BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2023-24/30087]

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

In respect of

Noticee No.	Name of the Noticee	PAN
1	M/s Nestra Capital Prop.: Dhirendra Ramraj	AHCPY1950C

In the matter of

M/s Nestra Capital Prop.: Dhirendra Ramraj

Background

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an inspection of M/s Nestra Capital, Proprietor – Dhirendra Ramraja Yadav (hereinafter referred to as **Noticee),** on February 13, 2023, for the period from April 01, 2020 to February 13, 2023 (hereinafter referred to as **Inspection Period**). The inspection covers the compliance of regulatory requirements by the Noticee stipulated under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as '**IA Regulations'**), and circulars framed thereunder.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated November 03, 2023, appointed Ms Soma Majumdar as Adjudicating Officer to inquire into and adjudge under the provisions of Section 15EB of the SEBI Act for the violations alleged to have been committed by the Noticee. Subsequent to the transfer of the case, the undersigned was appointed as an Adjudicating Officer in the matter vide communique dated December 19, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter being referred to as the **"SCN"**) dated January 10, 2024 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 15EB of SEBI Act for the alleged violations of Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020.

4. During inspection Noticee was, inter-alia, advised to provide call recording of 20 sample clients. Noticee did not provide call records with respect to the sample clients. In view of the same it was alleged that Noticee was not maintaining call recordings of its clients and thus did not produce to the inspection team the above documents when called for.

5. Therefore, it was alleged that the Noticee violated Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020.

6. The SCN was sent to Noticee through Speed Post AD which returned undelivered, thereafter SCN was sent via digitally signed Email on January 11, 2024 and was duly served upon Noticee. Vide email dated February 03, 2024 Noticee sought an extension of 30 days for submitting its reply. Vide email dated February 05, 2024 the request of Noticee was acceded to and Noticee was requested to submit its reply on or before February 20, 2024. Vide email dated February 21, 2024, Noticee submitted its reply.

7. The Noticee's reply is summarised below:

   a) *Noticee submitted SEBI has conducted a detailed inspection in their company during their visit on Feb, 13th 2023, they were instructed to provide all compliance related documents of clients including KYC, RPM, Suitability Report, Invoice etc which were duly provided, the details of employees etc all were provided and the inspection team was satisfied.*

   b) *Noticee submitted that when the team visited there office and demanded the telephonic call recording they tried to access the same from there server in front of the inspection* *team, as the server was not responding they called there technical service provider and asked him to recover their data, the technical support provider sent them an e-mail to confirm their requirements on 14th Feb 2023.*

c) *Noticee submitted that the e-mail dated 14/02/2023 was forwarded to Inspection team to assure that efforts are being made to recover the data which is possibly corrupted. That apart from the said call recordings all other documents were timely sent.*

d) *Noticee submitted that the inspection team did observe that the server was non-responsive and during the visit, the team acknowledged the same and allowed them to send the servers for recovery. The same was sent in presence of the inspection team to the technical support provider and with their accord. Given the circumstances, the email by the technical support provider may be taken as evidence to establish that the said server was infact sent for recovery of data, further there is another e-mail by same service provider on 2nd April 2023 that the data could not be recovered.*

e) *Noticee submitted that the allegations that as the Noticee has failed to provide some data due to server issues and has thus violated regulation 19(2), 25(1), 25(2) and clause 8 of code of conduct is unfound as it is not the case that the Noticee never maintained call records and has never sent these records to SEBI infact in many cases of complaints on SCORES the call records have been sent to SEBI.*

f) *Noticee submitted that SEBI in other similar circular like SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March, 22nd 2018 has made provisions in regulation III that in case due to technical failure the call records are not provided broker can prove his case by other things like post confirmation, payment etc. Similarly, in case of IA if calls are not provided the disputes can be settled by looking at the agreements, RPM, Invoice, e-mails etc where all details of the service are provided, if the procedure does not accounts of such an eventuality in hardware failure the entire procedure becomes unconstitutional. Further in the present case as there is no other allegation this itself proves that the respondent has not done any mistake while dealing with his clients only due to technical failure he has been unable to provide call details.*

g) *Further Noticee referred to the SEBI order M/s JM MORGAN STANLEY SECURITIES PVT. LTD dated October 27, 2005 and Hon'ble SAT order in the matter of UPSE securities Ltd. v/s SEBI*

8. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on March 05, 2024 vide hearing notice dated February 22, 2024. The said hearing notice was sent to Noticee through SPAD which returned undelivered. Thereafter, it was sent through digitally signed email dated February 23, 2024 and was duly served upon Noticee and the delivery is on record. The Authorised Representative (ARs), appeared for the hearing scheduled on March 05, 2024 through zoom platform and made submissions on the lines of written reply submitted by Noticee and sought time till March 11, 2024 for the submission of additional reply. Vide emails dated March 11, 2024 Noticee has made the additional submissions along with supporting documents, the same is summarized below-

    a) *Noticee submitted that on 2nd April, 2023 the IT expert informed that the Data cannot be recovered. After 2nd April they have not bought any new server as the company has stopped all its operation and has not taken any client on-board after this date which is evident from the bank accounts. Noticee submitted that the company stopped taking new clients on board from February 2023 and only 1 existing client made payments for his service on 14 March 2023, thereafter no payments were received.*

    b) *Noticee submitted all the earlier emails containing call recordings which were sent before the server got corrupted and also submitted that as on date they do not have any old call recording data as the server got corrupted and thereafter they have not taken any client on board and not received any fees and thus there is no call recording after the said inspection took place.*

<u>CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS</u>

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

ISSUE I: Whether Noticee has violated provisions of Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020?

ISSUE II- Does the violation, if any, attract monetary penalty under Section 15EB of the SEBI Act, 1992 for Noticee?

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

10. Before proceeding further, it will be appropriate to refer the provisions of Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020.

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

Regulation 19(2) - *All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:*

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

Regulation 25 - Obligation of investment adviser on inspection.

(1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including [partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

Third Schedule

CODE OF CONDUCT FOR INVESTMENT ADVISER

8. Compliance - An investment adviser including its [partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

Regulation 15 - General responsibility.

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

SEBI Circular dated September 23, 2020.

Guidelines for Investment Advisers

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

(vi) Maintenance of record

Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:

a. IA shall maintain records of interactions ,with all clients including prospective clients(prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:

i. Physical record written & signed by client,
ii. Telephone recording,
iii. Email from registered email id,
iv. Record of SMS messages,
v. Any other legally verifiable record.

b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.

C. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

<u>FINDINGS</u>

11. On perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case I record my findings hereunder:

ISSUE I: Whether Noticee has violated provisions of Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020?

12. It was observed that vide email dated March 07, 2023 and March 23, 2023 Noticee was, inter-alia, advised to provide call recording of 20 sample clients. It was alleged that Noticee did not provide call records with respect to the sample clients and did not fulfil its obligation of investment advisor on inspection. In view of the same it was alleged that Noticee was not maintaining call recordings of its clients.

13. Therefore, it is alleged in the SCN that the Noticee violated Regulation 19(2), 25(1), 25(2) and Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020.

14. Noticee, in its reply to the SCN, submitted that when the team visited their office and demanded the telephonic call recording they tried to access the same from there server in front of the inspection team, as the server was not responding they called there technical service provider and asked him to recover their data, the technical support provider sent them an e-mail to confirm their requirements on 14th Feb 2023 and e-mail dated 14/02/2023 was forwarded to Inspection team to assure that efforts are being made to recover the data which is possibly corrupted. That apart from the said call recordings all other documents were timely sent. The service provider on 2nd April 2023 informed that the data could not be recovered.

15. Noticee further submitted the email dated April 27, 2022 containing call recordings which was sent to SEBI before Noticee's server got corrupted and also submitted that as on date

they do not have any old call recording data as the server got corrupted and thereafter they have not taken any client on board and not received any fees because Noticee has stopped all its operation as registered investment advisor and thus there is no call recording after the said inspection took place.

16. I note that as per regulation 19(2) of the IA regulations, IA shall maintain all records either in physical or electronic form for a minimum period of five years, as per regulation 25(1) and 25(2) of the IA regulations, every investment adviser in respect of whom inspection has been ordered and who is in possession of relevant information shall give all such assistance and documents in his custody or control as the inspecting authority may require for the purpose of inspection. Further, as per Clause 8 of Code of Conduct as specified under Third Schedule read with Regulation 15(12) of IA Regulations and paragraph 2(vi) of SEBI Circular dated September 23, 2020, an IA shall comply with all the regulatory requirements and shall furnish to board as may be specified by board and IA shall maintain records of interaction with all clients for a period of five years.

17. From the material available before me and the submission made by the Noticee I observe that during inspection Noticee did not provide call records with respect to the sample clients as there server was not responding. I note that Noticee had sent an email to technical support to recover the data from their hard disk, however, vide email dated April 2, 2023, technical support team informed Noticee that data could not be recovered. This was also communicated to SEBI. On perusal of the Noticee's submission/documents, it is noted that with respect to SCORES complaint in April 27, 2022 Noticee had forwarded call records to SEBI. Noticee was thus maintaining call records earlier which was sent to SEBI. Noticee submitted that they have not bought any server as they had stopped taking any new clients on board from February 2023 as they have closed down their operations. I observe from the bank statement submitted by the Noticee that there was no receipt of fees since February 2023 except from one existing client on March 14, 2023.

18. Given the above, I am therefore inclined to hold that a penalty in the matter may not be justified and accordingly dispose of the Show Cause Notice in the matter.

ORDER

19. In view of the above, I do not find it to be a fit case for imposition of penalty under section 15EB of SEBI Act, 1992. Hence, the SCN dated January 10, 2024 is disposed of, without imposition of penalty

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

Place: Mumbai **BARNALI MUKHERJEE**
Date: March 19, 2024 **ADJUDICATING OFFICER**