

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of:

NOTICEE	SEBI REGISTRATION No.
M/s. MI Research (Proprietor- Mr. Ashish Jain)	INA000008783

1. Securities and Exchange Board of India ('**SEBI**') carried out an examination of business of M/s. MI Research (Proprietor: Mr. Ashish Jain) ('**MI Research/Noticee**'), having SEBI Registration No. INA000008783, with respect to compliance of Noticee with the Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') and regulations framed thereunder. The period of examination was from November 02, 2017 to August 31, 2019 ("**examination period**").
2. During the examination, SEBI observed violation of provisions of SEBI Act, Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ('**IA Regulations**') and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 ('**PFUTP Regulations**'). Pursuant thereto, enquiry proceedings were initiated against the Noticee by appointing a Designated Authority ('**DA**') to enquire into the violations observed during the course of examination.
3. The DA issued show cause notice dated June 16, 2023 ('**SCN-1**') to the Noticee, inter-alia, stating as follows: -
 - a) SEBI vide email dated April 21, 2022 advised the Noticee to furnish following information/ documents-

- i. Copies of risk profile forms and suitability profile of clients,
 - ii. All the bank account statements of MI Research and Mr. Ashish Jain,
 - iii. Details of year wise fees collected since date of registration,
 - iv. Client master data,
 - v. Copies of audited financial statements for last three years,
 - vi. sample copy of agreement entered into with the clients,
 - vii. Copies of invoices issued to the clients
 - viii. Copies of agreement entered into with clients
- b) SEBI vide another email dated April 22, 2022 sought following documents from the Noticee in respect of SCORES Complaint no. SEBIE/MP21/0000766/1: -
- i. Risk Profile Assessment forms
 - ii. Suitability Assessment
 - iii. All the Invoices
 - iv. All the email correspondences with the complainant
 - v. WhatsApp Chats with the complainant
 - vi. Call recordings
 - vii. Summary of Payments received along with payments proof.
 - viii. Copies of any other relevant documents
- c) The Noticee vide letter dated April 28, 2022 submitted that MI Research has collected fees amounting to Rs.1,46,38,457/- and Rs. 47,68,582/- in the years 2018 and 2019, respectively. In respect of copy of sample of agreement entered with the clients, the Noticee submitted that they were not entering any type of agreement with the clients. With respect to invoices issued to the clients, the Noticee stated as follows: -
- ‘Copies of Invoices we already share with our clients, but from past 3 years I have not using that computer so due to technical fault I am unable to extract any kind of data. And this data which I provided to you, it is stored on my personal system.’*
- d) Further, the Noticee submitted following information/documents: -
- i. 401 Risk Profiling forms of clients;
 - ii. Client data sheet and sample of confirmations;
 - iii. Bank Account statements of 4 bank accounts pertaining to ICICI, Axis, SBI and YES Banks, which are as follows: -

Table - 1

Sr. No.	Bank Name	Bank Account No.
1	ICICI Bank	328705500061
2	SBI Bank	37642768774
3	YES Bank	47861900001565
4	Axis Bank	917020069023236

- iv. Client Master Register;
 - v. Year wise fees collected;
 - vi. Copies of ITR for last 3 years
- e) SEBI vide email dated May 04, 2022 sought following documents from the Noticee:-
- i. Evidence of communication of profile suitability;
 - ii. Backing documents of Risk Profiling;
 - iii. Archives pages of website- www.miresearch.in
 - iv. Product details like name, details of products;
 - v. All documents pertaining to Mr. Rinku Jakhar
- f) Further, vide email dated May 05, 2022 SEBI advised the Noticee to furnish details of its bank account (Account No., Bank Name, IFSC Code and name of the holder) as well as of its proprietor- Mr. Ashish Jain.
- g) The proprietor of the Noticee vide letter dated May 08, 2022 stated that he conducted KYC, RPM and sent invoices to all the clients and their revert emails were also received. However, due to breaking down of his computer, he has lost all the data, therefore, he is not able to furnish the same to SEBI.
- h) SEBI vide email dated May 09, 2022 advised the Noticee to furnish following documents-
- i. Copies of Audit reports in terms of Regulation 19 of IA Regulations
 - ii. Copies of KYC documents in respect of each of its clients
- However, the Noticee or its proprietor failed to respond to SEBI email dated May 09, 2022.
- i) The Noticee failed to provide copies of documents including copies of

invoices issued to the clients, audited financial statements for last three years and suitability assessment forms.

- j) MI Research has submitted copies of its 346 clients out of total 748 clients. However, these Risk Profiling Forms (RPFs) are neither dated nor any evidence of communication of risk profiling by MI Research to respective clients is submitted by MI Research. From copies of undated RPFs, it cannot be ascertained whether Risk profiling was carried out during the process of on boarding clients or they were prepared after SEBI sought the information. In respect of 402 clients, mentioned in the client data sheet submitted by MI Research, MI Research has failed to carry out risk profiling. However, details of products sold to them (e.g. name, duration of product and amount of fees) are mentioned against the name of clients.
- k) Vide email dated April 21, 2022, MI Research was asked to furnish suitability profile of clients. However, MI Research has failed to furnish the same
- l) From the information received from the Banks mentioned in Table-1, following bank accounts were found to be in name of the Noticee and its proprietor: -

Table – 2

Bank	A/c No.	Name of A/c holder	F. Y. 2018-19		F. Y. 2019-20		F. Y. 2020-21		F. Y. 2021-22	
			Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
ICICI Bank	657301655666*	Ashish Jain								
	328705500061	MI Research	49,33,764	51,08,635.45	15,06,607	13,38,225	6489.26	0		
	347701501334#	Ashish Jain	17,31,166.03	15,87,732.68	4,14,356.87	4,13,550.18	3,62,335.1	3,60,396.6	3,78,969	3,79,127.5
Axis Bank	917020069023236	MI Research	11,16,776.2	12,06,013.9	4,27,418.3	3,43,732	5561.4	0		
SBI Bank	37642768774	MI Research	12,37,186.32	12,77,319.13	3,08,811.18	2,77,462.00	10,022.63	1239		

		Name of A/c holder	F. Y. 2018-19		F. Y. 2019-20		F. Y. 2020-21		F. Y. 2021-22	
Bank	A/c No.		Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
YES Bank	47861900 001565	MI Research	1,11,59,55 2.8	1,12,71,79 0.7	28,21,37 8.8	25,44,792. 3	6048.23			
Total Debits			26426443. 09			Total Credits	26110016. 39			

**No credit or debit entry after March 09, 2016. Total debit and credit entries during the period from June 07, 2014 to March 09, 2016 is 5,41,852.68. However, same is not being considered to calculate total amount as MI Research was granted certificate of registration with effect from November 02, 2017.*

#Only bank account where debit and credit entries have been observed in the FY. 2022-23. Total amount debited and credited in the FY. 2022-23 was Rs. 57458.32 and Rs. 57473.32, respectively.

m) It was observed that Rs. 2,61,10,016.39 was credited and Rs. 2,64,26,443.09 was debited from the date of registration to March 31, 2022 in bank accounts of Ashish Jain and MI Research. Further, in the bank accounts of MI Research mentioned in the table 2 above, total credit amount for the financial years 2018-19 and 2019-20 was Rs. 2,18,13,189.35.

n) As per the details submitted by the Noticee, the total fees earned by MI Research from incorporation to April, 2019 is amounting to Rs. 1,94,07,039/- . The year wise break-up of fees collected by MI Research is tabulated as under:-

Table – 3

Sl. No.	Period-Year Wise	Amount (Rs.)
1	Year - 2018	1,46,38,457/-
2	Year - 2019	47,68,582/-
Total		1,94,07,039/-

o) From below mentioned excerpts of chats of Noticee with Mr. Rinku Jakhar, it was observed that on 5 occasions representative of MI Research assured profits to the complainant viz., Mr. Rinku Jakhar. Mr. Rinku Jakhar also submitted a copy of invoice dated May 09, 2018, issued by MI Research to

him for an amount of Rs. 8,00,000/-, which evidenced that product Stock Cash (HNI Services) was sold to him for two (2) years period.

Excerpt 1 of Chat between Complainant Mr. Rinku Jakhar and Representative of MI Research:

*'25/05/2018, 11:03 am - Rajiv Malhotra: Brother Kaise bhi kro Becouse Apke liye bhut sahi hoga
25/05/2018, 11:04 am - Rajiv Malhotra: Me bat krke ek din ka or time leta hu
25/05/2018, 4:18 pm - Rajiv Malhotra: Ye kam ho jayega to future me bhut apko bhut bada profit ho'*

Excerpt 2 of Chat between Complainant Mr. Rinku Jakhar and Representative of MI Research:

*'12/07/2018, 12:09 pm - Rinku: Gm sir
12/07/2018, 3:28 pm - Rajiv Malhotra: I, m waitting for your responce
12/07/2018, 3:29 pm - Rajiv Malhotra: Special call today
12/07/2018, 3:32 pm - Rajiv Malhotra: Buy banknifty 12july at 26 tgt 150
12/07/2018, 3:32 pm - Rajiv Malhotra: **Profit 104000**
12/07/2018, 3:43 pm - Rajiv Malhotra: Bank Name ICICI
Account Name RESEARCH24
Account No. 144105500674
Branch ONAM PLAZA AB ROAD INDORE
Type of A/C Current
IFSC Code ICIC0001441
12/07/2018, 3:44 pm - Rajiv Malhotra: Conferm me within a 10mnts'*

Excerpt 3 of Chat between Complainant Mr. Rinku Jakhar and Representative of MI Research:

*'20/09/2018, 11:38 pm - Rajiv Malhotra: Market recvery de rha hai
20/09/2018, 11:38 pm - Rajiv Malhotra: Low investment se start kr skte hai
20/09/2018, 11:42 pm - Rajiv Malhotra: Date - 17/09/2018
BUY BANKNIFTY PE 26500@CMP 18 TGT 200*

PROFIT 1.80 lac
INVESTMENT@ Rs, 25k only'

Excerpt 4 of Chat between Complainant Mr. Rinku Jakhar and Representative of MI Research:

*21/09/2018, 1:30 pm - Rajiv Malhotra: Today market **big profit**
21/09/2018, 1:30 pm - Rajiv Malhotra: Sell DHFL
21/09/2018, 1:31 pm - Rajiv Malhotra: Bank nifty 25500
21/09/2018, 1:31 pm - Rajiv Malhotra: **Profit is 3lac***

Excerpt 5 of Chat between Complainant Mr. Rinku Jakhar and Representative of MI Research:

'13/04/2018, 11:48 am - Rajiv Malhotra: Brother this is last amount in your investment

13/04/2018, 11:48 am - Rinku: But sir aapko sab pata hi mere bare me
 13/04/2018, 11:50 am - Rajiv Malhotra: Agar ye nhi hoga to hamara time bhi jayega and amount bhi pending ho jayega
 13/04/2018, 11:51 am - Rajiv Malhotra: I know but this last and final
 13/04/2018, 11:51 am - Rinku: Sir mene aapko pahle hi bola tha ki me investment nhi karta
 13/04/2018, 11:52 am - Rinku: Fir bi maine mere khet ko girvi rkakar ye kiya
 13/04/2018, 11:52 am - Rinku: Or muj se nhi ho payega
 13/04/2018, 11:55 am - Rajiv Malhotra: Brother me samjh skta hu apka condition but agar ap Esko krte ho **tabhi apna profit ka return aayega**
 13/04/2018, 11:55 am - Rajiv Malhotra: Or bhut jldi aagya'

- p) From the call recording (Call@0910XXXX643(0910XXXX643)_20180807130327.MP3), it was observed that Mr. Rinku Jakhar has paid an amount of Rs. 14,00,000/- to the MI Research. Further, Mr. Rinku Jakhar also mentioned multiple times during the call that he has paid Rs. 14,00,000/- for investment and not for services. However, representative stated that it was for services.
- q) MI Research has been assuring profit to the clients. MI Research is a SEBI registered intermediary and its Proprietor Mr. Ashish Jain is CFA by qualification thus, they were well aware that all the investments in securities market are subject to market risk, and such returns cannot be assured no matter how long the service period is fixed.
4. The SCN alleged that the Noticee: -
- Failed to maintain records as required in terms of Regulation 19 of the IA Regulations;
 - Failed to conduct yearly audit in respect of compliance with IA Regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India;
 - Failed to follow Know Your Client procedure specified by SEBI from time to time;
 - Promised assured profit or target return to its clients;
 - Failed to carry out risk profiling of every client. The Noticee failed to communicate risk profile of the client to the client after risk assessment

- is done. The Noticee sold products to the clients without carrying out risk profiling;
- f. Failed to act with due skill, care and diligence while deciding suitability of advisory product that was sold to the clients. The Noticee failed to act honestly and in best interest of the clients;
 - g. Failed to carry out suitability assessment of every client to ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client;
 - h. Failed to submit information sought by SEBI
5. The SCN -1 alleged following violations against the Noticee: -
- a. Section 12A(a), (b), (c) of SEBI Act;
 - b. Regulation 3(a), 3(b), 3(c) and 3(d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations;
 - c. Regulation 15(1), 15(8), 15(9), 15(12), 16(a), 16(e), 17, 19(1), 19(3) of IA Regulations and Clause 1 and 2 of the Code of Conduct as mentioned in Third Schedule to IA Regulations.
6. The DA sent the SCN-1 to the Noticee through Speed Post Acknowledgement Due (**'SPAD'**) and through digitally signed email dated June 19, 2023. The SCN-1 sent through SPAD returned undelivered with remark 'left'. The SCN-1 sent through email dated June 19, 2023 was served on the Noticee. However, no reply was received from the Noticee. Thereafter, the Noticee was granted an opportunity of hearing on August 04, 2023. In this regard, hearing notice dated August 01, 2023 was sent by SPAD and digitally signed email dated August 01, 2023. The hearing notice sent through SPAD returned undelivered with remark 'left'. The hearing notice sent through email dated August 01, 2023 was duly served on the Noticee. However, Noticee did not appear for the said hearing. Thereafter, the Noticee was granted another opportunity of hearing on August 11, 2023. Vide email dated August 07, 2023, the DA informed the Noticee about hearing dated August 11, 2023. Mr. Ashish Jain attended hearing dated August 11, 2023 and made oral submissions. At the request of the Noticee,

time till August 18, 2023 was granted to file reply to the SCN-1. Pursuant thereto, the Noticee vide email dated August 18, 2023 filed reply to the SCN-1.

7. The DA submitted an enquiry report dated September 18, 2023 (**“Enquiry Report”/ “ER”**), whereby, the DA recommended that registration of the Noticee, i.e., M/s. MI Research (Proprietor: Shri Ashish Jain) [Registration No.- INA000008783] be cancelled.
8. The enquiry report was forwarded to the Noticee vide show cause notice dated October 09, 2023 (**‘SCN-2’**) calling upon the Noticee to show cause as to why action as recommended by the DA or any other action should not be taken in terms of Section 12(3) of SEBI Act and Regulation 27 and 35 of Intermediaries Regulation.
9. The SCN-2 was sent to the Noticee through SPAD which returned undelivered with remark ‘left’. The SCN-2 was served on the Noticee through email dated October 10, 2023. SEBI procured new address of the Noticee and served the SCN-2 at 49, Gandhi Colony, Jaora, Ratlam, Madhya Pradesh vide letter dated November 02, 2023. The Noticee vide email dated November 28, 2023 stated that SCN-2 was received on November 10, 2023 and sought time of 21 days to file reply. Accordingly, the Noticee was granted time till December 20, 2023 to file reply to the SCN-2. Pursuant thereto, the Noticee vide email dated December 20, 2023 submitted reply dated December 18, 2023.
10. The Noticee was granted an opportunity of hearing on December 22, 2023, wherein, Mr. Ashish Jain, Proprietor of MI Research, appeared for hearing and reiterated submissions made in reply dated December 18, 2023.

CONSIDERATION ON MERITS

11. I have considered the SCNs, Enquiry Report, Noticee`s replies and Noticee`s submissions made during the course of hearing.

12. Before proceeding further, it is pertinent to refer to extracts of the relevant provisions involved in the present matter: -

Provisions of SEBI Act

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

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

Provisions of PFUTP Regulations

“Regulation 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 thereunder;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange.
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder

“Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

¹k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;]

[²(s) {³mis-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}};

Relevant provisions of IA Regulations

General responsibility

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

15(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time

15(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

15(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.

Risk profiling.

16. Investment adviser shall ensure that, -

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

i. age;

¹ Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022 w.e.f. January 25, 2022. Before the substitution the provision read as follows:

"disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities; "The provisions was previously substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019 and before the said substitution the provision read as follows: "an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors"

² Inserted by the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2012 w.e.f. December 11, 2012.

³ Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019. Before the substitution the provision read as follows "mis-selling of units of a mutual fund scheme; Explanation.-For the purpose of this clause, "mis-selling" means sale of units of a mutual fund scheme by any person, directly or indirectly, by— making a false or misleading statement, or(ii) concealing or omitting material facts of the scheme, or(iii) concealing the associated risk factors of the scheme, or(iv) not taking reasonable care to ensure suitability of the scheme to the buyer.

- ii. investment objectives including time for which they wish to stay invested, the purposes of the investment;
- iii. income details;
- iv. existing investments/ assets;
- v. risk appetite/ tolerance;
- vi. liability /borrowing details

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

Suitability.

17. Investment adviser shall ensure that, -

- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client;
- (b) It has a documented process for selecting investments based on client's investment objectives and financial situation;
- (c) It understands the nature and risks of products or assets selected for clients;
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into:
 - (i) meets the client's investment objectives;
 - (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
 - (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Maintenance of records.

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;
- [(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;]⁴
- (e) Investment advice provided, whether written or oral;

⁴ Substituted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020. Prior to its substitution, clause (d) read as under; "(d) Copies of agreements with clients, if any;

(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.

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India [⁵and submit a report of the same as may be specified by the Board].

THIRD SCHEDULE

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

[See Sub Regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

ALLEGATIONS IN THE SCN

13. The SCN-1 has alleged that the Noticee violated Regulation 19(1) of IA Regulations as it failed to maintain records required to be maintained by an IA in terms of Regulation 19(1) of IA Regulations. In terms of Regulation 19(3) of IA Regulations, the Noticee was required to conduct yearly audit in respect of compliance with IA regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India. The Noticee by failing to furnish audit reports sought by SEBI is alleged to have violated Regulation 19(3) of IA Regulations. The Noticee violated Regulation 15(8) of IA Regulations as it failed to furnish proof that it followed KYC procedure as specified by SEBI. The Noticee violated Regulation 15(12) of IA Regulations as it failed to furnish to SEBI information/documents like copies of Audit Reports, KYC documents of its clients, records of suitability assessment, product details

⁵ Inserted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020

and communication of risk profiles to clients, etc, as sought by SEBI vide emails dated April 21, 2022, April 22, 2022, April 26, 2022, May 04, 2022, May 08, 2022 and May 09, 2022.

14. Further the SCN-1 alleged that the Noticee failed to carry out risk profiling of 398 clients, thus, it violated Regulation 16(a) of IA Regulations. The Noticee failed to furnish evidence of communication of risk profiling by the Noticee to its clients, thus, the Noticee violated Regulation 16(e) of IA Regulations. The Noticee sold products to clients without risk profiling, thereby, it violated Regulation 17(a) of IA Regulations. By failing to carry out suitability assessment of its clients, the Noticee violated Regulation 17 of IA Regulations. The Noticee neither acted with due skill, care and diligence while deciding suitability of advisory product that was sold to clients nor acted honestly and in best interest of clients, thereby, it failed to abide by Clause 1 and 2 of the Code of Conduct for IA provided in Third Schedule to IA Regulations read with Regulation 15(9) of IA Regulations.

15. Further, the SCN-1 has alleged that the Noticee violated Section 12A(a), (b), (c) of SEBI Act and Regulation 3(a), 3(b), 3(c) and 3(d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations as the Noticee assured unrealistic returns/profit to its clients, made misrepresentation of truth and deceived its clients. Further, the Noticee is alleged to have failed to abide Regulation 15(1) of IA Regulations and Clause 1 and 2 of the Code of Conduct as mentioned in Third Schedule to IA Regulations read with Regulation 15(9) of IA Regulations as the Noticee failed to fulfill its responsibility to act in fiduciary capacity to its clients.

RESPONSE OF NOTICEE

16. With regard to failure to maintain record and not following KYC procedure, the Noticee submitted that the Noticee diligently provided services to its clients after doing proper KYC and risk profiling of the client. The Noticee provided records of 346 clients to SEBI. With respect to remaining clients, the Noticee could not produce record as folder containing requisite data got corrupted. Consequent to SEBI's direction to halt operation, issued vide order dated August 30, 2019, the Noticee vacated office premises and in

the process transferred all client record in his personal computer in separate folders. In 2022, the Noticee tried to access the said folders, however, 50% of the data was not accessible as folder got corrupted. No client has ever filed any grievance/complaint with SEBI stating that his KYC and risk profiling was not done.

17. Further, the Noticee has submitted that prior to September 23, 2020 Regulation 19(3) of IA Regulation did not specify the period within which compliance audit was to be done. Vide circular dated September 23, 2020, titled Guidelines for Investment Advisers, SEBI mandated that Audit is to be carried out within six months from the end of financial year and report is to be submitted to SEBI. As no time period was specified, the Noticee was of view that Audit Report is to be submitted at the time of renewal of certificate of registration.
18. The Noticee has submitted that chats display investment adviser's name as "Research24" which is different investment adviser from the Noticee. The bank details displayed therein is of Research24. The Noticee had some issues with Mr. Rinku Jakhar, hence, Rs.6,00,000/-were refunded to Mr. Rinku Jakhar. Risk disclaimer was made upon home page of website of the Noticee viz., <http://miresearch.in> that investment in stock and commodity market are subject to market risk. The Noticee through email had made clients aware regarding the risks involved in securities market. Out of 748 clients, 2 complaints were received against the Noticee. Those 2 complaints were also resolved by the Noticee which justifies that the Noticee was not involved in any fraudulent activity.
19. The Noticee has submitted that it always offered services to clients after conducting their risk profiling and advised them in line with their risk profile. SEBI has not produced any evidence that the Noticee failed to do risk profiling.

CONSIDERATION

20. I note that Regulation 15 of IA Regulations prescribe general obligations and responsibilities of an IA. Regulation 15(1) provides that an investment adviser (IA) shall act in a fiduciary capacity towards its clients. Regulation 15(8) mandates that an IA shall follow know your client procedure as specified by SEBI from time to time. Regulation 15(9) require that an IA shall abide by Code of Conduct which, inter-alia, requires the IA to (i) act honestly, fairly and in the best interests of its clients and in the integrity of the market, (ii) act with due skill, care and diligence in the best interests of its clients and (iii) ensure that its advice is offered after thorough analysis and taking into account available alternatives. Regulation 15(12) casts a duty on an IA to furnish information and reports as may be specified by SEBI from time to time.
21. Regulation 16(a) of IA Regulations requires an IA to obtain information including age, income details, assets, risk appetite, liability and investment objective from the client for the purpose of giving investment advice. Regulation 16(e) provides that risk profile of the client should be communicated to the client after risk assessment is done. Regulation 17 of IA Regulations requires an IA to ensure that (a) investments on which advice is provided is appropriate to the risk profile of the client, (b) It has documented process for selecting investments based on client`s investment objectives and financial situation.
22. Regulation 19 of IA Regulations mandates an IA to maintain record of (a) Know Your client records of the client, (b) Risk profiling and risk assessment of the client, (c) Suitability assessment of the advice being provided (d) Copies of agreements with clients, (e) Investment advice provided, whether written or oral, (f) Rationale for arriving at investment advice, duly signed and dated, (g) register or record containing list of clients, date of advice, nature of advice, products/securities in which advice was rendered and fee charged for such advice. Regulation 19(2) mandate that all record, either in physical or electronic form, should be preserved for minimum period of five years. Where records are required to be signed and maintained in electronic form, such record should be

digitally signed. Regulation 19(3) mandate that yearly audit in respect of compliance with IA Regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India should be conducted.

23. In order to examine compliance of the Noticee with provisions of IA Regulations, SEBI vide emails dated April 21, 2022, April 22, 2022, May 04, 2022, May 05, 2022 and May 09, 2022 sought from the Noticee information and records including records required to be maintained by the Noticee in terms of Regulation 19 of IA Regulations. As per client data sheet furnished by the Noticee, the Noticee had 748 unique clients (652 unique clients with Permanent Account Number (PAN) and 96 unique clients without PAN). The Noticee provided 401 risk profile forms. Admittedly, risk profile forms for remaining clients were not provided by the Noticee. Upon comparison of PAN mentioned in 401 risk profile forms with PAN mentioned in client data sheet, 350 PAN mentioned in risk profiling forms matched. From the above, it is noted that the Noticee furnished proof of risk profiling for 350 clients but failed to provide proof of risk profiling for 398 clients. The Noticee failed to furnish record of Know Your Client record, risk assessment record, suitability assessment record, copies of agreements with clients, record of investment advice and rationale for arriving at investment advice. Further, the Noticee failed to furnish yearly audit reports required to be conducted in terms of Regulation 19(3) of IA Regulations.

24. In terms of Regulation 19(2) of IA Regulations, the Noticee was required to maintain all record for minimum period of five years. Where record is physical, the Noticee was required maintain physical record. Where record was electronic, the Noticee was required to maintain electronic record. In view of above requirement of maintaining physical and electronic record, I do not find merit in reason assigned by the Noticee for non-furnishing of record. I note that the Noticee has not provided any justification for failure to furnish physical record. It is not the case of the Noticee that entire record was maintained only in electronic form. In my view, Know Your Client record, Risk profiling record, Risk assessment record, Suitability assessment record, Agreements with clients and

audit reports must be in physical form, however, the Noticee has not provided even complete record of such physical record. The Noticee has failed to demonstrate that KYC procedure specified by SEBI was followed. In view of the above, I find that the Noticee violated Regulation 19(1) of IA Regulations by failing to maintain records mentioned therein. The Noticee violated Regulation 15(8) of IA Regulations by failing to follow KYC procedure specified by SEBI from time to time. The Noticee violated Regulation 15(12) of IA Regulations by failing to furnish complete information and documents sought by SEBI vide aforementioned emails.

25. The Noticee has made bald submission that services were offered to clients after conducting their risk profiling and in line with their risk profile. In support of the said contention, the Noticee has submitted screenshot of two emails which states that RPM is true and they are satisfied with the Noticee and services may be continued. I note that Noticee has not furnished risk profiling record for all its clients. As noted above, the Noticee has furnished proof of risk profiling for 350 clients but failed to provide proof of risk profiling for 398 clients. No submission has been made by the Noticee with regard to suitability assessment. Further, the Noticee has failed to furnish proof of communication of risk profile to the client. Thus, I am of the view that the Noticee neither obtained from the client information which is necessary for purpose of giving investment advice nor communicated risk profile to the clients. The Noticee provided investment advice to clients without carrying out risk profiling of clients and suitability assessment of investment and failed to discharge responsibilities provided under Clause 1 and 2 of the Code of Conduct specified in Third Schedule to IA Regulations. In view of the above, I find that the Noticee violated Regulation 16(a), 16(e), 17 and 15(9) of IA Regulations and Clause 1 and 2 of the Code of Conduct specified in Third Schedule to IA Regulations.

26. I note that Regulation 19(3) of the IA Regulations at the relevant time read as *“An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India”*. With effect from September 30,

2020, words *“and submit a report of the same as may be specified by the Board”* was inserted in Regulation 19(3). SEBI circular dated September 23, 2020, titled Guidelines for Investment Advisers, stated that SEBI has notified SEBI (Investment Advisers) (Amendment) Regulations, 2020 on July 03, 2020. These amendments shall come into force on September 30, 2020. Clause 2 (vii) of the circular dated September 23, 2020 pertains to Audit and read *“As per regulation 19 (3) of the amended IA Regulations, IA shall ensure that annual audit in respect of compliance of SEBI (Investment Advisers) Regulations, 2013 and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year.”* SEBI circular dated September 23, 2020 was issued as consequence to SEBI (Investment Advisers) (Amendment) Regulations, 2020. With regard to Regulation 19(3) of IA Regulation, the circular provided that IA shall ensure that annual audit is completed within six months from end of each financial year and report thereof is submitted to SEBI within a period of one month from date of audit report but not later than October 31st of each year. As Regulation 19(3) of IA Regulations, prior to September 30, 2020, mentioned *“An investment adviser shall conduct yearly audit”*, therefore, in my view, IA was mandated to conduct yearly audit of its previous financial year. In absence of September 23, 2020 circular, IA was required to conduct audit of its previous financial year operations during next 8 months i.e. April to December falling subsequent to end of previous financial year. For e.g. For financial year April 01, 2018 to March 31, 2019, the IA was required to conduct audit during April 01, 2019 to December 31, 2019. In view of the above, I do not find merit in submission of the Noticee that Regulation 19(3) of IA Regulations, as it stood prior to 2020 amendment, did not provide time period in which compliance audit was to be carried out. In view of the above, I find that the Noticee has violated Regulation 19(3) of IA Regulations.

PROMISING ASSURED RETURNS

27. I note that the Noticee has not disputed that Mr. Rinku Jakhar was its client. The Noticee has submitted Mr. Rinku Jakhar had some issue with the Noticee, hence, Rs.6,00,000/- were refunded back to Mr. Rinku Jakhar. The Noticee has provided an email dated September 19, 2018, sent from

rjakhar242424@gmail.com to info@miresearch.in, in support of its contention of said refund to Mr. Rinku Jakhar. The email reads as *“I Received 6 Lac Rupee From MI Research Company. I am Satisfied with MI Research Company Owner Ashish Jain. He Corporate me and Give me 6 Lac Rupees. But I Still Take Legal Action Against his Company MI Research Employees Like Aasutosh Misra and rajiv malhotra. And Aashish will Jain Help me to Do This and aishish jain will be not liable for any cirurncdtance in future but he will copratrate me to take legal action againste his froad employes like aushotosh and rajyv mentioned above and ashush jain is very kindffull and helpfull peron”*. In view of the above, it is apparent that Mr. Rinku Jakhar was client of the Noticee and was allegedly defrauded while dealing with the Noticee.

28. In the SCN reliance has been placed on excerpt of chat stating that it is chat between Mr. Rinku Jakhar and representative of the Noticee. Further, reliance has been placed on call recording to state that Mr. Rinku Jakhar paid an amount of Rs.14,00,000/- to the Noticee. The SCN has also stated *“Complainant Mr. Rinku Jakhar also submitted a copy of invoice dated May 09, 2018, issued by MI Research to him for an amount of Rs.8,00,000/-.”* In response to the SCN, the Noticee has not made any request for cross examination of Mr. Rinku Jakhar. Further, the Noticee has not elaborated on the issue which Mr. Rinku Jakhar had with the Noticee. In the email dated September 19, 2018, Mr. Rinku Jakhar has referred to the Noticee`s employee viz., Mr. Rajiv Malhotra, whose name is also mentioned in the excerpt of the chat. In view of the above, I find that excerpts of chats stated in the SCN are excerpts of chat between Mr. Rinku Jakhar and representative of the Noticee. In view thereof, I do not find merit in the submission of the Noticee that the said excerpts of the chat do not pertain to the Noticee.

29. The Noticee has contended that risk disclaimer was made upon home page of its website, wherein, it was displayed that *“Investment in stock and commodity market are subject to market risk”*. Further, the Noticee has submitted that clients were made aware through email that *“We do not offer 100% guarantee on our calls. Investments in Share and Commodities are subject to market risks.”*

Without going into authenticity of such general disclaimer and email, I find that the Noticee in the case of Mr. Rinku Jakhar induced him to make more and more investments by assuring profits and returns to him. The Noticee kept on giving false assurances of profit to Mr. Rinku Jakhar.

30. I note that Regulation 3(a) of the PFUTP Regulations prohibits any person from buying, selling or otherwise dealing in securities in a fraudulent manner. Regulation 3(c) of the PFUTP Regulations prohibits any person from employing any device, scheme or artifice to defraud in connection with dealing in securities. Regulation 3(d) of the PFUTP Regulations prohibits a person from engaging in any course of business which operates as fraud or deceit upon any person in connection with any dealing in securities. Regulation 4(1) of the PFUTP Regulations prohibits any person from indulging in manipulative, fraudulent or an unfair trade practices in securities. Regulation 4(2)(k) of the PFUTP Regulations prohibits disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities. Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services relating to securities market by knowingly concealing the associated risk or by knowingly making a false or misleading statement. As per Regulation 4(2) of the PFUTP Regulations, the acts specified under Regulations 4(2)(k) and 4(2)(s) are deemed to be a fraudulent or an unfair trade practice.

31. In my view, promising assured profit in securities market amounts to misrepresentation and misleading the investors. Such reckless conduct intended to induce investors to deal in securities constitutes 'fraud' under the PFUTP Regulations. I also note that making promises of "assured returns" has been held to attract the said provisions of the PFUTP Regulations in terms of Order of the Hon'ble SAT dated December 12, 2022 in the matter of MSS Trading System Centre, which was providing unregistered portfolio management services without obtaining the certificate of registration. Extending the same analogy, I find that the Noticee has violated Regulation 3(a), 3(c), 3(d), 4(2)(k) and 4(2)(s)

of the PFUTP Regulations read with Section 12A(b) and (c) of SEBI Act. I also find that the Noticee by assuring profits and returns knowingly made false and misleading statements and played fraud on the investors, thereby, violated Regulation 15(1) and 15(9) of the IA Regulations and Clause 1 and 2 of the Code of Conduct mentioned in Third Schedule to the IA Regulations.

32. For the foregoing reasons, I find that the Noticee violated Regulation 15(1), 15(8), 15(9), 15(12), 16(a), 16(e), 17, 19(1), 19(3) of IA Regulations, Clause 1 and 2 of the Code of Conduct specified in Third Schedule to IA Regulations, Section 12A(b) and (c) of SEBI Act and Regulation 3(a), 3(c), 3(d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations.

33. I note that proprietor of the Noticee, Mr. Ashish Jain was, prima facie, found to be partner in a partnership firm viz., A2 Financial services, which was engaged in unregistered investment advisory activities. Pursuant thereto, the Hon`ble Whole Time Member of SEBI vide interim order dated August 30, 2019 prohibited, inter-alia, the Noticee and Mr. Ashish Jain from accepting any fresh clients until further orders. The findings and directions made in the order dated August 30, 2019 were by the Hon`ble Whole Time Member of SEBI vide confirmatory order dated January 30, 2020.

ORDER

34. In view of the above, I, in exercise of powers conferred on me under Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 and 35 of the Intermediaries Regulations, do hereby order that the certificate of the registration bearing number INA000008783 granted by SEBI to the Noticee to conduct the business of an investment adviser be cancelled from the date of this order.

Date: February 22, 2024
Place: Mumbai

G RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA