BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/BM/RK/2023-24/30080]

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:

Name of the Entity	Registration Number	PAN
Wealthmax Solution Investment Advisor (Proprietor: Piyush Jain)	**INA000010751**	**ATCPJ2297H**

In the matter of "Inspection of Wealthmax Solution Investment Adviser (Investment Adviser)"

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an inspection of Wealthmax Solution Investment Advisor (Proprietor : Piyush Jain), a registered Investment Adviser (hereinafter referred as "**IA**") under the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred as "**IA Regulations**"), having SEBI Registration No. INA000010751, since June 06, 2018 (hereinafter referred to as "**Wealthmax/Noticee/IA**") with the registered address at "Shop No 106-110, Sayaji Plaza, H-1, Scheme No 54, Vijay Nagar, Indore, Madhya Pradesh-452001." The said inspection was done for the period from April 1, 2020 to January 31, 2023 (hereinafter referred as "**Inspection Period/IP**"). The focus of the inspection was to ascertain compliance with Regulatory requirements stipulated under SEBI Act, 1992

(hereinafter referred to as the "**SEBI Act"**), IA Regulations and subsequent amendments, circulars and guidelines framed thereunder.

2. The aforesaid inspection prima facie alleged the irregularities with respect to the change in the information previously furnished regarding registered address, qualification and certification requirements, membership of BSE ASL, non-execution of agreement with clients, failure to maintain records and non-co-operation and submission of insufficient documents to the inspection team, thereby allegedly violating the various provisions of IA Regulations and SEBI Circulars viz, SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021 read with SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/ 579 dated June 18, 2021, Clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020,.

3. Accordingly, the findings of the inspection were communicated to the Noticee vide email dated March 10, 2023, pursuant to which the Noticee, vide email dated March 20, 2023 submitted its reply.

4. Based on the submitted replies, following alleged violations were observed as mentioned in table 1 below:

Table 1

S.N.	Alleged Violation	Statutory Provisions
1	**Registered office not available-** The IA has not forthwith informed SEBI about the material change in the information that is previously furnished.	Regulation 13 (a) & (b) of IA Regulations and Regulation 15 (9) r/w Clause 1 & 8 of Code of Conduct as mentioned in schedule III of IA regulation.
2	**Qualification and Certification requirements**- In terms of SEBI IA Regulations, 2013, the IA should hold valid NISM certifications at all times. Herein, the IA has failed to obtain fresh NISM certifications after April 2022, while the registration is valid till June 2023.	Regulation 7(2) of SEBI (Investment Advisers) Regulations, 2013
3	**Membership of BSE Administration & Supervision Limited: -** The IA submitted that he has no intention of seeking registration with BASL as mandated under SEBI circular dated June 18, 2021 and he has initiated surrendering his IA registration vide email dated October 12, 2022. However, no application is received from the IA in this respect.	Regulation 6 (n) and 13 of SEBI IA Regulations read with SEBI circular SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021 read with SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/ 579 dated June 18, 2021.
4	**Non-execution of agreement with clients** IA has failed to submit any documents w.r.t entering into agreement with his clients and has informed that due to sudden demise of his compliance person: CA Abhishek Shrivastava, he is unable to submit the data.	clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations
5	**Maintenance of records-** IA has failed to maintain records of KYC, Agreement, Risk profiling, Invoices, Call recordings for a minimum period of 5 years, as the records were being available with his CA. IA informed that Due to sudden demise of his CA, he is unable to provide the records to SEBI..	Regulations 19 of SEBI IA regulations for not maintaining the basic details and records of 5 clients r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations.
6	**Non-co-operation and submission of insufficient documents to the inspection team** IA has submitted insufficient / incomplete response to the PIQ to the inspection team. Further, the IA did not furnish networth certificate to the inspection team during inspection.	Regulation 25 (1) & (2) of IA regulations

5. In view of the above, SEBI initiated adjudication for the violations mentioned herein above.

APPOINTMENT OF ADJUDICATING OFFICER

6. In this regard, SEBI initiated adjudication proceedings and had appointed Ms Soma Majumder as the Adjudicating Officer **("AO")**, vide order dated October 09, 2023, under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge under Section 15EB of the SEBI Act for the aforesaid violations alleged to have been committed by the Noticee as specified in the Show Cause Notice (SCN). However, pursuant to the transfer of the erstwhile said AO, undersigned was appointed as the AO in the matter vide Order dated December 07, 2023 communicated by communique dated December 19, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. SCN No EAD-10/SM/AS/44559/1/2023 dated November 03, 2023 was issued to the Noticee under rule 4 of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15EB of the SEBI Act for the alleged violations as mentioned in table 1 above.

8. The said SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) which returned undelivered on both its addresses. Subsequently, the same was served through email dated January 03, 2024. The proof of

service is on record. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on February 21, 2024 vide Hearing Notice dated February 12, 2023 served through email on the same day. However, Noticee sought an adjournment of the said hearing vide email dated February 21, 2024 and accordingly, vide email dated February 21, 2024, the said Noticee was granted another opportunity of hearing on February 26, 2024. Further, Noticee sought another adjournment of the hearing vide email dated February 26, 2024. Subsequently, vide email dated February 26, 2024, a final opportunity of hearing was granted to the Noticee on February 27, 2024 vide email dated February 26, 2024. The Noticee attended the said hearing with its Authorized Representative (AR) and reiterated the submissions made vide its reply dated February 05, 2024 and additional submission vide email dated March 05, 2024 and March 08, 2024. The submissions made by the Noticee are reproduced hereunder:

a) *The Noticee denied having changed its registered office address at any point in time and that in February 2020, it had ceased its operations and closed the office. It further submitted that it didn't change its address as it was residing at its residential address.*

b) *With regard to the change in address, Noticee added that it had changed its office from Sayaji Plaza to Vardhaman Complex on February 26, 2020 and that it had duly informed SEBI about the change in its address through the SEBI Intermediary (SI) portal.*

c) It further submitted that it had operated at this new address for just one month and it closed down its operations with a view to surrender its registration.

d) Noticee submitted that it was having a valid NISM Certification till April, 2022 and that the certificate demonstrated the Noticee's qualification to provide Investment advisory services and it ceased providing investment advisory services in September 2021 and had collected the last payment in April 2021. It further added that the renewal of NISM Certificate was not required as it stopped providing services after September 2021.

e) Noticee further submitted that it had initiated the surrender procedure, and the same could not be completed as one complaint was pending against it.

f) Noticee also submitted that it had no intention to continue its operations owing to which it didn't obtain the membership of BSEASL as it was in the process of surrendering its SEBI Registration. It had notified SEBI vide its email dated October 12, 2022 about its intention to surrender the registration and forego BSEASL membership.

g) The Noticee acknowledged that the requirement to enter into agreements with clients came into effect on April 1, 2021 and that it had duly entered into agreements with 3 clients for 5 transactions for which it had received payments after April 01, 2021 and that the said agreements included all mandatory clauses of the SEBI circular.

h) The Noticee affirmed that all required records pursuant to the Regulations were duly maintained throughout the relevant period and that the sudden demise of its Compliance officer, CA Abhishek Shrivastava resulted in non-submission of data to SEBI.

i) *It submitted that it had onboarded only 8 clients during the IP (FY 2020-21 AND 2021-22) with a total revenue of Rs 2,29,000/-*

j) *It further submitted that it had consistently completed the KYC Procedures and risk profiling of all the clients and that the client agreements were duly executed in all instances.*

k) *It highlighted that no client had ever disputed or raised a complaint regarding the completeness or accuracy of its KYC or risk profiling.*

l) *The Noticee denied any lack of cooperation with SEBI officers during the inspection and that it acknowledged its inability to present the net worth certificate during the inspection due to its unavailability at that time.*

9. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been duly followed in the matter by granting the Noticee, an opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS: -

10. I have carefully perused the written submissions made, the documents available on record, and the issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the following provisions of IA Regulations and SEBI Circulars?

a) Regulation 13 (a) & (b) of IA Regulations and Regulation 15 (9) r/w Clause 1 & 8 of Code of Conduct as mentioned in schedule III of IA regulation.

b) Regulation 7(2) of IA Regulations.

c) Regulation 6 (n) and 13 of SEBI IA Regulations read with SEBI circular SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021 read with SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/ 579 dated June 18, 2021;

d) Clauses 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations;

e) Regulations 19 of SEBI IA regulations for not maintaining the basic details and records of 5 clients r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations;

f) Regulation 25 (1) & (2) of IA regulations.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act for the alleged violations?

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

11. Before proceeding further, I would like to refer to the relevant provisions of law:

Relevant provisions of SEBI (Investment Advisors) Regulations, 2013

Consideration of application and eligibility criteria

6. *For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —*

(n) *Whether the applicant is a member of a recognized body or body corporate as specified under regulation 14.*

Provided that the existing investment advisers shall comply with the requirement under this clause in such manner as may be specified by the Board.]

Qualification and certification requirement

7(2) *An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services -*

(*a)* *from NISM; or*

(b) *from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:*

Conditions of Certificate

The certificate granted under Regulation 9 shall, inter alia, be subject to the following conditions:

13(a) *the investment adviser shall abide by the provisions of the Act and these regulations;*

13(b) *the investment adviser shall forthwith inform the Board in writing, if any information or particulars submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.*

Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.

General responsibility

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

Maintenance of records

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

- ***(a)*** *Know Your Client records of the client;*
- ***(b)*** *Risk profiling and risk assessment of the client;*
- ***(c)*** *Suitability assessment of the advice being provided;*
- ***(d)*** *Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;*
- ***(e)*** *Investment advice provided, whether written or oral;*
- ***(f)*** *Rationale for arriving at investment advice, duly signed and dated;*
- ***(g)*** *A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was*

rendered and fee, if any charged for such advice.

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

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

Obligation of investment adviser on inspection

25(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

1. ***Honesty and fairness***

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

2. ***Diligence***

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

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.

Relevant Provisions of SEBI Circulars

SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021

https://www.sebi.gov.in/legal/circulars/aug-2021/extension-of-time-for-seeking-membership-of-bse-administration-and-supervision-limited_52237.html

SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/ 579 dated June 18, 2021

https://www.sebi.gov.in/legal/circulars/jun-2021/framework-for-administration-and-supervision-of-investment-advisers-under-the-sebi-investment-advisers-regulations-2013_50605.html

Clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020

2(ii) Agreement between IA and the client

a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.

b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013and amendments thereto as well as circulars issued thereunder.

c. *IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.*

d. *IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.*

(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,*
- *iv. 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

Issue No. I: Whether Noticee is in violation of following provisions of IA Regulations and SEBI Circulars?

a) Regulation 13 (a) & (b) of IA Regulations and Regulation

15 (9) r/w Clause 1 & 8 of Code of Conduct as mentioned in schedule III of IA regulation.

b) Regulation 7(2) of IA Regulations.

c) Regulation 6 (n) and 13 of SEBI IA Regulations read with SEBI circular SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021 read with SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/ 579 dated June 18, 2021;

d) Clauses 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations;

e) Regulations 19 of SEBI IA regulations for not maintaining the basic details and records of 5 clients r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations;

f) Regulation 25 (1) & (2) of IA regulations.

a) <u>Registered office not available</u>:

12. It has been alleged that Noticee did not inform regarding change in material information *i.e.* Registered office of the IA. And thus, allegedly violated Regulation 13 (a) & (b) of IA Regulations and Regulation 15 (9) r/w Clause 1 & 8 of Code of Conduct as mentioned in Schedule III.

13. Noticee in its submission to the inspection report denied having changed its registered office address at any point in time and that in February 2020, it had ceased its operations and closed the office. Further, I note from the submission made by the Noticee to the inspecting team that due to COVID-19 imposed locked down it had scaled down its operations, was not regularly visiting there and that it was providing services to few of its known persons only from its residential address and accordingly, there was no change in its registered office as it had not acquired any other office. So, the same shall not be construed as material change. However in reply to the SCN, the said Noticee submitted that it had duly informed SEBI about the change in its address through SEBI Intermediary (SI) portal and submitted the screenshot of the SI portal dated February 19, 2020. Further, vide its additional submission dated March 4, 2024, it submitted that it had changed its address from *Sayaji Plaza* to *Vardhman Plaza* on February 26, 2020 wherein it operated for only a month and then it had closed its operations.

14. Given the above inconsistent and contradictory submissions made by the Noticee, I do not find merit in its submissions.

b) <u>Qualification and Certification requirements & Membership of BSE Administration & Supervision Limited</u>

15. It was observed that NISM XA and XB certifications of the Noticee were expiring on October 2020 and December 2020 respectively. Although, the validity of NISM certifications were extended till March 31, 2022, owing to Covid-19 restrictions it had failed to obtain fresh NISM certifications after April 2022, while the registration of the Noticee was valid till June. Thus, it was alleged that Noticee is in violation of regulation 7(2) of IA Regulations.

16. In this regard, Noticee submitted that it ceased providing investment advisory services in September 2021 and had collected the last payment in April 2021. It further added that the renewal of NISM Certificate was not required as it stopped providing services after September 2021 and that it had initiated the surrender procedure, and the same could not be completed as one complaint was pending against it.

17. Further, it was observed that the Noticee being an IA did not have membership of BASL despite being mandated as per SEBI circular dated June 18, 2021. Thus, it was alleged that Noticee has violated Regulation 6 (n) and 13 of SEBI IA Regulations read with SEBI circular SEBI/ HO / IMD/ IMD-I/ DOF1/P/CIR/2021/622 dated August 31, 2021 read with SEBI circular SEBI/ HO/ IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021.

18. In this regard, the Noticee submitted that it had no intention to continue its operations and was in the process of surrendering its SEBI Registration because of which the Noticee didn't obtain the membership of BSEASL. It further submitted that it had generated a minimal revenue of Rs 2,29,000/- for the financial year(FY-2020-21 and 2021-22).

19. I note that the IA performs a crucial role while discharging its responsibility by conducting financial analysis, market research, risk assessment, portfolio management, asset allocation, etc for its clients. While there has been technical violation by the Noticee with respect to not obtaining fresh NISM certificate and not obtaining the membership of BSEASL, I note from the submission of the

Noticee that it received its last payment in the month of April 2021, didn't provide IA services after September 2021 and was in the process of surrendering its SEBI Registration. Further, I note from the material available on record that it had intimated SEBI regarding its intention to surrender SEBI Registration vide email dated October 12, 2022 as it was finding itself incapable to comply with the extant SEBI Regulations and Circulars and therefore, did not seek the membership of BSEASL. I also note that the documents available on record show that the said Noticee didn't receive any payment post April 2021 which demonstrates the Noticee's unwillingness to continue as an IA. Had the Noticee showed interest to continue to do business as an IA, it would have been advised to be careful in the future.

c) <u>Non-execution of agreement with clients</u>

20. It was observed that after April 01, 2021, Noticee had received fees from the clients on 5 instances without executing agreement. Noticee provided a copy of agreement with respect to remaining 3 clients i.e. Dhawal Khatri, Navneet Patel and Prakash K Jadhav wherein those agreements were not as per Annexure A of SEBI Circular September 23, 2020 which mandated IA to cover the terms and conditions provided in Annexure-A. Thus, it was alleged that Noticee has violated clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations

21. In this regard, the Noticee acknowledged that the requirement to enter into agreements with clients came into effect on April 1, 2021 and that it had duly entered into agreements with 3 clients for 5 transactions for which it had

received payments after April 01, 2021 and that the said agreements included all mandatory clauses of the SEBI circular. With regard to the Noticee's aforesaid submission, I note that the Noticee has not provided any documentary evidence in support of having executed agreements including the mandatory clauses as provided in the SEBI circular. At this juncture, it is pertinent to mention the relevant clauses of September 2020 Circular which reads as mentioned below:

> a) *Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.*
> b) *IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder*
> c) *IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.*
> d) *IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.*

22. From the above, I note that the Noticee was duty bound to ensure that neither any investment advice was rendered nor any fee was charged until the client had signed the aforesaid agreement and provided copy of signed agreement to the client. However, in the absence of any documentary evidence in support of having executed any agreement with clients , the Noticee is in clear violation of the said provisions. Further, the material available on record shows that the Noticee made the following submission "*in respect of clients mentioned at Serial no 1, 2 and 3 it is informed that, complete details of KYC, Client agreement, Risk profiling, Suitability Report & other relevant records are not is possession of me as a proprietor of Wealthmax Solution*."

23. In view of the above, I find that the Noticee has violated clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations by having failed to execute agreement with clients.

d) <u>Maintenance of records</u>

24. Noticee was alleged to have not maintained the basic details and records and discrepancies were observed w.r.t the details/documents submitted by the Noticee i.e. copy of agreement, KYC documents, invoices, Risk Profiling, email communications, call recordings etc of all 8 clients. It was therefore alleged that that Noticee has violated Regulations 19 of SEBI IA regulations r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

25. I note that following discrepancies were observed with respect to maintenance of records of 8 clients on boarded by Noticee in April 2021.

   a) **<u>KYC</u>**: Noticee had not done KYC of 5 out of 8 clients and for these 5 clients, name of the clients was mentioned as 'AAAAAA', 'BBBBBBB' and 'CCCCC', indicating that the Noticee didn't have the basic details of the clients i.e. name, Phone number, email-id and PAN. Further, I note that the Noticee had submitted copy of PAN card and Aadhar card of remaining 3 out of 8 clients.

   b) **<u>Agreement:</u>** With regard to agreement, no agreement was executed with 5 clients out of 8 clients. Further, with respect to the agreement with remaining

3 clients, the same was not as per Annexure A of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 which mandated IA to cover the terms and conditions provided in Annexure-A of the circular.

c) **<u>Risk Profiling:</u>** Out of 8 clients, the Noticee submitted that, it had not done Risk Profiling for 5 clients.

d) **<u>Invoices</u>**: In this regard, Noticee had not submitted invoices with respect to any of the payments received by it.

e) **<u>Call Recording, Emails and Record of SMS messages:</u>** With regard to the call recordings, emails and SMS, Noticee had not maintained call recording, Emails and Record of SMS messages for the services rendered by it to its clients.

26. In this regard, Noticee submitted that all records pursuant to the Regulations were duly maintained by it and that it had consistently completed KYC procedures and risk profiling of all its clients before providing services. It further submitted that it had duly executed client agreements in all instances and that the sudden demise of its Compliance officer, CA Abhishek Shrivastava resulted in non-submission/delayed of data to SEBI.

27. With regard to the Noticee's aforesaid submission, I note that the Noticee had not provided any documents as mentioned above and is only claiming of having maintained all documents. Mere statement of the Noticee cannot be construed as providing documents. In this regard, I find it pertinent to mention the provision of Regulation 19 of IA Regulation.

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

(a) Know Your Client records of the client;

(b) Risk profiling and risk assessment of the client; (c) Suitability assessment of the advice being provided;

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

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

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

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

28. From the aforesaid provision, I note that the Noticee was mandatorily required to maintain the KYC records, risk profiling, risk assessment, Copies of agreements with clients which it didn't provide to the inspection team. Further, Noticee was required to maintain the records either in physical or electronic form and preserved for a minimum period of five years above as per the Regulation 19(2) of IA Regulations which it failed to do. It could not demonstrate maintaining of records either in physical form or electronic form. Thus, the submission of the Noticee is bereft of merits.

29. Accordingly, in view of the above, it stands established that the Noticee has violated Regulations 19 of SEBI IA regulations r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1 (honesty and fairness), 2 (diligence) and 8

(compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

e) <u>Non-co-operation and submission of insufficient documents to the inspection team</u>

30. It has been alleged that Noticee has submitted insufficient / incomplete response to Post Inspection Questionnaire (PIQ) and inspection team. Further, the Noticee did not furnish net worth certificate to the inspection team during inspection. Thus, it was alleged that Noticee has violated Regulation 25 (1) & (2) of IA regulations.

31. In this regard, the Noticee denied any lack of cooperation with SEBI officers during the inspection and submitted that it had actively provided all available documents, information, and records to the officials. It further acknowledged its inability to submit the networth certificate to the inspection team due to its unavailability at that time but had provided the same after the inspection.

32. As demonstrated at paragraphs 25 to 29 above, Noticee did not produce documents during inspection to the inspection team. While Noticee produced the networth certificate subsequent to the inspection, it did not produce the mandatory documents as required to be maintained by IA under the IA Regulations on the ground that it was in the custody of its CA who has expired. Noticee was bound by the Regulations to maintain the documents at its registered office and was under obligation to produce to the Regulator, documents as and when sought by the Regulator. Thus the submissions of the

Noticee is devoid of any merit. Thus, the violation of Regulation 25 (1) & (2) of IA regulations as alleged against the Noticee is established.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act?

33. As it has been established Noticee has violated following provisions of the IA Regulations and SEBI Circulars.

    a) Regulation 13 (a) & (b) of IA Regulations and Regulation 15 (9) r/w Clause 1 & 8 of Code of Conduct as mentioned in schedule III of IA regulation.

    b) Clauses 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 19 (1) (d) of SEBI IA regulations;

    c) Regulations 19 of SEBI IA regulations for not maintaining the basic details and records of 5 clients r/w clause 2 (ii) & (vi) of SEBI Circular reference no SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations;

    d) Regulation 25 (1) & (2) of IA Regulations.

34. In the context of the above, I refer to the observations of Hon’ble Supreme Court in the matter of Chairman, ***SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}*** wherein the Hon’ble Court had held that: “*In our considered opinion, penalty is*

attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.......”

35. Therefore, in view of the foregoing and placing reliance on the above judgement of Hon’ble Apex Court, I am of the view that the Noticee is liable for imposition of monetary penalty under Section 15EB of the SEBI Act, which is reproduced hereunder:

SEBI Act, 1992:

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

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

36. While determining the quantum of penalty under Section 15EB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:

SEBI Act, 1992

15J Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely

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

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

(c) the repetitive nature of the default.

37. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee. It is pertinent to mention here that in the past Noticee had been penalized vide AO order dated February 28, 2023 for not redressing the grievances of the clients. Further, I note that that the role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that it has failed in its fiduciary duties owed to its clients and attracts penalty.

ORDER

38. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble *Supreme Court in* ***SEBI vs. Bhavesh Pabari (2019)*** 5 SCC 90 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15EB of the SEBI Act on the Noticee:

Name of the Noticee	**Penal provisions**	**Penalty**
Wealthmax Solution Investment Advisor (Proprietor: Piyush Jain)	Under Section 15EB of the SEBI Act	Rs 7,00,000/- (Rupees Seven Lakhs Only)

39. 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

40. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

41. 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.

Date: March 13, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**