BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2023-24/29277]

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

M/s. MI Research (Proprietor: Shri Ashish Jain)
(**PAN**- **ANIPJ1043K**)
(**SEBI Registration No.**- **INA000008783**)

In the matter of M/s. MI Research (Proprietor: Shri Ashish Jain)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the business of M/s. MI Research (Proprietor: Shri Ashish Jain) (hereinafter referred to as '**MI Research/Noticee'**) having SEBI Registration No. INA000008783 with respect to compliance of Noticee with Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"). The period of examination was from November 02, 2017 to August 31, 2019 (hereinafter referred to as "**examination period**"). Pursuant to the examination, certain violations of the relevant provisions of law by Noticee were observed.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated January 20, 2023, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding

Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under:-

2.1. Sections 15HA of the Act, the alleged violation of Regulations 3(a) to (d), 4(1), 4(2)(k) and 4(2)(s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) read with Section 12A(a), (b), (c) of SEBI Act by Noticee;

2.2. Section 15EB of the Act, the alleged violation of Regulations 15(1), 15(8), 15(12), 16(a), 16(e), 17, 19(1) and 19(3) of IA Regulations and Regulation 17(a) of IA Regulations read with Clauses 1 and 2 of Code of Conduct for Investment Adviser as mentioned in Third Schedule read with Regulation 15(9) of IA Regulations, by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated June 16, 2023 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Sections 15HA and 15EB of SEBI Act for the alleged violations as specified in paragraph 2 above.

4. The allegations against the Noticee in the SCN are summarised as under :-

   a) *It has been alleged in the SCN that Noticee that Noticee failed to maintain records as required in terms of Regulation 19(1) of IA Regulations and therefore, violated Regulation 19(1) of IA Regulations. It has also been alleged that Noticee failed to carry out Know Your Client procedures in respect of its clients as specified in regulation 15(8) of IA Regulations and thereby, violated Regulation 15(8) of IA Regulations. It has been further alleged that Noticee failed to submit the information/documents as sought by SEBI during the course of examination and thereby, violated Regulation 15(12) of IA Regulations.*

   b) *It has been alleged in the SCN that Noticee has failed to conduct yearly audits in respect of compliance with IA Regulations and thereby, violated Regulation 19(3) of IA Regulations*.

   c) *It has been alleged in the SCN that Noticee assured returns to his clients through his recommendations, Noticee misled investors and mis-sold his services and hence,* *Noticee allegedly violated the provisions of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act and clauses 1 and 2 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations, and Regulation 15(1) of IA Regulations.*

d) *It has been alleged in the SCN that Noticee failed to carry out risk profiling of its clients in terms of Regulation 16 of IA Regulations and thereby, violated Regulations 16(a) and 16(e) of IA Regulations.*

e) *It has also been alleged in the SCN that Noticee failed to ensure that all investment products on which investment advice is provided is appropriate to risk profile of the client and sold its products/services without conducting risk profiling and thereby, violated Regulation 17 of IA Regulations. It was alleged that Noticee has neither acted with due skill, care and diligence while deciding the suitability of advisory product that was sold to the clients nor acted honestly and in the best interest of the clients thereby, violated clause 1 and 2 of Code of Conduct for IA given in Third Schedule read with regulation 15(9) of IA Regulations*.

5. The SCN was despatched to Noticee by Speed Post Acknowledgement Due ('**SPAD**') and through Digitally Signed Email dated June 19, 2023 which was duly served on Noticee. However, no reply was submitted by Noticee. Thereafter, vide Hearing Notice dated August 01, 2023, Noticee was granted an opportunity of hearing on August 04, 2023. The said Hearing Notice was despatched by SPAD and Digitally Signed Email dated August 01, 2023, which was duly served on Noticee. However, Noticee did not appear for the said hearing. Thereafter, vide email dated August 07, 2023, Noticee was granted another opportunity of hearing on August 11, 2023. Noticee attended the hearing on the scheduled date and made oral submissions in the matter. During the course of hearing, Noticee requested for extension of time for submission of reply to the SCN. Considering the request, Noticee was granted time till August 18, 2023 to file reply to the SCN. Subsequently, Noticee filed its reply in the matter vide emails dated August 18, 2023.

6. In regard to the allegations made in the SCN, the relevant extracts of the Noticee's submissions in its reply vide emails dated August 18, 2023, are summarized as under:

   i. *Noticee has contended that Noticee had complied with all SEBI regulations from the date of registration till 2019.*

   ii. *Noticee has contended that all documents pertaining to RPM and KYC of clients were provided by it during the SEBI's examination. Noticee has further contended* *that several documents pertaining to RPM and KYC could not be retrieved due to technical reasons arising due to COVID pandemic.*

iii. *Noticee has contended that documents pertaining to several clients were lost due to the said technical reasons and the same could not be produced during SEBI's examination.*

iv. *Noticee has contended that fees taken from Rinku Jakhar for services provided by it were refunded to her and vide her email addressed to Noticee, Rinku Jakhar had stated that she would not raise any objections in respect of Noticee in the future.*

v. *Noticee has also contended that only two SCORES complaints had been registered against it and it had disposed of the said complaints.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

I) Whether Noticee has violated the provisions of law as specified in paragraph 2 above?

II) Do the violations, if any, attract a monetary penalty under Sections 15HA and 15EB 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:

SEBI Act

*"**Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

12A. No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

PFUTP Regulations

"Regulation 3: Prohibition of certain dealings in securities: *No person shall directly or indirectly-*

(a)buy, sell or otherwise deal in securities in a fraudulent manner;

(b)use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c)employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange.

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

"Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

(1)Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2)Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

[1]*k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;]*

[[2](s) {[3]mis-selling of securities or services relating to securities market

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

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

(ii)knowingly concealing or omitting material facts, or

(iii)knowingly concealing the associated risk, or

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

Relevant provisions of IA Regulations

General responsibility

15.*(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

15*(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time*

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

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[1] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022w.e.f. January25, 2022. Before the substitution the provision read as follows:
"disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities; "The provisions was previously substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019and before the said substitution the provision read as follows: "an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors"

[2] Inserted by the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2012 w.e.f. December 11, 2012.

[3] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019.Before the substitution the provision read as follows"mis-selling of units of a mutual fund scheme; Explanation.-For the purpose of this clause, "mis-selling" means sale of units of a mutual fund scheme by any person, directly or indirectly, by— making a false or misleading statement, or(ii) concealing or omitting material facts of the scheme, or(iii)concealing the associated risk factors of the scheme, or(iv) not taking reasonable care to ensure suitability of the scheme to the buyer.

15*(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.*

Risk profiling*.*

16*. 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

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

Suitability*.*

17*. 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.

***Maintenance of records**.*

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

(a)Know Your Client records of the client;

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

(c)Suitability assessment of the advice being provided;

[(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;][4]

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

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

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

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India [[5]and submit a report of the same as may be specified by the Board].

THIRD SCHEDULE

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

[See Sub Regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

2. Diligence

[4] Substituted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020. Prior to its substitution, clause (d) read as under; "(d)Copies of agreements with clients, if any;

[5] Inserted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives

Issue No. I - Whether Noticee has violated the provisions of law as specified in paragraph 2 above?

9. It has been alleged in the SCN that Noticee that Noticee failed to maintain records as required in terms of Regulation 19(1) of IA Regulations and therefore, violated Regulation 19(1) of IA Regulations. It has also been alleged that Noticee failed to carry out Know Your Client ('**KYC**') procedures in respect of its clients as specified in Regulation 15(8) of IA Regulations and thereby, violated Regulation 15(8) of IA Regulations. It has been further alleged that Noticee failed to submit the information/documents as sought by SEBI during the course of examination and thereby, violated Regulation 15(12) of IA Regulations. It has also been alleged in the SCN that Noticee failed to carry out risk profiling of its clients in terms of Regulation 16 of IA Regulations and thereby, violated Regulations 16(a) and 16(e) of IA Regulations.

10. I note that in terms of Regulation 19(1) of IA Regulations, every Investment Advisor registered with SEBI is required to maintain records pertaining to KYC procedures, Risk Profiling, Risk Assessment, Suitability assessment, copies of agreement with clients, Investment advice provided, rationale for risk profile and register containing list of clients, date & nature of advice, product securities in which advice was rendered and fee. I also note that in terms of Regulation 15(8) of IA Regulations, Investment Advisors are required to follow KYC procedures as specified by SEBI. I further note that in terms of Regulation 15(12) of IA Regulations, Investment Advisor shall furnish to SEBI, information and reports as may be specified by SEBI from time to time. Regulation 16(a) of IA Regulations mandates every IA to carry out risk profiling of all its clients. Similarly, Regulation 16(e) of IA Regulations stipulates that an Investment Advisor must communicate the client's risk profile to the client after risk assessment is done.

11. I note from the Bank Account statements of Noticee and its Proprietor, Mr. Ashish Jain, that Rs. 2,61,10,016.39 was credited and Rs. 2,64,26,443.09 was debited in bank accounts of Ashish Jain and MI Research from the date of registration to March 31, 2022. I also note that total credit amount in bank accounts of Ashish Jain and MI Research for the financial years 2018-19 and 2019-20 was Rs. 2,18,13,189.35.

12. I also note from Noticee's Client master register that MI Research received Rs. 1,94,07,039/- from 748 clients during the period from November 02, 2017 to April 30, 2019. The year wise break-up of fees collected by MI Research is tabulated as under:

Table - 2

Sl. No.	Period-Year Wise	Amount (Rs.)
1	Year - 2018	1,46,38,457/-
2	Year - 2019	47,68,582/-
Total		**1,94,07,039/-**

13. I have perused SEBI's emails dated April 21, 2022, April 22, 2022 and April 26, 2022, addressed to the Noticee during the course of examination. In the said emails, SEBI had advised the Noticee to furnish the copies of following documents:- (i) risk profile forms of clients, (ii) suitability assessment of profiles, (iii) bank account statements of Noticee and Mr. Ashish Jain, Proprietor of Noticee, (iv) details of year wise fees collected since date of registration, (v) client master data, (vi) copy of audited financial statements for last three years, (vii) sample copy of agreement entered into with the clients, (viii) copies of invoices issued to the clients, (ix) copies of agreement entered into with clients, (x) all the email correspondence, WhatsApp chats, call recordings, summary of payment received from the SCORES complainant/client named Mr. Rinku Jakhar and (xi) any other relevant documents in respect of the Noticee*.*

14. In reply to the aforesaid emails, the following documents were submitted by Noticee vide email dated April 28, 2022:
    - 346 Risk Profile forms of clients.
    - Bank Account statements of 4 bank accounts pertaining to ICICI, Axis, SBI and YES Banks. Details of Bank Accounts of Mr. Ashish Jain/MI Research are reproduced as under-

Table - 1

Sr. No.	Bank Name	Bank Account No.
1	ICICI Bank	328705500061
2	SBI Bank	37642768774
3	YES Bank	47861900001565
4	Axis Bank	917020069023236

    - Client Master Register/Client data sheet.
    - Year wise fees collected.
    - Copies of ITR for last 3 years.

15. I note that vide Noticee's letter to SEBI dated April 28, 2022, Noticee had stated that it did not enter into any agreement with its clients. From a perusal of the aforesaid documents, I find that Noticee did not provide copies of invoices issued to the clients, agreements with clients, records of clients, suitability assessment forms pertaining to the said clients, and audited financial statements of Noticee for last three years, as required to be maintained in terms of Regulation 19(1) of IA Regulations. I further note that as per Noticee's client master register, Noticee had 748 clients. However, vide the aforesaid email dated April 28, 2022, Noticee had provided risk profile forms of only 346 clients to SEBI. Thus, I observe that Noticee had not produced the risk profile forms of 402 clients. During examination, vide email to SEBI dated May 08, 2022, Noticee had stated that the computer in which the aforesaid documents were stored had broken down and therefore, it was unable to retrieve the said documents pertaining to certain clients. I further note that vide emails dated May 09, 2022, Noticee was again advised to furnish copies of KYC documents in respect of each of its clients. From perusal of records, it is observed that Noticee did not produce copies of the KYC documents which were requested by SEBI vide the aforesaid email.

16. In its reply to the SCN, Noticee has contended that it had complied with all SEBI regulations from the date of registration till 2019 and that all documents pertaining to Risk Profiling (RPM) and KYC of clients were provided by it during SEBI's examination from his personal computer. Noticee has further contended that several documents pertaining to RPM and KYC could not be retrieved due to technical reasons arising due to COVID pandemic and that documents pertaining to several clients, including voice recordings and invoices were lost from Noticee's computer due to the said technical reasons and the same could not be produced during SEBI's examination. I find that while on one hand, while Noticee has affirmed compliance with SEBI regulations, on the other hand, it has made a contradictory statement that due to a glitch in its systems, some documents could not be submitted to SEBI during its examination. I further note that Noticee has not furnished any evidence in support of its contention that it had complied with KYC procedures mandated by SEBI, and had maintained/furnished the documents as stipulated under Regulations 19(1), 15(8), 15(12) of IA Regulations. Noticee is under a statutory obligation to maintain Risk Profiling of all its clients and also communicate the same to its clients, however, in the instant case, Noticee could not demonstrate the

aforesaid compliance of Regulations 16(a) and 16(e) of IA Regulations. Therefore, I am not inclined to accept the aforesaid contention of Noticee.

17. Therefore, in view of the foregoing and on account of Noticee's own admission to the default, I find that the allegation that Noticee violated the provisions of Regulations 19(1), 15(8), 15(12), 16(a) and 16(e) of IA Regulations stands established.

18. It has been alleged in the SCN that Noticee has failed to conduct yearly audits in respect of compliance with IA Regulations and thereby, violated Regulation 19(3) of IA Regulations.

19. In terms of Regulation 19(3) of IA Regulations, every Investment Advisor registered with SEBI is required to conduct yearly audit in respect of compliance with IA regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

20. In this regard, I note that during its examination, vide email dated May 09, 2022, SEBI had advised Noticee to furnish the copies of Audit reports in terms of Regulation 19 of IA Regulations. I have perused the documents and submissions of Noticee produced by Noticee during the examination and note that Noticee did not produce copies of the Audit reports which were sought by SEBI. I further note that Noticee has not made any contentions in its reply to the SCN in respect of the aforesaid allegation. I am inclined to the view that Noticee has accepted the aforesaid allegation.

21. In view of the foregoing, I find that Noticee failed to comply with Regulation 19(3) of IA Regulations and thus, the allegation that Noticee has violated Regulation 19(3) of IA Regulations stands established.

22. It has been alleged in the SCN that Noticee assured returns to his clients through his recommendations, Noticee misled investors and mis-sold his services and hence, Noticee allegedly violated the provisions of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act and clauses 1 and 2 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations, and Regulation 15(1) of IA Regulations.

23. I have perused the Whatsapp chats and call recordings sent by SCORES complainant Mr. Rinku Jakhar vide email dated April 19, 2022 where it shows that Noticee had been promising high returns/ profit of on the investments made by the clients. The part of chat which specify high returns/profit is reproduced below:

"***Excerpt 1 of Chat/call recording between Complainant Mr. Rinku Jakhar and Representative of MI Research:***

'25/05/2018, 11:03 am - Rajiv Malhotra: Brother Kaise bhi kro Becouse Apke liye bhut sahi hoga
25/05/2018, 11:04 am - Rajiv Malhotra: Me bat krke ek din ka or time leta hu
25/05/2018, 4:18 pm - Rajiv Malhotra: Ye kam ho jayega to future me bhut apko bhut bada profit ho'

Excerpt 2 of Chat/call recording between Complainant Mr. Rinku Jakhar and Representative of MI Research:

'12/07/2018, 12:09 pm - Rinku: Gm sir
12/07/2018, 3:28 pm - Rajiv Malhotra: I, m waitting for your responce
12/07/2018, 3:29 pm - Rajiv Malhotra: Special call today
12/07/2018, 3:32 pm - Rajiv Malhotra: Buy banknifty 12july at 26 tgt 150
12/07/2018, 3:32 pm - Rajiv Malhotra: Profit 104000
12/07/2018, 3:43 pm - Rajiv Malhotra: Bank Name ICICI
Account Name RESEARCH24
Account No. 144105500674
Branch ONAM PLAZA AB ROAD INDORE
Type of A/CCurrent
IFSC Code ICIC0001441
12/07/2018, 3:44 pm - Rajiv Malhotra: Confirm me within a 10mnts'

Excerpt 3 of Chat/call recording between Complainant Mr. Rinku Jakhar and Representative of MI Research:

'20/09/2018, 11:38 pm - Rajiv Malhotra: Market recvery de rha hai
20/09/2018, 11:38 pm - Rajiv Malhotra: Low investment se start kr skte hai
20/09/2018, 11:42 pm - Rajiv Malhotra: Date - 17/09/2018
BUY BANKNIFTY PE 26500@CMP 18 TGT 200

PROFIT 1.80 lac

INVESTMENT@ Rs, 25k only'

Excerpt 4 of Chat/call recording between Complainant Mr. Rinku Jakhar and Representative of MI Research:

21/09/2018, 1:30 pm - Rajiv Malhotra: Today market big profit

21/09/2018, 1:30 pm - Rajiv Malhotra: Sell DHFL

21/09/2018, 1:31 pm - Rajiv Malhotra: Bank nifty 25500

21/09/2018, 1:31 pm - Rajiv Malhotra: Profit is 3lac

Excerpt 5 of Chat/call recording between Complainant Mr. Rinku Jakhar and Representative of MI Research:

'13/04/2018, 11:48 am - Rajiv Malhotra: Brother this is last amount in your investment

13/04/2018, 11:48 am - Rinku: But sir aapko sab pata hi mere bare me

13/04/2018, 11:50 am - Rajiv Malhotra: Agar ye nhi hoga to hamara time bhi jayega and amount bhi pending ho jayega

13/04/2018, 11:51 am - Rajiv Malhotra: I know but this last and final

13/04/2018, 11:51 am - Rinku: Sir mene aapko pahle hi bola tha ki me investment nhi karta

13/04/2018, 11:52 am - Rinku: Fir bi maine mere khet ko girvi rkakar ye kiya

13/04/2018, 11:52 am - Rinku: Or muj se nhi ho payega

13/04/2018, 11:55 am - Rajiv Malhotra: Brother me samjh skta hu apka condition but agar ap Esko krte ho tabhi apna profit ka return aayega

13/04/2018, 11:55 am - Rajiv Malhotra: Or bhut jldi aagya"

24. I note from the abovementioned excerpts of chats that on numerous occasions representative of Noticee assured definite profits to the complainant, Mr. Rinku Jakhar. I further note from a copy of invoice dated May 09, 2018 issued by MI Research, that prior to the aforesaid correspondence between the Noticee and its client Mr. Rinku Jakhar, Mr Rinku Jakhar had bought the product Stock Cash (HNI Services) for an amount of Rs. 8,00,000/- from Noticee on May 09, 2018.

25. I also note from call recording as found in the records under the title "*Call@09109999643(09109999643) 20180807130327.MP3*" that complainant Mr. Rinku

Jakhar had paid an amount of Rs. 14,00,000/- to Noticee. The complainant also mentioned multiple times during the call that he had paid Rs. 14,00,000/- for investment and not for services. However, the representative of Noticee stated that it was for services.

26. I note from the aforesaid Whatsapp chats and call recordings that while recommendations of stocks and options contracts were made by Noticee with an assurance that said stocks and options contracts recommended by it would undergo a rise in price/premium and fetch high returns for Noticee's clients, there was no disclaimer as to risks associated with investing in the said stocks and options contracts. Moreover, I do not find any evidence of such assurance of definitive return backed by proper research conducted by Noticee in the said stocks and options contracts. Moreover, the aforesaid documents show that Noticee also induced the complainant to repeatedly buy its services, that too charging an exorbitant amount, on the basis of such false assurance regarding high returns of securities recommended by it. I am of the view that Noticee, being a SEBI registered intermediary, is expected to be aware that all the investments in securities market are subject to market risks and such returns cannot be assured.

27. I note that Regulations 3(a)–(d) of the PFUTP Regulations, *inter alia,* prohibit employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. I note that Regulation 4(1) of the PFUTP Regulations provides for a prohibition on indulging in fraudulent or unfair trade practices in securities. I note that in terms of the definition of fraud under Regulation 2(1)(c) of PFUTP Regulations, "fraud" includes any act, expression, omission or concealment while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and it includes the following:-

i. a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
ii. a representation made in a reckless and careless manner whether it be true or false;
iii. any such act or omission as any other law specifically declares to be fraudulent.

28. I also note that Regulation 4(2)(k) of PFUTP Regulations prohibits disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities.

Regulation 4(2)(s) of PFUTP Regulations prohibits mis-selling of securities or services relating to securities market by knowingly concealing the associated risk. As per Regulation 4(2) of PFUTP Regulations, the acts specified under Regulations 4(2)(k), 4(2)(o) & 4(2)(s) are deemed to be a fraudulent or an unfair trade practice.

29. At this juncture, I find it pertinent to refer to decision of Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Kanaiyalal Baldevbhai Patel (Civil Appeal No. 2595 of 2013; Decided on September 20, 2017). In the aforementioned judgment, the Hon'ble Supreme Court of India, while discussing the ambit of fraud under PFUTP Regulations, has held as under:

"*The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required… To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities… The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified."*

30. Thus, placing reliance on the aforesaid judgement, I am of the view that in the context of PFUTP Regulations, proof of fraud only requires an inference that the person induced would not have acted in the manner that he did, but for the inducement.

31. In its reply to the SCN, Noticee has contended that the Whatsapp chats of Rinku Jakhar contained messages between Rinku Jakhar and Reasearch24 which was not Noticee's company. Noticee has also contended that Rinku Jakhar had taken refund of fees which he had paid for Noticee's services. Noticee has further contended that vide her email addressed to Noticee, Rinku Jakhar had communicated that he was satisfied with the services of Noticee. I note that Noticee has not furnished any evidence in support of the aforesaid contentions and these are only bald claims made by it. Therefore, I am not inclined to accept the aforesaid contentions of the Noticee.

32. It is clear that the Whatsapp chats sent by Noticee and recordings of calls between Noticee and Rinku Jakhar indicate that Noticee repeatedly assured certainty in the outcome of stock price movement in certain securities and the movement in the premium of options contracts.. I am of the view that the said statements are misleading because such certainty of outcome does not manifest in a stock market due to its inherent associate risks. Thus, I note that the said stock and options contracts recommendations were sensationalistic and gave an assurance to Noticee's clients that buying the said stocks or options contracts would necessarily fetch high returns. I am of the view that the promise of an assured returns in the aforesaid statements, which were not supported by any research on Noticee's part, amounted to dissemination of misleading information which amounted to a violation of Regulation 4(2)(k) of PFUTP Regulations. The investor was misled into paying a huge sum of money to Noticee, believing it was for investment, but subsequently denied by Noticee Since Noticee induced and misled the investors to buy into its services/products on the basis of such misleading information, I am inclined to view such act of Noticee as amounting to mis-selling of services which would be tantamount to violation of Regulation 4(2)(s) of PFUTP Regulations by Noticee. I further find that by promising assured returns and mis-selling its services, Noticee has failed to act honestly, fairly and in the best interests of its clients and the integrity of the market and also failed to act with due skill, care and diligence in the best interests of its clients, and failing to ensure that Noticee's advice is offered after a thorough analysis and taking into account available alternatives. Noticee has not made any contentions in its reply in respect of the aforesaid allegation. Thus, I am of the view that Noticee has accepted the aforesaid allegation. Thus, based on the foregoing observations and placing reliance upon the judgement of Hon'ble Supreme Court in the matter of SEBI vs. Shri Kanaiyalal Baldevbhai Patel (*Supra*), I find that the allegation that Noticee violated the provisions of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(k) and 4(2)(s) of PFUTP Regulations and clauses 1 and 2 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations, and Regulation 15(1) of IA Regulations, stands established.

33. It has also been alleged in the SCN that Noticee failed to ensure that all investment products on which investment advice is provided is appropriate to risk profile of the client and that Noticee sold its products/services without conducting risk profiling and thereby, violated Regulation 17 of IA Regulations. It was alleged that Noticee has neither acted with due skill, care and diligence while deciding the suitability of advisory

products/services that were sold to the clients nor acted honestly and in the best interest of the clients thereby, violated clause 1 and 2 of Code of Conduct for IA given in Third Schedule read with regulation 15(9) of IA Regulations.

34. I note that in terms of Regulation 17(a) of IA Regulations an investment adviser shall ensure that all investments on which investment advice is provided is appropriate to risk profile of the client. I further note that in terms of Regulation 17, an investment adviser's investment advice should be, *inter alia*, based on client's investment objectives, understanding of risks involved, and his financial situation, such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance.

35. As noted earlier, during examination, Noticee failed to furnish the risk profiles of 402 clients onboarded by Noticee. I also note that the risk profile forms of 346 clients submitted by Noticee during examination were undated. I also note that Noticee did not furnish any supporting documents to show that the said risk profile forms had been communicated to its clients. Since the aforesaid risk profile forms were not duly dated and communicated to clients, such risk profile forms do not appear to be credible. Thus, I observe that Noticee has neither conducted proper risk profiling nor undertaken suitability assessment of its investment advice under Regulation 17(a) of IA Regulations in compliance with the requirements stipulated under Regulation 17 of IA Regulations.

36. In its reply to the SCN, on one hand, while Noticee has affirmed compliance with SEBI regulations, on the other hand, it has made a contradictory statement that due to a glitch in its systems, some documents could not be submitted to SEBI during its examination. I note that Noticee has not furnished any evidence to show that it had undertaken suitability assessment of investment advice in terms of Regulation 17(a) of IA Regulations. Thus, I note that Noticee has not demonstrated its compliance with the norms regarding such suitability assessment mandated under Regulation 17 of IA Regulations. Therefore, I am not inclined to accept the aforesaid contention of Noticee.

37. Therefore, in view of the foregoing, I find that Noticee has failed to comply with Regulation 17 of IA Regulations and that Noticee has failed to act honestly, fairly with due skill, care and diligence and in the best interest of the clients and thereby, failed to abide by clauses 1 and 2 of Code of Conduct for Investment Advisers as specified in Third Schedule read with regulation 15(9) of IA Regulations. Therefore, I find that the allegation that Noticee

violated Regulation 17 of IA Regulations and clauses 1 and 2 of Code of Conduct for Investment Advisers as specified in Third Schedule read with Regulation 15(9) of IA Regulations, stands established.

Issue No. II- Do the violations, if any, attract a monetary penalty under Sections 15HA and 15EB of SEBI Act?

38. It has been established in the foregoing paragraphs that the Noticee has violated the provisions of IA Regulations and PFUTP Regulations as specified in paragraph 2 above. 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……*"

39. 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 will attract monetary penalty under Sections 15HA and 15EB of SEBI Act as specified in paragraph 2 of the order. The respective provisions, as applicable at the time of the violations, are reproduced as under:

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

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

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

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

40. While determining the quantum of penalty under Sections 15HA and 15EB 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.

41. In the present matter, it is noted from available records that Noticee had collected appx Rs. 1.95 crores from 748 clients by charging them for services provided as an Investment Adviser. The quantum of fees charged for its services appears to be unreasonably high. However, as noted, Noticee had failed to comply with basic requirements of IA Regulations and also promised assured returns and mis-sold his services to clients and thus, failed to act honestly and in good faith with due skill, care and diligence, and failed to adhere to high professional standard, appropriate standards of conduct and compliance with regulatory requirements. Therefore, I find that Noticee had acted with blatant disregard for the interest of its clients and exposed its uninformed clients to the risk of financial peril while simultaneously charging exorbitant fees from them. Thus, in light of such grave violations committed by Noticee, I am of the view that the aforesaid amount of money collected as fees by the Noticee from its clients was tantamount to disproportionate gain or unfair advantage obtained by Noticee, 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 Noticee. 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 Noticee for the same violations as those observed in the instant inspection. However, as a SEBI registered Investment Adviser, Noticee was under a statutory obligation to abide by the provisions of IA Regulations and act honestly and fairly in the best interests of its clients, which it had deliberately failed to do. Such blatant disregard for the provisions of law governing the functioning of Investment Adviser calls for a stiff penalty which would act as a deterrent.

ORDER

42. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee, and also the factors mentioned in Section 15J of SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalties on Noticee under Sections 15HA and 15EB of SEBI Act for the violations established above:

Name of Noticee	**Penalty under Section 15HA of SEBI Act**	**Penalty under Section 15EB of SEBI Act**
M/s. MI Research (Proprietor: Shri Ashish Jain)	Rs. 15,00,000 /- (Rupees Fifteen Lakhs only)	Rs. 20,00,000 /- (Rupees Twenty Lakhs only)

43. Noticee 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 Noticee may contact the support at portalhelp@sebi.gov.in.

44. The Noticee 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 - VI, 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)	

45. 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 Noticee.

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

PLACE: Mumbai **SOMA MAJUMDER**
DATE: September 18, 2023 **ADJUDICATING OFFICER**