adviser by giving investment advice to the client, which was not at all suitable for the client has not acted in the best interests of the client, and has put its own interest of earning more fees at the fore, thereby breaching the fundamental duty of a fiduciary. I accordingly find that the Investment Adviser has violated Regulation 15 (1) of the IA Regulations.

5.29. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Cause 4 mandates an Investment Adviser to seek necessary information viz., financial situation, investment experience etc. so as to give proper investment advice. Clause 5 requires an Investment Adviser to make necessary disclosures of material information while dealing with clients. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. I find from the facts brought out above that the Investment Adviser has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1, 2, 4, 5 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

5.30. Accordingly, I find that the Noticee has violated Regulation 15(1) and clauses 1, 2, 4, 5 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

The Noticee was promising assured returns to its clients

5.31. The SCN has alleged that the Noticee through its service agreements was promising targeted returns to its clients by terming them as ‘approachable profit’ on the investments made. The SCN has also alleged that the Noticee was inducing clients to join its services

by promising huge returns and also assuring them that the information/advice provided were 100% accurate with no-loss guarantee.

5.32. In this regard, it has been submitted by the Noticee that the allegation in the SCN had been made by relying on specific parts of the service agreement overlooking the whole document. Also, the Noticee has contended that the call recording relied upon in the SCN did not reveal the phone number and whether the call had been with an employee of the Noticee. Further, it has been stated by the Noticee that the call recording was not from an independent professional source.

5.33. I observe from the material on record that call recordings have been provided by the clients, with their complaints, in respect of the services/products offered by the Noticee. In this regard, I note from the transcript of the conversation between a client, Mr. Bhaveshkumar Bhatt and the employee of the Noticee that the client was being assured 100 % accuracy as regards the recommendation and there would be no loss. I also note from the conversation that the employee was negotiating a profit sharing arrangement (50-50) with the client. Also, the conversation shows that a scheme was proposed to the client whereby the profit made in the first 3 days was to be given to the Noticee, and the profit made in the subsequent nine days, would be kept by the client. This, it was stated, was a festive offer on the occasion of the birthday of the owner, presumably, Alka Shrivastava, the sole proprietor of Money Secure Investor.

5.34. It is relevant to reproduce hereunder the transcripts of the conversations extracted in the SCN. Mr. Subhash Chand, one of the complainants, has submitted audio call recordings between the employee and himself (in Hindi) , wherein the following is observed:

“02.21 Client: Kal shyam ko humari jo baat hui thi, baat ye hui thi ki pachis bazaar mein teen machine ki service milegi, abhi unhone baat ki pachis bazaar mein ek machine ki service milegi.

04:38 Money Desire: Jis company ko aapne 3000 रुपये pay kara hain na sir, ye company 2013 se Top 5 company mein aati hain, theek hain na sir, aap ne sabi bola hain sir har koi company galat nahi ho sakti,... hum apni baat pe isliye confident hain sir kyun ki kaam maine aapko stock cash ke andar nahi karaya jo baki company karvati hain, theek hain, doosri cheese ki mein index ke andar ashish sir isiliye surety dete hain kyun ki woh iske andar aap jitna return bologe woh na utna kar denge,

log sir 4,50,000 ka package leke unke saath kaam karte hain,...., lekin jo cheezo ki profit kio surety hain jo ashish sir de sakte hain na sir; woh koi aur nahi de sakta”

5.35. Similarly, Mr. Mohammad Salahuddin , one of the complaints mentioned earlier, has submitted audio call recordings between the employee and himself (in Hindi), wherein the following is observed:

“00:13: Money Secure: ...unneez (19) May se start hui hai aur unneez (19) December tak chalegi. unneez December mein 23 se 35 lakh tak profit rahega, sare cheezon ka confirm email aayega pura aapko.... theyeez (23) se pesat (65) ke beech mein kuch bhi ho saktha hai. Teyeez se kam nahi, pesat se jyada nahi.

Client: service agreement ka copy milega?

00:39 Money Secure: wahi toh mein aapko bata rabe boon. Service appko sabi poora like aayegana aapko mail. Aapka service mein aapka kya cheezein, kitna amount aaya hain, poora 4.94 lakh ka amount aayega profile mein, jismein aapko company six month provide karen, six month ka service mein 23 to 35 ke beech ka profit rahega. Proper Company ka sign aur seal ke saath aapko email aayega...

02:04: Client: Demat account activate hoga? Usme andhar kuch dekh sakbtha boon mein? 02:33: Money Secure: Demat account aapka ka terminal mein usi din activate hogaya tha, pehle hi din terminal se transactions jo hota hai, woh aapke demat account se through hota hai...kyonki abhi account pe direct jaayega paisa. Jismein income tax ki mar padthi hain.

03:28: Money Secure: Aap Sunday se pehle, ek lakh das hazar kar do.”

5.36. In addition to the above, I note from the record that Mr. Mohammad Salahuddin, in his communication to the Noticee, vide email dated March 12, 2020 informed the following:
“ I have invested in HNI Terminal Package...He has informed that the scheme is completed by 10 th February and I will be paid back Rs.22 lakhs as the maturity amount accomplished by the HNI Scheme. Please arrange to payback my returns at the earliest to my HDFC Bank account.”

5.37. Lastly, Mr. Joy Kiran, another complainant, vide his complaint dated February 22, 2020 has alleged that *“fraud company promised me they earn profit of Rs. 345,000/- but they cheated me Rs. 1,56,000/-.”*

5.38. From these conversations it is clear that a) assertion was made that the recommendations were 100% accurate and there would be profits ; b) with respect to index (derivatives related index) there was absolute certainty that the Noticee would be able to provide as much return as the client desired, if the client bought the INR 4,50,000 package which would allow him to work with Ashish and c) for an investment of INR 4.94 lakh, the client would be able to get a profit in the range of INR 23 lakh to INR 35 lakh. Thus, it is evident that service of the Noticee, which was to provide investment advice, was in fact geared towards promising assured returns and windfall gains.

5.39. I take note of the argument raised by the Noticee that the recording has not been done by a professional body. In this regard, reference is made to the judgement of the Hon'ble Supreme Court in the matter of *Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal and Ors.*, AIR 2020 SC 4908, whereby the Hon'ble Supreme Court, with respect to the admissibility of audio recordings as evidence, opined that –

“in view of the three-Judge Bench judgments in Tomaso Bruno and Ram Singh, it can be safely held that electronic evidence is admissible and provisions Under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate Under Section 65-B(4).”

The Hon'ble Supreme Court in the said case has further stated that—

“...the required certificate Under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him.”

5.40. As would be evident from the above, audio records need not be created by a 'professional body' for them to be admissible. Further, the need to furnish a certificate Under Section 65-B(4) of the Evidence Act is obviated, if the maker of the audio record states/establishes that the device on which the audio information was first stored was owned or operated by him. It is a matter of record that the clients who have filed

complaints with SEBI were in touch with the employees of the Noticee, and it is during such conversations that the audio records were created. So, the clients named in the SCN were owning/operating the mobile phones on which the audio information was first stored. Accordingly, going by the principle elucidated by the Hon'ble Supreme Court, the audio recordings filed with SEBI by the clients of the Noticee are valid evidence, and, as such reliance is place on the same.

5.41. In addition to the telephonic conversations placed on record, certain parts of the service agreement also give credence to the above finding that the Noticee was promising assured returns and windfall gains to its clients. In this regard, the specific part from the service agreement on 'Service Holding' submitted by Bhaveshkumar Bhatt dated October 05, 2019 and Mohammed Salahuddin dated May 20, 2019 which has been relied upon in the SCN is reproduced hereunder:

“ The service tenure is of 35 days on minimum basis, after this period, Money Secure Investor will provide complementary (sic) services for rest of the approachable profit, if required.

Based upon the historical data (Past Performance), average profit delivery tenure for services may vary between 35-410/ 30-240 trading sessions.

The Sum service tenure refers to the profit done in the exchange of subscription amount paid by client for getting intraday as well as positional recommendation through the Money Secure Investor”.

5.42. It is observed from the first clause of the service agreement, reproduced above, that the service tenure would be for a minimum of 35 days, and after that period, the Noticee would provide complimentary services for the balance of the approachable profit. So, upon a plain reading of the above referred clause, I find that the Noticee had specifically stated in its service agreement that its service shall be for a period of 35days, and if the 'approachable profit' was not reached, the Noticee would provide complimentary services till such time the shortfall in the approachable profit was not realised. Thus, it is a clear indication that the Noticee was guaranteeing assured returns to its clients by terming them 'approachable profits', and it intended to provide the said assured returns by ensuring that complimentary services were provided to the client till the approachable profit was reached.

5.43. It is not in dispute that specific parts of a document should not be read in isolation and considered out of context. However, it must be emphasised that the service agreement taken together is unclear and ambiguous. The part as brought out above shows that there was an element of promise of assured returns in the service agreement itself. Although, I do note that certain portions of the service agreement contain a disclaimer that the Investment Adviser does not guarantee returns. Considering that there are anomalous clauses, it would be relevant to gather the true intent of the service agreement from the practice adopted. From the facets as brought out here, it is quite clear that as a practice, the Investment Adviser was offering investment advice with the promise of assured returns.

5.44. Furthermore, the Noticee has emphasised that the service agreement stated that its claims of service were based on past performance and it did not provide any kind of guarantee to any subscriber that the same (performance) shall happen in the future. In this regard, it is stated that the signing of the service agreement is the last step in the process of on-boarding a client for providing investment advice. It has been brought out that the Noticee had provided investment advice to clients even before their risk bearing ability could be ascertained. In such a case, even if the service agreement provided a disclaimer that it did not provide assured returns, the same was reduced to superfluous fine print in light of the practices adopted by the Noticee.

5.45. Thus, from a perusal of the material available on record, call recordings and the replies of the Noticee, I conclude that the Noticee was promising assured returns to its clients. In this regard, I note that it is a fundamental fact that investments in securities markets are subject to risks and hence the returns are unpredictable. Therefore, any form of assurance of fixed return or guaranteed profits to the clients is false and acts to mislead the investors.

5.46. In this regard, reference is drawn from Section 12A (a), (b) and (c) SEBI Act and Regulation 3(a),(b),(c),(d) of the PFUTP Regulations. It is stated that the promise of assured returns and profits is inherently misleading as it runs contrary to the fundamental precept of the securities market i.e., investments are subject to market risks. Such misleading promises might have induced the clients to invest in the schemes and packages

floated by the Noticee. Therefore, the guarantee of assured profits, in any manner or form or description, is fraudulent as it misleads and deceives the clients. Accordingly, I find that the Noticee has violated the provisions of Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d) of the PFUTP Regulations.

5.47. Furthermore, it has also been alleged that by promising assured returns, the Noticee has violated Regulation 15 (1) of the IA Regulations, which obligates an Investment Adviser to act in a fiduciary capacity with respect to its clients. I have already deliberated upon the fiduciary duties an Investment Adviser ought to discharge with respect to its clients. In such circumstance, it shall suffice to say that an Investment Adviser has to act in the best interests of its clients. The promise of assured returns acts to mislead the clients and fraudulently induces him to subscribe to the various packages/services offered by the Investment Adviser, which eventually leads to pecuniary loss to the clients as has been seen from the many complaints received. This evidently would not be in the best interests of the clients. Thus, the Noticee has acted in contradiction of the fiduciary duties cast on an Investment Adviser, and has, as such, violated Regulation 15 (1) of the IA Regulations.

Obtained trading account details and executed trades in the account of the client

5.48. The SCN has alleged that the Noticee while providing investment advice to its clients had carried out trading on their behalf, assuring them that they would earn profit from the market. Also, it has been alleged that the Noticee facilitated the opening of DEMAT accounts of clients who did not have any. In this regard, I note from the record that complaints had been received by SEBI from clients whereby it had been informed that the employees of the Noticee executed trades after obtaining their user ID and password. A summary of such complaints has been recorded in the SCN and the same is reproduced hereunder:

Table - 1

SI.	Client	Broker	IP Address	Coordinates of the Location of Trades	Location of client	Existing / New account
No.			Location of Trades			
1.	Joy Kiran	Zerodha	Indore, MP	Latitude: 22.7167 Longitude: 75.8333	Mysore, Karnataka	Existing
2.	Pavan	Zerodha	Indore, MP	Latitude: 22.7167 Longitude: 75.8333	Belgaum, Karnataka	Existing
3.	Bhaveshku mar Bhatt	Angel Broking	Indore, MP	Latitude: 22.7167 Longitude: 75.8333	Vadodara, Gujarat	Existing

5.49. I note from the IP details, as shown above, that the trades were executed from Indore, MP, whereas the client were located in Karnataka and Gujarat. In this regard, it has been argued by the Noticee that Indore was a city with a large population, and the IP address could belong to anyone and not necessarily be that of the Noticee. In this regard, I note that the trades in respect of the above-named three clients that were carried out from Indore show that it was carried out from a distinct location, i.e. 22.7167 latitude and 75.8333 longitude. While, it is not in doubt that Indore is a city with a large population, it cannot be a mere coincidence that the trades in respect of the above-named three clients that were carried out in Indore happened from a single location as demonstrated by the

above coordinates. Also, it is not in doubt that the complainants were the clients of the Noticee, and as such the Noticee had a fiduciary relationship with their clients. The proximity of this relationship afforded the Noticee (through its employees) wide scope in accessing information from the said complainants. Therefore, the probability of the Noticee to be able to have access to the user ID and password of the trading account of a client is infinitely much more than any other person in Indore.

5.50. I further note from the material on record that Mr. Pramod Kumar and Mr. Subhash Chand, two more complainants, had complained that the Noticee had opened an account on his behalf and had carried out trading in his account. The details of the same are as under :

Table - 2

SI. No.	Client	Broker	IMEI number of Mobile though which trades were executed	IMEI number of Clients' mobile	Existing / New account
1.	Pramod Kumar (resident of Bihar)	Swastika Investmart Ltd.	868188037361197	866047048510014, 866047048510022 (dual SIM)	New account
2.	Subhash Chand(resident of Haryana)	Swastika Investmart Ltd.	868188037361197, 355844092680505, 867197042547980, 357110094682073, 358327081439536	357110094682073, 357110094682071	New account

5.51. It has been brought out during the examination that the IMEI number of the mobile phones through which the trades were executed did not belong to the mobile phones of the clients. IMEI stands for International Mobile Equipment Identity. It is a 15-digit number unique to each mobile device. I note that one of the IMEI numbers, i.e., 868188037361197 is common for both the clients. In this respect, I note that Mr. Pramod Kumar was based in Bihar and Mr. Subhash Chand was based in Haryana. It is highly unlikely that both the above named clients would have known each other or been in contact. In such circumstance, trades being executed for both of them from a common IMEI number, in light of the surrounding circumstances and the complaints of the above-named clients, gives rise to the only conclusion that the same were executed by the Noticee or its employees.

5.52. Further, the complainant, Mr. Joy Kiran, has submitted a copy of the WhatsApp conversation (in Hindi) between an executive of the Noticee and himself wherein the trading account password has been obtained by an executive of the Noticee. Relevant part of the said conversation is extracted hereunder:

*“ **Executive of the Noticee:** Fund daal kar msg kar digiye*

***Joy Kiran:** 10000/Rs. Funded in Zerodha. NMXX46; Password AnitXXXX9; Pin 62XX99.”*

5.53. Also, Mr. Bhaveshkumar Bhatt has submitted call recordings wherefrom it is gathered that the Noticee had informed the client that it would no longer handle the client's DEMAT account because the client had lodged a complaint with SEBI. It would be relevant to reproduce the specific extract of the conversation hereunder:

*“ **Bhaveshkumar Bhatt:** I borrowed money from my brother and when you lost my capital and didn't pick up my phone, so he would have sent the complaint to SEBI.*

***Executive working with the Noticee (Phone: 968XXXX790):** It's ok. I will send a complaint withdrawal format. You fill that and send it. And you don't have to make any more payments to us today. Hereafter, do not do such things as sending complaint to SEBI, since this will ruin our long term relationship ... now the company has asked me to no longer handle your demat account....I will keep supporting you, but you will have to handle the account yourself.”*

5.54. In this regard, reference is made to Regulation 15 (3) of the IA Regulations. The said provision requires that the investment adviser shall maintain an arm's length relationship between its activities as investment adviser and other activities. It is quite evident that the Noticee in addition to the investment advisory services, for which it had registration from SEBI, was providing other services and had not maintained an arms-length relationship between its investment advisory services and other activities. Further reference is made to Regulation 22 of the IA Regulations. That said provision provides that Investment advisers which are banks, NBFCs and body corporate can provide execution services. Individual Investment Advisers, such as the Noticee, are not allowed to provide execution services in addition to their advisory service. In the present matter, as is evident from the above, the Noticee was not only recommending investments to its clients but also executing those investments on their behalf. Accordingly, I find that the Noticee has violated Regulation 15 (3) and 22 of the IA Regulations.

5.55. Further, it has been alleged that the Noticee has violated clause 1 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations. It has already been brought out that clause 1 of Code of Conduct requires an Investment Adviser to act in an honest and fair manner, and in the interests of the clients. The facts as brought out above, clearly show that the same has not been done by the Noticee. So, I find that the Noticee has also violated the said provision.

Arbitrarily charging service fees and collecting unreasonable amount of fees

5.56. The SCN has alleged that the Noticee arbitrarily charged service fees and collected unreasonable amount of fees. In this regard, I note from the record that complaints have been received by SEBI. Accordingly, it would be relevant to place hereunder the details regarding payments, as conveyed by Mr. Mohammed Salahuddin, for the service offered by the Noticee:

Table – 3

Invoice number	Invoice date	Package	Duration	Amount (in Rs.)
MSI/EQ-8564	15.05.2019	Equity Cash	15.05.2019 to 31.06.2019	10,500
MSI/EQ-8564	16.05.2019	Equity All	15.05.2019 to 30.07.2019	30,800
MSI/EQ-8564	13.06.2019	Equity All	15.05.2019 to 30.11.2019	15,000
MSI/EQ-8564	15.06.2019	Equity All	15.05.2019 to 30.12.2019	24,000
MSI/EQ-8564	16.06.2019	Equity All	15.05.2019 to 30.11.2019	24,000
MSI/EQ-8564	18.06.2019	Equity All	15.05.2019 to 30.12.2019	20,000
MSI/EQ-8564	22.06.2019	Equity All	15.05.2019 to 30.12.2019	10,620
MSI/EQ-8564	12.07.2019	Equity All	15.05.2019 to 31.12.2019	80,000
MSI/EQ-8564	12.07.2019	Equity All	15.05.2019 to 31.12.2019	45,000
MSI/EQ-8564	16.07.2019	Equity All	15.05.2019to 31.12.2019	38,000
MSI/EQ-8564	23.07.2019	Equity All	15.05.2019 to 31.12.2019	25,112
MSI/EQ-8564	31.07.2019	Equity All	15.05.2019to31.12.2019	25,000

5.57. Similarly, the details of the payments made by Mr. Joy Kiran are placed hereunder:

Table-4

Invoice number	Invoice date	Package	Duration	Amount (in Rs.)
INV-MS5113	19.08.2019	Equity Cash	-	19,800
INV-MS5112	18.10.2019	Equity Option	-	43,200

5.58. Further, the details of the payments made by one of the clients of the Noticee, Mr. Dipak Mendhe are placed hereunder:

Table-5

Invoice number	Invoice date	Package	Duration	Amount (in Rs.)
DAFS/18-19/2019/Nov/14	21.11.2019	HNI Cash	3 Month Service: 21.11.2019 to 31.12.2019	3,840
DAFS/18-19/2019/Dec/6	04.12.2019	HNI Cash	1 Year Service: 21.11.2019 to 31.12.2020	7,100
DAFS/18-19/2019/Dec/7	04.12.2019	HNI Cash	1 Year Service: 21.11.2019 to 31.12.2020	13,560

5.59. Lastly, the details of the payments made by one of the clients of the Noticee, Mr. Sathish Kumar are placed hereunder:

Table -6

Invoice number	Invoice date	Package	Duration	Amount (in Rs.)
DAFS/18-19/2019/Nov/14	21.11.2019	Equity Future and Option	Service: 20.06,2019 to 31.12.2019	75,555
			Adjustment Amount	44,000
			Total paid	1,19,555

5.60. I note with respect to Mr Mohammed Salahuddin that there were 11 instances of payment for the same product. It has been argued by the Noticee that the payments were not fresh payments but instalments paid. I note from Table-3 that the client paid INR 10,500 on May 15, 2019 for the “Equity Cash” package whose duration was from May 15, 2019 to June 31, 2019. Subsequently, the client paid INR 30,800 again on May 16, 2019; however this time it is for the “Equity All” package whose duration was from May 15, 2019 to July 31, 2019. So, if one were to consider the explanation of the Noticee that these were instalments, then there should not have been any change in the package/product or its duration. However, as can be seen there was a change, so it clearly belies the claim that these payments were instalments paid for one service. It is relevant to note that the complainant has informed that he paid service fee of INR 4.94 lakh for the service ‘HNI Terminal’ of the Noticee, whereas the invoices issued to the client are for Equity All/Equity Cash. Further, I note from the record that on the website of the Noticee there was no product named ‘Equity All’.

5.61. As regards Mr. Joy Kiran, it is seen from Table-4 above that no service duration was mentioned for both the services. This is ambiguous and vague and the client has no means to know for what duration the services were being offered.

- 5.62. Further, with respect to Dipak Mendhe it is seen from Table-5 that he was offered HNI cash and he made an initial payment of INR 3,840. Subsequently, the client made two more payments for the same product, with the service duration being the same on those two instances. As per the website of the Noticee, the service fee for any HNI product is more than INR 20,000 for a week. I note that the Noticee has sold the same package with the same duration multiple times to the client, but has charged different fee each time
- 5.63. Lastly, with respect to Sathish Kumar, I see that he made a payment of INR 1,19,555 for Equity Future & Option. I note from the record that the website of the Noticee did not have any such product.
- 5.64. Thus, from the above, the following have been observed: a) the clients were being charged for the same service for the same duration multiple times; b) the clients were told/informed that they were being provided a certain service, however, the invoice showed that they had paid for some other service; and c) the clients were being offered services/products that had not been mentioned on the Noticee's website.
- 5.65. In this regard, reference is made to Section 12 A a), b), (c), of the SEBI Act and Regulation 3 (a), (b), (c), (d) of the PFUTP Regulations. As already brought out, the above provisions prohibit deceptive and misleading practices in the securities market. In this regard, I find that the Noticee by charging its clients fees for the same service multiple times has violated the above provisions. Similarly, the Noticee by offering the clients a particular service, however in reality providing them some other service acted fraudulently to the detriment of the clients.
- 5.66. It has also been alleged that the Noticee has failed to abide by the fiduciary duty provided in Regulation 15 (1) and has violated clause 1 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of the IA Regulations. In the present matter, it is evident that the Investment Adviser has charged the client fees for the same service and duration multiple times, thereby not taking due care, as a person acting in a fiduciary capacity is duty bound to do. Also, the Investment Adviser by acting in a manner to maximize its fees and income at the detriment of the client has not acted in the best interests of the client, and has put its own interest of earning more fees at the fore, thereby

breaching the fundamental duty of a fiduciary. I accordingly find that the Investment Adviser has violated Regulation 15 (1) of the IA Regulations.

5.67. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. I find from the facts brought out above that the Noticee has failed to adhere to any of the above-mentioned stipulation in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

Violation of SEBI Circular dated December 27, 2019

5.68. The SCN has alleged that the Noticee has violated circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019. SEBI through the above-mentioned circular had advised Investment Advisors not to accept cash deposits for their services with effect from January 01, 2020.

5.69. In this respect, I note from the record that after January 01, 2020, cash deposits to the tune of INR 3.63 lakh and INR 15,000 were observed in the ICICI Bank Ltd. and HDFC Bank Ltd. accounts of the Noticee. The details of the same are provided hereunder:

Table- 7

ICICI Bank Ltd. (Account No. 657205500406)

Date of transaction	Narration	Credit Amount (in Rs.)
04.01.2020	By Cash - Kharagpur - Inda	2,500.00
24.01.2020	By Cash-Rajampet	4,000.00
29.01.2020	By Cash-Saharsa	15,000.00
07.02.2020	By Cash-Hazira	10,000.00

31.02.2020	By Cash-Hazira	14,500.00
12.02.2020	By Cash-Hazira	14,400.00
12.02.2020	By Cash-Hazira	14,700.00
13.02.2020	By Cash-Hazira	21,000.00
13.02.2020	By Cash-Hazira	19,050.00
18.02.2020	By Cash-Hazira	16,800.00
18.02.2020	By Cash-Hazira	18,600.00
19.02.2020	By Cash-Hazira	25,850.00
24.02.2020	By Cash-Hazira	18,000.00
24.02.2020	By Cash-Hazira	31,900.00
24.02.2020	By Cash-Hazira	27,000.00
25.02.2020	By Cash-Hazira	45,000.00
26.02.2020	By Cash-Hazira	18,000.00
27.02.2020	By Cash-Hazira	47,250.00

HDFC Bank Limited (Account No, 50200028592922

Date of transaction	Narration	Credit Amount (in INR)
04.01.2020	Cash Dep Veraval	9,000.00
18.02.2020	Cash Dep Bhavani Shan	3,000.00

03.03.2020	Cash Deposit- XXXXXXXXXXXX2922- Laxmipuri - Kolhapur	3,000.00
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5.70. With respect to the above allegation in the SCN no specific defence has been placed before me by the Noticee. It is evident from the above table that these cash deposits were being made with respect to the investment advisory activities as the narrations of these transactions denote the cities/towns of the persons they relate to.

5.71. Further, by way of clause (iv) of the said circular an Investment Adviser was required to display on the homepage of its website the number of complaints received/ resolved and pendency at the end of the month. I note from the record that the website of the Noticee displayed the following with respect to pending complaints as on July 31, 2020:

Table-8

No. of complaints				
At the Beginning of the month	Received during the month	Resolved during the month	Pending at the end of the month	Reasons for pendency
15	01	03	00	N. A.

5.72. However, from the examination by SEBI, it was noted that seven (7) SCORES complaints were pending against the Noticee as on July 31, 2020. It is evident from the above table that there was clear discrepancy between what was being shown by the Noticee on its website and what the pendency was as per SCORES. Also, the numbers mentioned in the above table do not tally. Accordingly, I find that the Noticee has violated SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

Non-redressal of SCORES complaints

5.73. The SCN has also alleged that the Noticee has not redressed SCORES complaints. As already stated above there were complaints pending against the Noticee on SCORES. In this regard, I note from the record that the status of pendency of complaint as on August 28, 2020 was as under:

Table- 9

Sr · N o.	SCORES Complaint No.	Name of Complainant	Date of receipt of complain t	Date of forwarding complaint to IA(X)	Date of Reminders	Date of Final ATR (Y)	Excessiv e time above 30 days
1	SEBIE/MP20 / 0000281/1	Subhash Chand	29 Jan 2020	27 May 2020	01 Jul 2020 23 Jul 2020 14 Aug 2020	NA	62
2	SEBIE/MP20 / 0000674/1	Gautam Ganvi	07 Feb 2020	27 May 2020	03 Jun 2020 24 Jun 2020 03 Aug 2020	NA	92
3	SEBIP/MP20 / 0000804/1	Dipak Mendhe	26 Feb 2020	27 May 2020	09 Jul 2020 03 Aug 2020	NA	92
4	SEBIE/MP20 / 0000890/1	Mohammed Salahuddin	12 Apr 2020	27 May 2020	09 Jul 2020 03 Aug 2020	NA	92
5	SEBIE/MP20 / 0001004/1	Sathishkumar	09 May 2020	12 May 2020	24 Jun 2020 13. Jul 2020 22 Jul 2020 14. Aug 2020	NA	107

6	SEBIE/MP20 / 0001007/1	Pramod Kumar	11 May 2020	27 May, 2020	01 Jul 2020 22 Jul 2020 14 Aug 2020	NA	92
7	SEBIP/MP20 / 0000112/1	Joy Kiran	11 June 2020	17 June 2020	10 Jul 2020 03 Aug 2020	NA	71

5.74. In this regard reference is made to SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations. The said SEBI circular mandates that all SEBI registered intermediaries are to take immediate action in the resolution of complaints within a period of thirty days and file an ATR with SEBI. Further, Regulation 21(1) of the IA Regulations requires an Investment Adviser to promptly redress the grievances of its clients. From the above table, it is quite clear that all the complaints by August 28, 2020 had breached the 30 day deadline for submission of ATR, and accordingly, the Noticee has violated SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations.

5.75. In view of the aforesaid violations committed by the Noticees, I find that directions under Sections 11(1), 11 (4), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations, need to be issued.

5.76. The SCN in the matter, also calls upon:

- the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15HB of the SEBI Act, 1992, for the failure of the Noticee to provide material information to SEBI ;
- the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15HA and 15 EB of the SEBI Act, 1992, for promising assured returns;
- the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15 EB of the SEBI Act, 1992, for obtaining the trading account details of the clients and executing trades on their behalf;

- d. the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15 EB of the SEBI Act, 1992, for improper risk profiling and not abiding by the norms of suitability;
- e. the Noticee to explain as to why appropriate penalty be not imposed upon it under Sections 15 HA and 15 EB of the SEBI Act, 1992, for charging its clients service fees arbitrarily and collecting unreasonable amount of fees;
- f. the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15 EB of the SEBI Act, 1992, for violation of SEBI Circular SEBI/H0/IMD/DF1/CIR/P/2019/169; and
- g. the Noticee to explain as to why appropriate penalty be not imposed upon it under Sections 15C and 15 EB of the SEBI Act, 1992, for not redressing investor grievances.

5.77. In this regard before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for facility:

Penalty for failure to redress investors' grievances. Section 15C of the SEBI Act. "If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."

Penalty for default in case of investment adviser and research analyst. Section 15EB of the SEBI Act. "Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."

Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992: "Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five

lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

Penalty for contravention where no separate penalty has been provided. Section 15HB of SEBI Act, 1992. *“Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”*

5.78. Upon a consideration of the above penalty provisions, I find that Section 15 C has been invoked for the delay in the redressal of investor grievances. In this regard, reference is made to Table 9 above. The details in Table- 9 clearly state that of the seven (7) complaints pending, one had breached 100 days and in the case of several others they were nearing 100 days. These delays were much above the time granted for resolution of complaints i.e., thirty (30) days. I therefore, find that penalty under Section 15 C is clearly attracted.

5.79. Similarly, I note that Section 15 EB has been invoked for the violation of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, for promising assured returns to its clients, charging its clients service fees arbitrarily and collecting unreasonable amount of fees, improper risk profiling and not abiding by the norms of suitability and obtaining the trading account details of the clients and executing trades on their behalf. I note that the above allegations have been clearly established in the preceding paragraphs. I also note that these violations are a derogation from the principal duties and responsibilities cast upon an Investment Adviser. I therefore, find that penalty under Section 15 EB is clearly attracted.

5.80. I also note that Section 15 HA has been invoked in respect of the Noticee for promising assured returns and charging its clients service fees arbitrarily and collecting unreasonable amount of fees. I note that the above allegations have been clearly established in the preceding paragraphs. I also note that Noticee’s acts of charging its clients service fees arbitrarily and collecting unreasonable amount of fees was fraudulent and an unfair trade practice. I further note that the Noticee by promising assured returns had violated the fundamental canon of the securities market i.e., investments were subject to market risks, and as such has mislead and deceived the clients. I, therefore, find that penalty under Section 15 HA is clearly attracted.

5.81. I further note that Section 15 HB has been invoked against the Noticee for not providing material information to SEBI. I note that it has already been established that the filing of FIR against the Noticee and the consequential sealing/seizure of the office premises was material information, which out to have been shared by the Noticee, a registered intermediary with SEBI. I therefore, find that penalty under Section 15 HB is clearly attracted.

5.82. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, 1992, guidance is provided by Section 15J of the SEBI Act, 1992. The said provision reads,

“Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

5.83. I also note that the SCN has not brought out the quantum of profit/gains made by the Noticee in promising assured returns and charging its clients service fees arbitrarily and collecting unreasonable amount of fees. I, though, note from the complaints received from the clients that certain investors have suffered losses due to the actions of the Noticee.

5.84. In consideration of the above, I shall now proceed with the directions and imposition of monetary penalties.

6. Directions and Monetary Penalties –

6.1. I, in exercise of powers conferred upon me under sections 11(1), 11 (4), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations and in the interest of investors do hereby pass the following directions: –

6.1.1.The Noticee is directed to resolve the complaints pending against it in SCORES and otherwise, and any refunds that may be required to be made pursuant to the resolution of the complaints within a period of thirty (30) days from the date of this Order.

6.1.2.The Noticee is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above or for the payment of penalty as imposed in this Order. Further, banks are directed to allow debit from the bank accounts of the Noticee, only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the Noticee or for the payment of penalty as imposed in this Order.

6.1.3.After completing the aforesaid repayments/resolution of complaints, the Noticee shall file a report of such completion with SEBI addressed to the “*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051*”, within a period of fifteen (15) days, after completion of thirty (30) days from the coming into force of the directions at para 6.1.1 above, duly certified by an independent Chartered Accountant and the direction at para 6.1.2 above shall cease to operate upon filing of such report on resolution of complaints/ completion of refunds to complainants.

6.1.4.The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/completion of refunds to complainants as directed in para 6.1.1 above, whichever is later.

6.1.5.The Noticee is hereby imposed with, the monetary penalties, as provided hereunder:

Noticee no.	Name of the Noticee	Provisions under which penalty imposed	Amount of Penalty (INR)
1	<i>Money Secure Investor (Proprietor- Alka Shrivastava)</i>	Section 15 C	Two (2) lakh
		Section 15 EB	Five (5) lakh
		Section 15 HA	Five (5) lakh
		Section 15 HB	Three (3) lakh
Total			Fifteen (15) lakh

6.1.6.The Noticee shall remit / pay the said amount of penalties within forty five (45) days from the date of receipt of this order. The Noticee shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details)	

6.2. This Order is without prejudice to any other action that SEBI may initiate.

6.3. The above directions shall come into force with immediate effect.

Place: Mumbai

ASHWANI BHATIA

Date: August 30, 2022

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA