

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992.

In respect of:

Name of the Noticee	PAN
Priyank Dineshbhai Shah	ALXPM7111J

In the matter of unregistered investment advisory by Priyank Dineshbhai Shah

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter, referred to as “**SEBI**”) has initiated 11B proceedings under section 11(1),11(4),11(4A),11B(1) and 11B(2) read with Sections 15A(a), 15HA and 15EB of the SEBI Act, 1992 against Priyank Dineshbhai Shah (hereinafter, referred to as the “**Noticee**”), the Compliance Officer of Eqwires Research Analyst (SEBI Research Analyst having SEBI registration no. INH000007465), for the alleged act of unregistered Investment Advisory service/activities as well as alleged to fraudulently misusing SEBI registration number (INH200007308) of Mr. Gowtham who is registered with SEBI as a Research Analyst.
2. Subsequently, a show cause notice dated January 11, 2024 (hereinafter referred to as “**SCN**”) was issued to the Noticee, calling upon him to show cause as to why suitable directions including directions as to refund of fees collected towards unregistered investment advisory and for imposing penalty under Sections 15A(a), 15HA and 15EB should not be issued against him under sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of the Securities and Exchange Board of India Act,

1992 (hereinafter referred to as “**SEBI Act**”) for alleged violations of section 12(1) of the SEBI Act read with Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”) and Regulation 3(a),(b),(c),(d) and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and why penalties under Sections 11(4A) and 11 B (2) of SEBI Act read with Section 15A(a), 15EB and Section 15HA of SEBI Act should not be imposed.

3. The facts of the case, as mentioned in the SCN, are following:

I. SEBI received a complaint against Mr. Gowtham who is registered with SEBI as a Research Analyst (INH200007308) on July 15, 2019, wherein the complainant stated that he had paid Rs.29,000/- to Proworth Investment Research (Proworth) on 07.02.2020 for the service package “PROWORTH PRO10 SERVICE” using PayUMoney payment gateway. Under the aforementioned package, the complainant was offered with profit of Rs.1 Lakh on the investment of Rs.1 Lakh. Further, as Proworth claimed to be a SEBI Registered entity, the complainant also shared login ID and password of his trading account with Proworth through email and funded his trading account with Rs.1 Lakh. The complainant had further stated that he was asked to sign the consent letter to trade in his trading account on behalf of him, which stated “I have established a business relation with Proworth Investment Research, an entity registered with SEBI under registration number INH200007308...”

II. The positions taken by Proworth in the trading account of the complainant incurred losses instead of earning profit as promised, the complainant sought for refund of his money, which was denied.

III. The complainant had further stated that from the posts made in the Quora website and the testimonials of clients it is observed that the name Proworth has been changed to Profinity.

IV. In this regard, it is observed that the contact number i.e. 98XXXXX882¹ mentioned in the twitter page and web page of Profinity, is the contact number of Gowtham in the application for change in name and address filed with SEBI. Copy of screenshot of name and address change application filed by Gowtham is provided below-

share.sebi.gov.in/wps/myportal/Home/SEBI/SEBIHome/apps/registrationlabel/Research%20Analyst/ut/p/z1/pZJNT4QwEIZ_yx640uFT9FbcpWUDgusq2luBpAl...

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Search Intermediary Status

Select Intermediary / खोज मध्यस्थ: Research Analyst

Search Type / तलाश की विधि: ☒ Application ☐ Registered Intermediaries

Application Number / आवेदन सं: 763072

Registration Number / रजिस्ट्रेशन सं:

Select Process / चयन प्रक्रिया: Choose a Process

Select Status of Application / आवेदन की स्थिति: Choose a Status

Select Start Date in DD/MM/YYYY format / डीडी / एमएम / वाई वाई वाई वाई प्रारूप में प्रारंभ तिथि का चयन करें:

Select End Date in DD/MM/YYYY format / डीडी / एमएम / वाई वाई वाई वाई प्रारूप में अंतिम तिथि को चुनें:

Intermediary Name / मध्यस्थ का नाम:

Search **Reset**

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Search:

Application Number / आवेदन सं	Process / प्रक्रिया	Applicant Name / आवेदक का नाम	Application Status / आवेदन की स्थिति	Pending With / के पास संवि	Pending Since / चुंकि लवित	Exchange Name
763072	Change in Name & Address	Gowtham	Rejected	Closed		

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share.sebi.gov.in/wps/myportal/Home/SEBI/SEBIHome/apps/registrationlabel/Research%20Analyst/ut/p/z1/pZJNT4QwEIZ_yx640uFT9FbcpWUDgusq2luBpAl...

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Change in Name / Registered Address

Attachments **Audit Trail**

Registration No. / पंजीकरण संख्या: INH200007308

Role/भूमिका: Research Analyst

Name of Applicant/ आवेदक का नाम: Proworth Investment Research

Change in Name / नाम में बदलें: ☒ Yes/हाँ ☐ No/नहीं

New Name of Applicant / आवेदक का नया नाम: Gowtham

Reason for Change in Name / नाम परिवर्तन का कारण: I have started my new Proprietorship firm and moving to Gujarat with my family. So I want to change my name and address.

I hereby declare that there is no Change in Control / मैं एतद्वारा यह घोषणा करता / करती हूँ कि नियंत्रण में कोई भी परिवर्तन नहीं हुआ है

Change in Registered Address / रजिस्ट्रीकृत पते में परिवर्तन: ☒ Yes/हाँ ☐ No/नहीं

New Registered Address of Applicant / आवेदक के नए पंजीकृत पता

Address Line 1/पंक्ति 1: 6, Tulsi Complex, 10, Lakshmi society.

Address Line 2/पंक्ति 2: Near LG showroom, Mithakhali Six roads

District/जिला:

City/शहर: AHMEDABAD

State/राज्य: GUJARAT

Country/देश: INDIA

Pin Code/पिन कोड: 380009

E-mail/ई-मेल: proworth.in@gmail.com

Telephone/दूरभाष: 0-91-9909828882

Telex/टेलिक्स: --

Mobile /मोबाइल नं.: 91-9909828882

Fax / फैक्स: --

Reason for Change in Registered Address / रजिस्ट्रीकृत पते में परिवर्तन का कारण:

¹ Mobile number has been masked to ensure privacy

share.sebi.gov.in/wps/myportal/Home/SEBI/SEBIHome/apps/registrationlabel/Research%20Analyst/ut/p/z1/pZJNT4QwEIZ_yx640uFT9FbcpWUDgusq2lu8pAl...

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Search

Name / नाम परिवर्तन का कारण
I have started my new Proprietorship firm and moving to Gujarat with my family. So I want to change my name and address.

I hereby declare that there is no Change in Control / मैं एतद्वारा यह घोषणा करता / करती हूँ कि नियंत्रण में कोई भी परिवर्तन नहीं हुआ है
☒ Yes/हाँ ☐ No/नहीं

Change in Registered Address / रजिस्ट्रीकृत पते में परिवर्तन
☒ Yes/हाँ ☐ No/नहीं

New Registered Address of Applicant / आवेदक के नए पंजीकृत पता

Address Line 1/पंक्ति 1 - पंक्ति 1	6, Tulsi Complex, 10, Lakshmi society.	Address Line 2/पंक्ति 2 - पंक्ति 2	Near LG showroom, Mithakhali Six roads
District/जिला		City/शहर	AHMEDABAD
State/राज्य	GUJARAT	Country/देश	INDIA
Pin Code/पिन कोड	380009	E-mail/ई-मेल	proworth.in@gmail.com
Telephone/दूरभाष	0-91-9809628882	Telex/टेलिक्स	--
Mobile /मोबाइल नं.	91-9809628882	Fax / फैक्स	--

Reason for Change in Registered Address / रजिस्ट्रीकृत पते में परिवर्तन का कारण
Reason / कारण
I have started my new Proprietorship firm and moving to Gujarat with my family. So I want to change my name and address.

Attachments

Proof for Change in Name/नाम में बदलाव के लिए सबूत
Gowtham Guma... [Preview](#)

Proof for Change in Address/पते में परिवर्तन के लिए सबूत
Gowtham Guma... [Preview](#)

Showing 1 to 1 of 1

V. Pursuant to the aforesaid complaint, SEBI initiated an examination into the matter, which inter alia, revealed the following facts:

- a. Gowtham had vide application dated December 04, 2019 bearing number 763072, applied on the SEBI Intermediary Portal (hereinafter referred to as ‘**SI Portal**’) to change name and address in capacity of RA. He had proposed to change the name from ‘Gowtham’ to ‘Proworth’ and his address from Coimbatore to Ahmedabad. The aforesaid application received by SEBI had also mentioned the contact email id as proworth.in@gmail.com and mobile number as 98XXXXX882.
- b. In the aforesaid application, Gowtham had stated the reason as “I have started my new proprietorship firm and moving to Gujarat with my family. So I want to change my name and address.” Gowtham had attached documents issued by Amdavad Municipal Corporation as a part of proof of change in the name and change in address. For this purpose, Gowtham was asked to first surrender the RA registration certificate held by him in his individual capacity, however, the said instructions were not abided by Gowtham even after multiple

reminders. Consequently, the said application seeking change of name and address was closed by SEBI as not required to be processed.

c. The websites of Proworth.in and Profinity.in, which were being run on the platform of Godaddy.com, are closed.

d. PayUMoney is the payment gateway for both Proworth and Profinity. PayUMoney vide email to SEBI, dated May 22, 2020 stated that the payments received through the gateway link on Proworth website were credited to the Central Bank of India bank account no. 3572335194 which belongs to Kota Sunil Shankarbhai (hereinafter referred to as '**Sunil Kota**').

VI. It is observed that the investment advisory fees of Rs.8,47,000/- collected by Gowtham through the websites Proworth.in / Profinity.in is credited to the bank account of Sunil during the period from February 06, 2020 and February 16, 2020.

VII. On December 04, 2019, Gowtham has applied for name and address change with SEBI. In this regard vide email dated December 05, 2019, sent from email address proworth.in@gmail.com to SEBI, Proworth had provided copies of rent agreement and Gumastha Certificate. The rent agreement is in the name of Gowtham S. Further, the name of establishment on Gumastha Certificate is Proworth Investment Research and name of Employer/ Proprietor is Gowtham S. Thus, Gowtham is owner of Proworth. Further, it is observed from the Name and Address change application of Gowtham (Proworth Investment Advisor) (Application No. 763072 dated December 04, 2019) that mobile number mentioned in the application is 98XXXXX882. Same contact number i.e. 98XXXXX882 is mentioned on multiple archives pages of Profinity.in. Thus, it is observed that owner of website Profinity is also Gowtham.

VIII. On the multiple archives pages of its website, Profinity is mentioned as 'Best Investment Advisor in India'. However, Proworth and Profinity are not registered with SEBI in any capacity and they are both being managed by Gowtham who is

registered with SEBI as an RA but not as an Investment Advisor. Thus, it is observed that Gowtham is operating as Unregistered Investment Advisor.

IX. In this regard Gowtham vide his letter dated October 17, 2022 addressed to SEBI, had submitted as under-

Excerpts from Submissions of Gowtham, vide his letter dated October 17, 2022

X. The Noticee had hired Gowtham to work as Research Analyst in Ahmedabad location. Joining date of Gowtham was November 01, 2019 and Remuneration was fixed at Rs.50,000/-. Gowtham has submitted copies of email communications between him and equitics.in@gmail.com. From the email communications, it is observed that Gowtham received an invitation for job opening in Ahmedabad in Equitics Global Research in equity research domain and Gowtham has confirmed that he will reach Ahmedabad on October 07, 2019. Address of location for interview submitted by Gowtham in his letter is same as address of Eqwires i.e. A 804, Dev Aurum Commercial, Near Shell Petrol pump, Prahlad nagar road, Ahmedabad, Gujarat, 380015. Further, vide email dated February 20, 2023, Research Analyst and Partner of Eqwires viz. Ms. Bansri Thakkar, who is also wife of Noticee, has confirmed that she had worked with Equitics Global Research for the period July 2018 to June 2019.

XI. Gowtham further submitted in the letter that due to poor health conditions he had returned to his native place i.e., Coimbatore in November 2019. During the stay of Gowtham in Ahmedabad, Noticee made him sign certain documents for opening a company and other related documents.

XII. On December 04, 2019, Noticee obtained OTP from Gowtham, through Whatsapp Chat, for changing address, name and mobile number on SI Portal in respect of Registration INH200007308 on the pretext that clients would not bother Gowtham. Subsequently, Gowtham refused to work with Noticee and told him to not to use his Certificate for Research Analyst.

XIII. In May, 2020, Gowtham received a complaint against him and Noticee helped him resolve it. During the processing of complaint, Gowtham came to know about usage of bank account of one Mr. Sunil Kota.

XIV. In support of submissions of Gowtham, he submitted copies of his Whatsapp chats with Noticee. It is observed that chat is between Gowtham Subramaniam and mobile number 96XXXXX336. It is observed from the statement recording of Noticee in WRO dated June 01, 2022, that Noticee admittedly, owns mobile number 96XXXXX336. Period of chat between Noticee and Gowtham is for the period from October 27, 2019 to October 16, 2020. Further, it is observed from the Whatsapp Chat between Noticee and Gowtham (hereinafter referred to as '**Chat**') that Noticee had hired Gowtham and was using his RA Registration. Actual occurrence of some key events (Bank transactions, email communications etc.), which were discussed in chat, were verified from the available evidences/records (Bank Account statements, email communications etc.). From the verification, it is observed that these events have taken place and therefore, confirm the veracity of chat submitted by Gowtham. Details of these, key events are discussed in chronological order, are as under-

Key events mentioned in the Chat between Gowtham and Noticee

XV. On December 03, 2019, Gowtham shared his SBI bank Account (A/c No. 881030226821) details with the Noticee and subsequently, the Noticee asked Gowtham to confirm whether he had received Rs.50,000/-, (in his bank account) to which Gowtham responded positively. Further, it is observed from statement of aforesaid bank account that on December 03, 2019, an amount of Rs.50,000/- has been cash deposited in three transactions.

XVI. On December 04, 2019, Gowtham allowed the Noticee, by sharing OTP with him, to Login into his account of SI Portal of SEBI and apply for change in address of RA Registration. It is observed from records available with SEBI that vide

application Number 763072, Gowtham has applied for Change in Name and Address on December 04, 2019.

XVII. On November 16, 2019, Noticee reminded Gowtham 'You have already signed the MOU based on that we have initiated all the procedures and did the investment for this association', which supports the submission of Gowtham in respect of MOU.

XVIII. Further, on December 04, 2019, Noticee instructed Gowtham through chat to forward email received after 'address change request submission' and all future emails from SEBI to proworth.in@gmail.com.

XIX. Vide email dated February 15, 2023, Gowtham has submitted unsigned copy of MOU dated October 11, 2019. As per MOU, if second party i.e. Gowtham, wants to break the MOU before 3 years then second party has to give advance notice before 3 months and second party has to pay Rs.1,50,000/- (equals to 3 months' salary).

XX. On January 03, 2020, Noticee had informed Gowtham 'if you want to quit, you can give $50,000 + 1,50,000 = 2,00,000$ and quit.' Aforesaid statement is in sync with MOU condition and thus supports submissions of Gowtham in respect of MOU.

XXI. It is observed from the Chat that on May 19, 2020, Noticee had tried to contact Gowtham from another mobile number i.e. 96XXXXXX397. As per recorded statement of Ms. Bansari (Wife of Noticee, Partner and Research Analyst in Eqwires) dated June 01, 2022, mobile number 96XXXXXX397 is owned by Ms. Bansari.

XXII. On May 19, 2020, Noticee and Gowtham discussed about resolving complaint filed by the complainant, dated May 14, 2020. Noticee has offered to transfer Rs.1,30,000/- in the bank account of Gowtham to be transferred to the

complainant to resolve the complaint. Further, on May 20, 2020, Noticee had sent a draft email to Gowtham through chat and asked Gowtham to send that email to the Complainant. As per the content of draft email, the Complainant was offered refund of Rs.1,29,000/- to compensate for advisory fees paid as well as losses incurred by the complainant. On May 21, 2020, Gowtham shared Bank A/c details of his brother's bank account (ICICI Bank A/c No. 607201514010, A/c Holder Name Murugappan AR). Same day, Noticee informed that an amount of Rs.65,000/- (Amount half of the total compensation to be offered to Complainant) has been deposited in the bank account provided by Gowtham. Cash deposit of Rs.65,000/- is confirmed from the Bank account statement of aforesaid bank account. Subsequently, Gowtham confirmed that he has sent above mentioned email to the complainant.

XXIII. On May 22, 2020, Noticee had informed Gowtham that Bank account of Sunil Kota was being used through PayUMoney Gateway to receive payments from clients, which was confirmed by PayUmoney.com vide its email dated May 22, 2020.

XXIV. Further, on May 24, 2020, Noticee had sent a draft email to Gowtham through Chat and asked Gowtham to send that email to the complainant, which was sent by Gowtham.

XXV. On May 27, 2020, Noticee instructed Gowtham to transfer Rs.65,000/- into the bank a/c of Sunil Kota. Noticee also shared details of bank A/c of Sunil Kota. On May 29, 2020, Gowtham had confirmed that he had transferred the money. In this regard it is observed from the bank account statement of Sunil Kota that in two transactions of Rs. 32,500/- each, total amount of Rs.65,000/- was cash deposited in his bank account.

XXVI. On May 29, 2020, Noticee had sent a draft email to Gowtham through Chat and asked Gowtham to send that email to the complainant which was sent by Gowtham.

XXVII. Thus, it is observed from the copies of the chat, submissions of Gowtham and other records available that –

- i. Noticee had control over website Proworth.in wherein he is using RA Registration of Gowtham to lure the clients.
- ii. Noticee had acquired login details of SI portal from Gowtham including OTP and applied for (a) change in name to Proworth and (b) change in address to and Ahmedabad based location using rent agreement and Gumastha Certificate of Gowtham.
- iii. On December 04, 2019, Noticee had instructed Gowtham to forward all the emails in future to email address proworth.in@gmail.com, which shows that Noticee had control over the email account proworth.in@gmail.com.

XXVIII. Further, it is observed from the Chat that Noticee has shared bank a/c details of Sunil Kota with Gowtham and instructed Gowtham to cash deposit an amount of Rs.65,000/- into it. Bank account of Sunil Kota has also been used to make payment to the Complainant. Further, fees received from PayUmoney is also being deposited in the same bank account of Sunil. In view of the same, it is observed that Noticee has control on the bank account of Sunil Kota maintained with Central Bank of India for his benefits including collection of money from clients through PayUmoney payment gateway.

XXIX. Therefore, it is observed from the available records that Noticee was running the scheme of Unregistered Investment Advisory activity (hereinafter referred to as '**UIA activities**') which was being run with support of his accomplice's viz. Gowtham and Sunil and same is in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations.

XXX. The modus operandi adopted by Noticee, discussed hereinabove, shows that:

- a) Noticee, working as compliance officer of Eqwires Research Analyst, recruited one SEBI registered Research Analyst (Gowtham), attempted to change name

in said SEBI registration to Proworth and address to Ahmedabad based location.

- b) Noticee created websites Proworth.in and later Profinity.in wherein RA Registration No. of Gowtham was used.*
- c) These websites were used for UIA activities and bank account of third person i.e. Sunil Kota was used for fees collection and other monetary purposes.*
- d) Noticee was controlling entire scheme of UIA activities being run in the name of Proworth / Profinity.*

XXXI. Therefore, as observed in the paragraphs above, Noticee had knowingly acted in a deceitful manner, by blatantly misusing RA registration of Gowtham to give impression of legitimate business to prospective clients of Proworth. Further, it is observed from available records that an amount of Rs.8.47 Lakh was collected as fees in 24 transactions in the bank account of Sunil Kota maintained with Central Bank of India. Thus, it is observed that Noticee had collected fees from multiple clients selling them investment advice, which had nothing to do with SEBI Registered RA viz. Gowtham.

XXXII. The abovementioned activities are the devices adopted by Noticee to defraud its clients in connection with their dealings in securities. Noticee has duped his clients who were subscribing to the services of Proworth believing that advice or tips they were receiving were from SEBI Registered Investment Advisor which was false. There is nothing on record to show that advices given by Proworth to its clients were actually generated by SEBI registered intermediary. Hence, Noticee is running a scheme of UIA in deceitful manner and defrauding its clients, with an intention to generate income through advisory fees by employing the above said devices, without keeping in mind the requirements of the clients and keeping its own interest ahead of its client's interest. The Noticee has knowingly misrepresented the truth or concealed the truth from its clients that he is running his activities without obtaining registration for the same from SEBI.

XXXIII. Thus, the activities of Noticee are fraudulent and are covered under the definition of 'fraud' under Regulation 2(1)(c)(1) and 2(1)(b)(ii) of the PFUTP

Regulations. Therefore, it is alleged that, Noticee, through its fraudulent act/ scheme as discussed above, has, violated the provisions of Section 12(1) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c), (d) and 4(1) of the PFUTP Regulations, 2003.

XXXIV. *Further, during the statement recording on June 01, 2022, Noticee submitted under oath that he does not know Gowtham nor he had entered into any MOU with any such person. However, the said statement of the Noticee is in contradiction and the same can be observed from the Chat that he had with Gowtham during the period October 27, 2019 to October 16, 2020 i.e. for more than 11 months. Further, on November 16, 2019, Noticee had discussed with Gowtham about MOU. In view of the same, it is observed that Noticee knew Gowtham as well as he had entered into MOU with him. Therefore, it was alleged that Noticee had submitted false information to SEBI which is in violation of Section 15A(a) of SEBI Act, 1992.*

4. The aforesaid SCN was served to the Noticee through Speed Post Acknowledgment Due (SPAD) and was accordingly delivered. The Noticee vide email dated January 31, 2024 confirmed receiving the hard copy of the SCN and requested further time to submit reply. The Noticee vide the said email also apprised his interest in pursuing the settlement option in the instant case. Thereafter, the Noticee was provided additional 10 days' time to submit their response. The Noticee submitted his reply dated February 14, 2024. Therein the Noticee mentioned the following:

- a) The Noticee was hired by Mr. Gowtham S, a SEBI registered Research Analyst having registration number: NH200007308, as a Business Development executive, to develop and expand the business operations of Mr. Gowtham.*
- b) The firm Proworth Investment Research and the websites: proworth.in and profinity.in were float under the name and registration number of Mr. Gowtham only and the Noticee was not involved in any operational activity such as engaging in any research activity, providing research-based recommendations or publishing any kind of research report. The Noticee was only generating business for Mr. Gowtham.*

- c) *The Noticee has never collected any fees in his account The Noticee has just solely assisted Mr. Gowtham in scaling his operations and all the fees has been collected in the Bank Accounts as provided by Mr. Gowtham.*
 - d) *Since the Noticee was based of Ahmedabad, Gujarat, and Mr. Gowtham was also comfortable in shifting to Ahmedabad, hence, he had asked Mr. Gowtham to shift his address to Ahmedabad and update the same to the SEBI, as the operations were running from Ahmedabad office.*
 - e) *Mr. Gowtham's response is deemed a deliberate attempt to shift blame entirely onto the Noticee. As it is a well-planned afterthought reply by him, whereas the entire activity has been done under his supervision and with his consent. All the requisite documents viz. Bank Account opening form, office address proof, and other documentations are in the name of Mr. Gowtham. Mr. Gowtham has just shared an excerpt of the entire Whatsapp chats and it does not include the conversations held telephonically and in person.*
 - f) *The Noticee referred to the order of Hon'ble Securities Appellate Tribunal (SAT) dated January 04, 2022 in the matter of Ms. Suhanika Chourey wherein the findings of PFUTP violations were set aside as there was no evidence brought out on record.*
 - g) *The Noticee had helped Mr. Gowtham in his business activities in a good faith without any malintention. Further, no fees from any of the investors has been credited in the bank account of the Noticee, hence holding the Noticee liable for the unregistered activities and collecting fees from the investors by defrauding them, is completely irrational.*
 - h) *The Noticee further submitted that SEBI has already passed an Order in the instant case Vide Order No.: WTM/SM/SRO/SRO/26975/2023-24 dated May 31, 2023 and has directed Mr. Gowtham to refund the amount of Rs.8,47,000/- to the investors. Hence, imposing the same directions against the Noticee will be double jeopardy and will be against the law to recover the same amount from two different persons.*
5. Thereafter an opportunity of personal hearing was provided to the Noticee vide Hearing Notice dated March 07, 2024 ('HN'). The HN was served at the email ID of the Noticee and the same was acknowledged by the Noticee vide return email dated

March 12, 2024. The personal hearing was scheduled on March 18, 2024. On the said date, the Authorized Representative ('AR') of the Noticee appeared before the undersigned and reiterated the submissions made vide aforementioned reply dated February 14, 2024.

6. On April 02, 2024, the Noticee filed settlement application under SEBI (Settlement Proceedings) Regulations, 2018 to settle the charges mentioned in the SCN. Accordingly, as per Regulation 8(1) of the said regulation passing of final order was kept in abeyance until the disposal of said settlement application. However, the said settlement application of the Noticee was rejected and the present proceedings were resumed.
7. In view of the above, I note that the SCN and HN were duly served to the Noticee and sufficient time was provided to respond to the SCN. Thereafter, an opportunity of personal hearing was given to the Noticee, which was duly availed. Hence, the principles of natural justice were complied with respect to the Noticee and I shall now proceed to deal with the key issues involved in the instant matter.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have considered the material available on record including complaint, on record and the following issue requires consideration:
 - ***Whether the acts of the Noticee as imputed in the SCN, have resulted in the violation of the provisions of SEBI Act, 1992 read with IA Regulations, 2013 and PFUTP Regulations, 2003, while providing the services related to Investment Advisory without having proper registration?***
9. Before proceeding further in the matter, it is pertinent to refer to the relevant provisions of the SEBI Act, IA Regulations and the PFUTP Regulations, alleged to

have been violated by the Noticee, as per the SCN. The relevant provisions of law are reproduced herein below:

SEBI Act

Section 12 (1) - Registration of stock brokers, sub-brokers, share transfer agents, etc.

"No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:"

IA Regulations

Regulation 2(1)(g) – Definition of Consideration

"consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

Regulation 2(1)(l) – Definition of Investment Advice

"investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through Provided that investment advice given through any other means of communication for the benefit of the client and shall include financial planning: Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;"

Regulation 2(1)(m) – Definition of Investment Adviser

"investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of

persons and includes any person who holds out himself as an investment adviser, by whatever name called;”

Regulation 3(1) – Requirement of Registration from SEBI to act as Investment Adviser

“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:”

PFUTP Regulations, 2003

Section 2 – Definitions

(1) In these regulations, unless the context otherwise requires,—

...

(b) “dealing in securities” includes:

...

(ii) such acts which may be knowingly designed to influence the decision of investors in securities;

...

(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

Section 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 there under;

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

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

Section 4- Prohibition of manipulative, fraudulent and unfair trade practices

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

10. I shall now proceed to examine the issue on merits.

11. From the cached webpages of Proworth/Profinity, it was observed that following was mentioned:

*"We are a **SEBI Registered Research Analyst** who strongly believes in building a partnership with our clients. We are the business magnet for the traders and investors **who deal in the stock market and provide best stock trading investment advice.**"*

Genuine intraday stock tips provider, 100% accurate intraday tips free, Best F&O trading tips in India."

Also from the complaint received by SEBI against Gowtham, I note from the consent letter submitted by the complainant, which stated that, *In course of availing the services, I want to avail their add on facility to trade on my behalf whenever I am not available. So, I want to nominate and authorize Proworth Investment Research or its Relationship Manager to trade in my account with my login details provided below.* The complainant also mentioned that the company has changed its name from PROWORTH INVESTMENT RESEARCH to PROFINITY INVESTMENT SOLUTIONS.

12. In this regard, at the outset, I want to refer to SEBI order no. WTM/SM/SRO/SRO/26975/2023-24 dated May 31, 2023 (**'WTM Order'**) wherein

the role of Mr. Gowtham (SEBI registered Research Analyst) and Mr. Kota Sunil Shankarbhai (whose bank account was used to receive fees from clients) was examined for the allegations of carrying out unregistered investment advisory activities in the name of Proworth/Profinity. As per the said order, it was discovered during the proceedings that one Mr. Priyank (Noticee) was running the affairs of Proworth/Profinity and was responsible for running the unregistered investment advisory activities and also misused the RA number of Mr. Gowtham. The above conclusion was arrived upon examining the whatsapp conversation between Mr. Gowtham and Mr. Priyank (Noticee). The relevant portion of the said order is reproduced below:

“23. ...Priyank was the only person who was actively involved in resolving the complaint of the complainant and he was the one who was preparing draft replies at every stage to respond to the complainant and to SEBI, communicating with the complainant over phone and initiating refunds to the complainant from Sunil’s bank account, etc. and Gowtham was apparently unaware of all the developments and activities of Priyank. I also note that the complainant vide email dated May 18, 2020 informed SEBI that he received a call from a person Priyank from mobile number 9601XXXX37 and it is further gathered from the aforementioned WhatsApp chats that the same number has been owned by Priyank. It is further observed from the WhatsApp chats that it was Priyank who had raised a request for change of name, address and contact details in the Gowtham’s RA registration on the SEBI SI portal by taking OTP from Gowtham.”

”24. From the aforesaid discussions, it is prima facie established that Priyank was the master mind and Kingpin who was involved in the complete affairs of Proworth/Profinity starting from using Gowtham’s RA registration number on Proworth website, thereby misrepresenting the same as an registered RA, registering Proworth in name of Gowtham, selling investment services to investors through Proworth / Profinity and collecting money from such investors without taking required IA registration from SEBI. I also note that on various occasions, Gowtham had asked Priyank not to use his RA registration number for collecting money from investors. However, instead of reporting the above acts of Priyank to the appropriate authorities viz. Police, SEBI, Gowtham preferred making request to Priyank asking

him to stop using his registration number granted to him by SEBI in the capacity of a Research Analyst. It is not only desirable but expected and upon the Gowtham to have reported the facts to SEBI immediately upon sensing the suspicious acts of Priyank so as to come out clean. I can't close my eyes to the same that till the time of hearing, no such facts have been disclosed in details and brought to the notice of SEBI. Such an act should have saved various investors from being duped by Priyank through Proworth / Profinity. At the same time, considering the facts and circumstances of the case, I have to acknowledge the miniscule role played by Gowtham, who somehow in the process of his desire to work as a RA with a firm in Ahmedabad ended up giving the particulars of his RA registration to Priyank and unintentionally became part of this fraudulent scheme by entering into an MoU with Priyank and allowing his RA number to be misused by Priyank for rendering unregistered investment advisory services."

13. In the WTM order it was established that both Proworth and Profinity are same entity and the name of Proworth was only changed to Profinity. I also note from the above, that the person, Mr. Priyank, who is Noticee in the instant proceedings, was held to be the mastermind in running the affairs of Proworth/Profinity and ultimately was responsible for carrying out unregistered investment advisory activities by misusing the SEBI registration of Mr. Gowtham. Since the Noticee was not party to the said proceedings before the Hon'ble Whole Time Member, no action was taken against the Noticee in the aforesaid WTM order.
14. In the instant matter, I note that the whatsapp chats submitted by Mr. Gowtham were relied upon and corroborated with the events those were discussed in those chats. Upon perusal of the screenshots of the said Whatsapp chats, shared by Mr. Gowtham, I note that Mr. Gowtham was receiving texts/instructions from mobile number 9601XXXX36 which belongs to the Noticee. The Noticee in his statement recording at the western regional office of SEBI on June 01, 2022 has admitted that the said mobile number belongs to him. In his reply of the SCN as well the Noticee has not denied the said fact. With regard to the whatsapp chats, the Noticee has only contended that Mr. Gowtham has just shared an excerpt of the entire whatsapp

chats and it doesn't include the conversation held telephonically and in person. However, the Noticee did not provide further details regarding the same.

15. Further, as per the SCN, the Noticee used one more mobile number to contact Mr. Gowtham i.e. 9601xxxx97 as can be seen from the chat of May 19, 2020. The said mobile number was discovered to be Noticee's wife as per the statement submitted by Ms. Bansari (Noticee's wife) on June 01, 2022. The Noticee in his reply has also contended that the whatsapp excerpts provided by Mr. Gowtham are *unverified* as no tangible evidence is provided by Mr. Gowtham. For the said contention, I note from the SCN that the events mentioned in the said whatsapp chats were corroborated with the other documents and thereafter the chats were relied upon.

16. The following table shows the corresponding actions of the Noticee and Mr. Gowtham which were in line with the conversation taking place between them over whatsapp.

Date	Whatsapp Conversation	Corresponding corroborating event
03.12.2019	Gowtham shared his SBI bank Account (A/c No. 881030226821) details with the Noticee and subsequently, the Noticee asked Gowtham to confirm whether he had received Rs. 50,000/-, (in his bank account) to which Gowtham responded positively.	As per SBI bank Account (A/c No. 881030226821) statement of Mr. Gowtham, on December 03, 2019, an amount of Rs. 50,000/- had been cash deposited in three transactions.
04.12.2019	Gowtham shared OTP with the Noticee to allow him to Login into his account of SI Portal of SEBI and apply for change in address of RA Registration.	From records available with SEBI, it was observed that vide application Number 763072, Gowtham has applied for Change in Name and Address on December 04, 2019.
16.11.2019	Noticee wrote 'You have already signed the MOU based on that we have initiated all the procedures and did the investment for this association' 'We gave 50k instead of 35k and that too from home which will overcome your expenses to zero.'	Mr. Gowtham also submitted that he entered in MoU with the Noticee wherein it was decided that Mr. Gowtham will get Rs.50,000/- in remuneration. Mr. Gowtham also submitted that he returned to Coimbatore (hometown) from Ahmedabad after two days due to health issues.

03.01.2020	The Noticee had informed Gowtham ' <i>if you want to quit, you can give 50,000+1,50,000 = 2,00,000 and quit.</i> '	As per the unsigned copy of MoU submitted by Mr. Gowtham vide email dated February 15, 2023, if second party i.e. Gowtham, wants to break the MOU before 3 years then second party has to give advance notice before 3 months and second party has to pay Rs. 1,50,000/- (equals to 3 months' salary).
22.05.2020	Noticee informed Gowtham that Bank Account of Mr. Sunil was being used through PayUMoney gateway to receive payments from clients.	PayUMoney vide email dated May 22, 2020 provided details of bank account linked to its payment gateway of Proworth/Profinity. The details provided are following: Name on PAN Card: Kota Sunil Shankarbhai Bank Account No.: 3572335194 PAN: BJAPK7820G
27.05.2020	Noticee instructed to transfer Rs. 65,000/- into the bank a/c of Mr. Sunil Kota. Noticee shared the bank a/c details of Sunil Kota. On 29.05.2020, Mr. Gowtham confirmed the transfer of money.	Bank account statement of Mr. Sunil Kota shows that on 29.05.2020 vide two cash deposits of Rs.32,500/-, an amount of Rs. 65,000/- was deposited.
29.05.2020	Noticee sent a draft email to Mr. Gowtham and asked him to send the email to the complainant.	Vide email dated 29.05.2020 Mr. Gowtham sent the email to the complainant having the exact text as provided by the Noticee over chat.

17. The aforesaid confirm the veracity of whatsapp chats between the Noticee and Mr. Gowtham and it further confirms that the Noticee was in control of the activities of Proworth/Profinity which was receiving fees from clients and providing unregistered investment advisory services. Further, the whatsapp chats also verifies that the Noticee was misusing the SEBI registration number of Mr. Gowtham on the website of Proworth. I also note that the Noticee was asking Mr. Gowtham to refund the amount (Rs. 2.5 Lacs) to complainant which when refused by Mr. Gowtham was done through the bank account of Mr. Sunil Kota. In two tranches the amount was paid to the complainant on 27.05.2020 (Rs. 1.5 Lacs) and 29.05.2020 (Rs. 1 lac). The same was informed by the Noticee to Mr. Gowtham on the respective dates

over chat. This further strengthens the fact that Noticee was managing/controlling the Central Bank of India account of Mr. Sunil Kota (A/c No. 3572335194) which was used to receive fees from the clients of Proworth/Profinity.

18. I therefore refer to Regulation 2(1)(m) of the IA Regulations which defines the term '*investment adviser*'. As per Regulation 2(1)(m) of the IA Regulations, investment adviser means any person, who is engaged in the business of providing investment advice to clients or other person or group of persons for consideration. Further, it includes any person who holds himself out as an '*investment adviser*'. Regulation 2(1)(m) of the IA Regulations refer to terms '*consideration*' and '*Investment advice*'. As per Regulation 2(1)(g) of the IA Regulations, consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice. As per Regulation 2(1)(l) of the IA Regulations, '*investment advice*' means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning. However, advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, shall not be an investment advice within the meaning of Regulation 2(1)(l) of the IA Regulations.

19. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, registration of the investment advisers is mandatory. It provides that, "*On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations*".

20. It is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. In this regard, Section 12(1) of SEBI Act reads as under:

“No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”

21. Therefore, I note that in order to obtain a certificate of registration for acting as an investment adviser, an entity is required to satisfy, inter alia, the following requirements, as provided under the IA Regulations:

- i. An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite nonrefundable application fee;
- ii. The applicant, in case of an individual investment adviser or its principal officer shall be appropriately qualified and certified as under:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;
 - b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

- c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
- iii. Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

22. Further, the IA Regulations requires minimum professional qualification and prescribes mandatory net-worth. Further, it *inter-alia* provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

23. In the present matter, it was observed that the Proworth/Profinity was not registered with SEBI in the capacity of Investment Adviser while acting as investment adviser. Further, the bank account of Mr. Sunil Kota in Central Bank of India, which was linked to the PayUmoney gateway on the website of Proworth/Profinity and where the complainant was making payment. Hence, I note from the SCN that the amounts received by Proworth/Profinity to the tune of Rs.8.47 Lakh in the bank account of Central Bank of India (bank account no. 357XXXX194) was construed to be in the nature of Investment Advisory fees. I also note from SCN that during investigation when details regarding the said credited amount was sought from the Noticee, no response was offered. The WTM Order also states that Mr. Sunil Kota did not provide any explanation for the credit entries made in his bank account which were construed as unregistered investment advisory fees. Accordingly, it was held in the

WTM order that Mr. Sunil Kota allowed his bank account to be used for credit and refund of monies earned as unregistered investment advisory activities.

24. In view of the above, I find that aforesaid total credit of Rs.8.47 Lakh in the bank accounts of Central Bank of India of Mr. Sunil Kota was received by him as fee for investment advisory services. The said bank account was used by the Noticee, who was controlling Proworth/Profinity, to receive fees from clients while acting as an investment adviser without obtaining certificate of registration from SEBI. The aforesaid becomes evident upon holistic evaluation of material including the whatsapp chats between Noticee and Mr. Gowtham. In view of the above, I find that Proworth/Profinity by acting as an investment adviser within the meaning of the IA Regulations, without obtaining requisite certificate of registration from SEBI has acted in total disregard to the requirements of law. Therefore, I conclude that Noticee through Proworth/Profinity was running the scheme of UIA activities, which was being run with support of his accomplice's viz. Gowtham and Sunil and has violated Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations.
25. With respect to the other allegation of fraud upon the investors and potential investors by misrepresenting itself as a SEBI registered IA, it was observed during investigation that Noticee was using the SEBI Registration No. INH200007308 and portraying Proworth/Profinity as a SEBI registered intermediary. The said registration number belonged to one Mr. Gowtham, a SEBI registered Research Analyst. Mr. Gowtham, had informed SEBI that the Noticee was using his SEBI registration number illegally without his knowledge.
26. In view of the observations above, I note that the Noticee created a false picture by portraying Proworth/Profinity as a SEBI registered intermediary to induce the clients into availing the services it offered. The act of the Noticee to actively conceal the material information is a non-genuine and a deceptive act and has been made with an intent to influence the clients to avail of his advisory services and to deal in securities. In my view, to misrepresent oneself as a SEBI registered Investment

Advisor without actually obtaining one amounts to misrepresentation and misleading the investors. Such reckless conduct which was intended to knowingly misrepresent the truth or concealment of material fact and also a suggestion as to a fact which is not true by one who does not believe it to be true constitutes 'fraud' under the PFUTP Regulations.

27. In this regard, it is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, which are as under-

*"The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".....
.....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."*

28. The observation recorded by the Hon'ble Supreme Court of India in the matter of **Kanaiyalal Baldevbhai Patel** (Supra) is also worth quoting: "...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did..."

29. Therefore, I conclude that the acts of the Noticee of resorting to misrepresentation and spreading falsehood regarding Proworth/Profinity being a SEBI registered IA are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing the services of the Noticee controlled Proworth/Profinity.
30. I further note that Regulation 3 of PFUTP regulations prohibits certain dealings in securities wherein manipulative or deceptive methods are used, or any entity employs any device or scheme or artifice to defraud in connection with dealing in or issuing securities and also engage in any act, practice, course of business which operate as fraud or deceit upon any person in connection any dealing in or issue of securities.
31. Thus, I note that the Noticee by presenting Proworth/Profinity as a SEBI registered IA with respect to its investment advisory related plans, without obtaining the necessary certificate of registration as an investment adviser and knowingly publishing false and misleading information, Noticee had used non-genuine, deceptive means like engaging in business of UIA by misusing the Research Analyst SEBI registration number of Mr. Gowtham, created thereby defrauded investors and potential investors, which, I find is in violation of the provisions of Regulation 3(a), (b), (c) & (d) and 4(1), 4 (2)(k) and 4 (2)(s) of the PFUTP Regulations.
32. Further, during the statement recording on June 01, 2022, I note that the Noticee submitted under oath that he do not know Gowtham nor he had entered into any MoU with any such person. However, the said statement of the Noticee is in contradiction and the same can be observed from the Chat that he had with Gowtham during the period October 27, 2019 to October 16, 2020 i.e. for more than 11 months. Further, on November 16, 2019, Noticee had discussed with Gowtham about the said MoU over WhatsApp. In the instant proceedings, in his reply to the SCN also the Noticee has stated that, *“he was hired by Mr. Gowtham S, a SEBI registered Research Analyst having Registration Number: INH200007308...to develop and expand the business operations of Mr. Gowtham.”* This demonstrates

how the Noticee has been conveniently changing his statements as per the situation and throwing around web of lies in order to safeguard his own interest while throwing Mr. Gowtham under the bus. This shows malice on behalf of the Noticee and a deliberate attempt to misguide the investigation.

33. In view of the observations made in this order, I note that Noticee knew Gowtham and he had entered into MoU with him. Therefore, I note that Noticee had submitted false information to SEBI under oath, which is in violation of Section 15A(a) of SEBI Act, 1992.

34. I note that the SCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed upon him under Sections 15A(a), 15EB and 15HA of SEBI Act for the violations alleged in the SCN. Sections 15A(a), 15EB and 15HA of the SEBI Act are reproduced hereunder: -

Section 15A. Penalty for failure to furnish information, return, etc.

“If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;”

Section 15EB - Penalty for default in case of investment adviser and research analyst

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

Section 15HA - Penalty for fraudulent and unfair trade practices

“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”.

35. From the above, I note that the Noticee’s activities show that he was acting as an investment adviser through Proworth/Profinity without holding the requisite certificate of registration as investment adviser from SEBI. Therefore, Noticee knowingly misrepresented Proworth/Profinity as a SEBI registered entity to investors /clients and collected money from the investors. Such misleading representations are deceptive and fraudulent in nature and hence in violation of Regulation 3(a), (b), (c) & (d) and 4(1) of the PFUTP Regulations. Further, the Noticee continuously received investment advisory fees in the bank account of Mr. Sunil Kota, which was linked to the PayUmoney gateway provided on the website of Proworth/Profinity, in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act. Consequently, I find that the Noticee is liable to be imposed with penalty under both Sections 15EB and 15HA along with Section 15A(a) of the SEBI Act.

36. I note that Section 15J of the SEBI Act provide for factors which are required to be considered for adjudging quantum of penalty. Section 15J of the SEBI Act reads as follows: -

“Factors to be taken into account while adjudging quantum of penalty.

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

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

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

(c) the repetitive nature of the default.”

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section

15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

37. As observed above, I note that the bank account linked to the PayUMoney gateway of Mr. Sunil Kota which was managed/controlled by the Noticee received total credit of amount to the tune of Rs.8,47,000/- (Rupees Eight Lakhs and Forty Seven thousand) in the said bank account of Central Bank of India as advisory fees. These being the proceeds of an illegal activity, are liable to be refunded to the respective clients. In this connection, I note that vide the WTM Order, Mr. Kota Sunil Shankarbhai was directed to refund the said amount. Accordingly, the following is hereby directed with respect to the Noticee.

DIRECTIONS:

38. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) and 19 of SEBI Act and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue the following directions:

- a. The Noticee shall be jointly and severally liable to refund the money along with Mr. Kota Sunil Shankarbhai in terms of paragraph 29 (i) of the WTM Order dated May 31, 2023 passed in the matter of unregistered Investment Advisory by Gowtham S and Kota Sunil Shankarbhai.
- b. Further, the directions contained therein under paragraph 29 (ii) to (vi) of the aforesaid WTM Order dated May 31, 2023 shall also be complied by the Noticee. The date of the instant order shall be considered for calculating the timelines.
- c. The Noticee is debarred from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **02 (two) years** from the date of this order or till the date of filing of report, as directed in para 29(iv) of the WTM Order, whichever is later;
- d. The Noticee is restrained from associating with any company whose securities are listed on a recognized stock exchange and any company

which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of **02 (two) years** from the date of this Order or till the expiry of 02 (two) years from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in paragraph 29 (i) and 29 (v) of WTM Order, whichever is later;

- e. The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 38(c) and (d) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;
- f. Upon submission of report on completion of refunds to complainants/ investors to SEBI and after depositing the balance money with SEBI, if any, the direction at sub-paragraph 29 (vi) of WTM Order shall cease to operate within 15 days thereafter with respect to the Noticee.
- g. The Noticee is hereby imposed with penalty of **Rs.5,00,000/-**-(Rupees Five Lakhs Only) under Section 15A(a) of the SEBI Act, **Rs.5,00,000/-**-(Rupees Five Lakhs Only) under Section 15HA of the SEBI Act and **Rs.1,00,000/-**-(Rupees One Lakh Only) under Section 15EB of the SEBI Act;
- h. The Noticee shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date 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 EDs/CGMs → PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

39. For any non-compliance of this order, the Noticee shall be subject to strict action under the applicable provisions of the law, including prosecution.

40. The direction for refund as given in Para 38(a) above does not preclude the complainants/investors to pursue the other legal remedies available to them under

any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

41. This order shall come into force with immediate effect.

42. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, the relevant banks, Depositories, Registrar and Transfer Agents of Mutual Funds and BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

43. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

Date: September 20, 2024

Place: Mumbai

G RAMAR

QUASI JUDICIAL AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA