BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2023-24/26946-26948]

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 Noticees	PAN
1.	CapitalVia Global Research Limited	AADCC5782H
2.	Kiran Ravindra Kumar Choudhary	AAEPK1536D
3.	Rohit Gadia	AGXPG1899A

(“*hereinafter collectively referred to as Noticees*”)

In the matter of CapitalVia Global Research Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) conducted an inspection of M/s. CapitalVia Global Research Limited (SEBI Registration No. INA200001512; hereinafter referred to as ‘**CapitalVia/Noticee 1’**) from September 11-12, 2017, at its office located at NRK Business Park, Indore. The period covered in the inspection was from April 01, 2016 till September 11, 2017 (hereinafter referred to as ‘**Inspection Period’**) and the inspection was conducted to verify whether CapitalVia and its directors, Mrs. Kiran Ravindra Kumar Choudhary (hereinafter referred to as ‘**Noticee 2’**) and Mr. Rohit Gadia (hereinafter referred to as ‘**Noticee 3’**) (Noticees 1 to 3 hereinafter collectively being referred as “**Noticees/appellants/CapitalVia and its directors**”*)* had complied with regulatory requirements prescribed in SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as ‘**IA Regulations’**) and had adhered to the

directions/observations contained in the SEBI orders dated November 11, 2016 (hereinafter referred to as "**SEBI WTM Order I**") and January 20, 2017 ("**SEBI WTM Order II**/**SEBI final order**") (hereinafter both the said orders are referred to as "**SEBI WTM Orders**") passed by Hon'ble Whole Time Member (hereinafter referred to as "**Hon'ble WTM**") of SEBI. Based on reports of inspection, the undersigned was appointed the Adjudicating Officer ("**AO**") to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the non-compliance of directions contained in SEBI WTM Orders as well as violation of Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct as specified in Third Schedule of the IA Regulations, alleged to have been committed by Noticees. A common Show Cause Notice ('**SCN**') dated September 21, 2021 and Supplementary Show Cause Notice ('**SSCN**') dated October 07, 2021 (hereinafter referred to as '**SCN and Supplementary SCN**' respectively) were issued to Noticees under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15HB of SEBI Act for the aforesaid alleged violations by Noticees.

2. Thereafter, on conclusion of the said Adjudication proceedings, vide Adjudication Order bearing no. Order/SM/S./2022-23/21361-21364 dated November 22, 2022, a monetary penalty of ₹ 50,00,000/- was imposed upon the Noticees. The said adjudication order was challenged by Noticees before Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") vide Appeal No. 184 of 2023 (Misc. Application No. 182 of 2023). Vide order dated February 09, 2023, Hon'ble SAT allowed the appeal qua the appellants and held as follows:

"7. The first SEBI order dated November 11, 2016 directed "not to solicit or undertake any fresh advisory business". A plain reading of these directions can lead to a conclusion that the appellants were restraint from undertaking any fresh advisory business i.e. with new clients. On the other hand, it can also lead to a conclusion that the appellants were restrained from undertaking any fresh advisory services not only from the existing clients but also from new clients.

8. Thus, in our opinion, the direction dated November 11, 2016 was ambiguous and in the absence of clarity the appellants in good faith only continued advisory services from the existing clients.

9. In view of the aforesaid, imposing a penalty for violation of the directions of SEBI's order dated November 11, 2016 cannot be sustained. We accordingly set aside the impugned order. The appeal is allowed. The matter is remitted to the AO to redecide the matter after excluding the advisory services given by the appellants to its existing clients under the first SEBI's order dated November 11, 2016. If upon enquiry it is found that the appellants have given advisory services to new clients then appropriate orders would be passed accordingly."

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to the aforesaid order of Hon'ble SAT, SEBI, vide a *communique* dated March 03, 2023, appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of Adjudication Rules to inquire into and adjudge, under the provisions of Section 15HB of the SEBI Act, the non-compliance of directions contained in SEBI WTM Order I and SEBI WTM Order II as well as violation of Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct as specified in Third Schedule of the IA Regulations, alleged to have been committed by Noticees.

REPLY AND PERSONAL HEARING

4. In respect of the charges contained in the SCN and Supplementary SCN in the matter, a hearing notice dated March 06, 2023 was issued to Noticees granting them an opportunity of hearing on March 10, 2023 which was served via digitally signed email and Speed Post Acknowledgement Due ("**SPAD**"). The SCN and Supplementary SCN were also provided to Noticees along with the aforesaid hearing notice. Subsequently, the Noticees vide their email dated March 07, 2023 requested for adjournment of hearing and also sought extension of time to submit their reply to the SCN and Supplementary SCN. Considering Noticees' request, vide email dated March 08, 2023, another opportunity of hearing was granted to the Noticees on March 27, 2023. Noticees appeared for the hearing on the scheduled date through their Authorised Representative ("**AR**") Adv. Vedchetan Patil. During the course of the hearing, the AR made submissions on the issue of non-compliance of the SEBI WTM Orders. The AR also requested for time of three weeks to submit reply in the matter. The aforesaid request of the AR was acceded to and the Noticees were granted another opportunity of submitting their reply on or before the next

date of hearing in the matter i.e. April 19, 2023.Subsequently, Noticees submitted their replies vide letter dated April 17, 2023 and emails dated April 17, 2023 and April 19, 2023. Thereafter, Noticees appeared for the hearing on the scheduled date on April 19, 2023 and reiterated their earlier submissions made.

5. The relevant extracts of the allegations levelled against Noticees in the SCN read with Supplementary SCN are as under:

*"1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') passed an Interim Order cum Show Cause Notice dated November 11, 2016 against M/s. Capitalvia Global Research Limited (hereinafter referred to as '**Capitalvia/Noticee 1/You'**) and its directors, Mr. Kiran Ravindra Kumar Choudhary (hereinafter referred to as '**Noticee 2'**), Mr. Rohit Gadia (hereinafter referred to as '**Noticee 3'**), and Mr. Anshul Mansingka, stating as under:*

1. Not to solicit or undertake any fresh advisory business with immediate effect till further directions.

2. To redress the grievances received against CapitalVia and to comply with all provisions of IA regulations and submit a compliance report to SEBI within three (3) months from the date of receipt of this order."

…

2. Thereafter, SEBI passed a final order dated January 20, 2017 wherein the following directions were passed against Noticee 1 and its directors, i.e., Noticees 2, Noticee 3 and Mr Anshul Mansingka:-

> *"a. Not to solicit or undertake any fresh advisory business for another period of four months from the date of order.(i.e. till May 19,2017)*
>
> *b. To discontinue the acceptance of funds from clients including by way of deactivation of online remittances, with immediate effect during the aforesaid four month period.*
>
> *c. To disclose the contents of these directions prominently on its website(s) immediately."*

…

9. Vide SEBI order dated November 11, 2016, Noticees were directed not to solicit or undertake any fresh advisory business with immediate effect till further directions. Vide SEBI order dated January 20, 2017, Noticees were further directed not to solicit or *undertake any fresh advisory business for another period of four months from the date of the order. During the inspection, on scrutiny of its client master (**Annexure 3**), SEBI observed that Noticee 1 had continued to receive advisory fees amounting to Rs. 2,08,66,490 for investment advisory services from 625 clients during the period November 12, 2016 to January 21, 2017.*

…

15. SEBI observed that Noticee 1 accepted advisory fees from the clients during the ban period. Therefore, it is alleged that Noticee 1 and its directors, i.e., Noticees 2 to 4, continued to undertake fresh subscriptions from the clients during the period from November 12, 2016 to May 19, 2017 and thereby violated the directions imposed by SEBI vide its orders dated November 11, 2016 and January 20, 2017. It is also alleged that, by receiving renewal advisory business fees and money for an associate in same bank account, Noticee 1 and and its directors, i.e., Noticees 2 to 4 contravened the general responsibility cast under Regulation 15(3) of IA Regulations.

…

22. I observe that Noticee 1 was carrying out risk profiling of the clients for the purpose of selling the available products without ensuring the suitability of the same. Therefore, it is alleged that by not doing risk profiling of its clients and by not ensuring suitability of advice provided to the client, Noticee 1 and and its directors, i.e., Noticees 2 to 4 have violated Regulations 16 (c) and 17 of IA Regulations.

…

29. … it was observed that Noticee 1 charged unreasonable fee from its clients. Therefore, it is alleged that by charging un-reasonable fees to clients, Noticee 1 and and its directors, i.e., Noticees 2 to 4, have violated Clause 6 of Code of Conduct as specified in third schedule of IA Regulations."

6. I note that Noticees filed their replies vide letters dated April 17, 2023 & December 07, 2021 and emails dated April 17, 2023 and April 19, 2023 in regard to the allegations made in the SCN and Supplementary SCN. The summary of the Noticees' relevant submissions in their replies is as under:

i. Noticees have contended that the present adjudication proceedings of the Hon'ble SEBI are barred by the law of limitation and doctrine of delay and laches, as the same is commenced after considerable lapse of time (i.e., more than 4 years) from the accrual of alleged cause of action. The said adjudication proceedings pertain *to Inspection period between April 1, 2016 to September 11, 2017 for which Inspection was conducted on September 11 and 12, 2017 at the Corporate Office of the Noticee No.1. Serious prejudice is being caused to the Noticees because it has become difficult to collate evidence in defense of the Show Cause Notice and allegations contained therein due to considerable lapse of time. Employees that could have supported the case of the Noticees by their testimonies have left and are not traceable. Further, no reason is stated in the Show Cause Notice under address as to why the present proceedings could not be initiated at an earlier stage.*

ii. *Noticees have contended that as per the directions of the Hon'ble Securities Appellate Tribunal vide its Order dated February 09, 2023, it is prima facie evident that the Hon'ble Securities Appellate Tribunal has set aside the entire order and limited the scope of inquiry to whether any fee was received from new clients during the period after Interim Order dated November 11, 2016 and up to Final Order dated January 20, 2017.*

iii. *Noticees have contended that Noticee did not undertake any fresh advisory business and thereby complied with the SEBI order. Noticees have contended that Noticee 1 had accepted funds from existing clients and emails acknowledging such receipt of payment had been sent to customers as part of automated communication. Noticees contended that the aforesaid communications did not pertain to fresh advisory business and thus, the same were not restricted by the SEBI orders.*

iv. *Noticees contended that as per the wordings of the directions in the Interim Order cum Show Cause Notice dated November 11, 2016, it only restricted the Noticee from conducting fresh advisory business. There was no restraint on providing services to the existing customers. Further, there was no restriction on accepting funds from these existing clients.*

v. *Noticees have contended that it was only through the final order dated January 20, 2017 the Noticee No. 1 was directed to discontinue the acceptance of funds from existing clients. The same is evident from the language used in Directions in Final Order dated January 20, 2017.*

vi. *Noticees contend that the directions were duly complied with by the Noticees and no business was solicited from new clients from November 12, 2016. Further as per direction in Final Order dated January 20, 2017 no funds were accepted from any existing clients as well from January 21, 2017.*

vii. *Noticees have contended that it relied on the said correct interpretation of the expert and continued providing services to the existing clients.*

viii. *Noticees have contended that the said issue of interpretation of the Interim order dated November 11, 2021 has been duly clarified by the Hon'ble Securities Appellate Tribunal vide its order dated February 09, 2023. Hence the only cases where services of Investment Advisory are provided to new clients are to be considered for any violations on the part of the Noticees.*

ix. Noticees have further contended that email dated 24-11-2016 to Neetu and email dated 24-01-2017 to Shweta, were automated emails sent to the existing clients informing them about the expiry of services. The said emails did not intend to solicit advisory services. The said email only mentions "In order to continue our services, kindly renew the service pack."

x. Noticees have contended that email dated November 24, 2016 to Neetu and email dated January 24, 2017 to Shweta, Lalit A were automated emails sent to the existing clients informing them about the expiry of services. The said email template was not updated inadvertently and without any malafide intent as the automated email template could only be updated within a reasonable time period of communication of Order dated 20.01.2017.

xi. Noticees contended that certain clients were sent system generated emails regarding investment products/payment status of existing subscriptions which was due to automated communication which had not been updated. Noticees further contend that certain clients were sent emails to give its existing clients an extension of validity/renewal of service with respect to existing services.

xii. Noticees further contend that payments during the period of interim restraint (between November 11, 2016 to January 20, 2017) were received from existing clients only as renewal fees.

xiii. Noticees have also contended that payments dated 27.02.2017 (Axis Bank), 10.03.2017 (HDFC Bank) and 28.04.2017 (SBI) are for fees charged for online learning platform (LearnOD) and 24.04.2017 (HDFC Bank) is fees charged for provision of software maintenance services.

xiv. Noticees have contended that the amount credited in the four bank accounts of CapitalVia Global Research Limited between 21st January, 2017 to May 19, 2017 were received towards LearnOD and software maintenance services. It clearly shows that no new or existing clients were onboarded for Investment Advisory

Services by the Noticees after January 20, 2021 till the period of complete restraint i.e., May 19, 2017. Further, the payments made by few clients for Investment Advisory Services post January 20, 2017 were duly refunded.

xv. *Noticees have also contended that email dated 23-11-2016 to Raymond and email dated 16-01-2017 to Arvind, it is submitted that the said emails mention the renewal of services of existing clients Raymond and Arvind. Their services with the Noticee started on October 10, 2016 and October 11, 2016 respectively. It is submitted that the proof of providing services can only be the actual service provided and the money collected toward such service. Further, the said above mentioned emails were only sent to existing clients and not to new clients. From the above observations it is evident that all the emails were with respect to existing clients.*

xvi. *Noticees have contended that that no monies were collected from any client after the final Order dated January 20, 2017, was passed.*

xvii. *Noticees have contended that Risk Profiling was done by them in terms of the SEBI orders and the risk profiling questionnaire was based on all factors laid down under the IA Regulations.*

xviii. *Noticees have also contended that in the current tool of Risk Profiling which was implemented by CapitalVia applicable from May 20, 2017 i.e. post the restraint period, CapitalVia has mitigated all the limitations shared by SEBI in the findings during Inspection.*

xix. *Noticees have further contended that it has been incorrectly alleged that the Risk Profiling Questionnaire of one of the clients, Mr. Yarabolu Venkat did not contain the question in the respect of Risk Appetite and the same was covered in the last question to the risk profile assessment – "What would you do if there is a drop of in value in one of your investments?".*

xx. *Noticees have contended that IA Regulations do not prescribe any maximum amount of fees which can be charged from a client and fees charged by them were legally permissible.*

xxi. *Noticees have contended that the KYC processes and risk profiling was always done with respect to its clients and any person could not subscribe to its services by merely paying via the payment gateway as was alleged.*

xxii. *Noticees have contended that the risk profiling of the customer was based on different factors and not only investment amount.*

xxiii. *Noticees have contended that the payment gateway was merely an online payment mechanism and has nothing to do with client on-boarding process.*

xxiv. *Noticees have contended that the commonality of bank account for LearnOD and IA services does not tantamount to not maintaining the arms' length relationship. Noticees have also stated that during the relevant period, Noticee 1 had separately identified departments for the aforesaid two activities.*

xxv. *Noticees have also contended that the clients who had filed SCORES complaints against CapitalVia had paid in numerous installments over an extended period of time and the said clients had renewed their services owing to their satisfaction regarding the CapitalVia's services. In support of their contentions, Noticees have placed reliance upon appreciation emails received by CapitalVia in this regard. Noticees have also contended that the aforesaid SCORES complaints had been resolved by CapitalVia.*

xxvi. *Noticees have also contended that Noticees 2 and 3 cannot be penalised merely because they were directors of CapitalVia at the time of the alleged violations by CapitalVia. In support of their contention Noticees have placed reliance upon the judgements of Hon'ble SAT in the matter of Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on August 8, 2019) and Aadesh Jain vs. SEBI (Appeal No. 217 of 2020 decided on 19.11.2020).*

xxvii. *Noticees have contended that there is no strict or mandatory obligation on the part of the Learned Adjudicating Officer under Section 15HB of SEBI Act to levy penalty. In this regard, Noticees have relied upon the judgements of Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, Ram Rattan vs. Parma Nand reported in AIR 1946 PC 51, Hari Prasad Shivashanker Shukla vs. A.D. Divelkar reported in AIR 1957 SC 121, Clariant International Ltd. & Anr vs. Securities & Exchange Board Of India, Narendra Singh Vs. Chhotey Singh and Another, (1983) 4 SCC 131, Dr. Akshaibar Lal and Others vs. The Vice-Chancellor, Banaras Hindu University and Others, (1961) 3 SCR 386, Samrat Holdings Ltd. vs. SEBI (Appeal No. 23 of 2000, order of January 2001, Ranjit Thakur vs. Union of India (AIR 1987 SC 2386), B.C. Chaturvedi vs. Union of India (1995) 6 SCC 749, Union of India vs. G. Ganayutham (1997) 7 SCC 463; Excel Crop Care Ltd vs. Competition Commission of India (2017) 8 SCC 47, Nathi Devi vs. Radha Devi Gupta [AIR 2005 SC 648], M/s. Hindustan Steel Ltd. vs. State* *of Orissa, [1969(2) SCC 627], Jameel vs. State of Uttar Pradesh (2010) 12 SCC 532*.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges levelled against the Noticees, replies filed by Noticees and other documents/evidence available on record. The issues that arise for consideration in the present case are:

   I) Whether Noticees have violated directions contained in SEBI WTM Order I and SEBI WTM Order II and Regulations 15(3), 16(c), and 17 of IA Regulations and Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations?

   II) Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

   III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

8. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions, which are as under:

Relevant provisions of SEBI Act

Penalty for contravention where no separate penalty has been provided

15HB*. 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*

Relevant provisions of IA Regulations:

15. General Responsibility.

…

(3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

16. Risk Profiling.

…

(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated.

17. Suitability.

Investment adviser shall ensure that-

(a) *All investments on which investment advice is provided is appropriate to the risk profile of the client;*

(b) *It has a documented process for selecting investments based on client's investment objectives and financial situation;*

(c) *It understands the nature and risks of products or assets selected for clients;*

(d) *It has a reasonable basis for believing that a recommendation or transaction entered into:*

(i) *meets the client's investment objectives;*

(ii) *is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;*

(iii) *is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.*

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

Issue No. I - Whether Noticees have violated directions contained in SEBI WTM Order I and SEBI WTM Order II passed by Hon'ble WTM and Regulations 15(3), 16(c) and 17 of IA Regulations and Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations?

9. I have carefully perused the charges levelled against Noticees in the SCN read with Supplementary SCN, replies filed by Noticees, SEBI's inspection report and other documents/evidence available on record. It has been alleged in the SCN read with Supplementary SCN that Noticees have failed to comply with the SEBI WTM Orders and have violated various provisions of the IA Regulations.

10. Before proceeding with the case on merits, I first deal with the preliminary objections made in the Noticees' replies. Noticees have contended that the Hon'ble Securities Appellate Tribunal has set aside the entire Adjudication order dated November 22, 2022 and the limited scope of inquiry in the present adjudication proceeding was to decide afresh

whether any fee was received from new clients during the period after passing of the SEBI WTM Order I and the period up to SEBI WTM Order II. In support of their contention, Noticees have submitted that if the intention of the Hon'ble SAT's order was otherwise, then the said Order would have been set aside only to a limited extent as to interpretation of SEBI WTM Order I and Hon'ble SAT would not have set aside the entire Order dated November 22, 2022. In regard to the aforesaid contention, a reading of paragraphs 7, 8 and 9 of the Hon'ble SAT's order dated February 09, 2023 shows that the instant matter has been remitted to the present adjudication proceedings only with respect to determination of the issue of whether the appellants have given advisory services to new clients during the operation of the SEBI WTM Order I. I further note that it is a settled position of law that a judgement passed by Hon'ble Court/Hon'ble Tribunal is in respect of the issues considered for the decision. In this respect, I place reliance on the judgement of the Hon'ble Supreme Court in the matter of Dir. Of Settlements, A.P. & Ors vs. M.R. Apparao [Appeal (civil) 2517 of 1999; decided on March 20, 2002] wherein it was held as under:

"To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision."

11. I further place reliance on the Hon'ble Supreme Court's judgement in the matter of Career Institute Educational Society vs. Om Shree Thakurji Educational Society [Special Leave to Appeal (C) Nos. 7455-7456/2023; decided on April 24, 2023] wherein Hon'ble Supreme Court reiterated the aforesaid legal position and held as under:

"The judgment in Vidya Drolia & Ors. vs. Durga Trading Corporation did not examine and decide the issue of effect of unstamped or under-stamped underlying contract on the arbitration agreement. As this issue and question has not been decided in Vidya Drolia (supra), the decision is not a precedent on this question… the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision operates as a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the obiter dicta."

12. In view of the foregoing and placing reliance on the aforesaid judgements, I find that Hon'ble SAT has remitted the matter to the present adjudication proceeding for fresh consideration with respect to the issue of determination of whether the appellants have given advisory services to new clients under the SEBI WTM Order I. The decision of Hon'ble SAT is in the context of examining the interpretation that flows from the SEBI WTM Order I. Hon'ble SAT, while specifying the issue to be considered in the context of breach of the directions issued in the SEBI WTM Order I, had clarified that the breach should be analysed only with respect to dealing with new clients subsequent to the said order. Hence, I follow the order of the Hon'ble SAT and the inquiry related to the breach of the directions contained in the SEBI WTM Order I is limited to the Noticees' dealings with new clients. Additionally, I note that SCN alleges that Noticees had violated the directions imposed on them in the SEBI WTM Order II. It is also alleged that by not maintaining an arms-length relationship between investment advisory activities and other activities of CapitalVia, Noticees had violated Regulation 15(3) of IA Regulations. Further, it is alleged that by not conducting adequate risk profiling of clients and by not ensuring that the investment advice provided by CapitalVia was suitable to its clients having regard to their risk profile, Noticees had violated Regulations 16(c) and 17 of IA Regulations. It is also alleged in the SCN that Noticees had charged excess fees which were not fair and reasonable and thereby, had violated Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations. I find that in its aforesaid order, Hon'ble SAT has also set aside the said Adjudication Order while allowing the appeal qua the appellants. I note that while I have to reconsider the aforesaid issue which has been remitted by Hon'ble SAT, it is open to deal with the other charges in the SCN read with the Supplementary SCN qua the appellants in the present adjudication proceedings after considering the submissions of Noticees, since Hon'ble SAT has not considered or passed any finding with respect to any of the other charges in the SCN and Supplementary SCN which were also decided in the said Adjudication Order dated November 22, 2022. Therefore, I find that the aforesaid preliminary objection of the Noticees is not sustained.

13. Noticees have also made a preliminary objection that there has been a considerable delay in the issuance of SCN after the inspection, which has caused serious prejudice to Noticees because it has become difficult to collate evidence in defense w.r.t. the Show

Cause Notice and allegations contained therein due to considerable lapse of time and on this ground, the SCN ought to be dropped. On perusal of available records, I note that the inspection took place on September 11-12, 2017 which pertained to the period from April 01, 2016 till September 11, 2017. The inspection involved analysis of the bank account statements of the Noticees, payments received by CapitalVia from 625 clients and analysis of 2 years' client master data of CapitalVia from two financial years to ascertain the compliance of the SEBI WTM Orders by Noticees. The inspection was completed on June 01, 2018. Thereafter, Noticees submitted their comments to inspection report vide letter dated June 19, 2018. Subsequently, vide order dated December 29, 2020, SEBI appointed the undersigned as the Adjudicating Officer for commencing adjudication proceeding against the Noticees. SCN in the matter was issued on September 21, 2021. Thus, considering the above chronology, I find that SCN in the present proceeding has been issued within a reasonable period of time and there has been no delay in issuance of SCN.

14. After issuance of SCN, adequate opportunities were granted to Noticees to represent their cases and replies were also received from Noticees with regard to the allegations against them in the SCN. Further, looking at the material available at the disposal of the Noticees, I note that Noticees were provided with all the relevant material, to enable them to form a definite defence to the charges in the SCN, which the Noticees have provided through their replies. Hence, I note that the said Noticees have failed to show that, how delay, if any, in the instant matter has prejudiced their interest. In this regard I find it pertinent to refer to the observations of the Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (decided on February 28, 2019) in which it was held that-"*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc*." I also place reliance on the judgement of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Girrajkumar Gupta HUF (Appeal No. 424/2019; Decided on August 11, 2021), wherein Hon'ble SAT held that, "*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in*

the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted."

15. Thus, placing reliance on the aforesaid judgments and considering the aforementioned facts & circumstances, I find that instant adjudication proceeding has been initiated within a reasonable period of time and no prejudice has been caused to the Noticees. Thus, I do not find any merit in the objection raised by Noticees that there has been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

16. I now proceed to deal with the matter on merits and in accordance with the directions of Hon'ble SAT.

17. It has been alleged in the SCN read with Supplementary SCN that Noticees have failed to comply with directions contained in the SEBI WTM Order I and SEBI WTM Order II passed by Hon'ble WTM. I note that SEBI WTM Order I, *inter alia,* directed Noticees not to solicit or undertake any fresh advisory business from date of the order till further directions i.e. till the date of passing of the final SEBI Order dated January 20, 2017 ("**interim restraint period**"). The directions passed against the Noticees in the aforesaid order are stated as under:
"1. Not to solicit or undertake any fresh advisory business with immediate effect till further directions.
2. To redress the grievances received against CapitalVia and to comply with all provisions of IA regulations and submit a compliance report to SEBI within three (3) months from the date of receipt of this order."

18. Vide SEBI WTM Order II dated January 20, 2017, Noticees were further directed not to solicit or undertake any fresh advisory business for another period of four months from the date of the order and Noticees were directed to discontinue the acceptance of funds from clients including by way of deactivation of online remittances, with immediate effect during the aforesaid four month period. Thus, Noticee 1 was restrained from soliciting or undertaking any advisory business from January 20, 2017 to May 19, 2017 ("**restraint period**"; the total time period of restraint from November 11, 2016 to May 19, 2017 is referred to as "**cumulative restraint period**"). The directions passed against the Noticees in the SEBI WTM Order II are stated as under:

"a. Not to solicit or undertake any fresh advisory business for another period of four months from the date of order.(i.e. till May 19,2017)

b. To discontinue the acceptance of funds from clients including by way of deactivation of online remittances, with immediate effect during the aforesaid four month period.

c. To disclose the contents of these directions prominently on its website(s) immediately."

19. I have perused the trail of email communications between Noticee 1 and its clients during the cumulative restraint period, as placed on records. The screenshots of email communication between Noticee 1 and some of its clients are placed below as illustration of solicitation of business by CapitalVia during the period after the passing of SEBI WTM Order I and SEBI WTM Order II:

Dear Lalit A, Date: 14-02-2017

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **Bullion Pack** has expired on 14-02-2017.In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

CapitalVia/2016/602427 ID : 602427

Dear Neetu, Date: 24-11-2016

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **Stock Cash** has expired on 24-11-2016.In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

Dear Shweta,

Date: 24-01-2017

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **BTST/STBT Pack** has expired on 24-01-2017.In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

We insist you to go through the below points before proceeding with our services and products:

- We do not offer any assured or guaranteed returns on our services or products.
- Membership once taken, can not be cancelled, refunded or transferred.Please read refund policy.
- Please read detailed disclaimer & risk warning: **Click here**

Dear RAYMOND ,

Date: 23-11-2016

CapitalVia Welcomes you to the world of professional trading. You have successfully subscribed for **Options - Call and Put** and will be able to enjoy tips and advice to make the most of your investment.

Thank you for subscribing to the services of CapitalVia Global Research Limited Please find details of your services as under:

Service Details:

- Service: Options - Call and Put
- Start Date: 24-11-2016
- Expiry Date: 24-03-2017
- Carrier: SMS,Android App

With our services, you will experience award-winning CapitalVia support, backed by proven track record for providing consistent, quality services for optimal results.

Dear Arvind , Date: 16-01-2017

CapitalVia Welcomes you to the world of professional trading. You have successfully subscribed for **Stock Future Plus** and will be able to enjoy tips and advice to make the most of your investment.

Thank you for subscribing to the services of CapitalVia Global Research Limited Please find details of your services as under:

Service Details:

- Service: Stock Future Plus
- Start Date: 17-01-2017
- Expiry Date: 17-04-2017
- Carrier: SMS

20. I note from the aforesaid emails that Noticee 1 had solicited investment advisory assignment/business from various clients during both the interim restraint period and restraint period. I have perused the Noticees' replies vide letters dated April 17, 2023 & December 07, 2021 and emails dated April 17, 2023 and April 19, 2023 and the documents submitted in the present adjudication proceedings. In their submissions, Noticees have contended that the email dated November 24, 2016 to Neetu and email dated January 24, 2017 to Shweta, Lalit A were automated emails sent to the existing clients, informing them about the expiry of services and were not intended to solicit advisory service and there has been no money charged to Shweta, Lalit or any client post the communication of SEBI WTM Order II. Noticees have also contended that inadvertently, the said email template was not updated and were without any *mala fide* intent as the automated email template could only be updated within a reasonable time period of communication of Order dated 20.01.2017. With respect to email dated November 23, 2016 to Raymond and email dated January 16, 2017 to Arvind, Noticees have contended that the said emails mention the renewal of services of the existing clients, i.e., Raymond and Arvind and their services with the Noticee started on October 10, 2016 and October 11, 2016, respectively. Noticees have further contended that CapitalVia did not undertake any new business and that certain clients were sent emails to give an extension of validity/renewal of service with respect to existing services. Noticees have also contended that the proof of providing services can only be the actual service provided and the money collected toward such service. In support of the aforesaid contention, the Noticees have provided data in tabular form in respect of payments received during the interim restraint period with justification for payments during the

period. Noticees have also contended that CapitalVia had accepted funds only from existing clients and emails acknowledging such receipt of payment had been sent to customers as part of automated communication and that the aforesaid communications did not pertain to fresh advisory business and thus, the same were not restricted by the SEBI WTM Order I. Thus, Noticees have contended that they had complied with the SEBI WTM Order I. In respect of emails dated January 24, 2017, and February 14, 2017 sent to clients, Noticees have contended that the payments received by CapitalVia post January 20, 2017 were refunded by CapitalVia. Noticees have thus contended that the above mentioned emails were only sent to existing clients and not to new clients. In this regard, I note that the contents of the aforesaid emails show that these were addressed to existing clients who had subscribed to CapitalVia's investment advisory services in the period before the passing of SEBI WTM Order I or during the interim restraint period before the passing of SEBI WTM Order II. The perusal of the tabulated details of payments received by CapitalVia as well as CapitalVia's client master do not demonstrate any payment received from Neetu, Shweta and Lalit. In the case of Arvind and Raymond, I find from the documents placed on record that CapitalVia had received payment from them. On account of the fact the aforesaid five clients were the existing clients of CapitalVia, following the order of Hon'ble SAT, I find that soliciting business from these clients through emails and payments received from some of them would not constitute violation of the directions of SEBI WTM Order I. Therefore, I am inclined to accept the aforesaid contentions of the Noticees.

21. On a perusal of the bank statements submitted by Noticees along with their replies, I observe the following illustrative instances of payments received from clients during the said cumulative restraint period:

S. No.	Date	Bank	Particulars	Amount (Rs.)
1.	06/12/2016	Axis Bank	NEFT/VIJBH16341024170/SHASHANK MOHAN SHAH//URGENT/	15,000/-
2.	08/12/2016	Axis Bank	MOB/TPFT/KISHAN KANAYALA/913010047716384	10,000/-
3.	19/01/2017	Axis Bank	DHARMESH KUMAR	50,000/-
4.	27/02/2017	Axis Bank	NEFT/KKBKH17058684210/SANJIV RAIU PAI VERNEKAR/Pa	17,249/-
5.	21/11/2016	HDFC Bank	NEFT/KKBKH17058684210/SANJIV RAIU PAI VERNEKAR/Pa	30,000/-

6.	03/12/2016	HDFC Bank	FT-CR-50100056177745-Sanjay Shekhar	35,000/-
7.	10/03/2017	HDFC Bank	Cash Dep Begum Bazar	10,000/-
8.	24/04/2017	HDFC Bank	-NEFT CR-ICIC0SF0002-Krishnakant Sonawane	4,000/-
9.	07/12/2016	ICICI	By cash- Haridwar	10,000/-
10.	19/01/2017	ICICI	By cash-Dadar-Gokhale road	10,000/-
11.	05/01/2017	ICICI	TRFR FROM- MEERA	37,500/-
12.	28/04/2017	SBI	TRANSFER FROM 11234502049 Mr. GOPAL HARISCHANDRA /	17,250/-
13.	03/12/2016	HDFC Bank	Sanjay Shekhar	35,000/-
14.	16/01/2017	Axis Bank	Prakash Kumawat	15,000/-
15.	14/12/2016	Axis Bank	Dharmesh Kumar	5,500/-
16.	17/12/2016	Axis Bank	Dibya Dyotan Hazra	30,000/-
17.	16/01/2017	SBI	Uday Shankar	15,000/-
18.	17/01/2017	SBI	Rajesh Gurunath Shrisat	15,000/-
19.	17/01/2017	SBI	Rajesh Gurunath Shrisat	15,000/-
20.	24/11/2016	SBI	V Rameshwar Rao	15,000/-
21.	21/01/2017	Axis Bank	Vinod Kumar Kantilal Vasava	5,100/-
22.	21/01/2017	HDFC Bank	Chandra Prakash Sahu	27,500/-
23.	21/01/2017	HDFC Bank	Chandra Prakash Sahu	27,940/-
24.	21/01/2017	HDFC Bank	Anoop Kumar Asthana	7,000/-
25.	21/01/2017	HDFC Bank	Bipin Dalmia	60,000/-

22. On perusal of the aforesaid documents, I find that Noticees have been conducting their business and receiving fees from various clients during the cumulative restraint period. I have also perused the pricing details of CapitalVia's services as shown on its website. I note from the account statements of CapitalVia that some of the amounts received in the said bank accounts also corresponds with the monthly subscription fees for CapitalVia's services as shown on its website for various services. For instance, the Stock Cash product was being sold along with Commodity pack which were sold for a monthly subscription amount of Rs. 5,000/- and Rs. 10,000/- respectively and BTST/STBT Futures which was sold for a monthly subscription amount of Rs. 10,000/- was also being sold along with Stock Cash product. The Index Options product was also being sold along with Stock Cash product for a monthly subscription amount of Rs. 5,000/-. Thus, Noticee 1 received Rs. 15,000/- each from clients namely, Rajesh Gurunath Shrisat, Uday Shankar and Prakash Kumawat for the aforesaid products for which payments were made during the cumulative restraint period.

23. In their replies filed vide letters dated April 17, 2023 & December 07, 2021 and emails dated April 17, 2023 and April 19, 2023, w.r.t. the SCN dated September 21, 2021 and Supplementary SCN dated October 07, 2021 in the instant proceeding, Noticees have contended that Noticee 1 had accepted funds from existing clients and the same was not restricted by SEBI WTM Order I and that CapitalVia had not on-boarded any new clients during the period from November 11, 2016 to January 20, 2017 and continued to provide advisory services to their existing clients only. In support of the contention, Noticees have placed on record extracts from account statements of CapitalVia's bank accounts, CapitalVia's client master and invoices relating to 625 clients of CapitalVia pertaining to the cumulative restraint period along with their replies. Noticees have also provided a list of clients along with explanation for the receipt of funds. I have perused the aforesaid documents. As noted above, CapitalVia had solicited subscription of its services from various clients and had received advisory fees for undertaking new assignments relating to advisory services to its clients during the interim restraint period. In this regard, I note from CapitalVia's client master, invoices relating to 625 clients of CapitalVia and the account statements of CapitalVia's bank accounts that during the operation of SEBI WTM Order I, one client of CapitalVia namely, V Rameshwar Rao (Client No.- ACC72341), who was recorded as a "new client" in the client master, had paid a fees of Rs. 15,000 on November 24, 2016 to CapitalVia, i.e., during the interim restraint period between November 11, 2016 and January 20, 2017. However, I also note from the invoice bearing invoice no. CV/INV/16-17/OCT/1807 dated October 27, 2016 that CapitalVia had received fees to the tune of Rs. 12,272/- on October 27, 2016 from the same client i.e. V Rameshwar Rao towards subscription to CapitalVia's BTST (Banking and Financial) investment advisory service. Therefore, I find that although V Rameshwar Rao was recorded as a "new client" of CapitalVia in their client master, the aforesaid invoice establishes that he was one of the existing clients of CapitalVia. From the aforesaid information and documents placed on record, after excluding the advisory services given by CapitalVia to its existing clients, I do not find any evidence of new clients on-boarded by CapitalVia under SEBI WTM Order I. Thus, I am inclined to accept the aforesaid contentions of the Noticees and following the Hon'ble SAT's order dated February 09, 2023, I find that the charge that Noticees had violated SEBI WTM Order I does not stand established.

24. In respect of the charge in the SCN that Noticees had violated the directions imposed on them in the SEBI WTM Order II, Noticees have contended that that no new or existing

clients were onboarded for investment advisory services by the Noticees after January 20, 2021 till the end of restraint period i.e., May 19, 2017. In support of their contention, Noticees have referred to extracts from account statements of the bank accounts of CapitalVia submitted by them and explanation for payments received in bank accounts of CapitalVia at Axis Bank, HDFC Bank, ICICI Bank and State Bank of India during the cumulative restraint period. On perusal of the aforesaid bank account statements of CapitalVia at Axis Bank (A/c No. 911020035630712), HDFC Bank (A/c No. 02812320001963 and 50200003869255), ICICI Bank (A/c No. 024105500192) and State Bank of India (A/c No. 00000032001090962) and CapitalVia's client master as well as emails exchanged between CapitalVia and its clients for the period from November 11, 2016 to April 13, 2017 and invoices relating to 625 clients of CapitalVia i.e. within the cumulative restraint period as placed on record, I find that CapitalVia received funds amounting to Rs. 1,27,540/- on January 21, 2017 from 4 existing clients, namely, Vinod Kumar Kantilal Vasava (Client No.- ACC59627), Chandra Prakash Sahu (Client No.- ACC72088), Anoop Kumar Asthana (Client No.- ACC72474), Bipin Dalmia (Client No.- ACC56039) toward fees charged by CapitalVia for various advisory services offered to them during the operation of SEBI WTM Order II i.e. during the restraint period between January 20, 2017 to May 19, 2017. In their replies, Noticees have contended that no fees were received from any existing clients after the passing of SEBI WTM Order II. Noticees have further contended that CapitalVia has refunded the amounts which were received on January 21, 2017 by few of its existing clients. On perusal of CapitalVia's account statements and Noticees' explanation for the receipt of funds on January 21, 2017 and subsequent refunds issued by them on February 07, 2017, I find from records that CapitalVia had refunded the aforesaid amounts received from these aforesaid four existing clients on February 07, 2017 i.e. within two weeks from passing of the SEBI final order. I also find from records that there were no other new clients on-boarded by CapitalVia during this period. Thus, I am inclined to take a lenient view in this regard and accept the aforesaid contentions of the Noticees. Therefore, I find that the charge that Noticees had violated SEBI WTM Order II does not stand established.

25. Noticees have further contended that the payments received by CapitalVia after the passing of SEBI WTM order II were in respect of online learning platform LearnOD. Noticees have also contended that only four payments dated 27.02.2017 (Axis Bank), 10.03.2017 (HDFC Bank), 24.04.2017 (HDFC Bank), and 28.04.2017 (SBI) were received post Final Order dated January 20, 2017 and that the said payments were towards fees

charged for provision of LearnOD and software maintenance services. In support of the aforesaid contention, Noticees have relied upon copies of the invoices for the said payments in lieu of LearnOD and Software Maintenance services provided between the period of November 12, 2016 to May 19, 2017 and a table providing explanation for the payments received in the aforesaid four bank accounts of Noticee No. 1 from January 21, 2017 to May 19, 2017 after the passing of SEBI WTM Order II. However, I find that the payments pertaining to CapitalVia's LearnOD and Software Maintenance services are not relevant to the specific charge of violation of SEBI WTM Order II and therefore, this does not merit any further consideration.

26. In view of the foregoing, I find that the allegation that Noticee 1 and its directors, i.e., Noticees 2 & 3 have violated directions contained in the SEBI orders dated November 11, 2016 and January 20, 2017 does not stand established.

27. I note that it is also alleged in the SCN read with Supplementary SCN that, by receiving renewal advisory business fees and money for an associate business in same bank account, Noticee 1 and its directors, i.e., Noticees 2 to 3 contravened the general responsibility of maintaining an arms-length relationship between investment advisory activities and other activities under Regulation 15(3) of IA Regulations.

28. I note from records that CapitalVia maintained a common bank account and funds for both activities, i.e. Investment advisory business and LearnOD business, were being received by CapitalVia in the common bank account. In this regard, I note that vide its letter dated June 20, 2019 and email dated February 20, 2019 wherein Noticee 1 had furnished its comments to the inspection report, CapitalVia had admitted that it was operating another business concern named "LearnOD" which provided an online education platform and that it had received funds and paid money in relation to the business activities of LearnOD from its HDFC bank account in which funds transferred by clients towards advisory fees were received by CapitalVia.

29. In their replies in the instant adjudication proceedings, Noticees have contended that the commonality of bank account for LearnOD and IA services does not tantamount to not maintaining the arms' length relationship, while once again admitting that payments were received in respect of the business activities of LearnOD in the same bank accounts in which CaptialVia was receiving funds from Clients towards advisory fees. Noticees have

also stated that during the relevant period, Noticee 1 had separately identified departments for the aforesaid two activities. I note that apart from a mere statement, Noticees have not produced any documents either during the inspection or in the instant adjudication proceedings to support their aforesaid claim. The available records also do not indicate that investment advisory business and LearnOD of Noticee 1 were managed by separate teams. I note that Noticees have not furnished any proof to show that that separate accounts were being maintained w.r.t. revenues from investment advisory business and LearnOD and that investment advisory business and LearnOD were managed by separate teams. I further note that there are no records to indicate that separate accounts were being maintained by CapitalVia w.r.t. revenues from investment advisory business and LearnOD. These circumstances, coupled with the fact that CapitalVia itself has conceded that such common bank account was being used for receipt of funds concerning both the businesses of CapitalVia, i.e., funds from both activities were converging in the same bank account, point to the conclusion that no segregation was maintained between LearnOD and investment advisory services of CapitalVia. This shows that Noticees failed to maintain an arms-length relationship between investment advisory services and other activities. Thus, I find that the allegation that Noticee 1 and its directors, i.e., Noticees 2 to 3 have contravened Regulation 15(3) of IA Regulations, stands established.

30. It has also been alleged in the SCN read with Supplementary SCN that CapitalVia had not conducted adequate risk profiling of clients. It is also alleged that CapitalVia had not ensured that the investment advice provided by it was suitable to its clients having regard to their risk profile.

31. In terms of Regulation 16 of IA Regulations, Investment adviser shall ensure that:-

(a) 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.

(b) 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.

(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d) 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.

(e) risk profile of the client is communicated to the client after risk assessment is done;

(f) information provided by clients and their risk assessment is updated periodically.

32. I also note that in terms of Regulation 17 of IA Regulations, Investment adviser shall ensure that:-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is

consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

33. In this regard, from the risk profiling questionnaire as found in email correspondence between CapitalVia and its clients, I observe the following in its Risk Profiling Methodology (hereinafter referred to as '**RPM**'):

(a) While Noticee 1 had included the factors as prescribed under IA Regulations in the risk profiling questionnaire, the assessment of risk profile was based on only 3 factors i.e. Investment of client, Age group and Risk Appetite.

(b) For investment of client, the following scores were assigned to different range of income:

(i) Less than 1 Lac- 2

(ii) 1 to 3 Lacs- 3

(iii) 3 to 5 Lacs- 5

(iv) 6 to 10 Lacs- 5

(v) 10 to 30 lacs- 5

(vi) Greater than 30 lacs- 5

The same score was assigned to all income ranges above Rs 3 lakh.

(c) From the risk profiling questionnaire of one of the clients, Mr. Yarabolu Venkat, it is observed that the questionnaire used to create the risk profile did not contain the question in respect of risk appetite. Therefore, I observe that the assessment of risk profile by CapitalVia was based on only 2 factors i.e. Investment of customer, Age group and the same was not adequate.

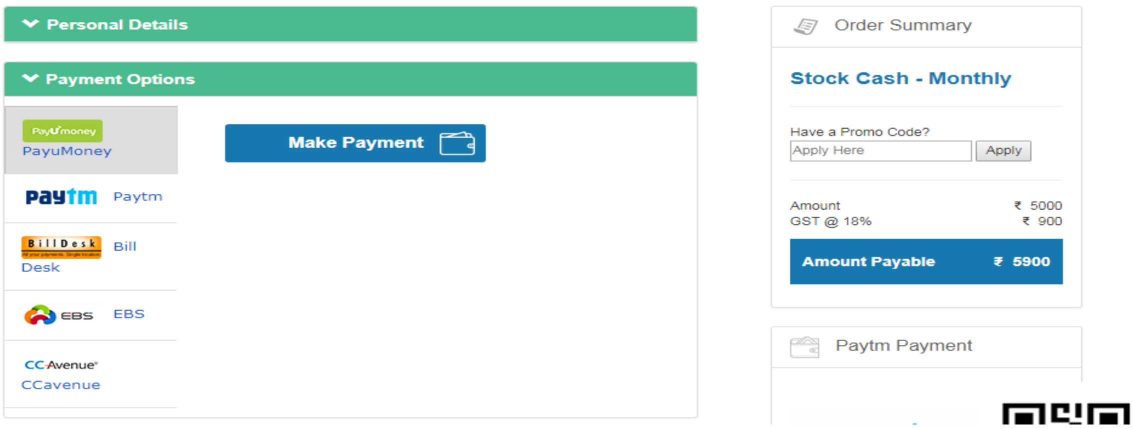
(d) I also observe that the same product was offered and sold to one of its clients, Shahina Parveen Herial, multiple times for almost same duration irrespective of the risk profile of the client.

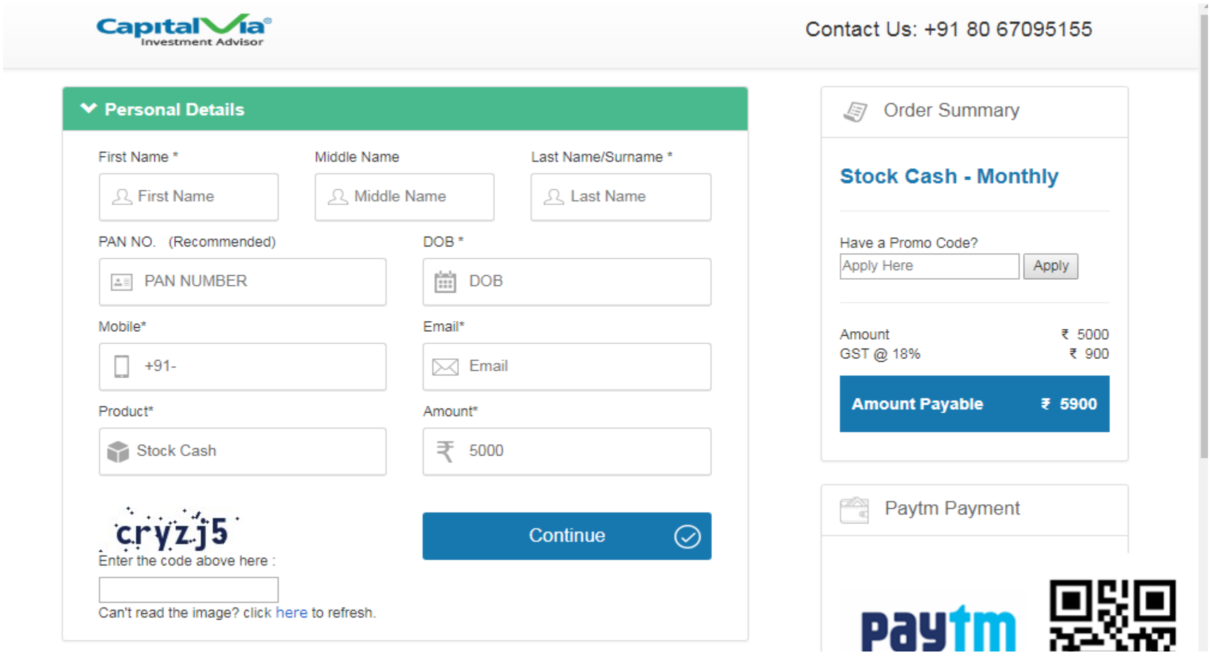
(e) I observe from Risk Profiling Methodology that no client could avail the advisory services for 'low risk' category as the scores were assigned in such a manner that considering minimum scores for all the factors the average was coming to be more than '2'.

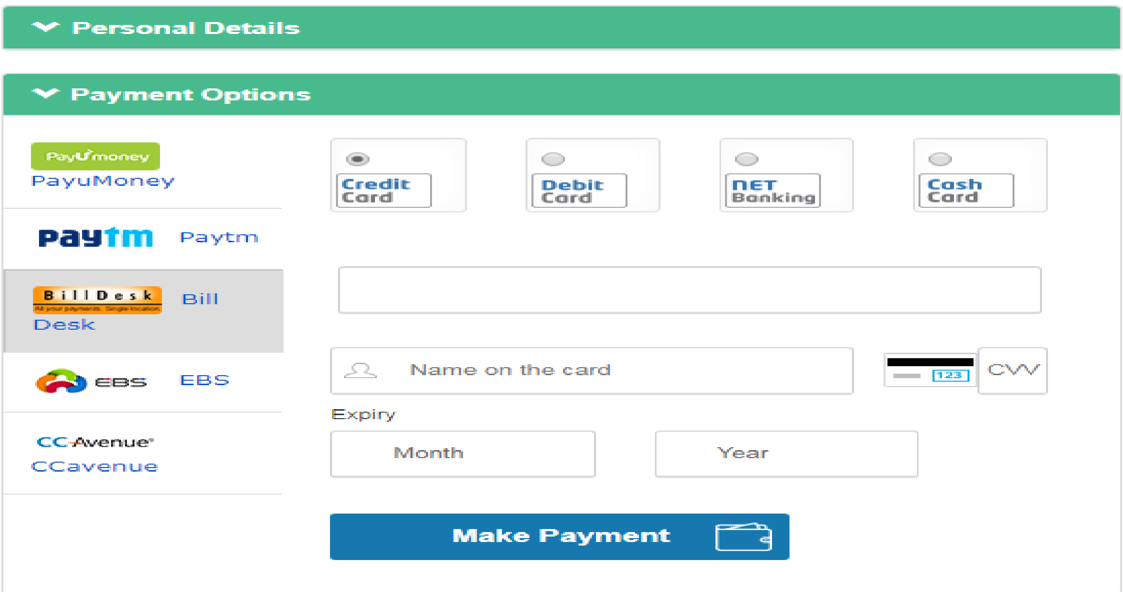
(f) I further observe in respect of RPM that Noticee 1 had sold multiple packages such as HNI, Stock futures, Nifty futures etc. to a single client on the basis of different investment amount submitted in the risk profiling questionnaire.

34. Therefore, I observe that the process employed by Noticee for risk profiling subsequent to SEBI inspection conducted in 2015, was without any rational and scientific basis and that there were serious defects in the RPM deployed by Noticee 1, i.e., it was not adequate for the assessment of risk profile of its clients.

35. I note from the records of inspection that vide its letter to SEBI dated June 19, 2018 and its email dated February 20, 2019, Noticee 1 had claimed to have revamped the entire risk profiling methodology. In this regard, I have perused the screenshots of the pertinent sections of the website of CapitalVia which provide the method of subscription to CapitalVia's services. The aforesaid screenshots are provided as under:







36. I note from the aforesaid screenshots, that CapitalVia's website was designed in such a manner that any person could directly buy any product that is being offered by Noticee 1 through its website-www.capitalvia.com, without due assessment of his risk profile by Noticee 1. Thus, I observe that any client could avail the advisory services of CapitalVia by paying a subscription amount via its website without undergoing the process of risk profiling. Thus, I find that Noticee 1 was onboarding new clients without conducting the process of prior risk profiling.

37. In terms of Regulations 16 and 17 of IA Regulations, CapitalVia was required to conduct Risk Profiling of clients before providing them investment advice by deploying a reliable RPM which adequately captures and analyses the information provided by clients w.r.t. age, investment objectives, income details, risk appetite, borrowing details etc. in order to form an accurate client risk profile and conduct an independent assessment of suitability of its advice to its clients on the basis of an accurate client risk profile.

38. As noted above, the RPM deployed by Noticee 1 was without any rational and scientific basis and there were serious defects in the same. Therefore, I find that Noticee 1 failed to conduct adequate risk profiling of clients in accordance with Regulation 16 of IA Regulations. As observed herein, Noticee 1 sold its investment products and provided investment advice to its clients, without obtaining full details pertaining to risk profile and in some cases, clients directly subscribed to its services. I note from the aforesaid records that Noticee 1 gave recommendations to its clients in respect of high-risk complex products such as BTST/STBT Futures and Commodity Pack, without conducting assessment of suitability of its advice to its clients. Therefore, I find that due to its inadequate RPM as well defects in its processes, Noticee 1 failed to carry out proper assessment of the suitability of its investment advice and so the subscription of CapitalVia's investment advisory services by its clients was not based on a reasonable assessment that the structure and risk reward profile of its products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss, as mandated in terms of Regulation 17 of IA Regulations.

39. In this regard, Noticees have merely stated that the KYC processes and risk profiling was always done with respect to its clients and any person could not subscribe to its services by merely paying via the payment gateway as was alleged. Noticees have also contended that the risk profiling of the customer was based on different factors as required under the IA Regulations. In support of their contentions, Noticees have placed reliance on a Compliance Audit Report for Financial Years 2016-2017 and 2017-2018 based on an audit by a Fadnis & Gupte, Chartered Accountants. I note that the aforesaid Compliance Audit Report relied upon by Noticees does not specify the sample clients whose records were audited for the purposed of ascertaining the regulatory compliance of CapitalVia's RPM. I further note that the aforesaid Compliance Audit Report does not provide any detailed findings on the RPM deployed by CapitalVia. Therefore, I find that the aforesaid

Compliance Audit Report cannot be relied for the purpose of deciding whether or not CapitalVia's RPM was in compliance with the IA Regulations. In their contentions, Noticees have produced the category wise assessment metrics used by Noticees for the purpose of risk profiling. However, I note that the aforesaid metrics merely show the marks assigned to different risk profiles and does not prove any point w.r.t. the charge alleged in the SCN. Noticees have also contended that Risk Profiling Questionnaire along with suitability assessment process was approved by the Hon'ble SEBI at the time of granting certificate of registration dated April 10, 2014 and any subsequent lacunae found therein may not be solely attributed to the Noticees as Noticees had no reason to doubt the same as the processes were approved by the regulatory body itself. I note that a standard form of RPM was approved by SEBI at the time of grant of certificate of registration and CapitalVia was expected to abide by the said RPM in accordance with the IA Regulations. However, as noted earlier, I find that the records pertaining to RPM of specific clients demonstrate that CapitalVia had not assessed the risk profile of its clients having regard to clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss, as mandated in terms of Regulation 17 of IA Regulations. Noticees have also contended that the payment gateway was merely an online payment mechanism and has nothing to do with client on-boarding process. However, as observed above, any client could avail the advisory services of CapitalVia by paying a subscription amount via its website without undergoing the process of risk profiling by paying a subscription amount on CapitalVia's website. I am of the view that risk profiling, if any, done after the subscription fees were paid via the website of Noticee 1 was not being done adequately and such post-facto risk profiling was merely a sham which only paid a lip service to the regulatory requirements stipulated under Regulation 16 and Regulation 17 of IA Regulations. Noticees have also contended in their reply dated April 17, 2023, that in the current tool of Risk Profiling which was implemented by CapitalVia applicable from May 20, 2017 i.e. post the restraint period, CapitalVia has mitigated all the limitations shared by SEBI in the findings during Inspection. I find that the aforesaid contention contradicts Noticees' contention made in their reply dated December 07, 2021 wherein the Noticees have contended that there were no defects in its RPM. Nevertheless, I am of the view that the aforesaid contention of Noticees is tantamount to an admission that there were serious defects in the RPM deployed by Noticee 1, i.e., it was not adequate for the assessment of risk profile of its clients prior to May 20, 2017, during the inspection period. Therefore, I am not inclined to accept the aforesaid contentions of Noticees.

40. Noticees have further contended that it has been incorrectly alleged that the Risk Profiling Questionnaire of one of the clients, Mr. Yarabolu Venkat did not contain the question in the respect of Risk Appetite and the same was covered in the last question to the risk profile assessment – "What would you do if there is a drop of in value in one of your investments?". However, from a perusal of the Risk Profiling Questionnaire, I find that the said question being indirect in nature, is inadequate for the purpose of understanding the risk appetite of a prospective client and a prospective client cannot be reasonably expected to understand that the said question has bearing in determination of his risk appetite and therefore, would not elicit a response from the client w.r.t. risk appetite. I also note that the aforesaid Risk Profiling Questionnaire of Mr. Yarabolu Venkat states that his annual income was above Rs. 7 Lakhs and that his investment amount was Rs. 6-9 Lakhs. However, the risk appetite of Mr. Yarabolu Venkat has been determined by CapitalVia to be "Moderately High" risk despite the fact that Mr. Yarabolu Venkat's annual income and investment amount showed that he did not have the capability to bear the risk of investing in high risk investments which entail high risk of losses. Therefore, I find that the aforesaid instance of Mr. Yarabolu Venkat establishes that there were serious defects in the RPM deployed by Noticee 1, i.e., it was not adequate for the assessment of risk profile of its clients. Therefore, I am not inclined to accept the aforesaid contentions of Noticees.

41. Thus, I find that the allegation that Noticee 1 along with its directors, i.e., Noticees 2 to 3 have violated Regulations 16(c) and 17 of IA Regulations, stands established.

42. It has also been alleged in the SCN that Noticees had charged excess fees which were not fair and reasonable and thereby violated Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations.

43. As per Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations, "*An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board if any. The Investment Adviser shall ensure that fees charged to the clients is fair and reasonable*."

44. In this regard, I note from the records of inspection, including complaints from investors, that during the term of subscription of the advisory services, Noticee 1 charged advisory fees in the range of Rs. 5,03,500 to 31,90,000 from the 49 clients, chosen as sample

during inspection, for the period from August 2015 to August 2017. I observe that CapitalVia had charged the aforesaid fees towards advisory services under different packages such as Stock Cash product, Commodity pack, BTST/STBT Futures etc. I have perused the details of fees charged for CapitalVia's services as shown on its website. I also observe from the aforesaid details that CapitalVia did not have a fee structure based on transparent and defined parameters pertaining to intended investment amount and risk profile of clients as well as accuracy of advice. I also note from records of inspection that Noticee 1 had charged excessive fees from clients by selling high risk products/services such as "Options- Call and Put", "Nifty Options Pack" and "Stock Future Plus" to clients who were willing to assume moderate risk. Thus, I note that CapitalVia did not have a consistent, reasonable or rational fee structure.

45. In this regard, from the records of inspection, I note that Noticee 1 vide its letter submitted to SEBI dated June 19, 2018 during inspection, accepted that aforesaid fees were charged by Noticee 1 from the said 49 clients. I also note from records of inspection that there were multiple SCORES complaints in respect of the aforesaid fees charged by CapitalVia. As an instance, I note that one of the SCORES complainants alleged that CapitalVia charged a fee of Rs. 25,00,000/- for their services rendered wherein they promised an assured return of 10%. I observe that similar complaints had been received on the SCORES platform and CapitalVia had to issue refund to certain investors in view of such complaints. The details of complaints on SCORES platform of SEBI in relation to the excessive fees charged by Noticee 1 are as under:

Name of the complainant	**Registration number/Date**	**Status**
Madan Mohan Mohta	SEBIE/KN17/0000295/1- 27.02.2017	Disposed
H Shahina Parveen /H Nadeem Ahmed	SEBIE/KN17/0000276/1- 14.05.2017	Disposed
Siddique Ali	SEBIE/KN16/0000564/1-09.12.2016 SEBIE/KN16/0000563/1-08.12.2016	Disposed
Pankaj Kumar	SEBIE/KN17/0000176/1- 06.4.2017	Disposed

46. I have also perused records of CapitalVia pertaining to one of the complainants (Client no. ACC57407, Shahina Parveen Herial). From the said records, I observe as follows:

    (i) An advisory fees of Rs. 31,90,000 was collected from the complainant.

(ii) Irrespective of the investment amount and the risk appetite stated by Shahina Parveen Herial i.e. Moderate amount of capital risk, the client was considered as 'High Risk Category' client at all the times even when the client had invested a lower amount, indicating that she did not possess a high risk appetite.

(iii) The details of the services provided to the client are as under:

S. No.	Name of the service	Duration
1.	HNI Research-Equity	30.03.2016-29.04.2016
2.	Stock Future Plus	18.04.2016-17.07.2016
3.	Stock Cash Plus	18.04.2016-17.07.2016
4.	Options-Call and Put	18.04.2016-17.07.2016
5.	Nifty Options Pack	18.04.2016-17.07.2016
6.	Nifty Future tips	18.04.2016-17.07.2016
7.	Premium Stock Tips	18.04.2016-17.07.2016
8.	BTST/ STBT Pack	29.04.2016-28.07.2016
9.	Stock Cash Plus	29.04.2016-28.07.2016
10.	Stock Future Plus	29.04.2016-28.07.2016
11.	HNI Research –Equity	13.05.2016-27.07.2016
12.	HNI Research –Equity	23.05.2016-21.08.2016
13.	HNI Research –Equity	01.06.2016-30.08.2016
14.	HNI Research –Equity	27.06.2016-25.09.2016
15.	HNI Research –Equity	29.08.2016-28.09.2016
16.	HNI Research –Equity	21.09.2016-31.10.2016

47. In their reply, Noticees have contended that the fees was based on services offered to the client on the basis of client's risk profile as well as other factors. On perusal of the risk profiling questionnaire furnished by Noticee 1, I note that under the head "Risk assessment", the aforesaid client was wrongly classified as having a 'high risk appetite' even though she had herself stated in the risk profiling questionnaire that she was willing to accept 'moderate risk'. Therefore, I note that Noticee 1 charged significantly high advisory fees from the said client on the basis of such wrong classification of risk appetite of the client. I, thus, find that the contention put forth by Noticees is not tenable.

48. Noticees have also contended that the fees were justified based on the personalised nature of services and the expenses and cost of providing services to clients. I note that

a company providing services such as investment advisory services, would ordinarily be expected to inform clients about the particulars relating to each slab of the fee structure which form the basis of the fees charged, which would include factors such as risk profile of the clients, experience of the analyst serving, frequency of involvement, the benefits which accrue to clients in terms of trading strategy or loss avoidance, tenure of subscription, number of products subscribed to, standard of service and support expectations of a client and the cost-efforts of operations while serving client etc. I note that Noticees have not provided any objective explanation w.r.t. the fees charged by CapitalVia, such as personalised nature of services and the expenses and cost of providing services to clients, the benefits which accrued to clients in terms of trading strategy or loss avoidance, in return for such excessive fees charged to the 49 clients which had been cited in the SCN. It is seen that although fees charged from the aforesaid clients ranged from Rs. 6,76,000/- to 31,90,000/-, CapitalVia has not provided any distinguishing facts in the column under the head “services” which can justify the different fees charged from different clients. Noticees have also contended that the clients who had filed SCORES complaints against CapitalVia had paid in numerous installments over an extended period of time and the said clients had renewed their services owing to their satisfaction regarding the CapitalVia’s services. In support of their contentions, Noticees have placed reliance upon appreciation emails received by CapitalVia in this regard and have contended that the aforesaid SCORES complaints had been resolved by CapitalVia. However, considering the grave complaints filed by CapitalVia’s complaints w.r.t. fees charged by CapitalVia, the appreciation emails relied upon by Noticee cannot be taken at face value. I note that Noticees have contended that the SCORES complaints did not provide any evidence against CapitalVia and they were disposed of or withdrawn without any finding against it. Noticees have also contended that the aforesaid complainants had filed the said SCORES complaints due to vested interests. I also note that although Noticees have sought to cast aspersions on the aforesaid SCORES complainants, they have admitted that the said complainants had been charged fees in the range of Rs. 6,76,000/- to 31,90,000/-. I further note that the aforesaid contention with regard to the SCORES complaints do not have any relevance to the charge that the fees charged by CapitalVia were not fair and reasonable. Noticees have further contended that during the inspection period, IA Regulations did not prescribe any maximum amount of fees which can be charged from a client and thus, fees charged by them were legally permissible. They have also contended that the fee charged was based on various factors and was charged in the normal course of business and was not excessive. Noticees have also contended that the issue of higher fees was raised in the SEBI's Interim Order and that it had well presented the entire logic, mechanism and the rationale, based on which, it charges fees from clients and had stated that it incurred substantial expenditure on skilled manpower and high end technology. However, as observed from the records of inspection, I note that Noticees have not produced any records to justify the fee charged from each client i.e., whether such fees were assessed to be reasonable having regard to the structure and risk reward profile of such products/services, the clients' risk profile, knowledge, investment objectives, risk appetite and capacity for absorbing loss, and CapitalVia also failed to demonstrate how the various parameters, as mentioned by it in its own statement, have been applied while arriving at the different fees charged from the clients.

49. In view of the aforesaid observations, I find that CapitalVia has not been able to demonstrate that aforesaid fees levied by them was fair and reasonable as against the advice rendered in terms of reliability, duration, accuracy and suitability of the advice and was based on certain defined criteria. This is also validated by the complaints received against CapitalVia on the SCORES platform and the fact that Noticees' justification for its fee structure was rejected by the Hon'ble WTM in SEBI WTM Order I as well as in SEBI WTM Order II. Based on the foregoing observations, I find that CapitalVia had arbitrarily charged excessive fees from clients in relation to its advisory services without having regard to the intended investment amount, investment objectives and risk appetite and risk profile of its clients.

10. Therefore, I find that the allegation that Noticee 1 along with its directors, i.e., Noticees 2 to 3 have violated Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations, stands established.

11. Noticees have also contended that Noticees 2 and 3 cannot be penalised merely because they were directors of CapitalVia at the time of the alleged violations by CapitalVia. In this regard, I note that CapitalVia is a company and is an artificial legal person and all the acts of the company are carried out by the directors of the company. I also note that Noticees 3 was a managing director and Noticee 2 was an executive director of CapitalVia at the time of the alleged violations. I note that Section 179 of the Companies Act, 2013 empowers the Board of Directors to do all acts and things which a company can do. When

powers are vested in the Board of Directors, naturally, the Board is to shoulder all responsibilities also. Therefore, I am inclined to the view that as per Section 179 of the Companies Act, 2013, the responsibilities for the conduct of the business of CapitalVia lies on its directors by virtue of their being on the Board of Directors of CapitalVia. At this juncture, it is pertinent to refer the judgement of Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was held that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence".* In view of the foregoing observations and placing reliance on the aforesaid judgment, I find that by virtue of being on the Board of Directors of the company, Noticees 2 and 3 were responsible for the acts of the company and would be liable for the conduct of the business of CapitalVia. In view of the foregoing, I do not find any merit in the contentions raised by Noticees.

12. I find that in support of their contention, Noticees have placed reliance upon the judgements of Hon'ble SAT in the matter of Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on August 8, 2019) and Aadesh Jain vs. SEBI (Appeal No. 217 of 2020 decided on 19.11.2020). In this regard, I note that in the aforesaid matter of Sayanti Sen vs. SEBI, SEBI had preferred an appeal before the Hon'ble Supreme Court (SEBI vs. Sayanti Sen; Civil Appeal Diary No. 37822/2019) and the Hon'ble Supreme Court had vide its Order dated November 13, 2019 disposed of the said appeal and held that the Hon'ble SAT's order in Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on August 8, 2019) was not to be treated as precedent. I further note that the Hon'ble SAT's judgement in the matter of Aadesh Jain vs. SEBI (Appeal No. 217 of 2020 decided on 19.11.2020) does not apply to the facts and circumstances in the instant matter because the aforesaid judgement of Hon'ble SAT pertained to the liability of an independent director as the appellant Aadesh Jain had contended that he was an independent director at the time of alleged violations by the concerned company. In the instant matter, I note that Noticee 3 was a managing director and Noticee 2 was an executive director of CapitalVia at the time of the alleged violations. Therefore, I find that the reliance placed on the aforesaid judgements by Noticees is misplaced.

13. Therefore, I find that the allegation that Noticee 1 along with its directors, i.e., Noticees 2 to 3 have violated Regulation 15(3), Regulations 16(c) and 17, and Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations stands established.

Issue No. II- Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

14. It has been established in the foregoing paragraphs that the Noticees have violated have violated Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct under Schedule III of IA Regulations. Noticees have contended that there is no strict or mandatory obligation on the part of the Learned Adjudicating Officer under Section 15HB of SEBI Act to levy penalty. In this regard, Noticees have relied upon the judgements of Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, Ram Rattan vs. Parma Nand reported in AIR 1946 PC 51, Hari Prasad Shivashanker Shukla vs. A.D. Divelkar reported in AIR 1957 SC 121, Clariant International Ltd. & Anr vs. Securities & Exchange Board Of India, Narendra Singh Vs. Chhotey Singh and Another, (1983) 4 SCC 131, Dr. Akshaibar Lal and Others vs. The Vice-Chancellor, Banaras Hindu University and Others, (1961) 3 SCR 386, Samrat Holdings Ltd. vs. SEBI (Appeal No. 23 of 2000, order of January 2001, Ranjit Thakur vs. Union of India (AIR 1987 SC 2386), B.C. Chaturvedi vs. Union of India (1995) 6 SCC 749, Union of India vs. G. Ganayutham (1997) 7 SCC 463; Excel Crop Care Ltd vs. Competition Commission of India (2017) 8 SCC 47, Nathi Devi vs. Radha Devi Gupta [AIR 2005 SC 648], M/s. Hindustan Steel Ltd. vs. State of Orissa, [1969(2) SCC 627], Jameel vs. State of Uttar Pradesh (2010) 12 SCC 532. In the 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 held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established…*"

15. I also find it relevant to rely upon the judgement of the Hon'ble Supreme Court in the matter of SEBI vs. Sandip Ray (Decided on February 13, 2023) wherein it had ruled that once a finding of violation of provisions of SEBI Act has been reached by SEBI, there is no

justification for SEBI to impose a penalty below the penalty stipulated under SEBI Act. The Hon'ble Supreme Court held as follows:

"The grievance of the appellant is that once a finding of violation of Section 15HB of SEBI Act, 1992 has been recorded, there appears no justification for the Tribunal to reduce the penalty below Rs. 1,00,000/- which is the minimum as permissible under Section 15HB of SEBI Act, 1992 Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of."

16. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations of Regulations 15(3), 16(c), 17 of IA Regulations read with Clause 6 of the Code of Conduct under Schedule III of IA Regulations, will attract monetary penalty under Section 15HB of SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

Penalty for contravention where no separate penalty has been provided

***15HB**. 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.*

Issue No. III - What should be the quantum of monetary penalty?

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

***Section 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.

18. In the present matter, it has been established that Noticees have violated various provisions of the IA Regulations by charging clients exorbitant fees for investment products/services without adequate disclosures and adequate risk profiling of such clients, as well as without assessing whether the structure and risk reward profile of such products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. It has also been established that by not maintaining an arms-length relationship between investment advisory activities and other activities of CapitalVia, Noticees had violated Regulation 15(3) of IA Regulations and that by not conducting adequate risk profiling of clients and that by not ensuring that the investment advice provided by CapitalVia was suitable to its clients having regard to their risk profile, Noticees had violated Regulations 16(c) and 17 of IA Regulations and that by charging excess fees, which were not fair and reasonable, Noticees had violated Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations. In this regard, Noticees have contended that in the current tool of Risk Profiling which was implemented by CapitalVia applicable from May 20, 2017 i.e. post the restraint period, CapitalVia has mitigated all the limitations shared by SEBI in the findings during Inspection. Therefore, Noticees have contended that the aforesaid fact should be considered a mitigating factor because even if it is assumed that CapitalVia was not compliant on the date of inspection with all the necessary requirements under the IA Regulations, CapitalVia has subsequently become fully compliant with the necessary requirements of IA Regulations. However, I note that Noticees had subjected their clients to extraordinary financial risks without any knowledge of such risks on their part, while charging them exorbitant fees and without complying with basic requirements of IA Regulations. Therefore, I find that Noticees had acted with blatant disregard for the interest of their clients and made a disproportionate gain by exposing their uninformed clients to the risk of financial peril and violated the provisions of IA Regulations. Thus, in light of such grave violations committed by Noticees, I am of the view that the aforesaid amount of money collected as fees by the Noticees from their

clients was tantamount to disproportionate gain or unfair advantage obtained by Noticees, even though the material available on record does not sufficiently quantify the amount of loss caused to investors as a result of the aforementioned violations by Noticees. As regards the repetitive nature of the default, I do not find the inspection having brought on record any regulatory action taken by SEBI in past against Noticees for the same violations as those observed in the instant inspection. However, as a SEBI registered investment adviser, Noticee 1 along with its directors, Noticees 2 to 3, were under a statutory obligation to abide by the provisions of IA Regulations and act honestly and fairly in the best interests of their clients, which they had deliberately failed to do.

19. However, I note that SEBI WTM Order II had directed the Noticees to not to solicit or undertake any fresh advisory business for a period of four months from January 20, 2017. In the said order, Noticees were also directed discontinue the acceptance of funds from clients, with immediate effect during the aforesaid four month period. As noted earlier, Noticees have complied with the aforesaid directions under SEBI WTM Order II.

ORDER

20. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the maximum penalty of Rs. 30,00,000 (Rupees Thirty lakhs Only), jointly and severally, on Noticees under Section 15HB of SEBI Act for the aforementioned violations.

21. 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, said Noticees may contact the support at portalhelp@sebi.gov.in.

22. The Noticees shall forward the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - 4, Securities

and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

PLACE: Mumbai **SOMA MAJUMDER**
DATE: May 31, 2023 **ADJUDICATING OFFICER**