BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2024-25/31089

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

In respect of:
Abhishek Kumar Singh
Proprietor of Supreme Investrade and Research Services (Research Analyst)
(PAN: CLZPS0733E / SEBI Registration Number: INH000008747)

In the matter of Abhishek Kumar Singh Proprietor of Supreme Investrade and Research Services (Research Analyst)

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out a thematic inspection of Abhishek Kumar Singh Proprietor of Supreme Investrade and Research Services (hereinafter also referred to as "RA-Abhishek" / "Noticee" / "Entity" / "RA") for the theme 'Complaints alleging Assured returns and Maintenance of records on February 09, 2024 for the period of April 01, 2022 to January 31, 2024. The findings of the inspection were communicated by SEBI to the entity vide email and letter dated March 26, 2024. The entity submitted its reply to the observations vide letter dated March 28, 2024. Thereafter, post inspection analysis was carried out by SEBI.

2. Pursuant to the said inspection, based on the analysis of replies received and examination in the matter by SEBI, briefly stated, it was inter alia observed by SEBI that the Noticee had allegedly violated various provisions of SEBI (Research Analysts) Regulations, 2014 {"SEBI RA Regulations, 2014" / "SEBI RA Regulations" / "RA Regulations"}, SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to Securities Market) Regulations, 2003 {“SEBI PFUTP Regulations, 2003” / “SEBI PFUTP Regulations” / “PFUTP Regulations”} and SEBI Act, 1992 viz., Regulations 3(a), 3(b), 3(d) , 4 (1) and 4 (2)(k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014. Accordingly, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of SEBI Act, 1992 (hereinafter also referred as “SEBI Act”) for the alleged violations of the provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of SEBI Act, 1992 read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as ‘SEBI Rules’), the Competent Authority appointed the undersigned as Adjudicating Officer (“AO”) vide order dated May 15, 2024 to inquire into and adjudicate under Section 15EB of the SEBI Act, 1992, for the aforesaid alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated May 16, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing no. SEBI/EAD-5/AN/RG/18270/1/2024 dated June 03, 2024 (“SCN”), was served upon the Noticee through Speed Post with

Acknowledgment Due ("SPAD") and digitally signed email dated June 03, 2024, under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15EB of the SEBI Act, for the violations alleged to have been committed by the Noticee.

5. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

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3. BACKGROUND

3.1. SEBI carried out a thematic inspection of Abhishek Kumar Singh Proprietor of Supreme Investrade and Research Services for the theme 'Complaints alleging Assured returns and Maintenance of records on February 09, 2024 for the period of April 01, 2022 to January 31, 2024 (copy of the inspection report is placed as Annexure 2). The findings of the inspection were communicated by SEBI to the entity vide email and letter dated March 26, 2024. The entity submitted their reply/ comments to the observations vide letter dated March 28, 2024 (Annexure 3). Thereafter, post inspection analysis was carried out by SEBI (copy of post inspection analysis placed as Annexure 4).

4. In this regard, the following was interalia observed and alleged by SEBI:

4.1. Assured returns by RA-Abhishek and its associates/employees:

4.1.1. In multiple instances, it was observed that the RA and its employees were misleading their clients by;

a) Depicting a misleading picture of assured profits by sharing screenshots, of profits earned by previous clients, to the prospective clients.

b) Inducement to infuse more capital, despite losses being incurred on previous recommendations, with a promise to recover the losses.

It is pertinent to mention that even though the RA did not assure any specific % of return directly, they had lured prospective clients / misled their clients in the regular correspondences by depicting a picture of earning profits on a consistent basis / recovering earlier losses incurred on account of the recommendations provided by the RA.

4.2.1. Pursuant to Inspection by SEBI, the following was inter-alia observed and alleged in respect of the Noticee:

4.2.1.1. It is observed that RA-Abhishek employed around 30 employees for sale of its services w.r.t. sales calls, WhatsApp /telegram chats etc. Further, RA-Abhishek does not maintain the call recording and WhatsApp chat for client leads, as it is not mandatory as per SEBI (Research Analysts) Regulations, 2014.

4.2.1.2. During the inspection period, total 29 SCORES complaints were filed against RA-Abhishek. On perusal of the complaints filed against the RA, the following observations were noted :

(A) Complaints filed by Axxxxxxx Pxxxxx Sxxxx Jxxxxx:

(i) 14 complaints were filed by Axxxxxxx Pxxxxx Sxxxx Jxxxxx

(ii) In this regard, it is noted that RA has been inducing the client to extend their positions and also persuaded the client for additional capital.

(iii) Further, the RA has induced the client to send a mail, that was drafted by them in the WhatsApp chat, to their sales email id to close the previous complaints depicting a picture that the complainant was satisfied with the resolution provided by the RA (Annexure – A).

(B) Complaint filed by Axxx:

(i) RA-Abhishek has induced the complainant by posting screenshots of profits allegedly earned by their existing clients without indication of the risk involved. It is also noted that the RA stated that the complainant can earn similar profits on a daily basis. This is in contradiction to their own disclaimers given during client onboarding (Annexure – B).

(C) Complaint filed by Jxxxxxxx Sxxxx Rxxxx:

(ii) RA-Abhishek has been continuously handholding the client and position sizing and providing the exact timing for exit, despite providing the buy/sell recommendation on their Whatsapp which already indicates the targets, stoploss and exit price (Annexure – C).

(D) Compliant filed by Vxxxxx Kxxxx:

(i) RA-Abhishek has induced the complainant by posting screenshots of profits allegedly earned by their existing clients without indication of the risk involved. It is also noted that the RA stated that the complainant can earn similar profits on a daily basis. This is in contradiction to their own disclaimers given during client onboarding.

(ii) It is also noted that the RA has been giving assurance that they would be able to recover the losses suffered by the complainant with the successive tips (Annexure – D).

4.1.1.3. On examination of the aforesaid complaints, it is observed that RA-Abhishek and its employees are providing assurance to recover the loss/earn profit to its clients.

4.2.1.4. In view of the above, it is observed that RA-Abhishek neither monitors nor has any control over the communications /conversations between its clients and his employees.

4.1.3. Noticee in its reply to the findings of the Inspection submitted that:

"With regard to the Call Recording Requirement, I would like to state that the Regulations do not mandate research analysts to maintain call recordings.

Regulation 25 of the RA Regulations, which governs record-keeping, clearly outlines the required documentation:

(i) research report duly signed and dated;

(ii) research recommendation provided;

(iii) rationale for arriving at research recommendation;

(iv) record of public appearance.

I have consistently maintained the applicable records and presented them to the inspecting authority upon request.

Further, all the complaints mentioned in the observation letter is resolved as on date and have provided the relevant satisfactory resolution to each of the client.

Furthermore, in the matter of Jxxxxxxx Sxxxx Rxxxx, I have found the mistake was being from my employee end and hence the service amount was refunded back to the client and the employee was also being sacked immediately from the organisation.

Neither me nor any of my employee is engaged in offering any kind of assurance to the clients. The statements relied upon the SEBI are not read in full and just a part of the call/chat have been relied upon by the regulator.

Further, the SEBI itself in an Order passed by the Whole-Time Member in the matter of "GRS Solution" had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to the dismissal of such allegations.

Moreover, my website explicitly outlines the inherent risks associated with stock market investments and other relevant disclosures.

Furthermore, the communication between the client and employees are being monitored continuously by a dedicated team from quality check department to ensure none of the employees is being involved in any type of mis-selling of the services.

Henceforth, I have not violated provisions of Regulations 3 (a-d), 4 (1) and 4 (2)(k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014."

4.1.4. In this regard, SEBI observed that:

4.1.3.1. The complaints filed against the RA by various complainants are broadly categorized into the following categories :

a) Depicting a misleading picture of assured profits with screenshots of profits earned by previous clients.

b) Inducement to infuse more capital, despite losses being incurred on previous recommendations provided by the RA. Further, RA promised to recover the losses incurred by clients due to their previous recommendations.

4.1.3.2. In this regard, the RA has submitted that they have resolved the matters in satisfaction to the clients and they did not offer any kind of assurance to the clients. They have also stated that they provided disclaimer on their website explicitly outlining the inherent risks associated with stock market investments.

4.1.3.3. Additionally, they have quoted SEBI order WTM/AB/WRO/WRO/14833/2021-22 passed by WTM(AB) dated February 08, 2022 wherein it is held that such statements on the RA's website indicating accuracy without a specific rate of return does not amount to promising assured returns.

4.1.3.4. However, it may be noted that the order specifically speaks about the statements given on the website of the RA in a generic sense but not regarding the statements communicated to the clients on an individual basis to lure them further by misleading/false assurances to earn profits in the securities market.

4.1.3.5. It is also pertinent to mention that even though the RA did not assure any specific % of return directly, they had lured prospective clients / misled their clients in the regular correspondences by depicting a picture of earning profits on a consistent basis / recovering earlier losses incurred on account of the recommendations provided by the RA.

Hence, the reply of the RA was not accepted.

In view thereof, it was alleged that:

4.1.4. In multiple instances, it was observed that the RA and its employees were misleading their clients by;

c) Depicting a misleading picture of assured profits by sharing screenshots, of profits earned by previous clients, to the prospective clients.

d) Inducement to infuse more capital, despite losses being incurred on previous recommendations, with a promise to recover the losses.

It is pertinent to mention that even though the RA did not assure any specific % of return directly, they had lured prospective clients / misled their clients in the regular correspondences by depicting a picture of earning profits on a consistent basis / recovering earlier losses incurred on account of the recommendations provided by the RA.

4.1.5. In view thereof, it is alleged that Noticee has violated Regulations 3 (a), 3(b), 3(d) , 4 (1) and 4 (2)(k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

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6. Vide email dated June 18, 2024, the Noticee sought extension till July 04, 2024 to submit the reply to the SCN. In the interest of principles of natural justice, vide Hearing Notice dated June 25, 2024, the Noticee was provided an opportunity of hearing on July 05, 2024, and was advised to submit the reply by July 03, 2024.

7. Vide letter dated July 02, 2024, the Noticee submitted its reply to the SCN. The key submissions made by Noticee as reply to the SCN, are as under:

"...

A. Assured returns by RA-Abhishek and its associates/employees:
It has been alleged that the Noticee has violated Regulations 3 (a), 3(b), 3(d), 4(1) and 4(2)(k), (o) and (s) of PFUTP Regulations

In response to the allegation, the Noticee refutes any guarantee of returns to investors. The Noticee demonstrably informed and ensured client awareness of inherent market risks and potential losses. This transparency is evidenced by Exhibit-A, which includes the user consent form, terms and conditions (provided and accepted by all clients), and relevant website screenshots.

Regarding SEBI's claim of misleading profit portrayals through past client screenshots, the Noticee maintains that such marketing materials simply showcase the success of clients who followed recommendations. This does not constitute a guarantee of future returns. It is simply a form of marketing or advertisement for the Noticee's services. Prospective clients often seek testimonials or past performance data when evaluating services. Sharing profit screenshots, without implying assured returns, is a standard practice.

Furthermore, all clients are thoroughly apprised of the inherent risks associated with the securities market at the outset. It is important to note that SEBI regulations concerning advertising did not exist prior to April 2023. The relevant "Advertisement Code for Investment Advisers and Research Analysts" circular, dated April 5, 2023, only became effective on May 1, 2024. Therefore, the Noticee cannot be held liable for marketing practices predating May 2023.

Response to the Complaints as mentioned in the Notice:

a. ***Complaints filed by Axxxxxxx Pxxxxx Sxxxx Jxxxxx****:*
Mr. Jadoun submitted multiple complaints via SCORES, all of which were promptly resolved and closed by SEBI after reviewing our submissions. Evidence of this resolution is included as Exhibit-B.

While subscribed to our research alerts, Mr. Jadoun experienced both profits and losses based on his own trades initiated from our recommendations. He repeatedly extended his subscription (May 4, 2022 - Dec 17, 2022) by making additional payments until experiencing losses. Subsequently, he used abusive language and harassed our staff while requesting a refund.

As a research service provider, we neither trade on client accounts nor guarantee returns based on past performance. All trade decisions are made by the client based on our alerts, and as per the signed user agreement, they acknowledge the inherent risks of stock market trading. We have documented proof of Mr. Jadoun's acceptance of these risks through his registered email. Additionally, he agreed to our non-refundable policy via user agreement, email, and phone call. It appears Mr. Jadoun had an unrealistic expectation of consistent profits from every recommendation, and hence the said complaint was closed by the SEBI Officer.

Further, the Noticee had not induced the complainant, he had just shown the efficiency of his services which is no crime to do so. Also, the client was asked to infused the capital so that he can trade in the securities market as paying for our subscription charges and not making any trade does not make any sense, hence, that was the reason that the client was asked to infuse capital in his account. Further, the complainant had only asked to share the template of the mail as he was satisfied with our services but he couldn't write a formal mail, which was the reason, the Noticee shared with him the draft of the content upon WhatsApp, and sharing a draft email template via WhatsApp upon client request for assistance with composing a formal email doesn't constitute non-compliance.

b. Compliant filed by Axxx:

Mr. Axxx's complaint filed via SCORES was also resolved promptly by SEBI after reviewing our response. Evidence is included as Exhibit-C.

Mr. Axxx voluntarily subscribed to our research alert service after clearly acknowledging the associated risks prominently displayed on our website (https://supremeinvestrade.com/), within the research alerts themselves, on the invoice, and in the signed user agreement. Our service provides research alerts with both target prices and stop-loss levels; however, trade execution remains the client's sole responsibility. We do not provide trade execution services.

Mr. Axxx signed and accepted the user agreement to subscribe, acknowledging the risks involved in stock market trading. Records indicate he profited significantly from our recommendations, even extending his subscription based on this success. Out of the 79 options segment recommendations he received, 62 were profitable.

His request for a refund on service and loss amounts was deemed unfounded, leading to SEBI closing the complaint.

Similar to Mr. Jadoun's case, showcasing our service's efficiency isn't a crime. Furthermore, the Noticee had stated that the complainant can earn similar profits, where "can" denotes possibility, not certainty. It did not claim, there will definitely be profit, which is definitely dependent upon many factors. This aligns with the general understanding that investors seek profit in the inherently risky stock market. Further, the SEBI itself in an Order passed by the Whole-Time Member in the matter of "GRS Solution" had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to the dismissal of such allegations.

c. Compliant filed by Jxxxxxxx Sxxxx Rxxxx:

Mr. Rawat's complaint via SCORES was also resolved promptly by SEBI after reviewing our response. Evidence is included as Exhibit-D.

We did not engage in "handholding" or position sizing for Mr. Rawat. We simply provided additional support by copying and pasting recommendations via WhatsApp as he couldn't access them through the application.

Similar to the previous cases, Mr. Rawat voluntarily subscribed after acknowledging the risks on our website, within the research alerts, on the invoice, and in the signed user agreement. He also signed and accepted the user agreement outlining risks. Records indicate Mr. Rawat profited significantly from our recommendations, extending his subscription based on this success. Out of the 63 options segment recommendations he received, 51 were profitable.

His request for a refund on service and loss amounts was deemed unfounded, leading to SEBI closing the complaint.

*d. **Compliant filed by Vxxxxx Kxxxx:***

Mr. Kumar's complaint via SCORES was also resolved promptly by SEBI after reviewing our response. Evidence is included as Exhibit-E.

Mr. Kumar expressed interest in our research alert service through a Facebook advertisement on February 20, 2023, with the intention of investing in the stock market. We then contacted him. We clearly informed him of the market's risks and benefits, along with the service fees associated with paid subscriptions. After completing the user agreement acceptance process via email, he acknowledged our website's terms & conditions and policies.

Following his agreement on March 31, 2023, we sent a payment link. All emails included details like terms & conditions, disclaimers, and other policies.

On April 3, 2023, we sent an email titled "Trading Guidance" to educate him about the research analyst's role in his chosen service. We clearly communicated the inherent market risks, including potential capital loss.

On April 7, 2023, Mr. Kumar expressed dissatisfaction and requested a refund due to losses, citing a payment of ₹75,090. After investigating, we offered a complimentary two-month service extension (until June 30, 2023). He accepted this resolution via email. We reiterated the inherent market risks and clarified that we never guarantee profits in our research alerts. We also emphasized this was a one-time gesture due to his negative experience, not to compensate for losses. Finally, we encouraged him to review our website's and app's trading do's and don'ts.

Records show Mr. Kumar traded and incurred losses. As a research service provider, we don't execute trades on his behalf. Clients initiate all trades themselves. We cannot be held responsible for client losses.

The complaint solely concerned Mr. Kumar's overall losses, not any service delivery deficiencies. SEBI deemed the claim inadmissible and closed the case.

SEBI initiated proceedings based on incomplete WhatsApp chats and unverified accusations from complainants. This approach is unfair, considering all such complaints were resolved swiftly on the SCORES Portal. SEBI officers closed these cases after thoroughly reviewing our responses and the complainants' allegations. In all instances, SEBI found the Noticee not guilty. Notably, none of these complainants have since contacted us with further grievances, further validating our compliance with regulations.

Moreover, the Noticee's website explicitly outlines the inherent risks associated with stock market investments and the absence of guaranteed returns as the following disclosures/disclaimers are made in several pages:

- *Trading in stock market is inherently risky and the users agree to take complete and full responsibility for the outcomes of all trading decisions that they make, including but not limited to loss of capital.*
- *We do not provide any assurance or guarantee of profit or returns with any of our services.*
- *Investment in the stock market is subject to market risk, we do not offer any guaranteed profit services or Fixed Returns Services, we do not provide any assurance or guarantee of profit or returns with any of our services. Trading in the Stock Market may result in Partial or Complete loss of Gains as well as Initial Capital. Before taking our Research Alerts Services & any services of Supreme Investrade and Research Services firm, Clients should read carefully the Disclaimer. Legal disclaimer, terms and conditions, refund policy and other policies of our company.*

Also, the Noticee has a practise to execute the user consent form from all of the clients, wherein the clients acknowledges that:

- ✓ *I understand and accept that trading is a risky activity that involves the risk of loss of partial or complete capital and that there is no guarantee of profits or returns after subscribing to any of Supreme Investrade and Research Services research alerts services.*
- ✓ *I understand and agree that Supreme Investrade and Research Services firm and/or its owner/proprietor/managers/employees/ associates do not provide any assurance or guarantee of accuracy or consistency of any our research alerts/service.*
- ✓ *I confirm and accept that I do not expect a fixed return or a guaranteed return from the research alerts service subscribed by me and I fully understand that I can/ might lose your partial or entire capital in trading & investing by referring to research services/reports/alerts of Supreme Investrade and Research Services Firm.*
- ✓ *I declare that Supreme Investrade and Research Services firm and its proprietor/ Owner/ employees/ associates have not guaranteed me or assured me any returns or profits by trading and investing in the stock.*

Copies of the aforementioned user consent forms are attached in Exhibit-A.

Based on the aforementioned, the Noticee has not provided any assurances or guarantees of profit. The Noticee have consistently informed clients about the risks involved and the absence of such guarantees in the services. Therefore, the Noticee has not violated provisions of Regulations 3 (a), 3(b), 3(d), 4(1) and 4(2)(k), (o) and (s) of PFUTP Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

B. Violation of PFUTP Regulations

It has been alleged that the Noticee has by committing alleged violations has committed fraud and violated PFUTP Regulations.

With regard to the allegation that the Noticee has committed fraud and have violated the PFUTP Regulations. In that regard the Noticee would like to state that if his intention was of defrauding the clients then he would not have opted SEBI registration and followed the requisite applicable compliances. Also, 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) 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 ….."

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.

*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."*

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.

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.

Hence, by following the principle of doctrine of Stare Decisis, the SEBI shall consider its judgements issued under similar issues or facts and such allegations shall be remove upon from the Noticee.

The SEBI itself in its Orders in the matter of Star World Research and Niveshicon Investment Advisor has stated that for construing the definition of fraud, the fraud shall be committed while "dealing in security" and in absence of that the acts will not fall within the ambit of PFUTP Regulations. In the said Orders also, SEBI did drop the allegation of PFUTP for the following acts: selling products meant for High-Risk Category clients to clients having Medium Risk profile, charging of unfair, unreasonable and exorbitant fee from the clients, selling the clients multiple products/services, improper risk profiling of the clients, promising/assuring unrealistic return to clients. Hence, by following the principle of the stare decisis, the PFUTP violations shall be removed upon from the Noticee as the alleged violations, if established, have not been committed while dealing in security and also no material evidence has been established in this regard.

PRAYER

Based on the above-mentioned submissions, it is crystal clear that the Noticee has not violated any provisions. The Noticee has served thousands of clients, out of which only a few were dissatisfied or having grievances, which were duly solved in a timely manner. Further, the officers during the course of examination checked just few samples, which was inclined towards the clients who were having any grievance. Hence, the sample data checked/examined by the SEBI was not ideally distributed and had not taken into consideration relevant records, information and the Noticee's point of view. Further, there might be some instances wherein SEBI observed non-compliances, but if they look into the records shared by the Noticee along-with this reply, it is very clear that the Noticee has complied with the SEBI Regulation in the true letter and spirit of the law.

Also, the Noticee would like to refer the Order of Hon'ble Securities Appellate Tribunal dated 16.06.2011, in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011), it was held that "5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent. For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs."

It is humbly submitted that the Noticee has not violated any provisions and therefore is not liable for any monetary penalty under the provisions of Section 15EB of the SEBI Act.

…"

8. Vide email dated July 02, 2024, the Noticee also informed that it had filed settlement application in the instant matter.

9. On the scheduled date of hearing viz., July 05, 2024, the Noticee availed the opportunity of hearing through its Authorized Representative (AR) viz., Shri Abhishek Mishra, Practising Company Secretary, wherein the AR appeared in person and inter alia relied upon and reiterated the written submissions made vide letter dated July 02, 2024. The AR inter alia also submitted that there were no further /additional submissions to be made and the submissions made vide

letter dated July 02, 2024 be taken as final and complete submissions in the matter.

10. Vide email dated October 17, 2024, it was informed by SEBI that the settlement application in the instant matter had been rejected as the Noticee had not filed the Revised Settlement Terms ("RST") within the stipulated time frame and that the same had been informed to the Noticee by SEBI vide letter dated October 14, 2024 and accordingly, the pending proceedings could resume.

D. CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee had violated the provisions of SEBI RA Regulations, 2014, SEBI PFUTP Regulations, 2003 and SEBI Act, 1992, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

Issue No. I: Whether the Noticee had violated the provisions of SEBI RA Regulations, 2014, SEBI PFUTP Regulations, 2003 and SEBI Act, 1992, as alleged?

12. The following was inter alia observed and alleged in respect of the Noticee:

Assured returns by RA-Abhishek and its associates/employees:

In this regard, it has inter alia been observed and alleged that in multiple instances, the RA and its employees were misleading their clients by:

a) Depicting a misleading picture of assured profits by sharing screenshots, of profits earned by previous clients, to the prospective clients.

b) Inducement to infuse more capital, despite losses being incurred on previous recommendations, with a promise to recover the losses.

Therefore, it was alleged that the Noticee had violated Regulations 3 (a), 3(b), 3(d) , 4 (1) and 4 (2)(k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

13. In this regard, I note that Regulations 3 (a), 3(b), 3(d) , 4 (1) and 4 (2)(k), (o) and (s) of SEBI PFUTP Regulations, 2003 reads as under:

"…

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

…

(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 [4][manipulative,] fraudulent or an unfair trade practice in securities [5][markets].

[6][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 [7][manipulative] fraudulent or an unfair trade practice if it involves [8][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 in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

…

(o) [22][fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;]

…

(s) [7]{mis-selling of securities or services relating to securities market.

…"

14. I note that Sections 12 A(a), (b) and (c) of SEBI Act, 1992 reads as under:

"…

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;

…"

15. I note that clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of SEBI RA Regulations, 2014 reads as under:

"…

> ***24. General responsibility.***
>
> ***…***
>
> *(2) Research analyst or research entity shall abide by Code of Conduct as specified in Third Schedule.*
>
> *…*
>
> ***THIRD SCHEDULE***
>
> ***CODE OF CONDUCT FOR RESEARCH ANALYST***
>
> ***1. Honesty and Good Faith***
>
> *Research analyst or research entity shall act honestly and in good faith.*
>
> ***2. Diligence***
>
> *Research analyst or research entity shall act with due skill, care and diligence and shall ensure that the research report is prepared after thorough analysis.*
>
> *…*
>
> ***7. Compliance***
>
> *Research analyst or research entity shall comply with all regulatory requirements applicable to the conduct of its business activities.*
>
> ***8. Responsibility of senior management***
>
> *The senior management of research analyst or research entity shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures.*

…"

16. In this regard, SEBI observed that RA-Abhishek employed around 30 employees for sale of its services w.r.t. sales calls, WhatsApp /telegram chats etc. During the inspection period, total 29 SCORES complaints were filed against RA-Abhishek. On perusal of the complaints filed against the RA, SEBI observed the following:

16.1. Complaints filed by Axxxxxxx Pxxxxx Sxxxx Jxxxxx:

16.1.1. In this regard, SEBI observed that RA had been inducing the client to extend their positions and also persuaded the client for additional capital. Further, SEBI observed that RA had induced the client to send a mail that was drafted by them in the WhatsApp chat, to their sales email id to close the previous complaints depicting a picture that the complainant was satisfied with the resolution provided by the RA.

16.1.2. In this regard, the Noticee in its reply to SCN has submitted that, "*Mr. Jxxxxx submitted multiple complaints via SCORES, all of which were promptly resolved and closed by SEBI after reviewing our submissions…Further, the Noticee had not induced the complainant, he had just shown the efficiency of his services which is no crime to do so. Also, the client was asked to infused the capital so that he can trade in the securities market as paying for our subscription charges and not making any trade does not make any sense, hence, that was the reason that the client was asked to infuse capital in his account. Further, the complainant had only asked to share the template of the mail as he was satisfied with our services but he couldn't write a formal mail, which was the reason, the Noticee shared with him the draft of the content upon WhatsApp, and sharing a draft email template via WhatsApp upon client request for assistance with composing a formal email doesn't constitute non-compliance…"*

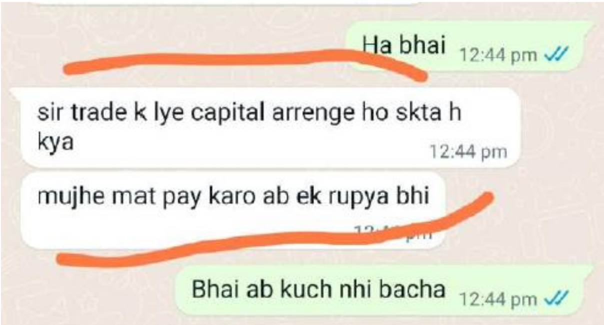
16.1.3. In this regard, I note from the material available on record that the representative of the RA had sent a Whatsapp message to the complainant Mr. Axxxxxxx Pxxxxx Sxxxx Jxxxxx, "*Dear Sir, I am very happy me Shahid Shaikh he give me trade every day all target met said all policy of company non refundable policy and I'm looking for long term relationship for company*" and then sent another message subsequently, which stated, "*Karo ispe mail wahi mail pe*". In response, the complainant Mr. Axxxxxxx Pxxxxx Sxxxx Jxxxxx replied, "*5 minutes…Just 5 minutes*".

The screenshot of the aforesaid Whatsapp chat is as below:

In view of the above, I find that the allegation that RA had induced the client to send a mail that was drafted by them in the WhatsApp chat, to their sales email id to close the previous complaints depicting a picture that the complainant was satisfied with the resolution provided by the RA, stands established.

16.1.4. In this regard, I note that the material available on record has not brought out clearly how the RA had been inducing the client to extend their positions. Further in this regard, I note from the material available on record that the representative of the RA had sent Whatsapp messages to the complainant Mr. Axxxxxxx Pxxxxx Sxxxx Jxxxxx stating, "*sir trade ke liye capital arrenge ho skta h kya"* and *"abhi kal se 160000 se trade karenge".* In this regard, I note that the copy of screenshots of Whatsapp chats between the representative of the Noticee and Mr. Axxxxxxx Pxxxxx Sxxxx Jxxxxx were provided to the Noticee as a part of the SCN and the Noticee has neither denied nor disputed the Whatsapp messages and its content, and instead the submissions of the Noticee are in nature of admission in so far as the Noticee has submitted, "…*the client was asked to infused the* *capital so that he can trade in the securities market as paying for our subscription charges and not making any trade does not make any sense, hence, that was the reason that the client was asked to infuse capital in his account…"*

The screenshot of the aforesaid Whatsapp chat is as below:



In view of the above, I find that the allegation that the RA had persuaded the client for additional capital, stands established.

16.2. Complaints filed by Axxx:

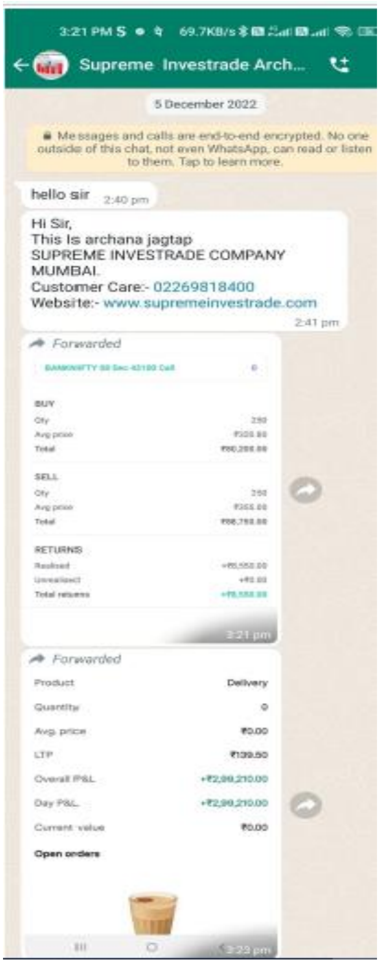
16.2.1. In this regard, SEBI observed that RA-Abhishek had induced the complainant by posting screenshots of profits allegedly earned by their existing clients without indication of the risk involved. It was also noted that the RA stated that the complainant could earn similar profits on a daily basis. This was in contradiction to their own disclaimers given during client onboarding.

16.2.2. In this regard, the Noticee has submitted, "*Mr. Axxx voluntarily subscribed to our research alert service after clearly acknowledging the associated risks prominently displayed on our website (https://supremeinvestrade.com/), within the research alerts themselves, on the invoice, and in the signed user agreement…Furthermore, the*

Noticee had stated that the complainant can earn similar profits, where "can" denotes possibility, not certainty. It did not claim, there will definitely be profit, which is definitely dependent upon many factors…"

16.2.3. In this regard, I note that the copy of screenshots of Whatsapp chats between the representative of the Noticee and Mr. Axxx were provided to the Noticee as a part of the SCN and the Noticee has neither denied nor disputed the Whatsapp messages and its content. I note from the material available on record that on December 05, 2022, the Noticee's representative Archana Jagtap had shared the screenshots of profits made by other clients of the Noticee and mentioned, "*Aap bhi isi Tarah se profit earn kar sakte ho….Aur who bhi daily basis pe*…".

The said screenshots are as below:



In this regard, I note that the above was in nature of promising assured returns to the client. Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

16.2.4. In this regard, I note that the Noticee has inter alia contended, "…*Further, the SEBI itself in an Order passed by the Whole-Time Member in the matter of "GRS Solution" had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to the dismissal of such allegations*…"

In this regard, I note from the material available on record that as per the Order of WTM, SEBI in the matter of GRS Solution, the statements on the RA's website indicating accuracy without a specific rate of return does not amount to promising assured returns. In my view, the Order cited by the Noticee is distinguishable from instant case in so far as the order specifically speaks about the statements given on the website of the RA in a generic sense but not regarding the statements communicated to the clients on an individual basis to lure them further by misleading/false assurances to earn profits in the securities market. Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

16.2.5. In view thereof, I find that the allegation that the Noticee depicted a misleading picture of assured profits by sharing screenshots of profits earned by previous clients, to the prospective client, stands established.

16.3. Complaints filed by Jxxxxxxx Sxxxx Rxxxx:

16.3.1. In this regard, SEBI observed that RA-Abhishek had been continuously handholding the client and position sizing and providing the exact timing for exit, despite providing the buy/sell recommendation on their Whatsapp which already indicates the targets, stoploss and exit price.

16.3.2. In this regard, the Noticee has submitted, "…*We did not engage in "handholding" or position sizing for Mr. Rawat. We simply provided additional support by copying and pasting recommendations via WhatsApp as he couldn't access them through the application…"*

16.3.3. In this regard, I note that the material available that on record that on multiple instances, the representative of the Noticee had sent Whatsapp messages to the complainant, stating, "…*jaldi buy karo…maximum quantity buy karo…ss send bhejo*…"

The sample instances of such Whatsapp messages are as per the screenshots below:

16.3.4. Further in this regard, I note that the material available that on record that on multiple instances, the representative of the Noticee had sent Whatsapp messages to the complainant, stating, "…*jaise boluga wasie exit karna hai*…"

The sample instances of such Whatsapp messages are as per the screenshots below:

16.3.5. In view thereof, I find that the allegation that the RA-Abhishek had been position sizing and providing the exact timing for exit, despite providing the buy/sell recommendation on their Whatsapp which already indicates the targets, stoploss and exit price, stands established.

16.4. Complaints filed by Vxxxxx Kxxxx:

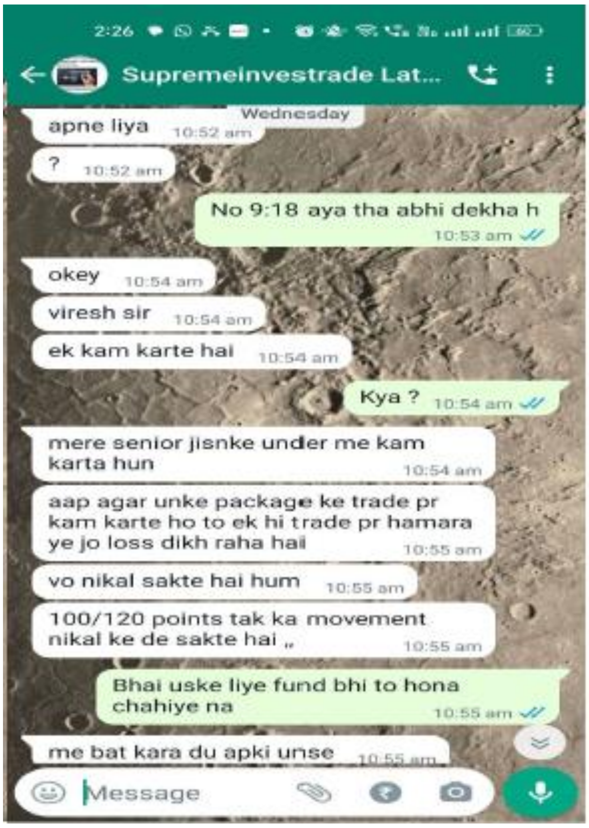
16.4.1. In this regard, SEBI observed that RA- Abhishek had induced the complainant by posting screenshots of profits allegedly earned by their existing clients without indication of the risk involved. It is also noted that the RA stated that the complainant can earn similar profits on a daily basis. This is in contradiction to their own disclaimers given during client onboarding. It was also noted that RA had been giving assurance that they would be able to recover the losses suffered by the complainant with the successive tips.

16.4.2. In this regard, I note that the Noticee's submissions are out of context in so far as the Noticee has submitted, "…*Mr. Kumar's complaint via SCORES was also resolved promptly by SEBI after reviewing our response*… *The complaint solely concerned Mr. Kumar's overall losses, not any service delivery deficiencies. SEBI deemed the claim inadmissible and closed the case*..." as the allegation is with respect to promising assured returns to the Noticee and not with respect to not resolving the SCORES complaint of Noticee.

16.4.3. I further note from the material available on record that the representative of the Noticee had shared screenshots of profits allegedly earned by their existing clients without indication of the risk involved. In this regard, the Noticee has submitted that, "…*We clearly informed him of the market's risks and benefits, along with the service fees associated with paid subscriptions. After completing the user agreement acceptance process via email, he acknowledged our website's terms & conditions and policies…Noticee's website explicitly outlines the inherent risks associated with stock market investments and the absence of guaranteed returns…"* In this regard, having regard to the material available on record and contentions of the Noticee, I note that it is not evidently brought out how RA- Abhishek had induced the complainant by posting screenshots of profits allegedly earned by their existing clients. In view thereof, I am inclined to allow the benefit of doubt to the Noticee in this regard.

16.4.4. As regards the allegation that RA had been giving assurance that they would be able to recover the losses suffered by the complainant with the successive tips, I note that the copy of screenshots of Whatsapp chats between the representative of the Noticee and Mr. Vxxxxx Kxxxx were provided to the Noticee as a part of the SCN and the Noticee has neither denied nor disputed the Whatsapp messages and its content. I note from the material available on record that the representative of the Noticee communicated to Mr. Vxxxxx Kxxxx, "*mere senior jisnke under me kam karta hun…aap agar unke package ke trade par kaam karte ho to ek hi trade pr hamara ye jo loss dikh raha hai…vo nikal sakte hai hum*…" Therefore, I note that the Noticee's representative had given assurance to the complainant that he would be able to recover the earlier losses suffered by the complainant if Mr. Vxxxxx Kxxxx works with his senior. Therefore, the Noticee's submissions are devoid of merit, in so far as the Noticee has submitted, "…*As a research service provider, we don't execute trades on his behalf…We cannot be held responsible for client losses … …"*

The screenshot of aforesaid Whatsapp chat between the Noticee and the representative of the RA is as below:



16.4.5. In view thereof, I note that the allegation that RA had been giving assurance that they would be able to recover the losses suffered by the complainant with the successive tips, stands established.

17. In view thereof, the allegations that the Noticee depicted a misleading picture of assured profits by sharing screenshots of profits earned by previous clients, to the prospective clients and that the Noticee had Induced to infuse more capital, despite losses being incurred on previous recommendations, with a promise to recover the losses stands established.

Accordingly, I hold that the Noticee had violated Regulations 3 (a), 3(b), 3(d) , 4 (1) and 4 (2)(k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with sections 12 A(a), (b) and (c) of SEBI Act, 1992 and clauses 1, 2, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

18. Further in this regard, the 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.

18.1. 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 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,…"

18.2. 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.]

18.3. 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*".

18.4. I further note that, as dealt with and brought out in the foregoing, the Noticee had promised assured profits to the clients in so far as relating to Mr. Axxx and Mr. Vxxxxx Kxxxx. In my opinion, such act of promising assured profits 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.

Therefore, the Noticee's contentions in this regard are devoid of merit and are not tenable.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of the SEBI Act, 1992?

19. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI RA Regulations, 2014, SEBI PFUTP Regulations, 2003 and SEBI Act, 1992.

20. In this regard, the Noticee in its submissions as reply to the SCN had inter alia cited the Hon'ble Securities Appellate Tribunal ('SAT') order dated 16.06.2011 in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011) and placed reliance on the following text:

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent. For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs."

In this regard, in my opinion each case is peculiar in its facts and circumstances based on which the violations are ascertained. Whether adjudication proceedings are to be initiated in a case would depend on the facts and circumstances of each case. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a prerogative of SEBI depending upon the outcome of such exercise viz., Inspection and findings thereof. It would also be relevant to state that the subject matter of instant proceedings are as per the Communique of appointment of AO, duly approved by the Competent Authority.

I also note from the text of Hon'ble SAT order dated 16.06.2011 as relied upon by the Noticee itself that Hon'ble SAT had inter alia held that "… *This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent…".*

Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law as are otherwise applicable to the entire category of intermediary viz., Research Analyst in the instant case, and not just about minor procedural aspects. I also note that the alleged violations in respect of the Noticee in the instant proceedings inter alia pertain to crucial aspects regarding depicting a misleading picture of assured profits by sharing screenshots of profits earned by previous clients, to the prospective clients and inducing clients to infuse more capital despite losses being incurred on previous recommendations with a promise to recover the losses. I note that the provisions relating to securities laws, including regulation and circulars issued by the regulator, are mandated inter alia with the objective of orderly functioning of the securities market and its constituents and for protection of the interest of the investors and therefore, in particular considering that such provisions of law are applicable to the entire class of intermediary which the regulator is duty bound to enforce. Accordingly, the contention of the Noticee in this regard cannot be accepted.

21. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......"*

22. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section 15EB of SEBI Act which provides as following:

"…

15EB: Penalty for default in case of investment adviser and research analyst.

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

…"

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

SEBI Act

"………..

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

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

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

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

c. the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

…………..”

24. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee being a SEBI registered Research Analyst has failed to comply with the extant applicable provisions of securities law, as brought out in the foregoing which SEBI is duty bound to enforce compliance of. Such failure and non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

25. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee 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 SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

Name of the Noticee	Penalty under Section	Penalty (in Rs.)
Abhishek Kumar Singh Proprietor of Supreme Investrade and Research Services (Research Analyst)	Section 15EB of the SEBI Act	5,00,000/- (Rupees Five Lakhs only)

26. The Noticees 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

27. 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.

28. 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: December 27, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER