WTM/AN/WRO/WRO/29772/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulations 27 and 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sl. No.	Name of Noticee	SEBI Registration No.
1	Ms. Pinky Kelva, Proprietor of Future Investment	INA000008242

In the matter of Future Investment

BACKGROUND

1. The present matter emanates from show cause notice dated July 10, 2023 (hereinafter referred to as "**SCN**") issued to Future Investment (Proprietor: Ms. Pinky Kelva) (hereinafter referred to as "**Future / Noticee**") under regulation 27(1) of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**"). The Noticee is registered with SEBI as an Investment Adviser since August 8, 2017 having registration no. INA000008242.

2. Vide the above mentioned SCN, Noticee was called upon to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as "**DA**") or any other direction as deemed fit should not be issued / imposed on her in terms of Intermediaries Regulations. The issued SCN enclosed therewith the Enquiry Report of the DA dated June 23, 2023 made with respect to the Noticee.

3. The DA in her report had observed the following against the Noticee:

   3.1. Noticee had promised assured / guaranteed returns to her clients;

   3.2. Noticee had dealt unfairly with her clients and had extorted more money under different pretexts;

3.3. Noticee had sold multiple packages to her clients and had collected multiple payments in a short period;

3.4. Noticee did not provide advice in line with the risk profile of her clients;

3.5. Noticee had obtained trading account credentials from her clients for trading on their behalf;

3.6. Noticee had failed to redress investor grievances.

4. Based on the aforesaid findings, the DA held that the Noticee has violated the following provisions of law:

4.1. Regulations 15(1), 15(3), 16(e), 17(a), 17(b), 17(d), 17(e) of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"), clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

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

4.3. SEBI Circular CIR/OIAE/2014 dated December 18, 2014 read with regulation 21 of IA Regulations.

5. The DA in her report has made the following recommendation:

"...I hereby recommend that the certificate of registration of the Noticee i.e. INA000008242 be cancelled."

6. The post enquiry SCN in the matter was sent to the last known address of the Noticee by speed post acknowledgment due. However, the same came back undelivered with remarks "*ADDRESSEE MOVED*". The SCN was attempted to be served through Stock Exchanges and Depositories on the Noticee. However, they were also not able serve the SCN on the Noticee. An attempt was made to affix the SCN at the last known address of the Noticee. The same was also not

successful. Considering that the SCN could not be served through the aforesaid modes, the details of the SCN was published in the newspapers (Times of India - English and Patrika - Hindi) on August 29, 2023. The SCN was also uploaded on the SEBI website under the heading “Unserved Summons / Notices”. It is noted from the records that no reply has been received from the Noticee in response to the SCN.

7. In compliance with the principles of natural justice, an opportunity of personal hearing was provided to the Noticee on November 2, 2023. The details of the hearing notice dated September 26, 2023 was published in the newspapers (Times of India - English and Nav Bharat - Hindi) on October 20, 2023. The hearing notice was also uploaded on the SEBI website under the heading “Unserved Summons / Notices”. On the day of the scheduled hearing, the Noticee failed to appear for the hearing.

8. Under the circumstances, I find that the principles of natural justice have been complied with adequately in the present matter and the matter is fit to be proceeded with, based on the material available on record.

BRIEF HISTORY OF THE CASE

9. Before moving forward to consider the matter on merits, the background facts necessary for the present proceedings are narrated in brief as under:

9.1. SEBI had received a number of complaints against the Noticee. Pursuant to the complaints, SEBI carried out an examination in relation to the affairs of the Noticee.

9.2. During the pendency of the examination, SEBI passed an *ex parte* Interim Order dated September 29, 2020, against the Noticee for violation of provisions of SEBI Act, IA Regulations and PFUTP Regulations. The *prima facie* findings of the Interim Order were same as that noted by the DA in her report.

9.3. In light of the *prima facie* findings of the Interim Order, following directions among others, were issued against the Noticee:

9.3.1. Ms. Pinky Kelva, proprietor of Future Investment, is restrained from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any

manner whatsoever or on behalf of any of her clients through their accounts, till further directions.

9.3.2.Ms. Pinky Kelva, proprietor of Future Investment shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.

9.3.3.Ms. Pinky Kelva, proprietor of Future Investment is directed 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 her name or her proprietary firm's name i.e., Future Investment, including money lying in bank accounts except with the prior permission of SEBI.

9.3.4.Ms. Pinky Kelva, proprietor of Future Investment is directed not to divert any funds raised from investors, kept in bank account(s) and/or in her custody until further orders.

10. Subsequently, a Confirmatory Order dated June 3, 2021 was passed against the Noticee wherein all the directions issued vide the Interim Order was confirmed against the Noticee.

11. Pursuant to the completion of the examination in the matter, proceedings under Intermediaries Regulations was initiated against the Noticee. Accordingly, the DA issued a SCN dated March 16, 2023 to the Noticee under regulation 25 (1) of the Intermediaries Regulations. The proceedings before the DA was concluded post submission of the Enquiry Report dated June 23, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have perused the post Enquiry SCN including the Enquiry Report and the Examination Report. Having considered the allegations levelled against the Noticee in the instant matter, I note that the following issues arise for consideration in the present proceeding:

12.1. Whether the Noticee was providing assured / guaranteed returns to her clients in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?

12.2. Whether the Noticee was unfairly dealing with her clients and had extorted more money under different pretexts in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?

12.3. Whether the Noticee had sold multiple packages to her clients and has collected multiple payments in a short period in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?

12.4. Whether the Noticee provided advice which was not in line with the risk profile of her clients in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?

12.5. Whether the Noticee obtained trading account credentials from her clients for trading on their behalf in violation of provisions of IA Regulations?

12.6. Whether the Noticee had failed to promptly redress her clients' grievances in violation of provisions of IA Regulations and SEBI circular dated December 18, 2014?

13. Before I proceed to examine the charges vis-à-vis the evidence available on record, it would be appropriate at this stage to refer to the relevant provisions of the securities laws, which are alleged to have been violated by the Noticee and are referred to in the present proceedings. The same are reproduced below for ease of reference:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder**;***

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, mutualisation 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 :—

…

(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

Investment Advisers Regulations

General responsibility.

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.

…

(3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

…

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

***Risk profiling**.*

16. Investment adviser shall ensure that,-

…

(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) …

(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.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

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.

SEBI circular no. CIR/OIAE/2014 dated December 18, 2014

9. All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

10. The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company / SEBI registered intermediary to the concerned investor should

also be uploaded in SCORES and preserved by the listed company / SEBI registered intermediary, for future reference.

11. Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

13. Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

Issue No. 1: *Whether the Noticee was providing assured / guaranteed returns to her clients in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?*

14. The DA has concluded that the Noticee had been providing assured / guaranteed returns to her clients and luring them to buy the services.

15. In this regard, I note that during the course of examination, few WhatsApp messages and SMSs exchanged between the employees of the Noticee and the clients were taken on record. Further, few email correspondences between the employees of the Noticee and the clients were also taken on record. An illustration of the aforesaid correspondences are reproduced below:

15.1. <u>Email communication of the Noticee with Mr.Vikash Pushkar</u>

Mr. Vikash Pushkar had received an email dated July 16, 2018 from support@futureinvestments.in wherein it is stated as follows:

> *"…We are looking forward to provide you a big opportunity to branch out and make bigger money.*

…

As per your discussion with your subordinates the details of your services are given below-

Equity Blaze"

Service amount	***Net payable***	***Duration (1+1)***	***Registration charge***	***Net Return***
4,50,000/-	*4,50,000/-*	*60 days*	*75,000/-*	*10,00,000/-*

It is observed from the above table that, if the client avails the package, Equity Blaze by paying a service amount of INR 4,50,000/-, the **net return** under the said package within a period of 60 days is stated as INR 10,00,000/-.

15.2. <u>WhatsApp communication of Noticee's employee Mr. Rishab with Mr. Raghava Kalva</u>

- *"23/04/19, 3:23 pm – raghava: I have 10000 you told me that I can make from 30000 to 50000 a month*

  23/04/19, 3:23 pm – raghava: Did you?

  23/04/19, 3:23 pm – Future Investment: Yes sir"

- *"23/04/19, 3:26 pm – Future Investment: Yesterday my paid client got 53k profit in bank nifty with just investment of 12k*

  23/04/19, 3:28 pm – Future Investment: Sir don't worry about profit. That is my task, and ***I will surely provide you promised profits****."*

- *"13/05/19, 9:52 am – Future Investment: Minimum 5000 is required for registration.*

  13/05/19, 9:52 am – Future Investment: That will be recover in 2 sessions."

- *"25/06/19, 2:03 pm – Future Investment: Update me as soon as you receive service id*

25/06/19, 2:06 pm – raghava: Dear Raghav, Congratulations for your service allocation in the services of jobbers cash of 1.50 lkh for the approx. suggested return of 4.50 lkh during your service. Your service id-raghWITG@71919 will be valid for your services."

- *28/06/19, 7:29 pm – raghava: Are you sure about the returns*

28/06/19, 7:30 pm – Future Investment: Sir then last time arrange 14k more for tomorrow and ***I promise I will recover amount within 15 days****."*

From the above, it is observed that the Noticee's employee is suggesting a return amount on the investment amount, if the client avails Noticee's services and is also promising to recoup the investment of the client within few days.

It is also noted from the above communication of Noticee's employee with the client that the employee is referring to a profit made by one of the Noticee's client to the tune of INR 53,000/- on his investment of INR 12,000/-.

15.3. <u>SMS of FI employee with Mr. Rajib Debnath</u>

On October 31, 2019 at 4:19 pm Mr. Rajib Debnath had received a SMS which stated as follows:

"Dear Sir,

This is inform you that you will be make the payment of INR 45,750/- and after the remaining amount INR 45,750 you have profits of INR 1.5 LKH.

Regards, Future Investment."

16. In view of the above correspondences (WhatsApp, email and SMS) it is observed that the Noticee has been, in her communications with her clients, explicitly promising assured returns / profits to her clients. The very fact that the Noticee has been assuring a "*Net Return*" on availing a particular service from her, is not only assuring the client of a specified return but is also enticing the client to avail her services by showing exaggerated return on the initial investment amount that too within a short period of time. If the Noticee was not inducing her clients by the optics of high returns, then there would be no need

for the Noticee to quantify the return. The very fact that a particular sum was quantified shows that the client was lured in by giving the impression that a specific high return can be achieved by availing the services of the Noticee. As noted above, the act of the Noticee of promising an assured return was not an isolated instance. The WhatsApp chat with Mr. Raghava Kalva shows that the Noticee was explicitly promising profits to the client. To a query raised by the client, whether the Noticee is "*sure about the returns*", the Noticee replied that the Noticee would recover the amount (INR 4.50 lakh) within 15 days if the client deposits INR 15,000/- more. As if such assurance was not enough, the Noticee also tried to lure the client to avail the service by informing the client about the significant profit (441% approximately) made by a different client on a small investment. In effect, the Noticee was making a representation to her client that, irrespective of the dynamics of the securities market, a specified profit was achievable. Securities market returns are volatile and unpredictable. In my view, being a registered IA, knowing the dynamics of the securities market, still the Noticee committed to recover the registration charges and promised to make substantial profit, is an act of misleading the client with the sole purpose of selling her service(s) to the client.

17. Being a registered IA, the Noticee can be reasonably expected to know the fundamental principle of the securities market, that all investments in securities market are subject to market risks and that returns cannot be assured no matter how much and for how long the investment is made. Accordingly, the Noticee is expected to take due care in her communication with her clients and should refrain from such communication which is misleading and may influence decision of investors. However, from, the above instances, it is clear that the Noticee has been, in her communications with the clients, promised assured returns. Such promises are misleading and can be regarded as nothing but acts of inducing the clients.

18. In this context, I draw reference to the Order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of *24 Carat Financial Services* vs. *SEBI* decided on January 18, 2023. Though the matter was related to Research Analyst, one of the issues involved in the matter was related to the

employees of the appellant, promising guaranteed returns to the prospective clients on investment of certain amounts. The Hon'ble Tribunal while adjudicating the said issue, held as follows:

"…Further guaranteed returns were promised quoting profit percentage or certain amount either monthly or on a daily basis. The action of promising guaranteed returns is patently against the principles of the securities market and not only manipulative but also fraudulent and violative of Regulations 3 and 4 of the PFUTP Regulations…"

19. Drawing parallel from the aforesaid Order of Hon'ble SAT, I note that the act of the Noticee of promising assured returns, is a misrepresentation of the truth. Neither there exists any grounds for belief of such returns nor can the assured returns be achieved with any certainty. An IA cannot make a false statement without reasonable ground for believing it to be true. The conduct of the Noticee of not disclosing all the material aspect with respect to the investment made in the securities market especially the likelihood of erosion of capital shows the deceptive behavior of the Noticee. The same was done with the sole purpose of influencing the decision of the prospective clients to avail the services of the Noticee. Therefore, the conduct of the Noticee has led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

20. Further, the IA has, by promising high returns to the clients, by concealing material facts and by not exercising due care and diligence in her dealings with her clients, has not been honest and has not acted in the best interest of her clients. Thus, the Noticee has failed to act in a fiduciary capacity towards her clients, which has led to the violations of regulation 15(1) of IA Regulations, clauses 1 and 2 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

Issue No. 2: *Whether the Noticee was unfairly dealing with her clients and had extorted more money under different pretexts in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?*

21. The DA has found that the Noticee did not disclose the fee structure completely to the clients. The charges for service tax and GST were not disclosed to the

client upfront by the Noticee. The Noticee tried to extract more money from clients under different pretexts such as GST, differential amount, creation of service id fees etc. It is further observed that if the client refused to pay additional service charges, the Noticee threatened the client with forfeiture of the amount paid earlier.

22. In this regard it is noted from WhatsApp messages that the Noticee did not inform her clients about the entire fee structure at the outset but has demanded fees gradually from her clients under different pretexts. Some of the instances are as under:

22.1. <u>WhatsApp communication with Mr. Raghava Kalva:</u>

"27.06.19, 1.20 pm – Future Investment: If today you don't pay, the result will be lost of 80k of services and 4.5 lacs of profits.

27.06.19, 1:20 pm – raghava: I would pay, if I have

27.06.19, 1:21 pm – raghava: I payed what ever I have

27.06.19, 1:21 pm – Future Investment: Then arrange for it

…

27.06.19, 1:22 pm – raghava: I took it from my father

27.06.19, 1:22 pm – raghava: You know I struggle to pay 5k

27.06.19, 1:22 pm – Future Investment: So took more and say them that you will pay after 15 days.

…

27.06.19, 4:17 pm – Future Investment: Ask your parents for last time. tomorrow fresh contract are opening in bank nifty so you can earn upto 5k.

…

29.06.19, 12:36 pm – raghava: I will pay after a 5fsys

29.06.19, 12:37 pm – raghava: Days

29.06.19, 12:37 pm – future Investment: and make the excuse of amount. I am just asking for 13570 only

29.06.19, 12:37 pm – future Investment: No.. today you have

29.06.19, 12:38 pm – future Investment: before 2.30

…

29.06.19, 12:40 pm – raghava: Don't be money minded. You know how much I have paid and how much you asked in the starting. I more then you have asked. I don't have man

…

29.06.19, 12:40 pm – raghava: I know you are fraud. You ask for more money

29.06.19, 12:40 pm – raghava: I paid more then you have asked

29.06.19, 12:41 pm – future Investment: okay then leave

29.06.19, 12:41 pm – raghava: pay my money back

…

29.06.19, 12:42 pm – future Investment: Non refundable policy

29.06.19, 12:42 pm – raghava: What you did not say all this before."

It is observed from the above communication that the client has paid more than what was disclosed to him at the beginning of his service / packaged availed by him. Thus, it is observed that the Noticee has not disclosed the full amount at the time of initial product / service selling to the client but gradually demands it from the client giving reasons that if the client does not pay the same then services will be stopped and profits will also be lost. Therefore, it can be inferred that the additional amounts were demanded by the Noticee to extract more and more money from the clients.

22.2. <u>WhatsApp communication with Mr. Rajeev B:</u>

"Rajeev B: Mail was sent to me not clearing my querries.

FI (Shruti): U have to pay service amount remaining from profit that I will mail u. Tax u have to clear now. Aftrr 72000 u have to pay after profit only.

FI (Shruti): There is no refund policy.

Rajeev B: Okay. You can deliver the same statement to SEBI, NSE, BSE, Indore Police and other Competent Authorities.

FI (Shruti): Sebi donot ask for refund if client is denying to take service ok

…

Rajeev B: Also without signing the service contract how could I start working?

…

Rajeev B: It was your responsibility to inform me before starting the things

FI (Shruti): Ok no problem.. I will tell the tax department that u r not interested and your time is wasted.. so kindly block your service.

…

Rajeev B: Also nobody had informed me about the huge service tax

FI (Balwant Sharma): Nothing next

…

Rajeev B: You are delaying without disclosing entire things

FI (Balwant Sharma): Leave it

…

FI (Balwant Sharma): I am leaving ur profile..now time is very important.

…

FI (Balwant Sharma): Profile canceled.

…

Rajeev B: Dear I have clearly informed you after making more than the necessary payments to you, you have declined my profile by stating that I need

to pay GST 72000/- which had not informed earlier. I got a valid information from your side that due to no payment of GST, you have cancelled my profile.

…

FI (Yamini): sir we did not said it official

…

Rajeev B: what do you mean? Message received from official who is using office number is not an official message?

FI (Yamini): message is not count in official….

…

Rajeev B: Based on the messages over whatsapp only I remitted money

…

Rajeev B: I have been continuously requesting you to repay my money but I don't get any kind of response from your side. As you have denied to accept the whatsapp messages as official messages, how could a customer trust and invest in Indian Share Market?"

It is observed from the above communication that the charges for service tax and GST were not disclosed to the client upfront by the Noticee. Thus, it is noted that the Noticee did not inform about the entire fee structure at the outset but demanded additional amount gradually from the client on the pretext of service tax and GST. Further, when the client was not willing to pay service tax and GST as they were not disclosed to him while availing the service, he was threatened that his profile / service would be canceled. Moreover, when the client was trying to approach the Noticee with respect to his refund, the Noticee did not respond to his communications. Additionally, though the Noticee was having communication with the client on WhatsApp for selling services and demanding service charges, the Noticee was refusing to treat the communication as official communication leaving the client in the lurch.

23. In light of the above discussion, following is noted:

23.1. Noticee levies additional amounts post initial subscription of the client without disclosing them at the time of initial subscription.

23.2. Noticee has not disclosed the material information to the clients that the Noticee does not have a refund policy.

23.3. Noticee arm-twists the clients to pay additional amount.

23.4. Noticee does not respond to client's queries.

24. The aforesaid discussion also throws light on the scheme employed by the Noticee to defraud the clients. The Noticee first takes the clients on-board for a particular service for an initial amount without disclosing all the charges / amounts that would be levied on the clients subsequent to the subscription. Then in order to generate more and more service fees (income) for herself, the Noticee gradually demands additional money on the pretext of either service tax or GST which if the client refuses to pay, the Noticee threatens to cancel the client's profile or tells the client that he will have to forfeit his profit. As a last resort when the client does not wish to avail the services of the Noticee, the Noticee refuses to refund the money to the client citing her "no refund policy". The aforesaid scheme was knowingly designed by the Noticee to influence the decision of the clients as the Noticee had actively concealed relevant information upfront (additional charges and no refund policy) with the sole purpose of maximising her revenue generation at the expense of the clients. Consequently, the act of the Noticee to induce the prospective clients to avail Noticee's services was self-serving and not in the best interests of the prospective clients.

25. As a SEBI registered intermediary, it is the duty of the Noticee to abide by the Code of Conduct and act with honesty, fairness and exercise proper due diligence, while dealing with the clients. However, as noted in preceding paragraphs, the Noticee has not made adequate disclosures of relevant material information upfront. The same shows that the Noticee was not acting honestly, fairly and in the best interest of the client. Further, the Noticee has not been diligent and fair in her dealing with the clients as when the client was trying to approach the Noticee with his query for refund, the Noticee did not respond to his communications. The aforesaid actions of the Noticee shows that the Noticee

has failed in her responsibility to act in a fiduciary capacity towards the clients in accordance with regulation 15 (1) of IA Regulations and the Noticee has also failed to abide by the clauses 1, 2 and 5 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations. However, I note that to equate non-disclosure of additional charges upfront with fraudulent behavior under PFUTP Regulations may not be correct as in the present matter the clients were induced to avail the services of the Noticee by assuring / promising guaranteed returns and / or a certain net return including recovering of money paid. Thus, while the act of the Noticee was dishonest and unfair to the clients, it would not fall within the ambit of provisions of regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(o) of PFUTP Regulations and Section 12A (a), (b) and (c) of SEBI Act. It would however constitute a breach of IA's code of conduct and other provision of IA Regulations as noted above.

Issue No. 3: *Whether the Noticee had sold multiple packages to her clients and has collected multiple payments in a short period in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?*

26. The DA has found as follows:

26.1. The Noticee had sold multiple services / products to clients within a short period of time.

26.2. The Noticee was selling same advisory product / service multiple times to the client. The product / service were sold before completion of the tenure of the previous service.

27. In this regard, it is noted from the invoices on record that in the very first month of the client's association with the Noticee, multiple packages were sold to the clients and substantial amount by way of fee was extracted by the Noticee from the clients. Analysis of the fees collected from the clients (sample basis) **in the first month of their association** with the Noticee is provided hereunder:

27.1. Client Name: Mr. Vikash Pushkar

Table No. 1

Sl. No.	Invoice Date	Product / Services	Duration			Amount (INR)
1.	14-Jul-18	Stock Cash	16-Jul-18	to	15-Aug-18	7,500/-
2.	17-Jul-18	Stock Cash	17-Aug-18	to	15-Nov-18	20,000/-
3.	19-Jul-18	Equity Blaze	19-Jul-18	to	27-Jul-18	1,00,000/-
4.	21-Jul-18	Equity Blaze	30-Jul-18	to	06-Aug-18	1,20,000/-
5.	23-Jul-18	Equity Blaze	07-Aug-18	to	14-Aug-18	1,00,000/-
6.	24-Jul-18	Equity Blaze	15-Aug-18	to	22-Aug-18	1,00,000/-
7.	24-Jul-18	Equity Blaze	25-Aug-18	to	30-Aug-18	40,000/-
8.	25-Jul-18	Jobbers Cash	25-Jul-18	to	24-Aug-18	70,000/-
9.	25-Jul-18	Cash Premium	25-Jul-18	to	24-Aug-18	25,000/-
10.	26-Jul-18	Cash Premium	27-Aug-18	to	25-Sep-18	25,000/-
11.	27-Jul-18	Equity Blaze	31-Aug-18	to	06-Sep-18	1,00,000/-
12.	30-Jul-18	Equity Blaze	07-Sep-18	to	13-Sep-18	1,08,000/-
Total						**8,15,500/-**

It is observed from the client's (Mr. Vikash Pushkar) risk profiling form that his investment amount and market value of portfolio was less than INR 2 lakh and his gross annual income was between INR 2 lakh to INR 5 lakh. However, based on the invoices and as seen from the table above that the Noticee has taken around INR 8.15 lakh towards service charges by issuing 12 different invoices to the client and had sold him 5 different services within a period of just 17 days, even though subscription to earlier packages were not over. Further, the fees are more than 4 times his investment amount and market value of his portfolio and 1.6 times, his gross annual income. Moreover, it is also noted from the above table that even before the subscription of a package is over, the same package is sold to the client within a couple of days from the subscription to the initial package. In essence, by virtue of this practice, the Noticee locked the client without giving him an opportunity to not continue with the Noticee, if the client was not satisfied with his first leg of service.

27.2. Client Name: Mr. Sunil Semwal

Table No. 2

Sl. No.	Invoice Date	Product/ Services	Duration			Amount (INR)
1.	15-May-19	Stock Cash	15-May-19	to	31-May-19	6,300/-

Sl. No.	Invoice Date	Product/ Services	Duration	Amount (INR)
2.	16-May-19	Stock Cash	31-May-19 to 30-Nov-19	27,750/-
3.	16-May-19	Cash Premium	16-May-19 to 15-Aug-19	48,900/-
4.	17-May-19	Equity Blaze	20-May-19 to 27-Aug-19	27,000/-
5.	17-May-19	Equity Blaze	28-May-19 to 28-Jun-19	84,200/-
6.	17-May-19	Equity Blaze	01-Jul-19 to 01-Aug-19	68,350/-
7.	18-May-19	Equity Blaze	02-Aug-19 to 02-Sep-19	94,500/-
8.	20-May-19	Equity Blaze	03-Sep-19 to 04-Dec-19	5,36,000/-
9.	27-May-19	Jobbers Future	28-May-19 to 28-Aug-19	1,16,000/-
Total				**10,09,000/-**

The following is observed from the client's risk profiling form -

- His investment amount and market value of portfolio was less than INR 2 lakh;
- His gross annual income was between INR 2 lakh to INR 5 lakh;
- PF and other employee benefits were his only source of savings.

However, it can be seen from the table above and invoices that the Noticee has taken INR 10.09 lakh towards service charges by issuing 9 different invoices and sold 4 different services within a period of just 13 days. Further, the fees are 5 times his investment amount and market value of his portfolio and double, his gross annual income.

27.3. Client Name: Mr. Kamal Waghela

Table No. 3

Sl. No.	Invoice Date	Invoice No.	Product/ Services	Duration	Amount (INR)
1	11.06.2019	3472	Stock Cash	11.06.2019 to 25.06.2019	3,500/-
2	11.06.2019	3476	Jobbers Cash	11.06.2019 to 12.07.2019	66,000/-
3	12.06.2019	3483	Jobbers Cash	15.07.2019 to 16.08.2019	48,600/-
4	12.06.2019	3486	Jobbers Cash	17.09.2019 to 18.10.2019	48,600/-
5	13.06.2019	3492	Equity Blaze	11.06.2019 to 28.06.2019	58,600/-
6	13.06.2019	3495	Equity Blaze	01.07.2019 to 08.07.2019	28,600/-
7	17.06.2019	3520	Equity Blaze	09.07.2019 to 25.07.2019	56,280/-
8	17.06.2019	3522	Equity Blaze	29.07.2019 to 13.08.2019	49,000/-

Sl. No.	Invoice Date	Invoice No.	Product/ Services	Duration	Amount (INR)
9	17.06.2019	3526	Equity Blaze	14.08.2019 to 14.09.2019	75,140/-
10	18.06.2019	3533	Equity Blaze	16.09.2019 to 18.10.2019	75,110/-
Total					**5,09,430/-**

From the table above, it is noted as follows:

- The Noticee had raised 10 invoices and had sold 3 unique services within a weeks' period and issued invoices of INR 5,09,430/-.
- As observed from Sl. Nos. 2 and 5 of above table, Jobbers Cash and Equity Blaze services were sold to the client for the periods even before the expiry of period for Stock Cash service, mentioned at Sl. No. 1. Further, both Jobbers Cash and Equity Blaze services were sold for the periods of service, which are overlapping each other.
- It is seen from Sl. Nos. 3 to 9 that the Noticee had sold the same services to the client multiple times in a single day even before the expiry of period of the preceding service.

28. The aforesaid discussion raises red flags with respect to the way the Noticee was operating her business. The conduct of the Noticee shows that a new client was enrolled with a basic product for which the amount of advisory fees charged was comparatively less and then the Noticee made the client to switch to products with higher fees. In the said process, the Noticee sold multiple packages to the clients irrespective of the clients' proposed investment amount and his gross annual income. Consequently, the client was tied up with the Noticee as within few days of on-boarding, the client was sold services whose tenure ran at least for couple of months, if not more. Considering that the IA was expected to carry out risk profiling of the clients, the Noticee was expected to be aware of the gross annual income details and proposed investment amount of the clients, yet multiple services were sold within a few days for a consideration which was significantly more than their gross annual income (Mr. Vikash Pushkar and Mr. Sunil Semwal). Paying up an amount which is more than their

declared gross annual income, cannot be by any stretch of imagination, in the best interest of the client. Rather it only furthers the interest of the Noticee towards maximising her revenue from a single client within a short span of time. The aforesaid conduct of the Noticee also reinforces the conclusion drawn in the preceding paragraphs that the clients were being enrolled / sold multiple services by enticing them with the prospect of abnormally high returns which was achievable by availing the services of the Noticee, irrespective of their proposed investment amount. There is no other rational explanation that can justify the actions of the clients of simultaneously subscribing to multiple services, if not for the Noticee, giving them the impression of achieving super normal returns. Thus, the conduct of the Noticee is in complete disregard to the interests of its clients.

29. It is observed that while offering her services to a client, the Noticee has to take into consideration a host of factors related to a client that are broadly covered by doing risk profiling of the client and adhering to the principles of suitability. The client's capacity to absorb loss is an important factor. The IA, has the obligation, under the IA Regulations, to act in the best interests of the clients. In a situation like the one in hand, if the client has paid in fees, an amount which is more than his total annual income within a month, and higher than his investable surplus, then how would the client invest any amount and how he would be in a position to absorb any loss. The IA has a fiduciary duty towards the clients to see that the client is not exposed to unnecessary economic hardship due to the IA knowingly selling him multiple services and charging him fees that is beyond client's source of income. In the instant matter, there are enough material in the form of risk profile of clients showing their proposed investment amount, gross annual income, payment receipts showing the kind of services sold, time gap between multiple services sold and tenure of services sold which when cumulatively seen shows that the fees charged by the Noticee from the clients by selling multiple services were unreasonable. Further, the fact that the fees charged by the Noticee was more than the gross annual income and was more than the proposed investment amount of the client also shows that the Noticee has not taken reasonable care to ensure that the client is able to bear any related investment risks consistent with his investment objectives and financial capacity.

30. In view of the aforesaid discussion, I find that the Noticee by selling multiple packages to the clients within a short period of time and even before completion of the earlier service and by charging unreasonable fees, had failed to act in a fiduciary capacity towards the clients as her interest of maximising revenue was in direct conflict with the interests of the clients. Further, the Noticee was not acting honestly and in the best interest of the client by making the client subscribe to multiple subscriptions to the same package on the same day. Moreover, the Noticee had not exercised due care and diligence in her dealings with the clients as services were sold to the clients without taking into account the information provided in the risk profile of the client, especially their gross annual income and investment amount / market value of their portfolio. Consequence of the same was that the total fees that was charged to the client was disproportionate to his gross annual income. In view of the above, it is held that the Noticee has violated regulation 15 (1) of IA Regulation and has also failed to abide by Code of Conduct under regulation 15(9) of IA Regulations read with clauses 1, 2 and 6 of Code of Conduct for Investment Adviser. However, it cannot be held that selling multiple services to the clients within a short span of time or even before the expiry of the tenure of an existing service, is a fraudulent act under PFUTP Regulations. The reason being that selling of multiple products is the consequence of the inducement given by the Noticee of achieving super normal profits and not the reason for achieving super normal profits. Therefore, in the given facts and circumstances of the matter, the act of the Noticee of selling multiple packages to the clients and charging unreasonable fees, does not fall within the ambit of provisions of regulations 3 (a), (b), (c), (d), 4(1) and 4(2) (s) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. It would however constitute a breach of IA's code of conduct and other provision of IA Regulations as noted above.

Issue No. 4: *Whether the Noticee provided advice which was not in line with the risk profile of her clients in violation of provisions of PFUTP Regulations, SEBI Act and IA Regulations?*

31. The next finding of the DA against the Noticee pertains to the issue of not providing advice to the clients which was commensurate with the risk profile of

the client. Further, the DA has also note that the Noticee had failed to communicate risk profile form to the clients.

32. It is noted that there were instances, where the package / service sold to the client did not match his risk profile. Some of the instances are reproduced below:

32.1. Client Name: Mr. Raghava Reddy Kalva

It is observed from the client's risk profiling form that he has been categorized under 'Medium Risk' category. However, inspite of the said categorisation, the Noticee had sold high risk product to the client. Details of risk profiling and products sold are given below:

Table No. 4

Sl. No.	RPF date	Risk category as per RPF	Name of product sold	Product risk category	Invoice / payment date	Amount collected (INR)
1.	17.6.19	Medium Risk	Stock cash	Medium Risk	18.6.19	5,000
2.			Option Premium	High Risk	25.6.19	71,680

It is seen from the above table that after selling the client a medium risk product, the Noticee had sold him a high risk product within a few days for a substantial value. It is observed that the risk profile / risk appetite of the client cannot change over a short span of time. The act of the Noticee to sell a product to the client which is not appropriate to the risk profile of the client, appears to be not in the best interest of its clients but is an act to maximise Noticee's revenue. Further, the very fact that a high risk product was sold to a medium risk client that too within a week when a medium risk product was sold to him shows that the Noticee had no reasonable basis of believing that the advice that the Noticee was giving to the client for subscribing to a high risk product was consistent with the client's risk appetite and capacity for absorbing loss.

32.2. Client Name: Mr. Radharaman Dash

It is observed from the client's risk profiling form that gross annual income of the client was INR 2 lakh to INR 5 lakh. The client's current investment amount was

less than INR 2 lakh and market value of portfolio held was less than INR 2 lakh. The products / services sold by the Noticee to the client is stated as under:

Table No. 5

Sl. No.	Invoice Date	Package Description	Duration	Amount (INR)
1.	12-Nov-18	Cash Premium	12-Nov-18 – 19-Nov-18	3,000/-
2.	12-Nov-18	Jobbers Cash	12-Nov-18 – 12-Dec-18	63,449/-
3.	12-Nov-18	Jobbers Cash	13-Dec-18 – 28-Jan-19	81,051/-
4.	13-Nov-18	Jobbers Cash	29-Jan-19 – 12-Feb-19	36,905/-
5.	14-Nov-18	Option Premium	19-Nov-19 – 03-Dec-19	14,000/-
6.	16-Nov-18	Jobbers Cash	13-Feb-19 – 14-May-19	1,68,400/-
7.	17-Nov-18	Jobbers Cash	20-May-19 – 19-Jun-19	49,895/-
Total				**4,16,700/-**

From the above table and the invoices, it is seen that the Noticee had sold 7 services to the client within a span of 5 days amounting to INR 4.16 lakh which is approximately the gross annual income of the client. The same is in total disregard to the financial condition of the client as disclosed in the risk profiling form of the client. Further, considering that investment in securities is subject to market risk, the act of the Noticee to advice the clients to buy services almost equivalent to his gross annual income that too in a span of 5 days, shows that the Noticee had no reasonable basis for believing that the recommendation given by the Noticee to the client to subscribe to multiple services, was such that the client would be able to bear any related investment risks.

Further, the risk profiling form of the client was perused to ascertain the risk appetite of the client. The following is observed –

Table No. 6

Q. No.	Questions	Response	Score
21	Risk Tolerance	High	5

Q. No.	Questions	Response	Score
26	Assume that you have invested Rs. 1,00,000 in a share that goes down by 10% the next day.	Book your loss and invest in fixed deposits or bonds	2
27	How would you 'honestly' describe yourself as a risk taker?	Willing to take evaluated risk (I can't tolerate a some loss)	4

From Q. Nos. 26 and 27, it is seen that client's risk tolerance level (i.e. assuming losses on investments) is very low, still the Noticee had categorized him under 'High Risk' category and sold him high risk products. The same shows that the Noticee had not exercised due skill, care and diligence in ascertaining the risk appetite of the client. It also leads to an inference that the Noticee was not acting in a professional manner.

32.3. Client Name: Mr. Sunil Semwal

The information mentioned in his risk profile form dated May 14, 2019 are as follows:

Table No. 7

Question	Client's Answer	Score
Occupation	Retired	2
Investment goal	Capital appreciation and regular income	3
Preferred investment type	Long term positional	2
How would you honestly describe yourself as a risk taker?	Willing to take evaluated risk (I can't tolerate a some loss)	4

Based on client's objective of generation of regular income and his inability to bear a small loss, indicates that he is a low risk taker. In spite of these parameters, the Noticee sold a product from derivative segment i.e. Jobbers Futures service to him for INR 1,16,000/- for the period May 28, 2019 to August 28, 2019, which was a high risk product. Similarly, the Noticee had sold him product, "Stock Cash". As per the product details one of the features of the said product is as follows: "*Stock Cash: This is an intraday services we will*

given a 3-4 calls on per day with 3 targets and 1 stop loss." It is evident from the above that client's preferred investment type is long term positional whereas the Noticee had sold him intraday trading product. Hence, the Noticee was not selling products as per client investment objectives. It also indicates that the Noticee had no reasonable basis to believe that the recommendation given by the Noticee to the client would meet the client's investment objectives.

33. The following is noted from the above instances and discussion:

33.1. The products sold by the Noticee to clients were not appropriate to the risk profile / risk tolerance of clients.

33.2. The Noticee has not sold products / services based on client's financial situation.

33.3. The Noticee has not sold services as per the investment objectives and investment time horizon of the clients.

34. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear the investment related risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of the advice he needs and expects from the IA. Thus, there is a clear onus on the IA to reasonably satisfy itself of the suitability of its investment advice with respect to every specific client, keeping in mind the factors as stated above.

35. In the present matter, it is observed that the Noticee has failed to act with due skill, care and diligence as the Noticee has been selling advisory services / products without ensuring suitability of advice to the clients in accordance / appropriate to their risk profile. Moreover, the Noticee has a mandatory obligation to assess the client's financial situation, his investment objectives and his risk appetite before advising / selling a product / service to him. The risk profiling is required to be a guiding factor before the product is chosen consistent with the risk profile of the client. In the instant matter, it is observed that the

Noticee had no reasonable basis to believe that the recommendation that the Noticee was giving to the clients was consistent with the client's investment objectives, his ability to bear related investment risks, his risk appetite and his capacity to absorb loss. Further, the Noticee has not been honest and fair in her dealings with the clients and has kept her own interest at higher pedestal compared to the interest of the clients as the Noticee has selected and sold multiple services / products without any regard to the financial situation of the client, his investment objectives and his risk appetite. The aforesaid actions of the Noticee shows that the Noticee has failed in her responsibility to act in a fiduciary capacity towards the clients which was entrusted upon her under regulation 15 (1) of IA Regulations and the Noticee has also failed to comply with regulations 17(a), 17(d) (i), 17 (d) (ii), 17 (e) and clauses 1 and 2 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations. However, I note from the material made available on record that the Noticee on her website had a product list that had categorized the products sold by the Noticee based on the risk associated with the product. Thus, it cannot be held that the Noticee concealed any material information when the Noticee had sold products, which were not as per the risk profile of the client. Moreover, in the given facts and circumstances of the matter, a reasonable explanation for the clients subscribing to high risk products would be the act of the Noticee of inducing the clients by the optics of high returns. Thus, while the act of the Noticee was dishonest and unfair to the clients, it would not fall within the ambit of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Section 12A (a), (b) and (c) of SEBI Act. It would however constitute a breach of IA's code of conduct and other provisions of IA Regulations as noted above.

36. It is also observed that the Noticee is selling products before communicating risk profiling to the client. Some of the instances are reproduced below:

36.1. <u>Client Name: Mr. Vijay Parvatrao Andhale</u>

It is noted from the records that the Noticee vide an email dated January 14, 2019 has sent risk profiling form to the client. But, the Noticee had sold the product "Cash HNI" to him on December 26, 2018 for the period January 4, 2019 to May 4, 2019 for INR 1,01,700/-. As such, the Noticee had sold product on December

26, 2018 and had communicated risk profile to the client on January 14, 2019 i.e. 20 days after collecting service charges.

36.2. Client Name: Mr. Pranamya Joshi

It is noted from the records that the risk profiling form has been communicated to the client vide an email dated January 31, 2019 whereas, it can be seen from table below that the Noticee had sold the products to the client starting from January 3, 2019 to January 19, 2019 and had collected INR 10,96,000/-. The details of products sold are given below:

Table No. 8

Invoice date	Invoice no.	Product	Duration of service	Amount (INR)
03.01.2019	2423	Equity Blaze	07.01.2019 to 08.01.2019	5,000/-
03.01.2019	2426	Equity Blaze	09.01.2019 to 16.01.2019	35,000/-
10.01.2019	2467	Equity Blaze	17.01.2019 to 21.01.2019	10,000/-
15.01.2019	2496	Equity Blaze	25.01.2019 to 22.02.2019	4,81,000/-
16.01.2019	2514	Equity Blaze	22.02.2019 to 22.03.2019	4,50,000/-
18.01.2019	2536	Equity Blaze	25.03.2019 to 01.04.2019	30,000/-
19.01.2019	2541	Equity Blaze	02.04.2019 to 09.04.2019	85,000/-
Total				**10,96,000/-**

36.3. Client Name: Mr. Radharaman Dash

It is noted from the records that the risk profiling form has been communicated to the client vide an email dated November 24, 2018 whereas, as seen in the preceding paragraphs (Table No. 5) that the Noticee had sold the products to the client starting from November 12, 2018 to November 17, 2018.

37. As per regulation 16(e) of IA Regulations, risk profile of the client has to be communicated to the client after risk assessment is done. The main objective of regulation 16 (e) of IA Regulations is to have both IA and the client on the same page with respect to client's risk profile so as to enable the IA to give investment advice to the client which is appropriate to the risk profile of the client and is

consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Thus, any communication of risk profile post selling of products to him is akin to no communication, as the client had no opportunity to examine the assessment done by the IA before subscribing to the product / service. In the instant matter, as noted in preceding paragraphs, the Noticee had sold on several instances, multiple products to the clients even before communicating their risk profile to them. Thus, it is observed that the investment advice given by the Noticee or product sold / subscription bought by the investor was not an informed choice due to the lack of communication of assessment of risk profile to the client. The reason being that there was still room for the client to differ from the assessment done by the Noticee, which may have a bearing on the product bought. On the other hand, if the Noticee had a well-documented process of selecting investments based on the risk profile of the client, the same would have involved communication of the risk profile to the client before any investment advice / product / subscription is sold to him. Thus, the aforesaid act of the Noticee to sell multiple services to the clients without first communicating their risk profile to them, has led to the violation of regulations 16 (e) and 17(b) of IA Regulations.

Issue No. 5: *Whether the Noticee obtained trading account credentials from her clients for trading on their behalf in violation of provisions of IA Regulations?*

38. The DA has noted that the Noticee had obtained trading account details (log in id and password) of the clients and has transacted in clients' trading accounts.

39. As per regulation 15(3) of IA Regulations, the IA shall maintain arms length relationship between its activities as investment adviser and distribution or execution services.

40. It is observed from the material available on record that the Noticee had procured user id and password of the clients' trading account. Some of the instances are reproduced below:

40.1. <u>WhatsApp chat between Mr. Raghav Kalva and employee of the Noticee</u>

19.06.19, 11:41 am – Raghava: Please provide me 1k return make me conformtable as you have promised.

19.06.19, 11:42 am – Future Investment: Sir send me your demat id and password

19.06.19, 11:43 am – Raghav: Ok

21.06.19, 11:22 am – Raghava: User name: RAGHAVA12 Membership pas: Raghava123@ Trading Pass: Raghava1234@

21.06.19, 11:24 am – Raghava: Ok

21.06.19, 11:24 am – Future Investment: Okay sir

40.2. <u>WhatsApp chat between Mohd. Aquib Khan and employee of the Noticee</u>

30.01.19 @3.15 pm – Future Investment employee Rudra: "Sir ek bar aap id password"

30.01.19 @3.15 pm – Future Investment employee Rudra: "Dedo"

30.01.19 @3.27 pm – Mohd Aquib Khan: "M128666 pd – aquib345"

41. An IA is in the business of providing investment advice in respect of securities and investment products. It is outside its scope of activities to trade on behalf of the clients. Therefore, the said action of the Noticee is in violation of regulation 15(3) of IA Regulations.

Issue No. 6: *Whether the Noticee had failed to promptly redress her clients' grievances in violation of provisions of IA Regulations and SEBI circular dated December 18, 2014?*

42. The DA has noted that the Noticee has failed to redress 3 client grievances promptly which were received during the month of September 2020. Details of the pending complaints along with ATR submission details are tabulated as under:

Table No. 9

Sl. No.	SCORES Registration No.	Complainant Name	Date of the Receipt of Complaint	Date of Forwarding to IA	Date of Receipt of ATR	Time taken in excess of 30 days to file ATR	Pending Days as on March 31, 2022
1	SEBIE/MP20/0001868/1 and SEBIE/MP20/0001869/1	Nakarani Hardikkumar Vinodbhai	04/10/2020	08/12/2020	ATR not Submitted		478
2	SEBIE/MP20/0001568/1	Nikhil Bharatbhai Bhuvad	02/09/2020	18/09/2020	ATR not Submitted		559
3	SEBIE/MP20/0001542/1	Dileep Nayak	29/08/2020	09/09/2020	ATR not Submitted		568

43. Further, it is noted that as on September 30, 2023, the following complaints are pending against the Noticee in SCORES:

Table No. 10

Sl. No.	SCORES Registration No.	Complainant Name	Date of the Receipt of Complaint	Date of Forwarding to IA	Date of Receipt of ATR	Time taken in excess of 30 days to file ATR	ATR pending as on September 30, 2023 in terms of days
1	SEBIE/MP21/0000824/1	Satnam Singh	14/06/2021	11/05/2022	ATR not Submitted		507
2	SEBIE/MP21/0000742/1	Mohammad Aquib Khan	22/06/2021	04/04/2022	ATR not Submitted		544
3	SEBIE/MP20/0001868/1	Nakarani Hardikkumar VInodbhai	03/09/2020	08/12/2020	ATR not Submitted		1026
4	SEBIE/MP20/0001869/1	Nakarani Hardikkumar VInodbhai	03/09/2020	08/12/2020	ATR not Submitted		1026
5	SEBIE/MP20/0001568/1	Nikhil Bharatbhai Bhuvad /	02/09/2020	18/09/2020	ATR not Submitted		1107
6	SEBIE/MP20/0001542/1	Dileep Nayak	29/08/2020	09/09/2020	ATR not Submitted		1116
7			30/01/2020	05/02/2020	25/02/2020		

Sl. No.	SCORES Registration No.	Complainant Name	Date of the Receipt of Complaint	Date of Forwarding to IA	Date of Receipt of ATR	Time taken in excess of 30 days to file ATR	ATR pending as on September 30, 2023 in terms of days
	SEBIE/MP20/0000287/1	Mohammad Aquib Khan			28/02/2020		
					06/05/2020		
8	SEBIP/MP20/0000010/1	Satish Kumar Kureel	06/01/2020	10/01/2020	13/01/2020		
					19/02/2020		
					25/02/2020		
					02/03/2020		
					05/05/2020		
					05/05/2020		
					06/05/2020		
					23/05/2020		
9	SEBIE/MP19/0003196/1	Pradeep Shankar More	30/11/2019	27/01/2020	Comments submitted but ATR not Submitted		1342
10	SEBIE/MP19/0002184/1	Radharaman Dash	11/09/2019	30/09/2019	Comments submitted but ATR not Submitted		1461

44. I am of the opinion that investor grievance redressal mechanism is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it under SEBI Act. One of the most important objects of SEBI is to protect the interest of investors and the same undoubtedly includes timely redressal of grievances of investors. Since, the Noticee has not submitted the ATR in a time bound manner as prescribed by SEBI and has also not resolved investors' grievance, it is held that the Noticee has not complied with SEBI circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21 of IA Regulations.

Conclusion

45. In the instant matter, as noted in the preceding paragraphs, the Noticee has violated various provisions of IA Regulations and PFUTP Regulations with the sole aim of generating more income for herself at the cost of the clients. It was noted from the invoices / payment receipts as discussed earlier that the Noticee was selling multiple packages to the clients, even before the completion of earlier package, and was extracting more and more money from the clients. The m*odus operandi* adopted by the Noticee discussed hereinabove show that the Noticee

was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his / her financial situation, risk appetite, financial goal, etc. From the findings arrived at in this Order and the overall *modus operandi* discussed in this Order, it can be inferred that the representatives of the Noticee would lure innocent investors by promising assured returns / profits and a basic package without disclosing the full amount at the time of initial product / service selling and then more money would be extracted from them by upgrading them from one package to another, asking for additional payment on the pretext of various types of fees service tax, GST etc. If the client refused to pay, the Noticee threatened to cancel the client's profile or tell the client that he will have to forfeit his profit. As a last resort when the client did not wish to avail the services of the Noticee, the Noticee refused to refund the money to the client citing its "no refund policy". Not only were the clients induced and their trading account details were sought by the employees of the Noticee, there had been instances where the risk profile form of the client was not communicated to them, post selling of multiple products to them. Moreover, the Noticee had paid scant regard to the risk profile of the clients before selling products to them and investment advice in the form of various packages was given to the clients without paying any heed to the principles of suitability as envisaged under IA Regulations. Further, by promising abnormally high and quick returns to the clients, the Noticee has not only defrauded her clients but has also placed the interest of her clients at great risk. In my view, the actions of the Noticee, as discussed in the preceding paragraphs, is reflective of the systemic issues in the way the Noticee was conducting her business. The acts of the Noticee not only cast a shadow of doubt over her operations but also jeopardises the integrity of the market and the confidence of the investors to deal in the securities market. Before concluding, it is pertinent to note that the Noticee has failed to promptly redress the investor complaints. Redressal of investor complaints within time bound framework is of utmost importance as non-redressal leads to loss of confidence of the investors in the integrity of the securities market. While non-compliance with the direction to redress the investor complaints would be met with post enforcement action in general, considering fraudulent conduct has been identified in the activity of the

Noticee, I am of the view that it is necessary to pass appropriate directions to ensure that the complaints filed in SCORES are adequately redressed.

46. I note that the DA has recommended that the registration of the Noticee may be cancelled. In light of the findings arrived at in this Order that the business activity of the Noticee is inimical to the interests of the clients / investors and are in contravention of the provisions of PFUTP Regulations and IA Regulations, I agree with the recommendation given by the DA.

DIRECTIONS

47. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 12 (3) and 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 27 (5) and 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration (INA000008242) granted to Ms. Pinky Kelva, proprietor of Future Investment and further direct as follows:

47.1. The Noticee shall continue to be prohibited from accessing the securities market and further be restrained from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of one (1) year from the date of this Order.

47.2. The Noticee is directed to resolve the complaints pending against her name or her proprietary firm's name i.e., Future Investment in SCORES and otherwise, within a period of 30 days from the date of this Order. After completing the aforesaid resolution of complaints, the Noticee shall file a report of such completion with SEBI addressed to the "Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051", within a period of fifteen (15) days from the resolution of all complaints, duly certified by an independent Chartered Accountant.

47.3. The directions issued at sub-para 47.1 shall continue to be in force beyond the period of one (1) year, till the date of compliance with direction given in sub–para 47.2 above by the Noticee.

47.4. During the period of restraint, the existing holdings of securities, including the holdings of units of mutual funds, of the Noticee, shall remain frozen.

47.5. One of the restraints imposed vide the Interim Order on the Noticee was not to divert any funds collected from investors, kept in bank account(s) and / or in her custody and not to alienate any assets, whether movable or immovable, or create any interest or investment or charge on such assets held in her name or her proprietary firm's name i.e., Future Investment, including money lying in bank accounts. This restraint shall continue except for making payments to clients by way of resolution of pending complaints, with prior permission of SEBI. The said restraint shall stand vacated after pending complaints are resolved and a report certified by an independent Chartered Accountant certifying that the complaints are resolved, is filed to the satisfaction of SEBI.

48. The Order shall come into force with immediate effect.

49. A copy of this order shall be forwarded to Ms. Pinky Kelva, proprietor of Future Investment, all recognized Stock Exchanges, Depositories, Registrar and Transfer Agents and BSE Administration and Supervision Ltd. (BASL) for ensuring compliance with the above directions.

-Sd-

Date: November 24, 2023 **ANANTH NARAYAN G.**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA