BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/RK/2024-25/31069]

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

In respect of

Name of the Entity	Registration Number	PAN
SAI PROFICIENT RESEARCH INVESTMENT ADVISORY (Prop- Ms MEESHIKA VISHWAKARMA)	INA000002504	AVBPV2205J

In the matter of

Sai Proficient Research Investment Advisory Prop- Ms Meeshika Vishwakarma

Background

1. Securities and Exchange Board of India **("SEBI")** was in receipt of complaints in respect of Sai Proficient Research Investment Advisory Prop Meeshika Vishwakarma (hereinafter referred to as the **"Noticee/ SPRIA"**), registered with SEBI as an Investment Advisor (IA), bearing registration no. INA000002504**.** SEBI therefore, conducted an examination in the matter to ascertain whether there was any violation of the provisions of SEBI Act, 1992 (hereinafter referred to as the "**SEBI Act**"), SEBI (Prohibition of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 (hereinafter referred to as the **"PFUTP Regulations"**), SEBI (Investment Advisers) Regulations, 2013 **(**hereinafter referred to as the **"IA Regulations")** and provisions of various SEBI Circulars by the Noticee.

2. During the examination, it was observed that the Noticee allegedly did not cooperate with SEBI and did not submit required information and documents sought at the time of examination, promised assured high returns to its clients to the tune of 95%, received money from unregistered IA viz, Shree Sai Proficient Financial Services which was collecting money from its clients, dealt unfairly with its clients, extracted more money from them on pretext of additional service charges, failed to resolve clients' complaints within prescribed timelines, failed to submit material information w.r.t change in its registered address and also failed to disclose the registered office address in its website.

3. SEBI had therefore initiated adjudication proceedings against the Noticee to inquire into and adjudge the alleged violations of the provisions of SEBI Act, PFUTP Regulations, IA Regulations and SEBI Circulars as tabulated in table 1 below and to impose penalties under Sections 15A(a), 15C, 15EB, 15HA and 15HB of the SEBI Act for the alleged violation by Noticee:

Table 1:

Sr. No.	Alleged Violations by Noticee	Regulatory provisions	Penal Provisions
1.	Failure to cooperate with and non-submission of documents to SEBI.	Regulation 13(a), 15(12), 25(i) and (ii) read with 24(3), Clause 8 of Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.	Section 15A(a) and 15EB of the SEBI Act (for violations after March 08, 2019).
2.	Promising of assured higher returns & receiving money from an unregistered IA.	Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013, Clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013. Regulation 3(a),(b),(c),(d) of SEBI (PFUTP) Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992	Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) and Section 15HA of the SEBI Act.
3.	Unfair dealing with its clients, extorting money under different Pretexts & threatening them of forfeiture of amounts paid.	Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013. Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013. Regulation 3(a)(b)(c)(d) of SEBI (PFUTP) Regulations, 2003 read with section 12A(a),(b) and (c) of SEBI Act, 1992.	Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) and Section 15HA of the SEBI Act.
4.	Failure to resolve the clients' complaints	SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and	Section 15C and Section 15EB of the SEBI Act (for

Sr. No.	Alleged Violations by Noticee	Regulatory provisions	Penal Provisions
	within prescribed timelines.	Regulation 21(1) and 28(f) of IA Regulations.	violations after March 08, 2019).
5.	Failure to submit material information w.r.t change in its Registered office address and non-disclosure of registered office address in its website.	Regulation 13(b) of IA Regulations, Regulation 15(9) of IA Regulations read with Clause 5 of Code of Conduct of Schedule III of IA Regulations.	Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019).

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Amar Navlani as the Adjudicating Officer (AO) vide Order dated August 22, 2023. Subsequently, Shri Biju S was appointed as the AO in the matter vide order dated March 14, 2024. However, pursuant to the transfer of the erstwhile AO, undersigned was appointed as the AO in the matter vide Order dated July 22, 2024 communicated by communique dated July 31, 2024 under Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") to inquire into and adjudge under the provisions mentioned against the alleged violations of the provisions of SEBI Act, PFUTP Regulations, IA Regulations and SEBI Circulars as mentioned in table 1 above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice No. SEBI/HO/EAD/EAD3/P/OW/2024/000/27394/1 dated August 27, 2024 (hereinafter referred to as ***SCN***) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against it and penalty, if any, be not imposed upon it under the following Sections of the SEBI Act:

   a) Section 15A(a) and 15EB of the SEBI Act (for violations after March 08, 2019) for aforementioned alleged violations of IA Regulations.

   b) Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act (for violations prior to March 08, 2019) and Section 15HA of the SEBI Act for alleged violations of the provisions of SEBI Act, PFUTP Regulations and IA Regulations.

   c) Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act (for violations prior to March 08, 2019) and Section 15HA of the SEBI Act for the alleged violations of the provisions of SEBI Act, PFUTP Regulations and IA Regulations.

   d) Section 15C and Section 15EB of the SEBI Act (for violations after March 08, 2019) for violation of above alleged provisions of IA Regulations and SEBI Circulars.

   e) Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) for violation of the above alleged provisions of IA Regulations.

6. The SCN was attempted to be served upon the Noticee via SPAD, which returned undelivered with a remark "*Left*". However, digitally signed email dated August 29, 2024 was delivered to the Noticee. The proof of service is on record. In the absence of any response from the Noticee, a reminder email dated September 17, 2024 was sent to the Noticee to submit its reply in the matter by EOD that day. Vide email dated September 21, 2024, Noticee sought Annexures to the SCN again and extension of time to file reply in the matter. Accordingly, vide email dated September 24, 2024, Noticee was provided an opportunity to collect the said Annexures from SEBI Indore Local office on September 25, 2024. However, Noticee didn't turn up on the said date to collect the Annexures. Vide email dated September 26, 2024, Noticee was advised to submit its reply in the matter by October 09, 2024. It is observed that the Noticee collected the Annexures on September 27, 2024. In response, vide email dated October 10, 2024, Authorized Representative (AR) of the Noticee requested for further extension of time to file reply in the matter. The said request was acceded to and the Noticee was advised to submit its reply in the matter by November 05, 2024. Noticee submitted its reply to the SCN vide its letter received through email dated November 11, 2024. The submissions made by the Noticee vide its letter dated November 11, 2024 is summarized as under:

Reply of the Noticee

6.1 Noticee submitted that she was pregnant and was in the last months of her pregnancy suffering from complications and thus, could not attend the office regularly and could not cooperate with investigation.

6.2 As regards allegation of non-cooperation, it relied upon the Hon'ble Supreme Court judgement in the in the case of State of Rajasthan and Anr Vs. Shamsher Singh 1985 (supp) - SCC – 416, wherein it submitted that the court had laid down the doctrine of the impossibility of performance *which indicates that however mandatory the provision may be, where it is impossible of compliance, that would be sufficient excuse for non-compliance particularly when it is a question of time factor.*

6.3 It submitted that the same had been again upheld in the case of Raj Kumar Vs. Tarapada (1987) 4 SCC 398, wherein it was mentioned as "............. The law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities and the administration of laws must adopt that general exception in consideration of all particular cases. the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full favour in the facts of this case ……….".

6.4 Noticee submitted that the alleged screenshots of its website that it was inducing the clients to buy its services are false and frivolous as the same website on its home page contained a scroll that ran on the top of the website which read "Investment In Stock And Commodity Market Is Subject To Market Risk. Please Do Not Trade On Those Tips Which Are Not Provided Through SMS Or Messenger" and the same message was also displayed at the bottom of the website and all other pages.

6.5 It further submitted that it is the standard disclaimer prescribed by SEBI and no other disclaimer is prescribed by SEBI in this regard.

6.6 That the Hon'ble WTM in the matter of GRS Solutions had held that "11"I have examined the above mentioned observations of the Order-cum-SCN and have considered the reply of the Noticee in this regard. I note that the Noticee has submitted that the accuracy levels shown on its website were just marketing /advertising tool. It has further stated that it had in no way guaranteed the returns. As per the Noticee, on its website, it was clearly mentioned that "We do not provide any guaranteed returns." Furthermore, in the Noticee's welcome mail, which was sent to every client while on boarding him / her, this line was mentioned: "Stock market has inherent market risk, hence we do not claim any profit guaranteed services". It has, thus, in no way made false and misleading representation to the clients /investors. Thus, the observations made in the Order-cum-SCN in this regard are not correct. The Noticee has also provided a copy of the welcome email.

12 "I note from the contents of the website, as mentioned in the Order-cum-SCN, that the same refers to "80-85% accuracy" of the Noticee's tips. The other phrases used are "high return on investment", "high accurate 1-2 calls", "maximize profit" and "promise of high success rates". It appears to me that *the figure of 80-85% is in the context of accuracy of tips and not the assured rate of return promised on investment made. I further note that phrases like "high return on investment", "high accurate 1-2 calls", "maximize profit" and "promise of high success rates" without mention of any specific rate of return is mere representation about quality / accuracy of his tips and does not amount to promising assured returns. In my view, promise of assured return would imply that the investor is being promised a specified rate of return on his investment, under any circumstances. I further note from the copy of the sample welcome mail which the Noticee purportedly sends to each client, as provided by the Noticee, that the same refers to investments in the securities market as being subject to risks. As regards the transcripts of the conversation between the employees of the Noticee and the clients, as quoted above from the Order-cum-SCN, I note that the same appear to be merely marketing gimmicks rather than being an actual promise of assured returns. In view of the above, I find that the allegations of offering assured returns against the Noticee are not made out."*

6.7 That as per the law laid down in the matter of GRS Solutions by the Hon'ble WTM, it is clear in this matter that such a content of website cannot be treated as any kind of assurance of profit and it can best be termed as a marketing gimmick.

6.8 It also submitted that the Annexure regarding complaint of Mr Sameer Mahawar is forged and fabricated and no such email was sent by either the noticee or any of its employee as the said email did not contain any sender details and thus, it is just a forged document typed and maliciously prepared by the complainant to blackmail the noticee and without proper verification and investigation such a document cannot be relied upon.

6.9 It added that the said complainant has provided copies of all other emails but the one email where actual allegation arises from has not been provided instead he has tried to mislead SEBI with a self-drafted forged letter/mail which does not contains SENDER, RECEIVER, DATE or any other details which email generally contain, and thus such a forged document cannot be relied upon.

6.10 It placed its reliance upon QJA order in the matter of star world research QJA/GG/WRO/WRO/24160/2022-23 wherein it submitted that para 39 and 40 read as are reproduced hereinafter:-

"39. Copies of the emails and Call Data Records were made available to the Noticee. In this regard the Noticee submitted that the call records do not belong to the Noticee or any of its representatives. Without forensic verification the said recordings could not be attributed to any employee of the

Noticee. The Noticee also specifically denied that the Noticee or any person associated with it has sent these emails. The Noticee has also stated that the invoices sent to clients and welcome mail clearly and unequivocally mentions that "Investments are subjected to market risk". With regard to complaint of Yogesh Vasant and emails attributed to the Noticee, the Noticee submitted that the Noticee or any person associated with the Noticee had not sent the said emails. Further, the Noticee submitted that email starworldrch@gmail and star.world@gmail.com *were never used by it and they are fake ids made by one Bharat.*

40. I note that the Noticee was not using a common email address to send welcome email to its clients. The emails mentioned above were received from email ids starworldrch@gmail.com and star.world@gmail.com. I note that there is no material/ analysis on record to show that the aforesaid email addresses belonged to the Noticee. In addition to the same, the call recordings are not supported by any further examination. In view of the same, I am unable to rely on these to arrive at a finding that the Noticee made promises of assured or unrealistic returns to its clients, as alleged."

6.11 As regards compliant of Mr. Shyam Sunder Viramani, Noticee submitted that e-mail from account saiproficientinvestment@gmail.com was neither operated by it nor its employees and is a fake id and does not belong to it or any of its employees, and that Mr Virmani had created this fake Id to blackmail the Noticee and this position and thus the email cannot be held against it in light of the law laid down in Star World case Supra followed in matter of Dezire Research and other matters. Thus, these charges deserve to be dropped without investigation into the fact as to whom does the said email id belongs.

6.12 As regards its connection with SSPFS, Noticee submitted that the said entity was not an unregistered investment advisor as there was no client to whom any advice was given by the said entity or its proprietor and thus, it cannot be said to be a unregistered investment advisor. It submitted that it had outsourced some of its non-core functions like Human Resource Management, Marketing Plan and Accounting functions to its third party associate that is Ms. Madhuri Garg, as it was not an expert in Accounting/taxation/law and the said arrangement was made based on the guidance of its CA.

6.13 It submitted that there were two different teams of employees working under it, one directly interviewed, selected and employed by it and another interviewed and selected by Ms. Garg and employed and trained by it to perform their jobs and in order to avoid any confusion as to how much *business had been generated out of the efforts made by Ms. Garg, the team was instructed to take payment in easebuzz which was connected to the account of Ms. Garg.*

6.14 That Ms. Garg and Noticee were responsible for hiring of employees under her code and training respectively and further Ms. Garg was also consulted for social media and other marketing strategies which may or may not be used by it and the remuneration was decided based on the business generated on her advise

6.15 That it had conducted KYC, Risk Profiling and suitability report of all the persons who had deposited payment through Easebuzz gateway and the investment advice was provided by it which is evident from the invoices sent by it to its clients.

6.16 That assurance of some kind of profit was given is totally false and frivolous and is unsubstantiated and there is absolutely no evidence at all to support such a preposterous claim.

6.17 That Annexure on the whatsapp chats have not been provided to it by SEBI and unless the document is supplied it cannot be relied upon, be that as it may, Secondly, the alleged whatsapp chats in the SCN do not show any phone number from which the purported whatsapp chats have been made, without the phone number the chats cannot be traced to either the noticee or any other person.

6.18 It denied having made WhatsApp communication with client and submitted that neither itself nor any person working under its instructions had made any such communication and further submitted that unless the said chats can be verified they cannot be held against it and in all possibilities the WhatsApp chats are forged as there are a number of apps on google play store where fake whatsapp chats that look exactly like original ones can be made and even Hon'ble Supreme Court has held that whatsapp chats cannot be relied upon unless they are accompanied with a certificate under Section 65B of Evidence act and the original instrument from which such chats are allegedly made is submitted/confiscated for investigation and it is proved by a FSL report that the chats are original.

6.19 It submitted that the allegation that it was pursuing its clients telephonically and made promises on phone calls is totally false and frivolous as neither the noticee nor any of its employee have ever promised any return to any client, on the contrary the documents provided to the clients clearly contained the disclaimer that "Investments are subjected to market risks" and thus, any allegation of promising assured return is totally false and frivolous and made with an intent to recover undue amounts from noticee by blackmailing it.

6.20 As regards allegation of SSPFS sending emails to public and offering assured returns and projecting itself as registered entity, it submitted that the allegation is totally false and frivolous as even in the SCN not a single email is annexed to give credibility to such a claim further the email id saiproficientinvestment@gmail.com did not belong to Ms. Garg or SSPFS, as submitted earlier SSPFS was not authorised to contact any client rather its job was only to take care of its non-core activities of the in line with the SEBI CIRCULAR CIR/MIRSD/24/2011 dated 15/12/2011 on Guidelines on Outsourcing of Activities by Intermediaries.

6.21 That there is not an iota of evidence to support the observation that it was providing assured returns and unrealistic returns and thus, these observations sans merit shall be dropped.

6.22 Noticee submitted that it discloses all its charges and fees to the clients at once and thereafter as per their financial requirements, clients select services and tenure of service and on certain instances the clients request that they cannot make the entire payment at once, which it used to accommodate for its clients.

6.23 It submitted that it allows its clients to make payment in instalments and thus the allegation of taking small amount initially and then charging heavy fees is totally unsubstantiated as no financial planning can be done for 2-3 days or even a week as investment advisor, it was obliged to conduct financial planning for its clients and that takes considerable time.

6.24 It submitted that it first conducts KYC, Risk Profiling and there after suggests its services in form of suitability report and if the Board wants to rely on mere statements made by the complainants then the noticee shall be given an opportunity to cross-examine the complainants to ascertain the veracity of their complaints.

6.25 It submitted that the clients subscribed for the entire services and then payed in instalments, and the client had not shared the welcome email in which the invoice was sent as an attachment and the invoice and the welcome mail both contained the service tenure.

6.26 It submitted that due to a clerical error, wrong dated invoice was sent to the client Sameer Mahawar where the end date came before the start date and it had offered the client to send him a corrected invoice, however the client demanded refund of fees and his entire fees was refunded and that was an isolated case where there was a clerical error and there was no malicious intention behind such a mistake.

6.27 As regards allegation of not having done KYC, risk profiling of its clients, Noticee submitted that the data was lost due to the servers getting corrupted during COVID 19 first wave and was unable to verify data from its own records and further submitted that it should not be punished for such an act which was beyond its control and relied upon point III of SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March, 22nd 2018 wherein it submitted that in case due to technical failure the call records are not provided broker can prove his case by other things like post confirmation, payment, etc.

6.28 As regards allegation of failure to resolve the clients' complaints, Noticee submitted that point number 13 circular of dated 18/12/2014 clearly states that the failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance and only non-filing of ATR can be considered as violation of said circular and hence it cannot be forced to refund the fees and/or resolve the matter within 30 days.

6.29 It again relied upon the the judgement of Hon'ble Supreme Court In the case of ***State of Rajasthan and Anr Vs. Shamsher Singh 1985 (supp) - SCC – 416****, w.r.t the doctrine of the impossibility of performance which indicates that however mandatory the provision may be, where it is impossible of compliance, that would be sufficient excuse for non-compliance particularly when it is a question of the time factor regarding the non-redressal of client's complaint.*

6.30 As regards non filing of ATR within stipulated, it submitted that at that time it was suffering from severe complications in her pregnancy and thereafter there was a severe lockdown during first COVID 19 wave that even the supreme court had suspended all limitations during covid 19 period from 2020 to 2022 and thus it should not be held liable for such non-compliance.

6.31 As regards alleged violation of not sharing of the change in address, Noticee submitted that the said allegation is false and frivolous and submitted that it had shared changed address and was issued a certificate of registration with changed address.

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the SEBI Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on November 12, 2024, vide hearing Notice dated November 06, 2024. The said hearing as per the request of the Noticee vide email dated November 10, 2024 was rescheduled to November 14, 2024 vide email dated November 11, 2024. The said hearing was attended to by AR of the Noticee who reiterated the submissions made by the Noticee vide its letter received through email dated November 11, 2024. During the course of hearing, AR of the Noticee was advised to provide the documentary evidence in support of the following:

a) Copy of emails, welcome letter along with the invoices sent by the Noticee to its clients;
b) Memorandum of Understanding (MoU)/Engagement letter/Agreement executed by the Noticee with Ms Madhuri Garg of Shree Sai Proficient Financial Services (SSPFS).
c) Registration Certificate provided by SEBI depicting its new address as submitted during the course of hearing.
d) Write up on change in address informed to SBI but not to SEBI as submitted during the course of hearing.
e) Application sent to SEBI Local office regarding updating of address on SEBI SI portal.
f) List of employees associated with the Noticee during the IP.
g) Copy of KYC, Risk profiling and suitability report of all the clients during the IP.

8. Vide email dated November 15, 2024, Noticee provided with some annexures in the matter and provided with the MOU as sought during the course hearing vide email dated November 22, 2024 and submitted as mentioned below:

8.1 " And On the topic of Office address is not registered in SEBI and registered in SBI is that when we started shifting i send letter to sebi for the address change request that time my SI portal is not working because one request is pending than it not take another one than i write a letter to sebi for address change the letter is already annexed in previous mail than the officer said you have to attached a registered Rent agreement with this letter in this duration i send letter to SBI only not to my any other bank. and my new owner is not ready to make a registered rent agreement till date. My rent agreement is already prepared and advanced. I also paid then I gave that premises to sub rent and it shifted to old premises."

CONSIDERATION OF ISSUES AND FINDINGS

9. The charges against the Noticee, its reply and the documents/material available on record have been carefully perused. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee is in violation of the provisions of SEBI Act, PFUTP Regulations, IA Regulations and SEBI Circulars as mentioned in table 1 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Sections 15A(a), 15C, 15EB ,15HA and 15HB of the SEBI Act, as applicable?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

10. Before proceeding further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, PFUTP Regulations, IA Regulations and SEBI circulars alleged to have been violated by the Noticee. The same are reproduced below:

Relevant provisions of SEBI Act, 1992

Registration Certificate

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;*

Relevant provisions of SEBI PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Relevant Provisions of SEBI IA Regulations

Conditions of certificate

***13.** The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(a) *the investment adviser shall abide by the provisions of the Act and these regulations;*

***(b)** the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;*

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(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.*

Redressal of client grievances.

***21(1)** 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.*

Notice before inspection

24(3) *During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.*

Obligation of investment adviser on inspection.

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

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

Liability for action in case of default

28. *An investment adviser who-*

(f) *fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

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.

5. Information to its clients

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

6. Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

8. Compliance

An investment adviser including its 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.

Relevant Provisions of SEBI Circular

https://www.sebi.gov.in/legal/circulars/dec-2014/redressal-of-investor-grievances-through-sebi-complaints-redress-system-scores-platform_28700.html

Issue No. I: Whether Noticee is in violation of the provisions of SEBI Act, PFUTP Regulations, IA Regulations and SEBI Circulars as mentioned in table 1 above?

Brief Background

11. It is observed that SEBI had been receiving a number of complaints against the Noticee since 2015 and total 90 complaints were received against it on SCORES portal till February 29, 2020. The total number of unique complaints (by unique complainant) received against the Noticee from 2015 till February 29, 2020 are tabulated in table 2 below:

Table 2:

Year	Complaints from investors	Complaints pending
2015	6	0
2016	3	0
2017	8	0
2018	10	2
2019	27	11
2020	10	10
Total	**64**	**23**

12. Further, it is observed that various documents / information such as Risk Profiling Form (hereinafter referred to as 'RPF'), KYC, invoices, products list, emails, audio call recordings, agreements, etc. were sought from the complainants and the same could not be provided by them since Noticee allegedly used to pursue its clients telephonically and made promises on phone calls. Accordingly, based on the availability of evidence from the complainants as mentioned in table 3 below thorough

examination was carried out by SEBI basis which following are the allegations levelled against the Noticee.

<u>Table 3</u>:

Sl. No.	Name of Complainant	SCORES Regn. No.
1.	Sameer Mahawar	SEBIE/MP20/0000505/1
2.	Krishnamurarilal G Agarwal	SEBIP/MP20/0000082/1
3.	Vijay vasantrao chavan	SEBIE/MP20/0000398/1
4.	Arun Agrawal	SEBIP/MP20/0000051/1
5.	Ashutosh tiwari	SEBIE/MP20/0000327/1
6.	Krishnamurarilal G Agarwal	SEBIP/MP20/0000041/1
7.	Manik Verma	SEBIE/MP20/0000289/1
8.	Anadilal Ahirwar	SEBIE/MP20/0000253/1
9.	vijay kumar	SEBIE/MP20/0000242/1
10.	Prince Kumar	SEBIE/MP20/0000143/1
11.	Kulwinder Singh	SEBIE/MP19/0003195/1
12.	Gyan Shanker Shukla	SEBIE/MP19/0003078/1
13.	Jitendra Kumar Yadav	SEBIP/MP19/0000406/1
14.	Jadav Gelabhai Govindhbh	SEBIP/MP19/0000378/1
15.	Hardev Singh	SEBIE/MP19/0002096/1
16.	Ajim Sattar Patave	SEBIE/MP19/0002003/1
17.	sumit kumar	SEBIE/MP19/0001894/1
18.	Ankit Prajapati	SEBIE/MP19/0000561/1
19.	Ramkesh Sharma	SEBIE/MP19/0000421/1
20.	Bansi Lal Patel	SEBIE/MP19/0000119/1
21.	Suresh Kumar	SEBIE/MP19/0000079/1
22.	Shyam Sunder Virmani	SEBIE/MP19/0000063/1
23.	Arun Mandal	SEBIE/MP18/0004611/1

<u>Alleged Violation 1: Failure to cooperate with and non-submission of documents to SEBI</u>

13. With respect to the captioned allegation, it is observed that SEBI vide letter no. WRO/ILO/IMD/Insp/5040/1/2020 dated January 15, 2020, informed the Noticee that an inspection of its books of accounts/ records and other documents pertaining to its registration as an investment advisor would be carried out by SEBI, in terms of Regulation 23 of IA Regulations. Accordingly, Noticee was advised to send its reply to the pre-inspection questionnaire latest by January 31, 2020.

14. In this regard, it is observed that Ms. Meeshika Vishwakarma, Proprietor of the Noticee, vide letter dated January 27, 2020 informed that due to her pregnancy complications and as the doctor suggested a proper rest, her business had come to a halt and office was closed since December 31, 2019 and being a sole owner of the business, only she has the access to all the relevant records and documents and no one is there to look out for it. She further submitted that no new client has been onboarded since January, 2020 and they are providing proper services to the existing clients and focusing on the complaints pending in SCORES.

15. Subsequently, vide email dated January 27, 2020, SEBI had advised the Noticee to submit all its bank account statements latest by January 31, 2020. However, Noticee vide email dated February 12, 2020 submitted its bank account statement with State Bank of India (SBI) only. Further, it is observed that SEBI, vide letter no. WRO/ILO/IMD/Insp/5145/1/2020 dated February 04, 2020 informed the Noticee that inspection of its books of accounts and other records shall commence from February 17, 2020 onwards.

16. In addition to the aforesaid, it is observed that the following details were sought from the Noticee vide email dated February 27, 2020**.**

- Risk Profiling Form
- KYC
- Invoices
- Suitability policy
- Product list with risk categorization and fees amount details

17. However, Noticee allegedly did not submit any details (citing the medical reason mentioned above) and hence, the said 22 complaints could not be examined in detail.

18. Further, it is observed that the Noticee was advised by SEBI to depute a person to represent herself before SEBI if she was not able to be present during SEBI inspection. However, the Noticee allegedly did not offer any co-operation with respect to inspection.

19. It is thus alleged that the Noticee failed to furnish information relating to its activity as an IA during inspection as required by SEBI and allegedly not cooperated with SEBI by being absent during inspection.

20. In view of the above, it is alleged that the Noticee has violated Regulation 13(a), 15(12), 25(1) and (2) read with 24(3), Clause 8 of Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

21. Noticee submitted that she was pregnant and was in the last months of her pregnancy suffering from complications and thus, could not attend the office regularly and could not cooperate with investigation.

22. As regards allegation of non-cooperation, it relied upon the Hon'ble Supreme Court judgement in the in the case of ***State of Rajasthan and Anr Vs. Shamsher Singh 1985 (supp) - SCC – 416***, wherein it submitted that the court had laid down the doctrine of the impossibility of performance which indicates that however mandatory the provision may be, where it is impossible of compliance, that would be sufficient excuse for non-compliance particularly when it is a question of the time factor.

23. It submitted that the same had been again upheld in the case of ***Raj Kumar Vs*. Tarapada (1987) 4 SCC 398**, and the same is mentioned below

"............. The law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities and the administration of laws must adopt that general exception in consideration of all particular cases. the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full favour in the facts of this case ……….".

24. It is noted that in terms of Regulation 25 (1) and (2) of IA Regulations, an Investment Adviser is mandated to produce to the inspecting authority such books, accounts and other documents in is custody or control and furnish the inspection team with such statements and information as required by the inspecting authority for the purposes of inspection and an Investment Adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser is mandated to give to the inspecting authority all such assistance and extend

all such co-operation as required in connection with the inspection and furnish such information as sought by the inspecting authority in connection with the inspection.

25. From the above submissions of the Noticee, it is noted that SEBI, vide letter dated February 04, 2020 once again informed that inspection of the books of accounts and other records shall commence from February 17, 2020 onwards and sought information as per the questionnaire. SEBI also informed the Noticee that if she was unable to be present during SEBI inspection, she can depute a person to represent during inspection. The material available on record shows that the proprietor was 26 weeks pregnant at the time of inspection. Further, as submitted, she had stopped working since December 2019 onwards and thus, could not be expected to depute someone on her behalf under such a circumstance as she being a proprietor was well versed with the know-how of her business. Given the above circumstances as depicted by the Noticee there is no case made out as alleged.

Alleged Violation 2: Promising of assured higher returns & receiving money from an unregistered IA

26. It is observed that the Noticee had mentioned following lines as the feature of its various products on its website www.saiproficient.com, as tabulated in Table 4 below:

<u>Table 4</u>:

Service/Product name	Service/Product's feature
Stock Cash	We are proud to say that we offer stock cash options that are more than 95% accurate and end up in **sure profits** for our clients. <u>Benefits of our service:</u> ➢ We could assure 80-90% accuracy with all our stock cash tips under this plan, consistently.
Stock Cash HNI	We have dedicated research analyst who watch the market very carefully and deliver trading tips to book sure profits to our investors.
Index Options	We consistently maintain 90% above accuracy with our trading tips which are revealed with our past results.
Index F&O; HNI	Through this way, we are able to maintain 85-90% accuracy with all our tips.

27. From the above, it is observed that the Noticee allegedly induced clients to buy its services/products by mentioning about the high percentage accuracy about its tips.

28. In this regard, it is observed that one complainant, Mr Sameer Mahawar had filed a complaint dated February 19, 2020 in SCORES vide regn. no. SEBIE/MP20/0000505/1) stating that the Noticee had taken Rs.14.25 lacs towards service charges and later on refunded Rs.10 lacs through cheques. Some of which were also dishonored. Vide email dated March 18, 2020 he had submitted copy of email received from the Noticee wherein it was mentioned as follows:

"Total paid amount Rs.525001/-, Total remaining Rs.1000000/-

……

……

*As per conversation with our executive Join our **(COMMETMENT PLAN + VOLUME + OFFER FOR SALE)** services We will give you good **Total profit (expected 88,00,000).** You also know that there of **4 MONTHS** trading season COMPANY PROVIDING TO YOU , So You HAVE TO pay 50% amount of **remaining amount 5,00,000/-** INR , after paying this **amount (5,00,000/-)** only than you will get expected **profit 14,00,000** , after getting this profit then you have to pay whole remaining amount."*

29. Another complainant, Mr Shyamsundar Virmani had filed a complaint dated January 07, 2019 in SCORES vide Regn. No. SEBIE/MP19/0000063/1 stating that he had paid Rs.5 lacs to the Noticee but never got promised return. He submitted a copy of email and service proposal received from email id saiproficientinvestment@gmail.com dated August 13, 2018) wherein it was stated as follows:

"*Equity service charge:- 500000(inclusive GST)*

As in offer…

…. Join our equity commitment services only in 500000/-. You will get 90-95% accuracy in our levels rest is in installment after profit. We will give you good profit (depends upon market). You also know that there of 90 trading session. In this service we give approx. INR 8 lac profit and which we will give all support required."

30. The said complainant had also submitted to SEBI copies of receipts received from e-payment service provider Easebuzz vide email dated February 28, 2020. It is observed that vide email dated February 14, 2020 Easebuzz informed as quoted "*there is no registration with PAN No. AVBPV2205J*", i.e. the PAN No. pertaining to the Noticee. Further, Easebuzz had submitted KYC, A/c opening form, PAN card and transaction details of "Sai Proficient Research Investment Advisory" mentioning the following details:

Name: ***Sai Proficient Research Investment Advisory***

Email: proficientsai@gmail.com

Contact Number: 8370039735

Bank Name: Axis Bank

Branch Name: Indore

Bank Info: Shree Sai Proficient Financial Serv IFSC Code: UTIB0000043 Account No.: 918020043217061

Business Name: ***Shree Sai Proficient Research Investment Advisory***

PAN ID: ***CMSPG1119C***

31. It is observed from the account opening form and PAN card submitted by Easebuzz that the said account belonged to one Ms. Madhuri Garg. Further, all the payments made by the said complainant were reflecting in the statement of Shree Sai Proficient Financial Services (Prop. Ms. Madhuri Garg) (hereinafter referred as 'SSPFS'). Further, from the SEBI website search it was observed that SSPFS was not

registered with SEBI as an investment adviser or research analyst or portfolio manager. However, SSPFS was allegedly sending emails to the public on the name of Sai Proficient Research Investment Advisory mentioning its registration number as INA000002504 and stating that it was a global market research company in equity and MCX. Further, it was allegedly offering assured returns from securities market. Based on the alleged email dated August 13, 2018, said complainant had made payment in the account of SSPFS through Easebuzz and all the payments made by Mr. Shyam Sundar Virmani, i.e. between August 10, 2018 to September 19, 2018, were reflecting in the account of SSPFS with Easebuzz. It is further observed that allegedly SSPFS had registered its email id proficientsai@gmail.com with Easebuzz whereas it was sending emails about investment advisory services through email id saiproficientinvestment@gmail.com.

32. Further, it is observed from the account opening form of SSPFS with Easebuzz that SSPFS had bank a/c with Bank of India and upon the analysis of Bank of India transactions, it was observed that SSPFS had a/c in ICICI bank also. The details of bank accounts of SSPFS are tabulated in table 5 below:

Table 5:

Sr. No	**Bank Name**	**Branch**	**A/c No.**	**Period**	**Total Receipts (Rs**	**Net Receipts(*) (Rs.)**
1	Axis Bank Ltd.	Kamal Palace, 1 Yeshwant Colony, Yeshwant Niwas Road, Indore - 452003	918020043217061	08-May-2018 to 15-Feb-2020	2,85,41,916.87	1,09,45,680.83*
2	ICICI Bank Ltd	Vijay Nagar Branch, Indore	185905500416	07-May-2018 to		41,68,569.50

				12-Mar-2020		
3	Easebuzz			29-May-2018 to 31-Dec-2019		1,80,66,244.43
					Total	3,31,80,494.76

(*)The Net Receipts in case of Axis Bank do not include an amount of Rs.1,75,96,236.04 transferred from Easebuzz a/c to Axis Bank. The said amount is included in the net receipts for Easebuzz.

33. It is thus alleged that though SSPFS was not a SEBI registered IA, however, in its email to public, it was mentioning name and registration number of the Noticee. Further, allegedly, SSPFS had kept its name as Sai Proficient Investment Advisory with Easebuzz and after making payment of fees by public, the payment confirmation email was being sent by Easebuzz in the name of Sai Proficient Investment Advisory. This allegedly created the impression in the minds of people that they were making payment to the Noticee and accordingly the said complainant had filed complaint in SCORES against the Noticee and not against SSPFS.

34. It is observed that after filing complaint in SCORES against the Noticee, proprietor of the Noticee, Ms. Meeshika Vishwakarma vide email dated April 26, 2019 from email id meeshika.mv@gmail.com (registered email id with SEBI) informed the said complainant as follows:

> "*YES SIR I AM FULL FILL MY COMMITMENT ASAP. YOUR MONEY NOT GO ANY WHERE. AND ONE THING MORE. WE GIVE YOU 50000/- FOR THE TRADING PURPOSE AND DUE TO ELECTIONS MARKET FOR*

TRADING IS NOT GOOD. SO WE HOLD IT FOR THIS TOO. WE GIVE YOU MONEY AT THE TIME OF THE IMMEDIATE TRADING."

35. Further, it is observed that the Noticee had sent an email to the said complainant on July 10, 2019 and July 11, 2019 stating as follows:

    July 10, 2019 email "*yes sir i agree give me some time i will deposit 50000 as soon as possible*"

    July 11, 2019 email "*I will try my level best*. "

36. It is observed from the above emails that though the payment had gone in the a/c of SSPFS, the proprietor of the Noticee was admitting that the payment was received and also informed the said complainant that she would refund the amount. Hence, it is alleged that the Noticee and SSPFS were related entities and they were cheating public in connivance with each other.

37. Similarly, one more complainant Mr. Ramkesh Sharma had filed complaint dated January 16, 2019 against the Noticee in SCORES vide registration no. SEBIE/MP19/0000421/1 stating that employees of the Noticee viz, Mr. Chirag and Mr. Praveen had assured him returns of Rs. 50,000/- per week and they had taken his Demat a/c id and password also. In this regard, upon analysis of the transactions of payments made by the complainant, it is observed that the payments of Rs.3,199/- , Rs. 21,800/- and Rs. 51,650/ were made through Easebuzz, from January 01, 2019 to January 08, 2019 and the same was also reflecting in the a/c of SSPFS.

38. Another complainant Mr. Hardev Singh had filed complaint dated August 29, 2019 in SCORES vide registration. no. SEBIE/MP19/0002096/1 submitted invoice copy of Rs.2,13,000/- issued by the Noticee and email receipt received from Easebuzz dated July 25, 2019 of Rs. 6,500/-. Upon scrutiny of the transactions of payments made by Mr Hardev, it was observed that the payments were made through Easebuzz from July 26, 2019 to July 31, 2019 and the same was also reflecting in the a/c of SSPFS.

39. In addition to the aforesaid, Mr Hardev had also stated in his complaint that his Demat a/c was handled by Mr. Deepak Mishra who had committed him about assured returns. In support of his complaint he had submitted whatsapp communication with Mr. Deepak Mishra vide email dated March 13, 2020. In this regard, some of the extracts of the communication between the duo is given below:

> "*25/07/19 @9:40 pm Deepak Mishra: Night me 12 bje tk v kr doge to ho jayega*
>
> *26/07/19 @9.28 am Hardev Dhillon: Id TB33454 psw sukh3333h*
>
> *…….*
>
> *……..*
>
> *26/07/19 @6:53 pm Deepak Mishra: Aap unko Bol Dena Wednesday ko 140000 lelena*
>
> *26/07/19 @6:54 pm Deepak Mishra: Ye Mera commitment hai*
>
> *……*
>
> *……*

08/03/19 @4:00 pm Deepak Mishra: SBI Bank AC Holder Name: Sai Proficient Research Investment Advisory A/c No-: 34855752897 IFSC-: sbin004241 www.saiproficient.com

08/03/19 @4:08 pm Deepak Mishra: Note Our ICICI Bank A/c Holder Name:- Shree Sai Proficient Financial Services A/c Number:- 185905500416 IFSC Code:- ICIC0001859."

40. From the above communication, it is observed that Mr Deepak Mishra, employee of the Noticee had mentioned about the bank account number of the Noticee as well as of SSPFS thereby allegedly proving the nexus between the two entities and the said Mr Deepak had allegedly committed assured returns to client.

41. In order to ascertain the alleged nexus between the duo i.e. SSPFS and the Noticee, analysis of the bank accounts of SSPFS in Axis Bank and the Noticee in ICICI Bank was done wherein it was observed that there were transactions between the duo. The details of transactions between the Axis Bank a/c no. 918020043217061 of SSPFS and the ICICI Bank account no. 657305500462 of the Noticee are given in table 6 below:

<u>Table 6</u>:

Date of payment	Amount of Paymen
18.09.2018	4,005.90
08.10.2018	46,005.90
05.11.2018	10,005.90
30.11.2018	5,005.90

Date of payment	Amount of Paymen
20.02.2019	20,005.90
21.02.2019	15,005.90
27.02.2019	5,005.90
28.02.2019	8,005.90
04.03.2019	70,005.90
06.03.2019	12,005.90
27.03.2019	17,005.90
28.03.2019	902.95
02.04.2019	10,005.90
02.04.2019	10,005.90
02.04.2019	10,005.90
02.04.2019	10,005.90
03.04.2019	2,005.90
03.04.2019	13,005.90
03.04.2019	13,005.90
03.04.2019	13,005.90
03.04.2019	13,005.90
03.04.2019	13,005.90
03.04.2019	13,005.90
04.04.2019	5,005.90
08.04.2019	7,005.90
08.04.2019	7,005.90
10.04.2019	47,005.90
15.04.2019	12,005.90
04.05.2019	1,305.90
Total	**4,12,368.15**

42. Further, the aforementioned alleged activities of SSPFS of using SEBI registered entity's name, website for collecting money from clients, is a fraudulent activity and knowing fully well that SSPFS does not have requisite registration from SEBI, Noticee

had allegedly allowed SSPFS to act on its behalf. Both the Noticee and SSPFS and their respective Proprietors namely Ms. Meeshika Vishwakarma and Ms. Madhuri Garg in connivance had allegedly deceived the general public that they were dealing with a registered intermediary of SEBI.

43. From the above, it is observed that the Noticee had been allegedly promising assured profit / unrealistic returns on the investment made by the clients and luring them to avail its services despite being fully aware of the fact that investment in equity, equity derivatives, commodity and currency derivatives are subject to market risk and also showed complete disregard to the responsibility entrusted on it under IA Regulation to act in fiduciary capacity to its client.

44. Accordingly, in view of the above it is alleged that the Noticee has violated Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013, Clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and Regulation 3(a),(b),(c),(d) of SEBI (PFUTP) Regulations, 2003 read with section 12A(a),(b) and (c) of SEBI Act, 1992 by not having dealt with its clients honestly and fairly by its following acts:

a) having promised higher returns from securities market and luring clients to make bigger investments,
b) mentioning on its website that its products are upto 95% of accurate and earn sure shot returns for the clients,
c) receiving money from another unregistered IA i.e. SSPFS, who was collecting money from client’s in the name of Noticee.

45. Noticee submitted that the alleged screenshots of its website that it was inducing the clients to buy its services are false and frivolous as the website on its home page

contained a scroll on the top of the website which read *“Investment In Stock And Commodity Market Is Subject To Market Risk. Please Do Not Trade On Those Tips Which Are Not Provided Through SMS Or Messenger*” and the same message was also displayed at the bottom of the website and all other pages.

46. It also submitted that the Annexure regarding complaint of Mr Sameer Mahawar is forged and fabricated and no such email was sent by either the noticee or any of its employee as the said email did not contain any sender details and thus, it is just a forged document typed and maliciously prepared by the complainant to blackmail the noticee and without proper verification and investigation such a document cannot be relied upon.

47. As regards compliant of Mr. Shyam Sunder Viramani, Noticee submitted that e-mail from account saiproficientinvestment@gmail.com was neither operated by its nor its employees and is a fake id and does not belong to it or any of its employees, and that Mr Virmani had created this fake Id to blackmail the Noticee and thus the email cannot be held against the noticee in light of the law laid down in Star World case (Supra) followed in matter of Dezire Research and other matters. Thus, these charges deserve to be dropped without investigation into the fact as to whom does the said email id belonged.

48. As regards its alleged connection with SSPFS, Noticee submitted that the said entity was not an unregistered investment advisor as there was no client to whom any advice was given by the said entity or its proprietor and thus, it cannot be said to be a unregistered investment advisor. It submitted that it had outsourced some of its

non-core functions like Human Resource Management, Marketing Plan and Accounting functions to its third party associate that is Ms. Madhuri Garg, as it was not an expert in Accounting/taxation/law and the said arrangement was made based on the guidance of its CA.

49. It submitted that it had conducted KYC, Risk Profiling and suitability report of all the persons who had deposited payment through Easebuzz gateway and the investment advice was provided by it which is evident from the invoices sent by it to its clients.

50. It added that the Annexure on the whatsapp chats have not been provided to it by SEBI and unless the document is supplied it cannot be relied upon and the alleged whatsapp chats do not show any phone number from which the purported whatsapp chats have been made, without the phone number the chats cannot be traced to either the noticee or any other person.

51. As regards allegation of SSPFS sending emails to public and offering assured returns and projecting itself as registered entity, it submitted that the allegation is totally false and frivolous as even in the SCN not a single email is annexed to give credibility to such a claim further the email id saiproficientinvestment@gmail.com did not belong to Ms. Garg or SSPFS, as submitted earlier SSPFS was not authorised to contact any client rather its job was only to take care of its non-core activities of the in line with the SEBI CIRCULAR CIR/MIRSD/24/2011 dated 15/12/2011 on Guidelines on Outsourcing of Activities by Intermediaries.

52. W.r.t the claim of the Noticee on its website regarding **"sure profits"** on the investment amount if the client availed its services, it is noted that Noticee, being a SEBI registered intermediary, was engaged in the business of providing investment advice for consideration and should have refrained from claiming direct assurance like "**sure profits**" on return of investments made by its clients. There may be a scenario where the capital deployed by the investor gets eroded if the investment advice provided by the IA turns out to be incorrect due to market risk. Even if there are disclaimers, its conduct of claiming **"sure profits**" reveal its actual intent of luring investors to avail its services. If its objective was not to mislead investors, it should not have made such reckless and careless claims.

53. It is further noted that the Noticee has claimed that its accuracy is more than 90% in providing stock market tips, however, the same is not supported by any evidence as available on its webpages. Hence, conduct of the Noticee by making such claims without any supporting facts is nothing but a blank claim by the Noticee to mislead and lure the investors to avail its services. Further, Noticee claimed on its web-page that it has dedicated research analyst, whereas the documents on record does not show that the Noticee has any research analyst. Thus, false claims were made by the Noticee.

54. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that is put out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment. This

act of the Noticee is an attempt to induce the clients to subscribe to its advisory service by claiming **sure profits**, which is an act to mislead the clients as full disclosure was not made by the Noticee that the proposed investment of the clients may incur loss.

55. It is noted that the Noticee adopted business tactics to induce the general public into availing the services it offered. Further, the act of conveying sure profit, is nothing but indulging in for the purposes of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticee, is a non-genuine, deceptive and fraudulent act and has been made with an intent to influence the general public to avail of its advisory services and deal in securities. It is noted that promising sure 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.

56. Further, It is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of ***SEBI Vs. Kanaiyalal Baldevbhai Patel***(2017) 15 SCC 1, which are as under-

> *"The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"............to*

make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient."

57. In this regard, the observation recorded by the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Kanaiyalal Baldevbhai Patel*** *[(2017) 15 SCC 1] is worth quoting: "...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did*...". Therefore, the undersigned is constrained to observe that the acts of the Noticee of resorting to misrepresentation and spreading falsehood about, promise of sure profit, etc. is fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing of the services of the Noticee.

58. In this regard, it is pertinent to further rely upon the decision of the Hon'ble SAT in the matter of ***MSS Trading System Centre and Anr. Vs. SEBI***, dated December 12, 2022, wherein the Hon'ble Tribunal has held that *"We are of the opinion that such assurance of profit given by the appellant was totally fraudulent and in violation of*

Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

59. It is noted that Regulation 3 prohibits certain dealings in securities wherein manipulative or deceptive methods are used, or any entity employs any devise or scheme or artifice to defraud in connection with dealing in or issuing securities and also engage in any act, practice, course of business which operate as fraud or deceit upon any person in connection with any dealing in or issue of securities.

60. Further, Noticee's submission that the claim on its website was a marketing gimmick wherein it had not claimed any specific rate of return rather had claimed only 90% accuracy with respect to its tips, which is a marketing gimmick akin to what was upheld by Hon'ble WTM in the matter of GRS Solutions. In this regard, it is noted that in the instant matter, Noticee on its website has claimed **sure profits**, which is nothing but an assurance on return and is not similar as in case of GRS Solutions. Although, the words sure profits do not exhibit a numerical return but is akin to the same and has the potential to entice the prospective clients to avail its services and thus cannot be termed as marketing gimmick. Thus, submission of the Noticee is bereft of merits.

61. With regard to its submission on the complaint of Mr Sameer Mahawar and Mr Shyamsundar Virmani, it is noted that Noticee has termed complaints by them as forged and fabricated and has claimed that the email id- saiproficientinvestment@gmail.com does not belong to it. In this regard, it is noted that during the course of hearing, Noticee was advised to provide copy of emails, welcome letter along with the invoices sent by the Noticee to its clients. However,

Noticee failed to provide the same. Noticee claimed that the complaints were forged and fabricated however, it did not provide any documentary evidence of taking any legal action with respect to the same. It also failed to provide any documentary evidence of having carried out KYC, risk profiling and having provided suitability report to its clients which was sought during the course of hearing.

62. Further, it is noted that admittedly Noticee has claimed to have refunded money to the client Mr Sameer Mahawar and that proprietor of the Noticee herself interacted with the complainant Mr Shyam Sunder Virmani through its email ID meeshika.mv@gmail.com, dated July 10, 2019 assuring him of refunding the amount of Rs 50,000 paid by the said client to the Noticee. This itself shows contradiction in the conduct and submission of the Noticee since on the hand, it is terming the complaints by the said clients as fake and fabricated and on the other hand refunding the amount paid and also interacting from its registered email ID and assuring Mr Shyam Sundar Virmani of the refund whereas the investments were made by the clients on the basis of account details of SSPFS, received by them from the email ID saiproficientinvestment@gmail.com, which Noticee claims to have disowned. Thus, it is nothing but Noticee's cock and bull story to cover up the allegations on it and an afterthought to absolve itself from the allegations of its collusion and acting in connivance with SSPFS, using SSPFS as a camouflage to lure the people into its net. If there had been a genuine advise basis which Noticee was providing suitability report and advise to its clients, the same would have been furnished by it. Thus, the foregoing conspicuously shows that the Noticee acted in connivance with SSPFS, which was not even a SEBI registered IA to dupe the clients. Further, SSPFS was using the registration of the Noticee on which Noticee has not commented which

again proves that Noticee had knowledge of the same. Thus, submission of the Noticee is not tenable.

63. With regard to its submission that SSPFS was engaged for outsourcing some non-core activities and that SSPS was only recruiting staff and the training was imparted by it, it is noted that during the course of hearing, Noticee was advised to provide documentary evidence of having inked a Memorandum of Understanding (MoU)/Engagement letter/Agreement with Ms Madhuri Garg of SSPFS. In this regard, Noticee submitted a copy of an MOU dated February 01, 2018 which specifies that the activities of SSPFS would be limited to recruiting the staff for the Noticee and managing the sales and marketing team. However, the said MOU is devoid of any clause which specifies money to be credited into the account of SSPFS for the core activities carried out by the Noticee viz, advising clients and sending email to the clients on behalf of SSPFS and as established above SSPFS in contrary to the MOU, was executing the activities not within the ambit of MOU. Further, the said MOU is also devoid of account of SSPFS being named as Sai Proficient Investment Advisory with Easebuzz, It is also noted that the arrangement between the Noticee and SSPFS through the said MOU surfaced only after the issuance of SCN and the same was not even presented during the examination in the matter, which also raises questions w.r.t the genuineness of the MOU. Thus, submission of the Noticee is bereft of merits.

64. With regard to its submission that it was not in receipt of the Annexures on the whatsapp chats, it is noted that vide email dated August 29, 2024, Noticee was duly served with the said whatsapp chats as Annexure titled *“Annexure 20.msg”* to the SCN. Further, as per Noticee’s request for the hardcopy of SCN along with Annexures

vide email dated September 21, 2024, the same was duly collected by her on September 27, 2024 from the local office of SEBI at Indore, wherein Noticee had acknowledged receipt of all the Annexures. Thus, submission of the Noticee is not tenable.

65. As regards the alleged whatsapp chats between Mr Hardev Dhillon and its employee ,Noticee contended that the said chats are forged and cannot be relied upon unless they are accompanied with a certificate under Section 65B of Evidence act and the original instrument from which such chats are allegedly made is submitted/confiscated for investigation and the same being proved by a FSL report that the chats are original, it is noted 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. It is important to mention that the Noticee has raised a general question as to the veracity and reliability of the data without pointing out even a single infirmity with the data.

66. Thus, in view of the above, it stands established that the Noticee has violated Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013, Clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and Regulation 3(a),(b),(c),(d) of SEBI (PFUTP) Regulations, 2003 read with section 12A(a),(b) and (c) of SEBI Act, 1992.

Alleged Violation 3: Unfair dealing with its clients, extorting money under different pretexts & threatening them of forfeiture of amounts paid

67. From the analysis of the SCORES complaints and supporting documents obtained from the complainants, it is observed that the Noticee does not disclose all the fees upfront to its client and asks them to start the advisory services by paying fees of around Rs.5000/- to Rs.10000/- and then extorts money from clients in the name of senior executive charges, file transfer, advanced services, etc. It is observed from several SCORES complaints against the Noticee wherein complainants have stated that its employees demand money in the name of assurance of profit, recoupment of losses, continuation of service etc.

68. Further, it is observed that the Noticee initially asks its clients for small amount and then gradually its different employees call and pursue for the additional service charges and if a client refuses to pay more service charges then the Noticee threatens them to forfeit the amount already paid citing its no refund policy. Being a registered investment adviser Noticee should first do financial planning and risk profiling and based on the financial and risk profile of the client, advisory services should be suggested with all the applicable service charges upfront. However, it is alleged that Noticee does not act in the professional manner and without undertaking financial planning, it is alleged that it first lures clients by promising profits and then gradually demands service charges. Thus, it is alleged that Noticee has been acting in such a manner with an objective to maximize its fees and keeping its own interest ahead of its clients' interest. Some of the instances wherein the Noticee allegedly did not inform about the entire fee structure at the outset but demanded fees gradually from clients are mentioned below.

69. W.r.t to complaint dated February 04, 2020 filed by one Mr. Ashutosh Tiwari (hereinafter referred to as AT) in SCORES vide regn. no. SEBIE/MP20/0000327/1, it is observed that AT had stated that the Noticee had initially taken Rs.10000/- towards basic services "Stock Cash" on October 16, 2019 and immediately on next day asked to pay Rs.60800/- towards advance services saying that his case was assigned to senior executive. Accordingly, AT had paid Rs.30400/- on October 17, 2019 and Rs.30400/- on October 24, 2019 and Noticee had issued him two invoices of Rs.30400/- each mentioning the service name as "Stock Cash" i.e. same as mentioned in the invoice dated October 16, 2019. It is observed from the invoices issued to complainant, AT that the Noticee had allegedly not mentioned service tenure, service start date, etc. in the invoice. Thus, it is alleged that Noticee was selling same service again and again to the client in the name of advance services and collecting service charges before ending the earlier service.

70. Similarly, w.r.t complaint dated February 19, 2020 filed by one Mr Sameer Mahawar (hereinafter referred to as Sameer) in SCORES vide regn no. SEBIE/MP/20/0000505/1 wherein he had stated that he had paid Rs.14.25 lacs to the Noticee towards fees and employees of the Noticee handled his demat account and suffered him loss of Rs.6 lacs. It is observed that Sameer in his complaint had mentioned that initially he had paid Rs.6 lacs but Noticee pursued him and forced him to pay another Rs.9 lacs by threatening that if the balance amount was not paid then they would not start the work. The details of three invoices received by Sameer from the Noticee are given in table 7 below:

Table 7:

Date of Invoice	Payment receipt No. (RCN)	Service name	Service start	Service tenure	Service charges (
17-Dec-2018	SPRDEC015	HNI	13-Dec-2018	12-Mar-2018	2,75,001/-
08-Feb-2019	SPRFEB009	HNI	13-Dec-2018	12-Mar-2018	7,50,001/-
25-Feb-2019	SPRFEB018	HNI	13-Dec-2018	13-Jul-2019	2,00,000/-
				Total	**12,25,002/-**

71. It can be observed from above table 6 above that all the 3 payment receipts (RCN) were issued for HNI services which started from same date i.e. December 13, 2018 .Further, RCN no. SPRFEB009 and SPRFEB018 issued on February 08, 2019 and February 25, 2019 respectively but the service period of the same started from December 13, 2018 i.e. two months before. In case of RCN SPRDEC015 and SPRFEB009, service tenure mentioned was allegedly absurd as the said tenures had ended on March 12, 2018 whereas service start date was December 13, 2018. It is thus alleged that the Noticee had issued payment receipts with an intention to defraud its client and sold same service with service period which were absurd.

72. It is observed that out of all the 22 complainants mentioned in table 2 above none could submit KYC and/or risk profiling form given by the Noticee and accordingly the said information/documents were sought from the Noticee vide email dated February 27, 2020. However, the Noticee had not submitted any document. Thus, it appears that Noticee was allegedly not doing/communicating KYC and risk profiling of the clients.

73. Thus, from the above, it is alleged that the Noticee was dealing unfairly with its clients by not disclosing all the fees upfront, extracting more money from them under the pretext of additional service charges, differential amount, senior executive charges, etc and threatening them about forfeiture of amount if the clients refused to pay additional service charges.

74. Accordingly, in view of the above, it is alleged that the Noticee has violated

a) Regulation 15(1) of IA Regulation by having failed in its responsibility to act in fiduciary capacity to its client which was entrusted upon it and Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15 (9) of IA Regulations.

b) Regulations 3 (a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act by generating more and more service fees (income) and defrauding its clients.

75. Noticee submitted that it discloses all its charges and fees to the clients at once and thereafter as per their financial requirements, clients select services and tenure of service and on certain instances the clients request that they cannot make the entire payment at once, which it used to accommodate for its clients.

76. It submitted that it allows its clients to make payment in instalments and thus the allegation of taking small amount initially and then charging heavy fees is totally unsubstantiated as no financial planning can be done for 2-3 days or even a week as investment advisor, it was obliged to conduct financial planning for its clients and it takes considerable time.

77. It submitted that it first conducts KYC, Risk Profiling and thereafter suggests its services in form of suitability report.

78. It submitted that the clients subscribed for the entire services and then payed in instalments, and the client had not shared the welcome email in which the invoice was sent as an attachment, the invoice and the welcome mail both contained the service tenure.

79. It submitted that due to a clerical error, wrong dated invoice was sent to the client Sameer Mahawar where the end date came before the start date and it had offered the client to send him a corrected invoice, however the client demanded refund of fees and his entire fees was refunded and that was an isolated case where there was a clerical error and there was no malicious intention behind such a mistake.

80. As regards allegation of not having done KYC, risk profiling of its clients, Noticee submitted that the data was lost due to the servers getting corrupted during COVID 19 and was unable to verify data from its own records and further submitted that it should not be punished for such an act which was beyond its control and relied upon point III of SEBI circular, SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March, 22nd 2018 wherein it submitted that in case due to technical failure the call records are not provided broker, it can prove its case by providing other things like post confirmation, payment, etc.

81. During the course of hearing, Noticee was advised to provide the copy of KYC, Risk profiling and suitability report of all the clients during the IP. In this regard, it is noted

that the Noticee has failed to provide any documentary evidence. Further, its submission that the data got corrupted in COVID, it is noted that the Noticee has simply made a statement that its data got corrupted but no documentary evidence of having raised it with the service provider in the form of email sent by it to them or steps taken by it to get it recover has been provided by it. Noticee also failed to provide any email communication between itself and its clients to show that it was doing KYC, risk profiling and was accordingly, providing suitability report. Further, Noticee being a registered IA was under an obligation under all circumstances to maintain the records of its clients for a period of atleast 5 years in terms of Regulation 19(2) of the IA Regulations. Thus, in the absence of any proof, it is noted that the Noticee was not doing any KYC, risk profiling, etc and therefore, the submission of the Noticee is bereft of merits.

82. As regards complaint of Sameer Mahawar, Noticee's submission that there was a clerical error w.r.t service tenure and it had refunded the fees of the said client, it has already been established in pre-paragraphs above regarding contradictory submission of the Noticee wherein it had claimed that the complaint was fake and was done to blackmail it, it is noted that the Noticee's action of refunding the fees shows tacit admission on its part of having charged unreasonable charges from its clients on pretext of advanced charged, executive charges. While Noticee claimed that complaint was fake, it had not taken any legal steps. Thus, submission of the Noticee is not tenable.

83. Noticee submitted that the discrepancy w.r.t service tenure was a clerical error and it was only in the case of Mr Sameer Mahawar. However, it is noted that the said

discrepancy also persisted with Mr Ashutosh Tiwari wherein Noticee had charged Rs 10000/- from him towards “Stock Cash” and subsequently, Rs 30400 respectively on October 17, 2019 and on October 24, 2019 wherein the invoices issued were devoid of service tenure, service start date, etc. Further, with regard to the Noticee’s submission that the clients used to pay in instalments, it is noted that the Noticee has not provided any documentary evidence of having a policy of receiving money from clients in instalments. Thus, submission of the Noticee is bereft of merits. However, the number of instances brought out above for having charged unreasonable amount are not sufficient to hold the Noticee for violation of PFUTP.

84. It has been alleged that the Noticee was threatening its clients about forfeiture of amount if clients refused to pay additional charges. It has been observed that the same has been made on the basis of certain statements of the clients. In the absence of any cogent evidence there does not arise any case as alleged.

85. In view of the above, it stands established that the Noticee has violated Regulation 15(1) of IA Regulation by having failed in its responsibility to act in fiduciary capacity to its client which was entrusted upon it and Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15 (9) of IA Regulations.

Alleged Violation 4: Failure to resolve the clients’ complaints within prescribed timelines

86. In terms of Regulation 21 of IA Regulations, an IA is mandated to redress clients’ grievances promptly. Further, SEBI, vide Circular CIR/OIAE/2014 dated December 18, 2014, inter alia, states that the registered intermediaries, to whom complaints are

forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, the said circular states that in case of failure by SEBI registered intermediaries to file Action Taken Report (hereinafter referred to as "ATR") under SCORES within thirty days of date of receipt of the grievance, it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance.

87. In this regard, it is observed that 23 unique SCORES complaints were pending against the Noticee as on March 15, 2020. Out of these complaints, it is observed that in 08 complaints, Noticee had failed to file ATR within prescribed timeline of 30 days, allegedly violating the directions given in the SEBI Circular CIR/OIAE/2014 dated December 18, 2014.

88. The details of pending complaints in which the Noticee had filed ATR after 30 days and complaints in which it had not yet filed any reply from the date of last communication are given in table 8 below.

Table 8:

Sr. No.	**SCORES Complaint number**	**Name of Complainant**	**Date of receipt of complaint**	**Date of forwarding the complaint to IA (X)**	**Date of Final ATR (Y)**	**Excessive time above 30 days ***
1	SEBIE/MP19/ 0003195/1	Kulwinder Singh	24/12/2019	01/01/2020	Not Submitted	45
2	SEBIE/MP19/ 0003078/1	Gyan Shankar Shukla	23/12/2019	26/12/2019	Not Submitted	50
3	SEBIP/MP19/ 0000406/1	Jitendra Kumar Yadav	31/10/2019	05/11/2019	29/01/2020	25

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to IA (X)	Date of Final ATR (Y)	Excessive time above 30 days *
4	SEBIE/MP19/0002096/1	Hardev Singh	29/08/2019	07/10/2019	30/01/2020	84
5	SEBIE/MP19/0002003/1	Ajim Sattar Patave	21/08/2019	04/10/2019	29/01/2020	56
6	SEBIE/MP19/0001894/1	Sumit Kumar	04/08/2019	07/08/2019	Not Submitted	191
7	SEBIE/MP19/0000421/1	Ramkesh Sharma	16/01/2019	19/02/2019	11/04/2019	24
8	SEBIE/MP18/0004611/1	Arun Mandal	20/11/2018	20/11/2018	14/01/2019	26

up to 15.03.2020

89. Accordingly, in view of the above, it is alleged that the Noticee has not complied with SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) and 28(f) of IA Regulations by having failed to submit the ATR in a time bound manner and also resolve investors' grievance.

90. Noticee submitted that the SEBI Circular dated December 18, 2014 prescribes that only non-filing of ATR can be construed as non-redressal of investors' complaints by it and it cannot be force to refund the fees and or resolve the matter within 30 days. It further submitted that it was peak COVID time and all limitations were suspended by the Apex court during that time and it was also suffering from severe complications w.r.t its pregnancy.

91. From the above submission of the Noticee, it is noted that the Noticee has misconstrued the allegation levelled on it, the allegation is w.r.t its failure to resolve

the complaints of the investors within prescribed timeline, which is in line with the 2014 circular wherein non-filing of ATR by an intermediary within 30 days is construed as non-redressal of investors' complaints. Further, vide the SCN, Noticee was not even alleged of not having refunded the amount received from its clients and it was never forced to refund the amount. It is noted from the material available on record that the Noticee had not filed ATR w.r.t 8 complaints within timeline of 30 days.

92. Since, the Noticee had not submitted the ATR in a time bound manner as prescribed by SEBI and had also not resolved investors' grievance, it stands established that the Noticee has failed to comply with SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) and 28(f) of IA Regulations.

Alleged Violation 5: Failure to submit material information w.r.t change in its Registered office address and non-disclosure of registered office address in its website

93. As per the intermediary details available in SEBI website, the registered office address of Noticee is UG-69, Trade Center, 18, South Tukoganj, Indore, Madhya Pradesh-452001. Pursuant to the hearing before SEBI, which was held on June 16, 2021, the Noticee, vide letter dated July 22, 2021, had made additional submissions before SEBI. Vide said letter, it had inter alia made a submission before SEBI (i.e. in reply to the SEBI's observations pertaining to non-cooperation with SEBI at the time of inspection such as not replying to SEBI's pre inspection notices, which were sent to its registered office address) that due to personal reasons i.e. medical issue of its Proprietor Ms. Meeshika Vishwakarma, the functioning of its business was stopped since its office had been closed since December 31, 2019 and no new clients were offered service since January, 2020 as the services to the existing clients was given and focus was on complaints pending in SCORES.

94. In this regard upon perusal of KYC document of Sai Proficient provided by SBI for the account number 34855752897, it was observed that the Noticee, vide letter dated September 01, 2018, had intimated to State Bank of India that its registered office address has changed and its new address is- Office no. 107, Vikram Urbane, Mechanic Nagar, Plot no. 25, Bhamori Road, Indore and requested SBI to update its above address for future communications.

95. However, it was observed upon perusal of SI Portal of SEBI that the Noticee had not informed SEBI with respect to above change of its registered office address till date.

96. Further, upon perusal of the archived website of the Noticee i.e. www.saiproficient.com which was last updated on January 18, 2021, it was observed that the Noticee had mentioned the following details of its address on its website:

> *"Our address:*
>
> *Scheme No. 74, Indore-452001"*
>
> *"Registered office :*
>
> *Vijay Nagar, Indore (MP)*
>
> *Branch office:*
>
> *Scheme no. 74, Vijay Nagar, Indore-452001".*

97. From the above, it is observed that the Noticee's registered address with SEBI was *UG-69, Trade Center, 18, South Tukoganj, Indore, Madhya Pradesh-452001* whereas Noticee had mentioned its registered address on its website as *Vijay Nagar,*

Indore (MP), which was different from the address with SEBI. Thus, it is alleged that the Noticee had not disclosed the address of its registered office, which was *UG-69, Trade Center, 18, South Tukoganj, Indore, Madhya Pradesh-452001*, on its website.

98. In view of the above, it is alleged that the Noticee has violated Regulation 13(b) and Regulation 15(9) read with Clause 5 of Code of Conduct of Schedule III of IA Regulations by not submitting the material information to SEBI w.r.t change in its registered office address and by not disclosing its registered office address on its website.

99. Noticee submitted that the said allegation is false and frivolous as it had shared changed address from the one on its Registration certificate dated December 29, 2014 to the one registered with SBI and was issued a certificate of registration with changed address.

100. It further submitted that when it had started shifting, it had sent a letter to SEBI for the address change since SI portal was not functioning at that moment as its previous request was pending and therefore, it had written a letter to SEBI for the address change wherein it was asked by SEBI to provide copy of registered rent agreement, which it didn't have since its owner had not executed the same with it. Subsequently, it wrote a letter to SBI for address change and later on it shifted to its old premises.

101. During the course of hearing, Noticee was advised to provide Registration Certificate provided by SEBI depicting its new address, write up on change in address informed to SBI but not to SEBI as submitted during the course of hearing, application sent to

SEBI Local office regarding updating of address on SEBI SI portal. In this regard, Noticee provided with a certificate of registration from SEBI dated December 29, 2014, mentioning its address as plot No 362, 1st and 2nd floor, PU 4, Scheme No 54, Vijay Nagar, A.B. Road, Indore, MP-452010, with a validity till December 28, 2019 and a copy of undated letter addressed to SEBI Indore Local office regarding change of its address from plot No 362, 1st and 2nd floor, PU 4, Scheme No 54, Vijay Nagar, Indore to Office No-107, Vikram Urbane, Plot no 25-A, Mechanic Nagar, Indore wherein it was also mentioned that it was enclosing rent agreement, Municipal cooperation certificate and a declaration stating change in address.

102. It is noted that the address mentioned in the Registration certificate dated December 29, 2014, granted to the Noticee underwent change in 2018, which is evident from its request made to SBI vide its letter dated September 01, 2018. From the above documents provided by the Noticee, it is noted that the Noticee claimed to have intimated the change of address. However, barring the said undated letter, no proof of any communication viz, acknowledgement of SEBI/Email to prove that SEBI had acknowledged request of the Noticee for address change as stated above has been provided. Thus, there is no evidence that Noticee intimated the change of address. Had the Noticee intimated SEBI regarding the address change, its address would not have been the one on the SEBI website i.e. *"UG-69, Trade Center, 18, South Tukoganj, Indore, Madhya Pradesh-452001*", which remains as its registered address. Further, Noticee has claimed that SEBI has issued certificate with change in address, however, no document/certificate has been provided by the Noticee which shows change in address which was intimated to SBI. With regard to the difference in registered address mentioned on SEBI website and its own website, Noticee has

not given any explanation. Thus, it is observed that the Noticee has not informed about change of address. Also it has not disclosed the registered office address on its website.

103. In view of the above, it stands established that the Noticee has violated Regulation 13(b) and Regulation 15(9) read with Clause 5 of Code of Conduct of Schedule III of IA Regulations.

<u>Issue No. II: If yes, does the violation, on part of the Noticee would attract monetary penalty under Sections 15A(a), 15C, 15EB ,15HA and 15HB of the SEBI Act, as applicable?</u>

104. As it has been established in the paragraphs above that the Noticee has violated the following provisions of SEBI Act, PFUTP Regulations, IA Regulations and SEBI Circulars:

a) Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013, Clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

   Regulation 3(a),(b),(c),(d) of SEBI (PFUTP) Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992.

b) Regulation 15(1) of SEBI (Investment Advisers) Regulations, 2013. Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

c) SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) and 28(f) of IA Regulations.

d) Regulation 13(b) of IA Regulations, Regulation 15(9) of IA Regulations read with Clause 5 of Code of Conduct of Schedule III of IA Regulations.

105. In context of the above, it is relevant to refer to the observations of Hon'ble Supreme Court in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein the Hon'ble Court had observed *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

106. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, Noticee is liable for penalty under Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) and Section 15HA of the SEBI Act for violation of provisions mentioned at para 104(a), Section 15EB of the SEBI Act (for violations after March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) for the violation of provisions mentioned at para 104(b), Section 15C and Section 15EB of the SEBI Act (for violations after March 08, 2019) for violation of provisions at para 104(c) and Section 15EB of the SEBI Act (for violations after

March 08, 2019) and Section 15HB of the SEBI Act(for violations prior to March 08, 2019) for violations of provisions mentioned at para 104(d), the relevant sections are reproduced hereunder:

<u>Penalty for failure to redress investors' grievances.</u>

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.*

<u>Penalty for default in case of investment adviser and research analyst</u>*.*

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.*

<u>[Penalty for fraudulent and unfair trade practices.</u>

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].*

<u>Penalty for contravention where no separate penalty has been provided</u>

15HB *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be 104[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?</u>

107. While determining the quantum of penalty under Sections 15C, 15EB, 15HA and 15HB of the SEBI Act, 1992, as applicable, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:

<u>SEBI Act, 1992</u>

<u>Factors to be taken into account by the adjudicating officer</u>

15J While adjudging quantum of penalty under section 15-I, 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.

108. In view of the charges as established, the facts and circumstances of the case and the judgment referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act as stated above. In this regard, it is noted that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors. However, it is observed that the Noticee has duped and mislead the clients and acted fraudulently by promising sure profits. It is pertinent to mention that the objective of registration is to protect the interests of the investors. Registration casts accountability and responsibility upon the registered investment adviser to comply with all regulatory requirements applicable to the

conduct of its business activity and it also promotes the best interests of the clients and integrity of the market. It is also noted that the role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that the entities providing investment advisory services should be as per the IA Regulations. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The violations on the part of the Noticee as brought out in the preceding paragraphs attract appropriate penalty.

ORDER

109. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and also taking into account judgment of the Hon'ble ***Supreme Court in SEBI vs. Bhavesh Pabari*** (2019)5 SCC 90 and in exercise of power conferred under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, following penalty under Sections 15C, 15EB , 15HA and 15HB of the SEBI Act, as applicable, is imposed upon the Noticee for violation of the aforementioned provisions of SEBI Act, PFUTP Regulations, IA Regulations & SEBI Circulars:

Name of the Noticee	Penal provisions	Penalty(Rs)
SAI PROFICIENT RESEARCH INVESTMENT ADVISORY (Prop- Ms MEESHIKA VISHWAKARMA)	Section 15C of the SEBI Act	Rs 2,00,000/- (Rupees Two Lakhs Only)
	Section 15EB of the SEBI Act	Rs 7,00,000/- (Rupees Seven Lakhs Only)
	Section 15HA of the SEBI Act	Rs 7,00,000/- (Rupees Seven Lakhs Only)
	Section 15HB of the SEBI Act	Rs 3,00,000/- (Rupees Three Lakhs Only)
	TOTAL	**Rs 19,00,000/- (Rupees Nineteen Lakhs Only)**

110. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: **ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW**. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

111. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

112. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE

Digitally signed by BARNALI MUKHERJEE
Date: 2024.12.24 17:45:31 +05'30'

Date: December 24, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**