BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2024-25/31072

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:
M/s Capital Ways Investment Adviser
(Proprietor: Mr. Deepak Ostwal)
(PAN: AAPPO6194C / SEBI Registration Number: INA000008862)

In the matter of Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal)

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal) (hereinafter also referred to as "**Noticee/ Capital Ways/ IA/ Investment Advisor**") during October 11, 2021 to October 14, 2021 for the Inspection period April 01, 2020 to October 14, 2021. The focus of inspection was to look into the compliance of regulatory requirements stipulated under SEBI Act, 1992, IA Regulations, SEBI (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter also referred to as 'Amended IA Regulations') and circulars and guidelines framed thereunder.

2. Pursuant to the said inspection, it was observed by SEBI that Noticee had allegedly violated various provisions of SEBI (Investment Advisers) Regulations, 2013 {"SEBI IA Regulations, 2013" / "SEBI IA Regulations" / "IA Regulations"}, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {"SEBI PFUTP Regulations, 2003" / "SEBI PFUTP Regulations" / "PFUTP Regulations"}, SEBI Act, 1992 and Circulars issued by SEBI viz.,

2.1. Regulation 15(13) read with Regulation 7 of IA Regulation, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

2.2. Regulation 15A of IA Regulations, 2013 read with Clause 2(iii) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clauses 1, 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

2.3. Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 and Clause (2) (ii) (c) of SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020.

2.4. Regulation 15(1) of IA Regulations, 2013; Regulation 17(a), (b) & (d) and (e) of IA Regulations read with Clauses 1 (Honesty and Fairness), 2 (Diligence) and 8 (Compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013; Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter also referred to as "PFUTP Regulations") read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

2.5. Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, read with Regulation 19(1) of IA Regulations, 2013 and Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations, 2013 read with Regulation 15(9) of IA Regulations, 2013; Regulation 15(12) of IA Regulations; Regulation 25 (1) & (2) of IA Regulations.

2.6. Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992; Regulation 15(1) of IA Regulations, 2013; Clause 1 of Code of Conduct for

Investment Advisers read with Regulation 15(9) of IA Regulations, 2013; Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020; Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992; Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992; Regulations 3 (a), (b), (c) and (d), 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992.

2.7. SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014; Regulation 21(1) of IA Regulations, 2013; Regulation 15(12) of IA Regulations, 2013; Regulation 25 (1) & (2) of IA Regulations, 2013.

2.8. SEBI Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

2.9. Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, 1992.

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

3. 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 Section 19 read with Section 15I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as 'SEBI Rules'), the Competent Authority appointed the undersigned as the Adjudicating

Officer ("AO") vide communique dated August 02, 2023 to inquire into and adjudicate under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992, for the aforesaid alleged violations of the Noticee. Thereafter, the matter was reallocated and Shri Biju S., CGM SEBI was appointed as Adjudicating Officer vide communique dated May 03, 2024. Subsequent to transfer of Shri Biju S., the matter was reallocated to the undersigned vide Communique dated July 29, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing no. SEBI/EAD-5/AN/RG/28392/1/2024 dated September 10, 2024 ("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 Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, for the violations alleged to have been committed by the Noticee.

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

"...

3. BACKGROUND

3.1. SEBI conducted the inspection of Capital Ways during October 11, 2021 to October 14, 2021 for the Inspection period April 01, 2020 to October 14, 2021 (copy of the inspection report is placed as Annexure A2). The focus of inspection was to look into the compliance of regulatory requirements stipulated under SEBI Act, 1992, IA Regulations, SEBI (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter also referred to as 'Amended IA Regulations') and circulars and guidelines framed thereunder.

4. Pursuant to the inspection the following has inter alia been observed and alleged by SEBI in respect of the Noticee:

*4.1. **Finding A: Compliance with Qualification and certification requirement:***

4.1.1. Regulation 2(1)(r) of IA Regulations, prescribes that "*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, ……client interface*."

4.1.2. As per the Business model submitted by IA (Annexure 2), the role of sales and compliance department in providing the advisory services to the clients are as under:

4.1.2.1. Pursuant to receiving the leads from IT team through CRM, sales executive pitches risk profile questionnaire to prospective clients about their risk capacity and procure KYC details, PAN and DOB of the client.

4.1.2.2. Thereafter, compliance team verify the risk profile and KYC and communicate the same to the client.

4.1.2.3. Further, according to suitability, sales executive provides details about services offered by IA, disclosure, policy, fees and agreement process to the client. All such details are also available at the website of the IA.

4.1.2.4. Subsequently, compliance department send agreement to the client through mail. The agreement is e-signed through Aadhar verification.

4.1.2.5. After signing of agreement, sales executive ask for payment from the client.

4.1.2.6. After receipt of payment, sales executive makes sales order which is approved by Compliance Department.

4.1.3. From the details of business process as mentioned above read with provisions of Regulation 2(1)(r) of IA Regulations, it is observed that Executives working in sales and compliance department of IA are acting as a client facing person and do the process related to risk profiling of clients, suitability of clients, agreement with clients and payment procurement from clients. Thus the Executive of sales and compliance department of IA shall be considered as "persons associated with investment advice".

4.1.4. As per Regulation 2(1)(r) and 7(2) of IA Regulations, read with Regulation 3(VIII) of Amended IA Regulations, "*An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services - (a) from NISM; or (b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM*."

4.1.5. Inspection team checked whether IA and its representative / persons associated with investment advice are compliant with the qualifications and certification requirement of IA Regulations. In this regard, SEBI, vide letter SEBI/WRO/ILO/NM/OW/P/25456/1/2021 dated September 23, 2021, advised Capital Ways to provide, inter-alia, details of employees and persons associated with advice. In response, IA vide letter dated October 08, 2021 and October 14, 2021, submitted the list of employees / persons associated with investment advice along with the qualification details. The details of active employees submitted by the IA is placed at Annexure 3.

4.1.6. Observations from the details of active employees submitted by the IA is as under:

4.1.6.1. Total number of active employees of IA is 96.

4.1.6.2. 84 out of 96 employees are in sales department, accounting for 87% of the total employee of IA.

4.1.6.3. 52 out of 83 sales executive are not holding post-graduation qualification. Further, 37 out of 84 sales executive do not possess NISM certification.

4.1.6.4. 3 employees are in compliance department. 2 out of such 3 employees are not holding NISM certification and post-graduation qualification.

4.1.7. In view of the above, it is alleged that Employees / The person associated with Capital Ways, who have dealt with clients, don’t possess requisite qualification and certification. Thus, IA has violated Regulation 15(13) read with Regulation 7 of IA Regulations and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

4.2. **Finding B: Compliance with fees structure:**

4.2.1. Provisions of Regulation 15A of IA Regulations read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, provides as under:

"…..*Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:*

(A) Assets under Advice (AUA) mode

…..

…..

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

<u>General conditions under both modes</u>

a. …..

b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an <u>annual basis</u>…..

………."

4.2.2. The abovementioned provision specifies that an IA shall charge fees from client which shall not exceed Rs. 1,25,000/- per annum per client under fixed fee mode or 2.5 percent of Asset Under Advice per annum per client for all the offered services. Further, it is provided that an IA shall charge fees from a client under any one mode on an ‘annual basis’.

4.2.3. The fees structure as submitted by the IA is placed at Annexure 1. On perusal of the fees structure, it is noted as under:

4.2.3.1. There are 17 services for which different price packages are offered by IA on weekly, monthly, 2 months or on quarterly subscription basis.

4.2.3.2. IA charge fees from the client through fixed fee mode by offering various price packages.

4.2.3.3. The minimum weekly fees charged by IA is Rs. 5,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 2,60,000/- (5000*12).

4.2.3.4. The minimum monthly fees charged by IA is Rs. 12,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,44,000/- (12000 * 12).

4.2.3.5. The minimum Bi-monthly fees charged by IA is Rs. 25,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,50,000/- (25000 *6).

4.2.3.6. The quarterly amount charged by IA are Rs. 30,000/-, Rs. 44,000/-, Rs. 69,000/- and Rs. 73,000/-.

4.2.3.7. Thus, apart from Rs. 30,000/-, all the fees charged by IA on quarterly basis would amount to more than Rs. 1,25,000/- on annual basis.

4.2.4. On the basis of the aforesaid information, it is observed that the minimum amount of subscription packages offered by the IA for weekly, Monthly, Bi-Monthly and Quarterly time period would exceed the fees amount of Rs. 1,25,000/- if such advisory product fees were charged on an annual basis.

4.2.5. With respect to the fees charged by IA to its clients, the client master of FY 2021-22 (Annexure 4), providing details of fees charged to the clients, submitted by the IA vide email dated October 22, 2021, has been analyzed. From the analysis of client master of FY 2021-22 (April 01, 2021 to October 04, 2021), it is noted as under:

4.2.5.1. IA has taken 1915 payments from multiple clients amounting to total of Rs. 2,65,58,119/-.

4.2.5.2. Out of 1915 payments, in 1690 payments instances, IA has charged fees in a manner which amounts to more than Rs. 1,25,000/- on annual basis. Few of the instances where IA has charged more than Rs. 1,25,000/- on annual basis are tabulated as under:

S. No.	Date Of Payment	Name	PAN	Services	Payment A	Service Start Date B	Service End Date C	No. of days of service D = C - B	Max service charges/per day E = 125000/365	Max Charges allowed F = D*E	Extra Charges G = A-F
1	09-07-21	Rxxxxx Bxxxxxxxx Pxxxx	AZxxx656xx	CW-MCX SUPER TREND COMBO	68000	12-07-21	08-08-21	27	342	9,247	58,753
2	05-05-21	Axxx Hxxxxx	AGxxx918xx	CW-SUPER TREND CASH	63000	06-05-21	20-05-21	14	342	4,795	58,205
3	03-07-21	Bxxx Pxxxxxx Rxxxxxxxxx	BExxx128xx	CW-SUPER TREND CASH	73000	01-07-21	01-09-21	62	342	21,233	51,767
4	19-07-21	Axxxx Nxxxxx Vxxxxx	AMxxx394xx	CW-SUPER TREND CASH	73000	20-07-21	20-09-21	62	342	21,233	51,767
5	16-07-21	Sxxxxxx Sxxxxxx Mxxx	AUxxx257xx	CW-SUPER TREND INDEX OPTION	73000	19-07-21	20-09-21	63	342	21,575	51,425

4.2.5.3. In 1690 payments instances it has been noted that IA has charged fees in excess to Rs. 1,25,000/- on annual basis. Such fees charged by IA is in noncompliance to the provisions of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020. In 1690 instances of payments, the total amount of fees in excess to Rs. 1,25,000/- on annual basis is Rs. 1,49,48,904/-.

4.2.6. In view of the above, it is alleged that Capital Ways has failed in its responsibility to act in fiduciary capacity by dealing unfairly with its clients by charging exorbitant advisory fees from its clients in violation of Regulation 15A of IA Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, and Clause 1, 6 and 8 of Code of conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

4.3. **Finding C: Agreement between IA and the client:**

4.3.1. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, provides as under:

"*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 ..*"

4.3.2. The mandatory terms and condition of the agreement, inter-alia, includes the following:

(b) Declaration from the Investment Adviser that:

Investment Adviser shall neither render any investment advice nor charge any fee until the client has signed this agreement.

……

17. Terms of fees and billing:

(a) Provide specific details on the following:

(i) The quantum and manner of payment of fees for investment advice rendered.

(ii) Fee modalities and periodicity, by attaching a detailed fee schedule to the agreement;

(iii) Illustration(s) on how the fee will be determined;

(iv) whether payment to be made in advance;

(v) type of documents evidencing receipt of payment of fee;

(vi) Periodicity of billing with clear date and service period.

S. No.	**Name**	**PAN**	**Details as per Agreement**				**Details as per invoices**			
			Date of Agreement	Service	Fees	Period of Service	Date of Invoice	Service	Fees	Period of Service
1	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	01-04-2021	CW-Cash Accurate	3,000	05-04-2021 to 10-04-2021	06-04-2021	CW-Super Trend Option	3000	05-04-2021 to 8-04-2021
2	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	06-04-2021	CW-Supertrend Cash	37000	11-04-2021 to 10-05-2021	06-04-2021	CW-Super Trend Option	37000	09-04-2021 to 12-05-2021

3	MD Mxxxxxxx	FxxxM375xx	21-08-2021	CW-Super Trend Option	68000	As per invoice	13-08-2021	CW-Super Trend Option	10000	16-08-2021 to 30-08-2021

4.3.3. From the above table, it is noted as under:

4.3.3.1. In the case of Cxxxxxx Sxx Sxxxxxxxxxx at S. No. 1 & 2, service details, i.e., service name and service duration mentioned in the Agreement with the client are different with the service details mentioned at the invoices issued to the client.

4.3.3.2. In the case of MD Mxxxxxxx at S. No. 3, fees mentioned in the Agreement with the client is different with the fees mentioned at the invoice issued to the client. Further, the agreement has been done on August 21, 2021, however, as per invoice the fees has been charged on August 13, 2021. Thus the fees has been charged prior to the agreement date.

The agreements and invoice details of Mr. Cxxxxxx Sxx Sxxxxxxxxxx and MD Mxxxxxxx are placed at Annexure 5.

4.3.4. In view of the above, it is alleged that the IA did not act in a diligent and honest manner with its clients. The details of the agreements do not match with the details of the invoices; invoice has been generated and advisory fee taken prior to entering into an agreement with the client in violation of Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations & Clause (2) (ii) (c) of SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020.

4.4. **Finding D: Suitability Assessment & Inappropriate product sold to clients:**

4.4.1. Regulation 17 of IA Regulations, inter alia, prescribes that:

4.4.1.1. All investments on which investment advice is provided is appropriate to the risk profile of the client.

4.4.1.2. IA shall ensure that it has documented process for selecting investments based on client's investment objectives and financial situation.

4.4.1.3. IA shall ensure that it has reasonable basis for believing that the recommendation to client is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

4.4.1.4. IA shall ensure that the recommendation or advice given to client is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with client's experience, knowledge, investment objective, risk appetite and capacity for absorbing loss.

4.4.2. In order to check the suitability of investment advisory services carried out by IA, on sample basis, risk profiles of the clients have been reconciled with the agreements and invoices issued to the clients and investment advisory messages sent to the client. Upon reconciliation, it was noted that IA has sold high risk products to the medium risk category clients. Thus, IA has not ensured that investment advice rendered is appropriate to the risk profile and financial situation of the clients. Few of the instances wherein IA has sold high risk product to the medium risk category client are tabulated as under:

S. No.	Name	PAN	Risk Score	Client Risk	Name of the service	Product Risk
1	Axxxx Sxxxx	NIxxx953xx	17.5	Medium risk	CW-Super Trend Option	High
2	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	16.5	Medium risk	CW-Super Trend Option	High
3	Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx	ATxxx545xx	15	Medium risk	CW-Equity Super Trend Combo	High

Risk profiles, agreements and invoices of the abovementioned sample clients are placed at Annexure 6.

4.4.3. From the above sample analysis of clients, it is observed that IA has not been fair and diligent in its dealing with clients regarding the investment advisory services sold to the clients. IA has sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients. Such acts of IA are in complete disregard to the responsibility entrusted on him under the provisions of IA Regulations to act in fiduciary capacity and in the best interest of its clients.

4.4.4. The act of selling high risk products to the clients who are categorized as medium risk is prima facie fraudulent and is covered within the definition of 'fraud' as defined in Regulation 2(1)(c) of PFUTP Regulations.

4.4.5. In view thereof, it is alleged that Capital Ways has failed to do proper suitability assessment and has sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients in violation of Regulation 15(1) of IA Regulations, Regulation 17(a), (b) & (d) and (e) of IA Regulations read with Clauses 1 (Honesty and Fairness), 2 (Diligence) & 8 (Compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, 1992.

4.5. **Finding E: Maintenance of records:**

4.5.1. Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, provides as under "

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. "

4.5.2. As per the abovementioned provisions, since January 01, 2021, it is required that IA maintains all records, including call records, of interactions with its clients / prospective clients from start of interactions, i.e., 1st interaction through any mode. Further, such records shall be maintained for at least 5 years. It is pertinent to mention here that the said amendment has been brought by SEBI to address multiple complaints, lodged against investment advisory activities in the nature of fraud, profit commitment and deceit, to examine the dealing of Investment Advisers with their clients and to bring more transparency in dealings with clients enabling IAs to act in a prudent manner and in fiduciary capacity.

4.5.3. SEBI inspection team advised the IA to provide the call records, since the applicability of this clause i.e., January 01, 2021, of the clients from their first conversation / interaction. In this regard, vide letter dated October 13, 2021 (Annexure 7) IA submitted that due to heavy load on system of IA, the hardware crashed. Because system crashed, IA doesn't have call recordings till August 11, 2021. Thereafter, on sample basis, IA was asked to provide complete call recordings for such 8 individuals who were made clients on or after August 12, 2021. The sample clients, whose call recordings were sought from IA, are tabulated as under:

S. No.	Name	PAN	Agreement Date
1.	Axxxxxxxxx B Fxxxxx	ABxxx914xx	Oct-06-2021
2.	Sxxxxxxxx Cxxxxxxxxxx	AJxxx855xx	Aug-30-2021
3.	Vxxxx Kxxxx Sxxxxx	BExxx502xx	Aug-28-2021
4.	Gxxxxxxx Bxxxxxxx	BPxxx377xx	Sept-15-2021
5.	T Dxxxxx Txxx	CMxxx695xx	Sept-29-2021
6.	Nxxxxxxx Bxxx Jxxxxxxxxx	AKxxx459xx	Sept-24-2021
7.	Gaxxxx Vxxxxxx Kxxxxxx Bxxx	CAxxx894xx	Oct-07-2021
8.	Rxxxxx Sxxxx	ECxxx554xx	Aug-30-2021

4.5.4. With respect to the abovementioned clients, IA was not able to submit complete call recordings from the 1st interaction with such clients. In this regard, vide letter dated October 13, 2021, (Annexure 8) IA informed that "*With respect to the said clients, selected by the inspection team on random basis, we are unable to provide the call recordings from the initiation/ time at which clients were taken on board. Further, except Gxxxxxxx Bxxxxxx, no call recordings were made available to the inspection team. I inform that I will submit all the records, pertaining to these clients, at the earliest if available*".

4.5.5. Subsequently, 2 call records panels of the IA were checked. Call Record Panel – 1 read as "*Showing 10991, filtered from 23806 total entries" and Call Record Panel - 2 read as "Showing 3431, filtered from 6945 total entries*". The said facts were reiterated by the IA vide an e-mail dated October 13, 2021 (Annexure 9). Vide the said e-mail, the IA also submitted that as the call recordings since the start of conversation with the clients are not made available to the inspection team, same would be made available after consulting respective vendors by November 15, 2021. The IA has also informed, vide the said email, that as total entries, shown at the call recording panels, are not made available, justification for the total entries would be provided by November 15, 2021.

4.5.6. With respect to above submission, no clarification or call recordings have been submitted by the IA till date. Such act by IA shows that IA has deliberately tried to not furnish the necessary call records, only feasible and pragmatic records to analyze and examine the true activities of IA while dealing with its clients, and did not co-operate with the inspection team, creating hindrance in the inspection of the intermediary.

4.5.7. In view thereof, it is alleged that:

- Capital Ways has failed to maintain the records of communication with clients during risk profiling and suitability assessment of advice / selection of advisory products / services in violation of Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, read with Regulation 19(1) of IA Regulations and Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

- Further IA has not complied by its duty to produce to the inspecting authority such statements and information as required for the purposes of inspection in violation of Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.

4.6. **Finding F: Profit Guarantee, Forced and False risk profiling, forced payments, profit sharing etc:**

4.6.1. As the IA did not provide the complete call recordings, the inspection team inspected the investment advisory activities of the IA by analyzing the live calls of IA through quality check team and other call recordings available with IA. The quality check team has the access to the live calls made by the employees of the IA to the clients or prospective clients. Findings from the perusal of some of the live calls are detailed as under:

S. No.	Name of the Client / Phone no. (PAN)	Date (Time) and ***<u>Unique ID</u>*** of call	Conversation with Executive	Findings	Annexure
1	Gxxxxx Vxxxxxx Kxxxxxx Bxxx (CATPG8946E)	**07/10/2021 (11:22:01)** ***<u>1633585921.52524</u>***	The sales executive acknowledges the risk profile and asked him to <u>agree to the risk profile</u>. The client has asked to work at no risk.	Forced Risk Profiling by the IA. Though client has repeatedly reminded to IA to work at low risk, he was compelled to work at high risk. Such act of IA is not fair and honest with the client. Further, IA is not acting in fiduciary capacity. IA has violated the provisions of the risk profiling of the client.	**10 (in CD)**
		11/10/2021 (10:04:30) ***<u>1633926870.755</u>***	The client has again raised the concern that he has limited capital (Rs 10,000/-) and does not want to work at High Risk. The client is willing to work at minimum or no risk.		**11 (in CD)**
2	Prospective client - (Dxxxxx) 70xxx91xxx	**13/10/2021 (16:06:35)** ***<u>1634121395.36973</u>***	The individual has informed that he is not working in the Securities market. But the executive has lured and convinced the individual if he works with the IA, he will make sure profit of 60% to 70%.	IA is promising the guaranteed return. As envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020 /182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	**12 (in CD)**
3	Prospective client – 99xxx72xxx	**13/10/2021 (15:53:54)** ***<u>1634120634.36827</u>***	Sales executive has informed that services charges of IA for the product Equity Cash for the period 1 month is Rs. 5,000/-.	As per the service details of the IA, no product / service is offered by IA whose monthly charge is Rs 5000/-. Thus IA is making false claims to the individuals and luring them to take his advisory services.	**13 (in CD)**

4	Gxxxxxxx Bxxxxxx (BPxxx37xxx)	**24/09/2021 (10:13:52)** ***<u>1632458632.156919</u>***	The client informed to the IA that during the service charge he was told about profit sharing model. The client doesn't want to trade in the market. Client is not capable to make payment of service charges but the sales executive is forcing and compelling client to make the payment of Rs. 48,000 for additional advisory services.	Client has not been treated fairly and honestly by the IA. IA has not considered the suitability of the client and forcing the client to make additional payment, impairing the financial objective of the client.	**14 (in CD)**

4.6.2. As all the above call recordings were made heard to IA, summary of the conversations was provided by the IA vide letter dated October 13, 2021 (Annexure 8).

4.6.3. During the scrutiny of emails IDs of the IA, cwenquiry@capitalways.com and info@capitalways.com, the inspection team found certain complaints whereby the complainants have alleged about fraudulent activities by IA such as profit assurance, demat account handling, forced payments etc. The analysis of 2 of the complaints are provided as follows:

4.6.3.1. Nxxxxxxx Kxxx, PAN - ADGPK9467Q: The complainant vide emails dated September 21, 2021 has alleged that IA has promised the client to profit of Rs. 600,000, managed the Demat account of the client and demanded additional fees of RS. 55,000. The allegation of the complaint vide its emails is reiterated as:

"Your team promised me assured net Profit of Rs. Six Lakh by managing my DEMAT Account with the fee of Rs. 1,75,000. You managed my HDFC Securities Account Id 34111814 from 13-01-2021 and Angel Broking Id AMRHM1505 from 23-01-2021 to 31-01-2021 i.e. till the receipt of Rs. Two Lakh in your account and you added Rs. 30000, in my Angel Broking Account through trading. Then your team demanded Rs. 55000, more to which I refused to pay, Then your team refused to manage my DEMAT and stopped communication. Then I sent my first mail on 05-02-2021 and to date, I am requesting refund but you are harassing me with various time killing strategies"

Further, vide email dated October 14, 2021, the recording of the conversation of the client with the IA and complaints of the clients were procured from the IA. The said recording has been perused and the relevant transcript of the same is produced below:

Client Demat Handling:

<u>Audio File: AUD-20210528-WA0012</u>
<u>Time Slot: 1:50 to 2:30</u>

Client: *….usme mera 50000 tha to baad me usme 4000 hi reh gaya tha. Usme 46000 ki karib loss ho gaya tha.*

Executive: *usme 6000-7000 nukasan ho gaya tha,* ***<u>vo maine position kaat ke accha kiya</u>*** *……. Tabhi to mai hold karne ki soch raha tha us position ko to sir ne kaha hold mat kariye market correction kar raha hai. Aap 4000-5000 ka nukasan ho raha hai to vo thik hai. Agar ye nukasan 40000 se 45000 ka* *hoga to aapko bhi dukh hoga aur client bhi pareshan honge. __To mai vahi usse kaat ke nikal gaya__ tha to uske baad maine phir haath hi nahi lagaya.*

<u>Audio File: AUD-20210528-WA0012</u>
<u>Time Slot: 08:10 to 08:45</u>

Client: *….. baat yahi hui thi ki __mai d-mat handle nahi kar sakta__ aur ye mere bas ki baat nahi hai d-mat handle karna. __To mai yahi bola tha ki mai handle nahi kar sakta karna hai aapne hi__…..*

Executive: *sir kisiko pata nahi hai, naahi pata chalegi, __nikaal ke muje dena hai__ bas yahi samajhiye, __nikaal ke mai de dunga__ tension mat lijiye.*

Assured returns:

<u>Audio File: AUD-20210528-WA0012</u>
<u>Time Slot: 05:40 to 06:02</u>

Executive: *mai itana bol raha hun ki sabse pehle aapne mujhe 200000 rupaye bol rahe hai muje vo complete karna hai ki aap mujhe bole na ki maine 200000 rupaye diya tha. Pehle vo mai vaapis kar dunga uske baad jo __bachega 500000 to 550000 vo mai nikalwake dunga__. Aapko bhi tension nahi hogi ki maine kisise uthaya tha. Apan pehle usko vaapis karenge jisse liya hai.*

The complaint details and the call recordings of the client Narinder Kaur, procured from the IA, are placed at **Annexure 15.**

4.6.3.2. Nxxxxx Sxxxx Rxxxx, PAN - AGMPR7862B: The complainant vide email dated September 15, 2020 has submitted multiple call recordings to the IA with respect to their trading discussion. The said email along with call recordings have been procured from IA on October 14, 2021 (Call recordings in CD as Annexure 16). The relevant transcript of the call recordings are produced as below:

Assured returns:

<u>Audio File: Dxxxxxxxxx Sxxxxx-1910191208.amr</u>
<u>Time Slot: 3:03 to 3:30</u>
Client: *Kya aapki commitment puri ho payegi aapse, aapne muje jo commitment kiye hain*
Executive: *dekho maine abhi jo aapko diya hai, abhi jo maine aapko samajhayi hai vo to mai kar ke de dunga ye to aap bhi jaante hai. __Sir bola hai ki roj 15000 yahi se nikal jayega.__*

<u>Audio File: Dxxxxxxxxx Sxxxxx -1910211432.amr</u>

<u>Time Slot: 1:20 to 2:23</u>

Executive: *sir mai kya bol raha hoon __jo maine jo aapko commitment diya tha 3000-4000 rupaye daily ka__ vo mai karwa deta hoon.*
Client: *kaha hai vo commitment abhi tak to pura hua nahi hai.*

<u>Audio File: Dxxxxxxxxx Sxxxxx -1910211432.amr</u>

<u>Time Slot: 3:20 to 3:40</u>

Client: *sir mai jo chaah raha hoon is cheez se kaise nikalunga? Mere paas 236000 nahi hai to. Muje card ki payment bhi karni hai mujhe EMI bhi deni hai mai un cheezon se kaise nikalunga.*

Executive: *maine aapko bola na* ***<u>50000 se 60000 mahine ke nikal jayenge</u>*** *EMI ke liye vo mai karwa dunga.*

4.6.4. From the perusal of the live and recorded call recordings of conversation between IA and clients / prospective clients it is noted that following unfair and fraudulent practices have been adopted by the IA to lure the client and maximize its revenue:

4.6.4.1. Coercing to the clients to agree to the risk profiles.

4.6.4.2. Promising the guaranteed return to the clients.

4.6.4.3. Forcing the client to take additional advisory services and make additional payment.

4.6.4.4. Understating the advisory fees and making false commitments.

4.6.4.5. Managing and handling demat / trading accounts of the clients.

4.6.5. By making / promising assured profits and unrealistic returns, the IA has tried to deceive its client. Neither there exist any grounds for belief for such unrealistic returns nor can the assured profits be achieved. Further, knowing fully well that assured profits / guaranteed returns in securities market is practically impossible, IA is knowingly misrepresenting the truth. Further, the IA is not transparent and is fraudulently misrepresenting the fees structure. Such misrepresentation is therefore, prima facie, fraudulent and is covered within the definition of "fraud" as defined under Regulation 2(1)(c) of PFUTP Regulations. Hence, Capital Ways has violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act.

4.6.6. It the duty of IA to act with due skill, care and diligence in the best interests of its clients and it is seen that the IA has failed to take due care and diligence to ascertain risk profile of the client to offer him suitable advise. By coercing the clients to agree to the risk profiles, it appears that IA is fabricating risk profile of clients to advice risky products to maximize fee for his own benefit rather than acting in the interest of his clients. Further, forcing the client to take additional advisory services and make additional payment is unethical. Thus, such acts by IA shows that IA is not dealing with its clients fairly and honestly, thereby IA has failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under Regulation 15(1) of IA Regulations and has failed to abide by the Code of Conduct thereby violating Clause 1 of Code of Conduct for Investment Advisers read with Regulation 15(9) of IA Regulations.

4.6.7. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, prescribes the following: *"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."*

4.6.8. As per the terms and conditions specified in Annexure A of the aforementioned circular, Investment Adviser shall declare that Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return. By giving profit assurance, IA has violated the provisions of the terms and conditions of the agreement.

4.6.9. In view thereof, it is alleged that:

- By coercing to the clients to agree to the risk profiles, promising the guaranteed return to the clients, forcing the client to take additional advisory services and make additional payment, understating the advisory fees and making false commitments and managing and handling demat / trading accounts of the clients, the Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992, Regulation 15(1) of IA Regulations and Clause 1 of Code of Conduct for Investment Advisers read with Regulation 15(9) of IA Regulations.

- As per the terms and conditions specified in Annexure A of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, Investment Adviser shall declare that Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return. Therefore, Noticee has violated Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992.

- Serious Complaints Promising assured return and taking details of friends of the client to charge exorbitant fees. Therefore, the Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992.

- By providing assurance of loss recovery which is another way of providing assured returns to the client, knowing fully well that assured profits / guaranteed returns in securities market is practically impossible, IA is knowingly misrepresenting the truth. Therefore, the Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992.

4.7. **Finding G: SCORES Complaints and Direct Complaints:**

4.7.1. SEBI has been receiving a number of complaints against Capital Ways. Total 48 complaints, were received against Capital Ways in SCORES portal during the period from April 2020 to January 2022 (Annexure 18), the details of which are as under:

Year	**Number of Complaints received**	**Pending Investors Complaints as on October 11, 2021**
2021-22 (up to January 2022)	23	2
2020-21	25	0

4.7.2. For examination of the complaints, various documents / information such as risk profile form, KYC, invoices, emails, audio call recordings, agreements, etc. were sought from the IA and the complainants.

4.7.3. The email id of Capital Ways (info@capitalways.com) is used to communicate with the clients and to deal with complaints of the client. During the inspection, the said email was analyzed to find out the number of complaints which are directly received by Capital Ways and the mechanism adopted by Capital Ways to process such complaints. Further, as per reply by the IA, direct complaints received by IA during the inspection period is 140. (Complaint details submitted by the IA is placed at Annexure 19).

4.7.4. On the perusal of various complaints, it is observed that in most of the complaints, inter alia, the following allegations have been made:

4.7.4.1. Taking hefty fees by guaranteeing unrealistic returns;

4.7.4.2. Huge loss incurred due to inappropriate advice given by Capital Ways;

4.7.4.3. Clients pressurized to buy multiple products and pay more amount;

4.7.4.4. Capital Ways employees misguiding and selling wrong products which are not suitable to the clients based on their risk profile.

4.7.5. Detailed examination of one of the complaints against the IA received on SCORES after inspection is provided as under:

Complainant Name - Sxxxxxx Vxxxxxxxxxx

SCORES Complaint Registration No. - SEBIE/MP22/0000016/1
The complainant in his complaint alleged that IA charged Rs. 7,30,000/- by forcing and manipulating the client. Further, 3 days later, IA asked the client additional amount of Rs. 42,000/- and also asked for different documents for invoice generation, and the client provided his friend's documents. IA also promised client to provide 4 times return, however, on the basis of service provided by IA, client incurred losses of Rs. 1,20,000/-

The complainant provided the call recordings and payment proof, including proofs of payment made by his friend Akash Hiralal Prabhune. The details / documents provided by the complainant are placed at **Annexure 20 (page nos. 558-568) (Call recordings in CD as Annexure 20).** The transcripts of relevant call recordings are provided as under:

Profit Commitment:

<u>Audio File: WhatsApp Audio 9</u>
<u>Time Slot: 3:25 to 3:58</u>

Executive: *1.50 lac rupaye k liye unko maine ye commitment kia hai 1.5 Lac me jo bhi remaining amount bach rha hai 70k ya 80k ka usme ek hafte ya 15 days ka time legega, lekin maine ye bola hai ki ek hafte mein agar 2.5 to 3 Lac ka profit hota hai to uske baad aap krwa dena. 2.50 Lac k baad aap waise bhi 70 k karwa doge.*

Complainant: *Ha, to koi issue nahi hai.*

Executive: *Aaj apan 23k complete karte hai, baad mein maine inse 15 din ka time liya hai lekin 15 din mein maine 2.5 Lac ka amount bola hai.* ***Mai pura try karti hu ki 2.5 Lac rupaye amount apka Monday tak aa jaye 29 tarikh tak.***

Audio File: WhatsApp Audio 9
Time Slot: 6:10 to 6:28

Executive: *Lekin unke taraf se 15 din ka time de rakkha hai* ***lekin monday tak apan kar hi lenge 2.50 lac tak ka****. Ek position to BTST ki lagegi hi lagegi. Lekin mai ye bhi bol rahi hu ki unki taraf se maine 15 din bola hai,* ***lekin mai ye pura commitment krti hu ki Monday taka apan kar hi lenge 2.5 Lac rupaye tak.***

Audio File: WhatsApp Audio 9
Time Slot: 7:15 to 7:32

Executive: *Maine apko bola tha na ki 6 lac k liye 3 month baat hai,* ***lekin mai chahu to apko ek mahine me bhi ye return de sakti hu wo mere haath mein hai. Thik Hai***

Complainant: *Ha*

Audio File: WhatsApp Audio 9
Time Slot: 9:20 to 9:27

Executive: *Mai itna commitment karti hu ki kal ke date pe aa hi jaega apka, atleast* ***minimum 40k to aa hi jaega.***

Complainant: *Thik hai mai call back karta hu.*

Audio File: WhatsApp Audio 11
Time Slot: 0:45 to 1:15

Executive: *nahi nahi definitely I promise ki apka relation meri wajah se kabhi kharab nahi hoga.* ***Mereko bas kal tak ka time de dijiye 10 baje tak ye sara amount apke pass aa jaega.***

Seeking Details of Friends:

Audio File: WhatsApp Audio 12
Time Slot: 0:32 to 2:10

Executive: *Abhi 30 thousand rupees karna hai, ho jaega kya?*

Complainant: *Utna account mein nahi hai mere.*

Executive: *Account mein nahi hai toh, matlab aap kya chah rahe ho sir, agar samne wala apke liye effort lga rha hai toh usme aap thoda bhi cooperate nahi krenge to kaise chalega.*

Complainant: *Mai dost se baat karke btata hu.*

Executive: *Thik hai,* ***baki ap apne friend ka detail jo hai wo send karo****, kam se kam mai uska KRA complete karti hu.*

Complainant: *Ha*

Executive: *Tabtak mai uska KRA complete karti hu. PAN, Email ID, Date of Birth ye sab send karo.*

<u>Audio File: WhatsApp Audio 12</u>
<u>Time Slot: 1:55 to 2:10</u>

Executive: *Aap abhi mereko unka detail abhi turant send karo and 10 minute mein mujhe batao kitna kya ho raha.*

Complainant: *Thik.*

<u>Audio File: WhatsApp Audio 13</u>
<u>Time Slot: 0:01 to 0.43</u>

Executive: *Kitna time lagega?*

Complainant: *Usme 15-20 min lagega, phone busy aa raha hai.*

Executive: *Itna time lgega, 15-20 min yaha se?*

Complainant: *Ha maam, matlab payment toh maine usko bhej dia hai, par usko 15-20 min lgega, waha boss aya hua hai usko.* ***<u>Baki ADHAAR, KYC ke liye bol diya hai usko wo ready hai.</u>*** *Payment apko 15-20 min mein screenshot send kar dunga and KYC bhi kar dunga.*

Executive: *ha, batao.*

<u>Audio File: WhatsApp Audio 14</u>
<u>Time Slot: 0: 05 to 0:52</u>

Executive: *Sxxxxxx, email id open karo fatafat aur jaise pehle kiya tha na digital signature aur KYC waisa hi karna hai aur suno jab aap kroge na signature tab* ***aap ADHAAR no. us bande ka hi dalna. Aadhaar no. uska lgega and us bande ke mobile no. pe hi OTP aaega****.*

Complainant: *Aree, abhi wo cooperate nahi krega itna, aisa banda hai wo.*

Executive: *Ab PAN No. de diya usne toh ADHAAR no. kya hai btao, usko bolo iske baad mai tereko jindagi mein kabhi call ni krunga, iske baad humko koi matlab nahi hai unse.*

4.7.6. Though the complaint was disposed of by the IA on January 21, 2022 (ATR placed at page no. 555), however, from the above, it is observed that even pursuant to inspection, IA has continued its fraudulent advisory practices to deceit gullible investors by inducing them under the garb of unrealistic profit commitments and also charge them huge advisory fees.

4.7.7. In view thereof, it is alleged that:

- Noticee did not provide resolution of complaint bearing SCORES registration no. SEBIE/MP22/0000055/1 (received on January 18, 2022) and therefore violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) of IA Regulations.

- Noticee did not provide call recordings sought by SEBI and therefore violated Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.

4.8. **Finding H: Compliance of AML and CFT Guidelines:**

4.8.1. SEBI has been receiving a number of complaints against Capital Ways. Total 48 complaints, were received against Capital Ways in SCORES portal during the period from April 2020 to January 2022 (Annexure 18), the details of which are as under:

4.8.2. Clause 2.1.1 read with Clause 2.11.1.1 of SEBI Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, requires that the intermediaries have an AML policy in place and also appoint Principal Officer and intimate the same to FIU, New Delhi.

4.8.3. Capital Ways has put AML policy in place and appointed Principal Officer and intimated to FIU.

4.8.4. Clause 2.12.2.1 of SEBI Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019 requires that intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures.

4.8.5. With respect to providing training to the employees, Capital Ways, vide letter date October 13, 2022 (Annexure 17) has informed that during the inspection period no training related to PMLA was provided to employees and accordingly no training record for the same is available.

4.8.6. In view thereof, it is alleged that Capital ways have not provided training related to PMLA to its employees and therefore, the Noticee has violated Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113.

4.9. **Finding I: Miscellaneous:**

4.9.1. It is alleged that Capital Ways sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients and therefore violated Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, 1992.

.....”

6. Vide email dated September 24, 2024, the Noticee sought extension to submit the reply to the SCN.

7. Having regard to principles of natural justice, an opportunity of hearing was afforded to the Noticee on October 04, 2024, vide Hearing Notice dated September 25, 2024 and the Noticee was allowed time till October 01, 2024 to submit its reply to the SCN.

8. Vide email dated September 26, 2024, the Noticee sought extension and considering the Noticee's request, the hearing in the matter was rescheduled to October 08, 2024.

9. Vide email and letter October 01, 2024, Noticee submitted its reply to the SCN. The key submissions made by Noticee as reply to the SCN, are as under:

"…

A. Compliance with Qualification and certification requirement:

It has been alleged that the Noticee has violated Regulation 7 of SEBI IA Regulations, 2013

*The Noticee respectfully clarifies that it is registered as an individual investment advisor and holds the requisite NISM certifications. The Noticee's employees engaged in sales are also duly qualified and certified as per the Regulations. A list of employees detailing their qualifications and designations, which was submitted to SEBI during the inspection, is attached as **<u>Exhibit A</u>**.*

Contrary to SEBI's assertion in Clause 4.1.6.2 of the SCN, the Noticee's sales department consists of 83 employees, not 84.

Regarding SEBI's claim in Clause 4.1.6.3 of the SCN that 52 sales executives lack post-graduate qualifications, the Noticee respectfully refers to Clause VIII of the SEBI (Investment Advisers) (Amendment) Regulations, 2020, which substituted Regulation 7:

*"<u>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</u> **<u>within three years</u>**"*

SEBI itself granted a three-year grace period for existing investment advisers to meet the qualification and experience requirements. These regulations took effect on September 30, 2020. Therefore, the deadline for employees to obtain post-graduate qualifications was September 30, 2023. Furthermore, SEBI extended this deadline by two years through a Circular dated October 10, 2023. Consequently, the current deadline for compliance with the enhanced qualification and experience requirements under Regulation 7(1) is September 30, 2025.

*Copies of the amended regulations and the Circular dated October 10, 2023 are attached as **<u>Exhibits B and C</u>**, respectively.*

In light of the foregoing clarification, the Noticee's employees fully meet the qualification requirements.

Moreover, all sales executives of the Noticee possess NISM-XA certifications. 48 employees hold both NISM-XA and NISM-XB certifications, while 35 employees hold NISM-XA and are in the process of obtaining NISM-XB certifications. NISM certificates for all employees will be submitted to the SEBI at the time of hearing.

The 35 employees who have not yet obtained NISM-XB certifications do not have direct contact with clients. Their roles are limited to assisting the investment advisory team with market research, data analytics, and *backend support. Some of these employees are managers responsible for overseeing qualified staff and ensuring tasks are completed. The Noticee affirms that these 35 employees do not interact directly with clients. They will only be allowed to do so after obtaining both certifications. Therefore, they are not considered persons associated with investment advice.*

Furthermore, the employees in the compliance department also do not have direct contact with clients. They handle backend operations such as fetching KYC documents, communicating risk profiling via email, sending agreements, and approving sales orders. They do not interact directly with clients and primarily perform clerical and administrative functions. Consequently, they cannot be classified as persons associated with investment advice.

Based on this clarification of roles and responsibilities, the Noticee requests that the alleged violation regarding employee NISM certifications be dismissed.

B. Compliance with fees structure:

It has been alleged that the Noticee has violated Regulation 15A of IA Regulations, 2013

In response to the allegation of excessive fee charges, the Noticee categorically asserts that it has never charged a single rupee beyond the limits prescribed by the SEBI. Furthermore, the SEBI has not identified any instances where the Noticee has actually overcharged clients.

The SEBI's allegation is based on a hypothetical assumption of excessive charging, which does not reflect the Noticee's actual practices. For example, under Para No. 4.2.5 of the SCN, it is mistakenly implied that the Noticee charged an excessive daily fee of Rs. 1177 for a 62-day period. However, the Noticee has never charged any client more than Rs. 1.25 Lakhs per annum since April 1, 2021.

The Noticee offers various services and packages with different pricing options, but none exceed the SEBI-mandated limit of Rs. 1,25,000 per annum per client. While SEBI has set this annual cap, it has not provided a detailed methodology for calculating daily fees. This has led to the erroneous assumption of a maximum daily charge of Rs. 342.

The Noticee's fee structure includes four categories: weekly, monthly, bimonthly, and quarterly. An examination of Annexure 4 in the SCN, which details the fees charged to clients, reveals that none of these services exceed the Rs. 1,25,000 limit.

An analysis of fees collected between April 1, 2021, and October 4, 2021, confirms that no client was charged more than Rs. 1.25 Lakhs. Given these facts, the Noticee humbly submits that it has always adhered to SEBI's fee collection guidelines.

The allegations against the Noticee are unfounded and unsustainable. In its order dated August 17, 2023, in the matter of ***Money Capital Height Research Investment Advisers Pvt. Ltd.****, the SEBI itself acknowledged that: "maximum fees that can be charged from a client as per the provisions is 1,25,000/- per annum per client across all services offered by IA. In absence of any detailed methodology under the provisions to calculate the fees, I am not inclined to agree with the manner in which the fees charged for shorter duration has been extrapolated and hence do not find that the Noticees have violated Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations."*

C. *Agreement between IA and the client:*

It has been alleged that the Noticee has violated Clause 1, 2 and 8 of Code of Conduct

*Regarding the alleged violation, the Noticee respectfully submits that the Invoices issued to client Cxxxxxx Sxx Sxxxxxxxxxx contained a typographical error, an inadvertent human oversight. However, the services provided to the client were in strict accordance with the terms of the agreement, as substantiated by the enclosed **Exhibit D**, which details the client's service records. Therefore, it is clear that the Noticee has fulfilled its contractual obligations without any breach of trust.*

*Moreover, in the case of client MD Mxxxxxx, the SEBI's allegation of fees charged prior to the agreement date is unfounded. The Noticee entered into a formal agreement with the client on August 4, 2021, a copy of which is attached as **Exhibit E**.*

In light of these explanations, the Noticee humbly requests that the alleged violation related to the code of conduct be dismissed.

D. *Suitability Assessment & Inappropriate product sold to clients:*

It has been alleged that the Noticee has Regulation 15 (1), 17(a), (b) & (d) and (e) of IA Regulations.

Regarding the alleged violation, the Noticee respectfully submits that to provide clients with suitable investment advice, it relies on their Risk Profiling Questionnaire (RPQ). This questionnaire assesses both a client's risk tolerance and capacity.

*Axxxx Sxxxx's risk profile was categorized as medium. However, after a comprehensive evaluation of his RPQ, the Noticee, as a SEBI-registered Investment Adviser, determined that the CW – Supertrend Option was a suitable product. This recommendation was outlined in the agreement and suitability report, which the client duly acknowledged and signed. A copy of this document is attached as **Exhibit F**.*

*In the case of Cxxxxxx Sxx Sxxxxxxxxxx, a typographical error occurred in the invoices issued which was a human. The services delivered to the client were consistent with the agreement, as verified by the service records in **Exhibit D**. Therefore, it is clear that the Noticee adhered to the terms of the agreement and did not provide any high-risk services.*

*Concerning Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx, the Noticee sold only medium-risk services, specifically the CW- Super Trend Cash service. The Noticee did not sell the 'CW- Equity Super Trend Combo', as falsely claimed by SEBI. This can be confirmed by reviewing the client's agreement in **Exhibit G**.*

The Noticee emphasizes that these actions do not constitute fraudulent activity. The Noticee sold products that the clients agreed to through signed agreements.

In light of the foregoing, the Noticee respectfully requests that the alleged violation be dismissed.

E. *Maintenance of records:*

It has been alleged that the Noticee has violated Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Regulation 25 (1) & (2) of IA Regulations.

The Noticee affirms that he has complied with all relevant regulations bymaintaining all the relevant records including call recording of the clients. However, due to heavy load on the system of the Noticee, the hardware got crashed and due to which the Noticee lost all the call recordings.

*Further, the Noticee did tried to recover the recordings, however it couldn't get recovered. The Noticee also visited data recovery center to restore the data, but it wasn't possible to recover the data. A letter from the data recovery center in this regard is enclosed in **Exhibit-H**.*

Moreover, the Noticee wasn't having sort of intention to not to cooperate with the Inspecting Authority, if it would be the case then the Noticee wouldn't have provided any documents to the inspecting authority. Whereas the Noticee has cooperated with the officers in the best possible way and provided them all sorts of information/documents except the call recordings which was unintentionally lost.

Considering the complete fulfillment of key regulatory requirements and the minor nature of the missing call recordings, the Noticee respectfully requests that the relevant allegation be dismissed.

F. Profit Guarantee, Forced and False risk profiling, forced payments, profit sharing etc.:

It has been alleged that the Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (k), (s) of PFUTP Regulationsand Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020

Regarding the call recordings referenced in paragraph 4.6.1 of the Noticee's response, the following explanations are provided:

*a. **Gxxxxx Vxxxxxx Kxxxxxx Bxxx**:*

- *A careful review of the recording reveals that the client was not pressured in any way during the risk profiling process. The employee simply explained the necessary steps to complete the compliance procedure, as the client was unfamiliar with the process.*
- *At around 02:55 in the recording, the employee uses a clear example to illustrate how safe trading practices can mitigate risks and generate consistent, albeit modest, profits.*
- *In the second recording, the employee provides a straightforward explanation of risk management strategies, including the use of stop-loss orders.*
- *A thorough examination of both recordings demonstrates that the client was not coerced into risk profiling. The employee merely outlined the process and explained risk management measures, thereby refuting the unfounded allegation.*
- *It is important to note that the securities market inherently involves risk. There is no such thing as a "no-risk" investment.*

*b. **Prospective client: Dxxxxx**:*

- *In the said recording, the employee of the Noticee has done an enquiry call to the prospective client to enquire about his trading and investment in the securities market. Thereafter the employee has briefed about the Noticee's firm and advised him to go through the website of the Noticee and check the performance. Also, the employee suggested to subscribe to the weekly package by just paying 5,000/-, but since the investor doesn't seem interested, so the employee didn't forcehim to subscribe to the services and had just shared the website link to provide an overview to the investor.*

- *Further, the allegation of the SEBI that the employee had assured profit of 60% to 70%, it is clearly a false statement, on perusal of recording it is clearly evident that the employee has just stated accuracy level to 60%-70%, which was maintained by the Noticee, which means that out of 10 advices, 6-7 advice turns in profit which was based upon the past performance of the Noticee. It was in no manner, a false statement or any assured return.*

- *Also, the employee had not stated the accuracy level upfront, the client asked the employee regarding the profit that how much he can earn, so in its reply the employee stated the accuracy levels.*

c. ***Prospective client****: The SEBI's assertion that the employee stated a monthly fee of 5,000 rupees is inaccurate. The employee clearly indicated that the service fee starts at 5,000 rupees and varies depending on the specific services required.*

d. ***Gxxxxxxx Bxxxxxx****:*

Thesaid client was interested in the Noticee's services but hesitated to pay the upfront fee. The employee explained that the fee could be offset by profits generated from the market. Also, it was also stated that once the service charge is complete, client is not required to pay any additional amount.

Moreover, the Noticee has not disregarded the suitability of the clients and has offered him the services in line with his suitability assessment only. Furthermore, the client was offering to pay the employee in his personal account, which the employee denied for.

Further, with respect to the client Narinder Kaur, the Noticee would humbly like to state that there was no commitment or demat handling done for the said client. The same can also be confirmed from the client's email dated February06, 2021, wherein it has been clearly stated by the client that '<u>I want to clear all things as I know there is no commitment and guarantee of fix profit in market. There was some miscommunication happened with me in my mind in terms with the net profit. I know profit and loss is subject to market risk. I have paid amount for only services and company is continuously giving me the services and I am totally satisfied with that. I have noproblem in respect with working pattern or any of the executive of the company associated with me</u>.'

The said email evidences that the Noticee has taken fees from her for the advisory services only and no profit commitment was done, further copy of the said email is enclosed herewith as ***<u>Exhibit-I</u>****.*

Furthermore, the Noticee being a diligent Investment Adviser, has refunded him the entire disputed amount, which can be checked from the refund agreement enclosed in ***<u>Exhibit-J</u>****. In the said agreement also, client has clearly stated that she has paid amount for purely and exclusively for the advisory services only.*

Furthermore, with respect to the client NandanSingh Rawat, the Noticee has not promised any assured returns to the clients, SEBI has just picked certain portions of the recording which were against the Noticee, instead of listening and understanding the conversation as a whole.

At 04:19, the client itself has acknowledged that the company has never assured any returns. Also, the Noticee categorically denies offering or guaranteeing any fixed or assured returns to its clients. This denial is supported by clear and prominent disclosures made on several platforms, including:

- ***Website**: Noticee's website, the primary onboarding platform for clients, includes prominent disclaimers on various pages stating that investments in securities are subject to market fluctuations and no guarantee of achieving any specific objectives is provided.* ***Exhibit-K*** *provides screenshots of these disclaimers, which are being reproduced below:*
  "Capital Ways don't provide any profit / loss sharing services, guaranteed profit services, & Services which are not mentioned in our website"
  "Investment in Stock / Commodity / Currency Markets is subject to market risk."
- ***Welcome Email**: All clients receive a Welcome email during onboarding, explicitly stating that Noticee does not guarantee profits or committed returns. This email also warns against any executive offering such services and encourages reporting such occurrences. A sample of the Welcome email is attached as* ***Exhibit-L*** *and is also being reproduced below:*
  "We do not provide profit guaranteed or committed returns. In case any person is trying to sell you such services doinform us at +0731-4971072 Also we do not sell any profit sharing services
  We DO NOT PROVIDE any personal a/c details for Services Charges, Please pay our Services Charges only inCompany A/c which are mentioned in our website or sent through our massage server named If any ourexecutives asks for payment in personal a/c, kindly inform us at: +91-0731-4971072. Investment in market is subject to market risk, please trade carefully with proper Stop Loss, you may loss more than youractual Investment.Investmentis stock or commodity markets is subject to market risk, though best attempts are made forpredicting markets, but no surety of return or accuracy of any kind is guaranteed"

Noticee asserts that the Inspecting Authority has not adequately considered the aforementioned risk disclosures made on its website and in email communications with clients. This failure constitutes an incomplete assessment of the facts and potentially erroneous conclusions.

Regarding the alleged telephonic conversation mentioned in the Notice (paragraph 4.6.3), Noticee emphasizes that:

- *SEBI has selectively quoted excerpts from the alleged recording, failing to consider the entire context of the communication.*
- *In the absence of forensic verification, the authenticity and attribution of the alleged recording to Noticee or its employees cannot be established.*

Noticee contrasts the Inspecting Authority's reliance on unsubstantiated evidence with its own demonstrably concrete measures of risk disclosure, as evidenced by the website disclaimers and documented email communications with clients.

Furthermore, Noticee draws attention to the Order of the SEBI in the matter of ***Star World Research*** *wherein it was held that: "The material on record does not indicate that the aforesaid emails addresses belonged to the Noticee. Further, the call recordings are not supported by any further examination. Hence, I am unable to rely on them to arrive at any finding of violation with respect to the making promises of assured or unrealistic return, as alleged".This precedent underscores the importance of verifiable evidence in such cases.*

Based on the aforementioned denials, clarifications, and supporting evidence, Noticee strongly contests the serious allegations levelled against it in the Notice. Noticee urges the Inspecting Authority to conduct a *thorough and unbiased re-evaluation of the matter, taking into account all relevant evidence and established legal precedents.*

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

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly ….."

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

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

*Also, the SEBI had in its **Order in the matter of Niveshicon Investment Advisor** had also held similar interpretation and the alleged violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 were removed upon.*

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

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

The SEBI itself in its Orders in the matter of Star World Research and Niveshicon Investment Advisor has stated that for construing the definition of fraud, the fraud shall be committed while "dealing in security" and in absence of that the acts will not fall within the ambit of PFUTP Regulations. In the said Orders also, SEBI did drop the allegation of PFUTP for the following acts: selling products meant for High-Risk Category clients to clients having Medium Risk profile, charging of unfair, unreasonable and exorbitant fee from the clients, selling the clients multiple products/services, improper risk profiling of the clients, promising/assuring unrealistic return to clients. Hence, by following the principle of the stare decisis, the PFUTP violations shall be removed upon from the Noticee as the alleged violations, if established, have not been committed while dealing in security and also no material evidence has been established in this regard.

G. SCORES Complaints and Direct Complaints:

It has been alleged that the Noticee has violated SEBI Circular CIR/OIAE/2014 and Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2)of IA Regulations

*The Noticee initially wishes to correct a significant error made by SEBI. The fees charged to the client were only ₹73,000, not the erroneous ₹730,000 as stated in the Notice. Furthermore, this complaint was promptly addressed, as evidenced by the enclosed refund agreement and client resolution email (**Exhibit-M**).*

*Similarly, the complaint of Axxxx Hxxxxxx Pxxxxxxx was resolved in a timely manner. The details of this resolution are provided in **Exhibit-N**.*

As outlined in Paragraph 4.7 of the SCN, both of these complaints were duly resolved. Therefore, SEBI's allegation that they were not addressed promptly is unfounded and should be dismissed.

*Regarding the complaint filed by Ms. Rxxxx Rxxx (complaint registration no. SEBIE/MP22/0000055/1), it is important to note that this is not a valid complaint. Ms. Rani had previously filed a complaint (Registration No.: SEBIE/MP21/0000904/1) on August 3, 2021, based on the same grounds. This earlier complaint was resolved through mutual understanding on October 7, 2021, as documented in **Exhibit-O**. Additionally, a settlement agreement was executed with Ms. Rani, wherein she agreed to waive and release all claims arising from this matter. A copy of this agreement is provided in **Exhibit-P**.*

Moreover, Ms. Rxxx has filed another complaint on the SCORES Portal, seemingly with the intent to harass the Noticee and demand additional funds. Despite having done nothing wrong in this matter, the Noticee has already refunded ₹180,000 to Ms. Rxxx. Even after this refund, she continues to pursue the complaint and threatens the Noticee. The Noticee has already resolved this complaint amicably and has repeatedly requested a meeting or hearing with the dealing officer, which has been denied. The complete documentation *related to this complaint is provided in **Exhibit-Q**, which clearly demonstrates the timely resolution of the matter.*

H. Compliance of AML and CFT Guidelines:

It has been alleged that the Noticee has violated clauses of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019

The Noticee respectfully submits that he has been diligently adhering to AML policy guidelines since 2017. It is important to note that the Noticee does not accept cash payments from clients and does not engage in large financial transactions with clients.

The Noticee conducts thorough KYC procedures for clients through registered KRAs (KYC Registration Agencies). Moreover, many of the firm's employees are long-standing members who have received comprehensive training on AML guidelines as part of their professional development.

During the specified period, the Noticee has not encountered any suspicious fees or transactions within the firm. Furthermore, the Noticee has submitted the client sheet to SEBI, which includes detailed information about client transactions, and no significant transactions have been identified.

Therefore, the Noticee submits that he has taken AML Regulations seriously and maintained strict adherence to these guidelines in his operations. Additionally, the Noticee has implemented an AML policy and registered with the FIU.

…"

10. On the rescheduled date of hearing viz., October 08, 2024, the Noticee, Mr. Deepak Ostwal appeared in person and availed the said hearing opportunity along with its Authorized Representative (ARs) viz., Shri Abhishek Mishra, Practising Company Secretary and Mr. Naveen Sharma, past employee of the Noticee wherein the Noticee/ARs inter alia relied upon and reiterated the written submissions made vide letter dated October 01, 2024. Further, the Noticee/ARs sought time till October 11, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed.

11. Vide email dated October 11, 2024, the Noticee made additional submissions as follows:

"…

These additional submissions are made with respect to the hearing held on 08th October, 2024 at 03:00 p.m. before the Ld. General Manager, SEBI with respect to Enquiry and Adjudication proceedings in the matter of Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal).

The Noticee MOST RESPECTFULLY SHOWETH:

a. That all the employees of the Noticee involved in the client interaction were duly holding NISM Certifications. NISM Certificates of all such employees are enclosed herewith as Annexure 1.

b. With regard to the client MD Mxxxxxx, the Noticee would like to state that the Noticee had entered into the agreement with the said client on 04th August, 2021 only and have charged fees thereafter. Furthermore, the Noticee has laterwards entered into another agreement with the same client which has been taken on record by the SEBI and has been misunderstood as entering into the agreement with the client after charging the fees. The Noticee has clearly entered into the primary agreement with the client before charging of any fees to them. Copy of the primary agreement of the said date was enclosed in the Exhibit-E of the Reply.

c. Further, with regard to the alleged violation in clause 4.9 of the adjudication SCN, the Noticee would like to state that if his intention was of defrauding the clients then he would not have opted SEBI registration and followed the requisite applicable compliances. Also, the definition of "fraud" as defined in regulation 2(1)(c) of the PFUTP Regulations which provides as under:

"(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include -
(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
And "fraudulent" shall be construed accordingly ….."

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

Further, the Noticee would also like to place the reliance on the following decision of the SEBI: Order in the matter of Star World Research; wherein in the exact same case it was held that "With respect to the definition of "fraud" under regulation 2(c), I am of the view that the same is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. There is no proof to show that the IA has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. In view of this, the misleading representations made by the IA to its clients and the wrong categorisation of clients and selling high risk products to unsuitable clients or levying GST after cancellation of its GSTN, etc., would not bring the Noticee`s acts within the prohibition under the PFUTP

Regulations. These are violations of the prescriptions laid down in various provisions of the IA Regulations and the Code of Conduct. I am, therefore, inclined to drop the allegation of fraudulent and unfair trading in favour of the Noticee."

Also, the SEBI had in its Order in the matter of Niveshicon Investment Advisor had also held similar interpretation and the alleged violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 were removed upon.

Further, no evidence on record has been established by the SEBI which evidences any fraud committed by the Noticee. In that regard, the Noticee would like to refer the Order of Hon'ble Securities Appellate Tribunal dated January 04, 2022 in the matter of Ms. Suhanika Chourey, wherein the findings of PFUTP violations were set aside as there was no evidence brought out on record.

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

The SEBI itself in its Orders in the matter of Star World Research and Niveshicon Investment Advisor has stated that for construing the definition of fraud, the fraud shall be committed while "dealing in security" and in absence of that the acts will not fall within the ambit of PFUTP Regulations. In the said Orders also, SEBI did drop the allegation of PFUTP for the following acts: selling products meant for High-Risk Category clients to clients having Medium Risk profile, charging of unfair, unreasonable and exorbitant fee from the clients, selling the clients multiple products/services, improper risk profiling of the clients, promising/assuring unrealistic return to clients. Hence, by following the principle of the stare decisis, the PFUTP violations shall be removed upon from the Noticee as the alleged violations, if established, have not been committed while dealing in security and also no material evidence has been established in this regard.

…"

D. CONSIDERATION OF ISSUES AND FINDINGS

12. 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, SEBI PFUTP Regulations, 2003, SEBI Act, 1992 and SEBI Circulars, as alleged?

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

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

Issue No. I: Whether the Noticee has violated the provisions of SEBI IA Regulations, 2013, SEBI PFUTP Regulations, 2003, SEBI Act, 1992 and SEBI Circulars, as alleged?

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

13.1. Finding A: Non-compliance with the qualification / certification requirement:

13.1.1. In this regard, it was inter alia been observed and alleged that the employees / person associated with Capital Ways, who had dealt with clients, did not possess requisite qualification and certification.

Accordingly, it was alleged that the Noticee had violated Regulation 15(13) read with Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

13.1.2. In this regard, I note that Regulation 15(13) of IA Regulations reads as under:

"…

(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.

…"

13.1.3. I note that Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations reads as under:

"…

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

…

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

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

…

8. Compliance
An investment adviser including its [94][partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

…"

13.1.4. I note that Paragraph 2(iv) of SEBI circular dated September 23, 2020 reads as under:

"…

(iv)<u>Qualification and certification requirement</u>
Regulation 7 of the amended IA Regulations specifies the minimum qualification and certification requirements for IAs. Further, in terms of second proviso of regulation 7 (1), existing individual IAs above fifty years of age (as on September 30,2020) shall not be required to comply with the qualification and experience requirements specified under Regulation 7(1)(a) and 7(1)(b)of the amended IA Regulations. However, such IAs shall hold NISM accredited certifications and comply with other conditions as specified under Regulation 7 (2) of the amended IA Regulations at all times.

…"

13.1.5. As per the Business model submitted by IA read with provisions of Regulation 2(1)(r) of IA Regulations, SEBI observed that Executives working in sales and compliance department of IA were acting as a client facing person and did the process related to risk profiling of clients, suitability of clients, agreement with clients and payment procurement from clients. Thus the Executive of sales and compliance department of IA should be considered as "persons associated with investment advice".

13.1.6. Inspection team checked whether IA and its representative / persons associated with investment advice were compliant with the qualifications and certification requirement of IA Regulations. I note from the material available on record that in this regard, SEBI, vide letter SEBI/WRO/ILO/NM/OW/P/25456/1/2021 dated September 23, 2021, advised Capital Ways to provide, inter-alia, details of employees and persons associated with investment advice. In response, IA vide letter dated October 08, 2021 and October 14, 2021, submitted the list of employees / persons associated with investment advice along with the qualification details.

13.1.7. From the details of active employees submitted by the IA, SEBI observed the following:

- Total number of active employees of IA was 96.
- 83 out of 96 employees were in sales department, accounting for 87% of the total employee of IA.
- 52 out of 83 sales executive were not holding post-graduation qualification. Further, 37 out of 83 sales executive did not possess NISM certification.
- 3 employees were in compliance department. 2 out of such 3 employees were not holding NISM certification and post-graduation qualification.

13.1.8. In this regard, the Noitcee has submitted the following:

"…

the Noticee respectfully refers to Clause VIII of the SEBI (Investment Advisers) (Amendment) Regulations, 2020, which substituted Regulation 7:

"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"

SEBI itself granted a three-year grace period for existing investment advisers to meet the qualification and experience requirements. These regulations took effect on September 30, 2020. Therefore, the deadline for employees to obtain post-graduate qualifications was September 30, 2023. Furthermore, SEBI extended this deadline by two years through a Circular dated October 10, 2023. Consequently, the current deadline for compliance with the enhanced qualification and experience requirements under Regulation 7(1) is September 30, 2025.

…"

13.1.9. In this regard, I note that the relevant part of Regulation 7 of IA Regulations with effect from September 30, 2020 reads as under:

"…

(1)…

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.

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-

(a) from NISM; or

(b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:

Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.

…"

13.1.10. I note from the text of Regulation 7(2) of IA Regulations time period of three years was provided to persons associated with investment advice with respect to complying with qualification and experience requirements, and not with respect to complying with the requirements of NISM certification for persons associated with investment advice. In this regard, I also note that the Noticee has failed to demonstrate if any extension was available with respect to NISM certification, and instead the submissions of the Noticee are in nature of admission in so far as the Noticee itself has inter alia submitted, "…*SEBI itself granted a three-year grace period for existing investment advisers to meet the qualification and experience requirements.…"*

13.1.11. I further note from the FAQs on SEBI Registered Investment Advisors that, "*An individual IA, a principal officer of a non-individual IA and persons associated with investment advice are required to fulfil the minimum qualification and certification requirements as specified under regulation 7(1) and regulation 7(2) of the IA Regulations at all times. Further, with regard to certification requirement, the said persons are required to obtain NISM-Series-X-A: Investment Adviser (Level 1) as well as NISM-Series-XB: Investment Adviser (Level 2) certification*". Therefore, I note that the Noticee's submissions are in nature of admission in so far as the Noticee has submitted, "…*35 employees hold NISM-XA and are in the process of obtaining NISM-XB certifications…"*

13.1.12. I note from the material available on record that the Noticee as regards it business model submitted that, ", according to suitability, sales executive provides details about services offered by IA, disclosure, policy, fees and agreement process to the client" and "compliance team verify the risk profile". In this regard, SEBI observed that sales executives and compliance team were acting as client facing person and should therefore be considered as "persons associated with investment advice". Therefore, I note that the Noticee's submissions, "…*The 35 employees who have not yet obtained NISM-XB certifications do not have direct contact with clients*…" and "…*employees in the compliance department also do not have direct contact with clients…"* is devoid of merit and hence not acceptable.

13.1.13. I further note from the list of active employees submitted by the Noticee to SEBI, vide letter dated October 14, 2021. I note from the material available on record that 35 out of 83 sales executive did not possess NISM certification and 2 out of 3 employees in compliance department did not possess NISM certification. Accordingly, I note that 37 employees/ persons associated with the Noticee did not possess NISM certification.

13.1.14. In view thereof, I find that the allegations that the employees / the person associated with Capital Ways, who had dealt with clients, did not possess requisite certification, stands established. Therefore, I hold that the Notciee had violated Regulation 15(13) read with Regulation 7 of IA Regulations and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

13.2. Finding B: Compliance with fees structure:

13.2.1. In this regard, it was inter alia observed and alleged that Capital Ways had failed in its responsibility to act in fiduciary capacity by dealing unfairly with its clients by charging exorbitant advisory fees from its clients.

Accordingly, it was alleged that the Noticee had violated Regulation 15A of IA Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, and Clause 1, 6 and 8 of Code of conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

In this regard, I note that Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 reads as under:

"…

Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

a. The maximum fees that may be charged under this mode shall not exceed2.5 percent of AUA per annum per client across all services offered by IA.

…

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

a. …..

b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis…..

………"

13.2.2. In this regard, SEBI noted from the fees structure submitted by IA that:

- There are 17 services for which different price packages are offered by IA on weekly, monthly, 2 months or on quarterly subscription basis.
- IA charge fees from the client through fixed fee mode by offering various price packages.
- The minimum weekly fees charged by IA is Rs. 5,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 2,60,000/- (5000*12).
- The minimum monthly fees charged by IA is Rs. 12,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,44,000/- (12000 * 12).
- The minimum Bi-monthly fees charged by IA is Rs. 25,000/-, thus on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,50,000/- (25000 *6).
- The quarterly amount charged by IA are Rs. 30,000/-, Rs. 44,000/-, Rs. 69,000/- and Rs. 73,000/-.
- Thus, apart from Rs. 30,000/-, all the fees charged by IA on quarterly basis would amount to more than Rs. 1,25,000/- on annual basis.

On the basis of the aforesaid information, SEBI observed that the minimum amount of subscription packages offered by the IA for weekly, Monthly, Bi-Monthly and Quarterly time period would exceed the fees amount of Rs. 1,25,000/- if such advisory product fees were charged on an annual basis.

13.2.3. Further, from the analysis of client master of FY 2021-22 (April 01, 2021 to October 04, 2021), SEBI noted as under:

- IA has taken 1915 payments from multiple clients amounting to total of Rs. 2,65,58,119/-.
- Out of 1915 payments, in 1690 payments instances, IA has charged fees in a manner which amounts to more than Rs. 1,25,000/- on annual basis.
- In 1690 payments instances it has been noted that IA has charged fees in excess to Rs. 1,25,000/- on annual basis. Such fees charged by IA is in noncompliance to the provisions of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020. In 1690 instances of payments, the total amount of fees in excess to Rs. 1,25,000/- on annual basis is Rs. 1,49,48,904/-.

13.2.4. In this regard, the Noticee has submitted that, "*The Noticee offers various services and packages with different pricing options, but none exceed the SEBI-mandated limit of Rs. 1,25,000 per annum per client. While SEBI has set this annual cap, it has not provided a detailed methodology for calculating daily fees. This has led to the erroneous assumption of a maximum daily charge of Rs. 342…*"

13.2.5. In this regard, I note that maximum fees that can be charged from a client as per the provisions of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 is 1,25,000/-per annum per client across all services offered by IA.

13.2.6. I note that the Noticee has further submitted, "*In its order dated August 17, 2023, in the matter of Money Capital Height Research Investment Advisers Pvt. Ltd., the SEBI itself acknowledged that: "maximum fees that can be charged from a client as per the provisions is 1,25,000/- per annum per client across all services offered by IA. In absence of any detailed methodology under the provisions to calculate the fees, I am not inclined to agree with the* *manner in which the fees charged for shorter duration has been extrapolated and hence do not find that the Noticees have violated Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations."*

13.2.7. In this regard, having regard to the material available on record and the submissions of the Noticee, I note that that alleged violation in respect of the Noticee has not been brought out clearly. Accordingly, I am inclined to allow benefit of doubt to the Noticee.

13.3. Finding C: Agreement between IA and the client:

13.3.1. In this regard it was inter alia observed and alleged that the Noticee did not act in a diligent and honest manner with its clients. The details of the agreements did not match with the details of the invoices, invoice had been generated prior to entering into an agreement with the client.

Accordingly, it was alleged that the Noticee had violated Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations & Clause (2) (ii) (c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020.

13.3.2. In this regard, I note that Clause (2) (ii) (c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020 reads as under:

"…

(ii)Agreement between IA and the client

…

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.

…"

13.3.3. I note that Annexure A of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020 inter alia reads as under:

"…

Investment Adviser shall ensure that the following terms and conditions are incorporated in the Investment Advisory Agreement:

…

17.Terms of fees and billing:

(a)Provide specific details on the following:

(i)The quantum and manner of payment of fees for investment advice rendered.

(ii)Fee modalities and periodicity, by attaching a detailed fee schedule to the agreement;

(iii)Illustration(s) on how the fee will be determined;

(iv)whether payment to be made in advance;

(v)type of documents evidencing receipt of payment of fee;

(vi)Periodicity of billing with clear date and service period.

…"

13.3.4. I note that Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations reads as under:

"…

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

…

CODE OF CONDUCT FOR INVESTMENT ADVISER

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

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

…

8. Compliance
An investment adviser including its [94][partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

…"

13.3.5. In this regard, I note that SEBI observed from the below table that:

S. No.	Name	PAN	Details as per Agreement				Details as per invoices			
			Date of Agreement	Service	Fees	Period of Service	Date of Invoice	Service	Fees	Period of Service

1	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	01-04-2021	CW-Cash Accurate	3,000	05-04-2021 to 10-04-2021	06-04-2021	CW-Super Trend Option	3000	05-04-2021 to 8-04-2021
2	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	06-04-2021	CW-Supertrend Cash	37000	11-04-2021 to 10-05-2021	06-04-2021	CW-Super Trend Option	37000	09-04-2021 to 12-05-2021
3	MD Mxxxxxxx	FWxxx375xx	21-08-2021	CW-Super Trend Option	68000	As per invoice	13-08-2021	CW-Super Trend Option	10000	16-08-2021 to 30-08-2021

- In the case of Cxxxxxx Sxx Sxxxxxxxxx at S. No. 1 & 2, service details, i.e., service name and service duration mentioned in the Agreement with the client are different with the service details mentioned at the invoices issued to the client.
- In the case of MD Mxxxxxxx at S. No. 3, fees mentioned in the Agreement with the client is different with the fees mentioned at the invoice issued to the client. Further, the agreement has been done on August 21, 2021, however, as per invoice the fees has been charged on August 13, 2021. Thus the fees has been charged prior to the agreement date.

13.3.6. As regards the allegation in respect of Cxxxxxx Sxx Sxxxxxxxxx, Noticee has submitted, "…*the Invoices issued to client Cxxxxxx Sxx Sxxxxxxxxxx contained a typographical error…"*

I note that in this regard, the Noticee has also submitted SMS log in support of its contention that, "*the services provided to the client were in strict accordance with the terms of the agreement…"* In this regard, I note from the SMS log submitted by the Noticee that the SMS sent to the client were with regards to the services "Cash Accurate" and "Supertrend Cash". Accordingly, in view of the material available on record and having regard to the submissions of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

13.3.7. It was also observed and alleged that in the case of MD Mxxxxxxx, fees mentioned in the Agreement with the client is different with the fees mentioned at the invoice issued to the client. Further, the agreement had been done on August 21, 2021, however, as per invoice the fees had been charged on August 13, 2021.

13.3.8. In this regard, the Noticee has submitted that, "…*in the case of client MD Mxxxxxx, the SEBI's allegation of fees charged prior to the agreement date is unfounded. The Noticee entered into a formal agreement with the client on August 4, 2021, a copy of which is attached as Exhibit E…"*

13.3.9. In this regard, I note that the allegation is with respect to the agreement entered into by the Noticee with MD Mxxxxxxx with respect to the service, "CW-Super Trend Option" on August 21, 2021. However, the Noticee has submitted the agreement dated August 4, 2021 wherein the Noticee had entered into agreement with MD Mxxxxxxx with respect to service, "CW – Stock Option Accurate". I further note that the invoice related to "CW-Super Trend Option" service is dated August 13, 2024. Therefore, the Noticee's submission is out of context and devoid of merit and hence not acceptable.

I further note that the Noticee has not submitted any response with respect to the allegation that in the case of MD Mxxxxxxx, fees mentioned in the Agreement with the client is different with the fees mentioned at the invoice issued to the client. In absence of any response from the Noticee, I am of the view that the Noticee has admitted to the allegation in this regard.

13.3.10. In view thereof, I find that the allegation that Noticee did not act in a diligent and honest manner with its clients and that the invoice has been generated prior to entering into an agreement with the client as regards the client MD Mxxxxxxx, stands established. Therefore, I hold that the Noticee had violated Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations & Clause (2) (ii) (c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020.

13.4. Finding D: Suitability Assessment & Inappropriate product sold to clients:

13.4.1. In this regard it was inter alia observed and alleged that Capital Ways had failed to do proper suitability assessment and had sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients.

Accordingly, it was alleged that the Noticee had violated Regulation 15(1) of IA Regulations, Regulation 17(a), (b) & (d) and (e) of IA Regulations read with Clauses 1 (Honesty and Fairness), 2 (Diligence) & 8 (Compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

13.4.2. In this regard, I note that Regulation 15(1) of IA Regulations reads as under:

"…

General responsibility.

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

…"

13.4.3. I note that Regulation 17(a), (b) & (d) and (e) of IA Regulations reads as under:

"…

17. Investment adviser shall ensure that,-

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

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

…

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

(i)meets the client's investment objectives;

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

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

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

…"

13.4.4. I note that Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations reads as under:

"…

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

…

CODE OF CONDUCT FOR INVESTMENT ADVISER

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

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

…

8. Compliance
An investment adviser including its [94][partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

…"

13.4.5. I note that Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations reads as under:

"…

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed

on are cognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a [9][manipulative] fraudulent or an unfair trade practice if it involves [10][any of the following]:

…

[28][(s) [29]{mis-selling of securities or services relating to securities market;

Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv)not taking reasonable care to ensure suitability of the securities or service to the buyer}];

…"

13.4.6. I note that Section 12A (a), (b) and (c) of SEBI Act, 1992 reads as under:

"…

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

12A. No person shall directly or indirectly—

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

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

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

…"

13.4.7. In this regard, in order to check the suitability of investment advisory services carried out by IA, on sample basis, SEBI reconciled risk profiles of the clients with the agreements and invoices issued to the clients and investment advisory messages sent to the client. Upon reconciliation, SEBI noted that IA has sold high risk products to the medium risk category clients. Thus, IA has not ensured that investment advice rendered is appropriate to the risk profile and financial situation of the clients.

Few of the instances wherein IA has sold high risk product to the medium risk category client are tabulated as under:

S. No.	Name	PAN	Risk Score	Client Risk	Name of the service	Product Risk
1	Axxxx Sxxxx	NIxxx953xx	17.5	Medium risk	CW-Super Trend Option	High
2	Cxxxxxx Sxx Sxxxxxxxxx	ACxxx208xx	16.5	Medium risk	CW-Super Trend Option	High
3	Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx	ATxxx545xx	15	Medium risk	CW-Equity Super Trend Combo	High

13.4.8. In this regard, SEBI observed that IA had not been fair and diligent in its dealing with clients regarding the investment advisory services sold to the clients. IA had sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients. Such acts of IA were in complete disregard to the responsibility entrusted on him under the provisions of IA Regulations to act in fiduciary capacity and in the best interest of its clients.

13.4.9. In this regard, as regards Axxxx Sxxxx's risk profile, the Noticee has submitted, "…*Axxxx Sxxxx's risk profile was categorized as medium. However, after a comprehensive evaluation of his RPQ, the Noticee, as a SEBI-registered Investment Adviser, determined that the CW – Supertrend Option was a suitable product. This recommendation was outlined in the agreement and suitability report, which the client duly acknowledged and signed*…"

In this regard, I note that as per the suitability assessment report of Axxxx Sxxxx, signed by the Noticee and Axxxx Sxxxx on August 17, 2024, the client was categorised as a High risk client and as a part of the agreement between the Noticee and Axxxx Sxxxx, CW- Supertrend Option service was sold to the client. In this regard, I note that the agreement was signed by the Noticee and Axxxx Sxxxx.

Therefore, I am inclined to allow the benefit of doubt to the Noticee in this regard.

13.4.10. As regards Cxxxxxx Sxx Sxxxxxxxxx's risk profile, the Noticee has submitted, "…*a typographical error occurred in the invoices issued which was a human*…".

I note that in this regard, the Noticee has also submitted SMS log in support of its contention that, "*the services provided to the client were in strict accordance with the terms of the agreement…"* In this regard, I note from the SMS log submitted by the Noticee that the SMS sent to the client were with regards to the services "Cash Accurate" and "Supertrend Cash". Accordingly, in view of the material available on record and having regard to the submissions of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

13.4.11. As regards Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx's risk profile, the Noticee has submitted, "…*the Noticee sold only medium-risk services, specifically the CW- Super Trend Cash service. The Noticee did not sell the 'CW- Equity Super Trend Combo', as falsely claimed by SEBI* …"

In this regard, I note from the material available on record that as per the agreement dated April 01, 2024 between the Noticee and Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx, the Noticee had sold "'CW- Equity Super Trend Combo" service to the client, however, the Noticee in its reply to the SCN has submitted the agreement dated March 20, 2024 between the Noticee and Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx wherein "CW- Super Trend Cash" service was sold to the client. Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

13.4.12. In view thereof, I find that the allegation that Capital Ways had failed to do proper suitability assessment as regards the client Mxxxxxxxxxx Bxxxxxxxxxxxx Kxxxxxxx, and had sold products bearing higher risk than the risk categories defined by the risk profile of the client, thereby impairing the investment objectives of the client, stands established. Accordingly, I hold that the Noticee had violated Regulation 15(1) of IA Regulations, Regulation 17(a), (b) & (d) and (e) of IA Regulations read with Clauses 1 (Honesty and Fairness), 2 (Diligence) & 8 (Compliance) of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992.

13.5. Finding E: Maintenance of records:

13.5.1. In this regard it was inter alia observed and alleged that:

- Capital Ways had failed to maintain the records of communication with clients during risk profiling and suitability assessment of advice / selection of advisory products / services.
- IA had not complied by its duty to produce to the inspecting authority such statements and information as required for the purposes of inspection

Accordingly, it was alleged that the Noticee had violated Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, read with Regulation 19(1) of IA Regulations and Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations; Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations

13.5.1.1. In this regard, I note that Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 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 on boarding), 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.

…"

13.5.1.2. I note that Regulation 19(1) of IA Regulations reads as under:

"…

19. (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;

[42][(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.

…"

13.5.1.3. I note that Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations reads as under:

"…

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

…

CODE OF CONDUCT FOR INVESTMENT ADVISER

…

8. Compliance

An investment adviser including its [94][partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

…"

13.5.1.4. I note that Regulation 15(12) of IA Regulations reads as under:

"…

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

…"

13.5.1.5. I note that Regulation 25 (1) & (2) of IA Regulations 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 [48][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.

…"

13.5.1.6. In this regard, SEBI inspection team advised the IA to provide the call records, since the applicability of Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 i.e., January 01, 2021, of the clients from their first conversation / interaction.

In this regard, I note that the period of inspection was April 01, 2020 to October 14, 2021.

13.5.1.7. I note from the material available on record that vide letter dated October 13, 2021 to SEBI, IA submitted that, "…*due to heavy load on the system, our hardware got crashed. We have recordings of clients from 12th Aug 2021 to till date*…" Thereafter, on sample basis, IA was asked to provide complete call recordings for such 8 individuals who were made clients on or after August 12, 2021. The sample clients, whose call recordings were sought from IA, are tabulated as under:

S. No.	**Name**	**PAN**	**Agreement Date**
1.	Axxxxxxxxx B Fxxxxx	ABxxx914xx	Oct-06-2021
2.	Sxxxxxxxx Cxxxxxxxxxx	AJxxx855xx	Aug-30-2021
3.	Vxxxx Kxxxx Sxxxxx	BExxx502xx	Aug-28-2021
4.	Gxxxxxxx Bxxxxxxx	BPxxx377xx	Sept-15-2021
5.	T Dxxxxx Txxx	CMxxx695xx	Sept-29-2021
6.	Nxxxxxxx Bxxx Jxxxxxxxxx	AKxxx459xx	Sept-24-2021
7.	Gaxxxx Vxxxxxx Kxxxxxx Bxxx	CAxxx894xx	Oct-07-2021
8.	Rxxxxx Sxxxx	ECxxx554xx	Aug-30-2021

With respect to the abovementioned clients, IA was not able to submit complete call recordings from the 1st interaction with such clients.

Vide email dated October 13, 2021 to SEBI, the Noticee submitted that, "… *all the call recordings since the start of conversation with the clients are not made available to the inspection team, same would be made available after consulting respective vendors by November 15, 2021*…" In this regard, SEBI noted that no clarification or call recordings have been submitted by the IA. I also note that the Noticee has not provided these recordings as a part of reply to the SCN as well.

13.5.1.8. In this regard, I note that the Noticee in its reply to the SCN has submitted that, "…*due to heavy load on the system of the Noticee, the hardware got crashed and due to which the Noticee lost all the call recordings.*

Further, the Noticee did tried to recover the recordings, however it couldn't get recovered. The Noticee also visited data recovery center to restore the data, but it wasn't possible to recover the data. A letter from the data recovery center in this regard is enclosed in Exhibit-H…"

In this regard, I note that as per Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, the IA was required to maintain the telephone recordings of interactions with all clients including prospective clients, since the applicability of the said clause i.e. since January 01, 2021.

In this regard, I note from the material available on record that the Noticee did not provide any call records prior to August 12, 2021 to the inspection team and the Noticee could not provide complete call records sought since first interaction for client interactions after August 12, 2021, by the inspection team.

The Noticee in its reply to the SCN has provided a letter dated November 24, 2021 from the data recovery center which reads, "*I have checked Seagate hard drive for data recovery purpose but drive in very bad condition some scratch on media, so that data is not possibel*". In this regard, I note that the Noticee has not demonstrated with relevant details and documents that the said letter is from an authorised service centre. I further note that it is not possible to ascertain if the hard drive with respect to which the Noticee has provided the letter is the same hard drive used by the Noticee to store the call records data. Therefore, I do not find merit in the submissions of the Noticee. Accordingly, the Noticee’s submissions are not acceptable.

13.5.1.9. In view thereof, I find that the allegations that Capital Ways had failed to maintain the records of communication with clients during risk profiling and suitability assessment of advice / selection of advisory products / services and that IA had not complied by its duty to produce to the inspecting authority such statements and information as required for the purposes of inspection, stands established. Therefore, I hold that the Noticee had violated Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, read with Regulation 19(1) of IA Regulations and Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations; Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.

13.6. Finding F: Profit Guarantee, Forced and False risk profiling, forced payments, profit sharing etc.:

13.6.1. In this regard the following was inter alia observed and alleged that the Noticee:

- Coerced the clients to agree to the risk profiles.
- Promised the guaranteed return to the clients.
- Forced the client to take additional advisory services and make additional payment.
- Understated the advisory fees and made false commitments.
- Managed and handled demat / trading accounts of the clients.

Therefore, it was alleged that the Noticee had violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992; Regulation 15(1) of IA

Regulations; Clause 1 of Code of Conduct for Investment Advisers read with Regulation 15(9) of IA Regulations.

13.6.1.1. I note from the material available on record that as the IA did not provide the complete call recordings, the inspection team inspected the investment advisory activities of the IA by analyzing the live calls of IA through quality check team and other call recordings available with IA. Findings of SEBI from the perusal of some of the live calls are detailed as under:

<table>
<tr><th>S. No.</th><th>Name of the Client /
Phone no.
(PAN)</th><th>Date (Time) and <u>Unique ID</u> of call</th><th>Conversation with Executive</th><th>Findings</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">Gxxxxx Vxxxxxx Kxxxxxx Bxxx

(CAxxx894xx)</td><td>07/10/2021 (11:22:01)
<u>1633585921.52524</u></td><td>The sales executive acknowledges the risk profile and asked him to <u>agree to the risk profile</u>. The client has asked to work at no risk.</td><td rowspan="2">Forced Risk Profiling by the IA. Though client has repeatedly reminded to IA to work at low risk, he was compelled to work at high risk.

Such act of IA is not fair and honest with the client. Further, IA is not acting in fiduciary capacity.

IA has violated the provisions of the risk profiling of the client.</td></tr>
<tr><td>11/10/2021 (10:04:30)
<u>1633926870.755</u></td><td>The client has again raised the concern that he has limited capital (Rs 10,000/-) and does not want to work at High Risk. The client is willing to work at minimum or no risk.</td></tr>
<tr><td>2</td><td>Prospective client - (Dxxxxx)
70xxxxxx16</td><td>13/10/2021 (16:06:35)
<u>1634121395.36973</u></td><td>The individual has informed that he is not working in the Securities market. But the executive has lured and convinced the individual if he works with the IA, he will make sure profit of 60% to 70%.</td><td>IA is promising the guaranteed return.

As envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/ 2020/182 dated September 23, 2020,

IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.</td></tr>
<tr><td>3</td><td>Prospective client – 99xxxxxx01</td><td>13/10/2021 (15:53:54)
<u>1634120634.36827</u></td><td>Sales executive has informed that services charges of IA for the product Equity Cash for the period 1 month is Rs. 5,000/-.</td><td>As per the service details of the IA, no product / service is offered by IA whose monthly charge is Rs 5000/-.

Thus IA is making false claims to the individuals and luring them to take his advisory services.</td></tr>
</table>

4	Gxxxxxxx Bxxxxxx (BPxxx377xx)	**24/09/2021 (10:13:52)** ***1632458632.156919***	The client informed to the IA that during the service charge he was told about profit sharing model. The client doesn't want to trade in the market. Client is not capable to make payment of service charges but the sales executive is forcing and compelling client to make the payment of Rs. 48,000 for additional advisory services.	Client has not been treated fairly and honestly by the IA. IA has not considered the suitability of the client and forcing the client to make additional payment, impairing the financial objective of the client.

13.6.1.2. As regards the call recording of Gxxxxx Vxxxxxx Kxxxxxx Bxxx, the Noticee has submitted, "…*A thorough examination of both recordings demonstrates that the client was not coerced into risk profiling. The employee merely outlined the process and explained risk management measures, thereby refuting the unfounded allegation*…" In this regard, I note from the call recording "1633926870.755" that Mr. Gxxxxx Vxxxxxx Kxxxxxx Bxxx had highlighted to the representative of the Noticee that he is not willing to take high risk as Mr. Gxxxxx Vxxxxxx Kxxxxxx Bxxx had stated at 1:14/ 3:28 of the call recording, "*Hamaare pass capital kaafi limted hai. Jab RPM kiya tha usme bhi risk thoda high bataaya tha. Maine Sir ko intimate kiya tha ki Sir apne ko minimum ya fir no risk pe kaam karna hai*". In response, the representative of the client told the client at 1:26/ 3:28 that, "*Sir dekhiye apne company ke jo messages ja rahe hain na Sir us message ke according aapko proper target, proper stop loss rakhna hai. Jo accuracy hai apni company ka bohot acha accuracy hai, us accuracy ke according hum kaam karenge Sir. I hope apne ko acha profit nikal jaayega…".* Mr. Gxxxxx Vxxxxxx Kxxxxxx Bxxx told the representative of the Noticee that he had already suffered a loss of Rs. 5000-5500/- and is left with capital of Rs. 10,000/- only as Mr. Gxxxxx Vxxxxxx Kxxxxxx Bxxx had stated at 2:25/ 3:28 of the call recording, "*Thursday ko start kiya tha…usi din follow up lete lete 5000-5500 ka loss ho gaya tha*…". In response, the representative of the client told the client at 2:52/ 3:28 that, "*Tension mat lijiye…aapko* *jo company ka message aa raha hai na Sir, us message ko aap follow kijiye…koi dikkat ni hoga".* Thereafter, at 3:02/ 3:28 of the call recording, Mr. Gxxxxx Vxxxxxx Kxxxxxx Bxxx had stated, "…*darr ye lagta hai ki agar aise late ho jaata hai toh abhi sirf 10000 capital hi bachi hai, usme bhi loss ho jaayega toh aage kaam kaaj ni kar paayenge".* …". In response, the representative of the client told the client at 3:10/ 3:28 that, "*Sir dekhiye company ke jo message hai na us message ke according aap target stop loss ko maintain karke chaliye, aapko I hope acha profit nikalke aayega…".* Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

In view thereof, I find that the allegation that the Noticee had coerced the client to agree to the risk profile, stands established.

13.6.1.5. As regards the call recording of Mr. Dxxxxx, the Noticee has submitted, "..*the allegation of the SEBI that the employee had assured profit of 60% to 70%, it is clearly a false statement, on perusal of recording it is clearly evident that the employee has just stated accuracy level to 60%-70%, which was maintained by the Noticee, which means that out of 10 advices, 6-7 advice turns in profit which was based upon the past performance of the Noticee. It was in no manner, a false statement or any assured return*…"

In this regard, I note from the call recording "1634121395.36973" that the representative of the Noticee had clearly said to client at 3:30 / 4:02 of the call recording, "…*aapko 60-70% ka profit jaroor hoga*…" Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

In view thereof, I find that the allegation that that the Noticee had the promised guaranteed return to the client, stands established.

13.6.1.6. As regards the call recording of a prospective client with mobile number xx9xxx20xx, the Noticee has submitted, "…*The SEBI's assertion that the employee stated a monthly fee of 5,000 rupees is inaccurate. The employee clearly indicated that the service fee starts at 5,000 rupees and varies depending on the specific services required*…*"* In this regard, I note from the call recording "1634120634.36827" that the prospective client had asked the representative of the Noticee at 2:03/ 5:03 of the call recording, "…*ek mahine ka charges kya hai?...*". In response, the representative of the Noticee had clearly said to the prospective client at 2:48 / 5:03 of the call recording "*5000*". However, I note from the list of service offerings of the Noticee that no product/ service was offered by the IA whose monthly charge was Rs. 5000/-. Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

In view thereof, I find that the allegation that the Notice had understated the advisory fees and made false commitments, stands established.

13.6.1.7. As regards the call recording of Mr. Gxxxxxxx Bxxxxxx, the Noticee has submitted, "…*The said client was interested in the Noticee's services but hesitated to pay the upfront fee. The employee explained that the fee could be offset by profits generated from the market. Also, it was also stated that once the service charge is complete, client is not required to pay any additional amount*…"

In this regard, I note from the call recording "1632458632.156919" that Mr. Gxxxxxxx Bxxxxxx had said at 0:53/ 22:09 of the call recording, "*aapne bola ki thoda aapko denge, thoda hum rakhenge, aisi baat hui thi apni...*" In response, the representative of the Noticee had said to the client at 0:58/22:09 of the call recording, "*Hmmm*" and did not object to words of Mr. Gxxxxxxx Bxxxxxx. Thereafter, Mr.

Gxxxxxxx Bxxxxxx had said at 0:59/ 22:09 of the call recording, “M*aine jab 20000 ka payment kiya na toh main us din bhi bola ki Sir aapko maine 25000 rupay tak ka payment kardiya, toh atleast ab meri jeb mein bhi 25000-30000 rupay aana chahiye Sir. Ab 30000 rupay aaya hai toh ab aap 48000 rupay maang rahe ho*”. *...”* In response, the representative of the Noticee had said to the client at 1:16/22:09 of the call recording, “*Hmmm*” and did not object to words of Mr. Gxxxxxxx Bxxxxxx. At 2:32/ 22:09 of the call recording, Mr. Gxxxxxxx Bxxxxxx had said, “*dil ki baat ye hai ki aage paisa dene ki himmat nahi ho rahi hai”.* At 3:39/ 22:09 of the call recording, Mr. Gxxxxxxx Bxxxxxx had said, “*ye jo profit hai mere ko rakhne do aap”*

Therefore, I note from the material available on record that the representative of the Noticee was having discussions regarding a profit sharing model with the client and that the representative of the Noticee was compelling the client to make additional payment for advisory services. Therefore, the Noticee’s submissions are devoid of merit and hence not acceptable.

In view thereof, I find that the allegation that that the Noticee had forced the client to take additional advisory services and make additional payment, stands established.

13.6.1.8. The inspection team further analysed complaints of Nxxxxxxx Kxxx and Nxxxxx Sxxxx Rxxxx, and observed the following:

13.6.1.8.1. Complaint of Nxxxxxxx Kxxx:

Vide email dated October 14, 2021, the recording of the conversation of the client with the IA and complaints of the clients were procured from the IA. The said recording has been perused and the relevant transcript of the same is produced below:

Client Demat Handling:

Audio File: AUD-20210528-WA0012

Time Slot: 1:50 to 2:30

Client: *….usme mera 50000 tha to baad me usme 4000 hi reh gaya tha. Usme 46000 ki karib loss ho gaya tha.*

Executive: *usme 6000-7000 nukasan ho gaya tha,* ***vo maine position kaat ke accha kiya*** *……. Tabhi to mai hold karne ki soch raha tha us position ko to sir ne kaha hold mat kariye market correction kar raha hai. Aap 4000-5000 ka nukasan ho raha hai to vo thik hai. Agar ye nukasan 40000 se 45000 ka hoga to aapko bhi dukh hoga aur client bhi pareshan honge.* ***To mai vahi usse kaat ke nikal gaya*** *tha to uske baad maine phir haath hi nahi lagaya.*

Audio File: AUD-20210528-WA0012

Time Slot: 08:10 to 08:45

Client: *….. baat yahi hui thi ki* ***mai d-mat handle nahi kar sakta*** *aur ye mere bas ki baat nahi hai d-mat handle karna.* ***To mai yahi bola tha ki mai handle nahi kar sakta karna hai aapne hi****…..*

Executive: *sir kisiko pata nahi hai, naahi pata chalegi,* ***nikaal ke muje dena hai*** *bas yahi samajhiye,* ***nikaal ke mai de dunga*** *tension mat lijiye.*

Assured returns:

Audio File: AUD-20210528-WA0012
Time Slot: 05:40 to 06:02

Executive: *mai itana bol raha hun ki sabse pehle aapne mujhe 200000 rupaye bol rahe hai muje vo complete karna hai ki aap mujhe bole na ki maine 200000 rupaye diya tha. Pehle vo mai vaapis kar dunga uske baad jo* ***bachega 500000 to 550000 vo mai nikalwake dunga****. Aapko bhi tension nahi hogi ki maine kisise uthaya tha. Apan pehle usko vaapis karenge jisse liya hai.*

13.6.1.8.2. In this regard, the Noticee has provided email dated February 06, 2021 from the client and has submitted, "…*The said email evidences that the Noticee has taken fees from her for the advisory services only and no profit commitment was done…"*

13.6.1.8.3. In this regard, I note from the call recording "AUD-20210528-WA0012" that the representative of the Noticee was handling the client's demat account, in so far as the representative of the Noticee had said, "*maine position kaat ke accha kiya… To mai vahi usse kaat ke nikal gaya…"* and that the representative of the Noticee was promising assured returns to the client in so far as the representative of the Noticee had stated, "…*pehle aapne mujhe 200000 rupaye bol rahe hai muje vo complete karna hai ki aap mujhe bole na ki maine 200000 rupaye diya tha. Pehle vo mai vaapis kar dunga uske baad jo bachega 500000 to 550000 vo mai nikalwake dunga…"* Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

13.6.1.8.4. In view thereof, I find that the allegation that that the Noticee had promised the guaranteed return to the client and managed and handled demat / trading account of the client, stands established

13.6.1.8.5. Complaint of Nxxxxx Sxxxx Rxxxx:

The complainant vide email dated September 15, 2020 has submitted multiple call recordings to the IA with respect to their trading discussion. The said email along with call recordings had been procured from IA on October 14, 2021. The relevant transcript of the call recordings are produced as below:

Assured returns:

<u>Audio File: Dxxxxxxxxx Sxxxxx -1910191208.amr</u>

<u>Time Slot: 3:03 to 3:30</u>
Client: *Kya aapki commitment puri ho payegi aapse, aapne muje jo commitment kiye hain*
Executive: *dekho maine abhi jo aapko diya hai, abhi jo maine aapko samajhayi hai vo to mai kar ke de dunga ye to aap bhi jaante hai.* ***<u>Sir bola hai ki roj 15000 yahi se nikal jayega</u>*****.**
<u>Audio File: Dxxxxxxxxx Sxxxxx -1910211432.amr</u>
<u>Time Slot: 1:20 to 2:23</u>

Executive: *sir mai kya bol raha hoon* ***<u>jo maine jo aapko commitment diya tha 3000-4000 rupaye daily ka</u>*** *vo mai karwa deta hoon.*
Client: *kaha hai vo commitment abhi tak to pura hua nahi hai.*

Audio File: Dxxxxxxxxx Sxxxxx-1910211432.amr

Time Slot: 3:20 to 3:40

Client: *sir mai jo chaah raha hoon is cheez se kaise nikalunga? Mere paas 236000 nahi hai to. Muje card ki payment bhi karni hai mujhe EMI bhi deni hai mai un cheezon se kaise nikalunga.*

Executive: *maine aapko bola na* ***50000 se 60000 mahine ke nikal jayenge*** *EMI ke liye vo mai karwa dunga.*

13.6.1.8.6. In this regard, the Noticee submitted, "… *the Noticee has not promised any assured returns to the clients, SEBI has just picked certain portions of the recording which were against the Noticee, instead of listening and understanding the conversation as a whole.*
At 04:19, the client itself has acknowledged that the company has never assured any returns. Also, the Noticee categorically denies offering or guaranteeing any fixed or assured returns to its clients…"

13.6.1.8.7. In this regard, I note from the abovementioned call recordings "1910191208" that the representative of the Noticee has repeatedly promised assured return to the client in so far as the representative of the Noticee had said, "*Sir bola hai ki roj 15000 yahi se nikal jayega jo maine jo aapko commitment diya tha 3000-4000 rupaye daily ka…50000 se 60000 mahine ke nikal jayenge*…" I further note that the Noticee's submission, "…*At 04:19, the client itself has acknowledged* *that the company has never assured any returns. Also, the Noticee categorically denies offering or guaranteeing any fixed or assured returns to its clients…"* is devoid of merit as the client has clearly stated that the representative of the Noticee is promising the returns, however the company (Capital Ways) is not promising anything.

13.6.1.8.8. In view thereof, I find that the allegation that that the Noticee had promised the guaranteed return to the client and managed and handled demat / trading account of the client, stands established

13.6.1.9. Further in this regard, the Noticee has contended, "…*In the absence of forensic verification, the authenticity and attribution of the alleged recording to Noticee or its employees cannot be established…"*

13.6.1.9.1. In this regard, I note from the material available on record that the instant alleged violation pertains to 6 call recordings which had been submitted to SEBI by the Noticee itself. As regards the 4 call recordings, I note that the inspection team analysed the live calls at the time of onsite inspection by SEBI, through the quality check team of the Noticee itself. As regards the other 2 call recordings, I note that the call recording of Nxxxxxxx Kxxx was provided by the Noticee itself vide email dated October 14, 2021 and that Nxxxxx Sxxxx Rxxxx vide email dated September 15, 2020 has submitted multiple call recordings to the IA with respect to their trading discussion. The said email along with call recordings had been submitted by the Noticee itself to SEBI on October 14, 2021.

In view thereof, I note that the call recordings were submitted by the Noticee itself. Therefore, the Noticee's submissions are devoid of merit.

13.6.1.9.2. Further in this regard, it is noted from SEBI order dated June 30, 2017 in respect of Mr. Gxxxxx Sxxxxx Kxxxxxxxxx that Section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to "all judicial proceedings in or before any Court". As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence the Indian Evidence Act does not apply thereto.

13.6.1.9.3. Further, in this regard it is noted that SEBI in its order dated August 31, 2023 in the matter of GJ Advisory Services and Profit Ideas Advisory Services inter alia:

> *"….In this regard, I note that the present proceedings …under ….. SEBI Act and hence are quasi-judicial proceedings in nature as held by the Hon'ble Supreme Court of India in the matter of NSDL vs. SEBI and Other Connected Appeal, Civil Appeal No.5173of2006 decided on March 7,2017. As such, the provision of the Indian Evidence Act,1872 are not strictly applicable in the present matter. Here, it would be appropriate to refer to the order of Hon'ble Supreme Court of India in the matter of Tata Consultancy Services Limited vs. Cyrus Investments Pvt.Ltd. dated March26,2021 wherein it was held as follows:*
> *"It is true that the rigors of CPC and the Evidence Act are not be applicable to Tribunals/Quasi-Judicial Authorities..."*

13.6.1.9.4. Further, in this regard, reliance is placed on judgement of Hon'ble Supreme Court in Chairman, SEBI vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein it was inter alia held by Hon'ble SC that:

> *"…*

Therefore, the proceedings under Chapter VI A are neither criminal nor quasi criminal. The penalty leviable under this chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation

….

the breach of civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not…Hence, we are of the once the contravention is established, then the penalty has to follow

…"

13.6.1.9.5. Reliance is also placed on judgement dated February 23, 2016 of Hon'ble Supreme Court, in the matter of SEBI vs Kishore R. Ajmera whereby, as regards adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned, the following was inter alia held:

"

…

The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

The conclusion has to be gathered from various circumstances …....

…"

13.6.1.9.6. Therefore, the Noticee's contentions are devoid of merit and do not require any further consideration.

13.6.1.10. Further in this regard, the Noticee has inter alia contended that, "the definition of "fraud" under regulation 2 (c), is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee have committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. Hence, the serious violations of the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a) to (d) of the PFUTP Regulations shall be removed upon from the Noticee." In this regard, Noticee has relied upon SEBI Orders viz. Star World Research and Niveshicon Investment Advisor to support its aforesaid submission. Noticee has inter alia also contended, 'That further, no evidence on record has been established by the SEBI which evidences any fraud committed by the Noticee. In that regard, the Noticee has drawn reference to the Order of Hon'ble Securities Appellate Tribunal dated January 04, 2022 in the matter of Ms. Suhanika Chourey, wherein the findings of PFUTP violations were set aside as there was no evidence brought out on record.

13.6.1.10.1. In this regard, the relevant extracts of definition of 'fraud' under Regulation 2(1)(c) of PFUTP Regulations is as under:

> SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003
>
> *Definitions*
> *2.(1) In these regulations, unless the context otherwise requires,—*
> *(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another*

person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss,…"

13.6.1.10.2. In this regard, the relevant extracts of definition of 'dealing in securities' under Regulation 2(1)(b) of PFUTP Regulations are given below:

Definitions

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

(b) 1["dealing in securities" includes:

(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and

(iii) any act of providing assistance to carry out the aforementioned acts.]

13.6.1.10.3. I note from the aforesaid definition of fraud under regulation 2 (c) of PFUTP Regulations that fraud includes "*any act, expression, omission or concealment committed… or by his agent…. while dealing in securities in order to induce another person… to deal in securities*…." . Further, I note from sub-clause (ii) of the above definition of "dealing in securities" of PFUTP Regulations which inter alia includes "*such acts which may be knowingly designed to influence the decision of investors in securities*".

13.6.1.10.4. I further note that, as dealt with and brought out in the foregoing, the Noticee was promising assured return to the clients on various instances, coercing the clients to agree to the risk profile, forcing the client to take additional advisory services and make additional payment, and managing and handling demat / trading accounts of the clients. In my view, such acts were made while dealing in securities as the same was done in order to influence the decision of clients/ prospective clients with respect of doing trading based on the advice of the Noticee despite fully knowing that all the investments in securities market are subject to market risk.

13.6.1.10.5. Therefore, the Noticee's contentions are devoid of merit and are not tenable.

13.6.1.11. In view thereof, I find that the allegations that the Noticee had coerced the clients to agree to the risk profiles, promised the guaranteed return to the clients, forced the client to take additional advisory services and make additional payment, understated the advisory fees and made false commitments, and managed and handled demat / trading accounts of the clients, stands established. Therefore, I hold that the Noticee had violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992, Regulation 15(1) of IA Regulations and Clause 1 of Code of Conduct for Investment Advisers read with Regulation 15(9) of IA Regulations.

13.6.2. It was also observed and alleged that IA shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return.

Accordingly, it was alleged that the Noticee had violated Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020; Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act 1992.

13.6.2.1. In this regard, I note that Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 reads as under:

"…

2. (iii) 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.

…

Annexure A

…

Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice is risk-free and/or not susceptible to market risks and or that it can generate returns with any level of assurance.

"…

13.6.2.2. In this regard, I from the text of the Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 IA shall enter into an investment advisory agreement with its clients and the said agreement shall mandatorily cover that Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns etc. In this regard, I note that the copies of Noticee's agreements with clients Nxxxxxxx Kxxx and Nxxxxx Sxxxx Rxxxx, are not available on record. Therefore, I note that violation of provisions alleged to have been violated has not been brought out clearly in respect of the Noticee in this regard. In view thereof, I am inclined to allow the benefit of doubt to the Noticee in this regard.

13.6.3. It was also observed and alleged that Noticee had promised assured return and took details of friends of the client to charge exorbitant fees.

Accordingly, it was alleged that the Noticee had violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992.

13.6.3.1. In this regard, I note from the material available on record that the complainant Sxxxxxx Vxxxxxxxxxx with SCORES complaint registration number SEBIE/MP22/0000016/1 in his complaint alleged that

- IA charged Rs. 73,000/- by forcing and manipulating the client.
- Further, 3 days later, IA asked the client additional amount of Rs. 42,000/- and also asked for different documents for invoice generation, and the client provided his friend's documents
- IA also promised client to provide 4 times return, however, on the basis of service provided by IA, client incurred losses of Rs. 1,20,000/-

The complainant provided the call recordings and payment proof, including proofs of payment made by his friend Axxxx Hxxxxxx Pxxxxxxx.

The transcripts of relevant call recordings are provided as under:

Profit Commitment:

<u>Audio File: WhatsApp Audio 9</u>
<u>Time Slot: 3:25 to 3:58</u>

Executive: *1.50 lac rupaye k liye unko maine ye commitment kia hai 1.5 Lac me jo bhi remaining amount bach rha hai 70k ya 80k ka usme ek hafte ya 15 days ka time legega, lekin maine ye bola hai ki ek hafte mein agar 2.5 to 3 Lac ka profit hota hai to uske baad aap krwa dena. 2.50 Lac k baad aap waise bhi 70 k karwa doge.*

Complainant: *Ha, to koi issue nahi hai.*

Executive: *Aaj apan 23k complete karte hai, baad mein maine inse 15 din ka time liya hai lekin 15 din mein maine 2.5 Lac ka amount bola hai.* ***Mai pura try karti hu ki 2.5 Lac rupaye amount apka Monday tak aa jaye 29 tarikh tak.***

<u>Audio File: WhatsApp Audio 9</u>
<u>Time Slot: 6:10 to 6:28</u>

Executive: *Lekin unke taraf se 15 din ka time de rakkha hai* ***<u>lekin monday tak apan kar hi lenge 2.50 lac tak ka</u>****. Ek position to BTST ki lagegi hi lagegi. Lekin mai ye bhi bol rahi hu ki unki taraf se maine 15 din bola hai,* ***lekin mai ye pura commitment krti hu ki Monday taka apan kar hi lenge 2.5 Lac rupaye tak.***

<u>Audio File: WhatsApp Audio 9</u>
<u>Time Slot: 7:15 to 7:32</u>

Executive: *Maine apko bola tha na ki 6 lac k liye 3 month baat hai,* ***lekin mai chahu to apko ek mahine me bhi ye return de sakti hu wo mere haath mein hai. Thik Hai***

Complainant: *Ha*

<u>Audio File: WhatsApp Audio 9</u>
<u>Time Slot: 9:20 to 9:27</u>

Executive: *Mai itna commitment karti hu ki kal ke date pe aa hi jaega apka, atleast **<u>minimum 40k to aa hi jaega.</u>***

Complainant: *Thik hai mai call back karta hu.*

<u>Audio File: WhatsApp Audio 11</u>
<u>Time Slot: 0:45 to 1:15</u>

Executive: *nahi nahi definitely I promise ki apka relation meri wajah se kabhi kharab nahi hoga. **<u>Mereko bas kal tak ka time de dijiye 10 baje tak ye sara amount apke pass aa jaega.</u>***

Seeking Details of Friends:

<u>Audio File: WhatsApp Audio 12</u>
<u>Time Slot: 0:32 to 2:10</u>

Executive: *Abhi 30 thousand rupees karna hai, ho jaega kya?*

Complainant: *Utna account mein nahi hai mere.*

Executive: *Account mein nahi hai toh, matlab aap kya chah rahe ho sir, agar samne wala apke liye effort lga rha hai toh usme aap thoda bhi cooperate nahi krenge to kaise chalega.*

Complainant: *Mai dost se baat karke btata hu.*

Executive: *Thik hai, **<u>baki ap apne friend ka detail jo hai wo send karo</u>**, kam se kam mai uska KRA complete karti hu.*

Complainant: *Ha*

Executive: *Tabtak mai uska KRA complete karti hu. PAN, Email ID, Date of Birth ye sab send karo.*

<u>Audio File: WhatsApp Audio 12</u>
<u>Time Slot: 1:55 to 2:10</u>

Executive: *Aap abhi mereko unka detail abhi turant send karo and 10 minute mein mujhe batao kitna kya ho raha.*

Complainant: *Thik.*

<u>Audio File: WhatsApp Audio 13</u>
<u>Time Slot: 0:01 to 0.43</u>

Executive: *Kitna time lagega?*

Complainant: *Usme 15-20 min lagega, phone busy aa raha hai.*

Executive: *Itna time lgega, 15-20 min yaha se?*

Complainant: *Ha maam, matlab payment toh maine usko bhej dia hai, par usko 15-20 min lgega, waha boss aya hua hai usko.* ***<u>Baki ADHAAR, KYC ke liye bol diya hai usko wo ready hai.</u>*** *Payment apko 15-20 min mein screenshot send kar dunga and KYC bhi kar dunga.*

Executive: *ha, batao.*

<u>Audio File: WhatsApp Audio 14</u>

Time Slot: 0: 05 to 0:52

Executive: *Sxxxxxx, email id open karo fatafat aur jaise pehle kiya tha na digital signature aur KYC waisa hi karna hai aur suno jab aap kroge na signature tab* ***aap ADHAAR no. us bande ka hi dalna. Aadhaar no. uska lgega and us bande ke mobile no. pe hi OTP aaega****.*

Complainant: *Aree, abhi wo cooperate nahi krega itna, aisa banda hai wo.*

Executive: *Ab PAN No. de diya usne toh ADHAAR no. kya hai btao, usko bolo iske baad mai tereko jindagi mein kabhi call ni krunga, iske baad humko koi matlab nahi hai unse.*

13.6.3.2. In this regard, the Noticee has submitted, "…*this complaint was promptly addressed, as evidenced by the enclosed refund agreement and client resolution email*…"

13.6.3.3. In this regard, I note from the call recordings submitted by complainant Sxxxxxx Vxxxxxxxxxx that the representative of the Noticee promised assured returns to Sxxxxxx Vxxxxxxxxxx in so far as the representative of the Noticee had said, "…*Mai pura try karti hu ki 2.5 Lac rupaye amount apka Monday tak aa jaye 29 tarikh tak…", "…Maine apko bola tha na ki 6 lac k liye 3 month baat hai, lekin mai chahu to apko ek mahine me bhi ye return de sakti hu wo mere haath mein hai…" and "…minimum 40k to aa hi jaega…"*

I further note that the Noticee's respresentative was coercing the client for paying additional fee of Rs. 30,000/- and then sought details of his friend so as to extract exorbitant fees in so far as the representative of the Noticee had said, "*baki ap apne friend ka detail jo hai wo send karo… aap ADHAAR no. us bande ka hi dalna.*

Aadhaar no. uska lgega and us bande ke mobile no. pe hi OTP aaega… Ab PAN No. de diya usne toh ADHAAR no. kya hai btao, usko bolo iske baad mai tereko jindagi mein kabhi call ni krunga, iske baad humko koi matlab nahi hai unse…"

13.6.3.4. In view thereof, I find that the allegation that Noticee had promised assured return and took details of friends of the client to charge exorbitant fees, stands established. Therefore, I hold that the Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992.

13.6.4. It was also observed and alleged that Noticee had provided assurance of loss recovery which is another way of providing assured returns to the client, knowing fully well that assured profits / guaranteed returns in securities market is practically impossible, IA was knowingly misrepresenting the truth.

Accordingly, it was alleged that the Noticee had violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992.

13.6.4.1. In this regard, I note from the material available on record that the complainant Ms. Rxxxx Rxxx had raised the SCORES complaint with Registration No.: SEBIE/MP21/0000904/1, on August 03, 2021 and the complaint was resolved on October 07, 2021 pursuant to an agreement dated October 07, 2021 executed between the client and the complainant Ms. Rxxxx Rxxx, wherein the Noticee paid settlement amount of Rs. 1,80,000 to the complainant and it was also stated on page 2 of the agreement that, "*CAPITAL WAYS INVESTMENT ADVISER will continue to provide services till the loss is recovered*." I note that the said agreement was signed by the Noticee and Rxxxx Rxxxx.

13.6.4.2. I note that the representative of IA had provided assurance of loss recovery to the client, which is in the nature promising assured return to the client. I note that the same was mentioned in the agreement with client, despite the Noticee knowing that all the investments in securities market are subject to market risk.

13.6.4.3. In view thereof, I find that the allegation that Noticee had provided assurance of loss recovery which is another way of providing assured returns to the client, knowing fully well that assured profits / guaranteed returns in securities market is practically impossible, IA was knowingly misrepresenting the truth, stands established. Accordingly, I hold that the Noticee had violated Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992.

13.7. Finding G: SCORES Complaints and Direct Complaints:

13.7.1. In this regard it was inter alia observed and alleged that the Noticee did not provide resolution of complaint bearing SCORES registration no. SEBIE/MP22/0000055/1 (received on January 18, 2022 by the IA) and did not provide call recordings sought by SEBI.

Accordingly, it was alleged that the Noticee had violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014; Regulation 21(1) of IA Regulations, 2013; Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.

13.7.2. In this regard, I note that SEBI Circular CIR/OIAE/2014 dated December 18, 2014 reads as under:

"…

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

…"

13.7.3. I note Regulation 21(1) of IA Regulations reads as under:

"…

Redressal of client grievances.

21.(1)[44][The Investment Adviser shall redress investor grievances promptly but not later than twenty-one calendar days from the date of receipt of the grievance and in such manner as may be specified by the Board.]

…"

13.7.4. In this regard, I note from the material available on record that the SCORES complaint with registration number SEBIE/MP22/0000055/1, was received by the IA on January 18, 2022 and that the Noticee had not resolved the aforesaid complaint.

13.7.5. In this regard, the Noticee has submitted the following:

"…*Regarding the complaint filed by Ms. Rxxxx Rxxx (complaint registration no. SEBIE/MP22/0000055/1), it is important to note that this is not a valid complaint. Ms. Rxxx had previously filed a complaint (Registration No.: SEBIE/MP21/0000904/1) on August 3, 2021, based on the same grounds. This earlier complaint was resolved through mutual understanding on October 7, 2021, as documented in Exhibit-O. Additionally, a settlement agreement was executed with Ms. Rxxx, wherein she agreed to waive and release all claims arising from this matter. A copy of this agreement is provided in Exhibit-P.*

Moreover, Ms. Rxxx has filed another complaint on the SCORES Portal, seemingly with the intent to harass the Noticee and demand additional funds. Despite having done nothing wrong in this matter, the Noticee has *already refunded ₹180,000 to Ms. Rxxx. Even after this refund, she continues to pursue the complaint and threatens the Noticee…"*

13.7.6. In this regard, I note from the material available on record that the complainant Ms. Rxxxx Rxxx had raised the SCORES complaint with Registration No.: SEBIE/MP21/0000904/1, on August 03, 2021 and the complaint was disposed of on October 26, 2021 pursuant to an agreement dated October 07, 2021 executed between the client and the complainant Ms. Rxxxx Rxxx, wherein as per the agreement, the Noticee paid settlement amount of Rs. 1,80,000 to the complainant and it was also stated in the agreement that, "*CAPITAL WAYS INVESTMENT ADVISER will continue to provide services till the loss is recovered*."

Subsequently, the complainant Ms. Rxxxx Rxxx had filed another SCORES complaint with registration no. SEBIE/MP22/0000055/1, on January 18, 2022.

In this regard, I note from the SEBI's remarks in SCORES complaint with registration no. SEBIE/MP22/0000055/1 that on April 7, 2022, SEBI had inter alia sought telephone call recordings beginning with first interaction with the client till the completion of advisory services, from the Noticee. However, I note from the material available on record that the Noticee did not provide the same to SEBI. In this regard, I note that the Noticee has neither denied nor disputed the allegation that it had not submitted the call recordings sought by SEBI, and instead the submissions of the Noticee are silent in this regard. I further note that the Noticee did not provide the resolution to the SCORES complaint with registration no. SEBIE/MP22/0000055/1 and the complaint is pending as of date.

13.7.7. In view thereof, I find that the allegation that the Noticee did not provide resolution of complaint bearing SCORES registration no. SEBIE/MP22/0000055/1 (received on January 18, 2022 by the IA) and did not provide call recordings sought by SEBI, stands established. Therefore, I hold that the Noticee had violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014; Regulation 21(1) of IA Regulations, 2013; Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.

13.8. Finding H: Compliance of AML and CFT Guidelines:

13.8.1. In this regard it was inter alia observed and alleged that Capital ways had not provided training related to PMLA to its employees.

Accordingly, it was alleged that the Noticee had violated the provisions of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

13.8.2. In this regard, I note from the material available on record that vide letter dated October 13, 2022, Noticee had informed SEBI that during the inspection period no training related to PMLA was provided to employees and accordingly no training record for the same was available.

13.8.3. In this regard, I note that the Noticee's submissions, "…*many of the firm's employees are long-standing members who have received comprehensive training on AML guidelines as part of their professional development…"* are qualified and vague in nature, in so far as the Noticee has submitted, "…*many of the firm's employees…"* as the Noticee has not submitted details of the employees who had received the training. Further in this regard, I also note that the Noticee's submissions are in nature of mere statement without any supporting details and documents, in this regard. I further note that as per the aforesaid clause of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, requires intermediaries to have an ongoing employee training programme so that the members of the staff are adequately trained in Anti Money Laundering ("AML") and Combating the

Financing of Terrorism ("CFT") procedures, which the Noticee has not provided to its employees, as per the material available on record.

13.8.4. In view thereof, I find that the allegation that the Noticee had not provided training related to PMLA to its employees, stands established. Therefore, I hold that the Noticee had violated SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

13.9. Finding I: Miscellaneous:

13.9.1. In this regard it was inter alia observed and alleged that Capital Ways sold products bearing higher risk than the risk categories defined by the risk profile of the clients, thereby impairing the investment objectives of the clients.

13.9.2. In this regard, I note that the violations under finding D and finding I are common and that the violations have already been dealt with under finding D. Accordingly, from repetition point of view, the same does not require any dealing.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, 1992?

14. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI IA Regulations, 2013, SEBI PFUTP Regulations, 2003, SEBI Act, 1992 and SEBI Circulars.

15. In this regard, the 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 promising assured profit / unrealistic returns to clients; Not complying by the terms and conditions of the agreement between IA and the client; Faulty Suitability Assessment carried out by IA by selling high risk products / services to medium risk category of clients; Forcing the client to take additional advisory services and make additional payment; Not acting honestly and fairly by understating the advisory fees and making false commitments; Improper risk profiling of the clients, coercing the clients to agree to the risk profiles etc. 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.

16. In this regard, it is also 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......"*

17. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Sections 15A(a), 15C, 15EB and 15HA of SEBI Act which reads as under:

> ***Penalty for failure to furnish information, return, etc.***
>
> ***15A.*** *If any person, who is required under this Act or any rules or regulations made thereunder,—*
>
> *(a) to furnish any document, return or report to the Board, fails to furnish the same [63][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [64][a penalty [65][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]];*
>
> ***[73][Penalty for failure to redress investors' grievances***
>
> *15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such*

company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

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

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

[101][Penalty for fraudulent and unfair trade practices.

15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [102][which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

…"

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

18. While determining the quantum of penalty under Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

<u>SEBI Act</u>

"………..

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.

…………..."

19. 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 an investor or group of investors 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 provisions of securities law, which it failed to, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. Such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

20. 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 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹10,00,000/- (Rupees Ten Lakhs only), 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.)
Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal)	Section 15A(a) of the SEBI Act	1,00,000/- (Rupees One Lakh only)
	Section 15C of the SEBI Act	1,00,000/- (Rupees One Lakh only)
	Section 15EB of the SEBI Act	3,00,000/- (Rupees Three Lakhs only)
	Section 15HA of the SEBI Act	5,00,000/- (Rupees Five Lakhs only)

21. 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

22. 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.

23. 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: December 26, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER