BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30661-30663]

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

In respect of

Noticee No.	**Name of the Noticee**	**PAN**
1	Podium Market Research Proprietor: Suman Kumar	AMCPK0541Q
2	Prakash Kumar	BFEPK5196P
3	Roshni Kumari	DMEPK3997P

In the matter of

M/s Podium Market Research (Prop.: Shri Suman Kumar)

Background

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) received complaint against M/s Podium Market Research (Prop.: Shri Suman Kumar) (hereinafter referred to as **Noticee 1**) on SEBI SCORES portal. SEBI examined the complaints against Noticee 1 to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as IA regulation), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations) and circulars issued thereunder by Noticee 1, Prakash Kumar (hereinafter referred to as **'Noticee 2'**) and Roshni Kumari (hereinafter referred to as **Noticee 3**) (hereinafter Noticee 1, Noticee 2 and Noticee 3 collectively referred to as **Noticees**).

2. The extracts of the violation alleged to have been committed by the Noticees and corresponding provision of the securities law are given in the tabulation below:-

Table 1

Sr. No.	Noticee No.	Alleged Violations (summarized)	Regulatory provisions	Adjudication Provision
1	1	Infrastructure, Qualification, Certification, general Responsibility of IA and extent to their operations as Investment Adviser	Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013	Section 15EB of SEBI Act, 1992
2	1	Maintenance of Books of Accounts, Records etc.	Regulation 19(1) of IA Regulations, 2013.	Section 15EB of SEBI Act, 1992
3	1	Fees and charges	Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/ CIR/P/2020/182 dated September 23, 2020	Section 15EB of SEBI Act, 1992
4	1	Failed to maintain due care and diligence in maintaining confidentiality of information pertaining to SCORES complainants	Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.	Section 15EB of SEBI Act, 1992
5	1	Collection of GST from clients during FY 2018-19 and 2019-20 without having GST registration.	Regulation 3 (d) and Regulation 4(2)(p) of SEBI PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013	Section 15HA of SEBI Act, 1992
6	2 and 3	Allegedly duped clients of Noticee 1	Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations	Section 15HA of SEBI Act, 1992

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated April 22, 2024, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Sub-section (1) of Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) to inquire into and adjudge under the provisions as mentioned in the above table.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter referred to as **"SCN"**) dated May 16, 2024 was issued to the Noticees under rule 4(1) of the SEBI (Procedures for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as SEBI Rules) to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticees under Section 15EB and 15HA of the SEBI Act.

5. The SCN was sent to Noticees through Speed Post which returned undelivered, thereafter SCN was sent via digitally signed Email on May 22, 2024 which was duly served upon Noticees and the delivery of which is on record. Vide email dated June 18, 2024 reminder was sent to the Noticees for the submission of reply. Vide email dated June 18, 2024, Noticee 1 sought extension till June 30, 2024 for submission of reply, in view of the same, vide email dated June 20, 2024 extension was granted to Noticee 1 for submission of reply till June 30, 2024. Vide email dated June 30, 2024 Noticee 1 submitted the reply dated June 28, 2024, the same is summarized below:-

Observation 1- Infrastructure, Qualification, certification, general responsibility of IA and extent to their operations as Investment Adviser

Observation 2- Maintenance of Books of Accounts, Records etc.

Observation 3- Fees and Charges

i. *With respect to the observation 1, 2 and 3 above Noticee 1 submitted that these violations have already been addressed and adjudicated as part of the "Enquiry Order in respect of*

Podium Market Research - Prop Suman Kumar" dated December 14, 2023. Noticee 1 further submitted that the current allegations be dismissed on the ground of principle of res judicata.

Observation 4- Failed to maintain due care and diligence in maintaining confidentiality of Information pertaining to SCORES complaints

ii. *Noticee 1 submitted that Mr Prakash Kumar was his employee from July 01, 2019 to Feb 15, 2020. Being employee of Noticee 1 Mr Prakash Kumar was having access to all the information of his clients. Noticee 1 submitted that post leaving the job, Mr Prakash Kumar had contacted the client using the same information and lured them to file a complaint against Noticee 1 by giving them the assurance that, they will get all the fee back. Once the complainants supplied all the information's to Mr Prakash Kumar, he filed the complaint on their behalf on SCORES.*

iii. *After filing the complaint Mr, Prakash along with his accomplice created a fake id as compliance.podium@gmail.con and emailed to the complainant.*

iv. *Noticee 1 also made the following submissions-*

- *The fraud was done by Mr. Prakash Kumar and Ms. Roshini Kumari.*
- *The amount deposited by the complainants were in the account of Ms. Roshini Kumari and not in his account.*
- *At the time of this act, Mr Prakash Kumar was not connected with him in any capacity.*
- *Mr. Prakash Kumar filed the SCORES complaint himself on behalf on the complainant. Accordingly, Mr. Prakash Kumar and Ms Roshini Kumari did not get any information wrt the SCORES complaint from any source connected to Noticee 1. In contrast, they got this information from the complainant himself.*

v. *Therefore, Noticee 1 submitted that the allegation of failing to maintain confidentiality of SCORES complaint information does not hold, as Mr. Prakash Kumar obtained this information through direct communication with the complainants.*

Observation 5- Collection of GST from clients during FY 2018-19 and 2019-20 without having GST registration.

vi. *Notice 1 submitted that GST registration application was processed earlier however due to some technical reason there was a delay in obtaining registration. Accordingly, Noticee 1 clearly mentioned the RCM clause on GST payment. Noticee 1 admitted the alleged violation and submitted that he did whatever he was advised by his GST consultant*

6. In the interest of natural justice, vide hearing notice dated July 01, 2024 opportunity of hearing was provided to the Noticees on July 19, 2024. The said hearing notice was sent through SPAD which returned undelivered, thereafter it was sent via digitally signed email dated July 05, 2024 which was duly served and the delivery of the same is on record.

7. Vide email dated July 12, 2024, Noticee 2 made the submissions, the same is summarized below-

   a) *Noticee 2 submitted that he worked as an office admin in the company from October 2019 to March 15, 2020. Noticee 2 submitted that when he left his job he neither knew nor had any information about the names given in the complaint or the people who were associated with the Noticee 1.*

   b) *Noticee 2 submitted that after few months he received call from Mr. Suman that by mistake money has been transferred to Noticee 2's sister's account i.e. Noticee 3 and Mr. Suman asked Noticee 2 to transfer this amount to Noticee 1's account and this continued for 3-4 times later on.*

   c) *Noticee 2 submitted that his sister (Noticee 3) is married and has a family of her own. Noticee 2 submitted that he and his sister (i.e. Noticee 3) are being framed by Noticee 1 in this fraud.*

8. Vide email dated July 16, 2024, Noticee 3 submitted its reply to the SCN, the same is summarized below-

   a) *Noticee 3 submitted that she gave details of her account to her brother (Noticee 2) when Noticee 2 was working in reliance money to open her demat account. Noticee 3 submitted that she doesn't know any company named Podium. Noticee 3 submitted that after her brother left the job, without her information she received money in her account* *and the same was taken back from her and her brother gave this money to person named Suman.*

9. Noticee 1 and Noticee 2 (appeared on behalf of Noticee 2 and Noticee 3) attended the hearing on the scheduled day i.e. on June 19, 2024. During hearing Noticee 2 and Noticee 3 reiterated the submissions already made vide email dated July 12, 2024 and July 16, 2024 respectively and Noticee 1 sought time till July 23, 2024 for the submission of the following additional documents.

   a) Copy of complaint filed by Noticee 1 for misuse of his name.

   b) Copy of Noticee 1's NISM certificates.

   c) Details of Noticee 1's all bank accounts.

10. Vide email dated July 22, 2024 Noticee submitted the following additional documents

   a) NISM series X-A and X-B certificate of proprietor Mr. Suman Kumar.

   b) Pictures of FIR complaint.

11. Further, Noticee 1 submitted that it has a following bank accounts-

   a) AXIS bank -91802*******347

   b) HDFC BANK-50200******753

   c) ICICI BANK-05790****535

   d) IDBI BANK-20781*******964

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case, the submission of the Noticees and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: (a)-Whether Noticee 1 has violated the following provisions of securities law:-

i. **Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013**

ii. **Regulation 19(1) of IA Regulations, 2013**

iii. **Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.**

iv. **Regulation 15(9) of IA Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of IA Regulations, 2013.**

v. **Regulation 3 (d) and Regulation 4(2)(p) of PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013**

(b) Whether Noticee 2 and Noticee 3 violated Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations?

ISSUE II- Does the violation, if any, attract monetary penalty under the provisions of Section 15EB and 15HA of the SEBI Act?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act for Noticees?

13. Before proceeding further, it will be appropriate to refer to the relevant provisions-

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

Regulation 15- General responsibility.

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

(13) - *It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.*

Regulation 7 – Qualification and certification requirement.

(1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times-

[(a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;]

(b)An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

(c) Persons associated with investment advice shall meet the following minimum qualifications, at all times –

(i) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and

(ii) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management:

Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and experience requirements within three years:

Provided further that the requirements at clauses (a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board.

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-

(a) from NISM; or

(b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:

Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]

Regulation 19- Maintenance of records.

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

(a)Know Your Client records of the client;

(b)Risk profiling and risk assessment of the client;

(c)Suitability assessment of the advice being provided;

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

(e)Investment advice provided, whether written or oral;

(f)Rationale for arriving at investment advice, duly signed and dated;

(g)A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice."

Regulation 15A- Fees.

Investment Adviser shall be entitled to charge fees for providing investment advice from a client, including an accredited investor in the manner as specified by the Board.

THIRD SCHEDULE

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.

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

8. Compliance

An investment adviser including its 92[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.

SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

Guidelines for Investment Advisers

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

(iii) Fees

Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.

b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

a. In case “family of client” is reckoned as a single client, the fee as referred above shall be charged per “family of client”.

b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.

d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.

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

Regulation 3- Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

Regulation 4 of SEBI (PFUTP) Regulation, 2003 - Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4(2)- Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [any of the following]:—

(p) an intermediary predating or otherwise falsifying records [including contract notes, client instructions, balance of securities statement, client account statements

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

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

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

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

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

FINDINGS

14. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticee 1 that principle of res judicata will apply to violation 1, 2 and 3 (as mentioned in table 1 above) alleged against it as the enquiry order was already passed against it for the aforesaid violations. In this regard I note that for violation 1, 2 and 3 enquiry proceedings under Regulation 23 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ("Intermediaries Regulations, 2008") read with Section 12(3) of the SEBI Act, 1992 were initiated. Vide order dated July 06, 2023 Designated Authority ("DA") was appointed under Regulation 24 of the Intermediaries Regulations, 2008 to enquire and make recommendations under Regulation 25 and 26 of the Intermediaries Regulations, 2008 in respect of the alleged violations of the abovementioned provisions of law by the Noticee 1. The DA issued the Show Cause Notice dated August 01, 2023 to the Noticee 1 for the aforesaid violations and the said enquiry proceedings was concluded by enquiry order dated December 14, 2023. While the enquiry proceedings was initiated under regulation 23 of SEBI (Intermediaries) regulation, 2006 read with section 12(3) of SEBI Act, 1992, which contains the power of Board to suspend and cancel the certificate of registration, the present adjudication proceedings have been initiated under Chapter VIA of the SEBI Act, to determine the imposition of monetary penalty. Since the objective of the present proceedings is determine imposition of monetary penalty which is different from that in enquiry proceedings before the learned DA, I note that same cannot be considered to be barred by principles of res judicata. Therefore, I find that contention of Noticee 1 that the present proceedings is barred by principle of res judicata lacks merit.

ISSUE I: Whether Noticee 1 has violated the following provisions of securities law:-

(i) Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013.

15. During inspection it was observed that Noticee 1's NISM certificate series X-A has expired the validity. In view of the same, it was alleged that Noticee 1 violated Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013.

16. I note that regulation 15 (13) provides that an investment advisor is under an obligation to comply with the certification and qualification requirements as specified under Regulation 7 at all times and regulation 7(2) of IA Regulations, 2013, provides that the Investment Adviser is under an obligation, to have at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services- (a) from NISM; or (b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

17. I note from the material available before me that the validity of the NISM certificate series X-A: Investment Advisor (Level 1) Continuing Professional Education Program" of the Proprietor of the Noticee 1 i.e. Suman Kumar had expired on October 22, 2022 itself. Further, I note that in reply to the SCN Noticee 1 submitted copy of its NISM Series-X-A: Investment Adviser (Level 1) Certification Examination which is valid from February 26, 2024 to February 25, 2027. In view of the above I observe that Noticee 1 did not have NISM Series XA certificate from October 22, 2022 to February 26, 2024 (i.e. for almost 16 months).

18. In view of the above, I observe that Noticee 1 violated Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013.

(ii) Regulation 19(1) of SEBI (Investment Advisers) Regulations, 2013.

19. During inspection, Noticee 1 was unable to provide any agreement executed by it for clients registered since April 2021. Therefore it was alleged that Noticee 1 violated Regulation 19(1) of SEBI (Investment Advisers) Regulations, 2013.

20. I note that regulation 19(1) of the IA Regulations, 2013 provides that the list of records which has to be maintained by the investment adviser including the copies of agreements.

21. I note that during inspection, inspection team verified client registration documents of the Noticee 1 and he was unable to provide any agreement executed by it for clients registered since April 2021. Further, I note that no submission on merit has been made by the Noticee 1 for the aforesaid violation. In absence of any submission it can be presumed that aforesaid violation has been admitted by the Noticee 1.

22. In view of the above, I observe that Noticee 1 violated Regulation 19(1) of SEBI (Investment Advisers) Regulations, 2013.

(iii) Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020:

23. During inspection, it was observed that the Noticee 1 has collected fees from 7 clients in excess of permissible limit i.e. Rs. 1,25,000.

24. Therefore, it was alleged that the Noticee 1 had violated the provisions of Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

25. I note that Regulation 15A of the IA Regulations, 2013 states that the Investment Adviser shall be entitled to charge fees for providing investment advice from a client including an accredited investor in the manner as specified by the Board. Further, SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 on 'Guidelines for Investment Advisers' specifies that the maximum fees that may be charged shall not exceed Rs. 1,25,000 per annum per client across all services offered by the Investment Adviser.

26. Noticee 1 collected fees from 7 clients as detailed below –

Table 2

S. No.	Name of Investor	Amount collected during inspection period
1	Prathap K R	476380
2	Swapnil Rajendra Shah	451100
3	Ram Harihar Singh	294355
4	Minhaj Sheikh	290800
5	Bharat Gupta	202800
6	Rajat Parmar	197815
7	Lakhwindar Sharma	176700
	Total	**2089950**

27. From the above table, I observe that Noticee 1 has collected fee more than the regulatory limit of 1,25,000/- from its 7 clients. In reply to the SCN Noticee 1 has not made any submission for this violation, therefore, it is deemed that Noticee 1 has accepted the said violation.

28. In view of the above, I observe that Noticee 1 has collected excess fees from 7 clients in excess of the permissible limits of Rs. 1,25,000/- and thereby violated Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

IV. Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

29. During inspection it was observed that Mr. Ved Varat Sharma filed direct SCORES complaint on March 27, 2022 against Noticee 1. On March 30, 2022 Mr. Ved Varat Sharma received an email from email id complaince.podium@gmail.com on behalf of Account Head-Podium Market Research wherein he was asked to deposit amount of Rs. 1,43,000/. Mr. Ved Varat Sharma transferred Rs.1,43,100/- via NEFT in the account of Noticee 3 (A/c – 11251**********6) on April 5, 2022 at 9:06 AM. Therefore, during examination it was observed that Mr Sharma was duped of Rs 1,43,100/- after filing the complaint in SCORES portal. Similar SCORES complaints against the Noticee 1 were also received, the details of which are as follows-

Table 3

Sr. No	Name of the complainant	IA fees collected by Podium	SCORES complainant ID	SCORES complaint filed date	Email id from whom SCORES complainant received communications on behalf of Podium/ Suman Kumar / date
1.	Arun Kumar Agarwalla	2,93,200/-	SEBIE/BH21/0000002/1	02/12/2020	Complains.podiummarketresearch@gmail.com on behalf of Account Head-Podium Research / December 10, 2020 and December 11, 2020
2.	Pranati Sinha	1,65,603/-	SEBIE/BH20/0000502/1	28/11/2020	Not available
3.	Ajaykumar Pandurang Patil	NA	SEBIE/BH20/0000314/1	29/05/2020	Not available
4.	Ajaykumar Pandurang Patil	NA	SEBIE/BH20/0000455/1	04/12/2020	Similar of complaint no. SEBIE/BH20/0000314/1 mentioned at Sr. no 3
5.	Siddharth Kocharekar /SELF	1,40,000/-	SEBIE/BH20/0000262/1	23/05/2020	Not Available
6.	Mukund Bhardwaj	9,500/-*	SEBIE/BH21/0000034/1	29/12/2020	----
7.	Rakesh Kumar Singh	2,31,500/-	SEBIE/BH20/0000318/1	10/06/2020	----
8	Dr. Mohammed Sadiq**	Rs. 4,02,640/-	SEBIE/BH19/0000174/1	02/12/2019	NA

*the amount of fees has been mentioned as per the details provided by Noticee 1. However it is gathered that Mukund Bhardwaj has transferred Rs 1,98,000/- during February 2020 in Suman Kumar HDFC a/c no. 50200038566753.

** Noticee 1 requested for closure of complaint and submitted that its name has been misused and it has filed FIR in this regard.

30. Therefore, it was observed that the SCORES complainants mentioned at Sr. No. 1 to 7 of table 3 above and Mr. Ved Varat Sharma had sought refund of advisory fees in the complaints and have been duped / defrauded by receiving email communication from a

different email id other than registered email id of Noticee 1 luring them to deposit money in the name of GST for refund of fees in some other account.

31. In view of the above, it was alleged that the Noticee 1 failed to maintain due care and diligence in maintaining confidentiality of information pertaining to its clients and SCORES complainants and thereby violated Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

32. I note Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients. Further an investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

33. Noticee 1 submitted that Noticee 2 was its employee from July 01, 2019 to February 15, 2020 and during that time Noticee 2 had access to all the information of Noticee 1's clients and further submitted that post leaving the job Noticee 2 contacted the clients of Noticee 1 using the same information and lured them to file a complaint against Noticee 1 by giving them the assurance that, they will get all the fee back. Once the complainants supplied all the information's to Noticee 2, he filed the complaint on their behalf on SCORES.

34. In this regard, I note that in SCORES platform, complaint is filed electronically and communication happens between SEBI, respective registered intermediary and the complainant. All such communication happens via email id of SEBI, registered email id of the intermediary and the email id of the complainant from which complaint has been registered. Apart from these 3 (SEBI, Registered intermediary and complainant), no other person is aware about the any details including confidential details SCORES complaint no., details of the grievance etc. Further, I note that as per clause 4 of code of conduct for investment adviser, the investment adviser shall maintain confidentiality of the information of its clients. I also note that Noticee 1 as an Investment Advisor is expected to have the necessary checks and balances to ensure that the data of its clients does not get leaked. Therefore, the abovementioned contention of Noticee 1 is not tenable.

35. Noticee 1 submitted the copy of the FIR dated December 01, 2019 wherein it was alleged that Noticee 1's name has been misused to defraud its clients. However, I note that after the aforesaid FIR, 8 clients of the Noticee 1 was duped (as given in the table 3 and paragraph 26 above) and no legal action was taken by the Noticee 1. Noticee 1 also submitted the copy of the letter dated February 12, 2021 addressed to SHO Gardanibagh alleging misusing his name. I note that no authentic documents showing status of the investigation carried out by the police authorities into the matter etc. have been provided by the Noticee 1 to substantiate its claim. A mere letter to the SHO by a is not amounting to taking any legal action. Therefore, the abovementioned submissions of Noticee 1 is not tenable.

36. I note from the material available before me that Mr. Ved Varat Sharma filed direct SCORES complaint on March 27, 2022 against Noticee 1 in the SCORES portal inter-alia alleging that Noticee 1 did not give him services after hiring and also handled his demat account and due to mishandling, his account gave a huge loss in Nifty options and his hard-earned money was spoiled. He further requested help in getting the refund of the money Rs. 7,15,000 paid as fees and uploaded the five receipts issued by Noticee 1. Thereafter within 3 days of filing the complaint i.e. on March 30, 2022 an email was received from email id complaince.podium@gmail.com on behalf of Account Head-Podium Market Research inter-alia stating that "*some employees of our company are doing fraud with client and we want to inform you that Podium Market Research is blacklisted by SEBI and we will refund client's whole amount without any delay*". Podium Market research was not registered for GST in FY 2019-20 and got GST registration in May 2021. It has been further stated that -

*'Total amount received from you during 07 October to 10 November 2019 is Rs.7,95,000/- and your GST amount is 795000*18%=Rs. 1,43,100/-. Once the GST amount is deposited, total fees paid by you to us i.e. Rs, 7,95,000/- will be deposited in your account within 30 minutes, this is our promise.'*

In addition, Mr. Sharma was advised to mark copy of all emails to sebipatna@gmail.com and he was given an understanding that by marking all his emails on this email id, he will be keeping SEBI Patna office in loop with regard to refund of investment advisory fees.

37. After exchange of emails, Mr Ved Varat Sharma got convinced and as directed in the email communications, transferred Rs.1,43,100/- via NEFT in the account of Noticee 3 (A/c – 11251**********6) on April 5, 2022 at 9:06 am.

38. I note that email id-complaince.podium@gmail.com gives an impression of the official email id of Noticee 1. Therefore, I observe that filing of SCORES complaint by Mr. Sharma against Noticee 1 was known to the person who communicated with him.

39. I note from the information available before me that, SEBI enquired Mr. Sharma about transferring of Rs. 1,43,100/- into Noticee 3's account. Mr. Sharma submitted that he was contacted by a person named Prakash Kumar over phone and asked whether he is aggrieved from the services of Noticee 1 and he will get the refund of fees paid to Noticee 1 if he files the complaint in the SCORES Portal. He further said that after taking relevant documents (Podium fees invoices) from Mr. Sharma, Prakash Kumar raised complaint in the SCORES Portal by creating / taking SCORES login credentials of Mr Sharma.

40. I note that Mr. Ved Varat Sharma's SCORES complaint was a direct complaint (SEBIE/BH22/48680/D/1) therefore upon filing of the complaint in the SCORES portal an auto intimation would have been received at the registered email id of the Noticee 1 i.e. suman20may@gmail.com and complaint would have been appearing under the SCORES login of Noticee 1.

41. However, Noticee 1 did not act / communicate within 30 days of filing the complaint in the SCORES portal therefore complaint was again redirected to Noticee 1 by SEBI for filing ATR.

42. Susbequently, Noticee 1 filed ATR inter alia stating that they never handled demat account of Mr. Sharma and only provided calls. Service of the client has expired on November 4, 2020 and he never communicated with regard to loss suffered in the past. After calling the complainant, Noticee 1 came to know that someone has cheated Mr. Sharma in the name of Noticee 1 and fake complain id of SEBI to deposit a sum of Rs 1,43,100 in the account no. 1125104000073486 IFSC IBKL0001125 of Noticee 3 on 25 March 2022.

43. It is observed that email id i.e. complaince.podium@gmail.com from which communication is received by the SCORES complainant Mr Sharma is different from the email id registered in the SCORES portal of Noticee 1 i.e. suman20may@gmail.com.

44. I observe that the SCORES complainants mentioned at Sr. No. 1 to 7 of table 3 and Mr. Ved Vrat Sharma had sought refund of advisory fees in the complaints and were receiving email communication from a different email id other than registered email id of Noticee 1 luring them to deposit money in the name of GST for refund of fees in some other account. Therefore, I observe that the information pertaining to the complainants and also the details of SCORES complaint of the complainants were used by person other than Noticee 1. Thus Noticee 1 did not maintained confidentiality of the information pertaining to its clients.

43. In view of the above, I observe that the Noticee 1 failed to maintain due care and diligence in maintaining confidentiality of information pertaining to its clients and SCORES complainants and thereby violated Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

V. Regulation 3 (d) and Regulation 4(2)(p) of SEBI PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013

44. During inspection it was observed that Noticee 1 collected GST from its clients during FY 2018-19 and 2019-20 without having GST registration. Further, it was observed that Noticee 1 collected GST from clients despite having Reverse Charge Mechanism clause in invoices issued to clients, thereby allegedly defrauding its clients in the name of GST. In view of the above, it was alleged that Noticee 1 violated Regulation 3 (d) and Regulation 4(2)(p) of SEBI PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

45. In reply to the SCN Noticee 1 admitted the aforesaid violation and submitted that he did whatever he was advised by his GST consultant.

46. I note that regulation 3(d) and Regulation 4(2)(p) of PFUTP Regulations provides that no person shall 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 and an intermediary predating or otherwise falsifying records shall be deemed to be a manipulative fraudulent or an unfair trade practice. I further note that Clause 1, 5 & 8 of Code of Conduct under Third Schedule of Investment Advisers Regulations provides that an investment adviser shall act honestly, fairly and comply with all regulatory

requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and in the integrity of the market, and shall make adequate disclosures of relevant material information while dealing with its clients.

47. I note from the invoices issued by Noticee 1 during the FY 2018-19, 2019-20 that it charged GST on RCM basis from it's clients. However, I observe from the information provided by Noticee 1 that they have obtained GST registration on 19/08/2020. The details of few invoices issued by the Noticee 1 are as follows-

Table 4

S. No.	Name of the Client	Date of Invoice	Amount of GST	RCM Yes/No
1	Vad Varat Sharma	21/10/2019	21355	Yes
2	Vad Varat Sharma	21/10/2019	34322	Yes
3	Vad Varat Sharma	18/10/2019	15254	Yes
4	Vad Varat Sharma	15/10/2019	6864	Yes
5	Vad Varat Sharma	07/10/2019	762	Yes
6	Siddharth Kishor Kocharekar	27/11/2019	630	Yes
7	Siddharth Kishor Kocharekar	27/11/2019	2817	Yes

48. The sample invoice of Noticee 1 is attached below-

Podium Market Research Investment Advisor

Podium Research

104 Archi Academy, Alinagar Colony,
Opp. Gulshan Plaza Apartment,
Anishabad Golamber,Patna-800002 (Bihar)
Complaint- info@podiumresearch.in
9631111938/ 9631111938

GSTIN: 10 | SEBI Reg. No.- INA300011706

Invoice No : PMR-OCT-057
Invoice date : 21/10/2019
Reverse Charge (Y/N) : N
State : Bihar | Code 10
SAC CODE : 997156
Bill to Party :
Name : VAD VARAT SHARMA | Mobile 9711170557
Address: C-23, SF, CHANDER NAGAR JANAK PURI NEW DELHI, DELHI -110058
GSTIN :
State DELHI | Code 110058

S. No.	Product Descrip on	SAC Code	Dura ons	Rate	Amount	Discount	Taxable Value	Total
	PREMIUM CASH		31/12/2019 to 28/4/2020		140000		118644	140000

Total Amount before Tax Amount

Total invoice amount in words: ONE LAKH FORTY THOUSAND RUPEES ONLY /-

Add: CGST
Add: SGST

Bank Details : PAYU MONEY
PATNA
BIHAR

Rec. Pmt. Details

Company Name :
Podium Market Research Investment Advisor

Add: IGST 21355
Total Amount GST 21355
Total Amount a er Tax 118644

Term & condi on

GST on Reverse Charge

49. I observe from the table 4 above that Noticee 1 has charged GST to its clients even before obtaining the GST registration (i.e. on 19/08/2020). Further from the invoices available

before me I observe that invoices has option of Reverse Charge (Y/N) and N has been chosen for these invoices, however, in Term & condition column, GST on Reverse Charge has been mentioned in the invoice.

50. In view of the above I observe that Noticee 1 has taken GST amount without GST registration. Further, GST was taken on RCM basis. I observe that RCM clause in GST payment puts onus of payment of GST on the recipient of service i.e. the individuals who has taken services from Noticee 1 not on himself. Further I observe that putting RCM clause of GST in the invoices is a method of collecting money, in addition to advisory fees because general public may not know the consequences of RCM clause on GST payment.

51. I note that the abovementioned act of the Noticee 1 is a known misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment and the same constitute fraud under regulation 2(1)(c)(1) of the PFUTP regulations. As per Regulation 3(d) SEBI PFUTP Regulations, 2003 no person shall directly or indirectly 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 securities. Further as per Regulation 4(2)(p) of the PFUTP regulation dealing in securities shall be deemed to be manipulative, fraudulent or an unfair trade practices if it involves an intermediary predating or otherwise falsifying records. Thus I observe that the Noticee 1 by charging GST to its clients without obtaining the GST registration and collecting GST from its clients despite having Reverse Charge Mechanism clause in invoices has defrauded its clients.

52. Therefore, I observe that Noticee 1 violated Regulation 3 (d) and Regulation 4(2)(p) of SEBI PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

(b) Whether Noticee 2 and Noticee 3 violated Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations.

53. It has been alleged that Noticee 2 and Noticee 3 duped clients of Noticee 1 in the name of refund of Investment Advisory fee/GST payment etc. and by creating fake email IDs in the name of SEBI Patna office and Noticee 1, thereby Noticee 2 and Noticee 3 allegedly violated Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations.

54. In reply to the SCNs Noticee 2 submitted that after few months Noticee 2 received call from Noticee 1 that by mistake money has been transferred to Noticee 2’s sister’s account i.e.

Noticee 3 and Noticee 1 asked Noticee 2 to transfer this amount to Noticee 1's account and this continued for 3-4 times later on. I also note from reply submitted by the Noticee 1, Noticee 2 and Noticee 3 that Noticee 2 had worked as Relationship Manager and Back Office Support with Noticee 1 from July1, 2019 to February 15, 2020 period and Noticee 3 is sister of Noticee 2.

55. I note that regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations provides that no person shall 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 and mis-selling of securities or services relating to securities market shall be deemed to be a manipulative fraudulent or an unfair trade practice.

56. As observed earlier at paragraph 36 to 40 above that Mr. Ved Varat Sharma (Mr. Sharma) filed direct SCORES complaint (SEBIE/BH22/48680/D/1) against Noticee 1 in the SCORES portal on March 27, 2022 and within 3 days of filing the complaint i.e. on March 30, 2022 an email was received from email id complaince.podium@gmail.com on behalf of Account Head-Podium Market Research inter-alia stating that *"some employees of our company are doing fraud with client and we want to inform you that Podium Market Research is blacklisted by SEBI and we will refund client's whole amount without any delay". Podium Market research was not registered for GST in FY 2019-20 and got GST registration in May 2021*. It has been further stated that -

*'Total amount received from you during 07 October to 10 November 2019 is Rs.7,95,000/- and your GST amount is 795000*18%=Rs. 1,43,100/-. Once the GST amount is deposited, total fees paid by you to us i.e. Rs, 7,95,000/- will be deposited in your account within 30 minutes, this is our promise.'*

In addition, Mr. Sharma was advised to mark copy of all emails to sebipatna@gmail.com and he was given an understanding that by marking all his emails on this email id, he will be keeping SEBI Patna office in loop with regard to refund of investment advisory fees.

57. After exchange of emails, Mr Ved Varat Sharma got convinced and as directed in the email communications, transferred Rs.1,43,100/- via NEFT in the account of Noticee 3 (A/c – 11251**********6) on April 5, 2022 at 9:06 am.

58. After transfer of money, Mr Sharma received communication from email complaince.podium@gmail.com on April 5, 2022 at 9:27 am stating ‘please wait we have done NEFT and will share the screen shot shortly. After this email, Mr. Sharma has sent many reminders however no reply has not been received.

59. I observe from the information available with me that Mr. Sharma was contacted by a person named Prakash Kumar over phone and asked whether he is aggrieved from the services of Noticee 1 and he will get the refund of fees paid to Noticee 1 if he files the complaint in the SCORES Portal. After taking relevant documents (Podium fees invoices) from Mr. Sharma, Prakash Kumar raised complaint in the SCORES Portal by creating / taking SCORES login credentials of Mr Sharma.

60. I note that Mr Sharma had transferred Rs. 1,43,000/- into the bank account of Noticee 3 – 11251******73486 of IDBI on April 5, 2022. After receipt of this money, Noticee 3 in turn transferred (debited) Rs 85,000/-via 5 UPI transaction (4 of Rs. 20000/- each and one of 5000/-) into the Noticee 2’s SBI account no 308*****343 on April 5, 2022. I note that in many bank transactions Noticee 2 has referred Roshini Kumari as his wife. However, in reply to the SCN Noticee 2 and Noticee 3 submitted that they are brother and sister. From the transactions made by the Mr. Sharma in the Bank account of Noticee 3 and susbsequent transfer to Noticee 2, it can be concluded that the Mr. Prakash Kumar who contacted Mr. Sharma over phone was Noticee 2.

Fund trail - Examination of bank statements of Noticee 2 and Noticee 3

61. It is observed from the Noticee 3’s IDBI bank account and Noticee 2’s SBI bank account that Noticee 3 in addition to Mr. Sharma, has received money from 4 more SCORES complainants (as provided in table 5). Further, I note that Noticee 3 has transferred majority of funds received from SCORES complainant into Noticee 2’s SBI Bank account. The details of the fund transfer are as follows-

Arun Kumar Agarwalla

a) Arun Kumar Agarwalla (SEBIE/BH21/0000002/1) has received email from email id ‘Complains.podiummarketresearch@gmail.com’ (which is not the registered email id of Noticee 1) on behalf of Account Head- Podium Research inter-alia informing on behalf of accounts team that executives are doing fraud with Noticee 1 and his clients and for refund of fees he has to Pay GST amount into Noticee 3’s designated account.

b) This SCORES complaint was filed on December 2, 2020 and email for doing the payment in the name of GST was received on December 10, 2020 and December 11, 2020 and Arun Kumar Agarwalla paid Rs. 98,820/- on December 15, 2020 into Noticee 3's IDBI account.

Siddharth Kocharekar and Ajaykumar Pandurang Patil

c) Siddharth Kocharekar (SEBIE/BH20/0000262/1) and Ajaykumar Pandurang Patil (SEBIE/BH20/0000314/1, SEBIE/BH20/0000455/1) shared WhatsApp chat with SEBI and informed SEBI over phone that after filing complaint in the SCORES he received directions via phone and account no. of Noticee 3 and other details were shared by Noticee 1 and its Team via WhatsApp from mobile no. ending with XXXX 6575. Thereafter Siddharth Kocharekar and Ajaykumar Pandurang Patil transferred the money to the account no. of Noticee 3.

d) Noticee 3 received Rs 14000/- on 23/5/2020 from Siddarth Kochrekar and Rs 20500/- on 29/05/2020 from Ajay Patil. Thereafter she has transferred Rs 80000/- via 4 UPI credits to Noticee 2's SBI accounts on 18/06/2020 and 19/06/2020 respectively (*this Rs 80,000/- includes Rs. 20000/- received by Noticee 3 from Noticee 2's ICICI Bank account during 13/06/2020 to 16/06/2020*)

e) Again on 30/06/2020 Noticee 3 received Rs 30,000/- from Siddharth Kochrekar and transferred Rs 30000/- via 2 UPI credits to Noticee 2's SBI account.

f) I observe from Noticee 2's SBI account that after receipt of 40,000/- and 30,000/- from Noticee 3 on 19/06/2020 and 30/06/2020 respectively, net balance of Noticee 2's SBI account was Rs. 115116/-. No significant transactions are observed upto July 2020 and on July 31, 2020 he has received Rs 2,00,000/- via RTGS from Union Bank of India from M/S Ward Kriyanwayan Evam Prabandh (appears to be a Govt dept. account) and account had net balance of Rs 302901/- on 31/07/2020. From this Noticee 2 Transferred Rs 60000/ - to Noticee 3 during 01/08/2020 and 05/08/2020 and Rs 20000/- to his own ICICI account and withdrew Rs 40000/- in cash (from ATM Sarai Offsite Vaishali- Bihar).

g) Rs 60000/- received by Noticee 3 in IDBI Bank account during 01/08/2020 and 05/08/2020 were withdrawn in 6 transaction in cash (from ATM Sarai Offsite- VAISHALI (Bihar).

Pranati Sinha

h) Pranati Sinha (SEBIE/BH20/0000502/1) filed SCORES complaint on 28/11/2020 and paid money Total Rs 97100/- into the account of Noticee 3 on December 5, 2020 and December 7, 2020.

i) On 05/12/2020 Noticee 3 received Rs. 98100/- in 3 transactions from Pranati Sinha. From this Rs. 54167/- were withdrawn in cash during 15-19 December, 2020 from ATM UBI DIGHA PATNA. She transferred Rs 45300/- IN 3 UPI transactions into Noticee 2's SBI account on 16-17 December, 2020.

j) It is observed from Noticee 2's bank account that on 16/12/2020 he withdrew Rs 20000/- in cash from ATM UBI DIGHA PATNA and transferred Rs 20000/- to his own ICICI account (ending with xxxx6219) on 16/12/2020. The aforesaid Rs. 20,000/- transferred into Noticee 2's ICICI Bank account were withdrawn in cash on 16/12/2020.

k) Summary of transaction-

Received Rs. 98100/- from Pranati Sinha on 05/12/2020 =
Rs 54167/ cash withdrawal by Noticee 3 from IDBI account (during 15-19 December, 2020)
+
Rs. 20,000/- cash withdrawal on 16/12/2020 by Noticee 2 from SBI account
+
Rs 20,000/- cash withdrawal on 16/12/2020 by Noticee 2 from ICICI account.

Mukund Bhardwaj and Rakesh Kumar Singh

l) Mukund Bhardwaj (SEBIE/BH21/0000034/1) and Rakesh Kumar Singh (SEBIE/BH20/0000318/1) have transferred money into the ICICI Bank Account No 061601506219 of Noticee 2. Both complainants were contacted on phone no (as available in SCORES Portal) by SEBI and they had informed that after filing of the SCORES complaint they received a phone call from Noticee 1's employee, who provided them the details of the bank account in which they transferred the money.

m) Mukund Bhardwaj transferred Rs 20,000/- on 20/01/2021 into Noticee 2's ICICI Bank Account. These Rs 20,000/- were subsequently transferred by Noticee 2 into his another SBI account.

n) Rakesh Kumar Singh transferred Rs 24,000/- into Noticee 2 ICICI Bank Account. From this Rs 20,000/- were transferred by Rakesh Kumar Singh into Noticee 2's account on June 15, 2020 and June 16, 2020 in two instalment of Rs 10000/- each. On same days, Noticee 2 transferred Rs 20,000/- into Noticee 3's account. Remaining Rs 4,000/- were received from Rakesh kumar on June 29, 2020 by Noticee 2. He subsequently transferred this money into his SBI account on the same day which were later withdrawn in cash.

Mr Ved Varat Sharma

o) On 05/04/2022 Mr Ved Vrat Sharma transferred Rs 143,100/ into Noticee 3's account via NEFT transaction. From this amount, Noticee 3 transferred Rs 115000/- (85,000/- via 5 UPI credits on 05/04/22 and Rs 30,000/- via 3 UPI credits on 06/04/22) into Noticee 2 SBI account no ending with 3343. She herself withdrew Rs 25000/- cash in 3 transactions from an SBI ATM on 05/04/2022. After these transactions, net balance in Noticee 3's Account was Rs. 146/- on EOD 06/04/2022.

p) It is observed that Rs 25000/- have been deposited via cash on 05/04/2022 in Noticee 2's SBI account. It appears that this is the same money which has been withdrawn in cash from Noticee 3's account on 05/04/2022.

q) After receipt of the aforesaid money, Noticee 3 transferred Rs. 1,00,000/ and Rs 50,001/- to SBI fund management Pvt Ltd on 08/04/2022 and 14/04/2022 respectively.

62. Name of complainants, their SCORES complaint details and date of fund transfer are provided below in the tabular form-

Table 5

Sr. No	Name of the complainant	IA fees collected by Podium	SCORES complaint ID	SCORES complaint filed date	Date of deposit of money into Noticee 3's IDBI Bank A/C / Noticee 2's ICICI Bank A/c
1.	Arun Kumar Agarwalla	2,93,200/-	SEBIE/BH21/0000002/1	02/12/2020	Rs 98,820/- on December 15, 2020 Noticee 3's IDBI Bank A/C

2.	Pranati Sinha	1,65,603/-	SEBIE/BH20/0000502/1	28/11/2020	Total Rs 97100/- (Rs. 2000/-{in 2 transactions of 1000 each via NEFT and IMPS} on December 5, 2020 and (Rs. 96,100/-on December 7, 2020 via IMPS) into Noticee 3's IDBI Bank A/C
3.	Ajaykumar Pandurang Patil	NA	SEBIE/BH20/0000314/1	29/05/2020	Rs. 20500 on May 29, 2020 via IMPS into Noticee 3's IDBI Bank A/C
4.	Ajaykumar Pandurang Patil	NA	SEBIE/BH20/0000455/1	04/12/2020	Similar of complaint no. SEBIE/BH20/0000314/1 mentioned at Sr. no 3
5.	Siddharth Kocharekar /SELF	1,40,000/-	SEBIE/BH20/0000262/1	23/05/2020	Rs 14,000/- on May 23, 2020 via UPI Rs 30,000/- on June 30, 2020 via UPI into Noticee 3's IDBI Bank A/C
6.	Ved Varat Sharma	7,95,000/-	SEBIE/BH22/0000111/1	27/03/2022 (Direct complaint)	Rs.1,43100/- via NEFT on April 5, 2022 into Noticee 3's IDBI Bank A/C
7.	Mukund Bhardwaj	9,500/-*	SEBIE/BH21/0000034/1	29/12/2020	Rs 20,000/- on January 21, 2021 paid to ICICI a/c no X6219 of Noticee 2's ICICI Bank A/c
8.	Rakesh Kumar Singh	2,31,500/-	SEBIE/BH20/0000318/1	10/06/2020	Rs 24,000/- during June 2020 (Rs. 10,000/- on 15/06/2020, Rs 10000/- on 16/06/2020 and Rs 4000/- on 29/06/2020 into ICICI a/c no X6219 of Noticee 2's ICICI Bank A/c

63. In reply to the SCN Noticee 2 submitted that after few months of leaving job Noticee 2 received call from Noticee 1 that by mistake money has been transferred to Noticee 2's sister's account i.e. Noticee 3 and Noticee 1 asked Noticee 2 to transfer this amount to Noticee 1's account and this continued for 3-4 times later on. In this regard, during hearing documentary evidence was sought from the Noticee 2 with regard to transferring funds to Noticee 1's account. Further, as Noticee 2 claimed that he was used by Noticee 1 for fraudulent transfer of funds, therefore he was asked whether any legal action was taken by Noticee 2 and Noticee 3 against Noticee 1 and to provide the documentary evidence of the same. However Noticee 2 could not provide any evidence. Therefore the contention of the Noticee 2 and Noticee 3 is not tenable.

64. I observe that the Noticee 2 and Noitcee 3 has defrauded the clients of Noticee 1 in the name of refund of Investment Advisory fee/GST payment etc. and by creating fake email IDs in the name of SEBI Patna office and Noticee 1. I further note that the abovementioned act of the Noticee 2 and Noticee 3 is a representation made in a reckless and careless manner and the same constitute fraud under regulation 2(1)(c)(1) of the PFUTP regulations. As per Regulation 3(d) SEBI PFUTP Regulations, 2003 no person shall directly

or indirectly 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 securities. Further as per Regulation 4(2)(s) of the PFUTP regulation dealing in securities shall be deemed to be manipulative, fraudulent or an unfair trade practices if there is mis-selling of securities or services relating to securities market by a person knowingly making a false or misleading statement.

65. In view of the above, I observe that Noticee 2 and Noticee 3 duped and defrauded the clients of Noticee 1 in the name of refund of Investment Advisory fee/GST payment etc. and by creating fake email IDs in the name of SEBI Patna office and Noticee 1. Therefore, Noticee 2 and Noticee 3 violated Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations.

ISSUE II- Does the violation, if any, attract monetary penalty Section 15EB and 15HA of SEBI Act?

66. As has been established above that Noticee 1 is in violation of the following provisions-

    a) Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013.

    b) Regulation 19(1) of IA Regulations, 2013.

    c) Regulation 15A of IA Regulations, 2013 read with Para 2(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

    d) Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 read with Clause 1, 2 & 4 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

    e) Regulation 3 (d) and Regulation 4(2)(p) of SEBI PFUTP Regulations, 2003 read with Clause 1, 5 & 8 of Code of Conduct under Third Schedule of SEBI (Investment Advisers) Regulations, 2013.

67. The Noticee 2 and Noticee 3 is in violation of the Regulation 3 (d) and Regulation 4(2)(s) of PFUTP regulations.

68. In context of the above, I refer to the observations of Hon’ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* wherein the Hon’ble Court had observed: “In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.’’

69. Therefore, the aforesaid violations committed attract monetary penalty under Section 15EB and 15HA of SEBI Act. The text of provision is reproduced hereunder:

Penalty for default in case of investment adviser and research analyst.

15EB. *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

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.*

ISSUE III- If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

Factors to be taken into account by the adjudicating officer under SEBI Act
15J. While adjudging quantum of penalty under Section 15-I, 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

71. The material available on record does not quantify the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the Noticees failure. As regard to the repetitive nature of the default, I find that the no penal action has been taken by the SEBI in the past against the Noticees

72. I note that the role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee 1 as brought out in the preceding paragraphs clearly shows that it has failed in its fiduciary duties owed to its clients and attracts penalty. I also note that Noticee 2 and Noticee 3 has duped the investors of the securities market. This violation of the Noticee 2 and Noticee 3, if dealt with lightly could seriously undermine investors confidence in the securities market and has to be viewed seriously and calls for appropriate penalty.

<u>ORDER</u>

73. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in 15J of SEBI, the purpose of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15I of the SEBI Act read with Rule 5 of the SEBI Rules, 1995, I hereby impose following penalty under Section 15EB and 15HA of SEBI Act on the Noticees:

Name of the Noticee	Penalty Provisions	Penalty (Rs.)
Podium Market Research Proprietor: Suman Kumar	Section 15EB of SEBI Act	15,00,000/- (Rs. Fifteen Lakh Only)
	Section 15HA of SEBI Act	10,00,000/- (Rs. Ten Lakh Only)
Prakash Kumar	Section 15HA of SEBI Act	7,00,000/- (Rs. Seven Lakh Only)
Roshni Kumari	Section 15HA of SEBI Act	7,00,000/- (Rs. Seven Lakh Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

74. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

75. In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: August 16, 2024 **ADJUDICATING OFFICER**