BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/SM/RG/2022-23/24808

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

In respect of:
Profit Guru, Proprietor: Mr. Satish Shukla
(PAN: BLWPS1911G)

In the matter of Profit Guru, Proprietor: Mr. Satish Shukla

A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of Profit Guru, Proprietor: Mr. Satish Shukla, (hereinafter referred to as "**Noticee / Profit Guru**"), a SEBI registered investment advisor (registration number: INA000003510) with respect to its Investment Advisory activities. The period covered in the inspection was from April 01, 2018 to December 09, 2019 (hereinafter referred as "inspection period"). Pursuant to observations as per aforesaid inspection of the noticee, certain non-compliances were observed by SEBI in the activities of the noticee. Therefore, SEBI started adjudication proceedings against the noticee for the following alleged violations of the Noticee:
   i. **Non-compliance of SEBI directions with respect to inspection**
   ii. **Non-compliance of SEBI Directions contained in the ad interim ex-parte order**
   iii. **Promised Assured / Guaranteed Unrealistic Returns to its Clients**
   iv. **Selling Multiple Services and collecting unreasonable payments from clients**
   v. **Charging Unfair and Unreasonable fees for same kind of services and**

offering of customized packages

vi. **Changing Risk Profiling Form (hereinafter referred to as "RPF") of Clients multiple times on an arbitrary basis**

vii. **Not following the Guidelines regarding Risk Profiling and Suitability Assessment of Clients**

viii. **Violation of Conditions of Certificate**

ix. **Non Redressal of Investor Grievances**

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated June 10, 2022 appointed Shri N Hariharan as the Adjudicating Officer under Section 15I of SEBI Act read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "Rules"), to enquire into and adjudge under Sections15C, 15EB, 15HA and 15HB of SEBI Act, for the alleged aforesaid violations by the Noticee. Subsequently, the undersigned was appointed as Adjudicating Officer vide communique dated October 06, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

Date	Remark
December 05, 2022	SCN sent through e-mail and also through Speed Post Acknowledgement Due (hereinafter referred to as "**SPAD**").
December 12, 2022	Physical delivery of Show Cause Notice (hereinafter referred to as "**SCN**") to the registered address of Profit Guru: **415, Shekhar Central, Near Palasia Petrol Pump, AB Road, Indore- 452001, Madhya Pradesh**
December 27, 2022	Hearing Notice sent through e-mail and SPAD, for hearing scheduled on 6th January, 2023.
January 02, 2023	Vide its email, the Noticee said that it had not received the SCN or Hearing notice and came to know about the scheduled hearing through SEBI website. Also, the Noticee requested for hearing to be scheduled on or after 19 Jan, 2023.

	The Noticee mentioned its address as: 174, Satna Nagar, Lokhan Akhada Tak, Ward No. 41, Satna Gram, Tehsil Raghuraj Nagar, Satna, Madhya Pradesh – 485001 and its email id as: satishshukla4@yahoo.com
January 06, 2023	Vide an email, SEBI informed the Noticee that the SCN was delivered to its registered address on December 12, 2022 and to the email ids: info@profitguru.co.in and satishshukla4@yahoo.com on 05 December, 2022. Also, the Noticee was informed that the delivery was attempted on the address mentioned by it in its email dated January 02, 2023, but was unsuccessful. Further, the Noticee was informed that the hearing notice was delivered to the above email IDs on 27 December, 2022. The Noticee's request for extension to the date of hearing was acceded to and hearing was rescheduled to 19 January, 2023.
January 16, 2023	The Noticee informed SEBI that it has appointed its Authorised Representative (hereinafter referred to as "**AR**") to appear for hearing on behalf of the Noticee.
January 18, 2023	SEBI, vide an email, postponed hearing to 20 January, 2023 due to unavoidable circumstances.
January 19, 2023	The Noticee filed its reply to the SCN. The Noticee replied to SEBI's email sent on January 18, 2023, stating that the AR of the Noticee would be unavailable for hearing on January 20, 2023 and requested rescheduling to January 24, 2023 or later.
January 20, 2023	The Noticee's request was acceded to and the hearing was rescheduled to January 27, 2023.
January 27, 2023	The hearing was conducted. The AR of the Noticee additionally submitted that the number of complaints against the Noticee were negligible vis-à-vis the number of clients it had served. The Noticee was asked to provide the information on how many clients the Noticee had served to which the Noticee replied that the data of the same was not available with it as

	documents and records were held back by the landlord of the office premises.

3. The SCN bearing no. EAD1/SM/RG/60705/1/2022, dated December 05, 2022, was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15C, 15EB, 15HA and 15HB of the SEBI Act for the alleged violations.

4. In response to SCN, it has been submitted by the Noticee that –

a) it had provided complete services to all the clients for which it had charged the fees;

b) while the Noticee's firm was operational, all the clients' grievances had been resolved to their satisfaction;

c) it had maintained all the relevant client documents to the best of its knowledge viz. RPF, KYC, Invoices, email correspondences, etc. and the same were shared with the SEBI as and when sought for;

d) it had already faced a very strict punishment by being unable to generate any income through any job/business for the past 3 years, and that too in tough pandemic times, since the passing of the Interim Order, by way of which it was directed to cease and desist from acting as an investment advisor and all his bank accounts were frozen; and

e) opportunities lost during the past 3 years were commensurate to an imposition of monetary penalty.

5. With regard to the specific allegations made in the SCN, the Noticee has submitted as under:

Non-compliance of SEBI directions with respect to Inspection

a) Satish Shukla had received a call on October 15, 2019 from the telephone number of SEBI's Indore Local Office (0731-2557003), and was informed that an inspection was proposed to be done against the Noticee.

b) Thereafter on 22nd October, 2019 a call from an unknown number was received who stated that he was a well-wisher of Satish Shukla and if he desired to stop the inspection and save the licence then he could help him out.

c) The said person claimed to be the director of a few advisory firms and a close connection of SEBI Indore Office.

d) The said person had each and every detail of Profit Guru and SEBI's proceedings, so Satish Shukla decided to meet him once. The next day i.e., October 23, 2019, Satish Shukla met the said persons viz., 'Tiwari Ji' and Rahul at Vijaynagar, wherein it was informed by them that SEBI would close the operation of Profit Guru and if he wanted to stop the inspection then he should pay INR 14,00,000. Satish Shukla did not pay the said amount.

e) On the evening of November 15, 2019 few persons had visited the Noticee's office and handed over a copy of the letter of inspection, which did not bear any seal/stamp of SEBI. Subsequently, on November 19, 2019, the Noticee received the inspection notice through registered post from SEBI's Panaji Local Office. It was the same notice for which Satish Shukla had earlier received calls.

f) Satish Shukla realised that the said persons were indeed closely connected with SEBI and thought that they would be able to help him out, and the he agreed to pay them a certain amount, once the 'complete solution' was provided. Further, the said person had called Satish Shukla frequently and had informed that he was not required to reply to SEBI in any manner, and that the inspection would get cancelled and the Noticee need not appear in person on the inspection date as the said person would look into the entire matter.

g) *Subsequently, Satish Shukla received a call from the SEBI Office to come and meet the officer and since the Noticee was not in town, he had asked his lawyer to visit on his behalf. SEBI asked for an authority letter. The next day since the lawyer was not available so the Noticee asked his consultant Mr. Abhishek (Independent Professional) to go on his behalf and issued to him an authority letter through email. The authority letter nowhere mentioned that Mr. Abhishek will look into the inspection. At the SEBI office the consultant Mr. Abhishek was handed over the same inspection letter which the Noticee had received on November 19, 2019.*

h) *Further by way of a letter dated December 04, 2019, prior to the inspection, the Noticee authorised Mr. Arvinder to visit the SEBI office on his behalf and understand the procedure for extending the inspection date. Instead of helping out, the SEBI Office forced Mr. Arvinder to alter the authority letter and write that he would look into the inspection of Profit Guru and the alteration was made to the letter of authority without the knowledge of the Noticee. The same could be verified from annexure 4 of the SCN of SEBI.*

i) *Satish Shukla had never authorised either Mr. Abhishek or Mr. Arvinder for the inspection related matter. Both of them were authorised to visit the SEBI office on his behalf for a particular day as he was not available.*

j) *Inspection was conducted on December 09, 2019 and thereafter Satish Shukla received a call from the Tiwari ji and Rahul, who asked to meet him urgently. It was stated by them, "your order is in process and it will be passed in next 1-2 month, and if you want to get away with heavy penalties and regulatory actions, then you are required to pay Rs. 8,00,000 immediately."*

k) *Satish Shukla had fallen in the said trap and believed it to be true because of two major reasons: Firstly, Satish Shukla had received the calls from the number of SEBI Indore Local Office; secondly, the said persons had each and every detail of the activities of SEBI.*

l) *The said persons got arrested thereafter and few newspapers had also exposed them. Satish Shukla had fallen victim to a fraud carried out by SEBI Indore Office representatives.*

m) *The Noticee had assisted the SEBI officials in getting all the data from the computer systems. SEBI could not have accessed the data if the Noticee's employee had not assisted SEBI's officials. Further, the SEBI officials were allowed access to the office space of the Noticee. Nowhere the SEBI officials were denied access and hence, the claim that Noticee had not cooperated in the inspection was not tenable.*

Noticee Promised Assured / Guaranteed Unrealistic Returns to its clients

n) *SEBI had just picked a single line and had ignored the full content of the service description as appearing on the website of the Noticee. Complete content of the said page of the website is as below:*

"Profit Guru Investment advisor provides you with accurate tips related to the stock and share market with great accuracy percentile. Our expert teams work dedicatedly in order to make intense researches and then give you calls to stock or cash traders in NSE ensuring your profit. There are a lot of points that need to be covered when you talk about trading in the stock market.

You are definitely going to make profits if you make investments on the basis of stock cash tips given by our team who solely work for researching the news and stocks. You can subscribe our services at the reasonable package and then get up to intraday basis calls every day, weekly and monthly reports, chat sessions and dedicated customer service support for becoming a successful trader and make big profits with small investments on regular basis.

Stock tips are a way through which the intraday traders can earn. Purely intraday traders can work upon such tips. The technical team works upon stocks to evaluate the buying or selling decision in order to ensure the execution of the trade. We provide stock cash tips to our traders which successfully achieve their targets. The day's high and low of a particular stock gives a difference of value which is an opportunity for a trader."

n) *The email from Mr. Kuldeep Raj (one of the clients), wherein the word "Expected Return" had been used should be distinguished from guaranteed return.*

o) *The words used, namely, "yadi", "agar", "kamate hai" by one of the employees of the Noticee with Lokesh (one of the clients) was just to illustrate a hypothetical example that if the client made an investment he could earn profits. Similarly, the conversation between one of the employees of the Noticee and Mr. T.G. Srinivasan (one of the clients) was just to illustrate how an investment would work and not to guarantee profits.*

p) *Also, certain group of few persons were running their business by using the Noticee's name.*

q) *The email to Mr. Girdharilal in no way mentions that the notice has promised any assured returns to the client and similarly the email to Mr. Sudheer G uses merely "expected return" and did not promise any assured returns.*

Selling Multiple Services and collecting unreasonable payments

r) *In the invoices sent to Pinal Mistry (one of the clients) due to some software error, the invoices did not contain any period of service. Apart from that, in all invoices sent to all the clients, the period of service was clearly mentioned.*

s) *It was alleged in the SCN that the Noticee had sold 'PG Special Package' to the client, a service which is not mentioned anywhere on the website. Email dated August 31, 2018 would show that that 'HNI Special Package' had been sold to the client and not any PG Special Package.*

t) *The services offered to Anand Patel used to start one working day after the payment date, and in cases of renewal, the service started from the end date of the previous tenure. So, the duration of half yearly as mentioned in the Invoice satisfied the requirement of the start date and end date as the client knew that he had paid the fees for half yearly so his service would end on the expiry of 6 months.*

u) *Since clients had chosen to make payments in parts, different invoices were issued for each payment, even though the payment was for the same service. The stipulation by SEBI for not accepting payment in parts came into effect only from 01.01.2020.*

v) *Khush Ranjan (one of the clients) had taken the services for just 2 weeks, and after being satisfied he renewed the Cash Tips service for a duration of 1 year and additionally took the service, Cash HNI tips.*

w) *The client, Jai Prakash Singh, incurred losses as trading in the securities market was always subject to market risks. Also, the client was charged fees of INR 64,000 against the services which were subscribed by him for a period of 2 months. This had been misconstrued in the SCN and stated that the Noticee had taken fees of INR 64,000 in just 3 days, when the reality was that the client had paid INR 64,000 for 2 different services for a period of 2 months.*

x) *The allegation of Ashok Senegar that the Noticee handled his Demat account was false as no evidence had been provided by him. The said client had paid an amount of INR 2,29,326 by subscribing to the various services of the Noticee. Also, the Noticee, being the tips provider had taken into consideration the client's interest of providing him service in particular segment and had done the risk profiling on the later date. Also, there was difference between each and every service provided by the Noticee, such as: risk reward ratio, segment, scripts, etc.*

y) *The claim of Jithender Bangaru that the company had promised to give a profit of INR 1,32,700 was false as no evidence was provided. It had been misconstrued in the SCN and stated that the Noticee had taken fees of Rs.4,93,680 within a period of around 110 days for various services, rather the client has by his own willingness subscribed for 4 different services for a duration of around 13 months.*

z) *Further, SEBI came up with the Circular restricting advance payment for not more than 2 quarters, came only on September 23, 2020.*

aa) *The claim of Girdharilal that he was assured profit of INR 30 lakh was false as no evidence had been provided by him. Also, the client had filed the complaint on February 13, 2020 stating that the Noticee was not providing any services to him, as SEBI by way of its Interim Order dated February 06, 2020 had directed the Noticee to cease and desist from acting as an investment adviser.*

bb) *Ushar Kanti Dutta had paid Rs.2,98,300 for 4 different services. With respect to two separate invoices for Cash Premium services, the Noticee had made 2 different payments for the same service opted by him in 2 different invoices mentioning the same duration.*

cc) *Mohammed Ashif had paid INR 56,700 for 4 different services which were subsequently renewed by him. The details of each and every service was provided to the client via email. Mihir Dharod complaint for incurring losses was not acceptable as investments in the securities market were subject to market risks.*

dd) *Ram Charan Vijay (one of the clients) had subscribed for 2 months' service by paying INR 44,000. Further, on December 26, 2019 the Option premium service was not sold twice, instead the client had made the payment in part so the same service period was mentioned accordingly in two separate invoices.*

ee) *With respect to Chothe Ganesh Popat, the duration of service mentioned was one week, one month, etc. so it was understood that the service would start from the next working day of the payment and the clients were aware of the same.*

ff) The claim of Kamal Solanki that he was assured guaranteed returns was false as no evidence had been provided by him. Also, the client had filed a complaint stating that the Noticee was not providing any services to him, as SEBI by way of its Interim Order dated February 06, 2020 had directed the Noticee to cease and desist from acting as an investment adviser.

Charging Unfair and Unreasonable fees for the same kind of services and offering of customized packages

gg) Furthermore, for certain clients, the Noticee had devised customised packages as per the client requirement. The details of the customised package were not displayed on the website due to a very simple reason that it was a customised package and it didn't have any static details, as it was customised based upon client interest and requirements. Also, it is not necessary to disclose the details of customised packages on the website. The clients were made aware regarding the package over the calls and emails.

Changing RPF of Clients multiple times on an arbitrary basis

hh) In the payment tables mentioned in the SCN, the risk category in the tables refers to product risk categorisation and not the client's risk categorisation.

ii) Multiple risk profiling was never done for any client and also risk categorisation was never changed for any client deliberately.

Not following the Guidelines regarding Risk Profiling and Suitability Assessment of Clients

jj) Clients usually don't fill their correct income details or they don't feel safe to disclose their correct income due to personal/taxation reasons. Since clients are able to pay high fees which do validates that client's annual income and their proposed investment amount is much higher than mentioned.

kk) The clients had paid fees with their own will and consent and were neither forced nor deceived in any manner whatsoever. No exorbitant fees were charged from the clients, and since they were capable of paying high fees, they paid such high fees.

ll) Prior to 2021 there was no limit or restrictions or cap on quantum of fees to be charged from the clients. It was applicable from 1st April, 2021.

Leading Questions in RPF

mm) Risk profiling of the clients was carried out through a questionnaire, which was approved by the SEBI at the time of granting of registration in 2015. No objection was raised regarding the questions mentioned in the questionnaire at that point.

nn) It had complied with all relevant provisions with respect to risk profiling. It was emphasised that high returns came with high risk. Also, the word "High Risk" was self-explanatory.

oo) In the risk profiling form, 14 scoring questions had been incorporated, out of which in 10 questions had been assigned the maximum weight of 200. The maximum weight had not been assigned to those 3 questions only and was assigned to 10 different questions too.

pp) The SEBI regulations did not provide any specified format or scoring method for the risk profiling.

Violation of Conditions of Certificate

qq) The Noticee was not operating from different offices, and was operating out of a single main office on 4th floor of Shekhar Central, Indore. Further, during inspection, another office which was found by the inspection team at 6th Floor of the same building was taken on rent recently, and the Noticee was in process of shifting its office from the 4th floor to the 6th floor. Since the shifting had not been completed, the Noticee had not informed SEBI of the change in office address as the same was in process.

Non-Redressal of Investor Grievances

rr) Noticee was in regular touch with the clients for redressing their grievance, however the clients were not responding to the calls/e-mails and has always resolved client's complaint/grievance with proper client satisfaction.

ss) There was a huge delay from SEBI's end in forwarding the complaint to the Noticee and this resulted in the problem of resolving the issue in a timely manner.

D. CONSIDERATION OF ISSUES AND EVIDENCE

6. Before I proceed with the consideration of the substantive allegations made in the SCN, it shall be relevant to, at first, address certain contentions raised by the Noticee with respect to its claim that person/s connected to SEBI's Indore office had got in touch with him and had offered their assistance in the disposal of the inspection proceedings.

7. An inspection of the Noticee, a registered Investment Advisor (hereinafter referred to as "**IA**"), holding registration No. INA000003510 with effect from September 18, 2015, was proposed to be carried out by SEBI from December 09, 2019. In furtherance of the same, by way of an Order dated November 13, 2019, the Competent Authority appointed the then DGM posted at SEBI's Local Office in Goa as the Inspecting Authority. Consequently, a Notice of Inspection dated November 15, 2019 was issued to the Noticee informing it of the proposed Inspection. Therefore, I note that after the appointment of the Inspecting Authority based out of SEBI's Goa office, the matter had moved for all substantial purposes from SEBI's Indore Office, and the same had been in the knowledge of the Noticee, as he had been informed of the same by way of letter dated November 15, 2019. By way of the said letter, the Noticee was also called upon to provide documents/information detailed therein by November 29, 2019. The Inspecting Authority having not received the necessary documents /information sent a reminder email to the Noticee on November 29, 2019. Thereafter, on December 02, 2019, the Inspecting Authority sent a second reminder email to the Noticee, giving time to the Noticee to send the necessary documents /information to SEBI by 2.00 p.m. Also, by a separate email dated December 02, 2019, the Inspecting Authority informed the Noticee that the inspection was going to commence on December 09, 2019. The Inspection went through as scheduled on December 09,

2019, and subsequently thereof an Interim Order in respect of the Noticee was passed on February 06, 2020.

8. Further, Satish Shukla has named Rahul as one of the two who purportedly got in touch with him and calls were received by him purportedly from the SEBI Office at Indore. In this context, I note that one Rahul Kokre (Rao), was for a brief period employed on contract at SEBI's office in Indore as an office boy and was part of the housekeeping staff. I note from the records that Rahul Kokre had joined SEBI – Indore Office on contractual basis on June 09, 2016, through contractual staffing companies, and continued to work there till October 31, 2019. I also note from the record that Rahul Kokre had provided an NOC issued by the Thana Banganga, Indore, certifying that he did not have any criminal record.

9. In view of the above facts, the following conclusions emerge:

   a. When Satish Shukla was offered assistance in influencing the proceedings he should have brought it to the attention of SEBI immediately, as it was an illegal act. It was immaterial whether the persons proposing the same were connected to SEBI or not. However, Satish Shukla decided not to inform SEBI of the same at the material time.
   b. The facts brought out above demonstrate that the events were moving in a completely divergent direction than what had been promised to Satish Shukla by the aforesaid persons, so this should have corrected Satish Shukla's notion that the aforesaid persons were 'connected' to SEBI or had specific knowledge of the action contemplated by SEBI in respect of the Noticee.
   c. Instead of bringing the above to the notice of SEBI, Satish Shukla entered into an illegal arrangement with the aforesaid persons to influence a proceeding of a statutory body. Not only that, he acted in furtherance of such illegal agreement and did not provide necessary information and documents as sought for by the Inspecting Authority.
   d. Having entered into an illegal arrangement with certain persons to influence a proceeding of a government authority, which to the did not achieve the desired result for the Noticee; the Noticee is now playing a victim and claiming that he was defrauded by 'SEBI connected people'. This is a clear example of an

attempt at taking advantage of one's own wrongs by diverting from the issues at hand.

10. Accordingly, I find that the Noticee's contentions to show *mala fides* on the part of SEBI are ill-conceived and are an afterthought. He has failed in demonstrating any *mala fides* on the part of SEBI, and in the process exposed its own potentially criminal conduct.

11. Having addressed the above question, I shall now proceed with the consideration of the allegations made in the SCN.

12. Before proceeding further, I would like to refer to the relevant provisions of the Regulations violated by the Noticee:

SEBI Act

12A. No person shall directly or indirectly—
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the Regulations made thereunder;
(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations)

2. (1) In these Regulations, unless the context otherwise requires—

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—
(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly; Nothing contained in this clause shall apply to any general comments made in good faith in regard to— (a) the economic policy of the government (b) the economic situation of the country (c) trends in the securities market or (d) any other matter of a like nature whether such comments are made in public or in private;

3. Prohibition of certain dealings in securities:

No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the Regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices
(1) Without prejudice to the provisions of Regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. [Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

(s) mis-selling of securities or services relating to securities market;

Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by–
i. knowingly making a false or misleading statement, or
ii. knowingly concealing or omitting material facts, or
iii. knowingly concealing the associated risk, or
iv. not taking reasonable care to ensure suitability of the securities or service to the buyer;

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

SEBI (Investment Advisers) Regulations, 2013 (IA Regulations)

Conditions of certificate.

13.The certificate granted under regulation 9 shall, *inter alia*, be subject to the following conditions: -

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

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

15(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise**.**

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

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

Risk profiling.

16. Investment adviser shall ensure that-

(a) 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.

(b) 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.

(d) 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.

(e) risk profile of the client is communicated to the client after risk assessment is done;

Suitability

17. Investment adviser shall ensure that-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Redressal of client grievances

21. (1) An investment adviser shall redress client grievances promptly.

Notice before inspection

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24(3) During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.

Obligation of investment adviser on inspection

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

(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend

Liability for action in case of default

28. An investment adviser who
a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder
(b) fails to furnish any information relating to its activity as an investment adviseras required by the Board
(e) does not co-operate in any enquiry, inspection or investigation conducted by the Board
(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf
shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

THIRD SCHEDULE
Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
[See Sub Regulation (9) of Regulation 15]
CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

6. Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

8. Compliance

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

13. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings before the undersigned. In the light of the aforesaid factual position, I proceed to adjudicate the matter, and find that essentially, the following issues arise for determination in the instant matter:

I. Whether Profit Guru (Proprietor- Satish Shukla), a registered investment adviser with SEBI, has —

a. failed to furnish information as sought for by way of the questionnaire sent prior to the proposed inspection;

b. failed to comply with SEBI directions in the ad interim ex-parte order;

c. promised assured/guaranteed returns to its clients;

d. offered multiple services and collected unreasonable payments from its clients;

e. charged unfair and unreasonable fees for the same kind of services, and offered customised packages;

f. changed RPF of clients multiple times on arbitrary basis;

g. **carried out improper risk profiling of its clients and failed to abide by the principles of suitability;**

h. **framed misleading questions in RPF;**

i. **violated the conditions of the certificate of registration; and**

j. **not redressed the complaints of its clients?**

II. **If answer to the aforesaid questions is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15C, 15EB, 15HA and 15HB of the SEBI Act?**

III. **If answer to the aforesaid question in second issue is in affirmative, what should be the quantum of the monetary penalty?**

I will now proceed to deal with the allegations levelled against the Noticee in the SCN, the submissions made by the Noticee and record my observations/findings in the following paragraphs:

<u>Violation 1: Non –compliance of SEBI directions with respect to inspection</u>

14. The SCN had alleged that the Noticee did not cooperate during the inspection and the proprietor, Satish Shukla was not present during the inspection.

15. An inspection of the Noticee, a registered Investment Advisor (hereinafter referred to as "**IA**"), holding registration No. INA000003510 with effect from September 18, 2015, was proposed to be carried out by SEBI from December 09, 2019.

16. Vide letter no. WRO/PLO/IMD/Insp./30268/2019 dated November 15, 2019, SEBI advised the Noticee to send its reply to the pre-inspection questionnaire latest by November 29, 2019. In reply to the same, the Noticee produced a letter dated November 21, 2019 wherein which it authorized Mr. Abhishek Mishra (a Company Secretary having membership number: A56048) to represent the Noticee before SEBI. However, the Noticee had not provided its reply to the pre-inspection questionnaire and hence a reminder, vide email on December 02, 2019, was sent to the Noticee which was once again not replied to, by the Noticee.

17. SEBI, then vide letter no. WRO/PLO/IMD/Insp./31891/1/2019, dated December 02, 2019, intimated the Noticee that the inspection of its books of account and other records would commence from December 09, 2019 onwards. Subsequently, the Noticee produced a letter dated December 04, 2019 vide which it submitted that, *"Mr. Arvinder Ajmani is authorized to represent the Noticee before SEBI, ILO to do all such act and deed as may be required with respect to scheduled inspection of Profit Guru".*

18. On the day of commencement of inspection, the SEBI inspection team reached the registered office of the Noticee located at 415, Shekhar Central, Near Palasia, Petrol Pump, AB Road, Indore- 452001 and found that only the security guard was present in the office. On enquiring the guard about the owner of the Noticee, the guard led the team to 6th floor of the same building at the address, "612". It was noticed that 4 persons were present in the office however Mr. Satish Shukla, the Proprietor of the Noticee or Mr. Abhishek Mishra or Mr. Arvinder Ajmani (authorized persons of the Noticee) was not present in the office. The inspecting team asked the guard and the 4 persons present there to contact the aforesaid 3 persons of the Noticee; however, none of them could be contacted. I note that no specific reason has been provided by Satish Shukla in the reply for his absence from office on the scheduled date of inspection i.e., December 09, 2019.

19. During interaction, besides the security guard, out of the 4 persons available in the office premises of the Noticee, 3 persons left the premises without intimating the inspecting team and only 1 person was available for interaction with the team. He assisted the inspection team in accessing the PCs, logging into CRM (software used by the Noticee in daily operations) and retrieving some of the data available in the PCs kept in the premises. Subsequently, the inspection team could gather some of the data relating to the clients of the Noticee in soft copy saved in the PCs.

20. The submission of the Noticee that a staff member present during inspection assisted SEBI officials in retrieving data showed that there was necessary cooperation, is not acceptable. Further, the Noticee did not reply to the pre-

inspection questionnaire which is a necessary ingredient for the physical inspection that follows. As brought out above, by way of a letter dated November 15, 2019 the Noticee was informed of the proposed inspection and was advised to provide the necessary information/documents. Also, even after repeated reminders no information/documents were received from the Noticee. Evidently, the cooperation provided was merely perfunctory.

21. Later, SEBI vide letter dated August 7, 2020, had advised the Noticee to submit information inter alia w.r.t. bank account statements of the Proprietor, year wise fees collected since date of registration, client master data, copy of audited financial statements for last three years, sample copy of agreement entered into with the clients. The letter dated August 7, 2020 was also forwarded vide email dated September 11, 2020 to 'satishshukla4@yahoo.com', as per the details obtained from Bombay Stock Echange Ltd. However, no reply was received from the Noticee till the issuance of SCN.

22. As an additional defence, it has been submitted by the Noticee that pursuant to a call from SEBI's Office Satish Shukla authorised Mr. Abhishek (Independent Professional) to visit the SEBI office as he was out of town. At the SEBI Office he was handed over the same inspection letter which the Noticee had received on November 19, 2019. Further, prior to inspection, the Noticee authorised Mr. Arvinder to visit the SEBI office to understand the procedure for extending the inspection date. It has been contended by the Noticee that at SEBI's office Mr. Arvinder was forced to alter the authority letter and write that he would look into the inspection of the Noticee, and the said alteration was made to the letter of authority without the knowledge of the Noticee. It has been contended by the Noticee that he had never authorised either Mr. Abhishek or Mr. Arvinder for the inspection related matter. Both of them had been authorised to visit the SEBI office on behalf of the Noticee for a particular day since he was not in town on the said days.

23. I note that, as brought out in para 17 above, the authorisation was provided on the letter head of the Noticee and the part after required has been written by hand with the initials of Mr. Arvinder Ajmani. The Noticee has also stated that he had received a call from SEBI and pursuant to that he sent Mr. Arvinder Ajmani who

received a copy of the letter dated November 15, 2019 already issued to the Noticee. Thus, it is clear that the intent of the call from SEBI's office was with regard to the scheduled inspection. Similarly, with respect to Mr. Abhishek, the Noticee in its submission has stated that it had authorised Mr. Abhishek to visit the SEBI's Indore office and explore the procedure for extending the date of inspection. So, evidently the presence of either Mr. Abhishek or Mr. Arvinder at SEBI's local office were in respect of the proposed inspection of the Noticee. In view of the same, the contention of the Satish Shukla that he had never authorised either Mr. Abhishek or Mr. Arvinder for the 'inspection related matter' is misleading.

24. In this regard, it has been alleged in the SCN that the Noticee has contravened Regulations 13(a), 15(12), 25(1), 25(2) read with 24(3) of the IA Regulations read with 28(e) of IA Regulations read with Clause 8 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations. Regulation 13 (a) mandates a registered Investment Adviser to abide by the provisions of the SEBI Act and the IA Regulations. Regulation 15(12) requires a registered Investment Adviser to furnish the required information to the board. Regulation 24 (3) requires an investment adviser against whom inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25. Regulation 25 (2) requires an investment adviser to provide all relevant information in its possession with respect to the conduct of the affairs of the business to the inspecting authority as may be required by him. Also, an Investment Adviser is required to provide all assistance as may be required by the inspecting authority. Similarly, obligation is cast on the Investment Adviser including its partners, directors, principal officer and persons associated with investment advice by way of Regulation 25(1) with respect to the production of books of account and other documents in its custody or control to the inspecting authority, if required by the inspecting authority. Further, Regulation 28(e) mentions that the Investment Adviser who does not co-operate in any enquiry, inspection or investigation conducted by the Board shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**"). Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business.

25. Thus, it is not a contested fact that Satish Shukla, the proprietor of the Noticee was absent during the inspection even after prior intimation. Not only that, except for a few employees viz., security guard and IT person looking after the computer systems, no other person involved in giving investment advice was present on the day of inspection. Lastly, the Noticee did not provide the information sought for through the questionnaire prior to the date of the proposed inspection. Accordingly, I find that the Noticee has failed to submit information to SEBI and has failed in extending the cooperation as required during inspection thereby failing to comply with regulatory requirements

26. In view thereof, by failing to furnish information relating to its activity as an IA during Inspection, as required by the Board and by not cooperating with SEBI by being absent during inspection, the Noticee had contravened the Regulation 13(a), 15(12), 25(1), 25(2) read with 24(3) read with 28 (e) of IA Regulations read with Clause 8 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

Violation 2: Non Compliance of SEBI Directions contained in the ad interim *ex-parte* order

27. An *interim ex-parte* order dated February 06, 2020 was passed against the Noticee and its proprietor Mr. Satish Shukla under sections 11(1), 11(4), 11B and 11D read with Section 19 of the SEBI Act and Regulation 35 of Intermediaries Regulations with the following directions:

i. *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;*

ii. *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 Profit Guru / its proprietor Mr.*

Satish Shukla 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

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

iv. *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*

v. *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*

vi. *Banks including Axis Bank and State Bank of India, are directed to ensure that, without the permission of SEBI, until further orders, no debits/withdrawals are made from and no credits are made to, the bank accounts held by Profit Guru and its proprietor Mr. Satish Shukla (PAN: BLWPS1911G), jointly or severally. The Banks are also directed to ensure that all the above directions are strictly enforced*

vii. *Any person while working under PG/its proprietor Mr. Satish Shukla 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.*

viii. *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of PG, or its proprietor Mr. Satish Shukla, held jointly or severally*

ix. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Funds held in the name of PG, or its proprietor Mr. Satish Shukla, jointly or severally, are not transferred or redeemed.*

28. SEBI vide its aforementioned order had, *inter alia,* directed the Noticee and its Proprietor Mr. Satish Shukla 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*". However, no information was received from the Noticee.

29. SEBI, on February 07, 2020, forwarded a copy of order passed by Whole Time Member at the Noticee's registered office address through RPAD, which was delivered at the said address on February 10, 2020. However, SEBI did not receive any reply from the Noticee.

30. Subsequent to the passing of the Interim Order, SEBI vide letter dated August 7, 2020, advised the Noticee to submit information *inter alia* w.r.t. bank account statements of the proprietor, year wise fees collected since date of registration, client master data, copy of audited financial statements for the past three years, sample copy of agreement entered into with the clients, etc. However, the letter returned undelivered. Subsequently, several attempts were made to deliver the letter to various other addresses; however, the same could not be delivered. The status of delivery of letters is as under:

Sl. No.	**SEBI letter Dated**	**Address**	**Remarks**
1.	August 7, 2020	174, Satna Nagar, Lokhan Akhada Tak, Warn No. 41, Satna, Gram. Tehsil Raguraj Nagar, District; Satna, Madhya Pradesh - 485001. *(As per Aadhar card)*	Returned undelivered with the remark '*Address insufficient'*

2.	August 25, 2020	415, Shekhar Central, Near Palasia Petrol Pump, A.B. Road, Indore - 452001 *(Registered address as per SEBI records)*	Returned undelivered with the remark *'Insufficient Address'.*
3.	September 11, 2020	GI, Swadesh Bhawan, 2 Press Complex Road, Indore 452001. *(as per UCC details)*	Returned undelivered with the remark '*Addressee left without instruction*'.
4.	September 11, 2020	Old 125, New 593, Malviya Nagar, Behind Amarvilas Hotel, Indore, Madhya Pradesh - 452001. *(as per UCC details)*	Returned undelivered with the remark *'Insufficient Address'.*
5.	September 11, 2020	House No. 106, Royal Platinum, Neas Bombay Hospital, Indore - 452010. *(asper* UCC details)	Returned undelivered with the remark '*Addressee left without instruction'.*

31. A copy of the letter dated August 7, 2020 was also forwarded vide email to *'satishshukla4@yahoo.com'* on September 11, 2020, which had been gathered from the UCC details obtained from BSE Ltd. However, no reply had been received from the Noticee till the issuance of the SCN. It is pertinent to note that, as a regulated entity, the Noticee cannot ignore the directions of an Interim Order against it.

32. In this regard, it has been alleged in the SCN that the Noticee has contravened Regulation 13(a) read with Regulation 15 (12) read with Regulation 28 (a), 28 (b) of IA Regulations by not complying with the directions contained in the interim ex-parte order. Regulation 13 (a) mandates a registered Investment Adviser to abide by the provisions of the SEBI Act and the IA Regulations. Regulation15(12) requires a registered Investment Adviser to furnish the required information to the board. Further, Regulation 28(a) and 28(b) mention that the Investment Adviser who contravenes any of the provisions of the Act or any regulations or circulars issued thereunder, and fails to furnish any information relating to its activity as an investment adviser as required by the Board respectively, shall be dealt with in the manner provided under the Intermediaries Regulations.

33. Hence, it is established that the Noticee and its proprietor Satish Shukla had violated Regulation 13 (a) read with Regulation 15 (12) read with Regulation 28

(a), 28 (b) of IA Regulations by not complying with the directions contained in the interim ex-parte order.

34. It was observed that as on November 30, 2020, there were 42 unique complaints pending against the Noticee on SEBI Complaints Redress System (hereinafter referred to as "**SCORES**"). On examining the same, the following was alleged:

<u>Violation 3: Noticee Promised Assured / Guaranteed Unrealistic Returns to its Clients</u>

35. The SCN alleged that the Noticee was promising assured/guaranteed returns to its clients on the investments made. The SCN had also alleged that the Noticee was falsely inducing clients by promising huge unrealistic returns.

36. The following appeared on the Noticee's website www.profitguru.co.in to lure clients into taking its services:

37. *"Profit Guru Investment advisor provides you with accurate tips related to the stock and share market with great accuracy percentile. Our expert teams work dedicatedly in order to make intense researches and then give you calls to stock or cash traders in NSE ensuring your profit. There are a lot of points that need to be covered when you talk about trading in the stock market.*

<u>You are definitely going to make profits if you make investments on the basis of stock cash tips given by our team</u> who solely work for researching the news and stocks. You can subscribe our services at the reasonable package and then get up to intraday basis calls every day, weekly and monthly reports, chat sessions and dedicated customer service support for becoming a successful trader and make big profits with small investments on regular basis.

Stock tips are a way through which the intraday traders can earn. Purely intraday traders can work upon such tips. The technical team works upon stocks to evaluate the buying or selling decision in order to ensure the execution of the trade. We provide stock cash tips to our traders which successfully achieve their *targets. The day's high and low of a particular stock gives a difference of value which is an opportunity for a trader."*

38. It has been submitted by the Noticee that the specific line, underlined above, had been taken out of context and a conclusion reached. Upon perusal, I observe that the said line stresses on the fact that the client would make profits if investments were made on the basis of tips provided by the Noticee. Even on pursuing the service description in whole, I do not find anything that would counter the understanding that there was a clear assertion making a case for definitely earning profits, if investments were made on the basis of tips provided by the Noticee. Accordingly, I do not find merit in the submission of Profit Guru that the said line had been taken out of context. To further substantiate the above, I have persued the following investor's complaints promising assured/ guaranteed returns.

39. **Complaint of Mr. G. Sudheer and Mr. Jithender Bhangaru**

Complainant	**SCORES complaint no.**	**Nature of complaint**
Mr. G. Sudheer	SEBIE/MP20/0002009/1	The complainant alleged that the Noticee had promised him to give a profit of Rs. 23 Lakh by providing trading recommendation in NSE segment.
Mr. Jithender Bhangaru	SEBIE/MP20/00001293/1	The complainant alleged that the Noticee promised to give profit of Rs.1,32,700/- profit to his demat account but he incurred losses after following the Noticee's advice.

40. **Complaint of Mr. Kuldeep Raj and Mr. Girdharilal**

40.1 From the complaints lodged by Mr. Kuldeep Raj and Mr. Girdharilal, and evidences provided by them, following observations emerged:

The Noticee vide email dated October 11, 2019 and December 09, 2019, promised guaranteed returns to the client. The details are as under:

"Service and payment details: -

	Kuldeep Raj	**Girdharilal**
SCORES registration no.	SEBIE/MP20/0000695/1	SEBIE/MP20/0000726/1
Service details		
Service Name	*Customized Equity Cash Pack*	*HNI Customized Combo Pack :(C/ F&O and MCX)*
Service amount	*Rs. 2,36,000/-*	*Rs.3,61,000/-*
Expected Return	***7.5 to 8 lakh***	***Rs.11 to 12 lakh***
Required Amount for Activation	*Rs 59,000/-*	*Rs. 1 lacs and above*

If your return of investment will not come in given tenure than your service duration will be extended without any disturbances."

41. In reply to the issue mentioned above, the Noticee has mentioned that the service details in this case stated "expected return" and that the Noticee has in no manner guaranteed any kind of returns.

42. It was observed from the email received by Kuldeep Raj that the client on opting for this plan would be entitled to an "Expected Return" of INR 7.5 to 8 lakh, and from email received by Girdharlal that the client on opting for this plan would be entitled to an "Expected Return" of INR 11 to 12 lakh. It has additionally been mentioned that "*if your return of investment will not come in given tenure than your service duration will be extend without any disturbances."* So, from the above, it can be concluded that, as per Profit Guru, in case the return as committed was not realised then the service would go on till such time the client realises the return as promised, which is as good as "guaranteed return". It is not in doubt that "expected return" and "guaranteed returns" are different, what is of relevance is the content and not its form. Thus, in the present context, it is quite clear that Profit Guru was guaranteeing returns of specified amounts terming them as expected return/profit.

43. **<u>Complaint of Mr. Lokesh and Mr. T.G. Srinivasan</u>**

43.1 Complaint with SCORES registration number SEBIE/MP19/0002655/1, lodged by Mr. Lokesh: From the call recording it was noted that that the representative of the Noticee promised unrealistic / exorbitant returns (earning

1% daily from the market) to the client. The transcript of conversation of one the representatives of the Noticee with Mr. Lokesh is given below: -

Call recording at 1:15: Noticee "Toh kyon na aap apne paise ka utilize kare proper intraday mein agar 20000 ka investment hain, aap din ka hazaar, do hazaar rupaye bhi kamate hain toh sir mahine ka hota hain around 20,000 to 30,000, agar apan yearly bhi baat karte hain to aaraam se jaata hain sir do lakh ke above."

Call recording at 2:32: Noticee "Yadi aap din ka 1% Kamate ho, Saal me hote hai 365 din, Agar hum Baat kare 200 din ki bhi, agar 200% return apne liya to kya koi jyada investment hai aapka, apne jo 20000 lagaya hai, wo paisa Market se Kamane ke liye lagaya hai, naa ki bas lagaane ke liye"

43.2 A similar call recording was provided by Mr. T.G. Srinivasan in complaint with SCORES registration number SEBIE/MP19/0001504/1: It was noted that the representative of the Noticee promised to recover the losses previously incurred by the client on accounts of trade executed on the advice of the Noticee and also service charges paid by the client to the Noticee.

43.3 With regard to the above conversations, it has been claimed by the Noticee that through the said conversations the employees were providing illustrations to the clients. Also, it has been submitted that a group of persons was using the name of Profit Guru to run its business. I note from the above conversations that even though specific terms of services/plans were not discussed, it is evident that service of the Noticee, which was to provide investment advice, was clearly geared towards promising assured returns and unrealistic gains. The conversation nowhere even hints at the fact that investment in the markets comes with the risk or possibility of losses also. Even in this respect, I do not find any merit in the submission of Profit Guru.
43.4 Also, the claim that a group of persons was using the name of Profit Guru to run its business, even if true was of little consequence in the present consideration as Profit Guru has not disputed the conversations between the

employees of Profit Guru and the above-named clients. In the absence of any evidence by the Noticee to support this claim, I assume that it was just a passing remark absolved from the violations committed by the Noticee.

44. Thus from the abovementioned complaints wherein the Noticee made promising assured profits and unrealistic returns, I find that the Noticee had tried to deceive its clients. Neither there exist any grounds for belief for such unrealistic returns nor can the assured profits be achieved. Further, it was alleged that showing guaranteed returns on investments regardless of the market segment or security in which the investment was made, knowing fully well that the same was practically impossible, is equal to knowingly misrepresenting the truth on part of the Noticee. Such representation was therefore, prima facie, fraudulent and is covered within the definition of “fraud” defined under Regulation 2(1)(c) of PFUTP Regulations. It is stated that the promise of assured returns and profits is inherently misleading as it runs contrary to the fundamental precept of the securities market i.e., investments are subject to market risks. Such misleading promises might have induced the clients to invest in the schemes and packages floated by the Noticee. Therefore, the guarantee of assured profits, in any manner or form or description, is fraudulent as it misleads and deceives the clients. Accordingly, I find that Profit Guru has violated the provisions of Section12A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) of the PFUTP Regulations. I also find that Profit Guru has violated Regulation 4(1), 4 (2) (k) and 4 (2) (s) by disseminating information on its website offering services/products with the claims that it would give the clients definite profits.

45. I note that Regulation 15 (1) of the IA Regulations obligates an Investment Adviser to act in a fiduciary capacity with respect to 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 Noticee, 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 violated Regulation 15 (1) of the IA Regulations.

46. 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. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. I find that the Noticee has failed to adhere to the above mentioned clauses**.**

Violation 4: Engaged in Selling Multiple Services and collecting unreasonable payments from its clients

47. **Violation 4.1: Issue with respect to period of service as per invoice**

Complainant	SCORES registration no.	Allegation	Noticee's reply	Consideration
Mr. Pinal Mistry	SEBIE/MP19/0000223/1	The period of service had not been clearly mentioned in all the invoices and therefore, the client had no means to know the start and end date of the service.	Due to some software error, the invoices did not contain the period of service.	Since the Noticee has accepted the violation, the violation is established.
Mr. Anand Patel	SEBIE/MP19/0000979/1	Noticee had mentioned only the period of duration on the invoice i.e. one month / half yearly etc. and therefore the client had no means to know the actual start date of service and end date of service.	Services offered to clients used to start one working day after the payment date, and in cases of renewal, the service started from the end date of the previous tenure.	Noticee has failed to produce any evidence to substantiate its claim and hence I note from the material available on record that the client was not aware that the service will start one working day after the payment date.
Chote Ganesh Popat	SEBIE/MP20/0000318/1			
G. Sudheer	SEBIE/MP20/0002009/1			

48. **Violation 4.2: Issue of non-issuance of invoices for the payments made by customers**

Complainant	SCORES registration no.	Allegation	Noticee's reply	Consideration
Mr. Girdharilal	SEBIE/MP20/0000726/1	Noticee had not issued many invoices to clients for the payments received by him. Thus, client was not aware of the services provided to him for these payments.		No explanation has been provided by the Noticee in this regard. I assume that the Noticee has accepted this allegation.

Ushar Kanti Dutta	SEBIE/MP20/0000174/1	Noticee did not issue invoices to the client for the payments received by him on May 02, 2018 for an amount of Rs. 1,50,400/-, April 24, 2018 for an amount of Rs. 9,900/- and April 17, 2018 for an amount of Rs. 20,000/-.		
Mohammed Ashif	SEBIE/MP20/0000845/1	It was alleged in the SCN that the Noticee did not issue invoices to the complainant for the payments received by him on January 10, 2020, January 16, 2020, January 21, 2020 and January 22, 2020. Thus, complainant is not aware of the services provided to him for these payments.		
G. Sudheer	SEBIE/MP20/0002009/1	The complainant alleged that he had paid Rs. 12,23,833/- to the Noticee, but he had received invoice for only Rs. 11,55,775/- from the Noticee.		

49. **Violation 4.3: Issue of overlap of period of services sold to the clients**

Complainant	**SCORES registration no.**	**Allegation**	**Noticee's reply**	**Consideration**
Mr. Anand Patel	SEBIE/MP19/0000979/1	Noticee had sold services to clients even before the tenure of the earlier package could end.	Noticee has replied that the client had chosen to make payments in parts and different invoices were issued for each payment, even though the payment was for the same service. The stipulation by SEBI for not accepting payment in parts came into effect only from 01.01.2020.	From the material available on record, I am giving the benefit of doubt to the Noticee.
Ashok Senegar	SEBIE/MP20/0000624/1	Noticee had sold services to clients even before the tenure of the earlier package could end.		Client had paid INR 5,000 on April 02, 2019 for buying the service, Cash Premium Tips for the period, April 04, 2019 to April 12, 2019. Again he paid INR 45,000 on April 02, 2019 for buying

				the same service Cash Tips for the period, April 04, 2019 to June 08, 2019. So, there is a clear overlap of the durations of the services.
Khush Ranjan	SEBIE/MP19/0001824/1	Client had paid Rs. 3,500/- on February 07, 2019 for 'Cash Tips' services till February 22, 2019. Before the expiry of this service, the same service was again sold on February 15, 2019 and Rs. 1,05,000/- taken for the same service, for providing services from February 16, 2022 to March 16, 2020.	The Noticee has submitted that at first the client tried the service and after being satisfied it opted for it one more time.	Irrespective of the fact that whether the Noticee is telling the truth or not, I note from material available on record that there was an overlap in the period of services. So, I am unwilling to accept this argument of the Noticee.
Jithender Bhangaru	SEBIE/MP20/00001293/1	Noticee was selling the same advisory products/services to the client before completion of the tenure of the previous service. Complainant was charged multiple times for one single service even before the expiry of duration of that service.	The Noticee in this regard has submitted that the client renewed the services by his consent and extended the services for a longer duration in order to not to get his service discontinued and that SEBI came up with the Circular restricting advance payment for not more than 2 quarters, only on September 23, 2020.	I note from record that the Noticee had charged the client twice for "Cash Premium Tips" services on 23-11-2019, however the duration of said services was from 14-07-2020 to 03-09-2020 and 04-09-2020 to 01-11-2020. So, the service was to start almost 8 months from the date of payment. This is a clear violation of the existing norms of duty cast on an Investment Adviser to act in the best interests of the client.
Mr. Girdharilal	SEBIE/MP20/0000726/1	Noticee had sold services to clients even before the tenure of the earlier package could end.		I note from the record that the client had made a payment for MCX Tips on December 26, 2019, however, the said service was for the duration January 17, 2022 to April 02, 2022. So, the service was to start almost two years from the date of payment. This is a clear violation of the existing norms of duty cast on an Investment Adviser to act in

				the best interests of the client.
Ushar Kanti Dutta	SEBIE/MP20/0000174/1	It was observed that on April 17, 2018, the Noticee had raised two invoices i.e. invoice no. INV4076 and INV4067 for selling Cash Premium service to the complainant amounting to Rs. 10,000/- and Rs. 40,000/- respectively. The period of service was also the same i.e. April 17, 2018 to May 17, 2018.	The Noticee has submitted that the client had made payment in two parts on the same day for the same service and hence 2 invoices were issued to the client in this regard.	I am giving the benefit of doubt to the Noticee in this case.
Ram Charan Vijay	SEBIE/MP19/0003189/1	It was observed that Option Premium services were sold twice for the period starting from December 27, 2019 to January 16, 2020 and January 17, 2020 to February 22, 2020.		

50. **Violation 4.4: Other violations: - No service or non-payment of refund to the clients**

Complainant	**SCORES registration no.**	**Allegation**	**Noticee's reply**	**Consideration**
Kamal Solanki	SEBIE/MP20/0000187/1	He had paid Rs.1,24,000/- to the Noticee. However, the Noticee didn't provide him any advice neither refunded any money.	In this regard, the Noticee stated that since SEBI had passed an interim Order on 06th February, 2020 and had directed the Noticee to cease and desist from acting as an investment advisor, so the Noticee couldn't provide any further services to him.	From the material available on record, I note that the services for which the client had made the payment were valid till 22-01-2020. Therefore, the Noticee should have provided the services to the client. The Noticee in its reply has not contested the fact that it had not provided the services to the client and hence the Noticee is found to be at fault.
Chote Ganesh Popat	SEBIE/MP20/0000318/1	The complainant alleged that as per statement provided by Mr. Satish Shukla, company had to refund Rs. 1,40,000/- by January 2020 in equated instalment. But		No explanation has been given by the Noticee in this regard, therefore I assume

		company failed to refund Rs. 60,000/-.		that the Noticee is accepting this allegation.

51. From the above discussion, I infer that the major issues with the services provided by the Noticee were:

- Noticee didn't issue invoices for the payments by clients for certain services
- The Noticee didn't clearly mention the period of service in its invoices
- Noticee had taken payments for future services in advance
- The Noticee was gaining fees by providing the same service with overlapping durations
- The Noticee was also charging unreasonable fees

52. It is therefore established that the above acts of the Noticee had been carried out with the purpose of defrauding the clients and to earn maximum fees. Accordingly, I find that the Noticee had violated Regulation 3(a), (b), (c), (d) and 4(2)(o) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act.

53. It had also been alleged in the SCN that the Noticee has violated clauses 1,2,5,6 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of the IA Regulations.

54. 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. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Clause 6 of the Code of Conduct for IA, investment advisers shall ensure that fees charged to the clients are fair and reasonable.

55. I find from the facts brought out above that the Noticee has failed to adhere to any of the above-mentioned stipulation in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1,2 and 6 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

Violation 5: Charging Unfair and Unreasonable fees for same kind of services and offering of customized packages

56. It was alleged that the Noticee offered a variety of services which had different fee structure but essentially the same offering (stock tips). The comparison of three service are tabulated below (as taken from the Noticee website): -

Details	**Cash Basic**	**Cash Premium**	**Cash HNI**
Salient Feature	• Limited but Quality 3-4 calls on a daily basis. • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Nifty and Bank Nifty overview provided before market. • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • We provide you call through SMS	• Limited but Quality 2-3 calls on a daily basis. • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Nifty and Bank Nifty overview provided before market. • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • Assistance by call as well as messages	• 1-2 Intraday Advisory daily via SMS and phone calls. • We provide you NSE, BSE & Equity Research call • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Pre Market Calls • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • We provide you call through SMS.
Monthly fees	Rs. 11,000/-	Rs. 21,000/-	Rs. 50,000/-
Quarterly fees	Rs. 29,000/-	Rs. 55,000/-	Rs. 130,000/-
Half-Yearly Fees	Rs. 50,000-	Rs. 95,000/-	Rs. 230,000/-

57. As seen from the table above, Noticee offered three kind of intra-day services which are essentially giving 2-4 intraday calls to clients with 24/7 customer support, daily/weekly reports, etc. However, the prices charged for them are very much different.

58. In this regard, it has been submitted by the Noticee that there was a clear difference amongst the three services on the following parameters namely, risk reward ratio, scrips in which advice was offered and volume size.

59. As per clause 6 of the Code of Conduct for IA, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Charging of reasonable fees includes not only the quantum of fees to be charged for a particular service but also the mode or manner in which the fees are levied on the clients.

60. Thus, I find that Profit Guru has deliberately devised multiple services/packages (which are essentially offering same service) to earn huge amount of service fee from its clients. The above mentioned *modus operandi* is to fraudulently induce

clients with an objective of providing multiple services that are essentially offering similar services.

<u>Customized Packages</u>

61. The Noticee sold customized packages to the clients as follows:

Complainant	**SCORES registration no.**	**Details of the service**
Ushar Kanti Dutta	SEBIE/MP20/0000174/1	A service named 'Customized Package' was offered to him. The fees charged for this service was Rs. 4,68,000/-
Jithender Bangaru	SEBIE/MP20/00001293/1	It was observed that customized Package (Equity & Derivatives) was offered to him. As per the content of the email for selling such package, Rs. 4,25,678/- had been received from complainant and Rs. 68,000/- were yet to be received from him and only after payment of balance amount, his service was supposed to start
Girdharilal	SEBIE/MP20/0000726/1	The client was offered a customized package (Equity option and commodity pack). As per the content of the email, Mr. Girdharilal had paid Rs. 1,82,900/- to the Noticee for a service of 4 months.
G. Sudheer	SEBIE/MP20/0002009/1	A customized package (Equity and commodity pack) was sold to him. As per the content of the email, Mr. G. Sudheer had to pay Rs. 48,800/- to the Noticee for a service of 6 months duration

62. Based on the above table, I find that the customised package was created by bundling together a group of services, amongst which few would be suitable and the others unsuitable for the client. In this respect, it has been submitted by the Noticee that the customised packages were not provided on the website because they were specific packages curated to the needs of the client This effectively camouflaged the true risk profile of the services being provided to the clients. Accordingly, the customised package tricked the client by making him think that he was being offered a product that was specifically curated to his specifications and needs, but instead through this device he was being sold a product that didn't suit his requirements.

63. Accordingly, the acts of Profit Guru, as brought out above, is fraudulent in nature and is covered within the definition of "fraud" defined under regulation 2(1)(c) of PFUTP Regulations. In view of this, I find that Profit Guru has violated Regulation

3 (a), (b), (c) and (d), and 4(2)(o) read with Section 12A(a), (b) and (c) of SEBI Act, 1992.

64. 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. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Clause 6 requires an Investment Adviser to charge fair and reasonable fees for its services. I find from the facts brought out above that Profit Guru has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1, 2 and 6 of the Code of Conduct for IAs as specified under Third Schedule read with Regulation 15(9) of the IA Regulations.

Violation 6: Changing RPF of Clients multiple times on an arbitrary basis

65. It was alleged in Para 4.4 of the SCN that the Noticee had changed the risk categorization of the clients on multiple occasions. In this regard, the invoices issued to multiple clients i.e. Mr. G. Sudheer, Mr. Anand Patel, Mr. Dinesh Singla, Mr. T.G. Srinivasan and Mr. Ushar Kanti Dutta were analysed.

66. With respect to the changing of the risk category of the client, it has been submitted that –

    a. the risk categorisation mentioned in the SCN was regards ‘product risk categorisation’ and not ‘client risk categorisation’;

    b. Profit Guru had never done multiple risk profiling of clients and had never deliberately changed any client’s risk categorisation; and

    c. In few cases, Profit Guru prioritised client request for opting for high-risk services over their risk profile.

67. From a perusal of the material on record, it appears that the risk categorisation of the clients as produced in the above paragraphs does not relate to the clients but the products being offered to them. In such a circumstance, the specific allegation made in the SCN that Profit Guru changed the risk categorisation of the clients multiple times arbitrarily is not borne out from the facts.

Violation 7: Not following the Guidelines regarding Risk Profiling and Suitability Assessment of Clients

68. It was alleged in the SCN that the Noticee did not follow the guidelines regarding risk profiling and suitability assessment of clients as per following complaints:

Complainant	SCORES registration no.	Allegation	Noticee's reply	Consideration
Sunil Kothari	SEBIP/MP19/0000366/1	From the RPF of Mr. Sunil Kothari, it was observed that his gross annual income is Rs. 5 Lakhs to Rs. 10 Lakhs and his proposed investment amount is Rs. 2 Lakhs to Rs. 5 Lakhs. However, the Noticee took an amount of Rs. 16.73 lakhs from the client, which was in total disregard to the financial condition of the client. Also, the suitability assessment of the client was not signed by the Noticee. Even name of the client, service offered was not mentioned in the suitability assessment	It has been claimed by the Noticee that clients did not accurately specify their incomes due to various reasons, which meant that their investment capacities were generally more than what the RPFs would show.	I note from the RPF that the Sunil Kothari's and PayareLal's emergency fund was 1 to 3 months' income, and he was above 60 years old i.e., a senior citizen. His investment goal was to get a 'regular income'. Strangely, a person with these particulars was categorised as someone with a high risk appetite. Therefore, I infer that the risk taking capacity of the clients was limited. However, the Noticee sold them services which were of high risk and collected fees which were many times over the investment amount intended to be invested by the clients. This, in my opinion raises serious doubts on the risk profiling activity of the Noticee. Therefore, I infer that the recommendation made to the clients was without client's investment objectives, ignoring the risk tolerance capacity of the clients, without understanding the knowledge /experience of the clients in such type of products. In view of the same PG failed to comply
Pyare Lal	SEBIE/MP18/0001976/1	As per the RPF, it was observed that the client's gross annual income was between Rs. 1 lakh to Rs. 5 lakh, proposed investment amount between Rs. 1 lakh to Rs. 2 lakh, and the current market portfolio was Rs. 1 lakh to Rs. 2 lakh. However, the Noticee collected Rs. 8,46,355/- from him within 50 days.		

				with regulation 17(a)(b)(d)(e) of IA Regulations
Pinal Mistry	SEBIE/MP19/0000223/1	From the email dated August 13, 2018 from Pinal Mistry, the Noticee had sold him a service, the cost to which was INR 6,90,000, while his proposed investment was only INR 1 lakh to 1.2 lakh.		The fee charged to the client is unreasonable and unfair.
T.G. Srinivasan	SEBIE/MP19/0001504/1	As per the RPF of the complainant, it was observed that his gross annual income was between Rs. 1 lakh to Rs. 5 lakhs, and proposed investment amount was between Rs. 1 lakh to Rs. 2 lakhs. However, the Noticee collected Rs. 3,65,100/- from him within 45 days.		I note from the RPF of T.G. Srinivasan, that he had been categorized as having "Medium Risk Appetite". Accordingly, as per Profit Guru's suitability assessment procedure, he should have been provided services enlisted in Group A i.e., Stock cash and Positional Stocks. However, from the invoice dated April 26, 2019 bearing number PG-INV9913 it was seen that "OPTION HNI TIPS" was sold to the said client, which was a part of Group B which are for clients with high risk appetite. So, it is evident that the investment advice provided by Profit Guru's own procedure was not suitable in terms of the risk taking ability of the client
Jithender Bhangaru	SEBIE/MP20/00001293/1	As per the complainant's RPF, it was observed that his gross annual income was between Rs. 1 lakh to Rs. 5 lakh, proposed investment amount was between Rs. 1 lakh to Rs. 2 lakh and the current market portfolio was between Rs. 1 lakh to Rs. 2 lakh. However, the Noticee collected Rs. 4,93,680/- from him within a period of around 110 days.		Upon perusal of the RPF of Mr. Jithender Bangaru, I note that he had been categorised as having "Medium Risk Appetite. It is relevant to state that on November 29, 2019 the client was sold the service "MCX Premium Tips", which was a product in Group B, and accordingly suitable for clients with high risk appetite, unlike the present client.

Ashok Senegar	SEBIE/MP20/0000624/1	From the complainant's RPF, it was observed that gross annual income of Mr. Senegar is Rs. 5 Lakhs to Rs. 10 Lakhs, proposed investment amount was between Rs. 2 Lakhs to Rs. 5 Lakhs. However, the Noticee took an amount of Rs. 2,29,326/- from the client, as service fees.		The fee charged to the client is unreasonable and unfair.

69. Based on the above complaints, I infer that the fees collected by Profit Guru from the said clients, on most occasions, was more than their annual income.

70. It has been claimed by the Noticee that clients did not accurately specify their incomes due to various reasons, which meant that their investment capacities were generally more than what the RPFs would show. I find the argument of the Noticee unacceptable. The assessment of risk bearing ability can only be carried out by taking into account specific facts viz., annual income, investment amount, value of emergency fund etc. These details cannot be assumed by the Investment Adviser, which the Noticee by its own admission has done. Also, in my opinion, the Noticee should have updated the RPF of the clients based on their investment pattern, fees charged etc. So, in light of the above facts, it does not appear that any analysis was done of the RPFs. Accordingly, I find that Profit Guru has not ensured a proper process for the assessment of the risk profile of its clients.

71. 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. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. As per clause 6 of the Code of Conduct for IA, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. I find from the facts brought out above that the Investment Adviser has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1, 2, 6 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

Leading Questions in RPF

72. Based on the response of the clients to the Risk Profiling questionnaire with 21 questions, score was assigned and risk appetite of the client was assessed. Depending on the score, the Noticee classified the clients into following Risk categories: -

Risk Profiling Questionnaire SCORE	**Risk Category of the Client**
0-800	Low
800-1600	Medium
1600-2400	High

73. Based on the Risk category of the client, the Noticee offered following products:

S. No.	**SCORE**	**Type of Investor**	**Level of Risk Tolerance**	**Suitable Services**	**Characteristics of services**
1	0-800	Conservative	Low	Nil	NA
2	800-1600	Moderate	Medium	Group A	Offer Medium Risk and reward, Generally principal is exposed to risk but not 100% exposed to risk Approximately 4-5 tips per service and mostly intraday
3	1600 and above	Aggressive	High	Group B	Offers High Risk and High Return, principal may be at 100% risk, suitable only for experienced investors/ willing to take risk in markets for high returns. Approximately 4-5 tips per service and sometimes required to hold the position.

74. Classification of services:

S. No.	Group A	Group B
1	Stock Cash	Futures and Options
2	Positional Stocks	Commodities

75. On perusal of the Risk Profiling Questionnaire of the Noticee, the following was observed:

76. Risk Profile of the Noticee includes following 03 questions to ascertain risk appetite of the clients:

i. *Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?*
ii. *When market is not performing well would you like to invest in more risky investment instead of less risky investment to earn high return?*
iii. *High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risks can you bear (not prefer)?*

77. It was alleged in the SCN that the questions mentioned in the Questionnaire were framed in such a manner so that it would be difficult for the clients to understand and provide an appropriate response. It was further alleged that such questions were framed to make the clients fall in High Risk category so that they can be offered complex products like derivatives.

78. In this regard, it has been submitted by the Noticee that –

    a. the questionnaire had been approved by SEBI at the time of grant of certificate of registration (2015) and they had been using it since then;

    b. there were a total of fourteen (14) questions to which scores had been assigned, out of which ten (10) had been assigned the maximum score of 200; so it was not as if the maximum score of 200 had been assigned to those three (3) questions only;

    c. the mention of 'High Risk' in the questions were self-explanatory and the clients were made aware that trading in the securities involved risk; and

    d. no specific format or scoring method had been provided by SEBI for risk profiling.

79. It is not disputed that at the time of applying for a certificate of registration, a prospective Investment Adviser is required to submit the risk profiling questionnaire. However, the requirement for such a questionnaire is only to ascertain as to whether the prospective Investment Adviser had in place a process for assessing the risk bearing ability of the clients. It was left to the Investment Adviser to frame the risk profiling questionnaire as per the necessary requirements. So, the grant of a certificate of registration cannot be considered as

an approval of the questionnaire’s contents or its merits. But I accept the argument of the Noticee that the mention of ‘High Risk’ in the questions were self-explanatory and I find that such questions are the only way to gauge the risk bearing capacity of the clients.

80. Also, the Noticee has submitted that there were a total of fourteen (14) questions to which scores had been assigned, out of which ten (10) had been assigned the maximum score of 200. Therefore, I find that the aforesaid three questions were not the leading questions. In such a circumstance, the specific allegation made in the SCN that the aforesaid three questions were ambiguous in nature and were the leading questions, is not borne out from the facts.

81. **Complaint of Mr. Kiran Aravalli and Mr. S.K. Gupta**

Mr. Kiran Aravalli, Mr. S.K. Gupta mentioned in their SCORES complaint that they did not receive any RPF or suitability assessment form from the Noticee. Also, it was also alleged that the Noticee had not obtained signatures on RPF of Mr. T.G. Srinivasana. The Noticee has not refuted these allegations leveled in the SCN and therefore I assume that the Noticee has accepted these allegations. Accordingly, I find that the Noticee had violated Regulation 16(a), (b), (d) and (e) of IA Regulations.

Violation 8: Violation of Conditions of Certificate

82. The SCN has alleged that Profit Guru, even though was primarily operating from the address available in the records of SEBI (415, Shekhar Central, Near Palasia, Petrol Pump, AB Road, Indore- 452001), had several other branches from where it was carrying out its investment advisory operations. In this regard, the SCN has referred to the inspection carried out by SEBI on December 09, 2019. The Inspection Report, made pursuant to the said inspection, has recorded that during inspection it was found that Profit Guru had another office on the 6th floor of the same building in which its primary office was situated.

83. Further, from a conversation of a representative of the Noticee with one prospective client, namely Mr. Uttam Bhadouria, it was noted that the Noticee had

several branches and it primarily operates from the office address registered in SEBI records. Also, during the inspection, the team had found another office of the Noticee at 6th floor of the same building. The transcript of the aforementioned conversation is given below:

Call recording at 00:05: Noticee (02_10.01.2019): "*Apne 4 branches hain, mainly jo hamara branch hai wo Shekhar Central wala hai. Mainly saari cheezein wahin se operate hoti hain****".***

84. It is noted from Regulation 3 of the IA Regulations that no person shall act as an investment adviser or hold itself out as an investment adviser unless he obtains a certificate of registration from SEBI. I further note that FORM-A in Schedule- I to the IA Regulations provides a specified format for making an application for grant of certificate of registration as an investment adviser. The said Form-A requires a prospective investment adviser to provide a host of information based on which the application would be considered by SEBI. The Noticee, at the time of seeking registration from SEBI as an investment adviser, had also provided the requisite information in Form-A. Form-A at Sl. No. 4 requires an applicant to provide details of infrastructure. The said part is reproduced hereunder for reference:

"***4. DETAILS OF INFRASTRUCTURE***

1. *Details of office space, office equipment, furniture and fixtures, communication facilities, research capacity, research software for undertaking investment advisory services.*
2. *Declaration that the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser.*"

Similarly, Sl. No. 6 of Form-A requires an applicant to provide other additional information relevant to the application. The said part is reproduced hereunder for reference:

"***6. OTHER INFORMATION/DECLARATIONS/ REGULATORY ACTIONS***

(a) Details of all settled and pending disputes in the last 5 years.

(b) Whether any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by the Board; If yes, provide details of the same.

(c) Whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected with the applicant under the Act or the regulations made there under in the last 5 years. If yes, provide details of the action.

(d) Whether the applicant/directors/promoters/ partners have been indicted/involved in any economic offence in the last 5 years. If yes, provide details of the same.

(e) A credit report/ score from CIBIL for the applicant.(For applicants other than financial institutions & banking companies)

(f) Declaration that the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(g) Declaration that the applicant shall not obtain any consideration by way of remuneration or compensation or any other form whatsoever, from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided to the client.

(h) Any other information considered relevant to the nature of services to be rendered by the applicant."

85. So, from the above, it is clear that Form A that is filed by an Investment Adviser requires it to provide information regarding the infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities and also regarding regulatory actions taken against it and economic offences that it may have been charged with.

86. It is reiterated that based on the information provided in Form A, an investment adviser is granted a certificate of registration. Once a certificate of registration is granted, the same is subject to the stipulations contained in Regulation 13 of the IA Regulations. In this regard, it would be relevant to place here the stipulations

contained in Regulation 13 (b) of the IA Regulations. Regulation 13 (b) of the IA Regulations provides that –

"*13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*
(a) …
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted"

87. So, it is clear that the certificate of registration provided to an investment adviser by SEBI is subject to the conditions enumerated in Regulation 13 of the IA Regulations, which includes *inter alia* the obligation to inform SEBI of any material change in the information already submitted by it.

88. It has been submitted by Profit Guru that it had a "*single main office on 4th floor of Shekhar Central, Indore.*" It has further been submitted that it had taken the 6th floor on rent only recently and Profit Guru was in the process of shifting its office from the 4th floor to the 6th floor. It is the contention of Profit Guru that since the shifting had not been completed, SEBI was not informed.

89. It has been recorded in the SCN that when the SEBI inspecting team reached the premises of Profit Guru, the security guard present there took them to an office space marked as "612" on the 6th floor. This denotes that contrary to the assertion of Profit Guru in its reply that they were in the process of moving to the office space on the 6th floor, it in fact was their primary office space from where operations were being carried out. Additionally, I note from the record that during a conversation between an employee of Profit Guru and Mr. Uttam Bhadouria, a prospective client, it was claimed by the employee that there were four (4) branches of Profit Guru and the main branch was situated at 'Shekhar Central'.

90. No specific clarification has been made by Profit Guru, with respect to the above assertion of one of its employees, in its reply submitted to SEBI. In view of the same, I conclude that there were in fact multiple branches from where Profit Guru managed its operations.

91. It restated that in an application for registration as an investment adviser, as stated above, an applicant has to give a declaration that it has the necessary infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities. The increase in the number of branches from which Profit Guru operated and the acquisition of additional space on the 6th floor of Shekhar Central meant that the information earlier provided to SEBI by Profit Guru about the details of office space and infrastructure in its possession has undergone material change. That being the case, the Noticee was required to inform SEBI in writing about such change. However, the information regarding the above developments were never brought to the notice of SEBI by the Noticee. They only came to light when an inspection was sought to be carried out by SEBI. Accordingly, I find that the Noticee has violated Regulation 13 (b) of the IA Regulations for the reasons stated above.

Violation 9: Non Redressal of Investor Grievances:

92. The SCN alleged that out of 42 unique complaints pending against the Noticee as on November 30, 2020, in 11 complaints, the Noticee had filed the ATR after 30 days. In this regard, I note from the record that the status of pendency of complaint as on August 28, 2020 was as under:

S. No.	SCORES Complaint No.	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to the Noticee (X)	Date of receipt of initial reply from the Noticee (Y)	Difference between X and Y	Date of last communication
1	SEBIE/MP19/0000979/1	Anand Patel	18-03-2019	26-04-2019	09-06-2019	44	25-10-2019
2	SEBIE/MP19/0000223/1	Mistry Pinalkumar Ramanlal	27-12-2018	07-02-2019	02-05-2019	84	16-11-2019
3	SEBIE/MP18/0001976/1	Pyare lal	27-06-2018	16-08-2018	20-09-2018	35	16-10-2019
4	SEBIP/MP19/0000376/1	Kiran Aravalli	19-09-2019	25-09-2019	16-11-2019	52	22-11-2019
5	SEBIE/MP20/0000174/1	Ushar Kanti Dutta	17-01-2020	05-02-2020	No reply received	299	
6	SEBIE/MP19/0003189/1	Ram Charan Vijay	31-12-2019	01-01-2020	No reply received	334	
7	SEBIE/MP19/0003117/1	Ajinkya Bhosale	26-11-2019	28-12-2019	No reply received	338	

S. No.	SCORES Complaint No.	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to the Noticee (X)	Date of receipt of initial reply from the Noticee (Y)	Difference between X and Y	Date of last communication
8	SEBIE/MP19/0002906/1	Mihir Dharod	06-11-2019	27-11-2019	No reply received	369	
9	SEBIE/MP19/0002655/1	Lokesh kumar Gahlot	15-11-2019	27-11-2019	No reply received	369	
10	SEBIE/MP19/0002331/1	Sivannarayana Jakkamsetti	02-10-2019	28-11-2019	No reply received	368	
11	SEBIE/MP19/0002203/1	Srinibas Rao P	14-08-2019	17-12-2019	No reply received	349	

93. In this regard reference is made to SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations. The said SEBI circular mandates that all SEBI registered intermediaries are to take immediate action in the resolution of complaints within a period of thirty days and file an ATR with SEBI. Regulation 21(1) of the IA Regulations requires an Investment Adviser to promptly redress the grievances of its clients. Further, Regulation 28(f) states that if an Investment Adviser fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, it shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

94. In this regards, the Noticee has submitted that there was a huge delay from SEBI's end in forwarding the complaints, and it was this delay which created a problem in the timely resolution of such complaints.

95. I note from the above table that the calculation of delay has been made from the date on which the complaint was forwarded to Profit Guru and not the date on which the complaint was lodged on the SCORES portal. So, therefore to lay the blame for the delay in the redressal of the complaints on SEBI is misleading.

96. Also, the Noticee in reply to the SCN has submitted that post the Interim Order, the Noticee was directed to cease and desist from acting as an investment advisor and its entire bank accounts were frozen, due to which he could not resolve the pending complaints. In this regard, I would like to state that the Noticee could have

refunded the money of clients and resolved the complaint, by accessing the bank account with prior permission of SEBI, as per para 58.1.5 of the interim order.

97. In view of the above, I find that the Noticee had violated provisions of SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) of IA Regulations read with Regulation 28 (f) of IA Regulations.

98. The second issue to be addressed is as follows:

If answer to the aforesaid questions in first issue is in affirmative, whether the violations would attract monetary penalty on the Noticee under the provisions of Section 15C, 15EB, 15HA and 15HB of the SEBI Act?

From the discussion in the first issue, it is noted that the violations were established as described above and accordingly, the Noticee is liable for imposition of penalty in terms of Sections 15C, 15EB, 15HA and 15HB of SEBI Act.

Sections 15C, 15EB, 15HA and 15HB of the SEBI Act are reproduced as under:

SEBI ACT

Penalty for failure to redress investors' grievances.

15C*: If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication], to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

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

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

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.*

Penalty for contravention where no separate penalty has been provided.

15HB*: 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.*

99. The third issue to be addressed is as follows:

If answer to the aforesaid question in second issue is in affirmative, what should be the quantum of the monetary penalty?

In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI which is reproduced as under:

SEBI Act

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

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

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

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

(c)the repetitive nature of the default."

100. In view of the aforesaid facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred to under Section 15J of the SEBI Act stated as above. I note that a number of clients have suffered losses because of Noticee's action but based on material available on record I cannot quantify the loss caused to investors or the disproportionate gain earned by the Noticee. I would also like to take into account the fact that the Noticee was prohibited from accessing the securities market as per the Interim Order passed on February 06, 2020, in this case. Also, as per the aforesaid order, the Noticee's bank account was frozen and the Noticee is devoid of any income since then from its Investment advisory business . Also, SEBI ATR does not reflect any enforcement action against the notice in the past except the aforesaid Interim/ confirmatory and final order in the matter.

E. ORDER

101. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15C, 15EB, 15HA and 15HB, I hereby impose monetary penalty of Rs. 10,00,000/- (Rs Ten lakhs only) on the Noticee.

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

102. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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 AO → PAY NOW

103. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief, EFD1 – DRA - 4, Securities and Exchange Board of India, SEBI Bhavan, Plot no.C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051”. The Noticee shall also provide the following details while forwarding DD / payment information:

Case Name:	
Name of Payee:	
Date of Payment:	
Amount Paid:	
Transaction No.:	
Bank Details in which payment is made:	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	Penalty

104. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

105. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to Noticee viz. Profit Guru, Proprietor: Satish Shukla and also to SEBI.

Date: March 21, 2023 **SAHIL MALIK**
Place: Mumbai **ADJUDICATING OFFICER**