BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.Order/SM/AD/2023-24/27828]

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

In respect of

Mr. Anil Kumar Dhawan

[PAN: AGZPD4794P]

In the matter of Kassa Finvest Private Limited

BACKGROUND

1. Kassa Finvest Private Limited (hereinafter referred to as "**Kassa Finvest/broker/By Name**") was registered with SEBI as a stock broker. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received several complaints against Kassa Finvest from its clients during the year 2014. The said complaints, *inter alia*, alleged non-receipt/delay in payment of funds and securities of clients from Kassa Finvest and also that Kassa Finvest had raised funds by way of illegally selling the securities of its clients/investors and such funds were purportedly used for meeting the operational expansion of Kassa Finvest and for the economic benefit of its group persons/entities. Considering the allegations of violation of various provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act'**), Securities Contracts (Regulation Act), 1956 (hereinafter referred to as '**SCRA**'), Rules and Regulation made

and various circulars issued thereunder by Kassa Finvest, an investigation was ordered by SEBI under Section 11C of the SEBI Act, vide order dated February 23, 2015.

2. Based on the findings of investigation, SEBI initiated adjudication proceedings to inquire into and adjudge the alleged violations of various provisions of the SCRA , SEBI Act, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, (hereinafter referred to as the '**PFUTP Regulations**') ,SEBI (Portfolio Managers) Regulations, 1993, SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and circulars made thereunder by Kassa Finvest, its directors and certain employees, one of them being Mr. Anil Kumar Dhawan (hereinafter referred to as "**Noticee"**) .

3. Mr. Sharad K Sharma (hereinafter referred to as "**erstwhile AO**") was appointed as Adjudicating Officer, vide order of SEBI dated July 24, 2015, as amended by the orders dated January 21, 2016 and April 20, 2016, respectively, in terms of Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred as "**Adjudication Rules, 1995**") and Section 23-I of the SCRA read with Rule 3 of Securities Contract (Regulation) (Procedure of Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred as "**Adjudication Rules, 2005**") (both Adjudication Rules, 1995 and Adjudication Rules, 2005 are hereinafter together referred to as "**Adjudication Rules**") inquire into and adjudge the violations alleged to have been committed by the above mentioned entities.

4. A show cause notice dated November 04, 2016 (hereinafter referred to as '**SCN**') was issued to the entities including Noticee in terms of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty under Sections 15A9b), 15C, 15F9b), 15HA and 15HB of the SEBI Act and Sections 23A, 23C, 23D and 23H of SCRA be not imposed on them for the violations alleged to have been committed by the them. Vide Adjudication Order bearing reference no. AO/SKS/DL/AO-1/2021 dated February 24, 2021 (hereinafter referred to as "**Adjudication Order dated February 24, 2021**"), adjudication proceedings were concluded by the erstwhile AO, imposing penalties on Noticee and the other entities.

5. Thereafter, an appeal, bearing Appeal No. 307 of 2023, was filed before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") by Noticee, challenging

the aforementioned Adjudication order, grounds of appeal being that he was neither served with the SCN nor given any opportunity of personal hearing. The Hon'ble SAT, on being satisfied that Noticee was not served with SCN, vide order dated April 13, 2023 (hereinafter referred to as "**SAT Order**"), set aside the aforementioned Adjudication order with respect to Noticee and remitted the matter to fresh Adjudicating proceedings for passing a fresh order after giving an opportunity of hearing. Further, it was directed in the SAT Order that the "*appellant shall appear before the Adjudicating Officer on 28th April, 2023 on which date he would be served with a show cause notice and the matter will proceed thereafter in accordance with law."*

6. In compliance with SAT Order, vide order dated April 20, 2023, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of Adjudication Rules, 1995 to inquire into and adjudge under the provisions of Section 15HA and Section 15HB of SEBI Act, the violations of Regulation 3(a), (c) and (d) and Regulation 4(1) and Regulation 4(2)(m)(read with explanation given thereunder) of PFUTP Regulations, alleged to have been committed by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Vide email dated April 24, 2023, the appointment of undersigned as Adjudicating Officer in the matter was communicated to Noticee. Further, vide the aforementioned email, Noticee was also advised to collect the SCN from the office of the undersigned on April 28, 2023, as directed by Hon'ble SAT. Noticee in its reply to the aforementioned email submitted that he will receive the SCN electronically since he was located in Ghazibad and his advocates are in Delhi. Considering the aforementioned submission of Noticee, SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') as well as through digitally signed email on April 27, 2023. The SCN was duly served on Noticee and Noticee was given fourteen (14) days' time from the receipt of SCN to file his reply, if any, in respect of the allegations made in the SCN.

8. Subsequently, vide letter received by SEBI on May 15, 2023 as well as through email dated May 09, 2023, Noticee filed his reply to the SCN. The reply filed by Noticee to the SCN is reproduced hereunder :

- Noticee worked with Kassa Finvest Private Limited from 16.08.2002 to 21.07.2014. Noticee resigned from the service of Kassa Finvest, due to non-payment of salaries on 21.07.2014 and was relieved from services in month of November, 2014.
- Noticee was looking after work related to business development, verifying branch reports and operations in the risk management department in the Kassa Finvest. The learned Adjudicating Officer in his Order dated 24.02.2021 has observed that Noticee was an ordinary employee who was looking after the operations of the company during the relevant period
- Noticee was not authorised to sign any documents on behalf of Kassa Finvest
- Noticee, a senior citizen, has not worked since December 2014 till now and struggling to run his family and borrow money from his children for day-to-day expenses.
- As per the Order of Learned Whole Time Member, SEBI dated 05.09.2017 (Order SEBI/WTM/SR/EFD-DRA-II/66/09/2017), Noticee was Vice President (Operations) and was looking after Business Development work of Kassa Finvest. Noticee in its reply to the WTM proceeding , communicated that he hasn't looked at any other activities of the Kassa and his role was restricted to the business development only.
- The consideration and findings in the WTM Order with reference to the relevant Cause Notice were that the Noticee was allegedly aware of the assumed violation only.
- The Noticee was neither director nor compliance officer of the Kassa and cannot be considered as key managerial person (KMP) by any stretch of the imagination.
- In the SAT Order dated 26.09.2019 (Appeal No. 371 of 2017 dated 26.09.2019) , Hon'ble SAT held that being compliance officer and CFO, Manoj Kumar Agrawal (Another Employee of the Kassa Finvest) had responsibility towards regulatory compliance. Whereas, the Noticee was neither Compliance Officer nor CFO, he was just an employee involved in business development activities of the Kassa Finvest.
- Vide order dated 26.09.2019 in reference to Appeal No. 371, Hon'ble SAT remanded back the matter to the WTM, SEBI qua Manoj Kumar Agrawal. The WTM, SEBI reheard the matter after remand back by the Hon'ble Tribunal and passed the order in reference to Manoj Kumar Agrawal. Learned WTM,SEBI held that Manoj Kumar Agrawal was mere employee and he was only an instrument in the hands of the KMPs

who were perpetrating the fraud. The learned WTM held that employees were distinct from the directors/promoters. Accordingly, learned WTM reduced the period of debarment of Manoj Kumar Agrawal from 10 years to 5 years.

9. Thereafter, in the interest of natural justice, vide hearing notice dated May 15, 2023, served on Noticee through email dated May 16, 2023 as well as by SPAD, Noticee was granted an opportunity of personal hearing before the undersigned on May 22, 2023. On the scheduled date of hearing, the authorized representatives of Noticee, Advocate Vikas Gupta and Advocate Rajeev Batra appeared on behalf of Noticee before the undersigned and reiterated the contents of Noticee’s reply to the SCN.

10. In view of the above, I am satisfied that sufficient opportunities of hearing have been provided to Noticee which was duly availed by him and thus, I find that the principles of natural justice have been duly complied with .

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated Regulation 3(a), (c) and (d) and Regulation 4(1) and Regulation 4(2)(m)(read with explanation given thereunder) of PFUTP Regulations?

Issue No. II: Does the violation, if any, attract monetary penalty under Section 15HA and Section 15HB of SEBI Act?

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

12. Before moving forward, it is pertinent to refer to the relevant provisions of PFUTP Regulations which was in force at the time of impugned transactions, which are reproduced as under:

<u>Relevant provisions of PFUTP Regulations:</u>

3. Prohibition of certain dealings in securities
No person shall directly or indirectly—

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

…………………………………………………………………..

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:—

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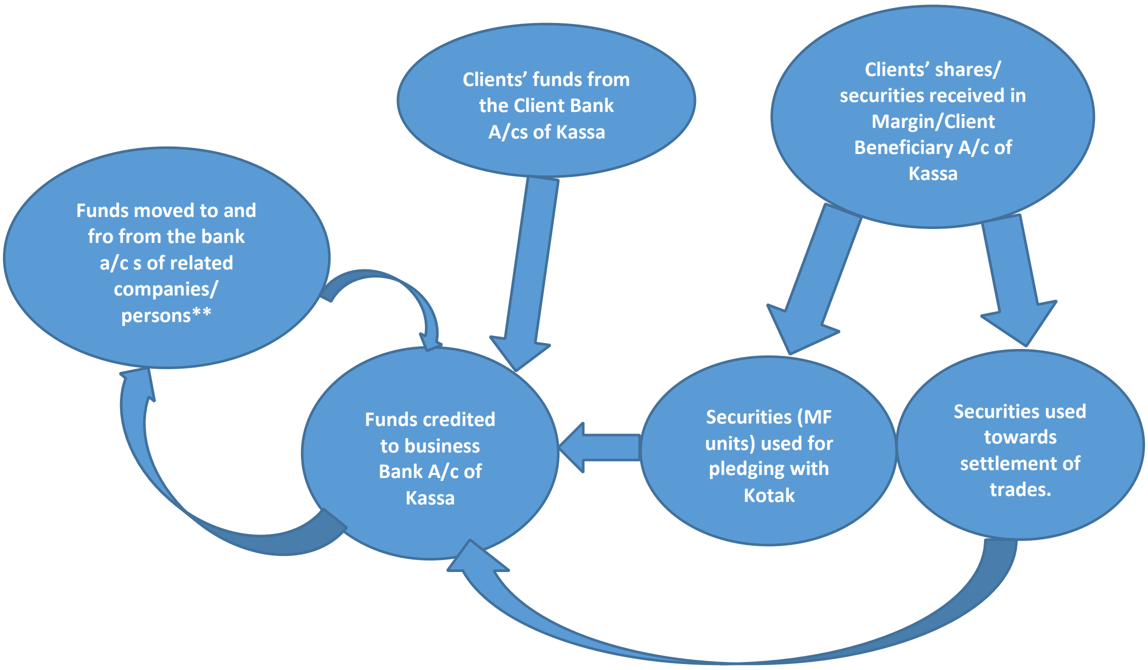
………………………………………...

(m) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

<u>Issue No. I</u> : <u>Whether Noticee has violated Regulation 3(a), (c) and (d) and Regulation 4(1) and Regulation 4(2)(m)(read with explanation given thereunder) of PFUTP Regulations</u>?

13. I note that SEBI, during its investigation, had observed that Kassa Finvest was involved in siphoning of its client's funds/securities. The pictorial representation of modus operandi adopted by Kassa Finvest for siphoning of its clients's fund is as given below:



**related entities

i. Kassa Holdings and Consultants Private Limited
ii. .Kassa Financial Advisors Pvt. Ltd.
iii. Mystic Cures Ltd
iv. .Mr. Siddharth Shankar(Son of Ashok Kumar)
v. .Ms. Neetika Shankar. (wife of Siddharth Shankar)

14. The description of the above pictorial representation of the modus operandi is summarised as below:

a. Kassa Finvest issued letters to clients promising fixed/ assured returns to its clients in lieu of shares and/or funds (money). In case of shares, the rate of interest promised by the Kassa Finvest varied from 9%-13% whereas in case of funds the rate of interest promised was in the range of 18-27%.
b. The Kassa Finvest *inter-alia* mentioned in the said letters that only the Kassa Finvest will execute trades on behalf of clients and the margin money can be used for trading in any segment/ exchange. Aforesaid clause of the letter issued by the Kassa Finvest to fixed return clients was not only limited to securities market/ share trading but was also extended to commodities business undertaken by its associate/group company, namely, Kassa Holdings & Consultants Pvt. Ltd.
c. Payment towards interest (assured/ fixed return) was made to clients through cheques as per the pre-agreed terms of interest payment (monthly/ quarterly etc).
d. The securities of the clients were received/ transferred/ kept in the client beneficiary account with the Stock Holding Corporation of India Limited bearing account number IN301330 - 20743522 in the name of Kassa Finvest Pvt. Ltd. and were sold/ pledged from thereon. The mutual funds units received in this account were used for pledging. From the e-mail dated April 28, 2015 received from Kotak Mahindra Bank, Karol Bagh Branch, it was observed that subsequent to creation of pledge, funds were transferred to bank account number 8111213081 in the name of the Kassa Finvest maintained at the said branch.
e. The funds/cheques received from clients in HDFC Client bank account no. 3132740000029 were transferred to other accounts including HDFC Business bank account no.3132740000012.The interest payments to assured return clients was mainly done from HDFC Business bank account no. 3132740000012.
f. From the analysis of bank account statements, it was also observed that the funds had been transferred to different group/ related entities/ person(s).
g. The securities as and when demanded by the clients were returned either from the client beneficiary account/margin account or after purchasing from the market.
h. Since the income from broking was not substantial, the money/funds raised by promising fixed/assured return and selling clients' securities were utilised towards the business expenses, payment of salaries, monthly interest payment to assured return clients etc.
i. Siphoning off the clients’ funds and securities resulted in liquidity problem for the Kassa Finvest and it failed to return the funds and securities payable by him to the clients.

15. I note that in the order of Learned Whole Time Member (WTM), SEBI, dated September 05, 2017 (**SEBI Order**), it was established that Kassa Finvest had violated, *inter alia,* Regulations 3(a), (c), (d) and 4(1) of PFUTP Regulations. Therefore, vide the aforementioned order, directions were issued, *inter alia,* restraining Kassa Finvest, its directors and certain employees from accessing the securities market and also from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for specified period. I note that in the Appeal filed by the directors before the Hon'ble SAT challenging the SEBI Order, the Hon'ble SAT, vide its order dated 26.09.2019, has upheld the aforementioned SEBI order on merit.

16. Vide, Adjudication Order dated February 24, 2021, the erstwhile AO, has also held Kassa Finvest liable for the violations of provisions of PFUTP Regulations as detailed in the preceding paragraphs. I further note that vide order dated January 29, 2021, Learned WTM, SEBI had cancelled the certificate of registration granted to Noticee, pursuant to completion of enquiry proceedings, initiated against Kassa Finvest in the same matter in issue under Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**").

17. It is matter of record that Kassa Finvest did not challenge the SEBI Order and the Adjudication Order dated February 24, 2021 before the appellate forum. Hence, the aforementioned orders have become binding on Kassa Finvest. It is also noted that the violation of Regulations 3(a), (c), (d), 4(1) and 4(2)(m) of PFUTP Regulations by Kassa Finvest as concluded in the Adjudication Order dated February 24, 2021 has attained finality.

18. I note that instant adjudication proceedings pertains to Noticee's role in the violations committed by Kassa Finvest. It has been alleged in the SCN that Noticee was aware of the fixed/assurance scheme run by Kassa Finvest. I observe that Noticee in his reply has not disputed the violations committed by Kassa Finvest but has limited his defense to his role in the aforementioned violations committed by Kassa Finvest.

19. I note from the statement of Noticee recorded before the Investigating Authority, SEBI (hereinafter referred to as "**IA**") on March 18 and March 19, 2015 that Noticee was an

employee of Kassa Finvest from August 2001 till November 2014, i.e, for a period of 13 years. Further, I observe from the statement of Mr. Ashok Kumar, Managing Director of Kassa Finvest (**MD)** during the relevant period, which was recorded on March 16, 2015 before IA that Noticee was the President, Business Development & Operations & Marketing in Kassa Finvest and was considered as one of the key managerial personnel of Kassa Finvest by Mr. Ashok Kumar.

20. I further note from the aforementioned statement and Noticee's reply that Noticee was looking after work related to business development such as verifying branch reports, operations in risk management etc. Further, I note from the aforementioned statement of Noticee before IA that client sourcing teams reported to Noticee and for the matters related to business development, RMS and helpdesk business in Kassa Finvest, Noticee was second to MD in hierarchy.

21. I note from the statement of Noticee before the IA that Noticee had clear knowledge that Kassa Finvest was providing assured returns to clients/investors on their investments. In this context, I would like to reproduce the relevant extract of the statement made by Noticee before the IA, hereunder:

"Fixed return@ 27% was offered to one, Mr. Amish Agrawal registered as a client and this was managed by Mr. Ashok Kumar himself.

Fixed return schemes offering returns in the range of 18-20% were started by Mr Dinakaran (he was there from 2008 till 2010, in Delhi and May 2014 to Nov 2014, Chennai) & Mr Dhananjay Chandla, National Head of sales (he was there from 2008 till 2010) were reporting to Mr. Ashok Kumar directly. I have no idea about accounts. I started looking after business development from March 2011 onwards. The clients which were sourced through me, I had the knowledge of assured return paid to them.

Fixed returns were availed by clients by giving cheque and/ or securities. For the clients who had given securities for assured returns, the same were kept in pool account (no. of the a/c is not known to me) and the returns were paid to them on regular basis through cheques. In the Shipli Back office software, ZMS group was created to identify the clients to whom fixed returns were to be paid. names for fixed returns. There were around 100 *clients in the group. The value of total funds & securities was approximately Rs.90 crores from these clients."*

22. I also note from Noticee's statement that his role in the fixed assurance scheme of Kassa Finvest was not restricted to mere knowledge and that he was involved in the actual running of the same. In this context, I would like to place reliance on Noticee's statement before IA, The relevant extract is reproduced herein below:

" It was in my knowledge that the fixed/ assured return clients were registered in Kassa. As per my knowledge if a client has given securities as margin and the same are kept with exchange, the interest earned from the exchange on the same can be passed on to the clients. <u>A client was given a proposal by marketing team and the matter was put up for approval to me and MD also.</u> The return was paid in the form of profit on trading/ advisory based broking (client was advised on trading in securities).(emphasis supplied)"

23. Noticee's involvement in the running of fixed assurance scheme is further seen from the statement of Mr. Manoj Kumar Agrawal recorded before IA on March 18 and March 19, 2015, wherein he had also submitted that client wise interest rates were approved by Noticee. The relevant excerpt of the statement of Mr. Manok Kumar Agrawal is given hereunder:

"Kassa Finvest took loan from clients in the form of fixed returns. The loan was taken in the form of shares or funds(money). In case of shares the interest paid varied from 9-13% whereas in the case of funds, the interest was 18-27%. Initially letters relating to MoU for loans were not issued to clients but later formal letters were issued. There was a separate list of clients on the basis of which monthly returns were calculated. Certain clients were given interest payments and some were given profit entries in their trading account The payments to clients were made by cheques. Funds received from clients were credited in the the trading account margin account and letters were issued to clients for the amount of money or shares taken. There was a system whereby the marketing person used to prepare a sheet which was approved by Mr. Dhawn and then Mr. Ashok Kumar (MD.). These approvals were done on paper (and maintained in file and then only the letters were issued to clients promising fixed returns. The client-wise interest rate was approved by Mr.

Dhawn. The profit entries which were passed in client accounts to give assured returns were more through back office in the last 2-3 years than through trading done on exchange. This was approved by Mr. Dhawn and was known to Mr, Ashok Kumar. "

24. The above observations establish that not only did Noticee have clear knowledge of fraudulent activities engaged in by Kassa Finvest but he was also involved in the same which shows his consent, connivance and collusion with Kassa Finvest and its directors in the fraudulent activities of Kassa Finvest.

25. With regard to the allegations in the SCN, Noticee has contended that he was neither a director nor compliance officer of Kassa Finvest and was a mere employee of the company. Noticee has further submitted that his role was restricted to business development only. Having regard to the conclusions drawn in the preceding paragraphs I am unable to accept the contention of Noticee that as he was a mere employee, he cannot be held liable for violation of Kassa Finvest.

26. Further, I note that in the SEBI Order, involving same matter in issue, after considering the submissions of Noticee, learned WTM that had held Noticee guilty of violating the provisions of Section 12A(b) &(c) of the SEBI Act and Regulations 3(a),(c) and (d) and Regulation 4(1) of the PFUTP Regulations. The relevant extract of the aforementioned Order is reproduced hereunder:

"The very inaction on the part of Manoj Agrawal, CFO and Anil Dhawan, V.P., Operations leads to the inescapable conclusion that they have colluded with Kassa Finvest in committing the aforementioned fraudulent activities in violation of various provisions of SEBI Act/Rules/regulations/Circulars. I therefore find that Manoj Agrawal and Anil Dhawan have violated the provisions of Section12 A(b) &(c) of the SEBI Act and Regulation 3(a),(c) and (d) and Regulation 4(1) of the PFUTP Regulations."

27. Since Noticee has not challenged the aforementioned SEBI Order in the appellate forum, the aforementioned Order had become binding on Noticee. In this context, I find it pertinent to refer to the decision of Hon'ble SAT in Nirmal N. Kotecha vs. SEBI, (Appeal

No. 580 of 2019; Date of Decision: 08.06.2021), wherein Hon'ble SAT, while applying the principle of issue estoppel, has held that divergent opinions on the same issue ought not to be taken. The relevant extract of the aforementioned SAT order is reproduced hereunder:

" *13. In our opinion, once an issue, on the same facts and between the same parties has been determined, it gives rise to an issue estoppel. It operates not only in the same proceedings but also in subsequent proceedings.*

………………………………………………...

18. In the light of the aforesaid, when the earlier proceedings is identical on facts and law with the present proceedings and the subject matter/ issue involved is the same, in such a case, we are of the opinion that the bar is absolute in relation to all points decided. The principle of issue estoppel is fully applicable in the instant case.

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We are of the opinion that a consistent view is required to be taken by SEBI for the purpose of orderly development of the securities market and therefore the quasi-judicial bodies are required to maintain a discipline and ensure that divergent opinions on the same issue are not taken."

28. In light of the aforementioned decision of Hon'ble SAT and my own observations in the matter, I find no reason to differ from the conclusion reached by Learned WTM in the SEBI order. Therefore, I find that allegation in the SCN that Noticee has violated Regulations 3(a), (c) and (d) and Regulation 4(1) of PFUTP Regulations stands established.

29. I note that the SCN has also alleged that Noticee has violated the provisions of Regulation 4(2)(m) of PFUTP Regulations. As per Regulation 4(2)(m) of PFUTP Regulations, an intermediary not disclosing to his client, transactions entered into on his behalf, would be deemed as dealing in securities in an fraudulent manner or an unfair trade practices in the securities market. I find that the said provision is applicable only on intermediaries and as such, would not be applicable to Noticee, him being an individual

and not an intermediary. Therefore, I find that Noticee is not liable for the violation of Regulation 4(2)(m) of PFUTP Regulations by Kassa Finvest.

Issue No. II - Does the violation, if any, attract monetary penalty under Section 15HA and Section 15HB of SEBI Act?

30. It has been established in the preceding paragraphs that Noticee has violated Regulations 3(a), (c) and (d) and Regulation 4(1) of PFUTP Regulations. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..…..*"

31. The SCN has alleged that the violation of Regulation 3(a), (c) and (d) and Regulation 4(1) of PFUTP Regulations charged against Noticee would make him liable under Section 15HA and Section 15HB of the SEBI Act. In this regard, I note that Section 15HB of SEBI Act is invoked for violation for Rules or Regulations or directions issued by Board for which no separate penalty has been invoked under SEBI Act whereas Section 15HA of SEBI Act specifically provides the penalty for a person found to have indulged in fraudulent and unfair trade practice relating to securities.

32. Thus, I find that when a specific provision for penalty for violation of PFUTP Regulations has been carved out in the SEBI Act, invocation of the general provision i.e. Section 15HB of SEBI Act, is misconstrued. Therefore, in view of the aforesaid and placing reliance on the above judgment of Hon'ble Supreme Court, I find that for the aforesaid violations of Noticee, monetary penalty can only be imposed under Section 15HA of SEBI Act.

33. I note that Noticee was in employment of Kassa Finvest till November, 2014. In this context, I note that vide Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014, minimum penalty of Rupees Five Lakhs was introduced Section 15HA of SEBI Act. Section 15HA of SEBI Act is reproduced hereinbelow:

"**Section 15HA**: **Penalty for fraudulent and unfair trade practices**

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

Therefore, since period of violation extended till November, 2014, i.e. after the coming into force of Securities Laws (Amendment) Act, 2014, I find that Noticee is liable for monetary penalty under Section 15HA of SEBI Act as amended by Securities Laws (Amendment) Act, 2014.

Issue No. III - What should be the quantum of monetary penalty?

34. While determining the quantum of penalty under Section 15HA of SEBI Act, it is important to consider the factors as stipulated in Section 15J of SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

35. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors listed in Section 15J of SEBI Act. In the instant case, having regard to the factors listed in Section 15J of SEBI Act, it is noted that the material available on record does not demonstrate any quantifiable gain or unfair

advantage accrued to Noticee or the extent of loss suffered by the investors as a result of the default. I also find that evidence available on record do not show that the violations of Noticee are repetitive in nature.

36. Further, I note that Hon'ble Supreme Court in its decision in Adjudicating Officer, SEBI vs. Bhavesh Pabari,(Decided on 28.02.2019) has held that Clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty. Placing reliance on aforementioned judgement of Hon'ble Supreme Court, I find below mentioned factors also to be relevant while determining the quantum of penalty in the instant case:

- Noticee was only an employee of Kassa Finvest and was not a director or promoter of Kassa Finvest.
- Learned WTM, SEBI in his order dated September 05, 2017 had prohibited *inter alia*, Noticee from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of ten years from the date of the Order.

I note that the aforementioned period of restraint imposed on Noticee vide aforementioned WTM Order as well as his role in Kassa Finvest can be considered as mitigating factors in the case.

ORDER

37. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a minimum penalty of Rs. 5,00,000/-(Rupees Five Lakh only) on Noticee i.e. Mr. Anil Kumar Dhawan, under the provisions of Section 15HA of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

38. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on

the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

39. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

41. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: June 28, 2023 **ADJUDICATING OFFICER**