**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**(ADJUDICATION ORDER NO: Order/AS/VC/2024-25/31071)**

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

**In respect of**
**Sameer Pande - Research Analyst (Proprietor of Niftypro Trading Research)**
(PAN: AMAPP3518Q)
(SEBI Registration Number: INH000009649)

**In the matter of Sameer Pande - Research Analyst (Proprietor of Niftypro Trading Research)**

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**BACKGROUND OF THE CASE**

1. Sameer Pande - Research Analyst (Proprietor of Niftypro Trading Research) (hereinafter referred to as **'Noticee / RA-Sameer / RA'**) is registered with Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) as a Research Analyst since May 24, 2022 under SEBI (Research Analysts) Regulations, 2014 (hereinafter referred to as **'RA Regulations'**), bearing SEBI Registration No. INH000009649. RA-Sameer provides his services through www.niftypro.in and/or Mobile App in the name 'Nifty Pro'. The registered office of the RA is situated at Nagpur. SEBI conducted inspection in respect of RA-Sameer on March 15, 2024 and the period of inspection was from May 24, 2022 to January 31, 2024.

2. Based on the findings of inspection in respect of RA-Sameer, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of the SEBI Act, 1992 for alleged violations of the following provisions of law:

(a) Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (k), (o) and (s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**) read with Sections 12 A (a), (b) and (c) of SEBI Act, 1992.

(b) Clauses 1, 2, 6, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations.

(c) Clause C of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023 (hereinafter referred to as **'SEBI circular'**).

**APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI appointed Mr. Shashi Kumar Valsakumar, CGM as the Adjudicating Officer (hereinafter referred to as **'AO'**), vide order dated May 15, 2024, under Section 19 read with Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred as **'SEBI Rules'**), to inquire into and adjudicate under Sections 15EB of the SEBI Act, 1992, for the aforesaid alleged violations of the Noticee. Further, pursuant to transfer of erstwhile AO, the undersigned was appointed as AO in the matter *vide* order dated July 22, 2024.

**SHOW CAUSE NOTICE, REPLY AND HEARING**

4. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/19553/2024 dated June 13, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Rules read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed upon the Noticee under Section 15EB of the SEBI Act, 1992 for the alleged violations. I note that the SCN issued to Noticee was duly served to him and it was acknowledged by him. Vide e-mail/ letter dated July 02, 2024, Noticee submitted his reply to the SCN.

5. In the interest of natural justice, an opportunity of hearing on August 13, 2024 was granted to the Noticee vide Hearing Notice dated July 31, 2024. On August 13, 2024, Authorized Representative of the Noticee attended the hearing in-person at SEBI and reiterated the submissions made by the Noticee vide e-mail/ letter dated July 02, 2024.

6. It is observed that a settlement application was filed by the Noticee on July 10, 2024 and further a revised settlement application was filed by the Noticee on August 08, 2024 under the SEBI (Settlement Proceedings) Regulations, 2018. However, the settlement application was rejected by SEBI and thus the adjudication proceedings were resumed.

7. The allegations levelled against the Noticee in the SCN are summarised as under:

   *7.1. It was observed during inspection that RA-Sameer runs a website '<u>https://www.niftypro.in</u>' and the following statements were inter-alia observed on the home page of the website, indicating accuracy of stock recommendations provided by the RA, assured profits/returns and misleading testimonials:*

   *"Best Market Tips*
   *We maintain upto 90% accuracy*
   *accurate intraday calls in all segments*

   ***Under the section 'Why Choose Us?***
   *…… We can ensure you that we have the expertise and skills to find stocks with exceptional potential….*
   *….. You can trade and invest based on our recommendations to ensure that you generate consistent profits across markets irrespective of the volatility….*

   ***Testimonials:** the following testimonial was inter-alia, mentioned on the website of RA- Sameer which is misleading in respect of consistently unexpected returns:*

   *"They helped me in earning excellent returns from the Futures market. It has been 3 months now and I've been able to earn consistently unexpected returns" - Testimonial of K. Mahadevan.*

***Under Request a Free Call Back:** Book your profit today by research based recommendations."*

*7.2. In addition to the above statements on the website, it was observed that sales representatives of the RA have provided profit calculations i.e. expected returns from trading based on their recommendations. For instance, one of the representatives has assured profits of ₹ 7,000/- to ₹ 10,0000/- from a capital of ₹ 20,000/- to ₹ 25,000/-. The instances of representatives providing profit calculations during sales pitches were observed from the RA's analysis of sales calls made by their representatives during December 2023 to February 2024.*

*7.3. Further, it was also observed from the sample call recordings found on email of compliance@niftypro.in that the sales representatives of the RA indulged in assuring profits from trading based on recommendations provided by RA-Sameer. Some of the statements made by the sales representatives of the RA-Sameer assuring returns paraphrased from the sample call recordings are given below for illustration purposes:*

*"with a capital of ₹ 50,000/-, profit of ₹ 8,000/- to ₹ 10,000/- per day from single level can be generated and ₹ 18,000/- to ₹ 20,000/- profit can be generated from 2 to 3 levels per day"*

*"the RA fees can be recovered in 2 to 3 days of trading based on their recommendations"*

*"reference to profit making Demo stock recommendation are mentioned assuring future returns in similar fashion"*

*7.4. In view of the above, it was alleged that RA-Sameer/and its representatives have engaged in mis-selling of its research services by assuring profits from trading based on their recommendations. Further, by displaying statements alluding to their past performance, RA Sameer has allegedly violated the provisions of SEBI circular.*

*7.5. In view of the above, it was alleged that Noticee (RA-Sameer) has violated the following provisions of SEBI Regulations and Circular:*

(a) *Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (k), (o) and (s) of PFUTP Regulations read with Sections 12 A (a), (b) and (c) of SEBI Act, 1992.*

(b) *Clauses 1, 2, 6, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations.*

(c) *Clause C of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023.*

8. Reply of the Noticee submitted *vide* e-mail / letter dated July 02, 2024 is summarised as under:

*A.* *<u>Website of the Noticee:</u>*

*8.1. In response to allegation regarding return assurances on the Noticee's website, Noticee denied any such claims. The website's homepage displays a prominent disclaimer on the top of the page, written in layman's terms for easy comprehension and in easy-to-understand language, which explicitly states: "Investments in the stock_market are inherently risky. We do not offer guaranteed profits, fixed returns, or any assurances of success. Trading can result in partial or complete loss of capital. Clients must carefully review our legal disclaimer, terms and conditions, refund policy, and other company policies before subscribing to any NiftyPro Trading Research services, including research alerts."*

*8.2. SEBI appears to have overlooked this comprehensive disclaimer at the top of our homepage and focused instead on content that doesn't make explicit guarantees. The said content highlights the effectiveness and potential benefits of the Noticee's services. Such marketing language is a standard practice within the service industry. However, Noticee readily acknowledge that any demonstrably false claims would be actionable whereas here, it's important to note that the said content is entirely factual. Noticee showcases his 90% accuracy rate, the precision of his intraday calls, his team's expertise, and client testimonials to demonstrate his capabilities. Noticee maintains that his website does not make any assurances of profit or return.*

*8.3. However, in the spirit of cooperation and full compliance with SEBI's directives in the inspection report, Noticee has removed the aforementioned content of the updated homepage.*

B. *Sales representatives of the RA have provided profit calculations i.e. expected returns from trading based on their recommendations*

8.4. *With regard to the said allegation, Noticee submitted that this accusation lacks merit and is unsupported by any credible evidence as the sheet upon which the SEBI has relied upon is an internal lead generation sheet, not a client-facing document. lt does not constitute any actual promise or assurance of guaranteed returns.*

C. *Based from the sample call recordings, it was alleged that sales representatives of the RA indulged in assuring profits from trading based on their recommendations*

8.5. *With regard to the said allegation, Noticee reiterated that he has not assured / guaranteed returns rather he has demonstrated that the clients can earn from their trading activities in the securities market.*

8.6. *Furthermore, the statements as mentioned/ illustrated in the SCN, Noticee had stated that the client can earn similar profits/ fees can be recovered, where "can" denotes possibility, not certainty. It did not claim, there will definitely be profit, which is definitely dependent upon many factors. This aligns with the general understanding that investors seek profit in the inherently risky stock market. Further, the SEBI itself in an Order passed by the Whole-Time Member in the matter of "GRS Solution" had recognized similar statements to be merely marketing gimmicks rather than being an actual promise of assured returns, leading to the dismissal of such allegations.*

8.7. *Moreover, the call recordings as enclosed by the SEBI in the Annexure - G to the SCN also includes a welcome/ verification call done by the team wherein they do inform the clients/ investors regarding the risks involved in the market and also there is no assurance of any guaranteed returns in the securities market. Some of the statements made by the staff of the Noticee to the investors paraphrased from the said welcome call recordings are given below for the illustration purpose:*

- *"I am not saying that there will be no loss through our research, there may be profit or loss in the securities market, depending upon market conditions.*
- *We do not have 100% accuracy.*
- *There is no assurance of returns."*

8.8. *Hence, Noticee has not guaranteed/ assured returns rather he has made his clients aware regarding the inherent risks involved in the securities market, which is evidenced from Exhibit-B, which includes the user consent form, terms and conditions (provided and accepted by all clients), and relevant website screenshots.*

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

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

8.10. *Also, Noticee has a practise to execute the user consent form from all of the clients, wherein the clients acknowledge that:*

- *"I understand and accept that trading is a risky activity that involves the risk of loss of partial or complete capital and that there is no guarantee of profits or returns after subscribing to any of NiftyPro Trading Research alerts services.*
- *I understand and agree that NiftyPro Trading Research and/ or its owner/proprietor/managers/employees/associates do not provide any assurance or guarantee of accuracy or consistency of any our research alerts/ service.*
- *I confirm and accept that I do not expect a fixed return or a guaranteed return from the research alerts service subscribed by me and I fully understand that I*

*can/ might lose your partial or entire capital in trading & investing by referring to research services/ reports/ alerts of NiftyPro Trading Research.*

- *I declare that NiftyPro Trading Research and its proprietor/ Owner/ employees/ associates have not guaranteed me or assured me any returns or profits by trading and investing in the stock."*

*8.11. Moreover, till date none of the clients/ investors has ever alleged that he has been lured by the Noticee or Noticee had promised him assured returns, which support the claim of the Noticee of not providing any kind of assured returns.*

*8.12. Noticee further submitted that in order to strengthen his compliance framework, he will keep in mind such points and will not use any of such terms in its client communication to avoid any concern/ dispute.*

*D. Violation of PFUTP Regulations*

*8.13. With regard to the allegation that the Noticee has committed fraud and have violated the PFUTP Regulations, Noticee submitted that if his intention was of defrauding the clients then he would not have opted for SEBI registration and followed the requisite applicable compliances. Also, the definition of "fraud" as defined in regulation 2(1)(c) of the PFUTP Regulations which provides as under:*

*"(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss ………"*

*8.14. Based upon the above definition, it can be construed that the definition of "fraud" under regulation 2(c), is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. Hence, the serious violations of the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a) to (d) of the PFUTP Regulations be removed.*

8.15. *Further, Noticee placed his reliance on the observations of QJA in the matter of Star World Research; wherein it was held that "With respect to the definition of "fraud" under regulation 2 (c), I am of the view that the same is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2 (1)(c) of PFUTP Regulations. There is no proof to show that the IA has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. In view of this, the misleading representations made by the IA to its clients and the wrong categorisation of clients and selling high risk products to unsuitable clients or levying GST after cancellation of its GSTN, etc., would not bring the Noticees acts within the prohibition under the PFUTP Regulations. These are violations of the prescriptions laid down in various provisions of the IA Regulations and the Code of Conduct. I am, therefore, inclined to drop the allegation of fraudulent and unfair trading in favour of the Noticee."*

8.16. *Noticee further relied on the observations of AO in the matter of Niveshicon Investment Advisor, and stated that similar interpretation was made in that case also and the alleged violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 were dropped.*

8.17. *Further, no evidence on record has been established by the SEBI which evidences any fraud committed by the Noticee. In that regard, Noticee referred to the Order of Hon'ble Securities Appellate Tribunal (**'SAT'**) dated January 04, 2022 in the matter of Ms. Suhanika Chourey and stated that the findings of PFUTP violations were set aside in that case as there was no evidence brought out on record.*

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

8.19. *Noticee further submitted that SEBI itself in its Orders in the matter of Star World Research and Niveshicon Investment Advisor has stated that for construing the definition of fraud, the fraud shall be committed while "dealing in security" and in absence of that the acts will not fall within the ambit of PFUTP Regulations.*

8.20. *Regarding levying of penalty, Noticee has referred to the Order of Hon'ble SAT dated June 16, 2011, in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011) and submitted that he is not liable for any monetary penalty under the provisions of Section 15EB of the SEBI Act, 1992.*

8.21. *Noticee also submitted that since he is just his second year of operations and has improved his framework post the inspection and also he has not violated any provisions and therefore is not liable for any monetary penalty under the provisions of Section 15EB of the SEBI Act.*

## CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   **I.** Whether the Noticee has violated the provisions of the SEBI Act, 1992, SEBI Regulations and SEBI Circular as indicated in para no. 2 hereinabove?

   **II.** Does the violation, if any, attract monetary penalty under Section 15EB of the SEBI Act, 1992?

   **III.** If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Rules?

10. Before proceeding further, it is pertinent to refer to the relevant provisions of SEBI Act, 1992, SEBI Regulations and SEBI Circular which are alleged to have been violated. The said provisions are reproduced hereunder for ease of reference:

    ***PFUTP Regulations:***

    ***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 manipulative fraudulent or an unfair trade practice if it involves any of the following: —*

*……………..*

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

*……………..*

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

*……………..*

*(s) 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;*

***<u>SEBI Act, 1992</u>:***

*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 there under;*

***<u>RA Regulations:</u>***

***General responsibility.***

*(2) Research analyst or research entity shall abide by Code of Conduct as specified in Third Schedule.*

***THIRD SCHEDULE***

***[See sub-regulation (2) of regulation 24]***

***Code of Conduct for Research Analyst***

***1. Honesty and Good Faith***

*Research analyst or research entity shall act honestly and in good faith.*

***2. Diligence***

*Research analyst or research entity shall act with due skill, care and diligence and shall ensure that the research report is prepared after thorough analysis.*

***6. Professional Standard***

*Research analyst or research entity or its employees engaged in research analysis shall observe high professional standard while preparing research report.*

***7. Compliance***

*Research analyst or research entity shall comply with all regulatory requirements applicable to the conduct of its business activities.*

***8. Responsibility of senior management***

*The senior management of research analyst or research entity shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures.*

***SEBI circular SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023:***

***c. Prohibitions in the advertisement:***

*The advertisement shall not contain:*

*i. Anything which is prohibited for publication under the law.*

*ii. Statements which are false, misleading, biased or deceptive, based on assumptions or projections.*

*iii. Any misleading or deceptive testimonials.*

*iv. Statements which, directly or by implication or by omission, may mislead the investor.*

*v. Any statement likely to be misunderstood or likely to disguise the significance of the same or any other statement contained in the advertisement.*

*vi. Any statement designed to exploit the lack of experience or knowledge of the investors.*

*vii. Any statement that is exaggerated or is inconsistent with or unrelated to the nature and risk and return profile of the product.*

*viii. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may distract the investors.*

*ix. Reference to any report, analysis, or service as free, unless it actually is free and without condition or obligation.*

*x. Any promise or guarantee of assured or risk free return to the investors. The advertisement shall not imply any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice/recommendation of research report is risk-free and/or not susceptible to market risks and/or that it can generate returns with any level of assurance.*

*xi. Any statement which directly or indirectly discredits other advertisements or intermediaries or makes unfair comparisons or ascribes any qualitative advantage over other intermediaries directly or indirectly.*

*xii. Reference to past performance of the IA/RA.*

*xiii. Superlative terms such as "Best", "No. 1", Top Adviser/Research Analyst, "Leading", "One of the best amongst market leaders", etc. so as to provide any endorsement of quality or standing of the IA/RA. However, factual details of awards received by the IA/RA from independent organizations may be included.*

*xiv. Advertisements shall not include SEBI Logo.*

*Note: For detailed/ complete text of the provisions, relevant Acts, Regulations, Circulars etc., may be referred.*

11. Based on perusal of the material available on record, submissions of the Noticee and giving regard to the facts and circumstances of the case, I record my findings hereunder:

**Issue I. Whether the Noticee has violated the provisions of the SEBI Act, 1992, SEBI Regulations and SEBI Circular as indicated in para no. 2 hereinabove?**

12. It was alleged in the SCN that Noticee displayed the accuracy of stock recommendations provided by him, assured profits / returns and misleading testimonials on his website. It was further alleged that sales representatives of the Noticee have provided profit calculations i.e. expected returns from trading based on their recommendations and they have also assured profits to the clients from trading based on recommendations of RA, during the sales calls made by them. Hence, Noticee was allegedly engaged in mis-selling of his research services by assuring profits from trading based on his recommendations. Further, it was alleged that by displaying statements alluding to their past performance, Noticee violated the provisions of SEBI circular.

13. In response to the allegations of displaying the accuracy of stock recommendations provided by him, assured profits / returns and misleading testimonials on his website, Noticee submitted that the website's homepage displays a prominent disclaimer regarding stock market risks, profits, fixed returns and assurances of success etc., which have been overlooked by the SEBI. Noticee submitted that such marketing language is a standard practice within the service industry. Noticee stated that the said content is entirely factual, which showcases his 90% accuracy rate, the precision of his intraday calls, his team's expertise, and client testimonials to demonstrate his capabilities.

14. I note that as per SEBI circular SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023, the advertisement shall not *inter-alia* contain the following:

    (i) Statements which are false, misleading, biased or deceptive, based on assumptions or projections;

    (ii) Any misleading or deceptive testimonials;

(iii) Statements which, directly or by implication or by omission, may mislead the investor;

(iv) Any promise or guarantee of assured or risk free return to the investors. The advertisement shall not imply any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice/recommendation of research report is risk-free and/or not susceptible to market risks and/or that it can generate returns with any level of assurance.

(v) Reference to past performance of the IA/RA.

(vi) Superlative terms such as "Best", "No. 1", Top Adviser/Research Analyst, "Leading", "One of the best amongst market leaders", etc. so as to provide any endorsement of quality or standing of the IA/RA. However, factual details of awards received by the IA/RA from independent organizations may be included.

15. I find that content displayed on the website 'https://www.niftypro.in' run by the Noticee contained the following: '*Best Market Tips', 'We maintain upto 90% accuracy', 'accurate intraday calls in all segments', and '….. You can trade and invest based on our recommendations to ensure that you generate consistent profits across markets irrespective of the volatility….'.* In this regard, I note that the usage of words such as 'best' and 'accurate' in the advertisement are prohibited as per SEBI circular, however, the website run by the Noticee had mentioned these prohibited words. I further observe that the Noticee has made reference to his past performance on its website by mentioning '90% accuracy', which is clearly prohibited as per SEBI circular.

16. Further, in my view that statements such as *'**accurate intraday calls** in all segments'*, and *'…..You can trade and invest based on our recommendations to **ensure that you generate consistent profits across markets irrespective of the volatility**….'* would fall in the category of promise or guarantee of assured or

risk free return to the investors. Further, I note that these statements are also misleading and deceptive as such statements have the possibility of misleading the investors, which is prohibited as per SEBI circular.

17. Also, I note that the testimonial displayed on website of the Noticee state that *"They helped me in earning excellent returns from the Futures market. It has been 3 months now and I've been able to earn consistently unexpected returns".* In this regard, I observe that the testimonial containing the statement *'…. I've been able to earn consistently unexpected returns'* is in violation of the SEBI circular, which provides that the advertisement shall not contain any misleading or deceptive testimonials. In my view, the possibility of earning the unexpected returns consistently, as claimed in the said testimonial, is very rare and scarce in the stock market and displaying such kind of testimonial on website of the Noticee is misleading and deceptive to the investors.

18. I further note that, the website of the Noticee displayed that *'Book your profit today by research based recommendations'* under 'Request a Free Call Back' section. In my view, the said assertive statement mentioned by the Noticee indicates RA's assurance to the investors of booking the profit on same day of registration / availing his services. Hence, it indicates that the Noticee provided the implied assurance of return to the investors.

19. In response to the allegations of providing the profit calculations by the sales representatives i.e. expected returns from trading based on recommendations of the RA, Noticee submitted that SEBI has relied upon is an internal lead generation sheet, not a client-facing document, which does not constitute any actual promise or assurance of guaranteed returns. Further, in response to the allegations of promising assured profits to the clients from trading based on recommendations of RA, during the sales calls made by sales representatives, Noticee submitted that he has not assured / guaranteed returns rather he has demonstrated that the clients can earn from their trading activities in the securities market. Noticee further

submitted that he did not claim that there will be profit definitely, but he stated that clients can earn similar profits/ fees can be recovered.

20. I find that data / information sheet relied upon by SEBI for levelling of allegations of providing the profit calculations by the sales representatives was RA's own analysis of sales calls made by his representatives during December 2023 to February 2024, which is not disputed by the Noticee. The contention raised by the Noticee is that said information was an internal lead generation sheet and not a client-facing document cannot be accepted as the lead generation sheet of RA is a records of the calls of the RA's sales representatives with potential clients. It reveals that his sales representatives have provided profit calculation i.e. expected returns from trading based on their recommendations during the calls with the clients. Therefore, the said contentions of the Noticee are not tenable.

21. Further, I find from the call recordings of calls made by the sales representatives of the Noticee to the clients that they have clearly given assurance of profits to the clients at multiple instances. Some of the statements made by the sales representatives of Noticee assuring returns, paraphrased from the sample call recordings, are given below for illustration:

*"with a capital of ₹ 50,000/-, profit of ₹ 8,000/- to ₹ 10,000/- per day from single level can be generated and ₹ 18,000/- to ₹ 20,000/- profit can be generated from 2 to 3 levels per day….. ₹ 2,40,000/- profit can be made in a month."*

*"₹40,000/- per day can be made from a single level and by working 18 days in a month, a total profit of ₹7,20,000/- can be made."*

*"the RA fees can be recovered in 2 to 3 days of trading based on their recommendations"*

*"reference to profit making Demo stock recommendation are mentioned assuring future returns in similar fashion"*

22. I observe from the above mentioned statements made by the sales representatives of the Noticee, that they have promised assured profits / returns to the clients from

trading based on their recommendations at many instances. Further, I also note that Noticee has made reference to his past performance. Therefore, the above contentions of the Noticee are not tenable.

23. In this regard, Noticee has also made other submissions such as a welcome / verification call is made by his team wherein they inform the clients / investors regarding the risks involved in the market, he has made his clients aware regarding the inherent risks involved in the securities market through the user consent form, and terms and conditions which are accepted by all clients and his website explicitly outlines the inherent risks associated with stock market investments etc. I note that the violations observed in preceding paragraphs *viz.* making the promises of assured profits / returns, providing the profit calculations, making reference to the past performances, using the misleading testimonial and prohibited words in the advertisements etc. and giving disclaimer / informing the clients are two different propositions. Further, informing the clients or making them aware about risks involved in the securities market is a responsibility of a SEBI registered RA. However, giving the disclaimers by the Noticee regrading risks involved in the securities market does not mean that the Noticee, at the same time, can make the promises of assured profits / returns to the clients and use the misleading testimonial and prohibited words in the advertisements. The said acts of the Noticee are in violation to the SEBI circular, hence, the contentions of the Noticee are not acceptable.

24. In view of the above findings, I hold that Noticee (RA-Sameer) has violated the following provisions:

    (a) Clauses 1, 2, 6, 7 and 8 of Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations.

    (b) Clause C of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023.

25. On the basis of aforesaid violations of the provisions of RA Regulations and SEBI circular, it was alleged in the SCN that Noticee has also violated the provisions of PFUTP Regulations. In response to the allegations of violation of provisions of PFUTP Regulations, Noticee submitted that his intention was not of defrauding the clients. Noticee further submitted that the "fraud" is defined in regulation 2(1)(c) of PFUTP Regulations and for establishing "fraud" there has to be "dealing in securities" as defined under Regulation 2(1)(c) of PFUTP Regulations and there is no proof which evidences that the Noticee has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. In this regard, Noticee placed his reliance on the observations of QJA in the matters of Star World Research and Niveshicon Investment Advisor and stated that similar interpretations were made in these case also. Further, Noticee also referred to the Order of Hon'ble SAT dated January 04, 2022 in the matter of Ms. Suhanika Chourey and stated that the findings of PFUTP violations were set aside in that case as there was no evidence brought out on record.

26. With regard to allegations of violations of PFUTP Regulations, I would like to refer to the definition of "fraud" as given in Regulation 2(1)(c) of the PFUTP Regulations, which provides as under:

*"(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

(1) *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

(2) *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……."*

27. I am of the view that the definition of "fraud" under Regulation 2(1)(c) of the PFUTP Regulations is very wide in nature. In the matter at hand, Noticee made the promise of assured profits / returns to the clients, made the reference to his past performance, gave the misleading testimonial and provided the profit calculations i.e. expected returns to the clients etc. which are in violation to the provisions of the said SEBI circular and Code of Conduct as specified in the Third Schedule under Regulation 24(2) of RA Regulations. However, I am of the view that there is not enough material on record to show that these acts fall within the definition of "fraud" under the PFUTP Regulations. Allegations of fraud in the instant matter are not supported by other evidences that such actions induced another person or his agent to deal in securities.

28. In this regard, I find it pertinent to refer to the observations of the Hon'ble Supreme Court of India in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, which are as under-

*"The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission,*

*as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"............ to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient."*

29. I note that the Hon'ble Supreme Court while interpreting the definition of "fraud" held that to constitute fraud under definition of fraud only "inducement" while dealing in securities is required. The acts of making one to one promises or making misleading representations to make the clients to buy the services or to invest in various securities in itself cannot be considered to attract the prohibitions under PFUTP Regulations, unless there is sufficient proof of "dealing in securities", in the sense contemplated under the PFUTP Regulations. In the instant matter, there is no proof to show that Noticee has committed fraud while "dealing in securities" as per the PFUTP Regulations. Hence, in view of the aforesaid and the prudent view that the allegation of fraud is serious offence which requires high level of proof, I find that the material available on record is insufficient to establish the violation of Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (k), (o) and (s) of PFUTP Regulations read with Sections 12 A (a), (b) and (c) of SEBI Act, 1992 by the Noticee.

**Issue II. Does the violation, if any, attract monetary penalty under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992?**

30. I find from the findings and observations made against the Noticee and other material available on record that the Noticee has failed to comply with the regulatory provisions and also failed to adhere to high standards of services to its

clients. The aforesaid violations make the Noticee liable for monetary penalty under the provisions of Sections 15EB of the SEBI Act, 1992.

31. With regard to levying of penalty, Noticee has referred to the Order of Hon'ble SAT dated June 16, 2011, in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011), wherein it is observed that the purpose of carrying out inspection is not punitive and every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not attract penalty. Noticee submitted that he is not liable for any monetary penalty under the provisions of Section 15EB of the SEBI Act, 1992.

32. In this regard, I have perused the orders of Hon’ble SAT in matter of Religare Securities Limited Vs. SEBI, relied upon by the Noticee. I note that Hon’ble SAT has held as a general principle that the object of the inspection is to ensure compliance with the provisions meant to regulate the securities market and every little irregularity/ deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. However, the Hon’ble SAT has not laid down that all defaults observed during inspection would attract no penal action at all. In fact, Hon’ble SAT has also held that if any serious lapse is observed, it would be always open to the Board to take penal action. Further, I find that the violation of provisions that stand established in the said cases is different from the violation of regulatory provisions that have been established in the present case of the Noticee. Hence, I note that the said case does not stand on the same footing as the given case of the Noticee.

33. Further, reliance is placed upon the judgment of Hon’ble Supreme Court of India in the matter of **SEBI Vs. Shriram Mutual Fund** [2006] 68 SCL 216(SC), wherein it was *inter-alia* observed that: *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the*

*Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"

34. Therefore, the aforesaid violations make the Noticee liable for penalty under Sections 15EB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

***SEBI Act, 1992*:**

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

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

**Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Rules?**

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

***SEBI Act, 1992:***

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

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

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

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

*(c) the repetitive nature of the default.*

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

36. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the RA Regulations and said SEBI Circular is not available. With respect to the repetitive nature of the default, I do not find anything on record.

37. However, I note that the role of a Research Analyst is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the research report or recommendations of such RAs. In this regard, the role of an RA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every RA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs shows that RA has failed in his fiduciary duties owed to its clients and also failed to comply with the provisions of Code of Conduct as specified under the RA Regulations. The conduct of the Noticee in not complying with the provisions of RA Regulations and said SEBI Circular make him liable for monetary penalty. However, I also note that Noticee has removed the aforementioned contents from the website run by him and he has improved his framework post the inspection and these factors are being considered as mitigating factors while deciding the quantum of penalty.

**ORDER**

38. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15-J

of the SEBI Act, 1992 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Rules, I hereby impose a monetary penalty of Rs. ₹ 2,00,000/- (Rupees Two Lakhs Only), under Section 15EB of the SEBI Act, 1992, on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

39. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

**ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

41. In terms of Rule 6 of the SEBI Rules, copy of this order is sent to the Noticee and also to the SEBI.

| | |
|---|---|
| **Place: Mumbai** | **ASHA SHETTY** |
| **Date: December 24, 2024** | **ADJUDICATING OFFICER** |