

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 in respect of –

Sr. No.	Noticee	SEBI registration no.
1.	Profit Guru (Proprietor: Satish Shukla)	INA000003510

In the Enquiry Proceedings Against Profit Guru (Prop: Satish Shukla)

1. Background –

1.1. Profit Guru (Proprietor: Satish Shukla), is registered with SEBI as an Investment Adviser bearing registration no. INA000003510, with effect from September 18, 2015 (“**Profit Guru**”/ the “**Noticee**”).

1.2. The present matter, which is in respect of Profit Guru, emanates from complaints on SEBI’s SCORES Portal in respect of Profit Guru. Considering the same, the inspection of the books of account of Profit Guru was ordered to be held on December 09, 2019 for the period, April 01, 2018 –December 09, 2019 (“**Inspection Period**”).

1.3. In this regard, SEBI by way of letter no. WRO/PLO/JMD/Insp./31891/1/2019 dated December 02, 2019 intimated the Noticee that the inspection of its books

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of account and other records would commence from December 09, 2019 onwards. Subsequently, the Noticee vide a letter dated December 04, 2019 informed that one Arvinder Ajmani had been authorised to represent the Noticee before SEBI, with respect to the concerned inspection. However, on the appointed date, the inspection could not be carried out, as no authorised personnel of the Noticee were present.

1.4. Pursuant to an attempted inspection of the books of account of Profit Guru on December 09, 2019, an examination was carried out to verify the veracity of the information brought out in the complaints and ascertain whether there had been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (the “**SEBI Act**”), the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (the “**IA Regulations**”), SEBI Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (the “**PFUTP Regulations**”) and any circulars framed thereunder.

2. Enquiry Proceedings against Profit Guru

2.1. Consequent to the findings of SEBI pursuant to an examination of the complaints, Enquiry Proceedings were initiated against Profit Guru, a registered intermediary, in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations**”), by appointing a Designated Authority (“**DA**”) in the matter.

2.2. Pursuant to the said appointment, the DA issued a Show-cause Notice dated December 05, 2022 along with copies of the complaints received by SEBI, data retrieved from the computers available at the premises of the Noticee and other documents coming to a total of thirty (36) annexures (“**SCN**”). In this regard, the SCN *inter alia* alleged that Profit Guru had –

- a. failed to furnish information as sought for by SEBI and not cooperated with SEBI by being absent during inspection;
- b. promised assured/guaranteed unrealistic returns to its clients;
- c. sold multiple services and collected unreasonable payments from its clients;
- d. charged unfair and unreasonable fees for the same kind of services and offered customised packages;
- e. changed the risk profile forms (“**RPF**”) of its clients multiple times on an arbitrary basis;
- f. did not follow guidelines regarding risk profiling and suitability assessment of the clients;
- g. included leading questions in the RPF; and
- h. violated the conditions of the certificate of registration.

2.3. In view of the above, it was alleged in the SCN that Profit Guru had violated the provisions of the SEBI Act, the IA Regulations and the PFUTP Regulations, as detailed in the SCN.

2.4. Accordingly, the SCN called upon Profit Guru to show cause as to why suitable recommendation for action under Regulation 27 of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 should not be made against the Noticee.

2.5. It is noted that the SCN was duly served on the Noticee, and an opportunity of hearing was also provided. It is noted that the Noticee submitted its reply to

the SCN on January 19, 2023 and hearing was conducted on January 27, 2023.

2.6. Consequently, the DA enquired into the above-mentioned violations, and in his report dated March 24, 2023 (“**Enquiry Report**”), found that Profit Guru had contravened various provisions of the SEBI Act, the IA Regulations and the PFUTP Regulations .

2.7. In view of the same, the DA in terms of Regulation 27 of the Intermediaries Regulations recommended that the Certificate of Registration of Profit Guru be cancelled.

3. Post - enquiry SCN dated April 13, 2023, Personal Hearing and Reply –

3.1. After considering the Enquiry Report, Post-enquiry SCN dated April 13, 2023 bearing No. SEBI/HO/EFD1/DRA6/OW/P/ENQ/JF/2023/14753 under Regulation 27(1) of the Intermediaries Regulations was issued to Profit Guru (enclosing therewith a copy of the Enquiry Report), whereby Profit Guru was called upon to show cause as to why action as recommended by the DA or any other direction should not be passed against it in terms of Regulation 27 of the Intermediaries Regulations, as deemed fit (“**Post-enquiry SCN**”).

3.2. It is noted from the record that the Post-enquiry SCN was sent by SPAD to the addresses of the Noticee, as available with SEBI:

- a. 415, Shekhar Central, Near Palasia Petrol Pump, AB Road, Indore, Madhya Pradesh;
- b. 174, Satna Nagar, Lokhan Akhada Tak, Ward No. 41, Satna Gram, Tehsil Raghuraj Nagar, Satna, Madhya Pradesh;
- c. Shop No. 118, Maharaja Shivaji Rao School Parisar, Subhash Marg, Chimanbag Square, Indore, Madhya Pradesh; and

d. 106, Royal Platinam, Near Bombay Hospital, Indore, Madhya Pradesh.

3.3. The letters containing the Post-enquiry SCN sent to the above-mentioned addresses returned to SEBI undelivered with the comment, “Left”. Concurrently, the Post-enquiry SCN was also sent by email to the address: satishshu@gmail.com. The Post-enquiry SCN was delivered to this address.

3.4. Consequently, reply dated May 12, 2023 was received in response to the Post-enquiry SCN from the said email.

3.5. Further, pursuant to the service of the Post-enquiry SCN, a personal hearing was scheduled for October 10, 2023 in respect of the Noticee. In this regard, a Hearing Notice dated September 11, 2023 was issued to the Noticee by e-mail at the afore-mentioned address for intimating the details of the said personal hearing. At the personal hearing, the Noticee made submissions in line with those made by him in his replies filed in response to the Post-enquiry SCN as well as the SCN.

3.6. To summarise, the Noticee has filed reply dated May 12, 2023 in response to the Post-enquiry SCN. In addition, oral submissions were made by the Noticee at the personal hearing on October 10, 2023 in response to the findings in the Enquiry Report. I also note that the Noticee had submitted a reply dated January 19, 2023 before the DA. Accordingly, a brief of the submissions made by the Noticee through his written replies as well as oral submissions appears in the following paragraphs.

3.7. In response to finding in the Enquiry Report and the allegations in the SCN, it has been submitted by the Noticee that –

- a. it had provided complete services to all the clients for which it had charged the fees;

- b. while the Noticee's firm was operational, all the clients' grievances had been resolved to their satisfaction;
- c. it had maintained all the relevant client documents to the best of its knowledge viz., RPF, KYC documents, invoices, email correspondences, etc. and the same were shared with SEBI as and when sought for;
- d. it had already faced a very strict punishment by being unable to generate any income through any job/business for the past 2 and a 1/2 years, and that too in tough pandemic times, since the passing of the Interim Order, by way of which it was directed to cease and desist from acting as an investment adviser and all his bank accounts were frozen.

3.8. With regard to the specific findings in the Enquiry Report and the allegations in the SCN, the Noticee has submitted as under:

Non-compliance of SEBI directions with respect to Inspection

- a. Satish Shukla had received a call on October 15, 2019 from the telephone number of SEBI's Indore Local Office (0731-2557003), and was informed that an inspection was proposed to be done against the Noticee.
- b. Thereafter on October 22, 2019 a call from an unknown number was received who stated that he was a well-wisher of Satish Shukla and if he desired to stop the inspection and save the licence then he could help him out.
- c. The said person claimed to be the director of a few advisory firms and a close connection of SEBI Indore Office.
- d. The said person had each and every detail of Profit Guru and SEBI's proceedings, so Satish Shukla decided to meet him once. The next day i.e., October 23, 2019, Satish Shukla met the said persons viz., 'Tiwari Ji' and Rahul at Vijaynagar, wherein it was informed by them that SEBI would close the operation of Profit Guru and if he wanted to stop the inspection

then he should pay Rs. 14,00,000. Satish Shukla did not pay the said amount.

- e. On the evening of November 15, 2019, few persons had visited the Noticee's office and handed over a copy of the letter of inspection, which did not bear any seal/stamp of SEBI. Subsequently, on November 19, 2019, the Noticee received the inspection notice through registered post from SEBI's Panaji Local Office. It was the same notice for which Satish Shukla had earlier received calls.
- f. Satish Shukla realised that the said persons were indeed closely connected with SEBI and thought that they would be able to help him out, and he agreed to pay them a certain amount, once the 'complete solution' was provided. Further, the said person had called Satish Shukla frequently and had informed that he was not required to reply to SEBI in any manner, and that the inspection would get cancelled and the Noticee need not appear in person on the inspection date as the said person would look into the entire matter.
- g. Subsequently, Satish Shukla received a call from SEBI Office to come and meet the officer and since the Noticee was not in town, he had asked his lawyer to visit on his behalf. SEBI asked for an authority letter. The next day since the lawyer was not available so the Noticee asked his consultant Mr. Abhishek (Independent Professional) to go on his behalf and issued to him an authority letter through email. The authority letter nowhere mentioned that Mr. Abhishek would look into the inspection. At the SEBI office, the consultant Mr. Abhishek was handed over the same inspection letter which the Noticee had received on November 19, 2019.
- h. Further by way of a letter dated December 04, 2019, prior to the inspection, the Noticee authorised Mr. Arvinder to visit the SEBI office on his behalf and understand the procedure for extending the inspection date. Instead of helping out, the SEBI Office forced Mr. Arvinder to alter the authority letter and write that he would look into the inspection of Profit Guru and the

alteration was made to the letter of authority without the knowledge of the Noticee.

- i. Satish Shukla had never authorised either Mr. Abhishek or Mr. Arvinder for the inspection related matter. Both of them were authorised to visit the SEBI office on his behalf for a particular day as he was not available.
- j. Inspection was conducted on December 09, 2019 and thereafter Satish Shukla received a call from Tiwari ji and Rahul, who asked to meet him urgently. It was stated by them, "your order is in process and it will be passed in next 1-2 month, and if you want to get away from heavy penalties and regulatory actions, then you are required to pay Rs. 8,00,000 immediately."
- k. Satish Shukla had fallen in the said trap and believed it to be true because of two major reasons: Firstly, Satish Shukla had received the calls from the number of SEBI Indore Local Office; secondly, the said persons had each and every detail of the activities of SEBI.
- l. The said persons got arrested thereafter and few newspapers had also exposed them. Satish Shukla had fallen victim to a fraud carried out by SEBI Indore Office representatives.
- m. The Noticee had assisted SEBI officials in getting all the data from the computer systems. SEBI could not have accessed the data if the Noticee's employee had not assisted SEBI's officials. Further, SEBI officials were allowed access to the office space of the Noticee. Nowhere SEBI officials were denied access and hence, the claim that Noticee had not cooperated in the inspection was not tenable.

Noticee Promised Assured / Guaranteed Unrealistic Returns to its clients

- n. SEBI had just picked a single line and had ignored the full content of the service description as appearing on the website of the Noticee.
- o. The email from Mr. Kuldeep Raj (one of the clients), wherein the word “Expected Return” had been used should be distinguished from guaranteed return.
- p. The words used, namely, “yadi”, “agar”, “kamate hai” by one of the employees of the Noticee with Lokesh (one of the clients) was just to illustrate a hypothetical example that if the client made an investment he could earn profits. Similarly, the conversation between one of the employees of the Noticee and Mr. T.G. Srinivasan (one of the clients) was just to illustrate how an investment would work and not to guarantee profits.
- q. Also, a certain group of persons was running their business by using the Noticee's name.

Selling Multiple Services and collecting unreasonable payments

- r. In the invoices sent to Pinal Mistry (one of the clients) due to some software error, the invoices did not contain any period of service. In all invoices sent to all the clients, the period of service was clearly mentioned.
- s. It was alleged in the SCN that the Noticee had sold ‘PG Special Package’ to the client, a service which was not mentioned anywhere on the website. Email dated August 31, 2018 would show that that ‘HNI Special Package’ had been sold to the client and not any PG Special Package.
- t. The services offered to Anand Patel used to start one working day after the payment date, and in cases of renewal, the service started from the end date of the previous tenure. So, the duration of half yearly as mentioned in the Invoice satisfied the requirement of the start date and end date as the

client knew that he had paid the fees for a half-yearly service, so his service would end on the expiry of 6 months.

- u. Since clients had chosen to make payments in parts, different invoices were issued for each payment, even though the payment was for the same service. The stipulation by SEBI for not accepting payment in parts came into effect only from January 01, 2020.
- v. Khush Ranjan (one of the clients) had taken the services for just 2 weeks, and after being satisfied he renewed the Cash Tips service for a duration of 1 year and additionally took the service, Cash HNI tips.
- w. The client, Jai Prakash Singh, incurred losses as trading in the securities market was always subject to market risks. Also, the client was charged fees of Rs. 64,000 against the services which were subscribed by him for a period of 2 months. This had been misconstrued in the SCN and stated that the Noticee had taken fees of Rs. 64,000 in just 3 days, when the reality was that the client had paid Rs. 64,000 for 2 different services for a period of 2 months.
- x. The allegation of Ashok Senegar that the Noticee handled his Demat account was false as no evidence had been provided by him. The said client had paid an amount of Rs. 2,29,326 by subscribing to the various services of the Noticee. Also, the Noticee, being the tip provider had taken into consideration the client's interest of providing him service in a particular segment and had done the risk profiling on a later date. Also, there was difference between each and every service provided by the Noticee, such as: risk reward ratio, segment, scrips, etc.
- y. The claim of Jithender Bangaru that the Noticee had promised to give a profit of Rs. 1,32,700 was false as no evidence was provided. It had been misconstrued in the SCN and stated that the Noticee had taken fees of Rs.4,93,680 within a period of around 110 days for various services, rather the client on his own willingness had subscribed for 4 different services for a duration of around 13 months.

- z. Further, SEBI had come up with the Circular restricting advance payment for not more than 2 quarters, only on September 23, 2020.
- aa. The claim of Girdharilal that he was assured profit of Rs. 30 lakh was false as no evidence had been provided by him. Also, the client had filed the complaint on February 13, 2020 stating that the Noticee was not providing any services to him, as SEBI by way of its Interim Order dated February 06, 2020 had directed the Noticee to cease and desist from acting as an investment adviser.
- bb. Ushar Kanti Dutta had paid Rs.2,98,300 for 4 different services. As regards two separate invoices for Cash Premium services, the Noticee had made 2 payments for the same service which were captured in 2 different invoices mentioning the same duration.
- cc. Mohammed Ashif had paid Rs. 56,700 for 4 different services which were subsequently renewed by him. The details of each and every service was provided to the client via email. Mihir Dharod's complaint for incurring losses was not acceptable as investments in the securities market were subject to market risks.
- dd. Ram Charan Vijay (one of the clients) had subscribed for 2 months' service by paying Rs. 44,000. Further, on December 26, 2019 the Option Premium service was not sold twice, instead the client had made the payment in parts so the same service period was mentioned accordingly in two separate invoices.
- ee. With respect to Chothe Ganesh Popat, the duration of service mentioned was one week, one month, etc. so it was understood that the service would start from the next working day of the payment and the clients were aware of the same.
- ff. The claim of Kamal Solanki that he was assured guaranteed returns was false as no evidence had been provided by him. Also, the client had filed a complaint stating that the Noticee was not providing any services to him,

as SEBI by way of its Interim Order dated February 06, 2020 had directed the Noticee to cease and desist from acting as an investment adviser.

Charging Unfair and Unreasonable fees for the same kind of services and offering of customized packages

gg. Furthermore, for certain clients, the Noticee had devised customised packages as per the client requirement. The details of the customised package were not displayed on the website due to a very simple reason that it was a customised package and it didn't have any static details, as it was customised based upon client interest and requirements. Also, it was not necessary to disclose the details of customised packages on the website. The clients were made aware regarding the package over the calls and emails.

Changing RPF of Clients multiple times on an arbitrary basis

- hh. The risk category in the tables referred to product risk categorisation and not the client's risk categorisation.
- ii. Multiple risk profiling was never done for any client and also risk categorisation was never changed for any client deliberately.

Not following the Guidelines regarding Risk Profiling and Suitability Assessment of Clients

- jj. Clients usually did not fill their correct income details or did not feel safe to disclose their correct income due to personal/taxation reasons. Since clients were able to pay high fees, validated that client's annual income and their proposed investment amount was much higher than mentioned.

- kk. The clients had paid fees with their own will and consent and were neither forced nor deceived in any manner whatsoever. No exorbitant fees were charged from the clients, and since they were capable of paying high fees, they paid such high fees.

Leading Questions in RPF

- ll. Risk profiling of the clients was carried out through a questionnaire, which was approved by SEBI at the time of granting of registration in 2015. No objection was raised regarding the questions mentioned in the questionnaire at that point.
- mm. It had complied with all relevant provisions with respect to risk profiling. It was emphasised that high returns came with high risk. Also, the word “High Risk” was self-explanatory.
- nn. In the risk profiling form, 14 scoring questions had been incorporated, out of which 10 questions had been assigned the maximum weight of 200. The maximum weight had not been assigned to those 3 questions only and was assigned to 10 different questions too.
- oo. The SEBI regulations did not provide any specified format or scoring method for the risk profiling.

Violation of Conditions of Certificate

- pp. The Noticee was not operating from different offices, and was operating out of a single main office on 4th floor of Shekhar Central, Indore. Further, during inspection, another office which was found by the inspection team at the 6th Floor of the same building was taken on rent recently, and the Noticee was in the process of shifting its office from the 4th floor to the 6th floor. Since the shifting had not been completed, the Noticee had not

informed SEBI of the change in office address as the same was in progress.

4. Consideration of Issues and Findings –

4.1. Before I proceed with the consideration of the substantive allegations made in the Post-enquiry SCN/Enquiry Report, it shall be relevant to, at first, address certain contentions raised by the Noticee with respect to his claim that person/s connected to SEBI's Indore office had got in touch with him and had offered their assistance in the disposal of the present proceedings. It is restated that the above contention is to assail the basis of the action of SEBI by alleging *mala fides*.

4.2. From the reply submitted by the Noticee, the following chronology appears:

Table – 1

<i>Sl. No.</i>	<i>Date</i>	<i>Event</i>
1.	October 15, 2019	Call purportedly from SEBI Indore's Local Office informing the Noticee of the proposed Inspection of the books of Profit Guru.
2.	October 22, 2019	Call purportedly from an unknown number, wherein the caller claimed that he was a director of few advisory firms and a close connection of SEBI Indore Office, and that if the Noticee desired to stop the Inspection and save the license then he could help him out.
3.	October 23, 2019	The Noticee met the persons from whom he had purportedly received calls, namely, Tiwari Ji and Rahul at Vijaynagar, wherein it was informed by them that SEBI would close the operation of Profit Guru, and if the Noticee desired to stop the

		Inspection then he should pay Rs. 14,00,000. The Noticee did not pay the said amount on the said date.
4.	No date provided	Subsequently, the Noticee agreed to pay them a certain amount, once the “complete solution” was provided. Further, the said persons had purportedly called the Noticee multiple times and had informed that the Noticee was not required to reply to SEBI in any manner, and that the inspection would get cancelled. Also, the Noticee need not appear in person on the Inspection date as the said person/s would look into the entire matter.

4.3. In this regard, I note from the record that SEBI’s Investment Management Department/Division of Funds-7, by way of an Office Note dated July 29, 2019, proposed the inspection of certain intermediaries including Investment Advisers for the activities carried out by them during the financial year 2018-19. Subsequent to this, SEBI’s Indore local office by way of an office note dated October 23, 2019, provided a list of five (5) Investment Advisers in respect of which maximum number of complaints were pending on SEBI’s SCORES Portal. I note from the said office note that of the five (5) entities named therein, in respect of three (3) entities action had already been initiated. As regards, the remaining two (2) entities – which included Profit Guru – inspection was proposed. In furtherance of the same, by way of an Order dated November 13, 2019, the Competent Authority appointed the then DGM posted at SEBI’s Local Office in Goa as the Inspecting Authority. Consequently, a Notice of Inspection dated November 15, 2019 was issued to the Noticee informing it of the proposed Inspection. By way of the said letter, the Noticee was also called upon to provide documents/information detailed therein by November 29, 2019. The Inspecting Authority having not received the necessary documents /information sent a reminder email to the Noticee on November 29, 2019. Thereafter, on December 02, 2019, the Inspecting Authority sent a second

reminder email to the Noticee, giving time to the Noticee to send the necessary documents /information to SEBI by 2.00 p.m. Also, by a separate email dated December 02, 2019, the Inspecting Authority informed the Noticee that the inspection was going to commence on December 09, 2019.

4.4. From the facts brought out above, I note that after the appointment of the Inspecting Authority based out of SEBI's Goa office, the matter had moved for all substantial purposes from SEBI's Indore Office, and the same had been in the knowledge of the Noticee, as he had been informed of the same by way of letter dated November 15, 2019. The Noticee was sent reminder emails to provide the necessary documents/information and the Inspection was not cancelled. The Inspection went through as scheduled on December 09, 2019, and subsequently thereof an Interim Order in respect of Profit Guru was passed on February 06, 2020.

4.5. Further, Satish Shukla has named Rahul as one of the two who purportedly got in touch with him and calls were received by him purportedly from the SEBI Office at Indore. In this context, I note that one Rahul Kokre (Rao), was for a brief period employed on contract at SEBI's office in Indore as an office boy and was part of the housekeeping staff. I note from the records that Rahul Kokre had joined SEBI – Indore Office on contractual basis on June 09, 2016, through contractual staffing companies, and continued to work there till October 31, 2019. I also note from the record that Rahul Kokre had provided an NOC issued by the Thana Banganga, Indore, certifying that he did not have any criminal record.

4.6. In view of the above facts, the following conclusions emerge:

- a. When Satish Shukla was offered assistance in influencing the proceedings he should have brought it to the attention of SEBI immediately, as it was an illegal act. It was immaterial whether the persons proposing the same were

connected to SEBI or not. However, Satish Shukla decided not to inform SEBI of the same at the material time.

- b. The facts brought out above demonstrate that the events were moving in a completely divergent direction than what had been promised to Satish Shukla by the aforesaid persons, so this should have corrected Satish Shukla's notion that the aforesaid persons were 'connected' to SEBI or had specific knowledge of the action contemplated by SEBI in respect of Profit Guru.
- c. Instead of bringing the above to the notice of SEBI, Satish Shukla entered into an illegal arrangement with the aforesaid persons to influence a proceeding of a government authority. Not only that, he acted in furtherance of such illegal agreement and did not provide necessary information and documents as sought for by the Inspecting Authority.
- d. Having entered into an illegal arrangement with certain persons to influence a proceeding of a government authority, which to the Noticee's chagrin did not achieve the desired result; the Noticee is now playing a victim and claiming that he was defrauded by 'SEBI connected people'. This is a clear example of an attempt at taking advantage of one's own wrongs by diverting from the issues at hand.

4.7. Accordingly, I find that the Noticee's contentions to show *mala fides* on the part of SEBI are ill-conceived and are an afterthought. He has failed in demonstrating any *mala fides* on the part of SEBI. Therefore, I find that the action of SEBI in initiating the present proceedings against the Noticee is a *bona fide* action grounded in reasonable and fair bases.

4.8. Having addressed the above question, I shall now proceed with the consideration of the allegations/findings made in the Post-enquiry SCN/Enquiry Report.

Allegation 1 – Non-compliance of SEBI directions with respect to inspection

4.9. The Enquiry Report has found that Profit Guru did not cooperate with the inspection and the proprietor, Satish Shukla was not present during the inspection.

4.10. In this regard, it has been submitted by Profit Guru that one of its employees, present at the address of the Noticee, had assisted SEBI during the proposed inspection from getting data from the computer systems and also to gain access to its office space.

4.11. I note that no specific reason has been provided by Satish Shukla in the reply for his absence from office on the scheduled date of inspection i.e., December 09, 2019. In this regard, I find that Profit Guru was using a software named “CRM” for its daily operations. During the proposed inspection of December 09, 2019 certain data was gathered from the systems of Profit Guru. Upon examination of such data, it was found that while there was no one available at Profit Guru’s premises except a security guard and a solitary person looking after the IT infrastructure, automated stock tips were being generated through CRM. A message in this regard reads as under:

“ Cash Call: Sell OIL INDIA below 159.10, TGT 157.1-153.1, SL-162.10

SENT Date and Time: 09-12-2019, 12:09:54 ”

4.12. So, there was no reason for the entire staff including the proprietor, Satish Shukla to be absent as operations were still being carried out. The natural conclusion is that Satish Shukla was not present to ensure the failure of the scheduled inspection; information for which had been shared with Profit Guru/Satish Shukla in advance.

4.13. The defence of Profit Guru that a staff member present provided access to the office space and assisted SEBI officials in retrieving data showed that there was necessary cooperation is fallacious. It is emphasised that an inspection of

a registered intermediary is preceded by the submission of necessary information/documents by the registered intermediary, which sets the contours of the physical inspection that follows. I note from the record that by way of a letter dated November 15, 2019 Profit Guru was informed of the proposed inspection and was advised to provide the necessary information/documents as contained in Annexure – 1 to the said letter. It has already been brought out in paragraphs 4.3 and 4.4 that even after repeated reminders no information/documents were received from the Noticee. Furthermore, Regulation 25 (1) and (2), elaborated in the subsequent paragraphs, cast an obligation on the investment adviser and its directors, principal etc. to provide all necessary assistance during inspection and present relevant books and records as may be sought for by the inspection team. Evidently, the cooperation provided was merely perfunctory.

4.14. It is a matter of record that on February 06, 2020 the Interim Order was passed in respect of Profit Guru/ Satish Shukla. Subsequent to the passing of the Interim Order, SEBI vide letter dated August 7, 2020, advised Profit Guru to submit information *inter alia* w.r.t. bank account statements of the proprietor, year-wise fees collected since date of registration, client master data, copy of audited financial statements for the past three years, sample copy of agreement entered into with the clients, etc. However, the letter returned undelivered. Subsequently, several attempts were made to deliver the letter to various other addresses; however, the same could not be delivered. The status of delivery of letters is as under:

Table – 2

Sl. No.	SEBI letter Dated	Address	Remarks
1.	August 7, 2020	174, Satna Nagar, Lokhan Akhada Tak, Wam No. 41, Satna, Gram. Tehsil Raguraj Nagar, District; Satna, Madhya Pradesh - 485001. (As per Aadhar card)	Returned undelivered with the remark ' <i>Address insufficient</i> '
2.	August 25, 2020	415, Shekhar Central, Near Palasia Petrol Pump, A.B. Road, Indore - 452001 (Registered address as per SEBI records)	Returned undelivered with the remark ' <i>Insufficient Address</i> '.
3.	September 11, 2020	GI, Swadesh Bhawan, 2 Press Complex Road, Indore 452001. (as per UCC details)	Returned undelivered with the remark ' <i>Addressee left without instruction</i> '.
4.	September 11, 2020	Old 125, New 593, Malviya Nagar, Behind Amarvilas Hotel, Indore, Madhya Pradesh - 452001. (as per UCC details)	Returned undelivered with the remark ' <i>Insufficient Address</i> '.
5.	September 11, 2020	House No. 106, Royal Platinum, Neas Bombay Hospital, Indore - 452010. (as per UCC details)	Returned undelivered with the remark ' <i>Addressee left without instruction</i> '.

4.15. A copy of the letter dated August 7, 2020 was also forwarded vide email to 'satishshukla4@yahoo.com' on September 11, 2020, which had been gathered from the UCC details obtained from BSE Ltd. However, no reply had been received from Profit Guru till the issuance of the SCN.

4.16. As an additional defence, it has been submitted by Profit Guru that pursuant to a call from SEBI's Office Satish Shukla authorised Mr. Abhishek (Independent Professional) to visit the SEBI office as he was out of town. At the SEBI Office he was handed over the same inspection letter which Profit

Guru had received on November 19, 2019. Further, prior to inspection, Profit Guru authorised Mr. Arvinder to visit the SEBI office to understand the procedure for extending the inspection date. It has been contended by Profit Guru that at SEBI's office Mr. Arvinder was forced to alter the authority letter and write that he would look into the inspection of Profit Guru, and the said alteration was made to the letter of authority without the knowledge of Profit Guru/Satish Shukla. It has been contended by Profit Guru/Satish Shukla that he had never authorised either Mr. Abhishek or Mr. Arvinder for the inspection related matter. Both of them had been authorised to visit the SEBI office on behalf of Profit Guru/Satish Shukla for a particular day since he was not in town on the said days.

4.17. It is relevant to look at the authority letter issued to Mr. Arvinder Ajmani. The said letter of authority reads as follows:

“ To Whomsoever it may concern

I Satish Shukla Proprietor of Profit Guru Investment advisor SEBI Reg. No. INA000003510 Do and on behalf of Profit Guru hereby authorize Mr. Arvinder Ajmani to represent before SEBI, Indore Local office do all such act and deed as may be required with respect to scheduled inspection of Profit Guru.”

4.18. The above authorisation was provided on the letter head of Profit Guru and the part after the word required has been written by hand with the initials of Mr. Arvinder Ajmani. Satish Shukla in his submission has stated that he had received a call from SEBI and pursuant to that he sent Mr. Arvinder Ajmani who received a copy of the letter dated November 15, 2019 already issued to Profit Guru. Thus, it is clear that the intent of the call from SEBI's office was with regard to the scheduled inspection. Similarly, with respect to Mr. Abhishek, Satish Shukla in his submission has stated that he had authorised Mr. Abhishek to visit the SEBI's Indore office and explore the procedure for extending the date of inspection. So, evidently the presence of either Mr. Abhishek or Mr. Arvinder at SEBI's local office weren't social calls and were in

respect of the proposed inspection of Profit Guru. In view of the same, the contention of the Satish Shukla that he had never authorised either Mr. Abhishek or Mr. Arvinder for the 'inspection related matter' is misleading, untrue and exhibits a flawed understanding of the facts.

4.19. In this regard, the DA in the Enquiry Report has found that the Noticee had contravened Regulations 13(a), 15 (12), 25(1), 25(2) read with 24(3) and 28(e) of the IA Regulations and Clause 8 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations. Regulation 13 (a) mandates a registered Investment Adviser to abide by the provisions of the SEBI Act and the IA Regulations. Regulation 24 (3) requires an investment adviser against whom inspection was being carried out shall be bound to discharge its obligations as provided in regulation 25. Regulation 25 (2) enjoins an investment adviser to provide all relevant information in its possession with respect to the conduct of the affairs of the business to the inspecting authority as may be required by him. Also, an Investment Adviser is required to provide all assistance as may be required by the inspecting authority. Similarly, obligation is cast on the Investment Adviser including its partners, directors, principal officer and persons associated with investment advice by way of Regulation 25(1) with respect to the production of books of account and other documents in its custody or control to the inspecting authority, if required by the inspecting authority. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. Similarly, Regulation 28 (e) provides that an Investment Adviser who does not co-operate in any enquiry, inspection or investigation of SEBI shall be dealt with in the manner provided under the Intermediaries Regulations.

4.20. Thus, it is not a contested fact that Satish Shukla, the proprietor of Profit Guru was absent during the inspection even after prior intimation. Not only that, except for a few employees viz., security guard and IT person looking after the computer systems, no other person involved in giving investment

advice was present on the day of inspection. Lastly, the Noticee did not provide the information sought for through the questionnaire prior to the date of the proposed inspection. Accordingly, I am in agreement with the finding of the DA that the Noticee had failed to submit information to SEBI and had failed in extending the cooperation as required during inspection thereby failing to comply with regulatory requirements. Further, I am also in agreement with the finding of the DA that Profit Guru had also failed to file any reply to the Interim Order dated February 09, 2020 during the relevant time. In view thereof, it is quite clear that Profit Guru has contravened Regulation 13(a), 25(1), 25(2) read with 24(3) and 28 (e) of the IA Regulations, and Clause 8 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

Allegation 2 – The Noticee promised assured/guaranteed and unrealistic returns to its clients

4.21. The DA in the Enquiry Report has found that Profit Guru was promising assured/guaranteed returns to its clients on the investments made. As part of his findings the DA in the Enquiry Report has also brought out that the Noticee was inducing clients to join its services by promising huge unrealistic returns.

4.22. In this regard, it would be relevant to provide hereunder the service description as appearing on the website of Profit Guru:

“ Profit Guru Investment advisor provides you with accurate tips related to the stock and share market with great accuracy percentile. Our expert teams work dedicatedly in order to make intense researches and then give you calls to stock or cash traders in NSE ensuring your profit. There are a lot of points that need to be covered when you talk about trading in the stock market.

You are definitely going to make profits if you make investments on the basis of stock cash tips given by our team who solely work for researching the news and stocks. You can subscribe our services at the reasonable package and then get up to intraday basis calls every day, weekly and monthly reports, chat sessions and dedicated customer service support for becoming a successful trader and make big profits with small investments on regular basis.

Stock tips are a way through which the intraday traders can earn. Purely intraday traders can work upon such tips. The technical team works upon stocks to evaluate the buying or selling decision in order to ensure the execution of the trade. We provide stock cash tips to our traders which successfully achieve their targets. The day's high and low of a particular stock gives a difference of value which is an opportunity for a trader."

4.23. It has been submitted by Profit Guru that the specific line, underlined above, had been taken out of context and a conclusion reached. Upon perusal, I observe that the said line is emphatic in its assertion that the client would make profits, if investments were made on the basis of tips provided by Profit Guru. The above service description has been perused in whole and I do not find anything that would counter the understanding that there was a clear assertion making a case for definitely earning profits, if investments were made on the basis of tips provided by Profit Guru. Accordingly, I do not find merit in the submission of Profit Guru that the said line had been taken out of context.

4.24. Also, the Enquiry Report has placed reliance on emails received by clients, namely, Kuldeep Raj and Sudhir G wherein Profit Guru had promised "expected returns". In this respect, it has been submitted by Profit Guru that expected returns should be distinguished from guaranteed returns. In light of the above submissions, I find it instructive to capture the relevant extracts of the email dated October 11, 2019 received by Kuldeep Raj. The payment details, as provided in the said email, are as under:

“ Service and payment details: -

<i>Service details</i>	
<i>Service Name</i>	<i>Customised Equity Cash Pack</i>
<i>Service amount</i>	<i>Rs. 2,36,000/-</i>
<i>Expected Return</i>	<i>7.5 to 8 lakh</i>
<i>Required Amount for Activation</i>	<i>Rs 59,000/-</i>

If your return of investment will not come in given tenure than your service duration will be extend without any disturbances.”

Similarly, the details of profit, as provided in the email dated December 17, 2020 are as under:

“Expected Profit: INR 12,00,000 /-

(minimum 1 lac investment required at all time) ”

4.25. It is observed from the email received by Kuldeep Raj that any client opting for this plan would be entitled to an “ Expected Return” of Rs. 7.5 to 8 lakh. It has additionally been mentioned that *“if your return of investment will not come in given tenure than your service duration will be extend without any disturbances.”* (sic) So, from the above, it can be gauged that, as per Profit Guru, in case the return as committed was not realised then the service would go on till such time the client realises the return as promised. It is not in doubt that “expected return” and “guaranteed returns” are different, what is of relevance is the content and not its form. Thus, in the present context, it is quite

clear that Profit Guru was guaranteeing returns of specified amounts terming them as expected return/profit.

4.26. I also observe from the material on record that call recordings have been provided by the clients, with their complaints, in respect of the services/products offered by the Noticee. Accordingly, it is relevant to reproduce hereunder the transcripts of the conversations. Mr. Subhash Chand, one of the complainants, has submitted audio call recordings between the employee of Profit Guru and himself (in Hindi) , wherein the following is observed:

Call recording at 1:15- Profit Guru: *Toh kyon na aap apne paise ka utilise kare proper intraday mein agar 20000 ka investment hain, aap din ka hazaar, do hazaar rupaye bhi kamate hain toh sir mahine ka hota hain around 20,000 to 30,000, agar apan yearly bhi baat karte hain to aaram se jaata hain sir do lakh ke above.*

Call recording at 2:32 - Profit Guru: *Yadi aap din ka 1% Kamate ho, Saal me hote hai 365 din, Agar hum Baat kare 200 din ki bhi, agar 200% return apne liya to kya koi jyada investment hai aapka, apne jo 20000 lagaya hai, wo paisa Market se Kamane ke liye lagaya hai, naa ki bas lagaane ke liye*

Similarly, T G Srinivasan, one of the clients , has submitted audio call recordings between the employee of Profit Guru and himself (in Hindi), wherein the following is observed:

Call recording at 4:29 - Profit Guru: *mein aapko mail par likh kar dene ko taiyaar hu, 4 mahine mein itna aapko profit, itna return aapko nikalkar de dunga mein, plus aapko apni jeb se kuch bhi na , aapko apni jeb se kuch bhi nahi dena hai, sir, hum yaha se khud amount jo bhi rahega aapki limit mein hum khud yaha se transfer mein aapko, hum aapko amount transfer kar denge, aap apne demat mein daliye, theek hai, phir jo bhi rahega daily*

basis par mein khud aapko kam karaunga or aap within 4 month ka aap time dijiye mujhe mein aapko proper sir aapko mail par bhi de dunga, aap 4 month ka time dijiye mujhe, mein aapko proper sab karwa dunga jitna aapko losses hua hai plus jo bhi loss vagera, jo aapne company ko pay kiya hai, wo pura ka pura aapko nikalkar de diya jayega, theek hain, ek baar aap bharosa kijiye sir aur 4 mahine ka time dijiye

Client: *nahi nahi bharosha karke hi aapko paisa diya hai*

Profit Guru: *toh phir wahi to mein aapse keh raha hu sir ek baar bharosha kijiye, aapko, ek baat bataiye sir, aapko toh kuch paisa nahi dena hai, mein aapko ye to nahi bol raha hu ki aap demat mein phir se paisa daliye, maine aapse toh nahi kaha ki aap daliye, mein khud bol raha hu ki, theek hai sir, hum daal denge aapke demat mein paisa hum daal denge, teek hain, aap daily basis par kaam karwaunga mein aapko, profit dhire dhire nikalta hain, aap chaho to sir har 10 din 15 din mein pay out dalte rehna, jaise maan lo 40 hazaar 50 hazaar ka profit hua hain aapko lag raha hain to aap 10 din 15 din mein pay out nikalte rehna, theek hai,*

Client: *aap mail kar dijiye mereko*

Profit Guru: *bilkul bilkul mein mail kar dunga, shriniivasan ji, mein aapko mail kar dunga, but aap mujhe ab bataiye ke apna 70 thousand ka aap bol rahe na losses hua hai?*

4.27. With regard to the above conversations, it has been claimed by Profit Guru that through the said conversations the employees were providing illustrations to the clients. Also, it has been submitted that a group of persons was using the name of Profit Guru to run its business. I note from the above conversations that even though specific terms of services/plans were not discussed, it is evident that service of the Noticee, which was to provide investment advice, was clearly geared towards promising assured returns and windfall gains. The conversation nowhere even hints at the fact that investment in the markets

came with the risk or possibility of losses also. Even in this respect, I do not find any merit in the submission of Profit Guru. Also, the claim that a group of persons was using the name of Profit Guru to run its business, even if true was of little consequence in the present consideration as Profit Guru has not disputed the conversations between the employees of Profit Guru and the above-named clients.

4.28. Additionally, many clients of the Noticee have, in their complaints to SEBI, stated that the Noticee was guaranteeing profits, and on heeding such investment advice, they had suffered losses. The Noticee in its reply has termed such complaints to be false on the ground that evidence has been adduced by them in respect to their claims. However, considering the number of complaints wherein such allegations of guaranteed profits has been provided, I find that the same is surely of persuasive value.

4.29. Thus, from a perusal of the material available on record, call recordings and the replies of Profit Guru, I conclude that Profit Guru was promising assured returns to its clients. In this regard, I note that it is a fundamental fact that investments in securities markets are subject to risks and hence the returns are unpredictable. Therefore, any form of assurance of assured returns or guaranteed profits to the clients is false and misleads the investors.

4.30. In this regard, reference is made to Section 12A (a), (b) and (c) of the SEBI Act and Regulation 3(a),(b),(c),(d) of the PFUTP Regulations. It is stated that the promise of assured returns and profits is inherently misleading as it runs contrary to the fundamental precept of the securities market i.e., investments are subject to market risks. Such misleading promises might have induced the clients to invest in the schemes and packages floated by the Noticee. Therefore, the guarantee of assured profits, in any manner or form or description, is fraudulent as it misleads and deceives the clients. Accordingly, I concur with the finding of the DA in the Enquiry Report that Profit Guru had violated the provisions of Section 12A(a),(b),(c) of the SEBI Act and

Regulations 3(a),(b),(c),(d) of the PFUTP Regulations. I also am in agreement with the finding of the DA in the Enquiry Report that Profit Guru had violated Regulation 4(1), 4 (2) (k) and 4 (2) (s) by disseminating information on its website offering services/products with the claims that it would give the clients definite profits.

4.31. Furthermore, it has also been brought out in the Enquiry Report that by promising assured returns, the Noticee had violated Regulation 15 (1) of the IA Regulations, which obligates an Investment Adviser to act in a fiduciary capacity with respect to its clients.

4.32. In this regard, reference is made to the judgment of the Hon'ble Supreme Court of India in the case of *Dale and Carrington Inv. (P) Ltd. and Ors. V. P.K. Prathapan and Ors.*, (2005) 1 SCC 212. The SC in the matter, while deciding that the Directors of a company had to act in a fiduciary capacity towards the company, elucidated on the specific duties that are enjoined on a director, owing to their fiduciary capacity vis-à-vis a company. The SC has held that “*The fiduciary capacity enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company.*” In the context of Investment Advisers and its clients, the same principles as elaborated upon by the Supreme Court in the above mentioned case shall also apply. In this regard, I also refer to the case of *Securities And Exchange Commission V. Capital Gains Research Bureau, Inc., Et al.*, 375 U.S. 180 (1963) decided by the US Supreme Court with respect to the fiduciary standard of an investment adviser in respect of the Investment Advisers Act of 1940, which regulates investment advisers in the United States much like the SEBI Act and IA Regulations in India. The court while considering the question of fiduciary duty owed by an investment adviser in respect of the Investment Advisers Act has stated that the said Act “*reflects the delicate fiduciary nature of an investment advisory relationship, as well as a*

congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously – to render advice which was not disinterested.” Further, it was held by the US Supreme Court that it has been “imposed on a fiduciary (Investment Adviser) an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients.”

4.33. So, upon a consideration of the principles enunciated by the Hon’ble Supreme Court of India as well as the US Supreme Court, I find that the fiduciary capacity within which an investment adviser works enjoins upon it a duty to act on behalf of its clients with utmost good faith, care and skill and due diligence, and in the interest of the clients it represents.

4.34. In such circumstance, it shall suffice to say that an Investment Advsier has to act in the best interests of its clients. The promise of assured returns acts to mislead the clients and fraudulently induces him to subscribe to the various packages/services offered by the Investment Adviser, which eventually leads to pecuniary loss to the clients as has been seen from the many complaints received. This evidently would not be in the best interests of the clients. Thus, I concur with the finding of the DA in the Enquiry Report that the Noticee had acted in contradiction of the fiduciary duties cast on an Investment Adviser, and has, as such, violated Regulation 15 (1) of the IA Regulations.

4.35. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. Accordingly, from the facts brought out above, I am one with the findings of the DA in the Enquiry Report that the Investment Adviser had failed to adhere to any of the above-mentioned stipulations in the Code of Conduct.

Allegation 3: Engaged in Selling Multiple Services and collecting unreasonable payments from its clients

4.36. It has been brought out in the Enquiry Report that Profit Guru had improperly offered products/services to its clients and collected unreasonable payments. The instances of improper selling of services/ products and collection of unreasonable payments have been considered by the DA in the Enquiry Report under the following heads: a) offering same services/products with overlapping durations to clients and charging unreasonable fees; b) invoices not clearly providing the duration of the services; c) non-issue of invoices for payments made; and d) no service to clients/non-payment of refund to the clients.

4.37. The Enquiry Report records many complaints received from clients wherein it had been stated that Profit Guru had offered same services/products with overlapping durations and collected fees from clients. In this regard, it would be relevant to place hereunder the details regarding payments, as conveyed by some of the clients, for the service offered by the Noticee. In this regard, the complaints received from clients are summarised hereunder:

Table – 3

Complainant	SCORES registration no.	Allegation
Mr. Anand Patel	SEBIE/MP19/0000979/1	Noticee had sold services to clients even before the tenure of the earlier package could end.
Ashok Senegar	SEBIE/MP20/0000624/1	Noticee had sold services to clients even before the tenure of the earlier package could end.
Khush Ranjan	SEBIE/MP19/0001824/1	Client had paid Rs. 3,500/- on February 07, 2019 for 'Cash Tips' services till February 22,

		2019. Before the expiry of this service, the same service was again sold on February 15, 2019 and Rs. 1,05,000/- taken for the same service, for providing services from February 16, 2022 to March 16, 2020.
Jithender Bhangaru	SEBIE/MP20/00001293/1	Noticee was selling the same advisory products/services to the client before completion of the tenure of the previous service. Complainant was charged multiple times for one single service even before the expiry of duration of that service.
Mr. Girdharilal	SEBIE/MP20/0000726/1	Noticee had sold services to clients even before the tenure of the earlier package could end.
Ushar Kanti Dutta	SEBIE/MP20/0000174/1	It was observed that on April 17, 2018, the Noticee had raised two invoices i.e. invoice no. INV4076 and INV4067 for selling Cash Premium service to the complainant amounting to Rs. 10,000/- and Rs. 40,000/- respectively. The period of service was also the same i.e. April 17, 2018 to May 17, 2018.
Ram Charan Vijay	SEBIE/MP19/0003189/1	It was observed that Option Premium service was sold twice for the period starting from December 27, 2019 to January 16, 2020 and January 17, 2020 to February 22, 2020.

4.38. The details of payments as received from one of the clients, Khush Ranjan are provided hereunder:

Table – 4

Invoice No.	Payment Date	Service	Duration of the service	Amount (Rs.)
8807	07-02-2019	Cash Tips	08 02-2019 to 22-02-2019	3,500
8900	15-02-2019		16-02-2019 to 16-03-2020	1,05,000
9188	02-03-2019	Cash HNI	02-03-2019 to 23-05-2019	1,35,000
Total				2,43,500

4.39. Similarly, the details of payments as received from Ashok Senegar are provided hereunder:

Table – 5

Invoice No.	Payment Date	Service	Duration of Service	Amount (Rs.)
9494	22-03-2019	Cash Tips	04-04-2019 to 07-05-2019	8,726
9665	02-04-2019	Cash Premium Tips	04-04-2019 to 12-04-2019	5,000
9662	02-04-2019	Cash Premium Tips	04-04-2019 to 08-06-2019	45,000
9694	05-04-2019	Option HNI Tips	06-04-2019 to 18-04-2019	20,000
9918	16-04-2019	Option Tips	27 04-2019 to 01-07-2019	23,600
9982	25-04-2019	Cash HNI Tips	02-05-2019 to 06-05-2019	6,000
9981	30-04-2019	Option HNI Tips	02-05-2019 to 02-06-2019	51,000
10489	09 05-2019	Cash HNI Tips	17-06-2019 to 26-06-2019	15,000
10490	30-05-2019	Cash HNI Tips	01-06-2019 to 16-06-2019	25,000
10519	31-05-2019	Option HNI Tips	03-06-2019 to 21-06-2019	30,000
Total				2,29,326

4.40. Further, the details of payments as received from Jithender Bhanagru are provided hereunder:

Table – 6

Invoice No.	Payment Date	Service	Duration	Amount (Rs.)
11478	09-08-2019	Cash Tips	13-08-2019 to 02-09-2019	7,122
11659	27-08-2019	Cash premium Tips	30-08-2019 to 27-10-2019	40,077
11975	24-09-2019	Cash premium Tips	29-10-2019 to 26-12-2019	40,000
12007	25-09-2019	Cash Tips	26-09-2019 to 25-12-2019	33,000
12000	25-09-2019	Cash HNI Tips	26-09-2019 to 13-10-2019	28,000
12102	28-09-2019	Cash premium Tips	04-02-2020 to 20-02-2020	11,000
12084	28-09-2019	Cash premium tips	06-01-2020 to 03-02-2020	19,000
12085	28-09-2019	Cash premium Tips	27-12-2019 to 05-01-2020	6,000
12129	30-09-2019	Cash premium Tips	16-03-2020 to 19-03-2020	2,000
12130	30-09-2019	Cash premium Tips	06-03-2020 to 14-03-2020	5,452
12115	30-09-2019	Cash premium Tips	26-02-2020 to 05-03-2020	5,000

12116	30-09-2019	Cash Tips	premium	21-02-2020 to 25-02-2020	2,500
12321	11-10-2019	Cash Tips	premium	20-03-2020 to 13-07-2020	80,000
12998	23-11-2019	Cash Tips	premium	04-09-2020 to 01 11-2020	39,998
12019	23-11-2019	Cash Tips		27-03-2020 to 11-07-2020	38,508
13000	23-11-2019	Cash Tips		26-12-2019 to 26-03-2020	33,015
13001	23-11-2019	Cash Tips	premium	14-07-2020 to 03-09-2020	35,007
13128	29-11-2019	MCX Tips	Premium	02-12-2019 to 23-01- 2020	68,001
Total					4,93,680

4.41. With respect to Khush Ranjan, I note from Table – 4 that he paid Rs. 3,500 on February 07, 2019 for buying the service Cash Tips for the period, February 08, 2019 to February 22, 2019. Again he paid Rs. 1,05,000 on February 15, 2019 for buying the service Cash Tips for the period, February 16, 2019 to March 16, 2019. So, there is a clear overlap of the durations of the services. Similarly, as regards Ashok Senegar, I note from Table – 5 that he paid Rs. 5,000 on April 02, 2019 for buying the service, Cash Premium Tips for the period, April 04, 2019 to April 12, 2019. Again he paid Rs. 45,000 on April 02, 2019 for buying the same service Cash Tips for the period, April 04, 2019 to June 08, 2019. So, there is a clear overlap of the durations of the services.

4.42. With regard to the above, it has been submitted by Profit Guru that the subscription of multiple services was as per the wishes of the clients. Also, with respect to the overlapping of durations of the same services, it has been submitted that the payment made for the service was split into two invoices.

4.43. I am ready to acknowledge that providing multiple services to clients is *per se* not problematic. However, there is still no justifiable explanation as to why an invoice is required to be split. Also, specifically in respect of Khush Ranjan, I note that he bought the service, Cash Tips for the period, February 08, 2019 to February 22, 2019 on February 07, 2019 and thereafter again on February 15, 2019 he bought the service Cash Tips for the period, February 16, 2019 to March 16, 2019. In this regard, Profit Guru has submitted that at first the client tried the service and after being satisfied it opted for it one more time. If the argument of the Profit Guru is considered then the client should have bought the second service only on February 22, 2019, when the tenure of the first service was ending instead he bought it almost a week before i.e., on February 15, 2019 and for a period that which was already covered through the first service. So, I am unwilling accept this argument of Profit Guru.

4.44. Also, the DA in the Enquiry Report has noted that the details of the invoices did not adequately specify the duration of the service and the purpose for making the payments. The Enquiry Report records a complaint from Pinal Mistry (one of the clients), wherein the invoices with respect to him for various products did not provide a specified period of service. A summary of the complaints received on this issue is provided hereunder:

Table – 7

Complainant	SCORES registration no.	Allegation
Mr. Pinal Mistry	SEBIE/MP19/0000 223/1	The period of service had not been clearly mentioned in all the invoices and therefore, the client had no means to know the start and end date of the service.
Mr. Anand Patel	SEBIE/MP19/0000 979/1	Noticee had mentioned only the period of duration on the invoice i.e. one month / half yearly etc. and therefore the

Chote Ganesh Popat	SEBIE/MP20/0000 318/1	client had no means to know the actual start date of service and end date of service.
G. Sudheer	SEBIE/MP20/0002 009/1	

4.45. Information in respect of invoices which did not capture the details adequately are provided hereunder:

Table – 8

Invoice date	Product	Client risk category as per RPF	Period of Service as per Invoice	Invoice Amount (Rs.)
27-06-2018	Cash Tips Intraday	High Risk	30-11-0001 to 30-11-0001	6,627.50
03-07-2018	Future HNI Tips	High Risk	30-11-0001 to 30-11-0001	60,250.00
05-07-2018	Option HNI Tips	High Risk	30-11-0001 to 30-11-0001	1,60,654.20
17-07-2018	Future HNI Tips	High Risk	30-11-0001 to 30-11-0001	1,50,625.00
18-07-2018	Option HNI Tips	High Risk	30-11-0001 to 30-11-0001	50,007.50
29-07-2018	Future HNI Tips	High Risk	30-11-0001 to 30-11-0001	27,474.00
31-08-2018	Option HNI Tips	High Risk	30-11-0001 to 30-11-0001	60,839.00

4.46. In this regard, it has been submitted by the Noticee that due to some software error, the invoices did not contain the period of service. A similar issue was raised by another client, Chote Ganesh Popat. From the documents provided by him in his complaint, it is noted that the duration in respect of many of the

services bought by him were mentioned as one week/one month/four months etc. In this regard, the Noticee has stated that the client was aware that the duration would start from the day payment was effected. Incomplete details in the invoices results in the clients not being aware of the products sold and their duration.

4.47. Further, it has also been brought out in the Enquiry Report that the Noticee had not issued invoices for payments made by the customers. In this regard, a summary of the complaints with respect to the above issue received from clients is provided hereunder:

Table – 9

Complainant	SCORES registration no.	Allegation
Mr. Girdharilal	SEBIE/MP20/0000 726/1	Noticee had not issued many invoices to clients for the payments received by him. Thus, client was not aware of the services provided to him for these payments.
Ushar Kanti Dutta	SEBIE/MP20/0000 174/1	Noticee did not issue invoices to the client for the payments received by him on May 02, 2018 for an amount of Rs. 1,50,400/-, April 24, 2018 for an amount of Rs. 9,900/- and April 17, 2018 for an amount of Rs. 20,000/-.
Mohammed Ashif	SEBIE/MP20/0000 845/1	Noticee did not issue invoices to the complainant for the payments received by him on January 10, 2020, January 16, 2020, January 21, 2020 and January 22, 2020. Thus, complainant is not aware of the services provided to him for these payments.
G. Sudheer	SEBIE/MP20/0002 009/1	The complainant alleged that he had paid Rs. 12,23,833/- to the Noticee, but he had received invoice for only Rs. 11,55,775/- from the Noticee.

4.48. In respect of Mohmmmed Ashif (one of the clients), I note from records that for payments made by him on January 10, 2020, January 16, 2020, January 21, 2020 and January 22, 2020 no invoices were issued to the client. No specific explanation has been provided by the Noticee in this regard. From the perusal of the details brought out above, it is evident that the same was a clear violation of the existing norms of duty cast on an Investment Adviser to act in the best interests of the client.

4.49. Lastly, it has been brought out in the Enquiry Report that there were instances when service was not provided even though payment had been made and non-payment of refund to the clients. In this regard, a summary of the complaints with respect to the above issue received from clients is provided hereunder:

Table – 10

Complainant	SCORES registration no.	Allegation
Kamal Solanki	SEBIE/MP20/0000 187/1	He had paid Rs.1,24,000/- to the Noticee. However, the Noticee didn't provide him any advice neither refunded any money.
Chote Ganesh Popat	SEBIE/MP20/0000 318/1	The complainant alleged that as per statement provided by Mr. Satish Shukla, company had to refund Rs. 1,40,000/- by January 2020 in equated instalment. But company failed to refund Rs. 60,000/-.

- 4.50. In respect of the above issue, it has been submitted by the Noticee that since SEBI had passed an interim Order on February 06, 2020 and had directed the Noticee to cease and desist from acting as an investment advisor, so the Noticee couldn't provide any further services to him.
- 4.51. From the material available on record, it is noted that the services for which the client (Kamal Solanki) had made the payment were valid till 22-01-2020, which was prior to the Interim Order, which only came in February of 2020. Therefore, the Noticee should have provided the services to the client, and evidently, the Interim Order was not a bar for providing such service.
- 4.52. In this regard, reference is made to Section 12 A (a), (b), (c), of the SEBI Act and Regulation 3 (a), (b), (c), (d) and 4 (2) (o) of the PFUTP Regulations. As already brought out, the above provisions prohibit deceptive and misleading practices in the securities market. In this regard, I am one with the DA that the Noticee by charging its clients fees for the same service multiple times has violated the above provisions.
- 4.53. It has also been brought out in the Enquiry Report that the Noticee had failed to abide by clauses 1,2 and 6 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of the IA Regulations.
- 4.54. In the present matter, it is evident that the Investment Adviser has charged the client fees for the same service and duration multiple times, thereby not taking due care, as a person acting in a fiduciary capacity is duty bound to do. Also, the Investment Adviser by acting in a manner to maximize its fees and income at the detriment of the client has not acted in the best interests of the client, and has put its own interest of earning more fees at the fore.
- 4.55. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary

diligence, skill and care. Clause 6 of the Code of Conduct for IA, investment advisers shall ensure that fees charged to the clients are fair and reasonable.

4.56. I find from the facts brought out above that the Noticee has failed to adhere to any of the above-mentioned stipulation in the Code of Conduct. I, therefore, concur with the view of the DA in the Enquiry Report that the Noticee had also violated clauses 1,2 and 6 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

Allegation 4: Charging Unfair and Unreasonable fees for same kind of services and offering of customized packages

4.57. It has been brought out in the Enquiry Report that Profit Guru had arbitrarily fixed distinct fees for services/products which were similar. In this regard, the features of the three services namely, Cash Basic, Cash Premium and Cash HNI, as gathered from the material on record, are reproduced hereunder:

Table – 11

Details	Cash Basic	Cash Premium	Cash HNI
Salient Feature	• limited but Quality 3-4 calls on a daily basis. • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Nifty and Bank Nifty overview provided before market. • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • We provide you call through SMS	• Limited but Quality 2-3 calls on a daily basis. • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Nifty and Bank Nifty overview provided before market. • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • Assistance by call as well as messages	• 1-2 Intraday Advisory daily via SMS and phone calls. • We provide you NSE, BSE & Equity Research call • Proper follow ups of calls with Timely Entry and Exit with Stop loss. • Stock to watch provided in Early Morning. • Pre Market Calls • Timely World Market updates. • Free Daily & Weekly Reports. • 24/7 customer support • We provide you call through SMS.
Monthly fees	Rs. 11,000/-	Rs. 21,000/-	Rs. 50,000/-
Quarterly fees	Rs. 29,000/-	Rs. 55,000/-	Rs. 130,000/-
Half-yearly fees	Rs. 50,000/-	Rs. 95,000/-	Rs. 230,000/-

4.58. In this regard, it has been submitted by Profit Guru that there was a clear difference amongst the three services on the following parameters namely, risk reward ratio, scrips in which advice was offered and volume size.

4.59. From the table above, I note that Profit Guru offered three kind of intra-day services which were essentially giving 2-4 intraday calls to clients with 24/7

customer support, daily/weekly reports, etc. Despite having similar offerings in the 3 services, the fees charged for them are very much different. Example - The monthly fees for Cash Basic was Rs. 11,000; for Cash Premium was RS. 21,000; and for Cash HNI it was Rs. 50,000.

4.60. As per clause 6 of the Code of Conduct for IAs, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Charging of reasonable fees includes not only the quantum of fees to be charged for a particular service but also the mode or manner in which the fees are levied on the clients.

4.61. Thus, I find that Profit Guru has deliberately devised multiple services/packages (which are essentially offering the same service) to earn huge amount of service fee from its clients. The above mentioned *modus operandi* is to fraudulently induce clients with an objective of providing enhancing service that is not there.

4.62. It has also been brought out in the Enquiry Report that the Noticee was providing customised packages which had not been disclosed on its website. In this respect, it has been submitted by the Noticee that the customised packages were not provided on the website because they were specific packages curated to the needs of the client.

4.63. In this regard, a summary of the complaints received as regards customised packages is tabulated hereunder:

Table – 12

Complainant	SCORES registration no.	Details of the service
Ushar Kanti Dutta	SEBIE/MP20/0000174/1	A service named 'Customized Package' was offered to him. The fees charged for this service was Rs. 4,68,000/-
Jithender Bangaru	SEBIE/MP20/00001293/1	It was observed that customized Package (Equity & Derivatives) was offered to him. As per the content of the email for selling such package, Rs. 4,25,678/- had been received from complainant and Rs. 68,000/- were yet to be received from him and only after payment of balance amount, his service was supposed to start
Girdharilal	SEBIE/MP20/0000726/1	The client was offered a customized package (Equity option and commodity pack). As per the content of the email, Mr. Girdharilal had paid Rs. 1,82,900/- to the Noticee for a service of 4 months.
G. Sudheer	SEBIE/MP20/0002009/1	A customized package (Equity and commodity pack) was sold to him. As per the content of the email, Mr. G. Sudheer had to pay Rs. 48,800/- to the Noticee for a service of 6 months duration

4.64. I note from the complaint filed by Jithender Bangaru by way of email dated November 29, 2019 that he had been offered a Customized Package (Equity & Derivatives). From the said email, it is seen that for the said package the client had paid Rs. 4,25,678 with Rs. 68,000 was yet to be paid, and only after the payment of the balance amount, his service was supposed to start. I further note from the RPF that Mr. Jithender Bangaru was categorised as a 'Medium Risk' client. In this regard, I make reference to "Procedure for Suitability

Assessment for client” as captured from the website of Profit Guru. As per the said suitability categorisation clients with ‘High’ risk tolerance were to be provided Group B services and clients with ‘Medium’ risk tolerance were to be provided with Group A services. Group A included Stock cash and Positional Stocks whereas Group B included Futures and options and commodities. It is clear that derivatives would be in Group B and as such would not be suitable for a client categorised as ‘Medium’ risk tolerance. Also, I note from the record that Ushar Dutta, another client of the Noticee, had been offered a customised package by way of email dated May 10, 2018. Similarly, I also note from the record that Girdhari Lal, another client of the Noticee, had also been offered a customised package (Equity option and Commodity pack) by way of email dated November 16, 2019.

4.65. From the facts stated above, I find that customised packages were created by bundling together different services, amongst which few would be suitable and the others unsuitable for the client. This effectively camouflaged the true risk profile of the services being provided to the clients. Accordingly, the customised package acted to pull the wool over the client’s eyes, making him think that he was being offered a product that was specifically curated to his specifications and needs, but instead through this device he was being sold a product that did not meet his needs.

4.66. Accordingly, the acts of Profit Guru, as brought out above, is fraudulent in nature. In view of this, I concur with the DA that Profit Guru had violated Regulation 3 (a), (b), (c) and (d), and 4(2) (o) read with Section 12A(a), (b) and (c) of SEBI Act, 1992.

4.67. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Clause 6 requires an Investment Adviser to charge fair and reasonable fees for its services. I find from the facts brought out above

that Profit Guru has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, am in agreement with the DA that the Noticee had also violated clauses 1, 2 and 6 of the Code of Conduct for IAs as specified under Third Schedule read with Regulation 15(9) of the IA Regulations.

Allegation 5: Changing RPF of Clients multiple times on an arbitrary basis

4.68. In respect of the above-mentioned allegation in the SCN, the DA in the Enquiry Report has found that the said allegation was not made out.

4.69. With respect to the changing of the risk category of the client, it has been submitted by the Noticee that –

- a. the risk categorisation mentioned in the SCN was regards ‘product risk categorisation’ and not ‘client risk categorisation’;
- b. Profit Guru had never done multiple risk profiling of clients and had never deliberately changed any client’s risk categorisation; and
- c. In few cases, Profit Guru prioritised client request for opting for high-risk services over their risk profile.

4.70. From a perusal of the material on record, it appears that the risk categorisation does not relate to the clients but the products being offered to them. In such a circumstance, I concur with the finding of the DA in the Enquiry Report that the allegation that the Noticee had changed the risk categorisation of the clients multiple times arbitrarily was not borne out from the facts.

Allegation 6: Not following the Guidelines regarding Risk Profiling and Suitability Assessment of Clients

4.71. The Enquiry Report has recorded that Profit Guru did not carry out proper risk profiling and failed to abide by principles of suitability. In this regard, the Enquiry Report has also recorded the instances of improper risk profiling and failure to abide by the suitability principles when the Noticee had: a) not followed the guidelines regarding risk profiling and suitability assessment of clients and b) provided leading questions in the RPFs. I shall deal with each of these specific allegations independently.

4.72. With respect to the allegation that the Noticee did not follow appropriate risk profiling processes and suitability assessment, it has been submitted by the Noticee that –

- a. clients did not fill correct income details or were reluctant to disclose their correct income due to personal/tax reasons;
- b. clients were, therefore, able to pay high fees which validated that they had higher annual income, and accordingly their proposed investment amount was higher than that mentioned; and
- c. the clients had paid fees with their own will and consent and were not forced nor were deceived in any manner.

4.73. In this regard, a summary of the complaints which show that the Noticee did not follow the guidelines regarding risk profiling and suitability assessment of clients is provided hereunder:

Table – 13

Complainant	SCORES registration no.	Allegation
Sunil Kothari	SEBIP/MP19/0000366/1	From the RPF of Mr. Sunil Kothari, it was observed that his gross annual income is Rs. 5 Lakhs to Rs. 10 Lakhs and his proposed investment amount is Rs. 2 Lakhs to Rs. 5 Lakhs. However, the Noticee took an amount of Rs. 16.73 lakhs from the client, which was in total disregard to the financial condition of the client. Also, the suitability assessment of the client was not signed by the Noticee. Even name of the client, service offered was not mentioned in the suitability assessment
Pyare Lal	SEBIE/MP18/0001976/1	As per the RPF, it was observed that the client's gross annual income was between Rs. 1 lakh to Rs. 5 lakhs, proposed investment amount between Rs. 1 lakh to Rs. 2 lakhs, and the current market portfolio was Rs. 1 lakh to Rs. 2 lakhs. However, the Noticee collected Rs. 8,46,355/- from him within 50 days.
Pinal Mistry	SEBIE/MP19/0000223/1	From the email dated August 13, 2018 from Pinal Mistry, the Noticee had sold him a service, the cost to which was RS. 6,90,000, while his proposed investment was only RS. 1 lakh to 1.2 lakh.
T.G. Srinivasan	SEBIE/MP19/0001504/1	As per the RPF of the complainant, it was observed that his gross annual income was between Rs. 1 lakh to Rs. 5 lakhs, and proposed investment amount was between Rs. 1 lakh to Rs. 2 lakhs. However, the Noticee collected Rs. 3,65,100/- from him within 45 days.
Jithender Bhangaru	SEBIE/MP20/00001293/1	As per the complainant's RPF, it was observed that his gross annual income was between Rs. 1 lakh to Rs. 5 lakhs, proposed investment amount was between Rs. 1

		lakh to Rs. 2 lakhs and the current market portfolio was between Rs. 1 lakh to Rs. 2 lakhs. However, the Noticee collected Rs. 4,93,680/- from him within a period of around 110 days.
Ashok Senegar	SEBIE/MP20/0000624/1	From the complainant's RPF, it was observed that gross annual income of Mr. Senegar is Rs. 5 Lakhs to Rs. 10 Lakhs, proposed investment amount was between Rs. 2 Lakhs to Rs. 5 Lakhs. However, the Noticee took an amount of Rs. 2,29,326/- from the client, as service fees.

4.74. In this regard, the fees received by Profit Guru from the clients are tabulated hereunder:

Table - 14

Sl. No.	Client Name	Annual Income (Rs.)	Proposed Investment	Fees
1.	Sunil Kothari	5 to 10 lakh	2 to 5 lakh	16,73,000
2.	T.G. Srinivas	1 to 5 lakh	1 to 2 lakh	3,65,100
3.	Pyare Lal	1 to 5 lakh	1 to 2 lakh	8,46, 355
4.	Jitendra Bangaru	1 to 5 lakh	1 to 2 lakh	4,93,680
5.	Ashok Senegar	5 to 10 lakh	2 to 5 lakh	2,29,326

4.75. From the information provided in the above two tables, I gather that the fees collected by Profit Guru from the said clients, on most occasions, was more

than their annual incomes. It has been submitted by the clients that they had taken loans to pay the fees.

4.76. I note from the RPF of one of the complainants namely, Sunil Kothari that the total value of his portfolio was Rs. 2 to 5 lakh at the time of becoming a client of Profit Guru. His emergency fund was 1 to 3 months' income, and he was 60 years old i.e., a senior citizen. His investment goal was to get a 'regular income' and his proposed investment amount was Rs. 2 to 5 lakh. Strangely, a person with these particulars was categorised as someone with a high risk appetite. Similarly, I note from the RPF of one of the complainants namely, Pyarelal that the total value of his portfolio was Rs. 1 to 2 lakh at the time of becoming a client of Profit Guru. His emergency fund was 1 to 3 months' income, and he was above 60 years i.e., a senior citizen. His investment goal was to get a 'regular income' and his proposed investment amount was Rs. 1 to 2 lakh. Strangely, a person with these particulars was categorised as someone with a high risk appetite.

4.77. The above details make it abundantly clear that the risk profile of the said clients was limited, and any reasonable person assessing the RPF would have gathered the same. However, Profit Guru sold them services which were of high risk and collected fees which were many times over the investment amount intended to be invested by the clients. This exhibits non-existence of a process for appropriately assessing the risk profile of the clients. Even if it were to be accepted that the risk profiling was adequately carried out, the result/outcome of such profiling was not taken into consideration by Profit Guru while offering it services to its clients, as seen from above. It has been claimed by Profit Guru that clients did not accurately specify their incomes due to various reasons, which meant that their investment capacities were generally more than what the RPFs would show. I find this argument unacceptable. Any worthwhile assessment of risk bearing ability can only be carried out by taking into account specific facts viz., annual income, investment amount, value of emergency fund etc. These details cannot be assumed by the Investment

Adviser, which Profit Guru by its own admission has done. So, in light of the above facts, it does not appear that any analysis was done of the RPFs. Accordingly, I find that Profit Guru has not ensured a proper process for the assessment of the risk profile of its clients.

4.78. I note from the “Procedure for Suitability Assessment for client” as captured from the website of Profit Guru that clients with ‘High’ risk tolerance were to be provided Group B services and clients with ‘Medium’ risk tolerance were to be provided with Group A services. I also note from the captured image of the website that Group A included Stock cash and Positional Stocks whereas Group B included Futures and options and commodities.

4.79. I note from the RPF of T.G. Srinivasa, one of the clients, that he had been categorized as having “Medium Risk Appetite”. Accordingly, as per Profit Guru’s suitability assessment procedure, he should have been provided services enlisted in Group A i.e., Stock cash and Positional Stocks. However, from the invoice dated April 26, 2019 bearing number PG-INV9913 it is seen that “OPTION HNI TIPS” was sold to the said client for a sum of Rs. 30,000. It is relevant to note that options are part of Group B which are for clients with high risk appetite. So, it is evident that the investment advice provided by Profit Guru’s own procedure was not suitable in terms of the risk taking ability of the client. Similarly, upon perusal of the RPF of Jithender Bangaru, I note that he had been categorised as having “Medium Risk Appetite”. In this regard, reference is made the various services/products sold to Jithender Bangaru by Profit Guru, as available on record. It is relevant to state that on November 29, 2019 the client was sold the service “MCX Premium Tips”, which was a product in Group B, and accordingly suitable for clients with high risk appetite, unlike the present client.

4.80. It has already been demonstrated above that the risk assessment process was flawed and risk categorisation of Noticees had not been carried out

properly. Notwithstanding the above, if it were considered that risk categorisation of clients had been carried out adequately, even then Profit Guru did not assess the suitability of the client for the investment advice/product offered by it, as brought out above.

4.81. It has also been brought out in the Enquiry Report that Profit Guru had violated clauses 1, 2, 6 and 8 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

4.82. I note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Clause 6 requires an Investment Adviser to charge fair and reasonable fees. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. I find from the facts brought out above that the Investment Adviser has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1, 2, 6 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

4.83. Further, the Enquiry Report has found that the RPF used by Profit Guru did not contain leading questions.

4.84. In this regard, it is stated that even though SEBI does not prescribe any specific questionnaire to examine and assess the risk profile of a prospective client, there is nonetheless clear guidance provided in Regulation 16 of the IA Regulations, which deals with risk profiling. Regulation 16 (a) states that an Investment Adviser is to ensure that *“it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:- (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/borrowing*

details.” Similarly, Regulation 16 (d) requires an Investment Adviser to ensure that “any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that: (i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand; (ii) questionnaire is not structured in a way that it contains leading questions.” Keeping the above in mind, it is specified in Regulation 16 (b) that an Investment Adviser shall ensure that it has a process for assessing the risk a client is willing and able to take, including: (i) assessing a client’s capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers. Also, as per Regulation 16 (e) the investment adviser is also required to ensure that “the risk profile of the client is communicated to the client after risk assessment is done”.

4.85. A typical RPF has multiple questions and each question has a mathematical score assigned to it and based on the cumulative score, a client would be categorised into low risk, medium risk and high risk. The RPFs are required to be filled by the clients and thereafter the same is analysed by the investment adviser to determine the risk profile of the client. SEBI had not prescribed any specific procedure for RPFs.

4.86. I note that the RPF of Profit Guru had twenty-one (21) questions, and corresponding to each question, a set of answers was provided. Each answer was assigned a particular weightage. Depending on the response of the client, the total score of the client was calculated. The maximum total score as per the RPF was 2400. Depending on the score, the risk category of the clients was determined in the following manner:

Table – 15

Risk Profiling Questionnaire SCORE	Risk Category of the Client
0-800	Low
800-1600	Medium
1600-2400	High

4.87. I take specific note of three questions appearing in the RPF. The same are as under:

- i. *Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?*
- ii. *When market is not performing well would you like to invest in more risky investment instead of less risky investment to earn high return?*
- iii. *High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risks can you bear (not prefer)?*

The above-mentioned three questions come to a score of 600 out of the total 2400.

4.88. In this regard, it has been *inter alia* submitted by Profit Guru that –

- a. the questionnaire had been approved by SEBI at the time of grant of certificate of registration (2015) and they had been using it since then;
- b. there were a total of fourteen (14) questions to which scores had been assigned, out of which ten (10) had been assigned the maximum score of 200; so it was not as if the maximum score of 200 had been assigned to those three (3) questions only;

- c. the mention of 'High Risk' in the questions were self-explanatory and the clients were made aware that trading in the securities involved risk; and
- d. no specific format or scoring method had been provided by SEBI for risk profiling.

4.89. It is relevant here to consider the three (3) questions mentioned in the preceding paragraphs. For instance, the expression "*High Risk is associated with high return...*" would in the mind of any average person create the impression that high return can be achieved through high risk. This clearly camouflages the fact that high risk products/services involve greater chances of losses. Any worthwhile risk profiling cannot be carried out without effectively and clearly making the client aware that taking high risk would mean greater chances of losses too. The mere mention of high risk cannot be considered as effectively conveying what such high risk might entail for the client. Hence, I am unwilling to consider the submission of Profit Guru that the word 'high risk' was self-explanatory and it was not required to elaborate that high risk products/services could also result in high losses for the client. Also, as already brought out before even though no specific format for risk-profiling has been mandated in the IA Regulations, Regulation 16 clearly gives guidance for risk-profiling to be carried.

4.90. It is not disputed that at the time of applying for a certificate of registration, a prospective Investment Adviser is required to submit the risk profiling questionnaire. However, it is emphasised that the requirement for such a questionnaire is only to ascertain as to whether the prospective Investment Adviser had in place a process for assessing the risk bearing ability of the clients. It was left to the Investment Adviser to frame the risk profiling questionnaire as per the necessary requirements. So, the grant of a certificate of registration cannot be considered as an approval of the questionnaire's contents or its merits. Thus, the submission of the Noticee is unacceptable.

Further, the Noticee in its own submission has stated that in respect of 10 out of the total 14 questions, the maximum weight of 200 had been assigned.

4.91. Accordingly, I find that the questions in the RPF were leading questions and were intended to draw a certain kind of rating. In this regard, I disagree with the finding of the DA that these were not leading questions.

4.92. Thus, the Noticee has exhibited a cavalier approach towards risk profiling of its clients thereby completely abandoning proper due diligence and care that a person acting in a fiduciary capacity is duty bound to ensure. So, the Noticee put its own interest of earning more fees at the fore, thereby breaching the fundamental duty of a fiduciary. I accordingly find that the Investment Adviser has violated Regulation 15 (1) of the IA Regulations.

4.93. I also note that clause 1 of the Code of Conduct requires an Investment Adviser to be honest and fair in its dealing with the clients, and act in their best interests. Clause 2 requires an Investment Adviser to act with necessary diligence, skill and care. Clause 6 requires an Investment Adviser to charge fair and reasonable fees. Lastly, clause 8 requires an investment adviser to comply with the regulatory requirements while conducting its business. I find from the facts brought out above that the Investment Adviser has failed to adhere to any of the above-mentioned stipulations in the Code of Conduct. I, therefore, find that the Noticee has also violated clauses 1, 2, 6 and 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations.

Complaint of Mr. Kiran Aravalli and Mr. S.K. Gupta

4.94. Further, Kiran Aravalli and S.K. Gupta (clients of the Noticee) have mentioned in their SCORES complaint/s that they did not receive any RPF or suitability assessment form from the Noticee. It has also been brought out that the Noticee had not obtained signatures on the RPF of T.G. Srinivasana, another

client. No specific explanation has been provided by the Noticee in this regard. In this regard, reference is made to Regulation 16 of the IA Regulations which relates to the risk profiling of clients by an Investment Adviser. Regulation 16 (a) requires an Investment Adviser to ensure that it obtains from the client, such information as is necessary for the purpose of giving investment advice. Regulation 16(b) requires an Investment Adviser to ensure that it has a process in place for assessing the risk a client was willing and able to take. Similarly, Regulation 16(d) requires an Investment Adviser to ensure that the questions in the RPF are fair, clear and not misleading. Lastly, Regulation 16(e) requires an Investment Adviser to communicate to the client the result of the risk assessment. In view of the facts brought out above, it is clear that the Noticee has violated the above provisions of law. Accordingly, I concur with the DA that the Noticee had violated Regulation 16(a), (b), (d) and (e) of IA Regulations.

Allegation-7 – Violation of the conditions of the certificate of registration

4.95. The Enquiry Report has brought out that Profit Guru, even though was primarily operating from the address available in the records of SEBI (415, Shekhar Central, Near Palasia, Petrol Pump, AB Road, Indore- 452001), had several other branches from where it was carrying out its investment advisory operations. In this regard, reference has been made to the inspection carried out by SEBI on December 09, 2019. It was noted during inspection that Profit Guru had another office on the 6th floor of the same building in which its primary office was situated.

4.96. It is noted from Regulation 3 of the IA Regulations that no person shall act as an investment adviser or hold itself out as an investment adviser unless he obtains a certificate of registration from SEBI. I further note that FORM-A in Schedule- I to the IA Regulations provides a specified format for making an application for grant of certificate of registration as an investment adviser. The

said Form-A requires a prospective investment adviser to provide a host of information based on which the application would be considered by SEBI. The Noticee, at the time of seeking registration from SEBI as an investment adviser, had also provided the requisite information in Form-A.

4.97. It is essential to point out that Form-A at Sl. No. 4 requires an applicant to provide details of infrastructure. The said part is reproduced hereunder for reference:

“4. DETAILS OF INFRASTRUCTURE

- 1. Details of office space, office equipment, furniture and fixtures, communication facilities, research capacity, research software for undertaking investment advisory services.*
- 2. Declaration that the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser.”*

Similarly, Sl. No. 6 of Form-A requires an applicant to provide other additional information relevant to the application. The said part is reproduced hereunder for reference:

“6. OTHER INFORMATION/DECLARATIONS/ REGULATORY ACTIONS

- (a) Details of all settled and pending disputes in the last 5 years.*
- (b) Whether any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by the Board; If yes, provide details of the same.*
- (c) Whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected with the applicant under the Act or the regulations made there under in the last 5 years. If yes, provide details of the action.*
- (d) Whether the applicant/directors/promoters/ partners have been indicted/involved in any economic offence in the last 5 years. If yes, provide details of the same.*

(e) A credit report/ score from CIBIL for the applicant.(For applicants other than financial institutions & banking companies)

(f) Declaration that the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(g) Declaration that the applicant shall not obtain any consideration by way of remuneration or compensation or any other form whatsoever, from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided to the client.

(h) Any other information considered relevant to the nature of services to be rendered by the applicant.”

4.98. So, from the above, it is clear that Form A that is filed by an Investment Adviser requires it to provide information regarding the infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities and also regarding regulatory actions taken against it and economic offences that it may have been charged with.

4.99. It is reiterated that based on the information provided in Form A, an investment adviser is granted a certificate of registration. Once a certificate of registration is granted, the same is subject to the stipulations contained in Regulation 13 of the IA Regulations. In this regard, it would be relevant to place here the stipulations contained in Regulation 13 (b) of the IA Regulations. Regulation 13 (b) of the IA Regulations provides that –

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

(a) ...

(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”

So, it is clear that the certificate of registration provided to an investment adviser by SEBI is subject to the conditions enumerated in Regulation 13 of the IA Regulations, which includes *inter alia* the obligation to inform SEBI of any material change in the information already submitted by it.

4.100. It has been submitted by Profit Guru that it had a “ *single main office on 4th floor of Shekhar Central, Indore.*” It has further been submitted that it had taken the 6th floor on rent only recently and Profit Guru was in the process of shifting its office from the 4th floor to the 6th floor. It is the contention of Profit Guru that since the shifting had not been completed, SEBI was not informed.

4.101. It is a matter of record that when the SEBI inspecting team reached the premises of Profit Guru, the security guard present there took them to an office space marked as “612” on the 6th floor. This denotes that contrary to the assertion of Profit Guru in its reply that they were in the process of moving to the office space on the 6th floor, it in fact was their primary office space from where operations were being carried out. Additionally, I note from the record that during a conversation between an employee of Profit Guru and Mr. Uttam Bhadouria, a prospective client, it was claimed by the employee that there were four (4) branches of Profit Guru and the main branch was situated at ‘Shekhar Central’. The transcript of the relevant part of the said conversation (in Hindi) dated January 10, 2019 is provided hereunder:

Call recording at 00:05: PG (02_10.01.2019): “*Apne 4 branches hain, mainly jo hamara branch hai wo Shekhar Centralwala hai. Mainly saari cheezein wahin se operate hoti hain*”.

No specific clarification has been made by Profit Guru, with respect to the above assertion of one of its employees, in its reply submitted to SEBI. In view of the same, I conclude that there were in fact multiple branches from where Profit Guru managed its operations.

4.102. It restated that in an application for registration as an investment adviser, as stated above, an applicant has to give a declaration that it has the necessary infrastructure at its disposal, including office premises, computers etc., to carry out investment advisory activities. The increase in the number of branches from which Profit Guru operated and the acquisition of additional space on the 6th floor of Shekhar Central meant that the information earlier provided to SEBI by Profit Guru about the details of office space and infrastructure in its possession has undergone material change. That being the case, it was incumbent upon the Noticee to forthwith inform SEBI in writing about such change.

4.103. However, the information regarding the above developments were never brought to the notice of SEBI by Profit Guru. They only came to light when an inspection was sought to be carried out by SEBI. Accordingly, I find that Profit Guru has violated Regulation 13 (b) of the IA Regulations for the reasons stated above.

4.104. I note from the Enquiry Report that the DA has recommended that the Certificate of Registration of the Noticee be cancelled. I also note from the material on record that by way of an Order dated December 30, 2022, SEBI has debarred the Noticee from accessing the securities markets for a period of five years. Considering the facts brought out in the foregoing paragraphs, I find myself in agreement with the findings of the DA. Accordingly, the Noticee is liable for action under Regulation 27 of the Intermediaries Regulations read with Section 12(3) of the SEBI Act and Section 19 of the SEBI Act. However, on the consideration of the facts brought, I am willing to differ with the recommendation of the DA.

6. Order –

6.1. I, in exercise of powers conferred upon me in terms of Regulation 27 of the Intermediaries Regulations read with Section 12(3) and Section 19 of the SEBI Act, hereby suspend the Certificate of Registration of the Noticee, i.e. Profit Guru (SEBI registration no. INA000003510) for a period of two (2) years.

6.2. The above directions shall come into force with immediate effect.

Place: Mumbai

ASHWANI BHATIA

Date: October 12, 2023

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA