

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/GD/2022-23/22750-22754)

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

In respect of:

Noticee	Name	PAN/DIN
1	D.S. Capital Venture Private Ltd.	AADCH8426M
2	Piyush Kumar Sharma	CAVPS0431C
3	Deepali Sharma	CTGPS9075L
4	Abhishek Tiwari	DIN: 08251068
5	Sanjay Sheshmani Dwivedi/ Sanjay Kumar Dwivedi	AJEPD3015F

In the matter of **D.S. Capital Venture Private Ltd.**

(Noticee 1 to 5 are individually known by their respective name or Noticee no. and collectively referred to as the "Noticees")

BACKGROUND OF THE CASE

1. D.S. Capital Venture Private Ltd. (hereinafter referred to as "**IA**"/"**Company**") is registered with SEBI as an Investment Adviser (IA) bearing registration no. INA000010511. As on December 09, 2020, there were 17 complaints on the SEBI Complaints Redress System (hereinafter referred to as "**SCORES**") pending against the IA for more than 6 months.
2. It was observed from the SCORES action history that all the complaints against the IA indicated false assurances, assured returns, advisory services related grievances, loss of funds, cheating etc. The IA had not redressed the complaints forwarded through SCORES despite reminders.

3. Noticees 2 to 4 were the directors of the IA. It is alleged that Noticees 2 to 4 were responsible for the conduct of IA. Additionally, Noticees failed to produce the documents sought for the purpose of inspection and were not traceable at any of the available addresses. Further, Noticees have also failed to inform change of registered office address of IA to SEBI.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned has been appointed as the Adjudicating Officer under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) read with section 15-I(1) of the SEBI Act and rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules, 1995**”) to inquire into and adjudge against the Noticees under:

- (i) Section 15EB of the SEBI Act, for the alleged violation of the provisions of Regulations 13 (b), 21, 25 (1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations, 2013**”);
- (ii) Section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3(d) and 4(2)(s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices), 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”);
- (iii) Section 15C of the SEBI Act for the alleged violation of the provisions of Regulation 21 of the IA Regulations, 2013; and
- (iv) Section 15A(a) of the SEBI Act for the alleged violation of the provisions of Regulation 25(1) of the IA Regulations, 2013 by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice ref. SEBI/EAD-8/PM/PA/20430/1/2021 dated August 23, 2021 (hereinafter referred to as “**SCN**”) was served via SPAD to the Noticees in

terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under sections 15C, 15HA, 15EB and 15A(a) of the SEBI Act.

6. The allegations levelled against Noticees in the SCN are reproduced below:

- a. The Noticee 1 is registered with SEBI as an Investment Adviser (IA) bearing registration no. INA000010511. As on December 09, 2020, there were 17 complaints on the SEBI Complaints Redress System (hereinafter referred to as "SCORES") pending against the IA for more than 6 months. The details regarding the 17 pending complaints are stated as under:

S. No.	Complainant Name	Status	Date of Receipt	Date of Forwarding to DS Capital Venture	Last communication received from DS Capital Venture	Last Reminder Sent to IA
1	Rama Soujanya Marella	Pending	26/01/2020	29/01/2020	Not received	Not sent
2	Praveen Patil	Pending	16/12/2019	31/12/2019	Not received	06/02/2020
3	Deepak Kumar	Pending	09/12/2019	18/02/2020	Not received	27/08/2020
4	Atul Tamhane	Pending	30/11/2019	02/12/2019	Not received	06/02/2020
5	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020
6	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020
7	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020
8	Atul Tamhane	Pending	22/11/2019	31/12/2019	Not received	06/02/2020
9	Hrushikesh Sahoo	Pending	04/11/2019	18/11/2019	Not received	06/02/2020
10	Ankit Parsotambhai Busa	Pending	10/10/2019	21/11/2019	Not received	06/02/2020
11	Rakesh Vemula	Pending	24/09/2019	27/09/2019	Not received	30/06/2020
12	Nitika Kapoor	Pending	07/09/2019	24/02/2020	Not received	Not sent
13	Rohit Kumar	Pending	29/07/2019	03/08/2019	Not received	24/02/2020
14	A Bhavarlal	Pending	25/06/2019	28/06/2019	Not received	24/02/2020
15	Ajit Singh	Pending	21/06/2019	28/06/2019	17/09/2019	06/02/2020

S. No.	Complainant Name	Status	Date of Receipt	Date of Forwarding to DS Capital Venture	Last communication received from DS Capital Venture	Last Reminder Sent to IA
16	Maj Vivekanand Shukla	Pending	11/06/2019	12/06/2019	05/11/2019	06/02/2020
17	Ajit Singh	Pending	28/05/2019	08/07/2019	17/09/2019	06/02/2020

- b. From the SCORES action history, it was observed that all the complaints against the Noticee 1 indicated false assurances, assured returns, advisory services related grievances, loss of funds, cheating etc. The Noticee 1 had not redressed the complaints forwarded through SCORES despite reminders. In certain complaints, it was clearly stated that suitable regulatory actions may be initiated against the IA in the absence of receipt of reply.
- c. In view of the quantum of pending investor complaints against the IA, it was decided to conduct an inspection of the IA by SEBI. Inspection notice was sent by Speed Post A.D. to the following registered and correspondence addresses of the IA advising the IA to submit the information as per the inspection questionnaire –
- D.S. Capital Venture Private Limited, Shop no.28, Second Floor, Om Heera Panna Shopping Mall, Near Oshiwara Police Station, Andheri (W), Mumbai-400053 vide letter dated September 22, 2020.
 - D.S. Capital Venture Private Limited, Office No. 402 A, 402B, 4th floor, Prithviraj Silver Mall, Block A, Ravindranath Tagore Marg, South Tukoganj, Indore - 452001 vide letter dated November 23, 2020.
- d. However, the above mentioned two letters sent by speed post to the Noticee 1, were returned undelivered. Additionally, a copy of the letter dated September 22, 2020 alongwith the pre inspection questionnaire was also sent to the following email addresses i.e., spiyush3963@gmail.com and info.dscapitalventureltd@gmail.com on September 22, 2020. However, again no reply was received.
- e. As per the information available from the website of the Ministry of Corporate Affairs (hereinafter referred to as “MCA”), the registered address of the IA was Plot No. 3141 Rahmat Nagar Behind Gangotri Hotel, Jamuna Talkie Road, Chitralalaya Bhaiyapada, Boisar, Palghar, Thane-401501, Maharashtra, which is different from the registered address stated in paragraph 5 (i) above. However, despite the change in the address, the IA has not filed any application for change in the registered or correspondence address

with SEBI. A copy of the company master data extracted from the MCA website reflecting the changed registered address is enclosed herewith as Annexure 2.

- f. Since there was a change of address of the IA, an inspection notice dated November 12, 2020 was sent to the new address of the IA for compliance (i.e., the address reflected in the company master data on the MCA website enclosed as Annexure 2. However, the said letter was also returned undelivered.
- g. From the information available with SEBI, Piyush Sharma (Noticee 2), Sanjay Dwivedi (Noticee 5) and Deepali Sharma (Noticee 3) were the directors of the IA. However, it was observed that Abhishek Tiwari (Noticee 4) was also a director of the IA as per the information available on the MCA website. A copy of the company master data extracted from the MCA website reflecting the name of Abhishek Tiwari as a director is enclosed herewith as Annexure 2. From the records, it is observed that the IA has not filed any application for updation/ change of director with SEBI.
- h. SEBI has been informed by the Economic Offences Wing (EOW), Indore, that based on the receipt of complaint by them for fraud/cheating, they are conducting an inquiry against the IA.
- i. It is observed that there were two websites of Noticee 1 i.e., www.dscapitalventure.com and www.dscapital.com. However, as on date, both the websites are non-functional. It is also observed that certain bank accounts of the IA are active.
- j. In view of the aforesaid paragraphs 3 to 11, the following is observed against the Noticees:
 - i. The Noticee 1 along with the Noticees 2 to 5 (Noticees 2 to 5 being directors of the IA who were responsible for the conduct of the business of the IA) have failed to redress investor grievances forwarded to them on the SCORES platform. As on December 09, 2020, there were 17 complaints against the IA which were pending on the SCORES platform for more than 6 months. Some complaints were pending for more than 1 year. The complaints made against the IA allege false assurances, assured returns, advisory services related grievances, loss of funds, cheating etc., which are serious in nature.
 - ii. The Noticees have failed to produce the documents sought for the purpose of inspection and were not traceable at any of the available addresses.

iii. *The Noticees also failed to inform change of its registered office address to SEBI.*

iv. *The Noticees neither informed nor obtained approval for change of its directors from SEBI.*

v. *The directors of the IA, being senior management of the IA, have failed to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate/ registered intermediary.*

7. The status of service of SCN and hearing notice with respect of Noticees is tabulated as under:

Noticee	SCN	Hearing Notice
DS Capital Ventures Pvt. Ltd.	SCN sent vide SPAD returned undelivered. Subsequently, Newspaper publication of SCN along with hearing opportunity on July 01, 2022 given vide notice published in Times of India and Nav Bharat Times in Mumbai edition and Indore edition on June 23, 2022.	
Piyush Kumar Sharma	SCN sent vide SPAD returned undelivered. SCN Delivered vide email on August 26, 2021.	Vide email on May 27, 2022, hearing opportunity was given on June 06, 2022. The email was delivered. On the scheduled date, Noticee 2 availed the hearing and stated that he does not have any further submissions to make.
Deepali Sharma	SCN sent vide SPAD returned undelivered. SCN Delivered vide email on August 26, 2021.	Vide email on May 27, 2022 at dipali.sharma.28@gmail.com, hearing opportunity was given on June 06, 2022. The email was delivered, however, Noticee 3 did not avail this hearing. Vide email on June 22, 2022, another hearing opportunity was given on July 04, 2022, The email was delivered, however, Noticee 3 again did not avail this hearing.
Abhishek Tiwari	SCN sent vide SPAD returned undelivered. Subsequently, Newspaper publication of SCN along with hearing opportunity on July 01, 2022 given vide notice published in Times of India and Nav Bharat Times in Mumbai and Indore on June 23, 2022. Noticee 4 did not avail this hearing. In light of reply submitted by Noticee 4, hearing opportunity was granted to him on July 13, 2022 vide email on July 04, 2022. The said email was delivered at the same email ID from which the reply was received (i.e, jetair05@rediffmail.com). Noticee 4 did not avail this hearing. Another hearing opportunity was given on August 11, 2022 vide email on July 29, 2022. The said email was delivered. Noticee 4 did not avail this hearing.	

Noticee	SCN	Hearing Notice
Sanjay Sheshmani Dwivedi/ Sanjay Kumar Dwivedi	SCN sent vide SPAD returned undelivered. Delivered by email on August 26, 2021 at sanjay_dwivedi13@yahoo.in.	Vide email on May 27, 2022, hearing opportunity was given on June 06, 2022. The hearing notice was said to the email ID listed alongside as well as at the following email IDs: 1. sajan_amiete1@rediffmail.com 2. sajan_amiete1@yahoo.co.in; 3. sajan_amiete2@yahoo.co.in However, the hearing notice could not be delivered by email. Newspaper publication for hearing given on June 27, 2022 vide notice published in Times of India and Nav Bharat Times in Mumbai and Indore on June 23, 2022. Noticee 5 did not avail this hearing.

8. I note that adequate opportunities of personal hearing have been provided to all the Noticees. However, Noticee Nos.1,3 and 5 have not filed any reply against the charges levelled in the SCN. I am of the opinion that principles of natural justice have been complied with in the present case. As the said Noticees have chosen not to respond to the SCN, it would be appropriate to proceed in the matter, based on materials available on record.
9. In this regard, it is pertinent to mention that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, *inter-alia*, observed that, "*..... the appellants did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". It is also pertinent to mention that the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs. SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, observed that: "*..... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*".
10. The key submissions of the Noticee No.2 vide email dated September 10, 2021 are as under:

- a. I am well aware of the fact that some complaints have been registered on SCORES against DS Capital Venture Private Limited and the fact cannot be denied that those complaints still might be requiring redressal. The error that might have been redressed at the time of the intimation from SCORES only is still persisting due to the fraudulent deeds of Noticee nos. 4 and 5 specifically.
- b. It can also not be denied that SEBI had sent reminders to the concerned authorities of DS Capital Venture Pvt. Ltd., but as a matter of surprise the Compliance Department led by Mr. Abhishek Tiwari (Noticee No. 4) has not responded to the clients' complaints in a proper manner. And the negligence and ignorance resulted in the piling of complaints and increased the load over the company unnecessarily
- c. I was not aware about the various offices or their branches in various places as they were completely operated and managed by Mr. Sanjay Dwivedi and Mr. Abhishek Tiwari (notice Nos. 5 & 4) respectively. Except these frauds and scams inside this company, they (especially Sanjay Dwivedi) were also involved in agricultural land scams and bank loans frauds as per my knowledge through various sources.
- d. At present, as per my personal knowledge there is no activity on behalf of DS Capital Venture Pvt. Ltd. is in process or progress in any manner. As the office in Indore (of which I am aware) is locked and all the other noticees addressed by you are in absconding state. As far as my personal knowledge is concerned, there is not even a single employee or authority is there in Indore to look after any operation of the company. Noticee No. 5, Mr. Sanjay Dwivedi had been involved in many fraudulent activities along with his wife and his aid Abhishek Tiwari. Many cases have already been registered against them in various types of financial frauds in different parts of Indore. At present all the three (Mr. Sanjay Dwivedi, Abhishek Tiwari and Deepali Sharma) are absconding and are at the surveillance radar of local Police and E.O.W.
- e. Mr. Sanjay Dwivedi was the main master-mind who misused his capacities to commit various financial scams in the name of company and eloped after a huge scam of multi crores in different fields. He used the name of this company to fulfill his personal desires and even I am also the one among his various victims. He kept me in darkness regarding the functioning of the company and operated the company in his own way showing the accounts and other formalities in his own way. I trusted him in every stage as he was running the business as a wise and minded businessman but everything broke down when he eloped after doing various scams.
- f. I am extending my help within my full capacity to the local police and the E.O.W. so that the culprits can be caught by the earliest and the justice can be delivered to the victims of fraud committed by Mr. Sanjay Dwivedi and his aide. I personally think that these types of criminals should be grabbed soon and shall be treated as per the norms of law and Constitution. 8. I was only the shareholder of even less than 0.1% in the company and my powers and authorities were limited in the company. I was doing my basic duties with full honesty and sincerity but the full control, authorities and decision taking power rested with Sanjay Dwivedi only. It was very hard to know what and how he was operating his work along with Abhishek Tiwari and it became very easy for them to misuse their powers and authorities to take undue advantage from the company. They have not only played with many clients or farmers but also cheated me in many aspects. I have faced financial as well as professional loss just because of their ill intentions and ill actions. After knowing about the deeds of Noticee Nos. 4 & 5, I sent my resignation from the company and intimated to ROC last year in 2020 only.
- g. I am completely ready to help SEBI in every possible manner so that the clients of the company can get the justice without any delay and problems may be resolved at the

earliest. I am ready to give my statements and provide the necessary documents available with me so that SEBI can take appropriate action and do the needful.

11. The key submissions of the Noticee No.4 vide letter dated July 02, 2022 and email dated July 19, 2022 are as under:

- a. That I was director in the DS capital Venture P Ltd for a period from 8/10/2018 to 16/09/2019.*
- b. That I am not in any relationship with sanjay dwivedi*
- c. That I have paid Rs. 5 lacs extra on request of Piyush sharma Ji and Sanjay Dwivedi Ji. For the purpose client's settlement and salary of employees*
- d. That I was working as an additional director in DSCPL. My job was to complete the directors Quorum in Board meeting and sign Board resolution. I was told to be given (TA & DA allowance) by the company but not paid till now, I was not paid monthly salary by the company.*
- e. That I have no experience before joining DSCPL, I have done BA.LLB(Hons) course and currently I am director of money maker research and investment Pvt Ltd.*
- f. I have no current address of Sanjay Dwivedi*
- g. That IDFC bank and Axis bank were operated by Sanjay Dwivedi and SBI and ICICI bank were operated by Piyush sharma*
- h. That Two complaints out of 17 are with IDFC bank and Axis bank handles by Sanjay Dwivedi*
- i. That 15 complainants have paid money to SBI & ICICI bank managed by Piyush sharma.*
- j. it is further submitted in this regard that there are various terms and conditions elaborated in the said agreement and is mentioned that the company does not provides any guaranteed profit service, contents of para Market and Other Related Risk . "The client expressly agrees and acknowledges that all investments are subjected to market and other related risk and there is no assurance or guarantee, whether directly or indirectly, that the value of or return on investment will always be accretive.*
- k. It is submitted that the Investment adviser has taken all due care in handling customer grievances, despite taking grievance handling on top priority the IA stands with folded hands and submits to the records available if any, and prays for the mercy of the hon'ble Adjudicating officer, also to consider the fact that out of total complaints received on SCORES which are delay in replying has been caused only in a handful if any. IA-D.S. Capital and its directors failed to reply to the inspection notice pre-inspection questionnaire sent to it by speed post A.D. as well as by Email because all the papers & documents were seized by The Economic Offence Wing.*
- l. As you can see there has been a havoc between the Directors and the updating of registered address and even the Directors that the company has been under a very difficult phase, in the mean time. we regret our failure to meet with the standard norms and procedures but we plan to comply and co...operate in every way in the near future. We accept our honest mistakes and deny certain serious allegations as said in the Show Cause Notice.*
- m. That, it is further submitted that the clients are repeatedly reminded that the company Does not provide any guaranteed or assured return and the said profit is to be seen in terms of service delivery tenure, another example of the same is a scroll that runs on the top of the website of the company www.dscapital.com 24 x 7 which reads "Stock & commodity investments are subject to market risk, Please read the offer document and Before registering check all the terms and conditions on the website, D.S. Capital Venture Private Limited do not provide any profit sharing services, guaranteed services, DMAT facility , and the services which are not mention in the website.*

- n. *That, it is further submitted that the company never takes a client on board without following the procedure laid down in the act and all the mandatory compliance of KYC, RPM, Suitability report and invoices were issued to all clients in addition mandatory disclaimers and disclosures were made beforehand in all the cases, as such the company has complied with all the statutory requirements under SEBI (IA) regulations 2013 contemplated under chapter III of the said regulations, further, there was ambiguity in the regulations themselves as to which services are allowed and which are not, there is no guideline or procedure laid down by the Hon'ble Board to either get a prior approval of the service model neither is there a template provided to give services in line of such template, in such a case the respondents have served their clients in best possible way as per their understandings, it is pertinent to note that due to such ambiguity in the said regulations of 2013 SEBI has recently made certain amendments in these regulations to regulate Investment Advisory activities in a better way. As such the respondent cannot be made responsible for the acts or omission of the Board.*
- o. *Noticee denies all such allegations. Noticee had no control over sales team or bank accounts of D S capital venture p ltd. Bank accounts were operated by noticee no . 1, 2 and 3 i'e piyush sharma, deepali sharma and sanjay dwiedi. So all the allegation are baseless.*
- p. *Noticee has relied upon various judgements and orders of Hon'ble SAT and Hon'ble Supreme court.*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

- I. Whether the Noticees have violated the provisions of Regulations 13 (b), 21, 25 (1) of the IA Regulations, 2013 and Regulations 3(d) and 4(2)(s) of the PFUTP Regulations, 2003?
- II. Does the violation, if any, attract monetary penalty under sections 15A(a), 15C, 15EB and 15HA of the SEBI Act?
- III. If the answer to Issue No. 2 is in affirmative, then what should be the quantum of monetary penalty?

Issue I. Whether the Noticees have violated the provisions of Regulations 13 (b), 21, 25 (1) of the IA Regulations, 2013 and Regulations 3(d) and 4(2)(s) of the PFUTP Regulations, 2003?

13. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are provided hereunder:

Regulations 13(b), 21 and 25 (1) of the SEBI (Investment Advisers) Regulations, 2013

Conditions of certificate

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

(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;

Redressal of client grievances

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

(2) An investment adviser shall have adequate procedure for expeditious grievance redressal.

(3) Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.

(4) Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

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 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.

Regulation 3(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003:

No person shall directly or indirectly—

(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.

Regulation 4(2)(s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003:

Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following :—

(s) mis-selling of securities or services relating to securities market;

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

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

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

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

14. I have considered the allegations and charges levelled against the Noticees, submissions of the Noticees and the relevant material available on record. At the outset, I find that there are four major violations to be established for attracting the provisions stated in Issue I in the instant matter: (i) Non redressal of investor grievances; (ii) Allegations of cheating and assured return by IA; (iii) Failure to comply with IA Regulations, 2013; and (iv) Non furnishing of information.

15. In accordance with SEBI guidelines, an IA is required to redress the SCORES complaints of investors within 30 days.

16. I note that upon perusal of material available on record *i.e.*, SCORES complaints by complainants, there is evidence available to indicate that Company is involved in offering false assurances and assured returns.

17. It is noted that as on December 09, 2020, as per the data available on SCORES, there are 17 complaints pending against the Company for more than 6 months. The details regarding 17 pending complaints are stated as under:

Sr No	Complainant Name	Status	Date of Receipt	Date of Forwarding to DS Capital Venture	Last communication received from DS Capital Venture	Last Reminder Sent to IA
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15	Ajit Singh	Pending	21/06/2019	28/06/2019	17/09/2019	06/02/2020
16	Maj Vivekanand Shukla	Pending	11/06/2019	12/06/2019	05/11/2019	06/02/2020
17	Ajit Singh	Pending	28/05/2019	08/07/2019	17/09/2019	06/02/2020

18. In light of the above, I note that complaints have been pending more than 30 days, Further, in most of the complaints, it can be seen that last communication is not received from the Company.

19. I note from SCORES action history that all the complaints against the IA indicate false assurances, assured returns, advisory services related grievances, loss of funds, cheating etc. I note that despite reminders being given to the IA, the concerns of complainants submitted through SCORES have not yet been resolved.

20. Noticee 2 and Noticee 4 in their replies have contended that the operations and bank accounts of the IA were managed by Noticee 5 (Sanjay Dwivedi) and they hold miniscule percentage of shareholding in the Company. In this regard, I note that Noticee 2 & 4 have tried to deflect the blame to other directors of IA. By shifting the responsibility of operations, Noticee 2 and 4 cannot get away with their duties as directors. There are certain duties to be followed by the directors of a company, and Noticee 2 and 4 must be aware and informed of its duties as a director.

21. Here, I would like to refer to section 166 of Companies act, 2013, which reads as follows:

Section 166 of Companies act, 2013

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

22. The IA has conducted its business in an unwarrantable and unjustifiable manner. The conduct of the IA regarding mis-selling of securities or services relating to securities market, providing assured returns and making a false or misleading statement, and concealing or omitting material facts comes under the ambit of fraud and clearly attracts section 3(d) and 4(2)(s) of PFUTP Regulations, 2003.

23. Noticee 4 in his reply has submitted that IA would not take a client on board without following the procedure laid down in the act and without following all the mandatory compliances of KYC, RPM, suitability report and invoices. However, it has failed to produce before me any evidence to substantiate its claims. In this regard, I note that mere bald assertions without any documentary evidence is liable to be rejected.

24. Noticees were required to furnish information books, accounts and other documents for the purposes of inspection. Noticee 4 in his reply has contended that IA was unable to reply to the pre-inspection questionnaire sent to it by speed post as well as by email because all the papers & documents were seized by EOW. I note that Noticees did not reply to any of the letters issued for pre-inspection. At the inspection stage, Noticees were not traceable at any of the available addresses. Further, Noticees also have failed to inform change of registered office address of IA to SEBI. The IA was required to preserve all the books registers, other documents and record of, or relating to, the company/the intermediary and to produce the same as and when demanded/called. Noticees were required to communicate and cooperate with the investigating authorities and inform about the preservation and maintenance of documents and record at the inspection stage only. By not replying and not furnishing documents, IA and Noticees 2 to 5 as directors of IA have failed in their duty.

25. The Hon'ble SAT has also recognized the importance of compliance of summons in the matter of DKG Buildcon Pvt. Ltd. vs. SEBI (Appeal No. 106 of 2006, Date of Decision: January 07, 2009), wherein it held that: *"...It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market."*

26. Noticee 2 and 4 have also submitted that the allegations of fraud require a high level of proof and establishment of mens rea by providing assured returns. In this regard, Noticees have relied upon various judgments/orders of higher courts. I have perused the judgments/orders and I am of the view that the facts of the instant case are different and distinguishable from the facts of the cited judgments/orders and the same shall not be of any help to the Noticees. Thus, contention of the Noticees in this regard is not tenable.

27. It is thus established that Noticees have violated:

- a. Regulation 13(b) of IA Regulations.

- b. Regulation 21 of IA Regulations.
- c. Regulation 25(1) of IA Regulations.
- d. Regulation 3 (d) and 4(2)(s) of PFUTP Regulations, 2003.

Issue II. Does the violation, if any, attract monetary penalty under sections 15A(a), 15C, 15EB and 15HA of the SEBI Act?

28. After taking into account the facts and circumstances of the case, submissions of the Noticees and material available on the record, I am of the considered view that for the aforesaid violations it is a fit case for imposition of penalty as the conduct of IA and Noticee 2 to 5 is detrimental to the interest of investors and securities market.
29. I note that the Apex Court in the case of SEBI vs Shri Ram Mutual Fund (Appeal Civil 9523-9524 of 2003) dated May 23, 2006 has held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.”*
30. Further, vide order dated April 26, 2013 the Hon’ble Supreme Court of India in the matter of N Narayanan vs. SEBI (Appeal Nos. 4112-4113 of 2013) held as under:-
“SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country’s economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India’s securities market. Message should go that our country will not tolerate market abuse and that we are governed by the Rule of Law. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and market security is our motto.”
31. In view of the above, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of sections 15A(a), 15C, 15EB and 15HA of the SEBI Act, which reads as under:

Section 15A(a) of the SEBI Act

Penalty for failure to furnish information, return, etc.

“If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he 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;”.

Section 15C of the SEBI Act

Penalty for failure to redress investors’ grievances

“.... if any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such 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.”

Section 15EB of the SEBI Act

Penalty for default in case of investment adviser and research analyst

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

Section 15HA of the SEBI Act

Penalty for fraudulent and unfair trade practices

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

Issue III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

32. While determining the quantum of penalty under sections 15A(a), 15C, 15EB and 15HA of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5(2) of the Adjudication Rules, 1995 which reads as under: -

SEBI Act, 1992

15J While adjudging quantum of penalty under ¹¹⁰[15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

[Explanation.—For the removal of doubts, it is clarified that the power [...] to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

33. In the instant case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticees is not available. Further, there is no material to indicate that the said failure is repetitive. However, Noticees have failed to comply with the regulatory requirements applicable to the conduct of its business activities so as to promote the best interest of its clients and the integrity of the market. The violations as stated above are not technical and has to be viewed seriously.

34. Further, Hon'ble SAT in P.G Electroplast Ltd. vs. SEBI (Appeal No. 281 of 2017), dated August 02, 2019, has held that an order passed in corresponding proceedings before the whole time member should be factored in while fixing the quantum of penalty. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticees under the provisions of sections 11(1), 11(4) and 11B (1) of the

SEBI Act under the same facts pursuant to which the December 29, 2022 order was passed. *Vide* the December 29, 2022 order, the whole time member has *inter alia* passed the following directions with respect to the Noticees in the present matter:

- (a) *Noticees No. 1 to 5 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of five(5) years from the date of this order.*
- (b) *Noticees No.2 to 5 are hereby restrained from holding post of Director, any managerial position or associating themselves in any capacity with any listed public company and any public company which intends to raise money from the public, or any securities market intermediary registered with SEBI for a period of five (5) years*
- (c) *DS Capital is directed to resolve the complaints pending against it in the SCORES and otherwise, within the period of 30 days from the date of this order. DS Capital shall within a period of 3 months from the date of this order, furnish a report to SEBI, duly certified by a Chartered Accountant, certifying that all the complaints against Noticee No. 1 have been resolved. In case of failure of DS Capital to comply with the aforesaid directions, DS Capital shall be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of 3 years.*

ORDER

35. Taking into account all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, 1995 I hereby impose the following penalties on the Noticees:

Noticee No.	Noticee	Violation	Penal provisions	Penalty (in Rs.)
1.	D.S. Capital Venture Private Ltd.	Regulations 13 (b), 21, 25 (1) of the IA Regulations, 2013 and Regulations 3(d) and 4(2)(s) of the PFUTP Regulations, 2003.	Sections 15A(a), 15C, 15EB and 15HA of the SEBI Act.	20,00,000
2.	Piyush Kumar Sharma			15,00,000
3.	Deepali Sharma			15,00,000
4.	Abhishek Tiwari			15,00,000

Noticee No.	Noticee	Violation	Penal provisions	Penalty (in Rs.)
5.	Sanjay Sheshmani Dwivedi/ Sanjay Kumar Dwivedi			15,00,000

36. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR 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

37. The Noticees shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

38. In terms of rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai

Date: January 10, 2023

PRASANTA MAHAPATRA

ADJUDICATING OFFICER