BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2023-24/29951

UNDER SECTION15-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:

Capital Grow Financial Services
(Proprietor Mr. Prashant Gole)

PAN: BAAPG4714Q
SEBI Registration. No. INA000001480

In the matter of Capital Grow Financial Services

BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as 'SEBI') conducted examination into the dealing of Capital Grow Financial Services (Proprietor Mr. Prashant Gole), a SEBI registered Investment Adviser having SEBI Regd. No. INA000001480 (hereinafter also referred as 'Noticee'/ 'IA') pursuant to receipt of complaint from the client of Noticee.

2. SEBI observed that Noticee had failed to resolve investor grievances promptly and got complaint closed from the client by misleading him and making false commitments and has also failed to submit ATR in a time bound manner, SEBI also observed that Noticee had made false and misleading representation to its clients by promising assured profits and unrealistic returns despite fully knowing that all the investments in securities market are subject to market risk. Further, by not informing clients that investments in securities market is subject to market risk, Noticee had failed to act in a fiduciary capacity towards its clients.

3. The violations alleged to have been committed by the Noticee and the corresponding provisions of SEBI Act, 1992 (hereinafter also referred to as "SEBI Act"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter also referred to as “PFUTP Regulations, 2003”) and SEBI Circular are tabulated below:

Sr. No.	Alleged Violations	Regulatory Provisions
1.	Noticee has failed to resolve investor grievances promptly and got its complaint closed from the client on SCORES portal by misleading complainant and making false commitments.	SEBI Circular CIR/OIAE/2014 dated December 18, 2014 (‘SEBI Circular’ / ‘Said Circular’). Regulation 21(1) read with Regulation 28(f) of SEBI (Investment Advisers) Regulations 2013 (hereinafter also referred as ‘IA Regulations, 2013’).
2.	Noticee has made false and misleading representation to its clients by promising assured profits and unrealistic returns despite fully knowing that all the investments in securities market are subject to market risk. Further, by not informing clients that investments in securities market is subject to market risk, Noticee has failed to act in a fiduciary capacity towards its clients.	Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter also referred to as ‘PFUTP Regulations, 2003’) read with section 12A(a), (b) and (c) of SEBI Act., 1992.

4. Pursuant to Adjudication Order dated January 03, 2023 passed in the matter of Capital Grow Financial Services (Proprietor Mr. Prashant Gole), in respect of Capital Grow Financial Services (Proprietor Mr. Prashant Gole) imposing monetary penalty of Rs 1,00,000/- under Section 15C of SEBI Act, 1992 and Rs 5,00,000/- under Section 15HA of SEBI Act, 1992 for violation of aforesaid alleged provisions of SEBI Act, 1992, IA Regulations, 2013, PFUTP Regulations, 2003 and SEBI Circular, the Noticee filed appeal before the Hon’ble Securities Appellate Tribunal (‘SAT’) challenging the order passed by Adjudicating Officer imposing the aforesaid monetary penalty.

5. Hon’ble SAT, vide Order dated June 09, 2023, in appeal no. 255 of 2023, while setting aside the Adjudication Order dated January 03, 2023 remanded the case to Adjudicating Officer. The Hon’ble SAT inter-alia observed that:

“Having perused the documents and the submissions made by the parties, we are of the opinion, that adequate opportunity was not given to the appellant to defend itself. Consequently, the impugned order is violative of the principles of natural justice and cannot be sustained. The impugned order is set aside and the matter is remitted to the AO to pass a fresh order after serving of a show cause notice and after giving an opportunity of hearing. In this regard, the appellant shall appear before the AO on July 24, 2023.”

6. Thus, Hon’ble SAT, remitted and remanded the matter on the ground that adequate opportunity was not given to the Noticee to defend itself and further Hon’ble SAT directed AO to pass a fresh order after serving of a show cause notice and after giving an opportunity of hearing and in that regard, Noticee shall appear before AO on July 24, 2023.

APPOINTMENT OF ADJUDICATING OFFICER

7. Subsequent to the aforesaid Hon’ble SAT order, the undersigned was appointed as Adjudicating Officer (hereinafter also referred to as ‘AO’) under sub-section 1 of section 15-I of the SEBI Act read with section 19 of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter also referred to as ‘Adjudication Rules’) to inquire and adjudicate under sections 15C and 15HA of the SEBI Act, 1992 for the aforesaid alleged violations by the Noticee.

<u>SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND PERSONAL HEARING</u>

8. Vide letter dated June 23, 2023, copy of Show Cause Notice No. SEBI/EAD-5/AA/NS/31023/2022 dated July 29, 2022 along with Annexures ('SCN') was duly served to Noticee at its new address as indicated in SAT Order dated June 09, 2023. Further, vide the said letter dated June 23, 2023, Noticee was also informed about opportunity of hearing on July 24, 2023.

Briefly stated, the following was inter alia alleged in the SCN dated July 29, 2022 in respect of the Noticee:

"….

Complaints-
4. Mr. Piyush Rana in his first complaint: SEBIE/MP18/0004325/1 dated October 3, 2018 to SEBI inter alia has alleged as follows:
4.1 Complainant has paid Rs. 12,500/- for the advisory services of the Noticee and incurred a loss of Rs. 1,80,000/- due to the recommendations of the Noticee. Further, the complainant has also alleged that the employee of the Noticee offered assured returns to the tune of Rs. 5,000-7,000/day orally over telephone, if complainant subscribes to the premium services of the Noticee. The complainant is seeking refund of advisory fees of Rs. 12,500/- and loss amount of Rs. 1,80,000/- from the Investment Adviser.
5. Subsequently, On October 4, 2018, the aforesaid complaint was forwarded to the Noticee for resolution and submission of ATR to SEBI. It was observed from SCORES portal, that the Noticee and the complainant were in conversation among themselves on SCORES portal during the period October 5, 2018 to January 23, 2019. It was observed that no ATR was received from the Noticee even after lapse of 30 days from receipt of complaint (i.e October 04,2018).
6. Accordingly, on February 13, 2019, the Noticee was again advised to resolve the complaint and submit the ATR to SEBI at earliest. The ATR was received from the Noticee on February 13, 2019 which was forwarded to the complainant on February 14, 2019 for his comments.
7. Prima Facie it was observed that complaint was not resolved by the Noticee. Therefore, documents, viz. Invoices, Risk Profiling Form, Suitability Assessment Form, Call recordings were sought from both the Noticee and the complainant. The Noticee submitted the Know Your Customer, Invoices and Risk Profiling Form in SCORES on October 22, 2019 (Details are placed at Annexure A). The complainant has submitted the call recordings in CD and copies of whatsapp chats vide letter dated October 22, 2019. (Details are placed at Annexure B).

8. Thereafter, vide ATR dated June 8, 2020, Noticee submitted the complaint withdrawal email of the complainant and informed that the complaint was disposed of on June 19, 2020. The copy of the withdrawal mail of the complainant is enclosed at Annexure C. The complete action history sheet of the complaint is enclosed at Annexure D.

9. Mr. Piyush Rana in his second complaint: SEBIE/MP20/0001182/1 dated June 25, 2020 to SEBI inter alia had alleged as follows:
9.1 The complainant had alleged that the Noticee promised the complainant to send a cheque of Rs.1,30,000/- and a bank transfer of Rs. 50,000/- as part of resolution of his earlier complaint (SEBIE/MP18/0004325/1). The complainant informed that the Noticee had also sent the whatsapp copy of the postdated cheque (PDC) of Rs.1,30,000/- which made him believe that resolution is being provided. The condition put forward by the Noticee for resolution was that the complainant has to first withdraw his complaint in SCORES and then only bank transfer will be done. Accordingly, as per the condition of the Noticee, he had sent the complaint withdrawal mail in SCORES. However, it is alleged the Noticee did not fulfil its commitments.
10. The complaint was forwarded to the Noticee on July 3, 2020 for resolution and submission of ATR in SCORES. The Noticee vide ATR dated November 26, 2020 informed that they have refunded the entire service amount of Rs. 12,500/- to the complainant and hence the complaint was disposed of in SCORES on November 26, 2020 and the Noticee further informed that complaint was communicated to the complainant. The complete action history sheet of the complaint is enclosed at Annexure-E.
11. Mr. Piyush Rana in his third complaint: SEBIE/MP20/0002105/1 dated November 26, 2020 to SEBI inter alia has alleged as follows:
11.1 The complainant had alleged that he lost Rs. 1,80,000/- and that he had closed his first SCORES complaint based on the promises of the Noticee, that the Noticee would pay Rs.1,80,000/-. However, Noticee did not fulfill its promises.

12. The complaint was forwarded to the Noticee on January 19, 2021 for resolution and submission of ATR in SCORES. The Noticee on January 29, 2021 submitted ATR stating that it has already closed the complaint. However, it was observed that Noticee did not submit any relevant details and supporting documents. Subsequently, the Noticee was advised on January 29, 2021 to submit the complaint withdrawal intimation, if any by the complainant. However, it was observed that no response was received from the Noticee.

Promising assured high profit to the client:
13. The complainant vide his reply dated October 22, 2019 has submitted the recordings of the complainant's call with the Noticee. The relevant transcript of the call recordings with regard to assured profit claim are as under:

MP3 file no. 1.2355 in the CD submitted by the complainant:
Time Slot - 2.06-3.22 minutes
Investor: Tell me which package has been subscribed by me?
Executive: Premium Package you have taken currently….
Investor: And how much profit do you assure in premium package?
Executive: Per day assurity is 5k-10k, 5k per day and according to that, profit for a month is 1.2lacs, approximately 1 Lacs.
Investor: And which package you suggested me to subscribe?
Executive: Beta-Binary Package
Investor: Ok, what is its pricing and how much profit you will give in that services?
Executive: Sir, that package costs Rs. 85,000 and in that services you will get return of 3.8Lac i.e., 15k to 20k returns in single day.
Time Slot – 5.02 to 5.31 minutes
Executive: First time it has ever happened that the SL triggered in the call because of heavy selling in the market...and this is the first time the call has failed where I was 200% sure and I did not know how it happened because I gave you 200% assurance (Call recordings are placed at Annexure B)

14. In view of the above, it is alleged that despite having knowledge that all the investments in securities market are subject to market risk and that such returns cannot be assured, The Noticee has promised assured high returns to the client. The Noticee has made, false and misleading promises/representation to its clients.

False commitment to get the complaint closed in SCORES:

15. With regard to the first complaint bearing registration no. SEBIE/MP18/0004325/1, SEBI had received withdrawal mail of Piyush Rana on June 08, 2020, informing that "I want to say that I have obtained a potential resolution from the company and I am satisfied with the same at this moment of time, therefore I request to close my above complaint on 'SCORES' portal of SEBI". Subsequently, the matter was closed as Noticee had convinced complainant for a resolution. (Details are placed at Annexure F)

16. The complainant filed second complaint in SCORES on June 25, 2020, bearing registration no. SEBIE/MP20/0001182/1, wherein complainant, inter alia, alleged that he had withdrawn his first complaint based on the following conditions promised by the Noticee below:
a) Postdated cheque of Rs. 1,30,000/-
b) Services of beta binary package for future trading
c) Total amount of resolution were Rs.1,80,000/-
d) Immediate transfer of Rs. 50,000/- in Bank

17. However, Noticee did not fulfill its promises. Subsequently second complaint was filed by the complainant. Noticee disposed of the second complaint by refunding Rs 12500/- (advisory charges) to the complainant. Pursuant to the disposal of second complaint, a third complaint was filed by the complainant.
18. On January 13, 2021, the complainant was requested to share any written document or evidence (audio recording, demat handling, profit commitment, if any, through SCORES. Vide email dated January 13, 2021, the complainant shared the following. (Copy of the email received from the complainant is placed at Annexure G):
a) Photo of mutilated cheque that the complainant received for Rs. 1,30,000/- from the Noticee.
b) Soft copy the above cheque which was shared by the Noticee with the complainant by the Noticee.
c) Some of the call recordings.
d) Screenshots of whatsapp chat between the complainant and Noticee.
e) Mail sent by the complainant after closure of the complaint.
19. It was observed from the copy of whatsapp chat screenshots provided by the complainant, that the Noticee shared a postdated cheque of Rs. 1,30,000/- and Noticee sought confirmation from the complainant that after receiving the photo of cheque, the complainant will withdraw the complaint. Accordingly post receipt of the photo of cheque, the complainant sent a mail with regard to withdrawal of his complaint bearing registration no. SEBIE/MP18/0004325/1. However, it is alleged that Noticee did not fulfill its promises made to the complainant regarding refund of Rs. 1,80,000.

20. In view of the above, Bank statement of Noticees account with ICICI Bank having account 02410500xxxx was sought from ICICI Bank. The said statement was provided by the bank vide emails dated March 02, 2021, and September 24, 2021, for the duration of December 31, 2019 – June 22,2020. The Bank in its reply dated September 24,2021 informed that post June 22,2020 there was no transaction in the account as on September 24,2021 and hence the account status is inactive. It was observed from the bank statement that the account balance was zero as on June 22, 2020. In view of the bank statement and the copy of the cheque dated August 27, 2020, as submitted by the complainant, it appears that the Notice did not intend to keep sufficient balance in its bank account for debit of funds. Copy of the bank account statement received from ICICI Bank is placed at Annexure H.

Alleged violation

21. The status of the complaint as on September 21, 2021 is as under:

S. No. SCORES Complaint number Name of Complainant Date of receipt of

S. No .	SCORES Complaint number	Name of Complaina nt	Date of receipt of complai nt	Date of forwardi ng complai nt to Noticee	Date of Reminde rs from investor / SEBI	Date of ATR filed by the IA	Pending no. of days from the date of forwardi ng to IA
1.	SEBIE/MP20/000210 5/1	Piyush Rana	26.11.20 20	19.01.20 21	16.07.20 21	Not filed after reminder from the investor	242

22. It is alleged that with respect to the third complaint i.e. SEBIE/MP20/0002105/1, the Noticee has failed to submit any response regarding complaint withdrawal or closure mail of complainant and also failed to provide clarifications regarding the remarks made by the complainant in SCORES on July 16, 2021.

23. In view of the above, it is alleged that the said complaint has not been resolved by the Noticee and the Noticee did not comply with the provision(s) of the SEBI circular CIR/OIAE/2014 dated December 18, 2014. Further, It is alleged that Noticee has also violated Regulation 21(1) read with Regulation 28(f) of Investment Advisers Regulations 2013 which read as-
21. (1) An investment adviser shall redress client grievances promptly.
Liability for action in case of default.
28. An investment adviser who -
(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

24. The Noticee's act of misrepresentation of "assured high return in the securities market" to his clients' is found to be a fraudulent act and same is covered within the definition of 'fraud' as defined under Regulation 2(1)(c) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ("PFUTP Regulations"). Therefore, its alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992 which read as-

PFUTP Regulations 2003
2(1)(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;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

3. Prohibition of certain dealings in securities:
(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.

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].

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [any of the following]:—
(k) ["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;]
(s) [{mis-selling of securities or services relating to securities market;
Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly,
(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}];

SEBI Act, 1992

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;

25. The Noticee, by not disclosing the market risk associated with an investment in securities market to his clients', has failed to act in a fiduciary capacity towards his clients, and thereby violated the provisions of the Regulation 15(1) of the IA Regulations and Clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) of the Code of Conduct as specified in the third schedule read with Regulation 15(9) of IA Regulations. (Provided in Annexure K)

26. In view of the abovementioned, it is alleged that the Noticee has violated the provisions of the following SEBI Act 1992, IA Regulations 2013, PFUTP Regulations 2003 and SEBI Circulars. Copy of the following circulars and Regulations are enclosed as (Annexure K):
a. SEBI Circular CIR/OIAE/2014 dated December 18, 2014.
b. Regulation 21(1) read with Regulation 28(f) of IA Regulations 2013
c. Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of PFUTP Regulations 2003.
d. Regulations of section 12A(a), (b) and (c) of SEBI Act, 1992.

…."

9. On the specified date of hearing on July 24, 2023, the Noticee appeared before the undersigned through its Authorised Representative (AR) viz. CS Abhishek Mishra in person. During the hearing, Noticee relied upon and reiterated the submissions *vide* letter /email dated July 12, 2023 and inter alia sought time for making additional submissions and accordingly, time till July 30, 2023 was allowed. Noticee made its additional submissions to the SCN vide letter /email dated July 28, 2023.

10. It is noted that the submissions of the Noticee as reply to the SCN vide letter dated July 12, 2023 and July 28, 2023 are broadly similar save for different text, the same have been dealt accordingly under paragraphs dealing with respective violations as alleged and for sake of brevity, reference to text of submissions as stated by the Noticee in either of the letters. The key submissions /additional submissions made by the Noticee *vide* letters dated July 12, 2023 and July 28, 2023, as reply to the SCN, are as under:

"….

<u>Facts of the Case:</u>

i. At the outset, the Noticee would like to state that nothing contained in the said Notice should be deemed to be admitted by virtue of it not having been specifically denied herein unless the same has been expressly admitted.

ii. That the Noticee is a SEBI registered Investment Adviser since April 09, 2014 having registration number: INA000001480.

iii. That the Noticee was conducting the operations on a small scale in a completely fair and smooth manner by adhering to all the applicable compliances.

iv. That the Noticee has no past record of violations committed since the date of registration i.e. April 09, 2014; which does evident that he was working diligently and adhering to all the compliances and was not involved in any wrongful activity.

v. That the Noticee had closed down his operations after Covid19 outbreak.

vi. That with respect to alleged violation regarding the complaint of Mr. Piyush Rana, the Noticee would hereby like to submit that the complaint filed by the complainant was invalid on the grounds that the complainant was claiming amount of loss made by him for which neither the investment Adviser nor any person is liable.

vii. That it is a well-known fact that no one can be held liable for the losses as trading in the securities market is always subject to the market risk and there is no guarantee of profits/returns in the stock market. Hence, the said complaint is not valid as no one is liable for the loss held in the securities market as no one can fully predict it. Hence, the client asking us to pay for his losses and refund the amount doesn't hold good.

viii. That also, the Noticee had disclosed/informed to his clients that trading/investments are subject to the market risk, which is clearly evident from the Exhibit - A.

ix. That then too the Noticee being a prudent Investment Adviser, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him.

x. That the said complainant didn't deposit the cheque in the bank for the clearance.

xi. That it is clearly evident that the said complainant through the SEBI was pressurizing the Noticee and was demanding more and more money from the Noticee even after providing proper resolution to the complaint.

xii. Also, the complainant had subscribed the services of 'Stock Option' from the Noticee, which is evident from the Invoices enclosed in Exhibit-A, whereas on one instance the Noticee in its complaint is stating that he had received advice relating to 'Futures', which itself clarifies that the complainant had made baseless allegations upon the Noticee and hence was not ready upon the resolution as he had a greed of gaining more and more amount from the Noticee.

xiii. Also, the Noticee had refunded the entire service amount charged to the said complainant, which illustrates the intention of the Noticee in resolving the client's grievance.

xiv. *That the Noticee didn't have any such intention of not resolving the grievances of the clients as in the past as well the Noticee had resolved all the client's grievances in a timely manner and to the best of the satisfaction of his clients.*

xv. *That the Noticee as a diligent Investment Adviser understands its responsibility of providing proper resolution to the client's grievances and is also bound to resolve the grievances and hence, they had always promptly responded to all of the client's complaint on filing of the same. Further, the client's supremacy was always the Noticee's utmost priority, which he had maintained throughout in the business tenure by resolving the client's grievance to the best of their satisfaction and as a result all of his complaints stays resolved, which can be verified from the Exhibit – B. Hence, the Noticee have not violated the provisions of the SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014.*

xvi. *That further, the SEBI had also not taken into consideration the Noticee's point of view while analysing the said complaint which was without any satisfactory documentary evidence and on a basis of it SEBI had alleged such serious violations against the Noticee.*

xvii. *Also, the allegation made by the SEBI that the Noticee has not acted in fiduciary capacity with his clients by not informing that investment in securities market is subject to market risk is baseless as the Noticee has in its website, invoices, etc. has everywhere disclosed that "Investment is stock or commodity markets is subject to market risk, though best attempts are made for predicting markets, but no surety of return or accuracy of any kind is guaranteed, while the performance sheet of various products is available but should not be considered as a guarantee for future performance of the products/services. Clients are advised to consider all the advice as just a opinion and make investment decision on their own".*

xviii. *That with regard to the allegation of promising assured high profit to the clients, the Noticee would like to submit that he has have never assured any profit or guaranteed any kind of returns to any of the clients.*

xix. *The Noticee has in his 8 years of practice has provided services to numerous of the clients, none of them have ever made such an allegation.*

xx. *That if the Noticee was engaged in such unethical practices, then many of his client would have filed the complaint against him, and hence allegation made by the SEBI just on a vague complaint is baseless.*

xxi. *That the call records as mentioned in the said Notice do not belong to the Noticee nor any of its representatives and in the absence of any Forensic verification the said recordings could not be attributed to any employee of Noticee.*

xxii. *That in the call recordings as annexed in the Annexure - B of the Notice, there is a mention of office address of the Noticee in Guna, M.P., however, the Noticee has always operated from Indore only. Hence, it evidences that the said recording does not belong to the Noticee.*

xxiii. *Moreover, on a basis of a random call recording wherein a person is saying that she belongs to the Capital Grow Financial Services, it cannot be attributed that the said call is done on behalf of the Noticee.*

xxiv. *That the Noticee would like to refer herewith the Order of the SEBI in the matter of Star World Research wherein it was held that: "The material on record does not indicate that the aforesaid emails addresses belonged to the Noticee. Further, the call recordings are not supported by any further examination. Hence, I am unable to rely on them to arrive at any finding of violation with respect to the making promises of assured or unrealistic return, as alleged".*

xxv. *Also, the SEBI in its order in the matter of Bonaz Capital had held that: "I note that the welcome email of the Noticee mentioned that the Noticee do not provide any profit warranty or guarantee in any product/service offered to the customers. Further, the email reads "You understand and acknowledge that there is high degree of risk involved in trading securities". Though I find that promising assured profit in securities market is misleading the public and is to be avoided by an IA. However, in the present case, I am not in a position to give any adverse finding on this account for want of any concrete evidence on record as to whether clients were indeed induced by the same or that the clients subscribed to such services shown on the websites. After looking at the facts in the present case in its entirety, I do not find the allegation that the Noticee had violated the provisions of Regulation 3(a), (b), (c) and (d), 4() 4(2)(k) and 4(2)(s) of the PFUTP Regulations, by publishing on its website about assured profits/ unrealistic returns, to be substantiated. Accordingly, allegation of violation of Regulation 15(1) and 15(9) of the IA Regulations read with Clause 1 of the Code of Conduct specified under Third Schedule of the IA Regulations may not lie against the Noticee".*

xxvi. *Also, the Noticee would like to state the definition of "fraud" as defined in regulation 2(1)(c) of the PFUTP Regulations which provides as under:*

"(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;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it:

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
And "fraudulent" shall be construed accordingly...."

xxvii. Based upon the above definition, it can be construed that the definition of "fraud" under regulation 2 (c), is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee have committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. Hence, the serious violations of the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a) to (d) of the PFUTP Regulations shall be removed upon from the Noticee.

xxviii. That further, the Noticee would also like to place the reliance on the following decision of the SEBI: Order in the matter of Star World Research; wherein in the exact same case it was held that "With respect to the definition of "fraud" under regulation 2 (c), I am of the view that the same is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1) (c) of PFUTP Regulations. There is no proof to show that the IA has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. In view of this, the misleading representations made by the IA to its clients and the wrong categorisation of clients and selling high risk products to unsuitable clients or levying GST after cancellation of its GSTN, etc., would not bring the Noticee's acts within the prohibition under the PFUTP Regulations. These are violations of the prescriptions laid down in various provisions of the IA Regulations and the Code of Conduct. I am, therefore, inclined to drop the allegation of fraudulent and unfair trading in favour of the Noticee."

xxix. That also, the SEBI had in its Order in the matter of Niveshicon Investment Advisor had also held similar interpretation and the alleged violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 were removed upon.

xxx. That further, no evidence on record has been established by the SEBI which evidences any fraud committed by the Noticee. In that regard, the Noticee would like to refer the Order of Hon'ble Securities Appellate Tribunal 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.

xxxi. That just on a basis of 1 complaint (contents of which are not true as well), SEBI shall not penalise the Noticee who is diligently working since 2014.

xxxii. That the SEBI shall consider the Noticee's contentions ongoing circumstances before imposing any harsh monetary penalty in the instant case.

xxxiii. That also the Noticee has not done any of the alleged violation and is not working as an Investment Adviser since last 3 years.

xxxiv. Also, the Noticee has no repetitive nature of default.

xxxv. The Noticee has neither misrepresented any of the investors nor has fraudulently collected monies from the investors.

xxxvi. Also, in the tenure of 6 years, the Noticee had carried out his business activities in a good faith without any malintention. None of the clients were forced in any manner and neither they were in undue influence nor any coercion was made for taking the services. The Noticee had provided proper advisory services to his each and every client.

….".

11. Additional submissions made by the Noticee *vide* letter dated July 28, 2023 are as under:

"…..

i. The Noticee is registered with the SEBI since April 2014 and has never been involved in any violations.

ii. The imposition of penalty under section 15C is not fair as the Noticee has already provided the best resolution to the complainant.

iii. Initially, the Noticee has provided a cheque of Rs. 1,30,000 to the complainant as a security deposit which has been wrongly misinterpreted by the SEBI and has not mislead to the complainant.

iv. Further, on not being satisfied with the resolution, the Noticee had refunded the entire amount collected as fees from the complainant.

v. Hence, the imposition of Penalty under Section 15C should be set aside.

vi. The Noticee has nowhere promised any return to the complainant, the call recording relied upon by the SEBI is not true and is not backed by any forensic examination.

vii. The Noticee has clearly mentioned in its Invoice and website about the risk involved. The same can be verified from the Exhibit A of the Reply filed on July 12, 2023.

viii. The imposition of PFUTP violations on the Noticee is not fair. It the Noticee had any intention of doing fraudulent activity, then the Noticee would not have obtained the registration from the SEBI.

ix. The Noticee has made the relevant disclosure of risk involved in the market and hence the imposition of Penalty under Section 15HA should be set aside.

x. That just on a basis of 1 complaint (contents of which are not true as well), SEBI shall not penalise the Noticee who is diligently working since 2014.

xi. Also, the Noticee has no repetitive nature of default.

xii. The Noticee has neither misrepresented any of the investors nor has fraudulently collected monies from the investors.

…."

CONSIDERATION OF ISSUES AND FINDINGS:

12. The issues that arise for consideration in the present matter are following:

Issue No. I: Whether the Noticee has violated the provisions of following Acts, Regulations and Circular:

- SEBI Circular CIR/OIAE/2014 dated December 18, 2014.
- Regulation 21(1) read with Regulation 28(f) of IA Regulations 2013.
- Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of PFUTP Regulations 2003 read with section 12A(a), (b) and (c) of SEBI Act, 1992.

Issue No. II: Do the violations of provisions mentioned above, if any, attract monetary penalty under Sections 15C & 15HA of SEBI Act, 1992?

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

Issue No. I: Whether the Noticee has violated the provisions of following Acts, Regulations and Circular:

- **SEBI Circular CIR/OIAE/2014 dated December 18, 2014.**
- **Regulation 21(1) read with Regulation 28(f) of IA Regulations 2013.**
- **Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of PFUTP Regulations 2003 read with section 12A(a), (b) and (c) of SEBI Act, 1992.**

13. Before proceeding on merits, it would be pertinent to deal with the following preliminary issues raised by the Noticee:

13.1. I note that Noticee had inter alia contended that *the Noticee has no past record of violations committed since the date of registration i.e. April 09, 2014; which does evident that he was working diligently and adhering to all the compliances and was not involved in any wrongful activity.*

In this regard, I note that Subject matter of instant proceedings is about Noticee having not resolved the cited Complaint and accordingly submissions of Noticee are out of context and at best can be considered as a mitigating factor.

13.2. I note that Noticee had inter alia contended *That the Noticee had closed down his operations after Covid19 outbreak.*

The submissions of the Noticee are vague in so far as neither any specific details whatsoever have been provided nor date since when operations were closed have been indicated. In any case, being a SEBI Registered Intermediary viz., an entity registered under Section 12 of SEBI Act, 1992 Noticee is expected to have operations on going concern basis unless the certificate of registration is surrendered and clients /stakeholders informed accordingly. In the instant case, Noticee has not demonstrated that having stated to have closed down its operations it had surrendered its registration and that it had kept its clients informed. In this regard, it would be relevant to draw reference to the mandate of SEBI which inter alia includes protection of interest of investors. In my opinion, being continuing to be a registered intermediary, Noticee was /is duty bound to adhere to the provisions of law including the SEBI circulars, as applicable.

13.3. I note that it has inter alia been contended by the Noticee *that with respect to alleged violation regarding the complaint of Mr. Piyush Rana, the Noticee would hereby like to submit that the complaint filed by the complainant was invalid on the grounds that the complainant was claiming amount of loss made by him for which neither the investment Adviser nor any person is liable.*
That it is a well-known fact that no one can be held liable for the losses as trading in the securities market is always subject to the market risk and there is no guarantee of profits/returns in the stock market. Hence, the said complaint is not valid as no one is liable for the loss held in the securities market as no one can fully predict it. Hence, the client asking us to pay for his losses and refund the amount doesn't hold good.

In this regard, I note that the submission of the Noticee are contradictory and /or conflicting in nature in so far as the Noticee has itself inter alia also submitted that, ' … Noticee being a prudent Investment Adviser, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him

…'. In my opinion, it is beyond reasonable understanding as to why would anyone give its client a post-dated cheque that too for Rs.1.30 Lakhs (as against service amount of Rs. 12,500/-) and also refund the client the service amount, if there was no cause /fault on part of itself. I note that submissions of the Noticee about the post-dated cheque match with the claims of the complainant about assurance of cheque of Rs. 1.30 lakhs, copy of which was also submitted by the complainant and is available on record. From the contents of the copy of the post-dated cheque of Rs. 1.30 lakhs, as available per material on record, it is noted that the drawer name is indicated as, 'FOR CAPITAL GROW FINANCIAL SERIVCES', name of the Payee is, 'Piyush Rana', which matches as that of the complainant, the amount mentioned is Rs. 1.30 Lakhs and the same was drawn on ICICI Bank having account number 02410500xxxx, which was confirmed by the ICICI Bank to belong to Customer Name Capital Grow Financial Services. Accordingly, the contention of the Noticee in this regard is devoid of merit and hence not acceptable.

13.4. I note that Noticee has inter alia contended that *then too the Noticee being a prudent Investment Adviser, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him and that the said complainant didn't deposit the cheque in the bank for the clearance and also that with regard to the allegation of promising assured high profit to the clients, the Noticee would like to submit that he has have never assured any profit or guaranteed any kind of returns to any of the clients.*

In this regard, I note that the Noticee as part of its submissions had inter alia itself submitted and admitted that, to resolve the client grievance, a post-dated cheque of Rs. 1.30 lakhs was given by him to the complainant and that the service amount was also refunded by it to the client viz., the complainant. Further in this regard, I also note that the Noticee has also inter alia as part of submissions stated that the said complainant didn't deposit the cheque in the bank for the clearance.

It is thus evident that Noticee was at fault else logically speaking why would someone issue a post-dated cheque for amount of Rs.1.30 lakhs when the service charges for the services rendered to the concerned client itself were in range of Rs.12,500/- (1,30,000 being 10.4 times of 12,500/-). Accordingly, submission of the Noticee in this regard are devoid of merit and hence not acceptable.

13.5. I note that Noticee has inter alia contented that *the complainant had subscribed the services of 'Stock Option' from the Noticee, which is evident from the Invoices enclosed in Exhibit-A, whereas on one instance the Noticee in its complaint is stating that he had received advice relating to 'Futures', which itself clarifies that the complainant had made baseless allegations upon the Noticee and hence was not ready upon the resolution as he had a greed of gaining more and more amount from the Noticee.*

In this regard, it is noted that the submission are vague and /or out of context in so far as having subscribed to some services and not having provided services other than subscribed are two distinct aspects. In the instant case, Noticee has not categorically denied about not having provided any such advice to the complainant from their side ever. This apart, it is noted that the submission of the Noticee are also vague and /or not specific in so far as specifics including basic details like date of Complaint etc., have not been cited /submitted. Accordingly, submission of the Noticee in this regard are devoid of merit and hence not acceptable.

13.6. I note that Noticee had inter alia submitted that *the Noticee had refunded the entire service amount charged to the said complainant, which illustrates the intention of the Noticee in resolving the client's grievance.*

I note that the submission of the Noticee in this regard, are in nature of admission in so far as why would anyone refund the entire service amount, if there was no cause /fault on part of itself as being contended otherwise.

13.7. *I note that the Noticee had inter alia contended that the Noticee didn't have any such intention of not resolving the grievances of the clients as in the past as well the Noticee had resolved all the client's grievances in a timely manner and to the best of the satisfaction of his clients and that the Noticee as a diligent Investment Adviser understands its responsibility of providing proper resolution to the client's grievances and is also bound to resolve the grievances and hence, they had always promptly responded to all of the client's complaint on filing of the same. Further, the client's supremacy was always the Noticee's utmost priority, which he had maintained throughout in the business tenure by resolving the client's grievance to the best of their satisfaction and as a result all of his complaints stays resolved, which can be verified from the Exhibit – B. Hence, the Noticee have not violated the provisions of the SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014.*

In this regard, I note that the subject matter of instant proceedings is inter alia about alleged failure of Noticee to resolve investor grievance of the complainant viz., Piyush Rana and accordingly the submissions of the Noticee in this regard are out of context and devoid of merit.

13.8. I note that Noticee has inter alia contended that, *the SEBI had also not taken into consideration the Noticee's point of view while analysing the said complaint which was without any satisfactory documentary evidence and on a basis of it SEBI had alleged such serious violations against the Noticee.*

In this regard, I note that the submission of the Noticee are conflicting and contradictory in nature in so far as Noticee has itself inter alia also submitted that, '… being a prudent Investment Adviser, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him…' and also that, '…the said complainant didn't deposit the cheque in the bank for the clearance..'. I also note that as per material on record as regards third Complaint i.e., SEBIE/MP20/0002105/1, the Noticee had not submitted any further response with regard to clarification sought on SCORES on January 29, 2021 and also with regard to the remarks made by the complainant in SCORES on July 16, 2021.

13.9. I note that Noticee has inter alia contended that *the allegation made by the SEBI that the Noticee has not acted in fiduciary capacity with his clients by not informing that investment in securities market is subject to market risk is baseless as the Noticee has in its website, invoices, etc. has everywhere disclosed that "Investment is stock or commodity markets is subject to market risk, though best attempts are made for predicting markets, but no surety of return or accuracy of any kind is guaranteed, while the performance sheet of various products is available but should not be considered as a guarantee for future performance of the products/services. Clients are advised to consider all the advice as just a opinion and make investment decision on their own".*

In this regard, I note that the subject matter of instant proceedings is inter alia about assurance of profits to the complainant being client of the Noticee as alleged in the complaints of the complainant and not about what may have been stated on the website, invoices etc., and accordingly the submissions of the Noticee in this regard are out of context and devoid of merit.

13.10. I note that the Noticee had inter alia contended that *the Noticee has in his 8 years of practice has provided services to numerous of the clients, none of them have ever made such an allegation.*

In this regard, I note that the subject matter of instant proceedings is inter alia about alleged failure by Noticee in resolving impugned complaint and accordingly the submissions of the Noticee in this regard are out of context and devoid of merit.

13.11. I note that the Noticee had inter alia contended that *if the Noticee was engaged in such unethical practices, then many of his client would have filed the complaint against him, and hence allegation made by the SEBI just on a vague complaint is baseless.*

In this regard, I note that the subject matter of instant proceedings is inter alia about alleged failure by Noticee in resolving impugned complaint. As regards, Noticee's contention of Complaint being vague, I note that the Noticee has itself as part of its submissions inter alia also stated that he had given the complainant a post-dated cheque for Rs. 1.30 Lakhs, as also brought out in the foregoing. Accordingly the submissions of the Noticee in this regard are devoid of merit and not acceptable.

13.12. I note that the Noticee had inter alia contended that *the call records as mentioned in the said Notice do not belong to the Noticee nor any of its representatives and in the absence of any Forensic verification the said recordings could not be attributed to any employee of Noticee and that in the call recordings as annexed in the Annexure - B of the Notice, there is a mention of office address of the Noticee in Guna, M.P., however, the Noticee has always operated from Indore only. Hence, it evidences that the said recording does not belong to the Noticee and that moreover, on a basis of a random call recording wherein a person is saying that she belongs to the Capital Grow Financial Services, it cannot be attributed that the said call is done on behalf of the Noticee.*

In this regard, I note that while the Noticee has contended so and which has been dealt with in detail in the paragraphs dealing with respective violation, I cannot ignore that the Noticee has inter alia also admitted of having issued a cheque in favour of the complainant and amount and timing of which exactly matches the contents of the complainant. In my opinion, generally speaking, it is beyond rational unless someone may otherwise be guilty, as to why would someone issue a cheque to other, amount of cheque being 10.4 times of the amount of service charges. In the instant case, the Noticee had charged Rs. 12,500/- from the complainant for the services.

13.13. I note that the Noticee had inter alia cited Order of the SEBI in the matter of Star World Research wherein it was held that: *"The material on record does not indicate that the aforesaid emails addresses belonged to the Noticee. Further, the call recordings are not supported by any further examination. Hence, I am unable to rely on them to arrive at any finding of violation with respect to the making promises of assured or unrealistic return, as alleged", and also inter alia contended that SEBI in its order in the matter of Bonaz Capital had held that: "I note that the welcome email of the Noticee mentioned that the Noticee do not provide any profit warranty or guarantee in any product/service offered to the customers. Further, the email reads "You understand and acknowledge that there is high degree of risk involved in trading securities". Though I find that promising assured profit in securities market is misleading the public and is to be avoided by an IA. However, in the present case, I am not in a position to give any adverse finding on this account for want of any concrete evidence on record as to whether clients were indeed induced by the same or that the clients subscribed to such services shown on the websites. After looking at the facts in the present case in its entirety, I do not find the allegation that the Noticee had violated the provisions of Regulation 3(a), (b), (c) and (d), 4() 4(2)(k) and 4(2)(s) of the PFUTP Regulations, by publishing on its website about assured profits/ unrealistic returns, to be substantiated. Accordingly, allegation of violation of Regulation 15(1) and 15(9) of the IA Regulations read with Clause 1 of the Code of Conduct specified under Third Schedule of the IA Regulations may not lie against the Noticee".*

13.13.1. In this regard, I note that Noticee has placed reliance on orders of SEBI in the matter of Star World Research / Bonaz Capital. In this regard, in my opinion, each matter may be peculiar in its facts and circumstances based on which the violations are ascertained. I note that Noticee has merely cited certain portion of the said orders and has neither demonstrated as to how cited orders were applicable in the instant matter nor has demonstrated as to what were the relied upon findings in the respective orders which would have a bearing on the alleged violations against Noticee. In this regard, I am of the view that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Accordingly, any generic parallel drawn would be devoid of merit. This apart, in my view, the orders as cited by the Noticee and present matter are distinguishable based on the facts and circumstances as applicable viz., to cite a few as example, (i) Noticee has itself inter alia admitted of having issued a cheque of Rs.1.30 Lakhs in favour of the complainant, (ii) Noticee having inter alia submitted to have given the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him, (iii) Noticee having inter alia made conflicting submissions regarding having provided cheque of Rs. 1.30 Lakhs to the complainant, (iv) Noticee having inter alia submitted to have initially provided a cheque of Rs. 1.30 Lakhs to the complainant as security deposit, however in respect of which no details as regards when and how the cheque was provided to the complainant, why such a security deposit was provided, reason for providing such a security deposit by way of cheque dated August 27, 2020, i.e., two years subsequent to the duration of service, considering that the invoices for services rendered were dated September 10 & 11, 2018 and duration of service to the complainant, as per copy of invoices submitted by the Noticee itself, being September 11 to October 25, 2018, (iv) that complainant had submitted copy of whatsapp chat between him and Noticee's side inter alia including messages relating to complainant having been promised to be paid Rs. 1.30 Lakhs by way of cheque and

Rs. 50,000 by way of bank transfer by company capital grow etc., and copy of which was provided to the Noticee and which Noticee has neither denied nor disputed, as also dealt with in detail under relevant para dealing with the alleged violation.

All this when seen in light of the conflicting submissions in respect of the cheque of Rs. 1.30 Lakhs having been provided by the Noticee viz., initial submissions inter alia stating that, ' … to resolve the client grievance … gave the complainant a post-dated cheque of Rs.1,30,000/-..' and subsequent submissions inter alia stating that, ' … initially, the Noticee has provided a cheque of Rs. 1,30,000 to the complainant as a security deposit ..', in itself speaks about Noticee choosing to put forth frivolous defenses. This is further fortified by the fact that while nothing much as such on merit has been submitted, the Noticee has put forth copious contentions including about having provided a cheque of Rs. 1.30 Lakhs without any relevant details and rationale, as brought out briefly above and as also dealt with in detail under relevant paragraphs dealing with the alleged violations. I see this as nothing but an attempt towards delaying /distracting of instant proceedings. In view thereof, the contention of the Noticee in this regard is devoid of merit and cannot be accepted.

13.14. I note that Noticee had inter alia contended, ' … *That just on a basis of 1 complaint (contents of which are not true as well), SEBI shall not penalise the Noticee who is diligently working since 2014.'.*

In this regard, I note that the submissions of the Noticee are in nature of admissions in so far as it has itself inter alia contended to not be penalised basis just one complaint. This apart, in my opinion, an entity registered as an intermediary under Section 12 of SEBI Act with SEBI, is obligated to comply with the provisions of law inter alia including the circulars issued by SEBI, as applicable and unless provided for otherwise as part of the provision, no exception and /or exemption as such would apply just because there may be one instance of violation. At best, such a contention can be considered as a mitigating factor.

13.15. I note that Noticee had inter alia contended that, *'… initially, the Noticee has provided a cheque of Rs. 1,30,000 to the complainant as a security deposit which has been wrongly misinterpreted by the SEBI and has not mislead to the complainant.'.*

In this regard, firstly I note that the Noticee has neither denied nor disputed about having given /provided a cheque of Rs.1.30 Lakhs to the complainant viz., Piyush Rana and instead the submissions of the Noticee in this regard, are in nature of admission in so far as the same relate to the aspect of Noticee having issued a cheque for Rs.1.30 Lakhs in favour of the complainant.

Further in this regard, I note that the above contention of the Noticee is conflicting and contradictory in nature in so far as Noticee in its earlier submissions as reply to the SCN vide letter dated July 12, 2023 had inter alia itself submitted that, *'Noticee being a prudent Investment Advisor, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him….', and, 'that the said complainant didn't deposit the cheque in the bank for the clearance'.*

Further in this regard, I also note that the earlier submission of the Noticee inter alia indicating about giving of post-dated cheque of Rs.1.30 Lakhs, matches the claims inter alia made by the complainant, as part of his complaints which were prior to the submission dated July 12, 2023 of the Noticee, that he was promised to be compensated for the loss claimed to have been incurred because of the company /capital grow and accordingly /for which copy of post-dated cheque drawn in name of Piyush Rana for amount of Rs.1.30 lakhs was shared with him. I also note from material available on record that the complainant as part of his complaint had inter alia also submitted copy of the cheque dated August 27, 2020, which reflects following important details: Amount as Rs.1.30 lakhs, Payee Name as Piyush Rana viz., the complainant, Drawn on ICICI Bank, Indore AshokNagar Branch, Drawn by Capital Grow Financial Services, A/c No. 02410500xxxx. I note that SEBI had sought bank statement of ICICI Bank Account No. 02410500xxxx from ICICI Bank and in the statement provided by ICICI Bank to SEBI, I note that the Customer Name and Account Number are reflected as, *'CAPITAL GROW FINANCIAL SERVICES' and '02410500xxxx'.* I also note that Noticee has not demonstrated that it was a routine practise

In view thereof, evidently, the above contention of the Noticee vide letter dated July 28, 2023, claiming the amount of Rs.1.30 Lakhs to be as security deposit, seem to be made as an afterthought. Accordingly, the above contention of the Noticee about cheque being towards security deposit, is devoid of merit and hence not acceptable.

14. I now proceed to deal with the matter on merits with respect to the allegations made against the Noticee vide SCN.

15. I now proceed with, in respect of the alleged violations, as abovementioned, against the Noticee having regard to SCN dated July 29, 2022 as here under. Briefly put, it has inter alia been alleged in respect of the Noticee, that it had failed to resolve investor grievances promptly and got complaint closed from the client by misleading him and making false commitments, that it had made false and misleading representation to its client by promising assured profits and unrealistic returns despite fully knowing that all the investments in securities market are subject to market risk and that by not informing client that investments in securities market is subject to market risk Noticee had failed to act in a fiduciary capacity towards its client.

16. I note that the allegations in respect of the Noticee viz., that the Noticee failed to resolve investor grievances promptly and got Complaint closed from the client by

misleading him and making false commitments and Noticee having made false and misleading representation to its clients by promising assured profits and unrealistic returns despite fully knowing that all the investments in securities market are subject to market risk and by not informing clients that investments in securities market is subject to market risk, Noticee having failed to act in a fiduciary capacity towards its clients, are all in some or other way interrelated /interconnected and are accordingly being dealt with conjointly.

17. I note from material available on record that with regard to the first complaint dated October 03, 2018 bearing registration no. SEBIE/MP18/0004325/1, the complainant had inter alia stated, *‘ … About 25 days ago,I was contacted by executive of Financial advisory company Capital Grow with SEBI REGISTER NUMBER INA000001480. They told me, to join their services, and assured me that I would get a profit of 5000to7000 on joining their premium services. So,I paid them Rs 12500, but they gave me calls which ripped my 1.8Lakhs INR with in three trading days. Her executive called me on 17th Sept 2018 and insisted to fund my demat account with at least 1.5 Lakh rupees, because according to her,the next trading day would provide me an assured profit,but I lost rs 1.5 Lakh because of their call on Indian Bank. I also lost about 25000 Rupees on their call on friday,14 Sept 2018 on Chola Fin. So, I lost around 1.8 Lakh Rupees because of their miserable calls in market. When I sent them complaint via email they did not reply … ’.* and in respect of the said Complaint the Noticee had on June 08, 2020 submitted Action Taken Report (ATR) on SCORES inter alia stating that, *‘this is to inform you that we have received the mail from client to withdrawal the complaint as we attached the same’,* along with attachment relating to withdrawal email of the client stating*, “I want to say that I have obtained a potential resolution from the company and I am satisfied with the same at this moment of time, therefore I request to close my above complaint on ‘SCORES’ portal of SEBI*”. Pursuant to submission of said ATR and attachment by the Noticee, the said Complaint was disposed of as closed.

18. The complainant filed second complaint in SCORES on June 25, 2020, bearing registration no. SEBIE/MP20/0001182/1 wherein the complainant had inter alia

stated that, *'This complaint of mine is with reference to my previous complaint (No.- SEBIE/MP18/0004325/1)against the same company. In order to resolve my complaint, company and its executive promised me to send a cheque of rupees 1.3 Lakh only(one lakh thirty thousands only) and a bank transfer of amount50,000(fifty thousands only)within few days.In order to believe me on their commitments, company s executive shared a soft copy of the cheque with me via WhatsApp(copy of which I am enclosing here). But, there was a condition, that I will have to send a closure mail wrt my complaint to SEBI, which I have done on 27th of February 2020. Also I have sent a confirmation mail to the company in the similar regard. Now its been about three months, but company is failing to fulfill its promises to me and also I am not getting any satisfactory reply from them.'*

19. Simply and briefly put the complainant in its second complaint had inter alia stated that he had withdrawn his first complaint based on promise by the Noticee and its executive to send him a cheque of Rs. 1.30 Lakhs and a bank transfer of Rs. 50,000/- and to make him believe that he was shared with a soft copy of a cheque and that there was a pre-condition that he would have to send a closure mail wrt his Complaint to SEBI (viz., complaint No. SEBIE/MP18/0004325/1 i.e., first Complaint) which he did on February 27, 2020 and for which he had sent a confirmation mail to the Noticee. However, it had been about three months that the Noticee did not fulfil its promises nor was he getting any satisfactory reply from the Noticee, as brought out above and therefore second complaint was filed by the complainant. I note from material available on record that in respect of the second Complaint, Noticee had on November 26, 2020 submitted Action Taken Report (ATR) on SCORES inter alia stating that, *'…we have refunded whole service amount for which he have made a complaint and attaching herewith proof of refund so the complaint is resolved from our end …',* along with attachment relating to transfer of Rs. 12,500/- on November 26, 2020 by Noticee to the complainant. I note that pursuant to submission of said ATR and attachment by the Noticee, the said Complaint was disposed of as closed by SEBI on November 26, 2020 inter alia with remarks that, ' … IA has refunded the complete advisory service charges

to the complainant. In case the complainant still has any unresolved issues with the IA, he may lodge a fresh complaint with proper written/documented evidences'.

20. Subsequently, the third complaint was filed by the complainant in SCORES on November 26, 2020, bearing registration no. SEBIE/MP20/0001182/1 wherein the complainant had inter alia stated that, '*I lost 1.8 lakh rupees because of the company. I registered complaint against them on Scores portal and presented evidences against them. They gave me a resolution, that they will give my 1.8 lakh rupees back to me in the following way- 50,000 rupees of bank transfer to my bank account and 1,30,000 rupees post dated cheque which will become eligible for cashing after six months But, they did not followed their promises and hence I am registering complaint against them. I have voice recordings and so many things which could prove easily at anywhere that they are at fault. …. I am sharing copy of cheques given by the company … '.*

21. The complainant also submitted copy of ICICI Bank Cheque No. 000744 dated August 27, 2020, bearing account no 02410500xxxx**,** for Rs. 1.30 Lakhs, drawn by CAPITAL GROW FINANCIAL SERVICES, with Payee Name as Piyush Rana.

22. In this regard, on perusal of the email dated January 13, 2021 sent by complainant to the SEBI, as available on record, I find the following documents:

    22.1. Copy of cheque No. 000744 dated August 27, 2020, bearing account no 02410500xxxx**,** for Rs. 1.30 Lakhs, drawn by CAPITAL GROW FINANCIAL SERVICES, with Payee Name as Piyush Rana.

    22.2. Document containing chat between Noticee's side and complainant where on February 11, 2020 while forwarding pdf copy of the cheque of Rs.1.30 Lakhs it had inter alia been communicated to the complainant that: *"As per our discussion with you this is the pdc cheque we will send* *you on tour registered address with us and after getting the cheque you will withdraw yours complain first ?".*

23. The status of the said complaint as on September 21, 2021 was as following:

S. No.	SCORES Complaint number	Date of receipt of complaint	Date of forwarding complaint to Noticee	Date of Reminders from investor / SEBI	Date of ATR filed by the IA	Pending no. of days from the date of forwarding to IA
1.	SEBIE/MP20/ 0002105/1	26.11.2020	19.01.2021	16.07.2021	Not filed after reminder from the investor	242

24. In this regard, from material on record, I note that the complaint was forwarded to the Noticee on January 19, 2021 for resolution and submission of ATR in SCORES. The Noticee on January 29, 2021 submitted ATR with attachment relating to electronic transfer of Rs. 12,500/- to the complainant on November 26, 2020 and inter alia stating, *'we have already close the compliant'*. However, it was observed that Noticee did not submit any relevant details and supporting documents. Subsequently, the Noticee was advised on January 29, 2021 to submit the complaint withdrawal intimation, if any by the complainant. However, it was observed that no response was received from the Noticee.

25. In this regard, I note that Noticee had issued a Post Dated Cheque (PDC / pdc) in favour of complainant which was dated August 27, 2020. I note from material on record that bank statement of concerned bank on which the said cheque was drawn viz., ICICI Bank account no. 02410500xxxx, was sought by SEBI from ICICI Bank. I note that as per the statement provided by the bank vide emails dated March 02, 2021, and September 24, 2021, for the duration December 31, 2019 – September 24, 2021, the bank account balance was zero as on June 22, 2020. Considering that cheque for Rs. 1,30,000/-, copy of which was submitted by the complainant to SEBI, was dated August 27, 2020. Further in this regard, I note that there is nothing on record submitted and /or demonstrated by the Noticee as to that the Noticee had kept the complainant informed about the nil balance in its account etc. Therefore it is evident that the Noticee did not

intend to keep sufficient balance in its bank account for the debit of funds viz., to honour the cheque issued by itself. This when viewed in backdrop of the fact that Noticee has not provided any relevant details and /or documents regarding about how and when the cheque of Rs.1.30 lakhs was sent /provided by it to the complainant, despite having claimed so as part of its reply to the SCN, is evident of that Noticee had made false commitment to the complainant to withdraw the first complaint.

26. As regards the allegation against the Noticee that he got complaint closed from the client by misleading him and making false commitments, from the developments relating to the three complaints as available on record and as also briefly brought out above, I note that the complainant had inter alia in his first Complaint itself, simply stating, mentioned about having lost around Rs.1.80 lakhs within three trading days owing to miserable calls in market given by the Noticee. In this regard, I also note from material on record that the complainant had inter alia mentioned about Noticee having promised him to pay Rs. 1.80 Lakhs i.e., by sending a cheque of Rs. 1.30 Lakhs and remaining amount of Rs. 50,000 by way of bank transfer, within few days and for which Noticee's executive shared a soft copy of the cheque with him via Whatsapp and that this was subject to the condition that the complainant had to first send a closure mail to SEBI with regard to his complaint and which the complainant did by sending an email to SEBI on February 27, 2020 and which was also sent by complainant to the Noticee. However, the Noticee failed to fulfil its promise.

27. In this regard, I note that Noticee has itself as part of its submissions as reply to the SCN inter alia admitted having issued a cheque of Rs. 1.30 Lakhs in favour of the complainant. Thus that a cheque of Rs. 1.30 Lakhs was drawn by the Noticee in favour of the complainant is a matter of record and is not a matter of dispute.

28. The question now arises is about whether the said cheque of Rs. 1.30 Lakhs was issued for resolution of the complaint and getting the Complaint closed or as a security deposit by the Noticee to the complainant, as was subsequently and contrary to its earlier submissions, contended by the Noticee.

29. In this regard, firstly I note that the Noticee had inter alia made conflicting submissions in so far as Noticee in its earlier submissions as reply to the SCN vide letter dated July 12, 2023 had inter alia itself submitted that, *'Noticee being a prudent Investment Advisor, tried his best to resolve the client grievance and gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him….',* and, '*that the said complainant didn't deposit the cheque in the bank for the clearance'*. In this regard, that the subsequent submissions of the Noticee claiming that it had provided a cheque of Rs. 1,30,000 to the complainant as a security deposit was devoid of merit and apparently made as an afterthought has already been dealt with in the foregoing. Further in this regard, as regards the subsequent submission of having provided cheque of Rs. 1.30 Lakhs as security deposit being without merit is also substantiated from the chronology and developments in the matter as noted and elaborated as follows.

30. Further in this regard, ignoring the contradiction in the submissions for time being, I note that save for claiming that it had provided a cheque of Rs. 1,30,000 to the complainant as a security deposit, no details and /or documents whatsoever had been submitted by the Noticee. To cite as example, Noticee has not provided any details whatsoever as to when and how was the cheque of Rs. 1.30 Lakhs provided by the Noticee to the complainant i.e., on which date was the cheque sent and how was the cheque sent by the Noticee to the complainant. Further, in this regard, I also note that Noticee has neither provided any details nor demonstrated as to why the security deposit, as was being claimed, amounted to Rs. 1.30 lakhs (and not any other amount), which was almost 10.4 times of the amount charged by it for the services to the client. I also note from the copy of the two invoices totalling to amount of Rs. 12,500/- issued by the Noticee to the complainant that the same were issued during September 2018 and indicated the duration of service September 11, 2018 to October 25, 2018 (viz., Invoice No. INV/CG/08/179 dated September 10, 2018 Client Name: Piyush Rana, Durations: From 11 Sep2018 To 25 Sep2018 for Total Rs. 3000/- and Invoice No. INV/CG/08/180 dated September 11, 2018

Client Name: Piyush Rana, Durations: From 26 Sep2018 To 25 Oct2018 for Total Rs. 9500/-). It is matter of record that the complainant had paid Rs.12,500/- to the Noticee for its services. The total of the two invoices being Rs. 12,500/- matches with the claims of the complainant about having paid Rs.12500/- to the Noticee for availing its services. That being so, Noticee has not demonstrated as to while the duration of service to the client was during September – October 2018 then why the cheque for Rs. 1.30 Lakhs, claimed to have been issued as security deposit, was of two years later, cheque being dated August 27, 2020.

31. The above vindicates the earlier conclusion drawn in the foregoing about the subsequent submission of the Noticee in this regard that, '*Initially, the Notice has provided a cheque of Rs. 1,30,000 to the complainant as a security deposit which has been wrongly misinterpreted by the SEBI and has not mislead to the complainant'*, was devoid of merit.

32. Further in this regard, I note that the developments /details relating to the cheque of Rs. 1.30 Lakhs, issued by the Noticee in favour of Piyush Rana, match with that of the claims and documents made by the complainant in so far as the complainant had stated, ' *… In order to believe me on their commitments, company s executive shared a soft copy of the cheque with me via WhatsApp(copy of which I am enclosing here). But, there was a condition, that I will have to send a closure mail wrt my complaint to SEBI, which I have done on 27th of February 2020. Also I have sent a confirmation mail to the company in the similar regard. …'.* In this regard, from the copy of document relating to contents of the whatsapp chat message, as available on record, I note that there was a pdf document forwarded from mobile number +91 888912xxxx and the said pdf document was about a cheque, contents of which, as visible, matched with the copy of the cheque of Rs.1.30 Lakhs, submitted by the complainant. I also note that immediately within three minutes of sharing of said pdf document relating to post-dated cheque there was a message from the same number contents of which read as, 'As per the discussion with you this is the pdc cheque we will send you on your registered address with us and after getting cheque

you will withdraw your complain first ? I note, logically speaking, the acronym pdc used in the said chat, purportedly referred to Post Dated Cheque. In this regard, I note that copy of document relating to the whatsapp chat contents in this regard, was also provided to the Noticee as part of the SCN and that Noticee has not disputed and /or denied about the mobile number and /or about the contents of the whatsapp chat viz., sharing of copy of post-dated cheque with the complainant and the message about withdrawal of complaint first.

33. From the material on record, I note that complainant as part of its complaint had inter alia stated that as part of resolution given to him by the Noticee he was promised about 1,30,000 rupees by way of post dated cheque which would become eligible for cashing after six months. In this regard, the details and developments relating to the cheque of Rs. 1.30 Lakhs, match with the contents /claims of the complainant in so far as it had inter alia been stated by him that he was promised about payment of Rs. 1.30 Lakhs by way cheque eligible for encashing after six months and the post-dated cheque, being dated August 27, 2020, copy of which was shared with him via whatsapp on February 11, 2020, and months February 2020 and August 2020 being six months apart.

34. Further in this regard, I also note from the ATR filed by the Noticee on June 08, 2020, in respect of the first Complaint that in document relating to copy of email from complainant to sebi, attached as part of the ATR, the following had inter alia been stated by the complainant, ' … with reference to my Complaint (no. SEBIE/MP18/0004325/1) which I had registered against Capital Grow Financial Services … I want to say that I have obtained a potential resolution from the side of concerned company, and I am satisfied from the same at this moment of time…….'. Here too, the details and developments relating to the cheque of Rs. 1.30 Lakhs, match with the contents /claims of the complainant in so far as the copy of cheque claimed to have been received by him on February 11, 2020 over whatsapp being post-dated viz., dated August 27, 2020, in the email sent with regard to closure of Complaint no. SEBIE/MP18/0004325/1, it had inter alia been indicated by the complainant about having obtained potential resolution. I also note from copy of email of Thu, Feb 27, 6:45 AM (read February 27, 2020)

sent by the complainant to the Noticee, as available on record and copy of which was provided to the Noticee as Annexure to the SCN, that the complainant had written to the Noticee drawing reference to his complaint no. SEBIE/MP18/0004325/1 dated October 03, 2018 and had inter alia written to the Noticee about having been promised by Noticee /company that he would receive a post dated cheque of Rs. 1.30 Lakhs in physical form at his address, Rs. 50,000/- in his account and that he has closed his complaint. In this regard, I note that the Noticee has not disputed and /or denied having received said email from the complainant.

35. In view of the foregoing it is evident that the Noticee had got complaint closed from the client by misleading him and making false commitments. I also note, as also brought out in the foregoing that as per material on record, as of September 21, 2021 the status of the complaint no. SEBIE/MP20/0002105/1, as on September 21, 2021 was, pending for 242 days from the date of forwarding to the Noticee.

36. In view of the foregoing the allegation that Noticee had failed to resolve investor grievances promptly and got complaint closed from the client by misleading him and making false commitments, stands established.

37. Accordingly, I hold that Noticee has violated the provisions SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations 2013, relevant provisions of which, as applicable, inter alia read as under:

> SEBI Circular No. CIR/OIAE/1/2014 December 18, 2014:
>
> *"*
>
> *...*
>
> *9. All … SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The … SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution,*

within thirty days. The … SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

…

11. Action taken by the … SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a … SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

….

14. The … Proprietor … of the registered intermediary shall be responsible for ensuring compliance with the provisions of this Circular.

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

Redressal of client grievances.

" …

21(1) An investment adviser shall redress client grievances promptly.

… ".

" …

Liability for action in case of default.

…

28. An investment adviser who –

…

(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,

…

"

38. Having held as above, I now proceed to deal with the other alleged violations in respect of the Noticee viz., Noticee having made false and misleading representation to its clients by promising assured profits and unrealistic returns despite fully knowing that all the investments in securities market are subject to market risk and by not informing clients that investments in securities market is

subject to market risk, Noticee having failed to act in a fiduciary capacity towards its clients.

39. In this regard, I note that as per material on record, as part of the first complaint dated October 3, 2018, ' *… the complainant has alleged that he paid Rs. 12,500/- for the advisory services of the Investment Adviser and incurred a loss of Rs. 1,80,000/- due to the recommendations of the Investment Adviser. Further, the complainant has also alleged that the employee of the Investment Adviser offered assured returns to the tune of Rs. 5,000-7,000 orally over telephone if he subscribes to the premium services of the Investment Adviser. The complainant is seeking refund of advisory fees of Rs. 12,500/- and loss amount of Rs. 1,80,000/- from the Investment Adviser …* ', and that, *' … as the complaint was not resolved by the Investment Adviser, so documents viz. invoices, risk profiling form, suitability assessment form, call recordings were sought from both the investment adviser and the complainant … . , the complainant has submitted the call recordings in CD and copies of whatsapp chats vide his letter which was received at ILO on October 22, 2019 …'*, and that *' … vide ATR dated June 8, 2020, the Investment Adviser submitted the complaint withdrawal mail of the complainant and accordingly the complaint was disposed of on June 19, 2020 …'.*

40. Further, in this regard, I note that as per material on record, as part of the second complaint dated June 25, 2020, the complainant had inter alia alleged in the said complaint that, *' … the Investment Adviser promised the complainant to send a cheque of Rs.1,30,000/- and a bank transfer of Rs. 50,000/- as part of resolution of his earlier complaint. Further, the complainant also alleged that the Investment Adviser had also send the whatsapp copy of the postdated cheque (PDC) of Rs.1,30,000/- which made him believe that resolution is being provided. The condition put forward by the IA for resolution was that the complainant has to first withdraw his complaint in SCORES and then PDC and bank transfer will be done. Accordingly, as per the condition of the Investment Adviser, he had sent the complaint withdrawal mail in SCORES. However, the IA did not fulfil his commitments ...*'.

41. Further, in this regard, I note that as per material on record, as part of the third complaint dated November 26, 2020, the complainant had alleged that he lost Rs.1,80,000/- and that he had closed his SCORES complaint based on the commitment of the Investment Adviser that he would pay Rs.1,30,000/- through post-dated cheque and Rs. 50,000/- through direct bank transfer. However, the promises made by the IA were not met and hence the complaint was lodged. The complainant also submitted that he had call recordings of the IA which can prove that the fault is of the Investment Adviser. The complaint was forwarded to the IA on January 19, 2021 for resolving the complaint and submitting ATR to SEBI. The IA on January 29, 2021 submitted ATR merely stating that he has already closed the complaint. IA did not submit any relevant details and supporting documents and did upload them on SCORES. Therefore, the ATR submitted being incomplete was not treated as ATR. Further, the IA was advised on SCORES on January 29, 2021 to submit the complaint withdrawal mail. No response has been received from the IA.

42. In this regard, I also note from the material on record that complainant has submitted the recordings of the complainant's call with the Investment Adviser and had CD containing call recordings, copy of which was provided to the Noticee along with the SCN. The relevant transcript of the call recording with regard to assured profit claim are as under:

MP3 file no. 1.2355 in the CD submitted by the complainant:

Time Slot - 2.06-3.22 mins

Investor: Tell me which package has been subscribed by me?

Executive: Premium Package you have taken currently….

Investor: And how much profit do you assure in premium package?

Executive: Per day assurity is 5k-10k, 5k per day and according to that, profit for a month is 1.2lacs, approximately 1 Lacs.

Investor: And which package you suggested me to subscribe?

Executive: Beta-Binary Package

Investor: Ok, what is its pricing and how much profit you will give in that services?

Executive: Sir, that package costs Rs.85,000 and in that services you will get return of 3.8Lac i.e., 15k to 20k returns in single day.

Time Slot – 5.02 to 5.31 mins

Executive: First time it has ever happened that the SL triggered in the call because of heavy selling in the market...and this first time the call has failed where I was 200% sure and I did not know how it happened because I gave you 200% assurance.

Accordingly, it was observed that the IA had promised assured high returns to the client, despite fully knowing that all the investments in securities market are subject to market risk and that such returns cannot be assured.

43. I note that the above three complaints, call recordings and relevant transcript of the call recording as also detailed in brief above were inter alia also provided to the Noticee as part of the SCN.

44. In this regard I note that Noticee has disputed the call recording inter alia stating that, *' … the call records as mentioned in the said Notice do not belong to the Noticee nor any of its representatives and in the absence of any Forensic verification the said recordings could not be attributed to any employee of Noticee.'* and that *' … in the call recordings as annexed in the Annexure - B of the Notice, there is a mention of office address of the Noticee in Guna, M.P., however, the Noticee has always operated from Indore only. Hence, it evidences that the said recording does not belong to the* Noticee…'.

45. In this regard, it is noted from SEBI order dated June 30, 2017 in respect of Mr. Gautam Sanjay Khandelwal that section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to "all judicial proceedings in or before any Court". As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence the Indian Evidence Act does not apply thereto.

46. Further, in this regard it is noted that SEBI in its order dated August 31, 2023 in the matter of GJ Advisory Services and Profit Ideas Advisory Services inter alia:

"….In this regard, I note that the present proceedings …under ….. SEBI Act and hence are quasi-judicial proceedings in nature as held by the Hon'ble Supreme Court of India in the matter of NSDL vs. SEBI and Other Connected Appeal, Civil Appeal No.5173of2006 decided on March 7,2017. As such, the provision so the Indian Evidence Act,1872 are not strictly applicable in the present matter. Here, it would be appropriate to refer to the order of Hon'ble Supreme Court of India in the matter of Tata Consultancy Services Limited vs. Cyrus Investments Pvt.Ltd. dated March26,2021wherein it was held as follows:
"It is true that the rigors of CPC and the Evidence Act are not be applicable to Tribunals/Quasi-Judicial Authorities..."

47. Further, in this regard, reliance is placed on judgement of Hon'ble Supreme Court in Chairman, SEBI vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein it was inter alia held by Hon'ble SC that:

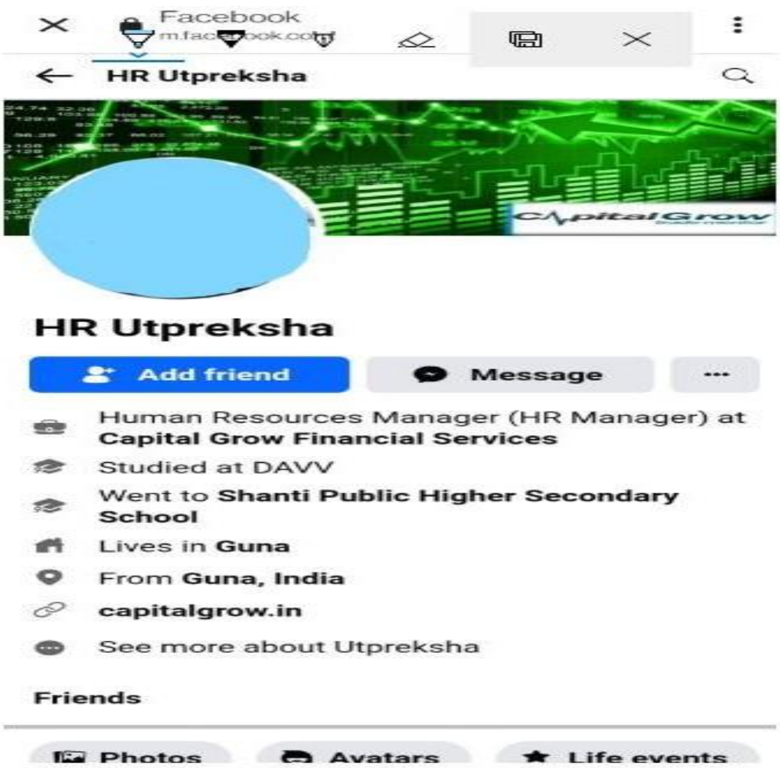
"…
Therefore, the proceedings under Chapter VI A are neither criminal nor quasi criminal. The penalty leviable under this chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation
….
the breach of civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not…Hence, we are of the once the contravention is established, then the penalty has to follow
…"

48. Reliance is also placed on judgement dated February 23, 2016 of Hon'ble Supreme Court, in the matter of SEBI vs Kishore R. Ajmera whereby, as regards adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned, the following was inter alia held:

"
…
The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

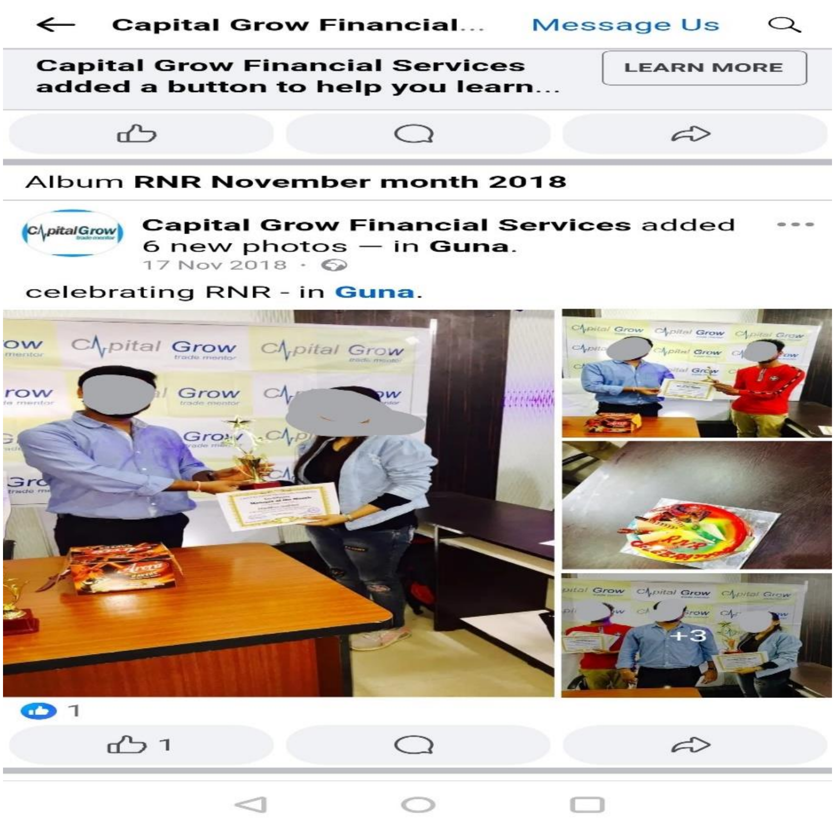
The conclusion has to be gathered from various circumstances …....
…
"
.

49. As regards, Noticee's contention about mention of Guna, MP and that Noticee had always operated from Indore only, I note that in one of the call recordings as available in material on record and also provided to the Noticee (recording name: 5.25221), the executive in said call named herself as 'Utpreksha' inter alia mentioning that she was calling from Capital Grow Financial Services in Guna. In this regard, upon simple random web search, a social media page relating facebook ID of Utpreksha was found, wherein she has mentioned herself as associated with "Capital Grow Financial Services" and with place of living and belonging to Guna and also mentioning about the website capitalgrow.in viz., website belonging to the Noticee as is evident from the fact that same is mentioned on the copy of invoices submitted by the Noticee itself (viz., website as www.capitalgrow.in and email id with domain capitalgrow i.e., info@capitalgrow.in). A screenshot of the social media page relating to said facebook profile /Id is pasted below (URL: https://www.facebook.com/utpreksha.bhargavahr/?locale=hi_IN)



50. From the foregoing it is evident that someone named Utpreksha was associated with the Noticee at the relevant time and she was working with Noticee from Guna. I also note that save for merely making a statement Noticee has not submitted any details and /or documents like to say for example list of all the employees and /or associates or persons associated with the Noticee, so as to satisfactorily demonstrate to the contrary.

51. Further in this regard, on simple random google search, Facebook Id of Noticee "Capital Grow Financial Services" was found, wherein six photographs in the post are observed to be captioned as "celebrating RNR – in Guna" (screenshot of the same is pasted below).



52. Further, on random google search another picture depicting a banner displaying name of Noticee along with the SEBI Registration No. viz. INA000001480 was found. I note that in the said banner, besides the name of the Noticee and the SEBI Registration Number, name of city Guna is distinctly displayed, along with

Indore and Bhopal. This apart, in the said photo, certain mobile phone numbers, other than those on record and /or appearing on the invoice submitted by the Noticee, are also mentioned implying that Noticee had other mobile numbers associated with it, besides those on record.

53. In view of the above, the contention of the Noticee that there was mention of office address of the Noticee in Guna, M.P., however, the Noticee has always operated from Indore only and hence same evidenced that the said recording did not belong to the Noticee is devoid of merit and hence cannot be accepted.

54. Notwithstanding the contention of the Noticee contesting the call recordings, in my opinion, even if the same were to be ignored for time being, I cannot ignore the other facts and documents as available on record. I also cannot ignore that in matters which was subject matter of proceedings, like the instant case, the same are to be adjudged having regard to the totality of the facts and circumstances of the matter and material on record. To cite as examples, I note from material available on record that the complainant had inter alia provided document containing whatsapp messages exchanged between the complainant and Noticee's side (mobile number being 888912xxxx). I note that Noticee copies of said document containing whatsapp chat messages was provided to the Noticee as part of annexures to notice dated June 23, 2023. I note from the said document containing text messages exchanged between the complainant and Noticee's side that there was mention of address of city Saharanpur by the

complainant which matches with the address as that of the complainant on SEBI Scores. I also note from the said document containing text messages exchanged between the complainant and Noticee's side that there was a forward of a message on February 11, 2020 purportedly with pdf image of the post-dated cheque drawn on ICICI Bank in favour of the complainant i.e., Piyush Rana. That the complainant was forwarded with a pdf image of the post dated cheque drawn on ICICI Bank in his name from given number itself is evident of that the complainant was in communication with Noticee's side else how would someone not connected even possess copy of the document that too a financial instrument viz., a cheque, issued by some other person. I also note that the said message containing the pdf image of the cheque was immediately followed by a message which inter alia read as, *'As per the discussion with you this is the pdc cheque we will send you on your registered address with us and after getting the cheque you will withdraw your Complaint first ? is it okay'.* Subsequently on February 27, 2020 the complainant was asked to send screenshot of the cheque and closer which was followed by sharing of photo of the post dated cheque of Rs. 1.30 Lakhs purportedly issued by the Noticee in favour of Piyush Rana and photo of copy of the complainant's withdrawal email sent to SEBI followed by message reading 'I have closed my complaint' which was reciprocated by the Noticee's side with word 'okay'.

55. I note from the said document containing text messages exchanged with the complainant that the complainant had inter alia alleged on June 29, 2020 that it seems that all promises by company - capital grow are lies that he was told that he would be sent a cheque for Rs.1.30 Lakhs from side of the company however neither that happened nor was there the transfer of Rs.50,000 in his account by the company, as was promised to him towards recouping losses incurred by him. If he is quickly not provided with any information with regard to the above, he would construe that commitments given to him inter alia by company capital grow are lies. As when the said commitments were made, he was told to first close his complaint on sebi website against capital grow and then the commitments would be honoured. However, it had been around three months

but there was a lull despite such a long wait and that he hoped that the commitments made by the company would be tried to be honoured.

56. In my view that the whatsapp messages exchanged contained address as that of the complainant, that it contained photo of the post dated cheque of Rs. 1.30 Lakhs sent on February 11, 2020 and which the Noticee had itself admitted having issued in favour of the complainant, that the complainant had inter alia alleged that he was promised with Rs. 1.30 Lakhs by way of cheque and Rs.50,000/- by way of bank transfer, copy of withdrawal email sent by the complainant to SEBI and shared by him with the Noticee, all cannot just be coincidence and evidently match with the allegations and developments as per the complaints. In this regard, I also note that Noticee has neither denied nor disputed the said document containing the whatsapp messages.

57. I note Noticee has inter alia contended that, “the definition of "fraud" under regulation 2 (c), is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee have committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. Hence, the serious violations of the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a) to (d) of the PFUTP Regulations shall be removed upon from the Noticee.”. In this regard, Noticee has relied upon SEBI Orders viz. Star World Research and Niveshicon Investment Advisor to support its aforesaid submission. Noticee has inter alia also contended, ‘That further, no evidence on record has been established by the SEBI which evidences any fraud committed by the Noticee. In that regard, the Noticee would like to refer the Order of Hon'ble Securities Appellate Tribunal 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.

58. In this regard, the relevant extracts of definition of 'fraud' under Regulation 2(1)(c) of PFUTP Regulations is as under:

> SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003
>
> ***Definitions***
>
> *2.(1) In these regulations, unless the context otherwise requires,—*
>
> (c) *"fraud" includes <u>any act, expression, omission or concealment</u> committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent <u>while dealing in securities</u> in order <u>to induce</u> another person or his agent <u>to deal in securities</u>, whether or not there is any wrongful gain or avoidance of any loss,…"*

59. In this regard, the relevant extracts of definition of 'dealing in securities' under Regulation 2(1)(b) of PFUTP Regulations are given below:

> ***Definitions***
>
> *2.(1) In these regulations, unless the context otherwise requires,—*
>
> *(b) [1]["dealing in securities" includes:*
>
> *(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;*
>
> *(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and*
>
> *(iii) any act of providing assistance to carry out the aforementioned acts.]*

60. I note from the aforesaid definition of fraud under regulation 2 (c) of PFUTP Regulations that fraud includes "*any act, expression, omission or concealment committed… or by his agent…. while dealing in securities in order to induce another person… to deal in securities…." .* Further, I note from sub-clause (ii) of the above definition of "dealing in securities" of PFUTP Regulations which inter

alia includes *"such acts which may be knowingly designed to influence the decision of investors in securities".*

61. In this regard, I note from one of the call recordings (Recording name: 1.2355) that the Executive who was addressed as 'Madhavi' by complainant accepted that she had given 200% assurance of the profit (Executive @ 5:15 minutes onwards stated that "first time call fail hui hai muje khud lag raha hai ki mene aapko 200% assure bola tha"). Further, later on during the same call she took the responsibility of the loss caused to the complainant (Executive @ 7:42 minutes of the said recording stated that "Agar mene aapko loss diya hai na to meri responsibility hai use recover karwane ki").

62. Further, with respect to profit assurance, I note the following from the said recording:

Time Slot - 2.06-3.22 minutes

"Complainant: Tell me which package has been subscribed by me?

Noticee (through its executive): Premium Package you have taken currently….

Complainant: And how much profit do you assure in premium package?

Noticee: Per day assurance of Rupees 5k-10k, 5k per day and according to that, profit for a month is 1.2lacs, approximately 1 Lacs.

Complainant: And which package you suggested me to subscribe?

Noticee: Beta-Binary Package

Complainant: Ok, what is its pricing and how much profit you will give in that services?

Noticee: Sir, that package costs Rs. 85,000 and in that services you will get return of 3.8Lac i.e., 15k to 20k returns in single day".

63. In my opinion, such act (aforesaid promising assured profits and unrealistic returns) by giving assurance of 200% of the profit was made while dealing in securities as such assurance was given for nothing but in order to influence the decision of complainant with respect of doing trading based on the advice of the

Noticee despite fully knowing that all the investments in securities market are subject to market risk.

64. In this regard, I note that Noticee had disputed the call recordings. However, I also note that complainant had submitted copy of whatsapp chat between him and Noticee's side inter alia including messages relating to complainant having been promised to be paid Rs. 1.30 Lakhs by way of cheque and Rs. 50,000 by way of bank transfer by company capital grow etc., and copy of which was provided to the Noticee and which Noticee has neither denied nor disputed, as also dealt with in detail under relevant para dealing with the alleged violation. I note that the contents of the whatsapp chat inter alia match with the submissions of the Noticee in so far as Noticee has itself inter alia submitted that, '*to resolve the client grievance … gave the complainant a post-dated cheque of Rs.1,30,000/-* '. I also note that Noticee has not demonstrated satisfactorily that the said cheque of Rs. 1.30 Lakhs had been given /provided to the complainant for purpose other than as claimed by the complainant in so far as even basic details like to cite as example., details of cheque viz., date, bank name, cheque number etc., as to how was the cheque sent /provided to the complainant, when was the cheque of Rs.1.30 Lakhs sent /provided by it to the complainant etc., have not been submitted by the Noticee.

65. The above, in particular that Noticee had itself inter alia submitted having given the complainant a post-dated cheque of Rs.1,30,000/-, inter alia matches with the contents of the complaints and all this when considered in backdrop of the fact that Noticee had neither provided relevant details in respect of the cheque of Rs.1.30 Lakhs, claimed to have been issued by it to the complainant, as also brought out above and dealt with under relevant paragraphs, nor demonstrated to satisfaction that the cheque was issued for the purpose other than as contended by the complainant, in itself, in my opinion, corroborates the version of the complainant, key content of which is as under:

> 1st Complaint: I was contacted by executive of Financial advisory company <u>Capital Grow</u> with SEBI REGISTER NUMBER <u>INA000001480</u>.

They told me, to join their services, and assured me that I would get a profit of 5000 to 7000 on joining their premium services. So, I paid them Rs 12500, but they gave me calls which ripped my 1.8 Lakhs INR with in three trading days. … I lost around 1.8 Lakh Rupees because of their miserable calls in market.

2nd Complaint: This complaint of mine is with reference to my previous complaint (No.- SEBIE/MP18/0004325/1) against the same company. In order to resolve my complaint, company and its executive promised me to send a cheque of rupees 1.3 Lakh. In order to believe me on their commitments, company's executive shared a soft copy of the cheque with me via WhatsApp (copy of which I am enclosing here). But, there was a condition, that I will have to send a closure mail wrt my complaint to SEBI, which I have done on 27th of February 2020. Also I have sent a confirmation mail to the company in the similar regard.

3rd Complaint: I lost 1.8 lakh rupees because of the company. They gave me a resolution, that they will give my 1.8 lakh rupees back to me in the following way- 50,000 rupees of bank transfer to my bank account and 1,30,000 rupees post dated cheque which will become eligible for cashing after six months But, they did not followed their promises and hence I am registering complaint against them. I am sharing copy of cheques given by the company.

66. In view thereof, having regard to the facts and circumstances and material on record, I am not convinced with the submissions of the Noticee that the cheque of Rs. 1.30 Lakhs subsequently claimed to have been issued by it as a deposit and am instead constrained to go with the earlier submission of the Noticee that the to resolve the client grievance Noticee gave the complainant a post-dated cheque of Rs.1,30,000/- and also refunded the client the service amount paid by him and accordingly I am constrained to agree with the version of the complainant viz., that he was assured by Noticee that he would get a profit of 5000 to 7000 on joining their premium services, so he paid them Rs 12500, but they gave me calls which ripped my 1.8 Lakhs INR with in three trading days

and he lost around 1.8 Lakh Rupees because of their miserable calls in market and in order to resolve his complaint, company and its executive promised to send a cheque of rupees 1.3 Lakh and to make him believe on their commitments, company's executive shared a soft copy of the cheque with him via WhatsApp, but there was a condition, that he will have to send a closure mail wrt his complaint to SEBI, which he did on 27th of February 2020.

67. Further, I note that Noticee has relied upon SEBI Orders viz. Star World Research and Niveshicon Investment Advisor and Ms. Suhanika Chourey, to support its aforesaid submission. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit and accordingly the contention of the Noticee in this regard cannot be accepted.

68. The above when seen in backdrop of the complaints of the complainant having narrative inter alia including that he had lost around Rs.1.80 Lakhs because of Noticee's miserable calls in market and that in order to resolve his complaint, Noticee /its executive promised him to be sent a cheque of Rs. 1.30 Lakhs and bank transfer of Rs.50,000 and in order to make him believe about their commitments, Noticee's executive shared a soft copy of the cheque with him via WhatsApp, copy of which was shared by the complainant before the date of the cheque and when viewed in totality of the facts and circumstances and that the developments in the matter, in particular that Noticee had himself admitted to have issued a cheque in favour of the complainant, amount of which exactly matches with the amount as indicated by the complainant in his complaint, and having regard to the conflicting submissions of the Noticee about purpose of the giving /providing of cheque of Rs.1.30 Lakhs to the complainant, Noticee not having demonstrated as to when and how was the cheque of Rs. 1.30 Lakhs given by him to the complainant, even assuming for time being that the contention of the Noticee that same was given by it to the complainant as security deposit, the justification as to why and how security deposit happened to be Rs. 1.30 Lakhs and not any other amount, Noticee not having demonstrated as to that it was his general practice to give such security deposits

to its clients, in my opinion, only go on to vindicate the assertions of the complainant.

69. To summarize and put in brief, while the Noticee has itself admitted of having issued a cheque of Rs. 1.30 Lakhs in favour of the complainant, the Noticee has not demonstrated to satisfaction, as brought out and dealt with in the foregoing, that the cheque of Rs. 1.30 Lakhs issued by it in favour of the complainant, was for purpose other than as alleged by the complainant. On the contrary, the developments in the matter, as per the material on record and as also brought out and dealt with in the foregoing, correspond with the version of the complainant inter alia including that he was promised of assured returns and that he had incurred loss owing to bad calls given by the Noticee and was promised to be recouped with the amount of loss inter alia with Rs. 1.30 Lakhs by way of cheque of and accordingly he was shared with a copy of post dated cheque of Rs. 1.30 Lakhs. Going by the facts inter alia including that Noticee had issued a cheque in favour of the complainant and that the amount of the cheque, being Rs. 1.30 Lakhs, was 10.4 times of the total amount /advisory fee otherwise charged by the Noticee from the complainant, that while the cheque was post dated August 27, 2020 the complainant had inter alia mentioned about him being promised to be paid Rs. 1.30 Lakhs by way of cheque in his second complaint dated June 25, 2020 itself evidently point to complainant allegation of having been promised assured returns by the Noticee undisputable.

70. In view thereof, when viewed in totality and having regard to the facts and circumstance and material available on record and in particular the fact that the Noticee had indeed issued a cheque of Rs. 1.30 Lakhs in favour of the complainant, copy of which is also available on record, the allegation that the Noticee had made false and misleading representation to the complainant being its client by promising assured profits and unrealistic returns and by not informing client that investments in securities market was is subject to market risk Noticee had failed to act in a fiduciary capacity towards its client, stands established.

71. Therefore, I hold that Noticee had violated Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and (s) of PFUTP Regulations 2003 read with section 12A(a), (b) and (c) of SEBI Act, 1992.

ISSUE II: Do the violations, if any, attract monetary penalty under Section 15C & 15HA of SEBI Act, 1992?

72. It has been established in the foregoing paragraphs that Noticee has violated the provisions of the SEBI Act, 1992, IA Regulations, 2013, PFUTP Regulations, 2003 and SEBI Circular and therefore, the aforesaid violations committed by the Noticee attract monetary penalty under section 15C and 15HA of SEBI Act, 1992.

73. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} – wherein the Hon'ble Supreme Court of India held:

> *"….*
> *In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant*
> *….*
> *".*

74. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provision of section 15C & 15HA of SEBI Act, 1992 which reads as under during the relevant period:

[62][CHAPTER VIA
PENALTIES AND ADJUDICATION

"….

[73][Penalty for failure to redress investors' grievances.

15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing [74][including by any means of electronic communication], to redress the grievances of investors, fails to redress such grievances within the time specified by *the Board, such company or intermediary shall be liable to a penalty [75][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].*

[101][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 [102][which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].
…."

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

75. While determining the quantum of penalty under section 15C & 15HA of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under-

Factors to be taken into account by the adjudicating officer.

"….

Factors to be taken into account while adjudging quantum of penalty

***15J.** While adjudging quantum of penalty under section 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.*

…."

76. In the instant case, I note that as per material on record the Noticee not only mislead the complainant to close the first complaint by sharing copy of post dated cheque, which as inter alia been admitted to have been issued by the Noticee itself, but also did not fulfill its promise made to the investor regarding refund of lost amount of Rs. 1.80 Lakhs and accordingly the complainant had to

lodge the third complaint which Noticee failed to resolve, as dealt with and established in detail in the foregoing. As regards repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticee. However, I cannot ignore that as per SEBI Act, 1992, SEBI is duty bound to inter alia protect the interests of investors in securities. Having regard to the same, in my opinion, in such matters concerning investor complaints involving violations by registered intermediaries, as is in the instant case, if not dealt with firmly may have a bearing on the confidence and trust of the investors in securities market and on orderly functioning of the securities market.

ORDER

77. After taking into consideration the facts and circumstances of the case, the material available on record and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, I hereby impose the following penalty on the Noticee as given in the table below, under section 15C & 15HA of SEBI Act, 1992. In my view, the penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
Capital Grow Financial Services (Proprietor Mr. Prashant Gole)	Section 15C of SEBI Act, 1992	Rs 1,00,000/-
	Section 15HA of SEBI Act, 1992	Rs 5,00,000/-

78. The 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

79. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization

of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

80. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

PLACE: MUMBAI
DATE: December 29, 2023

AMAR NAVLANI
ADJUDICATING OFFICER