

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11 (4), 11 (4A), 11B (1) and 11 B (2) of the Securities and Exchange Board of India Act, 1992 read with Regulation 35 of the Intermediaries Regulations

In the Matter of Money Desire Research.

In respect of –

Noticee No.	Noticee	PAN
1	Money Desire Research	AAYFM6388F
2	Anoop Kumar Tiwari	ALLPT5927F
3	Raghvendra Singh	CHPPS6375C

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as “the Noticees”, unless the context signifies otherwise)

1. Background

- 1.1. The present matter emanates from multiple complaints filed by investors/clients wherein it was informed that Money Desire Research (the “**Firm**”), which is a registered Investment Adviser bearing SEBI Registration No. INA000002454 under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (the “**SEBI IA Regulations**”) with effect from December 05, 2014, was *inter alia* providing deficient/fraudulent services as a result of which investors/clients had suffered losses.
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1.2. Pursuant to the receipt of such complaints, the matter was examined to verify the veracity of the information brought out in the complaints and ascertain whether there had been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (the “**SEBI Act**”), the SEBI IA Regulations and any other Rules or Regulations. Pending examination in the matter, an Interim Order bearing No. WTM/MPB/IMD/-DoF-1/WRO-PLO/90/2020 dated January 15, 2020 was issued to the Noticees, based on the preliminary findings (“**Interim Order**”).

1.3. In this regard, the directions passed against the Noticees are provided hereunder:

47.1. Money Desire Research (PAN:AAYFM6388F) and its partners Mr. Anoop Kumar Tiwari (PAN:ALLPT5927F) and Mr. Ragvendra Singh (PAN:CHPPS6375C) are directed:-

47.1.1. to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;

47.1.2. not to access the securities market and buy, sell or otherwise deal in securities or associate themselves with securities market, either directly or indirectly, in any manner whatsoever, until further orders; If Money Desire Research and its partners, named in this order have any open position in any exchange traded derivative contracts, they are permitted to close out/ square off such open positions within one month from the date of receipt/ knowledge of this order.

47.1.3. not to divert any funds raised from investors, kept in bank account(s) and/ or in their custody until further orders;

47.1.4. to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.

47.1.5. not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI

47.2. Banks including HDFC Bank Limited, ICICI Bank, Axis Bank and Bank of India, wherein Money Desire Research (PAN: AAYFM6388F) and its partners Mr. Anoop Kumar Tiwari (PAN: ALLPT5927F) and Mr. Raghvendra Singh (PAN: CHPPS6375C) are holding bank accounts, are directed not to allow any debits / withdrawals and credits from the said accounts, without the permission of SEBI, until further orders. The Banks are also directed to ensure that all the above directions are strictly enforced.

47.3. Any person while working under MDR or under its instructions as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

47.4. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of MDR, and its partners named in this order, held jointly or severally.

47.5. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Funds held in the name of MDR, and its partners named in this order, jointly or severally, are not transferred or redeemed.

1.4. Subsequently, upon the conclusion of examination in the matter, a common Show-cause Notice dated March 17, 2022 bearing no. SEBI/WRO/ILO/NM/OW/P/11505/2022 was issued to the Noticees (“SCN”). It is in this background that the present proceeding, which is to consider the allegations made in the SCN, is before me.

2. The Show-cause Notice

2.1. As stated above, the SCN has been issued to the Noticees based on the findings of the examination. In this regard, the SCN has *inter alia* alleged that the Noticees –

- a. were promising assured profit/ unrealistic returns to its clients;
- b. selling multiple services and collecting unreasonable fees from its clients;

- c. not doing proper risk profiling of its clients and had failed to abide by the principles of suitability; and
- d. had not complied with the directions contained in the Interim Order.

2.2. Accordingly, the SCN has called upon the Noticees to show cause as to why a) suitable directions under Sections 11(1), 11 (4), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations should not be issued against them; and b) directions for imposing monetary penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB of SEBI Act should not be issued against them.

3. Service of SCN, Personal Hearing, and Replies and Written Submissions from the Noticees

- 3.1. Consequent to the issuance of the Interim Order, which was duly served on Money Desire Research and its partners, no reply to the *prima facie* findings in the Interim Order was received from any of the Noticees in the period of twenty one (21) days granted in the Interim Order.
- 3.2. Subsequently, SCN was issued to the Noticees. Pursuant to the same, reply has been received from Noticee No. 3; however, no reply to the SCN has been received from Noticee Nos. 1 and 2. Further, no response has been received from Noticee Nos. 1 and 2 in respect of the Hearing Notice dated June 21, 2022 granting an opportunity of personal hearing on July 12, 2022.
- 3.3. The details with respect to the service of the Interim Order, SCN and Hearing Notice to Noticee Nos. 1 and 2 are provided hereunder:

Table- 1

Noticee No.	Name of the Noticee	Details
1	Money Desire Research	▪ Interim Order dated January 15, 2020 was sent by Speed Post to the said Noticee at the address: 63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001. The same could not be delivered and was returned to SEBI. ▪ Interim Order dated January 15, 2020 was affixed at the Noticee’s office at the address: 63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001 on February 12, 2020. ▪ Interim Order dated January 15, 2020 was also affixed at the Noticee’s office at the address: Office No. 101, T.K. Chamber, Plot No. 22, Scheme No. 54, PU-04, Behind C-21 Mall, Indore- 452010 on February 12, 2020. ▪ SCN dated March 17, 2022 was sent by Speed Post to the said Noticee at the address: 63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001. The same could not be delivered and was returned to SEBI. ▪ SCN dated March 17, 2022 was sent by Speed Post to the said Noticee at the

		address: Office No. 101, T.K. Chamber, Plot No. 22, Scheme No. 54, PU-04, Behind C-21 Mall, Indore- 452010. The same could not be delivered and was returned to SEBI. ▪ Public notices, informing of the issuance of the SCN against the said Noticee, were carried in the Indore editions of The Times of India (English daily) and the Nayi Duniya (Hindi daily) of April 22, 2022. ▪ Hearing Notice dated June 21, 2022 was sent to the said Noticee by way of Speed Post, informing of the hearing scheduled on July 12, 2022, at the address: 63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001. The same could not be delivered and was returned to SEBI. ▪ Hearing Notice dated June 21, 2022 was sent to the said Noticee by way of Speed Post, informing of the hearing scheduled on July 12, 2022, at the address: Office No. 101, T.K. Chamber, Plot No. 22, Scheme No. 54, PU-04, Behind C-21 Mall, Indore- 452010. The same could not be delivered and was returned to SEBI. ▪ The Hearing Notice dated June 21, 2022 was also sent to the Noticee by email on June 21, 2022 to the following email addresses: care@moneydesireresearch.in;
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		info@moneydesireresearch.in; moneydesireresearch@gmail.com; service@moneydesireresearch.in; moneydesireresearch38@gmail.com; and info@moneydesireresearch.co.in. The said email with the Hearing Notice was delivered to moneydesireresearch38@gmail.com and moneydesireresearch@gmail.com. However, the Hearing Notice could not be delivered to the rest of the above-mentioned email ids. ▪ Public notices, informing of the hearing scheduled on July 12, 2022 with respect to the said Noticee, were carried in the Indore and Bhopal editions of The Times of India (English daily) and the Naya Duniya (Hindi daily) of July 07, 2022. ▪ The Webex link for joining the hearing was sent by email on July 11, 2022 to the following email addresses: care@moneydesireresearch.in; info@moneydesireresearch.in; moneydesireresearch@gmail.com; service@moneydesireresearch.in; moneydesireresearch38@gmail.com; and info@moneydesireresearch.co.in. The said email with the Webex link was delivered to moneydesireresearch38@gmail.com and moneydesireresearch@gmail.com.
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		However, the same could not be delivered to the rest of the above-mentioned email ids.
2	Anoop Kumar Tiwari	▪ Interim Order dated January 15, 2020 was sent by Speed Post to the said Noticee at the address: 67, Hardi Tivariyan, Tehsil – Naigarhi, District – Rewa – 486340, Madhya Pradesh. The same was delivered to the said Noticee. ▪ SCN dated March 17, 2022 was sent by Speed Post to the said Noticee at the address: 67, Hardi Tivariyan, Tehsil – Naigarhi, District – Rewa – 486340, Madhya Pradesh. The same was delivered to the said Noticee. ▪ Hearing Notice dated June 21, 2022 was sent to the said Noticee by way of Speed Post, informing of the hearing scheduled on July 12, 2022, at the address: 67, Hardi Tivariyan, Tehsil – Naigarhi, District – Rewa – 486340, Madhya Pradesh. The same was delivered to the said Noticee. ▪ Public notices, informing of the hearing scheduled on July 12, 2022 with respect to the said Noticee, were carried in the Indore and Bhopal editions of The Times of India (English daily) and the Naya Duniya (Hindi daily) of July 07, 2022.

3.4. I note that Noticee No. 3 by way of his reply dated July 18, 2022 has filed his response against the allegations made in the SCN. After perusing the written replies filed by Noticee No. 3 and oral arguments made by him before me during the personal hearing, his submissions and arguments are summarised hereunder:-

- a) Noticee No.2 and Noticee No. 3 were the partners of the Firm; however, their individual roles and responsibilities were clearly bifurcated and Noticee No.2 was the authorised representative of the Firm and used to represent the Firm before the regulatory authorities.
- b) Noticee No. 3's responsibility was limited to managing the work relating to the back-office.
- c) The Firm had at no time made any assurance of guaranteed returns but had mentioned the expected returns, as the clients prior to taking subscription would ask about the returns they should expect, and because of that the expected returns were provided.
- d) The Firm did not make any representation on its website guaranteeing returns, rather what was mentioned was the accuracy level of the Firm's recommendations, and the accuracy levels were shown as a marketing/advertising tool, which was done by every entity to sell similar products.
- e) The Firm was not aware of the false promises made by the employees on behalf of the Firm, which when came to the notice of the Firm, the clients were refunded their money.
- f) Multiple services were sold to clients. As the nature of the services were different and clients were made aware of the said fact, some clients were involved in trading in derivatives as well as in the cash segment. Accordingly, at the request of the clients multiple services were offered to them viz., stock option, futures and cash simultaneously.

- g) The Firm did not offer multiple services and clients paid advances for the services so that service duration was extended. However, the invoices had not been updated for the extended period due to a typographical error.
- h) The Firm did not charge unreasonable fees from its clients as the same fees were adjusted for the next tenure; and the clients had paid fees of their own will and consent. They were neither forced nor were deceived in any manner whatsoever.
- i) Medium risk clients were sold high risk products as they insisted on it and they had past experience of trading in the same segment, while the risk profile of the clients was taken into consideration, client requests were prioritised over their risk profile.
- j) The Firm was not involved in offering any comprehensive financial planning as it was just providing intraday recommendations based on its research.
- k) The Firm resolved all the grievances of clients, received either through email or on SEBI SCORES Portal, in the best possible manner.
- l) The Firm had no fraudulent intentions and had not lured any innocent investors by guaranteeing them any returns, and, as such, not violated any provisions of the PFUTP Regulations.
- m) In April 2020, one of the partners, Anoop Kumar Tiwari (Noticee No.2), who had major control over the affairs of the Firm and all the relevant documents, was arrested by the Indore police in the matter of alleged murder case of his wife.
- n) As a result of the registration of FIR in the case of the murder of his wife, the police seized the house of Anoop Kumar Tiwari along with his laptop, mobile phone and other devices in which all the data was stored and maintained.
- o) Consequent to the arrest of Anoop Kumar Tiwari and closure of office, Noticee No.3 did not have any record of any of the documents or systems, as all the records were in the custody of Anoop Kumar Tiwari.
- p) In December, 2019 a renewal fees of INR 5,00,000 was paid by the Firm through the SEBI Intermediary Portal, as the Portal was reflecting the incorrect fees, when the

actual renewal fees in case of a partnership firm at that time was INR 10,000 (Rupees Ten thousand) only.

- q) Consequently, the SEBI Portal team informed that it was a system error, and once the amount of INR 5,00,000, which was incorrectly being reflected on the Portal was paid, the balance amount of INR 4,90,000 would be refunded later; however, the same had not been received by the Firm.

4. Issues

4.1. In view of the allegations made, the issues for consideration are :

- I. Whether Money Desire Research, a registered investment adviser with SEBI, –**
- a. promised assured profit/ unrealistic returns to its clients;**
 - b. sold multiple services and collected unreasonable fees from its clients;**
 - c. had carried out proper risk profiling of its clients and failed to abide by the principles of suitability; and**
 - d. had complied with the directions contained in the Interim Order?**
- II. Whether the partners, namely, Anoop Kumar Tiwari and Raghvendra Singh are liable for the actions of the firm, Money Desire Research?**

5. Consideration and findings

- 5.1. The Interim Order has, *prima facie*, held that the investment advisory services offered by the Firm were in violation of the prevailing provisions of law.
- 5.2. I note from Table-1 above that the Interim Order, SCN and Hearing Notice were duly served on the Firm (Noticee No.1) and Anoop Kumar Tiwari (Noticee No.2) at the addresses available in the records of SEBI. Further, as an additional measure public notices were carried in the Indore editions of The Times of India (English daily) and the Naya Duniya (Hindi daily), informing of the issuance of the SCN as well as the scheduled

hearing. The public notices also provided the details of the concerned SEBI official from whom the said SCN could be collected. Further, intimation was also made by way of emails to the email addresses of the Firm as available on record. In this respect, I also observe from the record that Noticee Nos. 1 and 2 in the present proceeding have neither filed a reply in response to the SCN nor availed the opportunity of personal hearing.

5.3. I find that Noticee Nos. 1 and 2 are not interested in participating in the present proceeding before me. Accordingly, in this context, I rely upon the observations of the Hon'ble SAT in *Sanjay Kumar Tayal & Ors. vs. SEBI* (Order dated February 11, 2014 in Appeal no. 68 of 2013), wherein it was observed: "... Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices." Even though the Noticees have remained *ex parte*, I nonetheless find it relevant that I should be guided by the documents available on record as laid down by the Hon'ble SAT in *Sbri B. Ramalinga Raju vs. SEBI* (Order dated May 12, 2017 in Appeal No. 286 of 2014).

Issue I- Whether Money Desire Research (Noticee No.1) was carrying out investment advisory activities in violation of the prevailing provisions of law?

5.4. The SCN has brought out that the Firm carried out its investment advisory activities in contravention of the obligations cast upon an investment adviser registered with SEBI. The specific actions based on which such allegations have been made in the SCN have been enumerated above, and, as such, do not require reiteration here.

5.5. In view of the above-referred actions of the Firm, the SCN has stated that the Noticees have *prima facie* violated the following provisions of law –

- a. Sections 12 A (a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c) of the PFUTP Regulations along with Regulation 15 (1) of the IA Regulations and Clauses 1 and 2 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations;
- b. Regulation 15 (1) of the IA Regulations and Clauses 1 and 6 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations along

with Sections 12 A (a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d) of PFUTP Regulations; and

- c. Regulation 16 (b) read with Regulation 16 (d) and Regulation 17(a) and 17 (e) of the IA Regulations read with Regulation 15 (1) of the IA Regulations and Clause 2 of the Code of Conduct as specified in Schedule –III read with Regulation 15 (9) of the IA Regulations.

5.6. The Firm, i.e., Money Desire Research has not submitted any reply in response to the SCN. Considering the same, I am relying upon the material on record to deliberate upon the issues that are for adjudication before me. Reply has been received from Raghvendra Singh (Noticee No. 3) , who was a partner in the Firm. The reply of Noticee No. 3 throws light on the working of the Firm, and also attempts to defend the actions of the Firm. I note that the SCN contains multiple allegations against Money Desire Research, and for the sake of convenience and clarity, I shall deal with each of the allegations independently. In considering these allegations, I shall take into account the defences as have been put forth in the reply received from Noticee No.3.

Promised assured profit / unrealistic returns to its clients

5.7. The SCN has alleged that the Firm was promising specific percentage and value of returns to its clients on the investments made by them. The SCN has also alleged that the Noticee was inducing clients to avail its services by promising huge returns and also assuring them that the information/advice provided would give them exponential returns.

5.8. I note from the record that the Noticee was running a website with the domain name – www.moneydesireresearch.in, which is no longer active. However, I gather from the copies of the webpages of the website available on record that the Noticee was offering various investment products. It is seen that the descriptions of those investment products invariably contain references to high returns and specific targets. A sample of the same is provided hereunder:

- a) With respect to the product “Swing Cash+” it is mentioned, *“We provide you around 3-4 cash positional based calls in a week”* and *“High return of 8-9% on each call”*.
- b) Similarly with respect to the product “Swing Future+” it is mentioned *“We provide you around 3-4 positional Future Calls in a week, Target of Rs.8000-9000”*.
- c) Further, with respect to the product “Premium Swing Options+” it is mentioned *“We provide you around 3-4 positional stock options calls in a week, Target of Rs.5000-7000”*
- d) Lastly, with respect to the products “Premium Stock Future”, “Premium Stock Options” and “Rhodium Future” it is stated that *“2-3 premium positional Futures Calls per week, you will get 3-5% average return on positional calls”*

5.9. I also note that various complaints have been received with respect to the activities of the Firm from its clients. One of the complainants, Mr. Kiran Aravalli in his complaint bearing no. SEBIP/MP18/0000300/1 filed on the SEBI-SCORES system has attached a copy of an email dated July 15, 2017 received by him from the Firm. The said email states,

“Equity Umbrella:- Customer will get all equity product with intraday, BTST, weekly levels and short term holdings.

Required Investment: 5 Lac

Expected Return: 1 to 1.5 lac/day

Management Charges: 8 lac” (sic)

5.10. The same said complainant has also separately addressed a letter dated July 16, 2018 to SEBI. By way of the above-mentioned letter, it has been stated that the Firm had made a promise to the complainant that he would get returns of INR 1 crore within 3 months. In this regard, it has also been submitted that further to the promises made by the Firm, through its employees, he had made a payment of INR 18.50 lakh. The details of the payments made, as gathered from the annexed documents, are as under:

Table- 2

Date	Amount Transferred (INR)	Mode
July 19, 2017	4,00,000	Through payment gateway, PayU
July 25, 2017	4,00,000	Through payment gateway, PayU
August 11, 2017	1,00,000	Through payment gateway, PayU
August 19, 2017	4,00,000	Through payment gateway, PayU
August 24, 2017	1,00,000	Through payment gateway, PayU
August 28, 2017	2,00,001	Through payment gateway, PayU
August 31, 2017	2,50,000	Through payment gateway, PayU
Total	18,50,001	

5.11. Further, SEBI has received an email dated September 23, 2019 from a complainant, Mr. Ajay Raj Sharma, stating that he had suffered losses owing to the services provided by the Firm, and that he had been guaranteed a return of INR 10,00,000. The said complainant has submitted an email dated May 23, 2018 received by him from the Firm, wherein it has been mentioned that the Firm was launching an “auto points plan”. The said plan has been characterised in the following terms, in the said email:

“We provide 1000 Redeemed points in this plan Each point would be calculate of rs.1000.

Completing of our 1000 points You will get $1000 \times 1000 = 10,00,000/-$ (10-12 lakh.)

....

Our best experience to cover these whole points with in 50 to 60 trading session or whenever you will not get the whole profit according to the commitment till the time your services not going to be end.

Our charges on whole 1000 points is INR- 2,25,000/- excluding GST.”

5.12. Further, I note that another customer of Money Desire Research, Shri. Alpesh Jariwala had filed a complaint bearing number SEBIE/MP20/0000778/1 on the SEBI SCORES system, wherein it was stated that the Firm had taken an amount of INR 1,72,392 within

two months' time, and the complainant had suffered losses owing to the investment advice provided by the Firm. The complainant has also provided the call recordings of some of the conversations between him and the representatives/employees of the Firm. The transcript of the said conversations are placed below:

Table- 3

S. No.	Client Information	Date	Duration of Talk	Chat In Recording
1	Employee Ravi	January 30, 2020	1:27 to 1:32	Ravi Call= Aapka Paisa Main Market Se Safe Zone Se Nikalke De Dunga Koi Dikkat Nahi Hai Par Chize Complete Hongi
			1:35 to 1:40	Client=2 Din Main Paisa Nikal Ke De Doge 1, 20,000
				Ravi Call= 1, 21,000 Ab 2 Tarik Ko Baat Hogi Apni
			1:50 to 1:59	Client=Mujhe 1, 20,000 Do Din Main Milna Chahiye Ye Appka Commitment Hain
				Ravi Call =Ji
				Client=Main Ye Payment Kar Raha Hu Aur Next Week Bhi Aap Paisa Nahi Mangoge
				Ravi Call= Ji
2	Employee Ravi	February 20, 2020	8:14 to 8:18	Client=Aapne Kitna Profit Nikal Ke Diya Hai
				Employee=Nikal Jayega Sir Nikal Jayega
3	Employee Ravi	February 25, 2020	4:10 to 4:15	Employee= 3 Mahine Mere Saath Kaam Karo Balance Sheet Maintain Rakho Aapko Profit Apne Aap Dikhega
4	Employee Akash	January 30, 2020	2:35 to 2:45	Employee= Jab Aapka Profit 2, 02,500 Recover Hoga Tab Aapko Pay Karna Hai Remaining Amount Jo Ki Hoga 24,500
5				Client= Vo Bhi Kitna Ho Payega

S. No.	Client Information	Date	Duration of Talk	Chat In Recording
	Employee Akash	March 5, 2020	7:25 to 7:33	Employee= Vo Pura Karaunga
				Client= 2, 00,000
				Employee= 2, 06,500
				Client= Thik Hai I Will Reply Accordingly
6	Employee Aman	February 28, 2020	00:40 to 00:47	Employee= Aapka Pura File Complete Hai Pura Process Complete Hai Koi Mana Thodi Na Kar Raha Hu Ki Refund Nahi Ho Raha
7	Employee Akash	January 30, 2020	00:25 to 00:32	Akash Call = Definitely When You Will Get A 2,02,500 Rs. When You Want To Pay The 24, 500 Rs.

5.13. Upon a consideration of the descriptions of the investment products brought out above, it is evident that the Noticee was trying to bring in clients by promoting its products as being capable of giving the client exceedingly good returns and at the minimum a particular targeted return. Noticee No. 3 in his submissions has stated that the Firm had only provided the “expected returns” so as to give a certain idea to the clients as to the returns they might get as a consequence of their investments, and there was no guarantee of returns. In this respect, specific reference is made to the email dated May 23, 2018 received by Ajay Raj Sharma from the Firm with respect to the “auto points plan”. The said email which appears to be promotional literature of the Firm, characterises the plan as “*We provide 1000 Redeemed points in this plan. Each point would be calculate of rs.1000. Completing of our 1000 points You will get $1000 \times 1000 = 10,00,000/-$ (10-12 lakh.)*” (sic). So, any client opting for this plan would be entitled to 1000 points with each point being equal to INR 1000; thus, the total entitlement of a client opting for such a plan would be INR 10,00,000. The said email further states that – “*Our best experience to cover these whole points with in 50 to 60 trading session or whenever you will not get the whole profit according to the commitment till the time your services not going to be end. Our charges on whole 1000 points is INR- 2,25,000/- excluding GST*” (sic). From the above, it can be gauged that, as per the Firm, it would take about 50 to 60 trading sessions for the profit as “committed” to be realised, and in case

the profit as “committed” was not realised within those 50 to 60 trading sessions then the service would go on till such time the profit as “committed” was realised. Thus, it is quite clear that the Firm was guaranteeing returns of specified amounts.

5.14. In this respect, the transcript of the conversations between the Firm’s executives and another complainant, Alpesh Jariwala is instructive. In one instance, the client says , “*Mujhe 1, 20,000 Do Din Main Milna Chahiye Ye Appka Commitment Hain*” (I should get 1,20,000 in two days, that is your commitment) ; in response to that the employee replies, “*Ji*” (affirmative). Upon this affirmation, the client replies, “*Main Ye Payment Kar Raha Hu Aur Next Week Bhi Aap Paisa Nahi Mangoge*” (I am making the payment, so next week you won’t ask for any money). From, this extract it is abundantly clear that the client (Alpesh Jariwala) made investment decisions on the promise that he would be getting a definitive return.

5.15. Further, Noticee No. 3 in his submissions has stated that the representations of high returns/guaranteed returns were made by the employees without the knowledge of the Firm/partners. In this respect, reference is made to the letter dated July 16, 2018 addressed by Kiran Aravalli to SEBI. In the said letter, the complainant had brought out that he was promised an amount of INR 1,00,00,000 in three months. Consequently, he paid an amount of INR 18.50 lakh between July 19, 2017 and August 31, 2017. The Firm and its partners surely would have been aware of this large amount of money coming in within such a short period of time, and if the money was being received without authorisation the same should have been returned; however nothing of that nature was done by the Firm. So, the claim that the representations made by the Firm were in fact made by the employees is without basis and an afterthought.

5.16. From a perusal of the material available on record, call recordings and consideration of the submissions of Noticee No.3, I conclude that the Firm was promising assured returns to its clients. In this regard, I note that it is common knowledge that investments in securities markets are subject to market risks and hence the returns are unpredictable. Therefore, any form of assured return or guaranteed profits to the clients in effect misleads investors.

5.17. Further, it has been alleged in the SCN that not only was the Firm promising assured returns but also exceedingly high returns. It has already been brought out in the preceding

paragraphs that Kiran Aravalli was promised an amount of INR 1 crore in three months. Consequently, he paid an amount of INR 18,00,001 between July 19, 2017 and August 31, 2017. It is apparent that a promise of INR 1 crore gain in three months is unrealistic, as no investment – howsoever rewarding – can provide such exponential returns. Also, the Firm on its website characterised one of its investment products, “Swing Cash+” as *“We provide you around 3-4 cash positional based calls in a week”* and *“High return of 8-9% on each call”*. Thus, it is abundantly clear that the Firm was characterising its investment products to be high yielding and offering returns which were mouthwatering.

5.18. In this regard, it is stated that the promise of assured returns and profits is inherently misleading as it runs contrary to the fundamental principle of the securities market i.e., investments are subject to market risks. Also, the promise of exceedingly high return is inherently misleading as it acts as a tool to attract clients, who may not be aware that such high returns would be impossible to achieve. Such misleading promises might have induced the clients to invest in the schemes and packages floated by the Firm. Therefore, the guarantee of assured profits/very high returns, in any manner or form or description, is fraudulent as it misleads and deceives the clients. Accordingly, I find that the Noticee has violated the provisions of Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d) of the PFUTP Regulations.

5.19. Furthermore, it has also been alleged in the SCN that by promising assured returns/high returns, the Noticee has violated Regulation 15 (1) of the IA Regulations, which obligates an Investment Adviser to act in a fiduciary capacity with respect to its clients. In this regard, reference is made to the judgment of the Hon’ble Supreme Court of India in the case of *Dale and Carrington Invst. (P) Ltd. and Ors. V. P.K. Prathapan and Ors.*, (2005) 1 SCC 212. The SC in the matter, while deciding that the Directors of a company had to act in a fiduciary capacity towards the company, elucidated on the specific duties that are enjoined on directors, owing to the fiduciary position they hold vis-à-vis a company. The SC, in the matter, held that *“The fiduciary capacity enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company.”* In the context of Investment Advisers and its clients, the same principles as elaborated upon by the Supreme Court in the above mentioned case

shall also apply. In this regard, I also refer to the case of *Securities And Exchange Commission V. Capital Gains Research Bureau, Inc., Et al.*, 375 U.S. 180 (1963) decided by the US Supreme Court with respect to the fiduciary standard of an investment adviser in respect of the Investment Advisers Act of 1940, which regulates investment advisers in the United States much like the SEBI Act and IA Regulations in India. The court while considering the question of fiduciary duty owed by an investment adviser in respect of the Investment Advisers Act stated that the said Act “*reflects the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously – to render advice which was not disinterested.*” Further, it was held by the US Supreme Court that it has been “*imposed on a fiduciary an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients.*”

5.20. So, upon a consideration of the principles enunciated by the Hon’ble Supreme Court of India as well as the US Supreme Court, I find that the fiduciary capacity within which an investment adviser works enjoins upon it a duty to act on behalf of its clients with utmost care, skill and due diligence, and in the interest of the clients it represents.

5.21. In such circumstance, it shall suffice to say that an Investment Adviser has to act in the best interests of its clients. The promise of assured returns acts to mislead the clients and fraudulently induces him to subscribe to the various packages/services offered by the Investment Adviser, which eventually leads to pecuniary loss to the clients as has been seen from the many complaints received. This evidently would not be in the best interests of the clients. Thus, the Noticee has acted in contradiction of the fiduciary duties cast on an Investment Adviser, and has, as such, violated Regulation 15 (1) of the IA Regulations.

Selling multiple services and collecting unreasonable fees from its clients

5.22. The SCN has alleged that the Firm arbitrarily charged fees for its services and collected unreasonable amounts of fees. I note from the record that multiple complaints were received by SEBI in this regard. Accordingly, it would be relevant to place hereunder the details regarding payments, as conveyed by some of the complainants. Mr. Amar

Ghosalkar, one of the complainants has provided the following payment details with respect to the services offered by the Firm to him:

Table- 4

S. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	08-Jun-18	INV291	Stock Option	08-Jun-18 to 16-Jul-18	31,250/-
2	08-Jun-18	INV292	Stock Option	08-Jun-18 to 16-Jul-18	31,313/-
3	08-Jun-18	INV294	Stock Option	08-Jun-18 to 31-Aug-18	57,347/-
4	14-Jun-18	INV301	Stock Option	14-Jun-18 to 28-Sep-18	45,000/-
Total					1,64,910/-

5.23. Further, the details of payments made by one of the other clients of the Firm, Mr. Tabish Khan are placed hereunder:

Table-5

S. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	June 19, 2018	569	All Equity	1 month	7,500/-
2	June 19, 2018	570	All Equity	3 months	40,000/-
3	June 19, 2018	571	All Equity	6 months	60,000/-
4	June 20, 2018	584	All Equity	6 months	52,000/-
5	June 21, 2018	585	All Equity	1 year	1,01,011/-
6	June 21, 2018	587	All Equity	1 year	15,000/-
7	July 05, 2018	827	Stock Option + Future	1 month	7,500/-
8	July 12, 2018	836	Stock Option + Future	3 months	60,000/-
9	July 17, 2018	841	Stock Option + Future	3 months	65,100/-
10	July 28, 2018	853	Stock Option + Future	6 months	1,25,000/-
Total					5,33,111/-

5.24. Lastly, the details of payments made by another client of the Firm, Mr. Rathva Maheshbhai are placed hereunder:

Table-6

Sl. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	April 19, 2018	INV 194	Stock Option	19-Apr-18 to 31-May-18	35,500/-
2	May 04, 2018	INV- MAY2018006	Cash	Not mentioned	20,000/-
3	May 09, 2018	INV- MAY20180013	Cash	Not mentioned	20,000/-
4	May 16, 2018	INV- MAY20180027	Cash	Not mentioned	20,000/-
5	May 18, 2018	INV- MAY20180032	Cash	Not mentioned	20,200/-
6	May 26, 2018	INV 265	Cash Premium	28-May-18 to 31-Dec-18	1,40,000/-
7	May 28, 2018	INV 266	BTST/STBT	28-May-18 to 24-Aug-18	2,10,203/-
8	May 28, 2018	INV 267	Nifty Future	28-May-18 to 23-Nov-18	1,26,202/-
9	June 29, 2018	INV- JUNE20180133	Cash	Not mentioned	30,000/-
Total					6,22,105/-

5.25. With respect to Amar Ghosalkar, I note from Table-4 that there were 4 instances of payment for the same product. I also note that the client paid INR 31,250 on June 08, 2018 for the “Stock Option” package whose duration was from June 08, 2018 to July 16, 2018. Subsequently, the client paid INR 31,313 again on June 08, 2018 for the same “Stock Option” with the same duration as before i.e., June 08, 2018 to July 16, 2018. So, on the same day i.e., June 08, 2018, the client paid two different amounts for the same product with the same duration. Again, the client paid INR 57,347 on June 08, 2018 for the “Stock Option” package whose duration was from June 08, 2018 to August 31, 2018. Lastly, the client paid INR 45,000 on June 14, 2018 for the “Stock Option” package whose duration was from June 14, 2018 to September 28, 2018. Noticee No.3 in his submissions has stated that the Firm did not offer multiple services, rather the clients paid advances for the services so the service duration was extended; however, the invoices had not been updated for the extended period due to a typographical error. If one were to consider the

explanation of the Noticee that the amounts paid by the clients were advances and they were used to extend the services to the clients, then there should not have been any overlap in the package/product or its duration. However, as can be seen there was a clear overlap among the durations of the products. This clearly belies the claim that these payments were advances paid for future service.

5.26. As regards Tabish Khan, it is seen from Table-5 that there were six instances when the client paid for the “All Equity” product and four instances when the client paid for the “Stock Option + Future” product. Out of the above-mentioned six instances, payments were made from June 19, 2018 to June 21, 2018 for the “All Equity” product for durations that ranged from one year to one month. It appears quite unusual that a client would buy a service for a period of one year, and then also additionally buy it for a period of one month, which is covered in the one year already bought by him; unless he has been made to buy the additional service through sleight. So, there is a clear ploy adopted by the Firm to sell the same product multiple times. Similarly, out of the mentioned four instances of payments made for the “Stock Option + Future” product, it is seen that they were made between July 05, 2018 and July 28, 2018 for durations that ranged from 6 months to 1 month. Again, the same ploy of selling the same product multiple times is evident here.

5.27. Further, not only was the client sold the same product multiple times, there was disproportionate charging of fees too. As can be seen from Table-5, the fees charged for the “Stock Option + Future” product for 1 month duration was INR 7,500, whereas fees charged for the same product with a duration of 3 months was INR 60,000. This is clearly disproportionate and ad hoc. Similarly, fees charged for the “All Equity” product with a duration of 1 month was INR 7,500, whereas the same product with a duration of 3 months and 6 months was respectively INR 40,000 and 60,000. This again is evidently arbitrary.

5.28. Lastly, coming to the case of Rathva Maheshbhai, I see that the Firm had sold multiple products within a short period of time and before the completion of the service period of the earlier products sold. In the month of May, 2018 alone the client had been sold products 7 times. Further, out of the 9 invoices issued, the period of service was not mentioned in 5 invoices, though the same product, namely “Cash”, was sold to the client.

This is reflective of the template followed by the Firm, as has been evident in the case of the previous two clients; to sell the same product multiple times to the client.

5.29. Thus, from the above, I find that the clients were being charged for the same service for the same duration multiple times, and the Firm was also charging them arbitrary fees.

5.30. In this regard, reference is made to Section 12 A (a), (b), (c), of the SEBI Act and Regulation 3 (a), (b), (c), (d) of the PFUTP Regulations. As already brought out, the above provisions prohibit deceptive and misleading practices in the securities market. In this regard, I find that the Firm by charging its clients fees for the same product multiple times has violated the above provisions. Similarly, the Firm by offering products to the clients at highly disproportionate fees has acted to the detriment of its clients.

5.31. It has also been alleged that the Firm has failed to abide by the fiduciary duty provided in Regulation 15 (1) and has violated clause 1 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of the IA Regulations. In the present matter, it is evident that the Investment Adviser has charged the client fees for the same product and duration multiple times, thereby not taking due care, as a person acting in a fiduciary capacity is duty bound to do. Also, the Investment Adviser by acting in a manner to maximise its fees and income at the detriment of the clients has not acted in the best interests of the clients, and has put its own interest of earning more fees at the fore, thereby breaching the fundamental duty of a fiduciary. I accordingly find that the Investment Adviser has violated Regulation 15 (1) of the IA Regulations. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. The Firm by selling the clients the same product multiple times has evidently not been fair and honest in its dealing with the clients.

5.32. Further, clause 6 of the Code of Conduct for IA stipulates that the fees that are to be charged by an Investment Adviser should be fair and reasonable. As already brought out above, one of the clients was charged INR 7,500 for the “All Equity” product with a duration of 1 month , the same client subsequently was charged INR 40,000 and INR 60,000 for the same product with a duration of 3 months and 6 months respectively. A product which costs INR 7,500 for a month cannot by any reasonable estimate cost INR

40,000 for 3 months. So, it is clear that the fees charged by the Firm from its clients were neither fair nor reasonable, and, as such, the Firm has breached the stipulation in clause 6 of the Code of Conduct for Investment Advisers.

Improper risk profiling of the clients and failure to abide by the principles of suitability

5.33. It has also been alleged in the SCN that the Firm did not carry out proper risk profiling of the clients and had failed to abide by the principles of suitability.

5.34. In this regard, specific reference is made to Regulation 16 of the IA Regulations, which deals with risk profiling. Regulation 16 (a) states that an Investment Adviser is to ensure that “it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:- (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/ borrowing details.” Similarly, Regulation 16 (d) requires an Investment Adviser to ensure that “any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that: (i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand; (ii) questionnaire is not structured in a way that it contains leading questions.” Keeping the above in mind, it is specified in Regulation 16 (b) that an Investment Adviser shall ensure that it has a process for assessing the risk a client is willing and able to take, including: (i) assessing a client’s capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

5.35. I note from the record that a complaint bearing no. SEBIP/MP18/0004671/1 was filed by Dhananjay Vaid on the SEBI-SCORES system. In the said complaint, it has been stated by him that the Firm advised him to buy premium services since his risk appetite was high. Upon perusal of the Risk Profiling Form (“RPF”) I note that the gross income of the said client was between INR 2-5 lakh, his investment experience was less than 2 years, and had no experience when it came to investments in forex and commodities and had moderate experience in equity investments.

5.36. I also find that the RPF of the said client had contradictory answers, which are enumerated hereunder:

Table – 7

Question	Answer	Weightage
Risk Tolerance	High	5
How would you honestly describe yourself as a risk taker?	Low risk taking capability (I'd have a hard time tolerating any losses)	2
Assume that you have invested rupees one lac in a share that goes down by 10% the next day.	Do not bother because you have done enough research on the company	4

5.37. As per the RPF, the total score assigned to the client by the Firm was 81 out of 140, and he was categorised as having a high risk tolerance capacity. This is quite surprising considering the facts that have been brought out and the contradictions that have emerged.

5.38. A similar pattern emerges with respect to the risk profiling of the other clients, namely, Tabish Khan and Yogesh Joshi, from a perusal of their respective RPFs. I note that the gross income of Yogesh Joshi was between INR 2-5 lakh, his investment experience was moderate, and he had no experience when it came to investments in forex and commodities and had moderate experience in equity investments. His risk tolerance was stated to be high. He was given a score of 84 out of 140, and was categorised as having a high risk tolerance capacity. Similarly, I note that the gross income of Tabish Khan was between INR 5- 10 lakh, his investment experience was moderate, and he had no experience when it came to investments in forex and very less experience in commodities. He also had moderate experience in equity investments. His risk tolerance was stated to be high. He was given a score of 87 out of 140, and was categorised as having a high risk tolerance capacity. Also, for all the three clients, namely, Dhananjay Vaid, Tabish Khan and Yogesh Joshi the size of their emergency funds was less than one month's income.

5.39. I note from the above facts that the clients had meagre/limited financial resources as demonstrated by their annual incomes which was in the range of INR 2 to 10 lakh. Also,

all the three had stated that the sizes of their emergency funds were less than a month's income, which considered in respect of their annual incomes came to a pittance. Further, to the question, "*How secure is your current and future income from sources?*", both Dhananjay Vaid and Tabish Khan have stated it to be Not secure. These were clear red flags and any reasonable person assessing the RPF of these clients would have gathered that their risk appetite was fairly limited. However, the Firm in fact categorised all of them as having a high risk tolerance capacity. This clearly exhibits the non-existence of a process for appropriately assessing the risk profile of the clients. In light of the above facts, it does not appear that any proper analysis was done of the RPFs, for if the same had been carried out the anomalies would have clearly emerged. Thus, I find that the Firm did not ensure a proper process for the assessment of the risk profile of the clients, and as such it has violated Regulation 16 (b) read with 16 (d) of the IA Regulations.

5.40. It has also been alleged in the SCN that the Firm has violated Regulation 17(a) and (e) of the IA Regulations which stipulates that the Investment Adviser should ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client and when a recommendation is given the same should be based on a reasonable assessment of the structure and risk-reward profile of the product and should be compatible with the experience, investment objectives, risk appetite etc. of the clients. Thus, there is a clear onus on the Investment Adviser to reasonably satisfy itself of the efficacy of his investment advice as regards the client, keeping in mind the factors stated above.

5.41. I note from the record that the Firm had provided its Suitability Assessment Policy on its website. The said policy segregated the various products offered by the Firm as per the risk category i.e. high risk and medium risk. In this regard, the same is reproduced hereunder:

"Types of risks and services covered under them:-

<i>Medium Risk</i>	<i>High Risk</i>
<i>1. INTRADAY CASH</i>	<i>2. CASH HNI</i>
	<i>3. STOCK FUTURE</i>
	<i>4. STOCK FUTURE HNI</i>

	<i>5. STOCK OPTION</i>
	<i>6. STOCK OPTION HNI</i>
	<i>7. STOCK F&O COMBO PACK</i>
	<i>8. MCX TIPS</i>
	<i>9. MCX HNI TIPS</i>
	<i>10. COMMODITY TIPS (MCX & NCDEX) COMBO PACK</i>
	<i>11. BTST/STBT TIPS RESEARCH PACK</i>
	<i>12. DATA BASED/INVENTORY CALLS</i>
	<i>13. SHORT HOLDING</i>
	<i>14. DOMESTIC FOREX</i>
	<i>15. PNP PLAN</i>

5.42. It is seen from the invoices on record that the Firm had sold the 'BTST/STBT' and 'Stock Option' products, to one of its clients namely Maheshbhai Rathva. It may be seen from the above table that both BTST/STBT and Stock Option were products in the High Risk category. I note from the RPF of Maheshbhai Rathva that his risk tolerance capacity had been categorised by the Firm as Medium Risk. So, it is evident that even though the said client's risk carrying capacity was only medium he was being provided investment products/services which were in the high risk category. Similarly, I also see from the record that the Firm had sold the 'Stock Option' product, to one of its clients namely, Amar Ghosalkar. As may be seen from the above table the Stock Option product was in the High Risk category.

5.43. In this regard, it has been submitted by Noticee No. 3 in his submissions that the Firm had sold high risk products to medium risk clients as the clients had insisted on them and they had past experience of trading in the same segment. While the risk profile of the clients was taken into consideration, client requests were prioritised over their risk profile. So, it is evident that, since client preference was prioritised, no fair assessment was done by the Investment Adviser in assessing the suitability of the client for the investment advice given to him. Accordingly, in view of the facts brought out above, I find that the Investment Adviser has violated Regulation 17(a) and (e) of the IA Regulations.

5.44. Further, it has been alleged that the Firm has violated the provisions of Regulation 15(1) of IA Regulations and has also failed to abide by clause 2 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations. As already stated, Regulation 15 (1) of the IA Regulations mandates that an Investment Adviser shall act in a fiduciary capacity towards its clients. This entails that the Investment Adviser is duty bound to act on behalf of its clients with utmost good faith, care and skill and due diligence, and in the interest of the clients it represents.

5.45. The above arguments proffered by Noticee No. 3 with respect to the practices adopted by the Firm are unacceptable. The fundamental premise for having Investment Advisers is to have professionals adequately conversant with financial services and products, who using such knowledge and experience would provide guidance to laypersons for investing in the financial markets. This premise has been codified in the form of legal principles which obligate the Investment Advisers to ensure that the financial guidance they provide to clients is in conformity with the investment objectives of the clients, their risk profile and the suitability of such guidance to the clients, and foremost, it should be in the best interests of the client. To claim that the wishes of the clients were prioritised over their risk profile is to cast away this central duty of working in the best interests of the clients and undertaking the necessary examination of the financial position of the client before making investment recommendations. Accordingly, I find that the Firm has violated Regulation 15(1) of IA Regulations and has also failed to abide by clause 2 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations.

Non-compliance of SEBI directions contained in the Interim Order

5.46. It has been alleged in the SCN that the Firm has not complied with the directions contained in the Interim Order.

5.47. I note that the Interim Order had directed that the Firm and its Partners were required to –

“...provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.”

5.48. I find from the records that no such information has been received from the Firm or its partners. In this regard, it has been submitted by Noticee No. 3 in his submissions that in April 2020, one of the partners, Anoop Kumar Tiwari (Noticee No.2), who had control over the affairs of the Firm and relevant documents was arrested by the Indore police in the matter of alleged murder case of his wife. It has been submitted that the police seized his house, along with his laptop, mobile phone and other devices in which all the data was stored and maintained. Consequent to the arrest of Anoop Kumar Tiwari and closure of office, it has been submitted by Noticee No.3 that he did not have any record of any of the documents or systems, as all the records of the Firm were in the custody of Anoop Kumar Tiwari.

5.49. I am unwilling to accept this defence that it was Noticee No. 2 who was solely responsible for the documents and systems of the Firm. Noticee No. 3 has not provided anything to suggest that there was a clear bifurcation of duties between the partners and that all responsibility of the Firm was in the hands of Anoop Kumar Tiwari. The arrest of Anoop Kumar Tiwari is of no relevance to the direction in the Interim Order mentioned above as the direction was required to be carried out within 5 working days from the receipt of the Interim Order. It is a fact that the Interim Order was passed on January 15, 2020, and subsequently was sent to the Firm and its Partners. I note from the record that the Interim Order was served on the Firm by affixture on February 12, 2020. Even considering that the time period of five days, as stipulated in the Interim Order, started from February 12, 2020, the same was over by February 18, 2020; one and a half months before the arrest of Anoop Kumar Tiwari in April of 2020. So, the occurrence of Anoop Kumar Tiwari's arrest cannot be accepted as a valid ground for not providing the information to SEBI as directed by way of the Interim Order. Accordingly, I find that the Firm has continued to not comply with the directions in the Interim Order.

Issue-II – Whether the partners, namely, Anoop Kumar Tiwari and Ragvendra Singh are liable for the actions of the firm, Money Desire Research?

5.50. The SCN has alleged that the Firm and its partners are liable for the actions as alleged in the SCN. It has already been brought out in the preceding paragraphs of this Order that the Firm, which was a registered Investment Adviser, was acting in contravention of the provisions of the SEBI Act, IA Regulations and PFUTP Regulations.

5.51. It is not a matter of dispute that Noticee Nos. 2 and 3 are partners of the Firm. Noticee No.3 who has made submissions in response to the allegations made in the SCN has also not disputed his position as a partner of the Firm. I also note from the Partnership Deed dated May 01, 2014 that Noticee Nos. 2 and 3 were listed as partners of the Firm and each held 50% of the partnership.

5.52. In view of the above, specific reference is made to Section 27 of the SEBI Act. The said provision reads,

“ 27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time of the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

5.53. It is evident from the above-mentioned provision that for the contravention by a partnership firm the persons who at the time of the contravention were in charge of and were responsible to the partnership firm for the conduct of the business of the partnership firm shall be deemed to be guilty of the contraventions of the partnership firm. So, the partners of the Firm, namely, Anoop Kumar Tiwari and Raghvendra Singh squarely fall within the scheme of this provision. Also, the partners, including Noticee No.3 who has made submissions in response to the allegations in the SCN, have not been able to show that the contraventions were committed without their knowledge or that they had exercised all due diligence to prevent the commission of such actions. That being the case, there is no ground to exclude liability of any of the partners for the contraventions of the Firm.

5.54. Further, specific reference is made to Section – 4 of the Indian Partnership Act, 1932 (**“Partnership Act”**). The said section defines a ‘partnership’ as the relation between persons who have agreed to share the profits of a business carried on by all or any of them for all. The persons entering into a partnership with one another are individually called as ‘partners’ and collectively the ‘firm’, and the name under which their business is carried out is called the ‘firm name’. Under section 2(a) of the Partnership Act, an ‘Act of Firm’ means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. Further, as per Section 25 of the Partnership Act, *“Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.”* Therefore, even under the scheme of the Partnership Act, the partners of Money Desire Research, namely, Anoop Kumar Tiwari and Raghvendra Singh are responsible for the contraventions committed by Money Desire Research.

5.55. Thus, from the above, it is clear that the partners namely, Anoop Kumar Tiwari and Raghvendra Singh are liable for promising assured profit/ unrealistic returns to its clients; selling multiple services and collecting unreasonable fees from its clients; not carrying out proper risk profiling of the clients and failing to abide by the principles of suitability; and not complying with the directions contained in the Interim Order.

5.56. In view of the aforesaid violations committed by the Noticees, I find that directions under Sections 11(1), 11 (4), 11 (4A), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations, need to be issued.

5.57. The SCN in the matter, also called upon the Noticees to explain as to why monetary penalty should not be imposed –

- a. under Sections 15HA and 15HB of the SEBI Act for promising assured profit / unrealistic return to its clients;
- b. under Sections 15HA and 15HB of the SEBI Act for selling multiple services and collecting unreasonable amount of fees;
- c. under Section 15HB of the SEBI Act for not carrying out proper risk profiling and not adequately ascertaining the suitability of the investment products/services to the clients; and
- d. under Section 15HB of SEBI Act for not complying with the direction contained in the Interim Order.

5.58. In this regard before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for facility of reference:

Section 15HA of SEBI Act, 1992 – Penalty for fraudulent and unfair trade practices. “Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

15HB of SEBI Act, 1992 – Penalty for contravention where no separate penalty has been provided. Section “Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”

5.59. Upon a consideration of the above, I note that Section 15 HA has been invoked in respect of the Noticees for promising assured returns and charging its clients fees arbitrarily and collecting unreasonable amounts of fee. I note that the above allegations

have been clearly established in the preceding paragraphs. I also note that Noticees' acts of charging its clients fees arbitrarily and collecting unreasonable amounts of fee was fraudulent and an unfair trade practice. I further note that the Noticees by promising assured returns had violated the fundamental canon of the securities market i.e., investments were subject to market risks, and as such has mislead and deceived their clients. I, therefore, find that monetary penalty under Section 15 HA is clearly attracted.

5.60. I further note that Section 15 HB has been invoked against the Noticees for not carrying out proper risk profiling and not adequately ascertaining the suitability of the investment products/services to the clients, and not complying with the directions contained in the Interim Order. I note that it has already been established that the Noticees did not analyse the RPFs of the clients and did not follow its own suitability policy when it came to recommending services/products to the clients. I, therefore, find that penalty under Section 15 HB is clearly attracted.

5.61. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, 1992, guidance is provided by Section 15J of the SEBI Act, 1992. The said provision reads,

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

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

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

(c) the repetitive nature of the default.

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

5.62. I also note that the SCN has not brought out the quantum of profit/gains made by the Noticee in promising assured returns and charging its clients fees arbitrarily and collecting unreasonable amounts of fee. I, though, note from the complaints received from the clients that certain investors have suffered losses due to the actions of the Noticees.

5.63. Noticee No.3 in his submissions has stated that a renewal fees of INR 5,00,000 was paid by the Firm through the SEBI Intermediary Portal, as the Portal was reflecting the

incorrect fees, when the actual renewal fees in case of a partnership firm at that time was INR 10,000 (Rupees Ten thousand) only. I find that the same is not relevant to the present proceedings, and the Noticee should take it up separately with SEBI.

5.64. In consideration of the aforesaid, I shall now proceed with the directions and imposition of monetary penalties.

6. Directions and Monetary Penalties

6.1. I, in exercise of powers conferred upon me under sections 11(1), 11 (4), 11 (4A), 11B(1), 11 B (2) of the Securities and Exchange Board of India Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations and in the interest of investors do hereby pass the following directions: –

- a) The Noticees, namely, Monsey Desire Research (Noticee No. 1), Anoop Kumar Tiwari (Noticee No.2) and Raghvendra Singh (Noticee No.3) are directed to resolve the complaints pending against the Firm on SCORES and otherwise, and any refunds that may be required to be made pursuant to the resolution of the complaints, within a period of thirty (30) days from the date of this Order.
- b) The Noticees are prevented from selling their assets, properties and holdings of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above or for the payment of penalty as imposed in this Order. Further, banks are directed to allow debit from the bank accounts of the Noticees, only for the purpose of making refunds to the clients/investors who were availing the investment advisory services from the Firm or for the payment of penalty as imposed in this Order.
- c) After completing the aforesaid repayments/resolution of complaints, the Noticees shall file a report of such completion with SEBI addressed to the “*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex,*

Bandra (East) Mumbai –400051”, within a period of fifteen (15) days, after completion of thirty (30) days from the coming into force of the directions at para 6.1(a), duly certified by an independent Chartered Accountant and the direction at para 6.1(b) above shall cease to operate upon filing of such report on resolution of complaints/ completion of refunds to complainants.

- d) Noticee Nos. 2 and 3 are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/completion of refunds to complainants as directed in para 6.1(a), whichever is later.
- e) I note that vide the Interim Order dated January 15, 2020, the Noticees were restrained from accessing the securities market and prohibited from buying, selling or dealing in the securities market till further orders. In this context, I note that enquiry proceedings have been initiated against Noticee No. 1 under the SEBI (Intermediaries) Regulations, 2008. The restraint imposed on Noticee No. 1 vide the Interim Order in respect of its investment advisory business shall continue till the disposal of the enquiry proceedings.
- f) The Noticees are hereby, jointly and severally, imposed with the monetary penalties, as provided hereunder:

Noticee No.	Name of the Noticee	Provisions under which penalty imposed	Amount of Penalty (INR)
1	Money Desire Research	Section 15 HA	Five (5) lakh
2	Anoop Kumar Tiwari	Section 15 HB	Five (5) lakh
3	Raghvendra Singh		
Total			Ten (10) lakh

- g) The Noticees shall remit / pay the said amount of penalties within forty five (45) days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or 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 Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details)	

- h) This Order is without prejudice to any other action that SEBI may initiate.
- i) The above directions shall come into force with immediate effect.
- j) A copy of the Order shall be communicated to the Government of Madhya Pradesh for information.

Place: Mumbai

ASHWANI BHATIA

Date: October 17, 2022

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA