

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No.: ORDER/VKV/AS/2022-23/21417]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992**

In respect of:

Equitypandit Financial Services Private Limited
(Investment Adviser – SEBI Reg. No. INA000006688)
(PAN: AADCE3035F)

A-488, Vidhyut Nagar, Ajmer Road,
Jaipur – 302 019 (Rajasthan).

1. Equitypandit Financial Services Private Limited (hereinafter referred to as “**Noticee**”) is a Securities and Exchange Board of India (“**SEBI**”) registered Investment Adviser having SEBI Registration No. INA000006688, since November 15, 2016. SEBI conducted an inspection of the Noticee during January 04 – 08, 2021 for the period April 01, 2019 to December 31, 2020 (hereinafter referred to as “**inspection period**”), to ascertain, whether the Noticee had complied with the provisions of SEBI Act, 1992, SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”), other regulations, circulars and guidelines framed thereunder. The inspection was carried out remotely i.e. “*offsite inspection*” due to Covid 19 pandemic situation pan India. The major observations during the inspection are as follows:
 - a) As per the Client Master sheet submitted by the Noticee during the inspection, the number of clients were 1,555 as on December 31, 2020. The Noticee had collected Rs 6.27 Crores (*including GST*) as fees during the inspection period.
 - b) The Noticee was selling same service multiple times to its clients with the same service validity period.
 - c) The Noticee had failed to upload details of the designated directors on FIU portal and there was delay in formulation of AML policy in terms of SEBI Master Circular dated October 15, 2019.
 - d) **Unfair Amount of Fees Charged from Clients**
 - i. It was observed that amount of fees received from the following clients was more in compared to annual gross income of the clients and/or proposed investment, as disclosed in the respective risk profile forms of these clients.

Table 1

Sl no	Name of client	Fees received from client (Rs.)	Annual gross income as per RF form	Proposed Investment
1	Ankit Gupta	4,80,000/-	5-10 lakh	-
2	Hirenkumar Soni	11,12,961/-	5-10 lakh	-
3	Kishore Gharate	4,60,987/-	5-10 lakh	-
4	Himanshu Sharma	8,15,900/-	-	2-5 lakh
5	Prabhu Arunkumar Raghupati	6,60,000/-	-	2-5 lakh
6	Rajiv Maini	7,40,524/-	-	2-5 lakh
7	Sanjiv Kumar Vir	7,23,324/-	-	2-5 lakh

- ii. From the above Table 1, it was observed that the annual income of Mr. Hirenkumar Soni was Rs. 5-10 lakh, however, the Noticee had charged Rs. 11,12,961/- from him as fees. Further, in his Risk Assessment Form, Mr. Ankit Gupta had proposed to invest Rs. 1 - 2 lakh in the market, but the Noticee had charged Rs. 4,80,000/- as fees from him. The Noticee during the risk profiling exercise of its client had obtained information such as – client’s proposed investment amount, their annual income and their other financial details. On comparing the aforementioned clients’ information available with the Noticee, with the fees charged by the Noticee, it was observed that the fees charged was either higher, or close to the client’s annual income or was several times to the proposed investment of its clients’.
- iii. Considering the same, it has been alleged that the Noticee had kept its own interest at higher level in compare to interest of its clients with having single motive of maximizing revenue instead of providing best services to clients. It has been further alleged that the Noticee had charged exorbitant amount of fees from its clients and deceived its clients by extorting fees which were more than their respective total annual income. Therefore, it has been stated that the aforesaid act of the Noticee comes under the definition of ‘*fraud*’ as mentioned in Regulation 2(1)(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) 2003 (hereinafter referred as ‘**PFUTP Regulations**’).
- iv. During inspection, various documents/information *viz.* KYC, Risk Profile, Client Master, Invoices, SCORES complaints and information submitted by the Noticee was examined and following was observed:

Table 2

Sl. No.	Name of the Client	Product	Invoice Date	Invoice No.	Amount of Fees Collected (Rs.)
1	Amit Banerjee	Basic	04-01-2019	9987	10,500
		EP Investor and option	09-01-2019	10007	12,000
		Investor EP option	10-01-2019	10013	16,020
		Investor EP option	14-01-2019	10058	19,500
Total					58,020
2	Ashok Bangad	Election special – Index Option Short Plan-M	26-04-2019	10775	30,000
		FO special Short Plan-3M	08-06-2019	11150	15,000
		Total			45,000
3	Virang Patel	Offer JAN20 Option Premium 6	24-01-2020	12844	25487
		Total			25487
4	Dinesh Kumar Jain	Stock Option Short Plan-3	02-03-2019	13007	12,000
		Ep Prima 12M	27-03-2020	13033	94,400
		Total			106,400
5	Nitasha Jain	Investor Plan	14-06-2019	11194	7,500
		Investor Plan	15-06-2019	11202	4,500
		EPLC	20-06-2019	11278	90,000
		Charterd Analyst	29-06-2019	11396	1,00,000
		Charterd Analyst	30-06-2019	11397	1,00,000
		Charterd Analyst	01-07-2019	11482	65,000
		VIP Package Medium Plan 6m	31-07-2019	11709	1,00,000
		Chartered Analyst-Long Plan-12M	31-07-2019	11777	1,00,000
		Chartered Analyst-Long Plan-12M	31-07-2019	11778	1,00,000
		Chartered Analyst-Long Plan-12M	31-07-2019	11781	55,840
		Total			7,22,840

Table 3

S. No.	Name	Date of Risk Profiling	Proposed Investment amount as per Risk Profile	Annual Income	Approx. Value of Assets Held	Trading experience / Investment Experience	Experience with commodity market / Derivative	Amount of fees collected (Rs.)	No. of Packages Sold
1	Amit Banerjee	4.1.2019	1-2 lakh	1-5 Lakh	2-5 Lakh	>5 years	No experience in commodity	58,020	4
2	Ashok Bangad	8.3.2019	2-5 lakh	5-10 Lakh	>5 Lakh	>5 years	-	45,000	2
3	Virang Patel	22.1.2020	Nil	5-10 Lakh	2-10 Lakh	>5 years	Nil	25487	1
4	Dinesh Kumar Jain	1.03.2020	Nil	1-5 Lakh	10-50 Lakh	>5 years	Nil	106,400	2
5	Nitasha Jain	4.1.2019	>5 lakh	10-25 Lakh	>5 Lakh	>5 years	Yes	7,22,840	10

- v. From the above Table 2 and 3, it was observed that the Noticee had charged huge amount of service fee from its clients by selling multiple packages in a very short span of time and same was disproportionate to the the proposed capital for trading/ proposed investment amount as per the Risk Profile of the respective clients.
 - vi. In view of the above, it has been alleged that the Noticee has violated the provision of Regulation 15(1) and Clauses 1, 2 and 6 of the Code of Conduct as specified in Schedule III read with Regulation 15(9) of the IA Regulations.
 - vii. It has been further alleged that the Noticee had kept its own interest of revenue maximisation over and above its clients' interest and it has not acted in the best interest of its clients' and therefore, the purpose of risk profiling and suitability assessment of its clients' has been defeated. Considering the same, it has been alleged that the Noticee violated the provisions of Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Sections 12A(a), (b) and (c) of the SEBI Act.
- e) **Compliance with Regulation 7 of the IA Regulations relating to Educational qualification and NISM certification:**
- i. It was observed that two employees of the Noticee, namely, Mr. Sourabh Dubey and Mr. Tapish Pandey have taken NISM Research Analyst certification, instead of NISM Investment Advisory certification.
 - ii. As per Regulation 7(2) of the IA Regulations, persons associated with investment advice shall have at all times a certification on financial planning or fund or asset or portfolio management or from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
 - iii. As per information provided by Noticee during the inspection these two individuals were working as Research Analyst and so associated with investment advisory services.
 - iv. Accordingly, it has been alleged that the Noticee has violated the provisions of the Regulation 7(2) of the IA Regulations and Clause 8 of the Code of Conduct as specified in Schedule III read with Regulation 15(9) of the IA Regulations.
- f) SEBI vide letter dated May 10, 2022 had issued administrative warning to the Noticee w.r.t. violations observed in para 1(b) and 1(c) above.

2. Vide letter dated June 01, 2021, the copy of Inspection Report was forwarded by the concerned department to the Noticee seeking comments on the aforesaid observations and vide letter dated June 17, 2021, the Noticee had submitted its comments/ explanations. Subsequent documents and clarifications were received by SEBI on January 14, 2022, January 25, 2022 and February 02, 2022 from the Noticee.
3. In view of above, after examining the replies/ comments/ explanations of the Noticee, SEBI has alleged that the Noticee has failed to comply with the provisions specified under the IA Regulations, PFUTP Regulations and SEBI Act. The details of the violations and relevant provisions with respect to the Noticee are as follows: -

Table 4

Sr. No.	Details of Violations by the Noticee	Regulations/ Circulars allegedly violated	Penalty Provisions
1	Unfair amount of fees charged from clients. {Refer Para 1(d) above}	a. Regulation 15(1) of the IA Regulations, 2013. b. Clauses 1, 2 and 6 of Code of Conduct for investment adviser specified in Third Schedule to the IA Regulations r/w Regulation 15(9) of the IA Regulations, 2013. c. Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003 r/w Sections 12A(a), (b) and (c) of SEBI Act, 1992.	Sections 15EB and 15HA of the SEBI Act, 1992.
2	Two employees of Noticee - Mr. Sourabh Dubey and Mr. Tapish Pandey have not taken NISM Investment Advisory certification. {Refer Para 1(e) above}	a. Regulation 7(2) of IA Regulations, 2013. b. Clause 8 of code of conduct for investment adviser specified in Third Schedule to the IA Regulations r/w Regulation 15(9) of the IA Regulations, 2013.	

4. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the aforesaid provisions of the IA Regulations, PFUTP Regulations and SEBI Act by the Noticee. Vide a *communication - order* dated August 01, 2022, Ms. Asha Shetty (hereinafter referred to as “**erstwhile AO**”) was appointed as Adjudicating Officer under Section 15I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules**’) to inquire into and adjudge the alleged violations by the Noticee under Sections 15EB and 15HA of the SEBI Act. Subsequently, the case has been transferred to the undersigned and undersigned has been appointed as the Adjudicating Officer vide a *communication-order* dated October 06, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and

condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) *'shall remain unchanged and shall be in full force and effect'*. It has also been advised that *'I should proceed in accordance with the terms of reference made in the original orders'*.

5. Accordingly, a notice to show cause no. EAD-8/AS/AK/ 46533/1/2022 dated September 02, 2022 (hereinafter referred to as '**SCN**') was issued by the erstwhile AO to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Sections 15EB and 15HA of the SEBI Act for the aforesaid alleged violations. The SCN was duly served upon the Noticee at its registered address on September 20, 2022. However, no reply to the SCN was received from the Noticee. Accordingly, in terms of Rule 4(3) of the Adjudication Rules on considering the material available on record and in the interest of natural justice, an opportunity of hearing was granted to the Noticee on November 03, 2022. After seeking adjournment, the Noticee had availed the opportunity of hearing on November 11, 2022. Meanwhile, the Noticee had filed its reply to the SCN on November 09, 2022. On November 11, 2022, Mr. Pulkit Vimal Mehta, Chartered Accountant and Mr. Abhishek Parakh, Ex Managing Director appeared for hearing on behalf of the Noticee and advanced the argument on the basis of the Noticee's written reply dated November 09, 2022. The aforesaid representative had sought a week's time for making additional written submissions and their request was acceded to. Thereafter, the Noticee had filed its additional written submissions vide e-mail dated November 16, 2022.
6. The Noticee has *inter alia* made following submissions in its written submissions dated November 09, 2022 and November 16, 2022:
 - a. In order to provide its clients with a suitable investment advice, as a practice the Noticee relies on the Risk Profiling Questionnaire ("**RPQ**") of the clients which contains questions pertaining to both the ability of the client to absorb the risk and also their willingness to absorb risk which is not just limited to Gross Annual Income and existing or proposed investment.
 - b. Risk Assessment conducted by the Noticee of its clients includes question to assess financial ability of the client such as - *total net worth, annual income, emergency funds, surplus amount, portfolio held, liquid assets available, insurances and goals to achieve*, etc. Other questions include willingness aspect of the client to ascertain how much risk the client is willing to take in order to achieve desired financial goal/returns while taking advise from it.
 - c. Prior to commencement of IA Amendment Regulations, 2021, there was no upper cap on the amount of fees that can be charged by an Investment Adviser from its clients.

In the absence of the same, the amount of fees charged from the client is quantified by it based on following 3 factors:

- i. Financial Capability of the Client.
 - ii. Complexity in achieving Investment Goals.
 - iii. Man-hours of advice rendered.
- d. The fees charged by the Noticee is at arm's length and as per mutually agreeable terms. Substantial efforts are put in by the Noticee to achieve its client's goals and expected results. The "*fairness or reasonability of the fees charged*" can be enumerated by "*Client Satisfaction*", which is result of the efforts put in by it, to help its client achieve desired investment goals.
- e. The 7 clients mentioned in Table 1 are financially affluent individuals and the fees charged for the services offered to them are based on the expenses incurred for the *complexity of research* done on client's total asset, *no. of man-hours of advice rendered* and *priority support* by dedicated account managers and certified investment advisors. The aforementioned 7 clients are highly satisfied with the support and services provided to them and they have never raised any complaint w.r.t. quality of advisory services or fees charged from them. The services offered to the said 7 clients were based on the Risk Profile and Goal Matrix and relevant documents attached with the reply.
- f. Post the IA Amendment Regulations, 2021, the Noticee has discontinued all HNI services that incurred high operational expenses and the fees charged thereafter are within the prescribed limits.
- g. The Noticee has served more than 8000 clients over a decade and till date it has received only 11 complaints on SCORES i.e. 0.087%. This data displays high customer satisfaction of its clients. It is also pertinent to note that all complaints received by it have been resolved timely and none of the complaints remain unresolved as on date.
- h. The Noticee has refunded full fee on *pro rata basis* to its clients, who are not satisfied with its advisory services. It has a seamless refund process for any client stating dissatisfaction in services rendered to him, directly at its support or through SCORES portal. The aforesaid 11 complaints pertain to its 7 customers, who were not satisfied with the profit generated from the services provided and accordingly, the Noticee has refunded their fees and the complainants were satisfied with the resolution. The resolution mails forwarded by complainants is attached with the reply.
- i. 5 of the Noticee's clients mentioned in Table 2 and 3 were not satisfied with the returns generated by the advisory services availed, however, the services provided to these 5

clients and the fees charged from these 5 clients were based on the full analysis of their profiles, with a 360-degree view. Each and every parameter that is important in product selection and services rendered based on their profiles was taken into consideration. The Profile Matrix, based on which the combination of the services was offered to these 5 clients is attached with the reply.

- j. The Noticee has taken due care of financial ability of its clients and willingness to avail advisory services before charging any fees. All fees collected for advisory activity are at arms-length, without any duress and with express consent.
- k. The list of 5 employees, namely, Mr. Kamlesh, Mr. Prateek Gupta, Mr. Vaibhav Jain, Mr. Deepesh Pawaia and Mr. Maulik Patel, associated with investment advisory services with the Noticee is attached with the reply and these 5 employees held the requisite qualifications and certification for the entire period.
- l. Mr. Sourabh Dubey and Mr. Tapish Pandey, who held NISM RA certification, were in no way directly or indirectly providing investment advisory to its clients. The said 2 employees have never posed as investment advisors before its clients. The same can be confirmed from the list of investment advisors provided to SEBI in compliance audit report and all the rationales submitted to the board from time to time.
- m. The role of aforementioned two employees was of – assisting the team handling investment advisory for the limited purposes of market research. These 2 employees are the part of the Data Analytics team, who perform the backend support to the investment advisors team. The roles and responsibilities of Mr. Sourabh Dubey and Mr. Tapish Pandey from Data Analytics department is also mentioned in the offer letter provided to these employees at the time of their joining.
- n. The act of the Noticee during the course of business has been *bona fide* and in the best interest of its clients. The Noticee continues to conduct its business with utmost honesty and fairness.
- o. The Noticee has provided the copies of risk profiling and information submitted by the clients (mentioned in Table 1, 2 and 3) disclosing their net worth, income, current portfolio, willingness to take risk and their experience in the market. Summary of all the data has been submitted in the form of profile matrix. All the documents are duly signed by the clients based on which financial risk profile is done and suitability is provided to the client. On the receipt of the suitability, clients opt for the services that is suitable for their risk profiles. The Noticee algorithms do not allow any client to opt for the services that are beyond their risk profiles.

- p. The Noticee has requested to consider its submissions and supporting documents and levy no penalty upon it in the instant matter.
7. I have carefully considered the allegations as levelled against the Noticee, the reply/submissions of the Noticee, the supporting documents produced by the Noticee during the proceedings and the relevant material available on record. The limited questions before me during the instant proceedings are as follows:
- a. Whether the Noticee has charged exorbitant fees from its clients, which was disproportionate to the client's annual income or proposed investment amount? If yes, whether the aforesaid act falls within the definition/realms of "frauds" as mentioned in Regulation 2(1)(c) of PFUTP Regulations? And if the aforesaid act of the Noticee is termed as fraud, then, whether the Noticee has violated the relevant provisions of the PFUTP Regulations, SEBI Act and IA Regulations?
 - b. Whether the two employees of the Noticee *viz.* Mr. Sourabh Dubey and Mr. Tapish Pandey were not possessing the desired certifications? If yes, whether the Noticee has violated the provisions of the Regulation 7(2) of the IA Regulations?
8. Considering the first issue of exorbitant fees charged by the Noticee from its clients (*refer Table 1, 2 and 3*), I note that, the fees charged by the Noticee from its 7 clients mentioned in Table 1 is substantially high, when same is compared with the respective client Annual Gross Income or Proposed Investment. Similar fact of charging substantially high fees from 5 of its clients are found in Table 2 and 3, when same is compared with the respective client Annual Gross Income or Proposed Investment. From Table 1, I note that, clients Mr. Ankit Gupta, Mr. Hiren Kumar Soni and Mr. Kishore Gharate annual gross income as per the RPQ is Rs 5 – 10 Lakhs, however, fees charged from them is Rs 4.80 Lakhs, Rs 11.13 Lakhs and Rs 4.61 Lakhs, respectively. Further, clients Mr. Himanshu Sharma, Mr. Prabhu, Mr. Rajiv and Mr. Sanjiv proposed investment as per RPQ is Rs 2 – 5 Lakhs, however, fees charged from them is Rs 8.16 Lakhs, Rs 6.60 Lakhs, Rs 7.40 Lakhs and Rs 7.23 Lakhs, respectively. The substantially high fees charged by the Noticee is not proportionate to the gross annual income or proposed investment of its aforementioned 7 clients. Similarly, from Table 2 and 3, I note that 2 of the Noticee complainants (*who have lodged complaints against the Noticee on SCORES*), Mr. Amit Banerjee and Mr. Dinesh Kumar Jain gross income as per the RPQ is Rs 1 – 5 Lakhs, however, fees charged from them is Rs 0.58 Lakhs and Rs 1.06 Lakhs, respectively. In these two cases, also it is found that the substantially high fees charged by the Noticee is not proportionate to the gross annual income or proposed investment of its aforementioned 2 clients.

9. In terms of observations regarding exorbitant fees charged by the Noticee from its clients, the Noticee has submitted that, his risk assessment process of its clients includes other financial parameters regarding financial ability of its clients such as - *total net worth, annual income, emergency funds, surplus amount, portfolio held, liquid assets available, insurances and goals to achieve*, etc. It also includes willingness aspect of the client to ascertain how much risk the client is willing to take in order to achieve desired financial goal/returns while taking advise from it. In support of its statement, the Noticee has provided a chart explaining the financial capabilities of its 7 clients (*as mentioned in Table 1*) and Profile Matrix of 5 clients (*as mentioned in Table 2 and 3*) along with their respective Risk Profiling Form (“**RPF**”). I have perused the aforementioned charts and RPF and same has been tabulated as follows:

Table 5

S. No.	Client Name	Fees Charged (Rs)	Gross Annual Income (Rs)	Emergency Fund Size	Portfolio Held (Rs)	Liquid Asset (Rs)	Net Worth (Rs)	Proposed Investment (Rs)
7 Clients as per Table 1								
1	Ankit Gupta	406779 + GST	5 - 10 Lacs	>6 Months	>5 Lacs	-	-	-
2	Hirenkumar Soni	943187 + GST (for 2 years)	5 - 10 Lacs	3 – 6 Months	1 - 2 Lacs	-	-	2 - 5 Lacs
3	Kishore Gharate	390670 + GST	5 - 10 Lacs	>6 Months	>5 Lacs	-	1 Crore	>5 Lacs
4	Himanshu Sharma	691440 + GST	>25 Lacs	3 – 6 Months	2 - 5 Lacs	-	-	2 - 5 Lacs
5	Prabhu arunkumar raghupati	559322 + GST	>25 Lacs	1 – 3 Months	>5 Lacs	-	-	1 - 2 Lacs
6	Rajiv maini	627119 + GST (for 1.5 years)	>25 Lacs	3 – 6 Months	2 - 5 Lacs	-	-	2 - 5 Lacs
7	Sanjiv Kumar Vir	612986 + GST(for 1.5 years)	10 - 25 Lacs	>6 Months	2 - 5 Lacs	-	-	2 - 5 Lacs
5 Clients as per Table 3								
1	Amit Banerjee	49170 + GST	1 - 5 Lacs	>6 Months	2 - 5 Lacs	-	-	1 - 2 Lacs
2	Ashok Bangad	38136 + GST	5 - 10 Lacs	>6 Months	>5 Lacs	-	4 Crore	2 - 5 Lacs
3	Virang Patel	21600 + GST	5 - 10 Lacs	1 – 3 Months	-	2 - 10 Lacs	-	-
4	Dinesh Kumar Jain	90170 + GST	1 - 5 Lacs	3 – 6 Months	-	10 - 50 Lacs	-	-
5	Nitasha Jain	612578 + GST	10 - 25 Lacs	>6 Months	>5 Lacs	-	-	>5 Lacs

10. I note that, in the documents supplied by the Noticee, it has mentioned that Mr. Hiren Soni and Mr. Sanjiv are having Rs 10 lakhs and Rs 11 lakhs as liquid assets, respectively, however, no such details have been found by me in any of the documents placed before

me. Further, as per the documents supplied by the Noticee, Net Worth details of only 2 clients i.e. Mr. Kishor Gharate and Mr. Ashok Bangad is available with the Noticee; and Liquid Assets details of only 2 clients i.e. Mr. Virang Patel and Mr. Dinesh Kumar Jain is available with the Noticee. I also note that, in Profile Matrix for 5 clients mentioned in Table 3, Mr. Ashok Bangad, Mr. Dinesh Jain and Ms. Nitasha Jain has been categorized as HNI Aggressive on the basis of their Risk Profile, however, reasoning for the same has not been supplied by the Noticee during instant proceedings. In fact, during the hearing, when the representative of the Noticee asked about the same, they stated that these clients are not HNI clients and there is some error in documents/ information supplied.

11. With regard to Table 5 above, I have considered the aforementioned financial parameters w.r.t. Noticee's clients brought before me during the instant proceedings and I am of the opinion that these factors are important factors with respect to assessing financial capability of an investor, while recommending financial product/ rendering financial advice. Further, the Noticee has stated in its submissions that the amount of fees charged from the client is quantified by it on the basis of financial capability, complexity in achieving investment goals and man-hours of advice rendered.
12. In terms of fees/ charges to be charged from the clients by an investment adviser, Clause 6 of the Schedule III of the Code of Conduct for the Investment Adviser states that, an investment adviser may charge fees from its client subject to any ceiling as may be specified by SEBI. In this regard, I note that the ceiling mentioned in said Clause 6 has been brought at first by SEBI *via* a circular dated September 23, 2020 pursuant to the Regulation 15A of the amended IA Regulations. Prior to aforementioned circular, no such limit regarding fees has been prescribed in the IA Regulations. However, aforesaid Clause 6 further states that, an investment adviser shall ensure that the fees charged to the clients to be **fair and reasonable**. In this regard, I note that, "*fair and reasonable*" fees will differ from investor to investor and same will depend on several parameters. Further, a "*fair and reasonable*" fees for a service, such as investment advice, will depend upon the two parties i.e. party rendering the service and party availing the service. If both parties agree upon a "*fees*" for a particular service, it means that they both are considering that fees to be "*fair*" to them, as the fees agreed upon by both parties is based upon the *agreed-upon conditions, promised quality and timeliness of contract performance*.
13. I further note that, the inspection period in this case is from April 01, 2019 to December 31, 2020, wherein, the aforesaid amendment w.r.t. fees were applicable from April 01, 2021 onwards. Therefore, parameters w.r.t. ceiling in the fees to be charged by an investment adviser was not applicable in this case. Further, the 7 clients mentioned in Table 1 has not filed any complaint or raised issue w.r.t. charging of excess fees from them by the Noticee.

I have also perused 5 complaints from the clients mentioned in Table 3 and I note that only one client i.e. Mr. Virang Patel has stated that high fees have been charged from him. Other 4 client's complaints were pertaining to non-satisfaction from the advisory services availed by them. I also note that the Noticee has resolved all 5 complaints pertaining to the said 5 clients to their satisfaction.

14. In view of the above discussion, I am of a view that, though the Noticee was charging substantially high fees from few of its clients (*Mr. Ankit Gupta, Mr. Hiren Kumar Soni and Mr. Sanjiv Vir*) and same was disproportionate to their gross annual income or proposed investment or any other financial parameters considered by the Noticee, however, none of the aforesaid clients have ever raised issue of the exorbitant fees charged from them by the Noticee. I further found that, during entire inspection period only one client i.e. Mr. Virang Patel has raised the issue of high fees. However, when charged fees of Rs 21,000 + GST from Mr. Virang is compared to his annual gross income of Rs 5 – 10 lakhs, liquid assets of Rs 2 – 10 lakhs and emergency fund of 1 – 3 months, same cannot be considered as exorbitant fees. Also, the fees charged from him for the advisory services rendered to him was later on refunded to Mr. Virang to his satisfaction. Considering the facts and circumstances discussed so far in this matter, especially considering no ceiling at relevant point of time and absence of any specific instance of complaint from the clients about excessive fees, I am inclined to give benefit of doubt to the Noticee regarding the allegations related to charging exorbitant fees from its clients in complete disregard to the financials of its clients. Therefore, violations of the provisions of – a) Regulation 15(1) and Clauses 1, 2, and 6 of the Code of Conduct as specified in Schedule III read with Regulation 15(9) of IA Regulations; and b) Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations read with Sections 12A(a), (b) and (c) of the SEBI Act cannot be established against the Noticee.
15. The second issue in this case is w.r.t. non possession of desired certification by two employees, namely, Mr. Sourabh Dubey and Mr. Tapish Pandey of the Noticee. I note that, Regulation 7(2) of the IA Regulations prescribes for qualification and certification requirements for a registered investment adviser, its partners and the representatives of investment advisers. During the instant proceedings, the Noticee has provided a list of 5 employees, namely, Mr. Kamlesh, Mr. Prateek Gupta, Mr. Vaibhav Jain, Mr. Deepesh Pawaia and Mr. Maulik Patel, who are associated with it for providing investment advisory services to its clients. I note that, the aforementioned 5 employees possess the requisite NISM Certifications in compliance with the Regulation 7(2) of the IA Regulations. With regard to said 2 employees, Mr. Sourabh and Mr. Tapish, who held NISM RA certification, the Noticee has stated that these employees are neither directly nor indirectly providing

investment advisory to its clients and their role is of assisting the team handling investment advisory for the limited purposes of market research. These 2 employees are the part of the Data Analytics team, who perform the backend support to the investment advisors team. In support of its claim, the Noticee has furnished copies of “*offer letter*” dated March 30, 2019 issued to said employees. I have perused the aforesaid *offer letters* issued by the Noticee to said two employees and I found that the designation assigned to both employees is of “*Research Analyst*” in Data Analytics Department of the Noticee. Further, the role and responsibilities detailed out in the said *offer letters* is as follows:

- a. Collect, clean and prepare data for predictive modelling.
- b. Develop algorithms to transform data into useful, actionable information.
- c. Analyze time-series data to identify quantitative trends and patterns.
- d. Generate risk-management modelling historical analysis, beta calculations, correlation between different sectors and indices and Black-scholes model.
- e. Perform back-testing of trading/investment strategies submitted by Investment Advisors using python/excel.
- f. Optimize back-testing results with various permutation/combinations and generate most optimized results.
- g. Avail raw market data, Backtested data, optimized data, tools, softwares as required by Investment advisors.
- h. Develop quantitative models in Indian and global Equity Markets.
- i. Work in close collaboration with Investment Advisors, Technology team and Risk Management team.

16. I note that, the Noticee in its response to the findings of inspection report has also stated that the said two employees are only assisting in backend research activities and therefore, both of them are certified under NISM Research Analyst. In support of its claim, it stated that, his statement can be verified from the list of representatives and details of the Rationales of advice rendered, submitted during the Inspection. With regard to aforesaid submission of the Noticee, I found no rationale provided in the “*post inspection analysis*” for ironing out such submissions of the Noticee. From the discussion so far and from the perusal of *offer letters*, I am of a view that, said two employees *viz.* Mr. Sourabh Dubey and Mr. Tapish Pandey of the Noticee, were not associated with the investment advisory services offered by the Noticee, instead they were part of the backend data analytics team for providing research related support to the Noticee. Since, the said two employees were not associated with investment advisory services with the Noticee, in my considerate view, there is no requirement of possessing prescribed certification under Regulation 7(2) of the IA Regulations. In view of the same, I found that the Noticee has not violated the

provisions of Regulation 7(2) and Clause 8 of the Code of Conduct as specified in Schedule III read with Regulation 15(9) of the IA Regulations.

17. In view of above facts and circumstances of the case and findings brought out in above paras 14 and 16 of this order, I found that the Noticee has not violated the provisions of the IA Regulations, PFUTP Regulations and SEBI Act in this case. Considering the same, I am of the opinion that this case does not deserve imposition of any monetary penalty upon the Noticee and accordingly, the SCN dated September 02, 2022 is disposed of *qua* the Noticee.
18. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: November 24, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer