BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2023-24/30015

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

In respect of:
Investment Adviser Rajiv Kumar Singh
Proprietor Elite Investment Advisory Services
(PAN: BZZPS6587H / SEBI Registration Number: INA000003668)

In the matter of Rajiv Kumar Singh Proprietor Elite Investment Advisory Services

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A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of Rajiv Kumar Singh Proprietor Elite Investment Advisory Services (hereinafter also referred to as "**Noticee**"/ "**RKSPEIAS**") during December 23-24, 2021 for the Inspection period April 01, 2020 to March 31, 2021. The focus of the inspection was to look into the compliance with respect to concerned regulations and circulars, investor service / complaints, KYC compliance, on-boarding of clients, fees /charges, conditions of grant of registration, risk evaluation and dealing with clients and their money and Anti Money Laundering (AML) guidelines issued by SEBI from time to time etc. and to inter alia verify if the Noticee had complied with applicable Regulations and Circulars issued by SEBI from time to time.

2. The findings and observations of the inspection were communicated to the Noticee by SEBI vide letter dated December 29, 2022 and comments of Noticee were

sought on the same. Noticee vide its letter dated January 12, 2022 (read January 12, 2023) provided its comments on the findings and observations of SEBI.

3. Pursuant to the said inspection, based on the analysis of replies received and examination in the matter by SEBI, briefly stated, it was observed by SEBI that Noticee had allegedly violated various provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 {"SEBI IA Regulations, 2013" / "SEBI IA Regulations" / "IA Regulations" / "Regulation(s)"} and Circulars issued by SEBI viz., Regulation 13(a) and 13(b) of SEBI (Investment Advisers) Regulations, 2013 and Clause 8, 9 of Code of Conduct specified at Schedule III read with regulation 15(9) of IA Regulations, 2013, Regulation 15(8) of SEBI (IA) Regulations, 2013 read with provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 and SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016 and clauses 2, 8 and 9 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulations, 2013, Regulation 25(1), 25(2), clauses 8 and 9 of Code of Conduct specified at Schedule III read with Regulation 15(9), 19(1) & 19(2) of SEBI (IA) Regulations, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, Regulation 7(1) (a), 7 (1) (c), 15(13), 25(1) and clauses 2, 3, 8 and 9 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulations, 2013, Regulation 17 of SEBI (IA) Regulations, 2013, Clause 1 (ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27/12/2019 read with Regulation 16 and Clause 1, 8 and 9 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulation, 2013, Regulation 18(4) of SEBI (Investment Advisers) Regulations, 2013 and Clause 1, 5, 8 and 9 of Code of Conduct specified at Schedule III read with regulation 15(9) of IA Regulations, 2013, Regulation 21(1) read with para 8 (c) of SEBI Circular No. SEBI/ HO/OIAE/IGRD/CIR/P2018/58 dated March 26, 2018 and Clause 2, 8 and 9 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulation, 2013. Accordingly, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of SEBI Act,

1992 (hereinafter also referred as “SEBI Act”) for the alleged violations of the relevant provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Whereas the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred upon him under section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by AO) Rules, 1995 (hereinafter also referred to as “SEBI Adjudication Rules” / “Adjudication Rules” / “AO Rules”) r/w Section 19 of the SEBI Act, 1992, the Competent Authority appointed the undersigned as Adjudicating Officer (“AO”) vide order dated September 26, 2023 to inquire into and adjudge under Section 15C and Section 15EB of SEBI Act, 1992 for the alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated September 28, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice bearing no. SEBI/EAD-5/AN/RG/49356/1/2023 dated December 07, 2023 (“SCN”), was served upon the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15C and 15EB of the SEBI Act, for the violations alleged to have been committed by the Noticee.

6. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

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3. BACKGROUND

3.1. SEBI conducted the inspection of RKSPEIAS during December 23-24, 2021 for the Inspection period April 01, 2020 to March 31, 2021. The focus of inspection was to understand the practices and systems put in place by the Noticee with regards to its operations as a SEBI registered Investment Advisor and to verify if the Noticee has complied with applicable Regulations and Circulars issued by SEBI from time to time. The findings of the inspection were communicated to the Noticee. Vide letter dated January 12, 2023, the Noticee submitted its reply to the abovementioned findings. Thereafter, post inspection analysis of the Noticee was carried out by SEBI.

4. Findings and Observations by SEBI and alleged violations thereto in respect of the Noticee:

4.1. Finding A: Non-disclosure of material information to SEBI:

4.1.1. ***In the Pre-Inspection Questionnaire (hereinafter referred to as 'PIQ') submitted by the Noticee, it was disclosed by the Noticee that there were three individuals appointed by it for rendering investment advice to its clients during the inspection period. However, on query done at the time of onsite inspection, it was found that during the said period, a total of 6 individuals were rendering investment advisory services to its client. During the said period 4 individuals resigned and 4 were appointed for rendering investment advice.***

4.1.2. ***The Noticee had not submitted this information in the PIQ, which it did provide at the time of inspection. However, SEBI observed that the Noticee being a registered Investment Adviser is under obligation to inform SEBI, as and when a material change occurs and in the instant case the Noticee failed to inform SEBI regarding appointment and relieving of individuals rendering investment advise to its clients.***

4.1.3. ***Further, Mr. Shivesh Shukla and Mr. Nikhil Kabra were given appointment by the Noticee on the basis of having experience of working at Money Maker Research Pvt. Ltd., an entity against whom SEBI has passed an order WTM/ MPB/ IMD/ WRO/ ILO/ 167/2021 dated 22/01/2021. This fact was neither disclosed by the two individuals nor any due diligence was done by the Noticee regarding this.***

4.1.4. ***As per SEBI, the Noticee failed to provide any documentary evidence in support of its claim that due diligence was done by him while giving appointment to the said individuals who worked with an entity named Money Maker Research Pvt. Ltd.***

4.1.5. ***In view of the above, it is alleged that the Noticee had violated Regulation 13 (a) and 13 (b) and clause 8, 9 of Code of Conduct of SEBI read with Regulation 15(9) of IA Regulations, 2013.***

4.2. Finding B: Non-compliance with the General Responsibility of an Investment Adviser:

4.2.1. ***It is observed from the submissions of the Noticee that it has obtained registration with CDSL Ventures Limited, KRA with POS Code 2500003668. Further, it is observed that the Noticee has maintained record of KYC status of its clients. However, as per SEBI, the Noticee has failed to register with CKYC agency CERSAI and accordingly execute its responsibilities towards maintenance of KYC records with CERSAI. In this regard, as per SEBI the Noticee has inter alia accepted the violation in response to findings of inspection.***

4.2.2. ***In view of the above, it is alleged that the Noticee has violated Regulation 15(8) of IA Regulations read with the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 and SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016 and clause 2, 8 and 9 of Code of Conduct read with Regulation 15(9) of IA Regulations.***

4.3. Finding C: Failure to provide the information/ records and non-cooperation during inspection:

4.3.1. ***The Noticee did not provide the onsite inspecting team any data pertaining to its prospective clients including the call records. In this regard, SEBI observed that the Noticee is not keeping any data pertaining to prospective clients including call recording, risk-profiling etc.***

4.3.2. ***Further, the Noticee did not provide onsite inspecting team any data pertaining to functions performed as a registered Investment Adviser during last 5 years. In this regard, the Noticee has submitted, "we are operating our office from indore in February 2020 we have repositioned our office from Indore to Prayagraj and during shifting our entire data server has been crashed and as we cannot stop our daily functionality we have created a fresh server in Prayagraj and as we adhere norms of SEBI to store the data of the clients we have asked our vendor provide us back up the same server.".***

4.3.3. ***However, SEBI observed that the Noticee has failed to furnish any data for last 5 years and also has not provided any data from February 2020 onwards, i.e., after shifting from Indore to Prayagraj, while it has submitted that a new server was created at the new location.***

4.3.4. ***Further, the Noticee had submitted the report confirming compliance with the requirement of para 2(ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, on July 13, 2021, i.e., after a delay of around 13 days (Annexure 7G).***

4.3.5. ***In this regard, the Noticee has submitted that the submission was delayed because of the health condition of its proprietor was not good. However, as per SEBI, the Noticee has not provided any medical documentations in support of its claim of bad health of proprietor.***

4.3.6. ***In view of the above, it is alleged that the Noticee has violated Regulation 25(1), 25(2), clause 8 and 9 read with Regulation 15(9), Regulation 19(1) and 19 (2) of IA Regulations read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.***

4.3.7. ***Further, the Noticee did not provide any document in support of education qualification of any of the individuals who were rendering investment advisory services to its clients during the period of inspection.***

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4.3.8. ***In view of the above, the Noticee is alleged to have violated Regulation 7 (1) (a), 7 (1) (c), 15(13), 25(1) and clause 2, 3, 8 and 9 of Code of Conduct read with Regulation 15(9) of IA Regulations.***

4.4. Finding D: Failure to assess the suitability of investment advice and maintain appropriate standards of conduct:

4.4.1. ***The Noticee has provided an option of submission of risk profiling questionnaire on its website, however, as per undertaking submitted by the Noticee, it is not taking in-to consideration the risk profiling score submitted online. The Noticee calls such prospective clients and perform risk profiling on call and shares the score on call itself and considers such score as the final one. Further, the Noticee has failed to produce any record of consent of client taken on the said risk profiling done on phone (Annexure 8H).***

4.4.2. ***As per SEBI, the Noticee is not keeping any data pertaining to prospective clients including call recording, risk-profiling etc.***

4.4.3. ***Further, the Noticee has not performed any suitability assessment of any of its client. As per the undertaking submitted by the the Noticee, it only performs Risk Profiling and on the basis of scores obtained by a client, the product is prescribed to him/ her, even if the product is not in line with the investment objective, financial situation or any other financial factor indicated by such client in the risk profile questionnaire (Annexure 9I).***

4.4.4. ***SEBI observed that the Noticee does not have a system in place to take into consideration important parameters of risk profile such as investment objective, current financial situation, preferred time horizon or any other financial factor indicated by its clients. Also, SEBI observed that the Noticee has failed to provide any document in support of suitability assessment being done by him before prescribing any product or services to his clients, i.e., the Noticee is providing advisory services without performing any suitability assessment for a particular client.***

4.4.5. ***The inspecting team examined the following sample cases:***

4.4.5.1. In case of a client, Mr. …., it is noted that the preferred time horizon indicated by him was more than 3 years, however the Noticee has prescribed the HNI Options Service which, as per information available on the website of the Noticee, claims to provide huge profits in short term.

4.4.5.2. In case of a client, Mr….., the preferred time horizon indicated by him in the risk profile was 1 to 3 years, however, the Noticee had prescribed him the HNI Cash Service in which, as per information available on the website of the Noticee, calls are provided in those scripts in which bigger movement is expected in intraday.

4.4.5.3. In case of a client, Mr…., the preferred time horizon indicated by him in the risk profile was profile 1 to 3 years, however, the Noticee had prescribed him the Jobbers Cash Service which, as per information available on the website of the Noticee, is designed for those who wants to trade for intraday pattern and wish to capture every Bull and Bear run of the market on daily basis intraday.

4.4.6. ***In view of the above, the Noticee is alleged to have violated Regulation Regulation 17 of IA Regulations, Clause 1 (ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27/12/2019 read with Regulation 16 and clause 1, 8 and 9 of Code of Conduct read with Regulation 15(9) of IA Regulations.***

4.5. Finding E: Failure to make necessary disclosures to clients:

4.5.1. ***The Noticee failed to submit any document evidencing that it has disclosed all its clients regarding its holding positions, w.r.t. the product or securities which are subject matter of advice.***

4.5.2. ***The inspecting team had analyzed the contract document signed by the the Noticee with its clients, however, no declaration w.r.t. the Noticee or its employees for not indulging in trading is mentioned in the said document. Further, SEBI observed that the Noticee failed to provide the inspecting team with any such declaration, separately sent to its clients.***

4.5.3. ***In view of the above, the Noticee has violated the provisions of Regulation 18 (4) and clause 1, 5, 8 and 9 of Code of Conduct read with Regulation 15(9) of IA Regulations as it failed to share information with all its clients regarding its holding positons, w.r.t. the product or securities which are subject matter of advice.***

4.6. Finding F: Delay in redressal of investor grievances:

4.6.1. ***It is observed from the submissions of the Noticee that it had received a total of 22 complaints out of which 13 were received through SCORES while remaining 9 were received directly on the dedicated email id service@eliteresearch.in (Annexure 10J)***

4.6.2. ***The complaints received on SCORES were resolved by the Noticee in the time range of 54 days to 220 days.***

4.6.3. ***SEBI observed that since the Noticee had not done any specific suitability assessment for the product and services being prescribed to individual clients, as a result of which the client suffered losses and had to raise dispute, which took more than usual time for redressal.***

4.6.4. ***Further, SEBI observed that the Noticee was granted initial registration in 2015 and after 5 years of being a registered Investment Adviser, the Noticee is unable to maintain proper mechanism for redressal of investor complaints and comply with other regulatory requirements with regards to timely disposal of investor complaints.***

4.6.5. ***In view of the aboce, the Noticee is alleged to have violated Regulation 21 (1) read with para 8 (c) of SEBI Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26/03/2018 and clause 2, 8 and 9 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulations, 2013.***

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7. Vide email and letter December 26, 2023, Noticee submitted its reply to the SCN. The key submissions made by Noticee as reply to the SCN, are as under:

A. Non-disclosure of material information to SEBI:

It has been alleged that the Noticee has violated Regulation 13(a) and 13(b) SEBI IA Regulations

The Noticee would like to state that the employee's information provided in the Pre-Inspection Questionnaire ('PIQ') was the information of current employees associated/employed by the Noticee, as the Noticee misinterpreted the same. Further, during the inspection, the Noticee had provided the details of all the employees employed during the inspection period.

Further, recruiting of new employees is in no manner a material change as it is an ongoing process of every organization. Moreover, the Noticee is registered in an individual capacity wherein the main person rendering investment advice is the Noticee himself. It is in the case of non-individual wherein the 'Principal Officer' is involved in rendering investment advice and his change is required to be intimated. Furthermore, the employees appointed by the Noticee were the 'persons associated with the investment advice' who assists the Noticee in his operations and they are duly in compliance with the enhanced qualification requirement as per the new amended IA Regulations.

Furthermore, the employees: Mr. Shivesh Shukla and Mr. Nikhil Kabra were employed with the Noticee since June 01, 2020 and July 01, 2020, respectively, (evident from the clause 4.3.7 of the SCN) which is way before the date of passing of an interim order by the SEBI against Money Maker Research Private Limited on January 22, 2021. Both the employees were appointed by the Noticee before SEBI had taken action against the said entity, moreover, in the said order, nowhere SEBI had mentioned the name of either Mr. Shivesh or Mr. Nikhil and also no action had been taken against them and hence employing both the individuals by the Noticee is in no manner a lack of due diligence or a non-compliance by the Noticee.

Hence, based on the above submissions, it is clearly evident that the allegation imposed upon the Noticee is vague and baseless and the Noticee is not in violation of any provisions of the Regulation 13 of the IA Regulations alongwith the provisions of Code of Conduct.

B. Non-compliance with the general responsibility of an Investment Adviser:

It has been alleged that the Noticee has violated Regulation 15(8) of IA Regulations

On the said allegation the Noticee would like to state that the provision of Regulation 15(8) reads as under: "*<u>An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.</u>*"

SEBI had also specified that the intermediaries shall get it registered with the KRA 'KYC (Know Your Client) Registration Agency' and shall capture the KYC documents of the investors therein. The Noticee had duly obtained the registration from the CDSL Ventures

Limited, KRA and was duly capturing KYC of all the clients and has in records the KYC records of all his clients. Hence, the Noticee has followed the KYC procedure as specified by the SEBI and has not violated the provision of Regulation 15(8).

C. Failure to provide the information/records and non-cooperation during inspection:

It has been alleged that the Noticee has not provided information/records to the SEBI during inspection

The Noticee would like to state that he has duly maintained all the records as mandated by the SEBI and the same was also submitted to the inspecting authority at the time of inspection. The provision for maintaining call recording was applicable with effect from January 01, 2021, which the Noticee had duly maintained.

The Noticee makes the clients through the way of organic marketing and conducts risk profiling of the clients telephonically and is orally communicated to the clients as well. The recording of such calls is maintained by the Noticee and the inspecting authority had verified the same and the officers had also took the same in their record.

Further, in 2020 while shifting his office from Indore to Prayagraj, the server, in which the entire data was stored, unfortunately got crashed and the data therein could not get recovered and hence the Noticee could not provide the same to the inspecting authority. However, post that the Noticee has in place all the requisite records of 4 years from 2020 to till date. Moreover, the inspection period was April 01, 2020 to March 31, 2021, for which the Noticee had provided complete details to the inspecting authority.

Furthermore, there was a delay of just 13 days in submitting the report confirming compliance with the requirement of para 2(ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 as the Noticee had got the symptoms of Coronavirus and as a result he was required to get himself quarantined and hence he could not submit the report in a timely manner. Also, the Noticee had no intention of making delayed reporting or not reporting as he did submit the report without any reminder/notice of the SEBI. Hence, the SEBI shall take said delay leniently and shall not penalize for the same as there was a delay of just 13 reasons that too due to medical condition and also no investor was harmed due to the said delay.

Further, due to misinterpretation, the Noticee in PIQ had only provided the qualification information of just his current employees. Thereafter during the inspection, the Noticee had duly provided the qualification details of all his past employees as well. Moreover, all his employees as mentioned in the table in clause 4.3.7 in the SCN were postgraduate i.e. having MBA degree. Also, the Noticee would like to bring into the kind consideration of the SEBI that the SEBI itself had provided time period of 3 years to the employees already employed by the existing investment advisers for complying with the enhanced qualification requirement i.e. having post graduate degree. Currently vide Circular No.: SEBI/ HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/168 dated October 10, 2023, SEBI had extended the time period for the said requirement till September 30, 2025.

Hence, the Noticee has is in no manner violated Regulation 7(1)(a), 7(1)(c), 15(13), 25(1) of IA Regulations as the Noticee himself and his persons associated with investment advice are duly in compliance with the applicable provisions of the regulations.

D. Failure to assess the suitability of investment advice and maintain appropriate standards of conduct:

It has been alleged that the Noticee didn't assessed the suitability of the advice provided

The Noticee would like to state that he had a document namely product suitability wherein the products offered by the Noticee are categorized in Medium and High-risk category. Further, the product suitability is also enclosed as **Exhibit-A** for your reference, …. Moreover, the Noticee has also attached (**Exhibit-B**) the screenshot of the website of the Noticee which is reflected post submission of risk profiling questionnaire, wherein it is evident that the suitable product according to the risk profile of the client is clearly displayed upon.

Hence, based upon above submissions, the said allegation shall be removed upon as the Noticee had duly followed the principles of suitability assessment.

Further, the examination carried out by the inspecting team of the samples as mentioned in the SCN is not done in an ideal manner as the SEBI has misunderstood the question: 'Investment time horizon' in the risk profiling form. As by the said question, the Noticee meant that: For how much time period the investor wishes to keep his money invested in the stock market and not the other way around which the SEBI has interpreted.

E. Failure to make necessary disclosures to clients:

It has been alleged that the Noticee didn't made necessary disclosures to his clients

The Noticee would like to state that the Noticee didn't have any demat/trading account as a result he is not holding/trading in the securities which are the subject matter of advice. Moreover, the Noticee had duly disclosed to all his clients upon its website that: "*To ensure compliance with the Investment Advisor regulations 2013, we have resolved that the investment adviser and all its representatives will not make any trades in the market. We are not associated in any manner with any issuer of products/ securities, this ensures that there is no actual or potential conflicts of interest. This also ensures that* *objectivity or independence in the carrying on of investment advisory services is not compromised.*" The screenshot of the same is also enclosed as **Exhibit-C**.

Hence, the said false allegation shall be set aside.

F. Delay in redressal of investor grievances:

It has been alleged that the Noticee has not redressed the investor complaints in a timely manner

The Noticee would like to state that the Noticee had always resolved all the clients' grievances in a timely manner and provided the best resolution as possible, which is evident from the SEBI SCORES Portal wherein 0 complaints are pending against the Noticee out of total of 148 complaints received. Screenshot of the SCORES Portal is provided in **Exhibit – D**. The Noticee has always promptly responded towards all of the investor's grievance, however in few cases to reach a final conclusion, there have been delays due to late response from the clients and also due to prevailing covid times in 2020.

Hence, the Noticee has in no manner violated the provisions of the SEBI Circular: SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26/03/2018. Moreover, the Noticee didn't have any such intention of not resolving the grievances of the clients as in the past as well the Noticee had resolved all the client's grievances in a timely manner and to the best of the satisfaction of his clients.

The Noticee as a diligent Investment Adviser understands its responsibility of providing proper resolution to the client's grievances and is also bound to resolve the grievances and hence, he had always promptly responded to all of the client's complaint on filing of the same. Further, the client's supremacy was always the Noticee's utmost priority, which he had maintained throughout in the business tenure by resolving the client's grievance to the best of their satisfaction.

8. Vide Hearing Notice dated December 28, 2023, the Noticee was provided an opportunity of hearing on January 03, 2024. On the scheduled date of hearing, the Noticee availed the said hearing opportunity via videoconferencing through its Authorized Representative (AR) viz., Shri Abhishek Mishra, Practising Company Secretary, wherein the ARs inter alia relied upon and reiterated the written submissions made vide letter dated December 26, 2023. The AR inter alia also submitted that there were no further /additional submissions to be made

and the submissions made vide letter dated December 26, 2023 be taken as final and complete submissions in the matter.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee has violated the provisions of SEBI IA Regulations, 2013 and SEBI Circulars, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15C and Section 15EB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

10. The relevant extracts of the provisions of law alleged to have been violated are reproduced below for reference:

Regulation 13 (a), (b) of IA Regulations

The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-
(a) the investment adviser shall abide by the provisions of the Act and these regulations
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

Clause 1,2,3,4,5,8 and 9 of Code of Conduct of IA Regulations

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.

3. Capabilities

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

5. Information to its clients

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

8. Compliance

An investment adviser including its 87[partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

9. Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Regulation 15(8) and 15(9) of IA Regulations

15. General responsibility

…

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

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

SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016

SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016

Regulation 25(1), 25(2) of IA Regulations

25. Obligation of investment adviser on inspection

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

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

may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

Regulation 19(1), 19(2) of IA Regulations

19. Maintenance of Records

(1) An investment adviser shall maintain the following records,-

(a)Know Your Client records of the client;

(b)Risk profiling and risk assessment of the client;

(c)Suitability assessment of the advice being provided;

(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;

(e)Investment advice provided, whether written or oral

(f) Rationale for arriving at investment advice, duly signed and dated;

(g)A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years: Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020

Regulation 7 (1) (a), 7 (1) (c) of IA Regulations:

7. Qualification and certification requirement

1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times-

a) professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute

…

c) Persons associated with investment advice shall meet the following minimum qualifications, at all times –

(i) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and

(ii) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management:

Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or *principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and experience requirements within three years:*

Provided further that the requirements at clauses(a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board

Regulation 15(13) of IA Regulations

It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.

Regulation 17 of IA Regulations

17. Suitability

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;

(c)It understands the nature and risks of products or assets selected for clients;

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

(i)meets the client's investment objectives;

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

(iii)is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

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

Clause 1 (ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27/12/2019

1. Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) provides for code of conduct to be followed by IAs. In order to further strengthen the conduct of IAs, while providing investment advice and to protect the interest of investors seeking their advice, the IAs shall comply with the following:

…

(ii) Proper risk profiling and consent of client on risk profiling

Risk profiling of the client is essential to provide advice on suitable product based on various criteria like income, age, securities market experience etc. RIAs shall provide investment advice only after completing the following steps:

a. Complete the risk profile of the client based on information provided by the client.

b.Obtain consent of the client on completed risk profile either through registered email or physical document.

Regulation 16 of IA Regulations

16. Risk Profiling

Investment adviser shall ensure that,-

(a)it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i)age;

(ii)investment objectives including time for which they wish to stay invested, the purposes of the investment ;

(iii)income details;

(iv)existing investments/ assets;

(v)risk appetite/ tolerance;

(vi)liability/borrowing details

(b)it has a process for assessing the risk a client is willing and able to take, including:

(i)assessing a client's capacity for absorbing loss;

(ii)identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii)appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c)where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d)any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i)questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii)questionnaire is not structured in a way that it contains leading questions.

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

(f)information provided by clients and their risk assessment is updated periodically

Regulation 18(4) of IA Regulations

18. Disclosures to clients

…

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

Regulation 21(1) of IA Regulations

21. Redressal of client grievances

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

Para 8 (c) of SEBI Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26/03/2018.

8. Effective from August 01, 2018, following procedure shall be followed for filing and redressal of investor grievances using SCORES:

(c) The complainant may use SCORES to submit the grievance directly to companies / intermediaries and the complaint shall be forwarded to the entity for resolution. The entity is required to redress the grievance within 30 days, failing which the complaint shall be registered in SCORES.

11. Before proceeding to deal with the matter on merits, I note that in the instant matter Noticee is registered as Investment Adviser as an individual. I note from the wordings of Clause 9 of Code of Conduct that same pertain to a body corporate. Noticee being registered as Investment Adviser as an individual, in my opinion, the same would not get attracted. Therefore, the alleged violations in respect of the Noticee have been accordingly dealt with in the instant matter.

12. Noticee in its submissions as reply to the SCN had inter alia cited the Hon'ble Securities Appellate Tribunal ('SAT') order dated 16.06.2011 in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011) and placed reliance on the following text

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent. For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs."

In this regard, in my opinion each case is peculiar in its facts and circumstances based on which the violations are ascertained. Whether adjudication proceedings are to be initiated in a case would depend on the facts and circumstances of each case. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a prerogative of SEBI depending upon the outcome of such exercise viz., Inspection and findings thereof. It would also be relevant to state that the subject matter of instant proceedings are as per the Communique of appointment of AO, duly approved by the Competent Authority.

I also note from the text of Hon'ble SAT order dated 16.06.2011 as relied upon by the Noticee itself that Hon'ble SAT had inter alia held that "… *This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent…".*

Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law as are otherwise applicable to the entire category of intermediary viz., Investment Adviser in the instant case, and not just about minor procedural aspects. I also note that the alleged violations in respect of the Noticee in the instant proceedings inter alia pertain to crucial aspects regarding Non-disclosure of material information to SEBI, Non-compliance with the General Responsibility of an Investment Adviser, Failure to provide the information/ records, Failure to assess the suitability of investment advice and maintain appropriate standards of conduct, Failure to make necessary disclosures to clients and Delay in redressal of investor grievances. I note that the provisions relating to securities laws, including regulation and circulars issued by the regulator, are mandated inter alia with the objective of orderly functioning of the securities market and its constituents and for protection of the interest of the investors and therefore, in particular considering that such provisions of law are applicable to the entire class of intermediary which the regulator is duty bound to enforce. Accordingly, the contention of the Noticee in this regard cannot be accepted.

Issue No. I: Whether the Noticee has violated the provisions of SEBI IA Regulations, 2013 and SEBI Circulars, as alleged?

13. The following was inter alia observed and /or alleged in respect of the Noticee:

13.1. Non-disclosure of material information to SEBI:

13.1.1. In this regard, it has inter alia been observed and alleged that during the inspection period, 4 individuals resigned and 4 were appointed for rendering investment advice. However, the said material information was not intimated to SEBI.

13.1.1.1. In this regard, firstly I note that Noticee has neither disputed nor denied that during the inspection period four individuals had resigned and four were appointed for rendering investment advice.

13.1.1.2. In this regard, I note that the Noticee as reply to the SCN has contended that recruiting of new employees is in no manner a material change as it is an ongoing process of every organization. Moreover, the Noticee is registered in an individual capacity wherein the main person rendering investment advice is the Noticee himself. It is in the case of non-individual wherein the 'Principal Officer' is involved in rendering investment advice and his change is required to be intimated. Furthermore, the employees appointed by the Noticee were the 'persons associated with the investment advice' who assists the Noticee in his operations and they are duly in compliance with the enhanced qualification requirement as per the new amended IA Regulations.

13.1.1.3. In this regard, I note that the contention of the Noticee inter alia stating, '…recruiting of new employees is in no manner a material change …', in my view is evidently misplaced and /or out of context as the allegation was not just about 'any employee' but about those individuals who were associated with rendering of investment advice. Also the allegation was not just about 'recruiting' viz., those appointed but also about those who had resigned /left the Noticee during the inspection period. Accordingly, the said contention of the Noticee is devoid of merit and hence not acceptable.

13.1.1.4. As regards the contention of the Noticee about principal officer, I note that from the submissions of the Noticee itself that said contention is out of context as the same pertains to an Investment Advisor registered as non-individual while as per submissions of the Noticee himself, Noticee is registered in an individual capacity.

13.1.1.5. In this regard, I note that Noticee as part of his submission has inter alia himself submitted that, ' *… Furthermore, the employees appointed by the Noticee were the 'persons associated with the investment advice' who assists the Noticee in his operations …*'.

13.1.1.6. In this regard, I note that Regulation 2 (1) r of SEBI IA Regulations, 2013 inter alia reads as under:

> *[9][(r) "persons associated with investment advice" shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser;*
>
> *Explanation. —*
>
> *All client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called shall be deemed to be persons associated with investment advice, but do not include persons who discharge clerical or office administrative functions where there is no client interface.]*

13.1.1.7. I also note that Regulation 13 (b) of SEBI IA Regulations, 2013 requires that an investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.

Further in this regard I note that as per Regulation 3 (2) of SEBI IA Regulations, 2013, application for grant of certificate of registration, as IA, is required to be made in Form A, as specified in the First Schedule to SEBI IA Regulations, 2013 ("Form A"). As per Para 2.I.(3) of Form A, as specified in the First Schedule to SEBI IA Regulations, 2013, an applicant is required to inter alia provide details in respect of number of persons associated with investment advice, if any, who shall render investment advice under these regulations on behalf of the applicant along with documents in respect of qualification and certification requirements and also required to enclose identity proof and address proof of the applicant and persons associated with investment advice. The Noticee was under obligation to inform SEBI, as and when material change occurred and in the instant case the Noticee failed to inform SEBI regarding appointment and relieving of individuals rendering investment advice to its clients. Further in this regard, I also note that as per Para 7 of Form A relating to declaration statement, an applicant for grant of registration is required to inter alia declare, ' … I … further agree that, I … shall notify the Securities and Exchange Board of India immediately any change in the information provided in the application. Thus as per the declaration to the Form A viz., Application for Grant of Certificate of Registration itself, Noticee was required to notify SEBI about any change in the information provided in the application. Accordingly, contentions of the Noticee in this regard is devoid of merit and cannot be acceptable.

13.1.1.8. In view thereof, I find that the allegation that during the inspection period four individuals resigned and four were appointed for rendering investment advice, however, the said material information was not intimated to SEBI by the Noticee, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 13 (a) and 13 (b) and Clause 8 of Code of Conduct read with Regulation 15 (9) of SEBI IA Regulations, 2013.

13.1.2. It was inter alia observed and alleged that Mr. Shivesh Shukla and Mr. Nikhil Kabra were given appointment by the Noticee on the basis of having experience of working at Money Maker Research Pvt. Ltd., an entity against whom SEBI has passed an order WTM/MPB/IMD/ WRO/ ILO/ 167/2021 dated 22/01/2021. This fact was neither disclosed by the two individuals nor any due diligence was done by the Noticee regarding this.

13.1.2.1. In this regard, as per SEBI, the Noticee failed to provide any documentary evidence in support of its claim that due diligence was done by him while giving appointment to the said individuals who worked with an entity named Money Maker Research Pvt. Ltd.

13.1.2.2. In this regard, the Noticee as part of its submissions as reply to the SCN has inter alia contended that the employees Mr. Shivesh Shukla and Mr. Nikhil Kabra were employed with the Noticee since June 01, 2020 and July 01, 2020, respectively, which is way before the date of passing of an interim order by the SEBI against Money Maker Research Private Limited on January 22, 2021. Both the employees were appointed by the Noticee before SEBI had taken action against the said entity, moreover, in the said order, nowhere SEBI had mentioned the name of either Mr. Shivesh or Mr. Nikhil and also no action had been taken against them and hence employing both the individuals by the Noticee is in no manner a lack of due diligence or a non-compliance by the Noticee.

13.1.2.3. In this regard, I note from the material on record that in its reply to the finding of inspection vide letter dated January 12, 2023, Noticee had inter alia indicated the date in respect of Shivesh was indicated as, '.. from 01 June 2021 ..'. However in the table forming part of inspection report as available in the material on record and in the reply to the SCN Noticee the dates in respect of the two said personnel have been indicated as June 01 and July 01, 2020. I also note that Noticee has also submitted that names of said two personnel did not find mention in the said SEBI Order dated January 22, 2021. I note that the material available on record has not evidently brought out as to how any due diligence was not done by the Noticee, in this regard.

13.1.2.4. In view thereof, I am inclined to give benefit of doubt to the Noticee in this regard.

13.2. Non-compliance with the General Responsibility of an Investment Adviser:

13.2.1. In this regard, it was inter alia observed and alleged that the Noticee had failed to register with CKYC agency CERSAI and accordingly execute its responsibilities towards maintenance of KYC records with CERSAI.

13.2.2. In this regard, I note that the Noticee as part of his submissions as reply to the SCN has submitted that it had duly obtained the registration from the CDSL Ventures Limited, KRA and was duly capturing KYC of all the clients and has in records the KYC records of all his clients. Hence, the Noticee has followed the KYC procedure as specified by the SEBI and has not violated the provision of Regulation 15(8).

13.2.3. I note that the submissions of the Noticee in this regard are not only out of context in so far as the allegation was about Noticee not having obtained registration with CKYC agency CERSAI and not about CDSL Ventrures Ltd., KRA but also incomplete in so far as Noticee has remained silent on the alleged violation of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 and SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016 (collectively referred to as "*said SEBI Circulars*").

13.2.4. I note that the said SEBI Circulars were inter alia addressed to Investment Advisors. I note that SEBI Circular dated July 21, 2016 inter alia read /mandated as follows, *' … Government of India has authorized the Central Registry of Securitization and Asset Reconstruction and Security interest of India (CERSAI), set up under sub-section (1) of Section 20 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to act as, and to perform the functions of, the Central KYC Records Registry under the PML Rules 2005,including receiving, storing, safeguarding and retrieving the KYC records in digital form of a "client", … As per the 2015 amendment to PML (Maintenance of Records) Rules, 2005 (the rules), every reporting entity shall capture the KYC information for sharing with the Central KYC Records Registry in the manner mentioned in the Rules, … Accordingly, the KYC template finalised by*

CERSAI shall be used by the registered intermediaries as Part I of AOF for individuals. …. In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, … " . I note that SEBI Circular dated November 10, 2016 inter alia read /mandated as follows, *' … This has reference to SEBI circular no. CIR/MIRSD/66/2016 dated July 21, 2016 on operationalization of Central KYC Records Registry (CKYCR) wherein the registered intermediaries were directed to upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 01, 2016. … Government of India, vide its letter dated October 04, 2016, has directed as follows with regard to KYC details of existing and new individual clients: a. Registered intermediaries have to update their IT systems as well as register all new accounts of individuals in accordance with the CKYCR template, mandatorily by October 31, 2016.* …".

13.2.5. I also note from the website of CERSAI that CERSAI was entrusted upon the responsibility of operating and maintaining a KYC Registry, governed under Prevention of Money Laundering Act (PMLA) /PML Rules 2005 (Maintenance of Records) and that the Central KYC Record Registry, caters to Reporting Entities (REs) of all four major regulators of financials sector i.e. RBI, SEBI, IRDAI & PFRDA. (https://www.cersai.org.in/CERSAI/aboutus.prg). I note that Central KYC Registry (CKYCR) as a repository was envisaged as per PMLA to digitize the KYC records and to facilitate inter-usability of these records across entities regulated by RBI, SEBI, IRDAI, and PFRDA, to inter alia address issues such as managing Money Laundering/Terrorism Financing (ML/TF) risk. Thus, Noticee was required to comply with the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 and SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016.

13.2.6. Further in this regard, I also note from material on record that vide SEBI letter dated December 29, 2022, the findings /observation arising out of the inspection by SEBI, including that relating to instant observation /alleged violation, were inter alia shared by SEBI with the Noticee and whereby Noticee was advised to provide its point wise comments. I note from the material available on record that the response of the Noticee, dated January 12, 2022 (read January 12, 2023, hereinafter referred to as 'January 12, 2023')) to the findings of the inspection in this regard, was in nature of admission in so far as it had inter alia been replied by the Noticee that, *' … we don't have CKYC agency CERSAI registration at the time tenure of inspection … now we had Applied for its registration and it is in process*'.

13.2.7. In short, Noticee has neither provided any details and documents in support of having complied with the provisions alleged to have been violated including the said SEBI Circulars nor demonstrated to the contrary viz., that it was not required to comply with the said circulars and instead had in its response on the findings of SEBI in this regard had inter alia replied in nature of admission, as brought out in the foregoing.

13.2.8. In view thereof the allegation that Noticee had failed to register with CKYC agency CERSAI and accordingly execute its responsibilities towards maintenance of KYC records with CERSAI, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 15(8) of SEBI (IA) Regulations, 2013 read with the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 and SEBI Circular No. CIR/MIRSD/120/2016 dated November 10, 2016 and clause 2 and 8 of Code of Conduct read with Regulation 15(9) of SEBI IA Regulations, 2013.

13.3. Failure to provide the information/ records and non-cooperation during inspection

13.3.1. In this regard it was inter alia alleged that the Noticee did not provide the onsite inspecting team any data pertaining to its prospective clients including the call records and accordingly it was observed that the Noticee was not keeping any data pertaining to prospective clients including call recording, risk-profiling etc.

13.3.1.1. In this regard, Noticee as part of his submissions as reply to the SCN has contended, *" … Noticee would like to state that he has duly maintained all the records as mandated by the SEBI and the same was also submitted to the inspecting authority at the time of inspection. The provision for maintaining call recording was applicable with effect from January 01, 2021, which the Noticee had duly maintained. The Noticee makes the clients through the way of organic marketing and conducts risk profiling of the clients telephonically and is orally communicated to the clients as well. The recording of such calls is maintained by the Noticee and the inspecting authority had verified the same and the officers had also took the same in their record.*

13.3.1.2. In this regard, firstly I note that while the Noticee has contended that it had duly maintained all the records and that the same was also submitted to the inspecting authority, neither relevant details nor any documentary evidence whatsoever has been provided by the Noticee in support of its contention. Further in this regard, I also note from material available on record that as part of its response on the findings of the inspection vide its letter dated January 12, 2023, the Noticee had earlier inter alia admitted to be not maintaining any data pertaining to prospective clients in so far as Noticee had inter alia replied stating, *' … This is to bring your notice that data Pertaining to prospective clients include call records we did not use to maintain. …'.* As regards the aspect of risk profiling, I note that Noticee had earlier vide its letter dated January 12, 2023, responded to SEBI inter alia stating that, ' … However, we would like to clarity that we only consider that client as a prospection client who has visited (site tour) on our website and used to raise query in respect of our any mentioned services. Our IA's do the over-the-prospecting client call and whatever the result derived we share it with our clients over the call itself and we used to consider that risk profiting as over final data of our customers ...'. Evidently the submission of the

Noticee now, as part of reply to the SCN in this regard are made as an afterthought and without any relevant details and documents and accordingly devoid of merit and hence not acceptable.

13.3.1.3. In this regard, I note that Regulation 19(1)(e) and Regulation 19(1)(g) of SEBI IA Regulations, 2013 pertaining to maintenance of records by IA inter alia reads as under:

"

…

Maintenance of records.

19. (1) An investment adviser shall maintain the following records,-

…

(e) Investment advice provided, whether written or oral;

…

(g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.

…

"

13.3.1.4. Further in this regard, I note that Para 2 (vi) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 inter alia reads as under:

"

…

(vi) Maintenance of record

Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:

a. IA shall maintain records of interactions ,with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:

i. Physical record written & signed by client,

ii. Telephone recording,

iii. Email from registered email id,

iv. Record of SMS messages,

v. Any other legally verifiable record.

b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.

c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

…

".

13.3.1.5. Further in this regard, I also note that Regulation 25(1) and 25(2) of SEBI IA Regulations, 2013 pertaining to Obligation of investment adviser on inspection, inter alia reads as under:

"
…
Obligation of investment adviser on inspection.

***25**. (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including [47][partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.*

(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

…
".

13.3.1.6. Thus as per the provisions of Regulation 19(1)(e) and 19(1)(g) of SEBI IA Regulations, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, Noticee was inter alia required to maintain records of interactions, with all clients including prospective clients and as per provisions of Regulation 25(1) and (2) or SEBI IA Regulations, 2013 Noticee was under obligation to produce to the inspecting authority the documents and information relating to prospective clients including the call records as was sought by the inspecting authority for the purposes of inspection.

13.3.1.7. However, as also brought out above, I note that the submissions of the Noticee as reply to the SCN are not only without any details and documents and hence in nature of mere statements but also the same are contrary and conflicting to the earlier response of the Noticee to SEBI vide its letter dated January 12, 2023. I also note that the earlier response of the Noticee in this regard was instead in nature of admission, in so far as Noticee had inter alia replied stating, *' … This is to bring your notice that data Pertaining to* *prospective clients include call records we did not use to maintain. …',* as brought out in the foregoing. Accordingly, the submission of the Noticee as reply to the SCN are devoid of merit and hence not acceptable.

13.3.1.8. In view thereof, I hold that the allegation that the Noticee did not provide the onsite inspecting team any data pertaining to its prospective clients including the call records and accordingly it was observed that the Noticee was not keeping any data pertaining to prospective clients including call recording, risk-profiling etc., stands established.

13.3.2. It was inter alia alleged that the Noticee did not provide onsite inspecting team any data pertaining to functions performed as a registered Investment Adviser during last 5 years.

13.3.2.1. In this regard, I note that Noticee as part of his submissions as reply to the SCN has contended, " … *Further, in 2020 while shifting his office from Indore to Prayagraj, the server, in which the entire data was stored, unfortunately got crashed and the data therein could not get recovered and hence the Noticee could not provide the same to the inspecting authority. However, post that the Noticee has in place all the requisite records of 4 years from 2020 to till date. Moreover, the inspection period was April 01, 2020 to March 31, 2021, for which the Noticee had provided complete details to the inspecting authority ….".*

13.3.2.2. I note that while the allegation is about data pertaining to past five years, the Noticee has contended to have had in place all the requisite records of four years from 2020 for which complete details had been provided to the inspecting authority. In this regard, firstly I note that the submissions of the Noticee in this regard are in nature of mere statements as neither relevant details nor any documentary evidence whatsoever has been provided by the Noticee in support of its contention.

13.3.2.3. I note that while it had been inter alia contended by the Noticee that during shifting its entire data server had been crashed, save for merely stating so, Noticee has not demonstrated the same along with relevant details and /or documents. Generally speaking, if an entity operating as an intermediary would face such a situation of having lost entire data, there would apparently be all attempts made by it to restore and /or recover the system and /or data by approaching relevant experts. In the instant case, I note that save for making statement, no details whatsoever have been provided by the Noticee to demonstrate and in support of its claim. This apart, as an intermediary registered with SEBI and offering its services to investors in securities market, in my opinion, Noticee ought to have in place proper policies and systems with regard to keeping of back-up and retrieval of data, more so as being a SEBI registered investment advisor, Noticee was required to maintain and preserve all records, either in physical or electronic form, for a minimum period of five years, as brought out earlier.

13.3.2.4. Further in this regard, I also note from material available on record that as part of its response on the findings of the inspection vide its letter dated January 12, 2023, the response of the Noticee earlier was in nature of admission in so far as Noticee had inter alia replied stating, *" … This is to draw your kind attention that since inspection we are operating our office from indore in February 2020 we have repositioned our office from Indore to Prayagraj and during shifting our entire data server has been crashed and as we cannot stop our daily functionality we have created a fresh server in Prayagraj and as we adhere norms of SEBI to store the data of the clients we have asked our vendor provide us back up the same server ... ".* Further in this regard, I also note from material available on record that Noticee had submitted an undertaking titled "Write-up on 5 Years Data", dated December 24, 2021, whereby the Noticee had inter alia stated, " … *in Feb 2020 we have shifted our office from Indore to Prayagraj we have created a fresh server in Allahabad, … we have asked out vendor to provide us the back-up of the same server and we are on it. As soon as we will get the data back-up we will provide you with the same*.". In this regard, I note that Noticee has not demonstrated providing relevant details and /or documents that it had provided the data back-up, as sought, to SEBI, as was committed by it in the undertaking dated December 24, 2021. Thus, the submissions made by the Noticee now as part of reply to the SCN in this regard, are evidently made as an afterthought and same being without any relevant details and documents are accordingly devoid of merit and hence not acceptable.

13.3.2.5. In view thereof, I hold that the allegation that the Noticee did not provide onsite inspecting team any data pertaining to functions performed as a registered Investment Adviser during last 5 years, stands established.

13.3.3. It was inter alia alleged that the Noticee had submitted the report confirming compliance with the requirement of para 2(ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, on July 13, 2021, i.e., after a delay of around 13 days.

13.3.3.1. In this regard, I note that para 2.(ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 reads as under:

"

…

2. *In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:*

…

(ii) <u>Agreement between IA and the client</u>

a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.

b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder.

c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.

d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.

…

".

13.3.3.2. I note that the submissions of the Noticee as reply to the SCN vide letter dated December 26, 2023 and as its response to SEBI earlier vide letter dated January 12, 2023, in this regard were in nature of admission in so far as it had inter alia submitted, *" … there was a delay of just 13 days in submitting the report confirming compliance with the requirement of para 2(ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020* ...". (as part of submission to the SCN), and that, " … *our proprietor health condition was not good enough, he conveyed the instruction but to a misunderstanding, it was delayed …*". (as part of its response to the SEBI on the finding of the inspection earlier). Further in this regard, I note that the Noticee has contended that the delay of 13 days was as the Noticee had got the symptoms of Coronavirus and as a result he was required to get himself quarantined and hence he could not submit the report in a timely manner. In this regard, I note from the copy of the document dated July 13, 2021 (read report) as available in the material available on record that while the same was dated July 13, 2021 nothing as regards delay and /or medical condition /reasons was stated in the said document. Generally speaking, any intermediary who misses to comply with certain requirement by a given date owing to certain genuine reasons, would mention the same in the document itself while making delayed compliance, which is not so, in the instant case. I also note that save for merely contending, as above, Noticee has not provided any document whatsoever in support of its said contention, say for example, copy of doctor's prescription /medical bills / RTPCR report etc. In this regard, I also note that the said provision of the cited SEBI circular was applicable to entire class of intermediary viz., All SEBI Registered Investment Advisors. Thus, I am not convinced with the contention of the Noticee in this regard and apparently the same are made as an afterthought.

13.3.3.3. In view thereof, the allegation that the Noticee had submitted the report confirming compliance with the requirement of para 2(ii) of SEBI Circular

No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 after a delay of 13 days, stands established.

13.3.4. It was inter alia alleged that the Noticee did not provide any document in support of education qualification of any of the individuals who were rendering investment advisory services to its clients during the period of inspection.

13.3.4.1. In this regard, I note that Noticee as part of his submissions as reply to the SCN has contended, *" … all his employees as mentioned in the table in clause 4.3.7 in the SCN were postgraduate i.e., having, MBA degree. Also, the Noticee would like to bring into the kind consideration of the SEBI that the SEBI itself had provided time period of 3 years to the employees already employed by the existing investment advisers for complying with the enhanced qualification requirement i.e. having post graduate degree. Currently vide Circular No.: SEBI/ HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/168 dated October 10, 2023, SEBI had extended the time period for the said requirement till September 30, 2025. …".*

13.3.4.2. In this regard, I note that Regulation 15(13) and Regulation 25(1) of SEBI IA Regulations, 2013 inter alia read as under:

"

15. [37][(13) It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.]

…

"

…

25. (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including [47][partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

…

".

13.3.4.3. In this regard I note that contention of Noticee inter alia about SEBI having extended the time period for the said requirement till September 30, 2025 is devoid of merit considering that Noticee has himself inter alia as part of his submissions as reply to the SCN has inter alia submitted that, " … *all his employees as mentioned in the table in clause 4.3.7 in the SCN were postgraduate i.e. having MBA degree. …".* I also note that the alleged violation allegation in this regard itself was about Noticee having not provided documents in support of education qualification of any of the individuals who were rendering investment advisory services to its clients during the period of inspection. I note that during instant proceedings Noticee has yet again failed to provide documentary evidence with regard to the education qualification, despite having claimed that all said employees were having MBA degree. Accordingly the submissions the Noticee in this regard are devoid of merit and hence not acceptable.

13.3.4.4. In view thereof, I hold that the allegation that Noticee did not provide any document in support of education qualification of any of the individuals who were rendering investment advisory services to its clients during the period of inspection, stands established.

13.3.5. In view of the violations as established under paragraph 13.3.1 to 13.3.4 above, I hold that the Noticee has violated provisions of Regulation 25(1), 25(2), clause 8 of Code of Conduct read with Regulation 15(9), Regulation 19(1) and 19 (2) of SEBI (IA) Regulations, 2013 read with SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020; Regulation 7 (1) (a), 7 (1) (c), 15(13), 25(1) and clause 2, 3, 8 and of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulations, 2013.

13.4. Failure to assess the suitability of investment advice and maintain appropriate standards of conduct:

It was inter alia alleged that the Noticee failed to assess the suitability of investment advice and maintain appropriate standards of conduct.

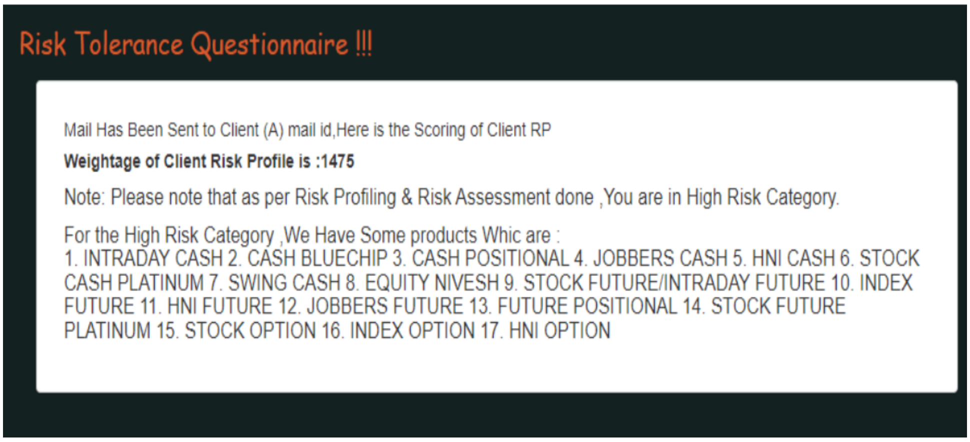
13.4.1. In this regard, I note that it was inter alia observed and alleged that the Noticee had provided an option of submission of risk profiling questionnaire on its website, however, as per undertaking submitted by the Noticee, it is not taking into consideration the risk profiling score submitted online. The Noticee calls such prospective clients and perform risk profiling on call and shares the score on call itself and considers such score as the final one. Further, the Noticee has failed to produce any record of consent of client taken on the said risk profiling done on phone.

Further it was inter alia observed and alleged that the Noticee had not performed any suitability assessment of any of its client. As per the undertaking submitted by the Noticee, it only performs Risk Profiling and on the basis of scores obtained by a client, the product is prescribed to him/ her, even if the product is not in line with the investment objective, financial situation or any other financial factor indicated by such client in the risk profile questionnaire. It was observed that the Noticee had not taken into due consideration the preferred time horizon indicated by its clients while prescribing products to them and details of certain sample cases examined by the inspecting team in this regard were provided to the Noticee.

It was alleged that that the Noticee had failed to provide any document in support of suitability assessment being done by him before prescribing any product or services to his clients, i.e., the Noticee is providing advisory services without performing any suitability assessment for a particular client.

13.4.1.1. In this regard, I note that the Noticee as part of his submission as reply to the SCN has inter alia submitted that, "*the Noticee would like to state that he had a document namely product suitability wherein the products offered by the Noticee are categorized in Medium and High-risk category. Further, the product suitability is also enclosed as Exhibit-A for your reference, which was submitted to the SEBI at the time of obtaining registration from the SEBI* *and the same is still being followed by the Noticee. Moreover, the Noticee has also attached (Exhibit-B) the screenshot of the website of the Noticee which is reflected post submission of risk profiling questionnaire, wherein it is evident that the suitable product according to the risk profile of the client is clearly displayed upon. ….*".

Exhibit-B



13.4.1.2. In this regard, I note from the material available on record that Noticee had submitted an undertaking dated December 24, 2021 inter alia stating, ' … our IA do the risk profiling of the customer over the call … '. I also note from the copy of Exhibit B as submitted by the Noticee itself that while the header of the same inter alia reads, ' mail has been sent to client …', no such copy of even a single email in this regard, has been submitted by the Noticee.

13.4.1.3. In this regard I note that SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, inter alia reads as under:

"

…

1. *Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) provides for code of conduct to be followed by IAs. In order to further strengthen the conduct of IAs, while providing investment advice and to protect the interest of investors seeking their advice, the IAs shall comply with the following:*
   …

(ii) Proper risk profiling and consent of client on risk profiling

Risk profiling of the client is essential to provide advice on suitable product based on various criteria like income, age, securities market experience etc. RIAs shall provide investment advice only after completing the following steps:

a. Complete the risk profile of the client based on information provided by the client.
b. Obtain consent of the client on completed risk profile either through registered email or physical document.

…
".

13.4.1.4. In this regard, I note that while the Noticee was required to obtain consent of the client on completed risk profile either through registered email or physical document, as per SEBI Circular dated December 27, 2019, Noticee has not demonstrated providing relevant details and documents that the consent of the clients was being obtained by him, as required.

13.4.1.5. In view thereof, I hold that the allegation that that Noticee was performing risk profiling on call and failed to produce any record of consent of client taken on the said risk profiling done on phone, stands established. Accordingly, I hold that Noticee has violated Clause 1 (ii) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27/12/2019 read with Regulation 16 and clause 1 and 8 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulations, 2013.

13.4.2. As regards suitability assessment, it was inter alia alleged that the Noticee did not have a system in place to take into consideration important parameters of risk profile such as investment objective, current financial situation, preferred time horizon or any other financial factor indicated by its clients. In this regard, it was inter alia observed and alleged that the Noticee had not taken into due consideration the preferred time horizon indicated by its clients while prescribing products to them. The following was inter alia observed by SEBI in this regard in respect of the sample cases:

a) In case of a client, Mr. Axxtkuxxr Sxxmxxo Bxxakx, it is noted that the preferred time horizon indicated by him was more than 3 years, however the Noticee has prescribed the HNI Options Service which, as per information available on the website of the Noticee, claims to provide huge profits in short term.

b) In case of a client, Mr. Uxxayx Kxmxx K., the preferred time horizon indicated by him in the risk profile was 1 to 3 years, however, the Noticee had prescribed him the HNI Cash Service in which, as per information available on the website of the Noticee, calls are provided in those scripts in which bigger movement is expected in intraday.

c) In case of a client, Mr. Mxhxt Kxxhyxx, the preferred time horizon indicated by him in the risk profile was profile 1 to 3 years, however, the Noticee had prescribed him the Jobbers Cash Service which, as per information available on the website of the Noticee, is designed for those who wants to trade for intraday pattern and wish to capture every Bull and Bear run of the market on daily basis intraday.

13.4.2.1. In this regard, the Noticee has inter alia contended that, " … *the examination carried out by the inspecting team of the samples as mentioned in the SCN is not done in an ideal manner as the SEBI has misunderstood the question: 'Investment time horizon' in the risk profiling form. As by the said question, the Noticee meant that: For how much time period the investor wishes to keep his money invested in the stock market and not the other way around which the SEBI has interpreted.".*

13.4.2.2. In this regard, I note that while it had inter alia been alleged that the Noticee had not performed any suitability assessment of any of his client, however it had inter alia also been stated that the product was prescribed to him /her (read client) on the basis of risk profiling scores obtained by a client. Further, I also note that the allegation in this regard, broadly speaking, is inter alia based on the observation that the IA had not taken into due consideration the preferred time horizon indicated by its clients. I note that as per Regulation 17.(a) of SEBI IA Regulations, 2013 pertaining to suitability an IA is required to inter alia ensure that 'all investments on which investment advice is provided is appropriate to the risk profile of the client'. Further in this regard, from Regulation 16 of SEBI IA Regulations, 2013, pertaining to risk profiling, I note that time for which client wishes to stay invested is one amongst various information required towards risk profiling.

13.4.2.3. Accordingly, having regard to the above and the contentions of the Noticee in this regard, I note that the material available on record has not evidently brought out as to how the Noticee had not performed any suitability assessment of any of his clients and as to how the investment advice provided were not appropriate to the risk profile of the clients and therefore I am inclined to allow benefit of doubt to the Noticee, in this regard.

13.5. Failure to make necessary disclosures to clients:

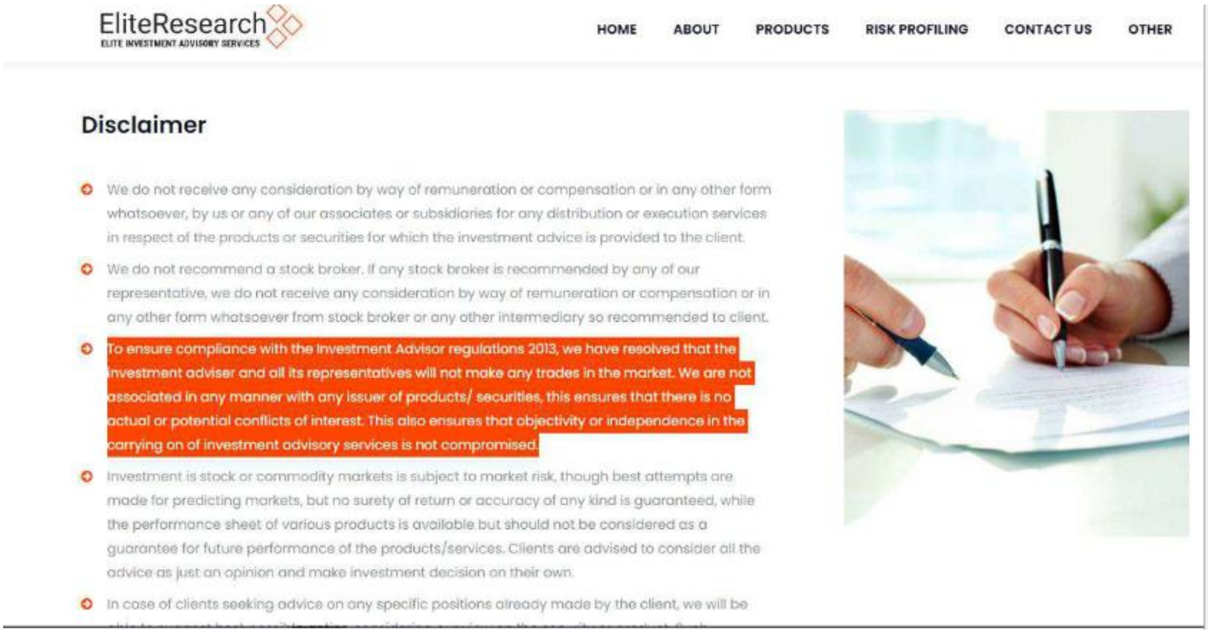
13.5.1. It was inter alia alleged that the Noticee failed to submit any document evidencing that it had disclosed to all its clients regarding its holding positions, with respect to the product or securities which were subject matter of advice.

13.5.2. In this regard, SEBI inter alia sought copies of contract notes from Noticee with respect to disclosure made to its clients. The Noticee, in response to the findings of inspection, had submitted the copy of contract document signed by him with his clients.

SEBI had analyzed the contract document signed by the Noticee with its clients, however, no declaration w.r.t. the Noticee or its employees for not indulging in trading was mentioned in the said document. Further, SEBI observed that the Noticee failed to provide the inspecting team with any such declaration, separately sent to its clients.

13.5.3. In this regard, the Noticee in his submission as part of reply to the SCN had inter alia contended that the '… *Noticee didn't have any demat/trading account as a result he is not holding/trading in the securities which are the subject matter of advice. Moreover, the Noticee had duly disclosed to all his clients upon its website that: "To ensure compliance with the Investment Advisor regulations 2013, we have resolved that the investment adviser and all its representatives will not make any trades in the market. We are not associated in any manner with any issuer of products/ securities, this ensures that there is no actual or potential conflicts of interest. This also* *ensures that objectivity or independence in the carrying on of investment advisory services is not compromised." The screenshot of the same is also enclosed as Exhibit-C…'*

Exhibit-C



13.5.4. I note that in response to this allegation in the SCN, the Noticee has submitted a document as exhibit-C claiming to be screenshot of disclosure to all his clients upon its website. In this regard, firstly, from the copy of document submitted by the Noticee as Exhibit-C, I note that the said document neither contains the URL, despite the fact that the Noticee has claimed that such disclosure was made through its website, nor does the said document indicate the date of the document. Logically speaking, if any information is populated by someone on their website, the person would submit a print out of the said website which inter alia would contain such information like the complete URL and date time of the print etc. Further in this regard, I note that neither material available on record has brought out nor has Noticee demonstrated that said information and document viz., Exhibit-C, were provided during the Inspection by SEBI or after the Inspection as part of response to the findings of the Inspection submitted by the Noticee vide its letter dated January 12, 2023. I also note that as regards document submitted as Exhibit-C now, Noticee has not stated as to since when the said disclosure was being populated on its website, as claimed. Noticee has not demonstrated to satisfaction to rule out the possibility of said document having been populated on the website after the Inspection by SEBI and/or produced as an afterthought. This apart, rationally speaking, an entity which is registered as an intermediary in a regulated regime, who is subject to as inspection by concerned regulatory body, would logically speaking produce all details and documents in its defence, in respect of any violation observed and/or alleged, at the time of Inspection or worse while responding to the findings of the Inspection. In the instant case that is not so. Accordingly, the submissions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

13.5.5. In view thereof, I hold that the allegation that Noticee failed to submit any document evidencing that it had disclosed to all its clients regarding its holding positions, with respect to the product or securities which were subject matter of advice, stands established. Accordingly, I hold that Noticee has violated the provisions of Regulation 18 (4) and clause 1, 5, 8 of Code of Conduct read with Regulation 15(9) of IA Regulations.

13.6. Delay in redressal of investor grievances:

13.6.1. It was inter alia observed and alleged that the Noticee had received a total of 22 complaints out of which 13 were received through SCORES while remaining 9 were received directly on the dedicated email id service@eliteresearch.in and that complaints received on SCORES were resolved by the Noticee in the time range of 54 days to 220 days.

13.6.2. In this regard, Noticee in his submissions as part of the reply to the SCN has contended that, '… *The Noticee would like to state that the Noticee had always resolved all the clients' grievances in a timely manner and provided* *the best resolution as possible, which is evident from the SEBI SCORES Portal wherein 0 complaints are pending against the Noticee out of total of 148 complaints received. Screenshot of the SCORES Portal is provided in Exhibit – D. The Noticee has always promptly responded towards all of the investor's grievance, however in few cases to reach a final conclusion, there have been delays due to late response from the clients and also due to prevailing covid times in 2020….'*

13.6.3. From the above, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee has submitted that '…*however in few cases to reach a final conclusion, there have been delays due to late response from the clients and also due to prevailing covid times in 2020….*'

As regards submission of Noticee that delays occurred due to late response from the clients and also due to prevailing covid times in 2020, I note that while the Noticee has merely stated so, it has failed to demonstrate the same by adducing documents in support.

Further, a regards the submission of Noticee that 0 complaints are pending against the Noticee, I note that the subject matter of the instant proceedings are regarding the time taken to resolve the complaints and not about the number of complaints pending. Accordingly, the contention of the Noticee is out of context and hence cannot be accepted.

13.6.4. I note that the Noticee in his submissions as part of the reply to the SCN has further contended that *'….the Noticee has in no manner violated the provisions of the SEBI Circular: SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26/03/2018. Moreover, the Noticee didn't have any such intention of not resolving the grievances of the clients as in the past as well the Noticee had resolved all the client's grievances in a timely manner and to the best of the satisfaction of his clients…..'*

As regards the contention of the Noticee that it has is in no manner violated SEBI circular dated March 26, 2018, it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

SEBI Circular SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated March 26,2018
"
…
8. Effective from August 01, 2018, following procedure shall be followed for filing and redressal of investor grievances using SCORES:
…
The complainant may use SCORES to submit the grievance directly to companies / intermediaries and the complaint shall be forwarded to the entity for resolution. The entity is required to redress the grievance within 30 days,.
…
"

I note from the above text that the Noticee was required to redress the grievance within 30 days, however, as noted from material available on record the Noticee took 54 days to 220 days to resolve the 13 complaints received through SCORES. I note that the Noticee has neither disputed nor denied the alleged time range taken by Noticee in resolving the complaints. Further, I note that the Noticee has failed to demonstrate that the complaints were resolved within 30 days. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

As regards contention of the Noticee that it has resolved the complaints of the clients in a timely manner in the past, I note that the subject matter of the instant proceedings are the 13 complaints on SCORES which were resolved by the Noticee in the time range of 54 days to 220 days. Accordingly, the contention of the Noticee is out of context and hence cannot be accepted.

13.6.5. In this regard, I also note that the SEBI Circular dated March 26, 2018 was in continuation of SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014. The said SEBI circular dated December 18, 2014 also mandates that all SEBI registered intermediaries are to take immediate action in the resolution of complaints within a period of thirty days and file an ATR with SEBI. Further, Regulation 21(1) of the IA Regulations requires an Investment Adviser to promptly redress the grievances of its clients.

13.6.6. In view thereof, I hold that the allegation that the complaints received on SCORES were resolved by the Noticee in the time range of 54 days to 220 days, stands established. Accordingly, I hold that Noticee has violated Regulation 21(1) read with para 8 (c) of SEBI Circular No. SEBI/

HO/OIAE/IGRD/CIR/P2018/58 dated March 26, 2018 and Clause 2 and 8 of Code of Conduct read with Regulation 15(9) of SEBI (IA) Regulation, 2013.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15C and Section 15EB of the SEBI Act, 1992?

14. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI IA Regulations and SEBI circulars
15. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held 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......"*
16. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Sections 15C and 15EB of SEBI Act which provides as following:

"…

15C: Penalty for failure to redress investors' grievances

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

…

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 No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee?

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

> **SEBI Act**
> *"……….*
> *Factors to be taken into account while adjudging quantum of penalty.*
> *15J. While adjudging quantum of penalty under 15- 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.*
> *…………."*

18. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee being a SEBI registered Investment Adviser was required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce. The Noticee failed to comply with the provisions of law, as brought out in the foregoing, and such failure and/or non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

19. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the

SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty under Section	Penalty (in Rs.)
Rajiv Kumar Singh Proprietor Elite Investment Advisory Services	Section 15C of the SEBI Act	1,00,000/- (Rupees One Lakh only)
	Section 15EB of the SEBI Act	5,00,000/- (Rupees Five Lakhs only

20. The Noticees 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

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: January 31, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER