

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
AD INTERIM EX PARTE ORDER**

**Under Sections 11, 11B (1) and 11D of the Securities and Exchange Board of India
Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and
Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and
Securities and Exchange Board of India (Investment Advisers) Regulations, 2013**

In respect of:

S. No.	Name of the Entity	PAN
1	Ms. Pinky Kelva, Proprietor of M/s. Future Investment	ECYPK7182R

In the matter of Future Investment

Background

1. M/s. Future Investment (Proprietor: Ms. Pinky Kelva) (hereinafter referred to as the "FI") is registered as an Investment Adviser (hereinafter referred to as "IA") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "IA Regulations") with effect from August 8, 2017 under SEBI Registration No. INA000008242. It has its registered office at 301, Laxmi Tower, Mahatma Gandhi Road, South Tukoganj, Indore Madhya Pradesh – 452001. Its website address is www.futureinvestments.in.
2. FI offers packages namely equity, equity future/option, jobbers future/ option/ cash, bullion premium, base metal and energy, forex domestic / international, etc. to its clients as part of its advisory activities. The advisory fees for the aforesaid packages

depends upon the period of subscription which varies from Rs. 10,000/- to Rs. 3,50,000/-.

3. From the details available on the website of FI, it is observed as follows:
 - 3.1. The advisory business of FI is based on subscription model.
 - 3.2. The fees charged is based on the product/ package subscribed and the subscription period for the product is monthly, quarterly, half-yearly and yearly etc.
 - 3.3. FI provides tips / calls to its client.
 - 3.4. The tips/calls are given to clients through SMS and/or telephone support.
4. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) has received a number of complaints against the IA. Pursuant to the complaints, SEBI carried out an examination in relation to the affairs of FI. The examination entailed *inter alia* an analysis of SEBI Complaints Redress System (hereinafter referred to as “**SCORES**”) documents/information provided by complainants (WhatsApp conversations, SMS, emails), information available on the website of FI, products list etc. In addition, call recordings by the complainants have also been submitted.

SEBI’s Examination

5. SEBI’s examination brought out the following:
 - 5.1. FI has been guaranteeing returns to its clients.
 - 5.2. FI has been pressurising the clients to buy multiple products and pay additional amount.
 - 5.3. Employees of FI have been selling products to clients which are not suitable to risk profile of the clients.
 - 5.4. FI has initially asked its clients to pay a small amount towards fees but later on has forced the client to pay larger amounts.
 - 5.5. FI has not been refunding the fees taken in advance from the client, even after the client does not want to avail services from the FI.
 - 5.6. FI has not resolved the investor grievances as per prescribed timelines.
 - 5.7. FI has sought from its client’s trading account user id and password from its clients.

Consideration and Prima Facie Findings

6. Before delving into the merits of the case, it is observed from the Examination report that FI has not cooperated with SEBI and has not submitted details of employees such as their qualifications, role/work description, NISM certification etc. sought vide email dated February 11, 2020 and reminder emails dated February 14, 2020 and February 18, 2020. Thus, in the absence of the details of the employees / representatives of FI, in the order wherever WhatsApp communications and communication by SMS are referred, from the context / contents of the message, it is *prima facie* observed that the same is with the employee / representative of FI. Similarly, the emails received by the clients are *prima facie* observed to be sent by the employee / representative of FI as the email id from which it is sent has been sent to the client has the domain name of future investment, for e.g., compliance@futureinvestments.in or is signed off as "Thanks & Regards, Future Investment, Support / Compliance Department." I, now proceed to consider the findings of the examination conducted by SEBI.

Promising assured / guaranteed returns / profit to its client:

- 6.1. It is noted from email and tele-communications (WhatsApp messages and SMS) that clients had with the employees of IA that FI has been promising assured / guaranteed returns / profits on the investment made by the clients based on the call / tips given by FI. Some examples of returns assured to the clients are as under:

6.1.1. Email communication of FI with Mr. Vikash Pushkar (complainant)

Mr. Vikash Pushkar had received an email dated July 16, 2018 from support@futureinvestments.in wherein it is stated as follows:

"...We are looking forward to provide you a big opportunity to branch out and make bigger money.

...

As per your discussion with your subordinates the details of your services are given below-

Equity Blaze

<i>Service amount</i>	<i>Net payable</i>	<i>Duration (1+1)</i>	<i>Registration charge</i>	<i>Net Return</i>
4,50,000/-	4,50,000/-	60 days	75,000/-	10,00,000/-

It is observed from the above table that, if the client avails the package, Equity Blaze by paying a service amount of Rs. 4,50,000/-, the net return under the said package within a period of 60 days is stated as Rs. 10,00,000/-. Thus, *prima facie* it is observed that FI is promising assured returns. The promise of assured returns *prima facie* appears to have been made to mislead the client and influence him to subscribe to its advisory service.

6.1.2. WhatsApp communication of FI employee Mr. Rishab with Mr. Raghava Kalva (complainant):

- “23/04/19, 3:23 pm – raghava: I have 10000 you told me that I can make from 30000 to 50000 a month
23/04/19, 3:23 pm – raghava: Did you?
23/04/19, 3:23 pm – Future Investment: Yes sir”
- “23/04/19, 3:26 pm – Future Investment: Yesterday my paid client got 53k profit in bank nifty with just investment of 12k
23/04/19, 3:28 pm – Future Investment: Sir don’t worry about profit. That is my task, and I will surely provide you promised profits.”
- “13/05/19, 9:52 am – Future Investment: Minimum 5000 is required for registration.
13/05/19, 9:52 am – Future Investment: That will be recover in 2 sessions.”
- “25/06/19, 2:03 pm – Future Investment: Update me as soon as you receive service id
25/06/19, 2:06 pm – raghava: Dear Raghav, Congratulations for your service allocation in the services of jobbers cash of 1.50 lakh for the approx. suggested return of 4.50 lakh during your service. Your service id-raghWITG@71919 will be valid for your services.”
- 28/06/19, 7:29 pm – raghava: Are you sure about the returns
28/06/19, 7:30 pm – Future Investment: Sir then last time arrange 14k more for tomorrow and I promise I will recover amount within 15 days.”

From the above, it is *prim facie* observed that FI employee is suggesting a return amount on the investment amount, if the client avails FI's services and is also promising to recoup the investment of the client within few days. Securities market returns are volatile and unpredictable. Further, in a short time span, the probability of incurring losses is equal to the probability of making gains. In my view, being a registered IA, knowing the dynamics of the securities market, still the IA committed to recover the registration charges / investment amount, is *prima facie* an act of misleading the client.

It is also noted from the above communication of FI employee with the client that the employee is referring to a profit made by one of its client to the tune of Rs. 53,000/- on his investment of Rs. 12,000/-. This act of the employees is nothing but *prima facie* appears to be an attempt to induce the client to subscribe to its advisory service by showing profit numbers which *prima facie* is an act to mislead the client as full disclosure is not made by the employee of FI that the proposed investment of the client may incur loss.

6.1.3.SMS of FI employee with Mr. Rajib Debnath (complainant):

On October 31, 2019 at 4:19 pm Mr. Rajib Debnath had received a SMS which stated as follows:

"Dear Sir,

This is inform you that you will be make the payment of INR 45,750/- and after the remaining amount INR 45,750 you have profits of INR 1.5 LKH.

Regards, Future Investment."

The above SMS *prima facie* shows that FI has been promising assured returns / profits on the investment made by its client. IA being an expert / qualified person giving advice in securities, knowing well the dynamics of the securities market, is still assuring returns / profits, which *prima facie* is misleading, and has been made with an intent to sell its advisory services.

- 6.2. In view of the above, it is *prima facie* observed that the conduct of the IA of promising assured returns / profits, *prima facie* is an active concealment of the material fact that every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Thus, by not disclosing this material aspect, the IA has *prima facie* acted in a deceitful manner and has misled its clients.
7. Interestingly, despite the evidence on record above discussed to the effect that FI was promising assured returns / profits, it was making a representation on its website that FI “*does not provide any guaranteed service*” and “*with investment, your capital is at risk*”. The said statements do not dilute the contrary *prima facie* evidence on record that it was in fact promising assured returns / profits, for the simple reason that if the object of FI was to inform its clients that investment in securities market is subject to market risk and therefore, it cannot provide any guaranteed service, it should not promise assured returns / profits at all including via WhatsApp, SMS, etc. Therefore, I find that the aforesaid statements on its website are only a facade to take shelter for its conduct of promising assured returns / profits and misrepresentation to the investors.
8. From the above, I *prima facie* observe that FI has been promising assured return / profits, if the clients availed its services. Moreover, I also *prima facie* observe that the IA knowing fully well that all the investments in securities market are subject to market risk and that returns cannot be assured no matter how much and for how long the investment is made, still went ahead and assured returns / profits to its clients. Thereby the IA has made, *prima facie*, false and misleading representation to its investors.
9. In view of the above discussions, it is noted that the IA provides tips / tele-messages in securities pertaining to various segment of securities market viz. equity cash segment, equity futures segment, stock derivatives, index derivatives, commodity derivatives, etc., which are listed / traded on the Exchange platform. Investment in Exchange traded securities are subject to market risk and hence the returns are unpredictable. Being a registered IA, FI was aware of the above and is accordingly

expected to take due care in its communication with its clients and should refrain from such communication which is misleading and may influence decision of investors. However, from, the above instances, it is apparent that FI has been, in its communications with clients, promising assured returns / profits to its clients. Such promises are *prima facie* misleading and appear to have been made to influence the decision of the investors to deal in securities.

10. In this context, I refer to regulations 2(1)(c), 3 (a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), Sections 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”), regulation 15(1) and clauses 1 and 2 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations:

PFUTP Regulations

2 (1) In these regulations, unless the context otherwise requires, —

(c). “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

...

(8) a false statement made without reasonable ground for believing it to be true;

....

And “fraudulent” shall be construed accordingly;

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

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.

SEBI Act

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

Section 12A: *No person shall directly or indirectly:*

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

IA Regulations

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

...

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

Code of Conduct

1. Honesty and fairness

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

2. Diligence

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

11. By promising assured returns / profits which the IA knows well cannot be assured, the IA has *prima facie* made a misrepresentation of the truth. Neither there exists any *prima facie* grounds for belief of such returns nor can the assured returns / profits be achieved with any certainty. An IA cannot make a false statement without reasonable ground for believing it to be true. Hence, the same has *prima facie* led to the violation of provisions of regulation 4(1) read with regulations 2(1)(c)(1), (2) and (8) of PFUTP Regulations. Moreover, as discussed in preceding paragraph, though FI has mentioned on its website that “*with investment, your capital is at risk*”, it is just a façade to take shelter for its conduct later on as from the conduct of the employee / representative, when they are directly dealing with the clients *prim facie* shows that they are promising clients of assured returns / profits and not informing them about the material aspect that their investment in the securities market is subject to market risk where their capital can even erode. Thus, *prima facie* it shows that the IA has engaged in an act which operates as fraud upon its client in connection with their dealing in securities market. The aforesaid manipulative scheme *prima facie* appears to be employed by the IA to defraud its clients with respect to dealing in securities. Hence, the aforesaid act / scheme of the IA has *prima facie* led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. Furthermore, the IA has also not been honest and taken due care in its dealings in the best interest of its clients. Thus, it appears that the IA has failed to act in a fiduciary capacity towards its clients, which has led to the violations

of regulation 15(1), clauses 1 and 2 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

FI has been unfair in its dealing with the clients and has extorted money under different pretexts

12. It is noted from tele-communication (WhatsApp messages) that FI did not inform about the entire fee structure at the outset to its clients but has demanded fees gradually from its clients under different pretexts. Some of the instances are as under:

12.1. WhatsApp messaging with Mr. Raghava Kalva (complainant):

"27.06.19, 1:20 pm – Future Investment: If today you don't pay, the result will be lost of 80k of services and 4.5 lacs of profits.

27.06.19, 1:20 pm – raghava: I would pay, if I have

27.06.19, 1:21 pm – raghava: I payed what ever I have

27.06.19, 1:21 pm – Future Investment: Then arrange for it

...

27.06.19, 1:22 pm – raghava: I took it from my father

27.06.19, 1:22 pm – raghava: You know I struggle to pay 5k

27.06.19, 1:22 pm – Future Investment: So took more and say them that you will pay after 15 days.

...

27.06.19, 4:17 pm – Future Investment: Ask your parents for last time. tomorrow fresh contract are opening in bank nifty so you can earn upto 5k.

...

29.06.19, 12:36 pm – raghava: I will pay after a 5fsys

29.06.19, 12:37 pm – raghava: Days

29.06.19, 12:37 pm – future Investment: and make the excuse of amount. I am just asking for 13570 only

29.06.19, 12:37 pm – future Investment: No.. today you have

29.06.19, 12:38 pm – future Investment: before 2.30

...

29.06.19, 12:40 pm – raghava: Don't be money minded. You know how much I have paid and how much you asked in the starting. I more then you have asked. I don't have man

...

29.06.19, 12:40 pm – raghava: I know you are fraud. You ask for more money

29.06.19, 12:40 pm – raghava: I paid more then you have asked

29.06.19, 12:41 pm – future Investment: okay then leave

29.06.19, 12:41 pm – raghava: pay my money back

...

29.06.19, 12:42 pm – future Investment: Non refundable policy

29.06.19, 12:42 pm – raghava: What you did not say all this before."

It is observed from the above communication that the client has paid more than what was disclosed to him at the beginning of his service / packaged availed by him. Thus, *prima facie* it is observed that FI does not disclose the full amount at the time of initial product / service selling to its client but gradually demands it from the client giving reasons that if the client does not pay the same then services will be stopped and profits will also be lost. *Prima face* it appears that the additional amounts were demanded by the IA to extract more and more money from the clients.

12.2. WhatsApp messaging with Mr. Rajeev B. (complainant):

"Rajeev B: Mail was sent to me not clearing my querries.

FI (Shruti): U have to pay service amount remaining from profit that I will mail u.

Tax u have to clear now. Aftrr 72000 u have to pay after profit only.

FI (Shruti): There is no refund policy.

Rajeev B: Okay. You can deliver the same statement to SEBI, NSE, BSE, Indore Police and other Competent Authorities.

FI (Shruti): Sebi donot ask for refund if client is denying to take service ok

...

Rajeev B: Also without signing the service contract how could I start working?

...

Rajeev B: It was your responsibility to inform me before starting the things

FI (Shruti): Ok no problem.. I will tell the tax department that u r not interested and your time is wasted.. so kindly block your service.

...

Rajeev B: Also nobody had informed me about the huge service tax

FI (Balwant Sharma): Nothing next

...

Rajeev B: You are delaying without disclosing entire things

FI (Balwant Sharma): Leave it

...

FI (Balwant Sharma): I am leaving ur profile..now time is very important.

...

FI (Balwant Sharma): Profile canceled.

...

Rajeev B: Dear I have clearly informed you after making more than the necessary payments to you, you have declined my profile by stating that I need to pay GST 72000/- which had not informed earlier. I got a valid information from your side that due to no payment of GST, you have cancelled my profile.

...

FI (Yamini): sir we did not said it official

...

Rajeev B: what do you mean? Message received from official who is using office number is not an official message?

FI (Yamini): message is not count in official....

...

Rajeev B: Based on the messages over whatsapp only I remitted money

...

Rajeev B: I have been continuously requesting you to repay my money but I don't get any kind of response from your side. As you have denied to accept the whatsapp messages as official messages, how could a customer trust and invest in Indian Share Market?"

It is observed from the above communication that the charges for service tax and GST were not disclosed to the client upfront by the IA. Thus, *prima facie*, it is noted that FI did not inform about the entire fee structure at the outset but demanded additional amount gradually from the client on the pretext of service tax and GST. Further, the profile / service of the client was canceled as he did not pay the additional amount. Moreover, when the client was trying to approach the IA with respect to his refund, the IA did not respond to his communications.

13. Before proceeding further, I would like to refer to the relevant provisions of law, which are, regulations 3 (a), (b), (c), (d) of PFUTP Regulations, Sections 12A (a), (b) and (c) of SEBI Act, regulation 15(1) and clauses 1, 2 and 5 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations. The text of clauses 5 and 6 of Code of conduct for Investment Adviser is reproduced hereunder. The text of the rest of the provisions have been reproduced in preceding paragraphs.

Code of Conduct

5. Information to its clients

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

14. In light of the above discussion, following is *prima facie* noted:
- 14.1. FI levies additional amounts post initial subscription of the client without disclosing them at the time of initial subscription.
- 14.2. FI does not respond to its client's queries.
15. It is *prima facie* observed that the IA was not acting honestly and in the best interest of the client by not making adequate disclosures of relevant material information as without disclosing upfront, the IA was charging additional fees (service tax and GST). Further, the IA has not been diligent and fair in its dealing with its clients as when the client was trying to approach the IA with his query for refund, the IA did not respond to his communications.
16. The aforesaid actions of the IA *prima facie* shows that it has failed in its responsibility to act in a fiduciary capacity towards its clients which is entrusted upon it under

regulation 15 (1) of IA Regulations and the IA has also failed to abide by the clauses 1, 2 and 5 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations.

17. The aforesaid discussion also *prima facie* throws light on the scheme employed by the IA to defraud its clients. The IA first takes its clients on-board for a particular service for an initial amount without disclosing all the charges / amounts which will be levied on the clients subsequent to the subscription. Then in order to generate more and more service fees (income) for itself, the IA gradually demands additional money on the pretext of either service tax or GST which if the client refuses to pay, the IA threatens to cancel the client's profile or tells the client that he will have to forfeit his profit. As a last resort when the client does not wish to avail the services of the IA, the IA refuses to refund the money to the client citing its "no refund policy". The aforesaid scheme is employed by the IA to *prima facie* defraud its clients in connection with their dealings in the securities and maximise its revenue generation at their expense. Further, the act of the IA to actively conceal material information upfront (additional charges) so as to induce the prospective clients to avail its services, operates as a fraud on its clients in connection with the dealings in the securities. Hence, the said act / scheme of the IA has *prima facie* led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act.

Selling multiple packages

18. It is noted from the material that FI starts with its basic product for which the amount of advisory fees charged is comparatively less and then makes the client to switch to products with higher fees. Thus, FI sells multiple services to its clients, as noted from invoices date, even though the subscription period for products earlier bought by the client was not over yet. Some of the instances are as follows:

18.1. Client Name: Mr. Vikash Pushkar (complainant)

Sl. No.	Invoice Date	Package Description	Duration	Amount (Rs.)
1	14-Jul-18	Stock Cash	16-Jul-18 to 15-Aug-18	7,500/-

2	17-Jul-18	Stock Cash	17-Aug-18 to 15-Nov-18	20,000/-
3	19-Jul-18	Equity Blaze	19-Jul-18 to 27-Jul-18	1,00,000/-
4	21-Jul-18	Equity Blaze	30-Jul-18 to 06-Aug-18	1,20,000/-
5	23-Jul-18	Equity Blaze	07-Aug-18 to 14-Aug-18	1,00,000/-
6	24-Jul-18	Equity Blaze	15-Aug-18 to 22-Aug-18	1,00,000/-
7	24-Jul-18	Equity Blaze	25-Aug-18 to 30-Aug-18	40,000/-
8	25-Jul-18	Jobbers Cash	25-Jul-18 to 24-Aug-18	70,000/-
9	25-Jul-18	Cash Premium	25-Jul-18 to 24-Aug-18	25,000/-
10	26-Jul-18	Cash Premium	27-Aug-18 to 25-Sep-18	25,000/-
11	27-Jul-18	Equity Blaze	31-Aug-18 to 06-Sep-18	1,00,000/-
12	30-Jul-18	Equity Blaze	07-Sep-18 to 13-Sep-18	1,08,000/-
Total				8,15,500/-

It is observed from the client's risk profiling form that his investment amount and market value of portfolio is less than Rs. 2 lakh and his gross annual income is between Rs. 2 lakh to Rs. 5 lakh. However, based on the invoices and as seen from the table above that FI has taken around Rs. 8.15 lakh towards service charges by issuing 12 different invoices to the client and had sold him 5 different services within a period of just 17 days, even though subscription to earlier packages were not over. Further, the fees are more than 4 times of his investment amount and market value of his portfolio and 1.6 times, his gross annual income. Moreover, it is also noted from the above table that even before the subscription of a package is over, the same package is sold to the client within a couple of days from the subscription to the initial package. In essence by virtue of this practice, FI is, *prima facie*, locking the client without giving him an opportunity to not continue with FI, if the client is not satisfied with his first leg of service.

18.2. Client Name: Mr. Sunil Semwal (complainant)

Sl. No.	Invoice Date	Package Description	Duration	Amount (Rs.)
1	15-May-19	Stock Cash	15-May-19 to 31-May-19	6,300/-

2	16-May-19	Stock Cash	31-May-19 to 30-Nov-19	27,750/-
3	16-May-19	Cash Premium	16-May-19 to 15-Aug-19	48,900/-
4	17-May-19	Equity Blaze	20-May-19 to 27-Aug-19	27,000/-
5	17-May-19	Equity Blaze	28-May-19 to 28-Jun-19	84,200/-
6	17-May-19	Equity Blaze	01-Jul-19 to 01-Aug-19	68,350/-
7	18-May-19	Equity Blaze	02-Aug-19 to 02-Sep-19	94,500/-
8	20-May-19	Equity Blaze	03-Sep-19 to 04-Dec-19	5,36,000/-
9	27-May-19	Jobbers Future	28-May-19 to 28-Aug-19	1,16,000/-
Total				10,09,000/-

The following is observed from the client's risk profiling form -

- His investment amount and market value of portfolio is less than Rs. 2 lakh;
- His gross annual income is between Rs. 2 lakh to Rs. 5 lakh;
- PF and other employee benefits are his only source of savings.

However, it can be seen from the table above and invoices that FI has taken Rs. 10.09 lakh towards service charges by issuing 9 different invoices and sold 4 different services within a period of just 13 days. Further, the fees are 5 times of his investment amount and market value of his portfolio and double, his gross annual income.

18.3. Client Name: Mr. Kamal Waghela (complainant)

Sl. No.	Invoice Date	Invoice No.	Product/Service	Product duration	Amount (Rs.)
1	11.06.2019	3472	Stock Cash	11.06.2019 to 25.06.2019	3,500/-
2	11.06.2019	3476	Jobbers Cash	11.06.2019 to 12.07.2019	66,000/-
3	12.06.2019	3483	Jobbers Cash	15.07.2019 to 16.08.2019	48,600/-
4	12.06.2019	3486	Jobbers Cash	17.09.2019 to 18.10.2019	48,600/-
5	13.06.2019	3492	Equity Blaze	11.06.2019 to 28.06.2019	58,600/-
6	13.06.2019	3495	Equity Blaze	01.07.2019 to 08.07.2019	28,600/-
7	17.06.2019	3520	Equity Blaze	09.07.2019 to 25.07.2019	56,280/-

8	17.06.2019	3522	Equity Blaze	29.07.2019 to 13.08.2019	49,000/-
9	17.06.2019	3526	Equity Blaze	14.08.2019 to 14.09.2019	75,140/-
10	18.06.2019	3533	Equity Blaze	16.09.2019 to 18.10.2019	75,110/-
Total					5,09,430/-

The above table shows that the client was sold an initial service for which the advisory fee is very small but on the same day he was sold a product whose advisory fee was substantial. Further, within a week's time FI has collected Rs. 5.10 lakh towards service charges from the client by selling multiple products even before the subscription of the earlier product had expired.

18.1. Client Name: Mohd. Aquib Khan (complainant)

Sl. No.	Invoice date	Invoice No.	Product	Service period	Amount (Rs.)
1	27.12.2018		Jobbers Cash (Free Trial)	28.12.2018 to 04.01.2019	5,000/-
2	27.12.2018	2381	Jobbers Cash	07.01.2019 to 21.01.2019	23,250/-
3	28.12.2018	2390	Jobbers Cash	22.01.2019 to 29.01.2019	17,900/-
4	30.01.2019	2596	Cash Premium	31.01.2019 to 14.02.2019	5,555/-
5	30.01.2019	2597	Cash Premium	15.02.2019 to 14.02.2020	1,45,000/-
6	30.01.2019	2508	Cash Premium	17.02.2020 to 24.02.2020	6,000/-
7	30.01.2019	2608	Cash Premium	25.02.2020 to 26.03.2020	21,000/-
Total					2,23,705/-

From the above, it is observed as follows:

- FI has sold 'Jobbers Cash' product to the client thrice within a period of 2 days (December 27, 2018 and December 28, 2018).
- FI has sold 'Cash Premium' four times on January 30, 2019.
- The product 'Cash Premium' was sold on January 30, 2019, the tenure of which would start on February 17, 2020 (invoice no. 2508 and 2608), more than 1 year after the receipt of fees from the client.

- Same product was sold to the client before the end of the service period of the product.

19. Before proceeding further, I would like to refer to the relevant provisions of law, which are, regulations 3 (a), (b), (c), (d) of PFUTP Regulations, Sections 12A (a), (b) and (c) of SEBI Act, regulation 15(1) and clauses 1, 2 and 6 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations. The text of clause 6 of Code of conduct for Investment Adviser is reproduced hereunder. The text of the rest of the provisions have been reproduced in preceding paragraphs.

Code of Conduct

6. Fair and reasonable charges

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

20. In light of the aforesaid discussion, *prima facie* it appears that the IA has not been honest and fair in its dealings with its clients and has been acting in a manner so as to maximize its service fees by selling multiple advisory services within a short period of time and even before completion of the earlier service, rather than rendering best possible advice to its clients. Moreover, the IA was also *prima facie* not acting honestly and in the best interest of the client by making the client subscribe to multiple subscriptions to the same package on the same day. Further, *prima facie* the IA has not exercised due care and diligence in its dealings with its clients as services were sold to the clients without taking into account the information provided in the risk profile of the client, especially his gross annual income and investment amount / market value of his portfolio. Consequence of the same was that the total fees that was charged to the client was disproportionate to his gross annual income. The aforesaid actions of the IA *prima facie* shows that it has failed in its responsibility to act in a fiduciary capacity towards its clients which is entrusted upon it under regulation 15 (1) of IA Regulations and the IA has also failed to abide by the clauses 1, 2 and 6 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations.

21. The aforesaid discussion also *prima facie* throws light on the scheme employed by the IA to defraud its clients. The IA first takes its clients on-board for a particular service for a small advisory fee. Then in order to generate more and more service fees (income) for itself, the IA gradually sells multiple products including the initial product to its clients within a short span of time even before the expiry of the initial service subscription's period. The aforesaid scheme is employed by the IA to *prima facie* defraud its clients in connection with the dealings in the securities and maximise its revenue generation at their expense. Further, the act of the IA to sell multiple products to its clients which was *prima facie* contrary to the information provided in their risk profile shows that the IA was not disclosing all the material information to its clients at the time of selling its services that the multiple products / packages that were sold to the client far exceeded his gross annual income as mentioned in client's risk profile. Such *prima facie* deceptive behaviour of concealing material information has deprived its clients of an informed consent to subscribe to the products and operates as a fraud on its clients in connection with their dealings in the securities. Hence, the said act / scheme of the IA has *prima facie* led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act.

Suitability Assessment of products/services irregularities

22. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance. Relevant extracts of regulation 17 of IA Regulations are reproduced below for reference:

Regulation 17(a). All investments on which investment advice is provided is appropriate to the risk profile of the client;

Regulation 17(d)(i). It has a reasonable basis for believing that a recommendation or transaction entered into meets the client's investment objectives;

Regulation 17(d)(ii). It has a reasonable basis for believing that a recommendation or transaction entered into is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

Regulation 17(e). IA shall ensure that the recommendation or advice given to client is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objective, risk appetite and capacity for absorbing loss.

23. However, in case of FI, there are instances, where the package / service sold to the client does not match his risk profile. Some of the instances are reproduced below:

23.1. Client Name: Mr. Raghava Reddy Kalva (complainant)

It is observed from the client's risk profiling form that he has been categorized under 'Medium Risk' category. However, inspite of the said categorisation, FI has sold high risk product to the client. Details of risk profiling and products sold are given below:

Sl. No.	RPF date	Risk category as per RPF	Name of product sold	Product risk category	Invoice / payment date	Amount collected (Rs.)
1.	17.6.19	Medium Risk	Stock cash	Medium Risk	18.6.19	5,000
2.			Option Premium	High Risk	25.6.19	71,680

It is seen from the above table that after selling the client a medium risk product, FI has sold him a high risk product within a few days for a substantial value. It is observed that the risk profile / risk appetite of the client cannot change over a short span of time. The act of FI to sell a product to its client which is not appropriate to the risk profile of its client, *prima facie* appears to be not in the best interest of its clients but is an act to maximise its revenue. Further, the very fact that a high risk product was sold to a medium risk client that too within a week when a medium risk product was sold to him *prima facie* shows that the IA had no reasonable basis of believing that the advice that it was giving to its client for subscribing to a high

risk product was consistent with the client's risk appetite and capacity for absorbing loss.

23.2. Client Name: Mr. Radharaman Dash(complainer)

It is observed from the client's risk profiling form that gross annual income of the client is Rs. 2 lakh to Rs. 5 lakh. The client's current investment amount is less than Rs. 2 lakh and market value of portfolio held is less than Rs. 2 lakh. The products / services sold by FI to the client is stated as under:

Sl. No.	Invoice Date	Package Description	Duration	Amount (Rs.)
1.	12-Nov-18	Cash Premium	12-Nov-18 – 19-Nov-18	3,000/-
2.	12-Nov-18	Jobbers Cash	12-Nov-18 – 12-Dec-18	63,449/-
3.	12-Nov-18	Jobbers Cash	13-Dec-18 – 28-Jan-19	81,051/-
4.	13-Nov-18	Jobbers Cash	29-Jan-19 – 12-Feb-19	36,905/-
5.	14-Nov-18	Option Premium	19-Nov-19 – 03-Dec-19	14,000/-
6.	16-Nov-18	Jobbers Cash	13-Feb-19 – 14-May-19	1,68,400/-
7.	17-Nov-18	Jobbers Cash	20-May-19 – 19-Jun-19	49,895/-
Total				4,16,700/-

From the above table and the invoices, it is seen that FI has sold 7 services to the client within a span of 5 days amounting to Rs. 4.16 lakh which is approximately the gross annual income of the client. The same is *prima facie* in total disregard to the financial condition of the client as disclosed in the risk profiling form of the client. Further, considering that investment in securities is subject to market risk, the act of FI to advice its clients to buy services almost equivalent to his gross annual income that too in a span of 5 days, *prima facie* shows that FI had no reasonable basis for believing that the recommendation given by it to the client to subscribe to multiple services, was such that the client would be able to bear any related investment risks.

Further, the risk profiling form of the client was perused to ascertain the risk appetite of the client. The following is observed –

Q. No.	Questions	Response	Score
21	Risk Tolerance	High	5
26	Assume that you have invested Rs. 1,00,000 in a share that goes down by 10% the next day.	Book your loss and invest in fixed deposits or bonds	2
27	How would you 'honestly' describe yourself as a risk taker?	Willing to take evaluated risk (I can't tolerate a some loss)	4

From Q. Nos. 26 and 27, it is seen that client's risk tolerance level (i.e. assuming losses on investments) is very low, still FI has categorized him under 'High Risk' category and sold him high risk products. The same *prima facie* shows that FI has not exercised due skill, care and diligence in ascertaining the risk appetite of the client. It also *prima facie* leads to an inference that FI was not acting in a professional manner.

23.3. Client Name: Mr. Sunil Semwal (complainant)

The information mentioned in his risk profile form dated May 14, 2019 are as follows:

Question	Client's Answer	Score
Occupation	Retired	2
Investment goal	Capital appreciation and regular income	3
Preferred investment type	Long term positional	2
How would you honestly describe yourself as a risk taker?	Willing to take evaluated risk (I can't tolerate a some loss)	4

Based on client's objective of generation of regular income and his inability to bear a small loss, indicates that he is a low risk taker. In spite of these parameters, FI has sold product from derivative segment i.e. Jobbers Futures service to him for Rs.1,16,000/- for the period May 28, 2019 to August 28, 2019, which is a high risk product. Similarly, the FI had sold him product, "Stock Cash". As per the product details one of the features of the said product is as follows: "*Stock Cash: This is an intraday services we will given a 3-4 calls on per day with 3 targets and 1 stop loss.*" It is evident from the above that client's preferred investment type is long term

positional whereas FI has sold him intraday trading product. Hence, FI is not selling products as per client investment objectives.

The aforesaid instances *prima facie* indicates that FI had no reasonable basis to believe that the recommendation given by it to the client would meet the client's investment objectives.

24. Before proceeding further, I would like to refer to the relevant provisions of law, which are, regulations 3 (a), (b), (c), (d) of PFUTP Regulations, Sections 12A (a), (b) and (c) of SEBI Act, regulations 15(1), 17(a), 17(d), 17(e) and clauses 1, 2 and 6 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations the text of the said provisions have been reproduced earlier.

25. From the above discussion, the following is *prima facie* observed-

25.1. The products sold by FI to clients are not appropriate to the risk profile / risk tolerance of clients.

25.2. FI has not sold products/services based on client's financial situation.

25.3. FI has not sold services as per the investment objectives and investment time horizon of the clients.

26. I note that the purpose for which it has been mandated by the IA Regulations that the IA must necessarily carry out risk profiling before selling its services is to give an informed advice to the client which is in his best interest. The aforesaid *prima facie* finding of the examination demonstrates that the IA has scant regard for exercising due skill, care and diligence that his advice be offered only after thorough analysis of the risk profile of its clients. Thus, *prima facie*, it appears that the IA has failed to act with due skill, care and diligence as the IA has been selling advisory services / products without ensuring suitability of advice to its clients in accordance / appropriate to their risk profile. Moreover, the IA has a mandatory obligation to assess the client's financial situation, his investment objectives and his risk appetite before advising / selling a product / package to him. The risk profiling is required to be a guiding factor before the product is chosen consistent with the risk profile of the client. In the instant matter, it is *prima facie* observed that FI had no reasonable basis to believe that the recommendation that it was giving to its clients was consistent with

the client's investment objectives, his ability to bear related investment risks, his risk appetite and his capacity to absorb loss. Further, the IA has not been honest and fair in its dealings with its clients and has kept its own interest at higher pedestal compared to the interest of its clients as the IA has selected and sold multiple packages / products without any regard to the financial situation of the client, his investment objectives and his risk appetite. The aforesaid actions of the IA *prima facie* shows that it has failed in its responsibility to act in a fiduciary capacity towards its clients which is entrusted upon it under regulation 15 (1) of IA Regulations and the IA has also *prima facie* failed to comply with regulations 17(a), 17(d) (i), 17 (d) (ii), 17 (e) and clauses 1, 2 and 6 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations.

27. The IA has to make adequate disclosure of relevant material information which among other things involves informing the client about the intricacy of the product including its key features, performance track record and various kinds of risks and rewards associated with it. However, in the instant matter, FI has sold products to its clients which are not appropriate as per their risk profile. For instance, he has sold Mr. Sunil Semwal who is a low risk taker, a high risk product namely "Jobbers Futures". The same *prima facie* indicates that the IA has not disclosed to Mr. Sunil Semwal the material information that the product being a high risk product is not suitable for him as his appetite to take risk is low. If the said information would have been disclosed to him, in all probability, he would have not subscribed to that product. Thus, *prima facie* FI has concealed aforesaid material information from its clients while advising them to subscribe to its services and have *prima facie* made the clients to act to their own detriment. The aforesaid act of the IA has *prima facie* defrauded its clients in connection with the dealings in the securities. Further, the act of the IA to sell products to its clients which are not appropriate to their risk profile *prima facie* operates as a fraud on its clients in connection with dealings in the securities. Hence, the said act / scheme of the IA has *prima facie* led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act.

Risk profiling, communication of risk profiling and financial planning

28. Regulation 2(1)(l) of IA Regulations defines that investment advice includes financial planning. Regulation 17(b) of IA Regulations states that IA shall select investments based on client's investment objectives and financial situation. However, in the instant matter it is *prima facie* observed that FI is not doing financial planning while selling its products/services to clients. An instance is reproduced below:

28.1. WhatsApp communication of Mohd. Aquib Khan (complainant) with FI employee Mr. Rudra

It is observed that client has mentioned that he has paid service charges by using friend's credit card, loan, etc. Some of the extracts of the said WhatsApp communication is given below:

On 30.01.2019 @5.13 pm "Mohd. Aquib Khan: 75k done, dusre ke card se kiya hai, ab baki tumhare hath me h"

@5.29 pm "Rudra from FI: Ok sir"

...

On January 31, 2019 @9.36 am "Mohd. Aquib Khan: As discussed all payments done with GST Rs.177000

@9.37 am" Rudra from FI: Ok

@9.38 am "Mohd. Aquib Khan: Ab mera 7 lac ka amount evenings tak demat show hona chahiye jaise tumhe payment ekdum chahiye aise hi mujhe return chahiye.

@10.33 am" Rudra from FI: As per as market condition per krenge sir aaj"

@4:23 pm "Mohd. Aquib Khan: Yah kal 1,19,555 ka loss hua hai, yeh mera hard cash gaya hai, jisme 60,000 udhar ke hai. Pls remember Rudra.

@4.28 pm" Rudra from FI: Ok sir."

@8.08 pm "Mohd. Aquib Khan: pasted sbi credit card statement saying "ye sbi ki pmt hai jo 5 ko karni hai"

@8.59 pm "Mohd. Aquib Khan: pasted sbi credit card message saying "125641 is card ki outstanding ho gayi hai"

@9.10 pm "Mohd. Aquib Khan: Pls meri request hai mera profit jald se jald kar wa do, me depression me aata jaa rha ho, last 1 month se 4LC ka udhar ho Gaya he mere upar. Pls mera 7LAC ka profit jald se jald karwa do."

It is observed from the above communication that FI was aware that the client had taken loan for making payment to FI. Moreover, in the risk profiling form it is mentioned that the client's current investment amount and market portfolio amount is less than Rs. 2 lakh. Further, he has submitted his salary slip for the month of November, 2018 wherein the gross salary is shown Rs. 28,951/-. However, as noted in preceding paragraphs, the client was sold multiple products worth Rs. 2,23,705/- within a span of one month. Thus, the aforesaid demonstrates that FI has *prima facie* not done any financial planning which *inter alia* includes analysing client's current financial situation and accordingly giving him investment advice.

29. As per regulation 17 of IA regulations, investment advice shall be appropriate to the risk profile of the client. Regulation 16(e) of IA Regulations states that risk profile of the client is communicated to the client after risk assessment is done. Thus, the regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice and accordingly risk profiling should precede suitability exercise. However, in the instant matter, it is *prima facie* observed that FI is selling products before communicating risk profiling to the client. Some of the instances are reproduced below:

29.1. Client Name: Mr. Vijay Parvatrao Andhale (complainant)

It is noted from the records that FI vide its email dated January 14, 2019 has sent risk profiling form to the client. But, FI had sold the product "Cash HNI" to him on December 26, 2018 for the period January 4, 2019 to May 4, 2019 for Rs. 1,01,700/-. As such, FI has sold product on December 26, 2018 and communicated risk profiling to client on January 14, 2019 i.e. 20 days after collecting service charges.

29.2. Client Name: Mr. Pranamya Joshi (complainant)

It is noted from the records that the risk profiling form has been communicated to the client vide email dated January 31, 2019 whereas, it can be seen from table below that FI has sold its products to the client starting from January 3, 2019 to January 19, 2019 and collected Rs. 10,96,000/-. The details of products sold are given below:

Invoice date	Invoice no.	Product	Duration of service	Amount (Rs.)
03.01.2019	2423	Equity Blaze	07.01.2019 to 08.01.2019	5,000/-
03.01.2019	2426	Equity Blaze	09.01.2019 to 16.01.2019	35,000/-
10.01.2019	2467	Equity Blaze	17.01.2019 to 21.01.2019	10,000/-
15.01.2019	2496	Equity Blaze	25.01.2019 to 22.02.2019	4,81,000/-
16.01.2019	2514	Equity Blaze	22.02.2019 to 22.03.2019	4,50,000/-
18.01.2019	2536	Equity Blaze	25.03.2019 to 01.04.2019	30,000/-
19.01.2019	2541	Equity Blaze	02.04.2019 to 09.04.2019	85,000/-
Total				10,96,000/-

29.3. Client Name: Mr. Radharaman Dash (complainant)

It is noted from the records that the risk profiling form has been communicated to the client vide email dated November 24, 2018 whereas, as seen in the preceding paragraphs that FI has sold its products to the client starting from November 12, 2018 to November 17, 2018.

30. It is also *prima facie* observed that FI has manipulated the risk profile form to sell high risk products to its clients. One such instance is reproduced below:

30.1. As per KYC of Mr. Pranamya Joshi his occupation is "private sector service".

However, in risk profiling form his occupation is mentioned as 'Business' and primary sources of income is also mentioned as 'Business' giving score weightage of 5 each resulting in total weightage of two questions as 10. Had the occupation been mentioned as 'private sector' instead of 'Business' and primary source of income as 'salary' instead of business in risk profiling form, the risk score weightage would be 2 and 3 respectively resulting in total weightage of two questions would have been 5 (instead of 10). Hence, the total risk score of the risk profiling form would have been 79 (Medium Risk) whereas, the total score of risk profiling form

of Mr. Pranamya Joshi mentioned as 84 (High Risk). Based on this manipulation in risk profiling form FI has sold high risk product “Equity Blaze” to the client. Had FI included correct information regarding the client his correct risk profiling would have been “Medium Risk”. As per product list FI could have sold only one product to Medium risk client. But, with an objective of selling high risks products, it is *prima facie* observed that FI has manipulated answers in risk profile form.

31. Before proceeding further, I would like to refer to the relevant provisions of law, which are, regulation 4 (1) of PFUTP Regulations, regulations 16 (e), 17(a), 17(b), 17(e) and clauses 1, 2 and 6 of Code of Conduct given in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations 2013. The text of regulations 16 (e) and 17(b) of IA Regulations is reproduced hereunder. The text of the rest of the provisions have been reproduced in preceding paragraphs.

IA Regulations

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

17 (b) Investment adviser shall ensure that, -

...

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

32. In view of the above discussion, following can be *prima facie* observed: -

32.1. FI is not doing financial planning of the clients before selling products to them.

32.2. FI has communicated risk profiling to clients after selling the products to them. As such FI has not confirmed from the client about the risk category of the client.

32.3. FI has manipulated risk profile form.

33. I note that the purpose for which financial planning has to be done is to identify client's current financial position and his financial goals and accordingly advise him to meet his goals. Thus, financial planning aids the IA in selling a suitable product to the client which is appropriate to the risk profile of the client and is consistent with client's risk appetite and his capacity to absorb loss. However, in the instant matter, FI was aware that its client, Mohd. Aquib Khan had taken loan to avail its services and

his financial situation was not healthy. Thus, the act of FI to sell the client multiple services for a substantial fee was *prima facie* not based on any reasonable assessment that the financial product was consistent with the client's risk appetite and his capacity to absorb loss. The investment advice given by FI was *prima facie* not in the best interest of the client as it was not appropriate to the risk profile of the client. Hence, the aforesaid act of FI has led to the *prima facie* violation of regulations 17 (a), 17(e) of IA Regulations and clause 6 of Code of Conduct given in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations 2013.

34. It is further observed that the rationale for doing a risk profile of the prospective client is that the IA is aware of client's investment objectives and his financial situation. The same also has therefore to be communicated to the client so as to rule out any ambiguity and that both IA and the client are on the same page vis-à-vis client's financial objectives and his risk appetite. Regulation 16(e) of IA Regulations states that risk profile of the client is communicated to the client after risk assessment is done. Here, I would like to refer to the order of the Hon'ble Supreme Court of India in the case of *District Mining Officer vs. Tata Iron And Steel Co.* [2001 7 SCC 5] wherein the Hon'ble Supreme Court has observed that "*a statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature*". The Court has further observed as under: -

"The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

The following further observations made by the Hon'ble Supreme Court in the same judgment are also relevant and are reproduced for ease of reference: -

"The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are

either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility."

35. The main objective of regulation 16 (e) of IA Regulations is to have both IA and its client on the same page with respect to client's risk profile so as to enable IA to give investment advice to its client which is appropriate to the risk profile of the client and is consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Thus, any communication of risk profile post selling of products to him is akin to no communication as the client had no opportunity to examine the assessment done by the IA before subscribing to the product / service. In the instant matter, as noted in preceding paragraphs, FI has sold on, several instances, multiple products to its prospective clients even before communicating their risk profile to them. Thus, *prima facie* it is observed that the investment advice given by FI or product sold / subscription bought by the investor was not an informed choice due to the lack of communication of assessment of risk profile to the client, there was still room for the client to differ from the assessment done by FI, which may have a bearing on the product bought. On the other hand, if FI had a well-documented process of selecting investments based on the risk profile of the client, the same would have involved communication of the risk profile to the client before any investment advice / product / subscription is sold to him. Thus, the aforesaid act of FI to sell multiple services to its clients without first communicating their risk profile to them, has *prima facie* led to the violation of regulations 16 (e), 17 (a) and 17(b) of IA Regulations.
36. FI by manipulating the risk profile form has *prima facie* sold a product which is not suitable as per the risk appetite of its clients which shows that FI is not honest in

dealing with its clients and does not have the best interest of its client while advising him. Further, the same also shows that FI has *prima facie* failed to exercise due care and diligence. The aforesaid act of FI has *prima facie* led to the violation of clauses 1 and 2 of Code of Conduct given in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations 2013. Moreover, as noted in the preceding paragraphs that the risk profile of Mr. Radharaman Dash is manipulated to sell a high risk product to him which is not as per his correct and non-manipulated risk profile. The said act of FI is a fraudulent act as defined under PFUTP Regulations as it has the effect on dealing in securities and is also not in the best interest of the client as per his risk appetite. The said act of FI has *prima facie* led to the violation of regulation 4 (1) of PFUTP Regulations.

Seeking non relevant information from clients

37. It is observed from the material available on record that FI has procured user id and password of its clients' trading account. Some of the instances are reproduced below:

37.1. WhatsApp chat between Mr. Raghav Kalva (complainant) and employee of FI

19.06.19, 11:41 am – Raghava: Please provide me 1k return make me conformtable as you have promised.

19.06.19, 11:42 am – Future Investment: Sir send me your demat id and password

19.06.19, 11:43 am – Raghav: Ok

21.06.19, 11:22 am – Raghava: User name: RAGHAVA12 Membership pas: Raghava123@ Trading Pass: Raghava1234@

21.06.19, 11:24 am – Raghava: Ok

21.06.19, 11:24 am – Future Investment: Okay sir

37.2. WhatsApp chat between Mohd. Aquib Khan (complainant) and employee of FI

30.01.19 @3.15 pm – Future Investment employee Rudra: "Sir ek bar aap id password"

30.01.19 @3.15 pm – Future Investment employee Rudra: "Dedo"

30.01.19 @3.27 pm – Mohd Aquib Khan: "M128666 pd – aquib345"

38. An IA is in the business of providing investment advice in respect of securities and investment products. It is outside its scope of activities to trade on behalf of its clients.

Furthermore, the information which the IA can seek from its clients has to be relevant for the purposes of the services to be provided to them. In the instant matter, *prima facie*, the IA was seeking their trading account details which is not remotely relevant to the services offered to them as it does not concern about their financial situation, investment experience and investment objectives. The said actions of the IA has *prima facie* led to the violation of clause 4 of Code of Conduct as specified under Third Schedule read with regulation 15(9) of IA Regulations. The text of clause 4 of Code of Conduct is reproduced below:

Code of Conduct

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

Non-Redressal of Investor Grievances

39. Regulation 21 of IA Regulations mandates that IA shall redress clients' grievances promptly. Further, SEBI has vide Circular CIR/OIAE/2014 dated December 18, 2014 regarding Investor grievances through SCORES platform has advised that all SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The SEBI registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, the said circular has stated that in case of failure by SEBI registered intermediaries to file Action Taken Report (hereinafter referred to as "**ATR**") under SCORES within thirty days of date of receipt of the grievance, it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance.
40. It is observed from the data obtained from SCORES that 5 unique complaints are pending against FI as on January 31, 2020. Out of these complaints, it is seen that in 4 complaints, IA has failed to file ATR within prescribed timeline of 30 days violating

the directions given in the SEBI Circular CIR/OIAE/2014 dated December 18, 2014. The details of pending complaints in which IA had filed ATR after 30 days and complaints in which FI has not yet filed any reply from the date of last communication are given below:

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to IA (X)	Date of Final ATR (Y)	Diff. b/w X and Y	Excessive time above 30 days
1	SEBIE/MP19/0001766/1	Raghava Kalva	18.7.19	20.7.19	1.9.19	41	11
2	SEBIE/MP19/0002184/1	Radharaman Dash	11.9.19	30.9.19	Not responded	331	301*
3	SEBIE/MP19/0002506/1	Mohd. Aquib Khan	30.10.19	30.10.19	2.12.19	32	2
4	SEBIE/MP19/0002521/1	Nitish Kumar Yadav	1.11.19	4.11.19	19.12.19	45	15

* up to 26/8/2020

38. I am of the opinion that investor grievance redressal mechanism is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it under SEBI Act. One of the most important objects of SEBI is to protect the interest of investors and the same undoubtedly includes timely redressal of grievances of investors. Since, the IA has not submitted the ATR in a time bound manner as prescribed by SEBI and has also not resolved investors' grievance, *prima facie* it is held that the IA has not complied with SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21 of IA Regulations.

39. To summarize, the following is *prima facie* observed from the analysis of invoices issued to clients, emails exchanged between IA and its clients, risk profile documents of clients and tele-communications of clients with IA's employees (WhatsApp messages and SMS), information available on FI's website and FI's products list:

39.1. FI has been promising assured / guaranteed returns / profit to its clients.

- 39.2. FI has been unfair in its dealing with the clients and has extorted money under different pretexts.
- 39.3. FI has been selling multiple packages to its clients even though the subscription period for products earlier bought by the client was not over yet.
- 39.4. FI has been selling advisory services / products to its clients without ensuring suitability of product / service in accordance to their risk profile.
- 39.5. FI does not consider the financial situation of the client and has not sold products as per clients' risk profile. FI does not have a documented process for selecting investments. And
- 39.6. FI has manipulated the risk profile form.
- 39.7. FI has sought user id and password of trading account of its clients which is not relevant for the purpose of selling products / services to its clients.
- 39.8. FI has not resolved the investor grievances as per prescribed timelines.
40. It is noted that as per regulation 2(m) of the IA Regulations "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called. The term "investment advice" has been defined under regulation 2(l) as advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.
41. On a perusal of the aforesaid definitions, it becomes clear that the role of an "investment adviser" envisaged under the Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, risk profile, risk

appetite, etc. The investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from its clients, which is also stipulated under the Code of Conduct for Investment Advisers under the IA Regulations.

42. An IA is required to comply with SEBI Act and other applicable Regulations. An IA can neither conceal a material fact in order that its clients act to their own detriment nor can he engage in any deceptive behaviour to deprive its client of an informed consent as mandated in PFUTP Regulations. An IA cannot sell products promising assured profits and returns to investors as was being done by FI in the present case. Knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk, FI was falsely promising assured returns / profits.
43. It is also noted from the invoices / payment receipts as discussed earlier that FI was selling multiple packages to its clients, even before the completion of earlier package, and extracting more and more money from the clients. The modus operandi adopted by FI discussed hereinabove *prima facie* show that FI was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his / her financial situation, risk appetite, financial goal, etc. From the findings of the preliminary examination and the overall modus operandi discussed in this order, it *prima facie* shows that the representatives of FI would lure innocent investors by promising assured returns / profits and a basic package / without disclosing the full amount at the time of initial product / service selling and then more money would be extracted from them by upgrading them from one package to another, asking for additional payment on the pretext of various types of fees service tax, GST etc. If the client refuses to pay, the FI threatens to cancel the client's profile or tells the client that he will have to forfeit his profit. As a last resort when the client does not wish to avail he services of the IA, the IA refuses to refund the money to the client citing its "no refund policy". The aforesaid scheme is employed by the IA to *prima facie* defraud its clients in connection with their dealings in the securities and maximise its revenue generation at their expense.

FI by promising assured returns / profits, by concealing material information and by engaging in deceptive behaviour was also inducing the investors to deal in securities and was maximising its revenue. The above discussed non-genuine and deceptive activities of FI are, *prima-facie* fraudulent and are covered under the definition of 'fraud' under regulation 2(1)(c) of the PFUTP Regulations.

44. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he /she / it operates and it ill-behooves the intermediary to defraud. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts. Under regulation 15 (1) of IA Regulations, an IA shall act in a fiduciary capacity towards its clients. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct for an investment adviser prescribed under the IA Regulations. Looking at the activities and manner of operation of FI in the present case, which have been discussed in detail in the preceding paragraphs, I am of the *prima facie* view that FI has failed to abide by the Code of Conduct on all counts as mentioned in preceding paragraphs.

45. It is observed that the website of the IA is functioning and it is one of the medium via which new / prospective clients may subscribe to the services of the IA. It is noted that the complaints of investors are still flowing in SCORES. The latest complaint received in scores is on January 30, 2020. As discussed in preceding paragraphs, the conduct of the IA has been *prima facie* found to be fraudulent in nature and is also in violation of IA Regulations, thus, it is imperative that the new / prospective clients are safeguarded from the activities of IA which are *prima facie* not as per the provisions of applicable laws.

46. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of FI mentioned above does not *prima facie* appear to be in the interest of investors and

the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and such a fraudulent scheme, plan, device and artifice as *prima facie* found in this case, I am convinced that this is a fit case where effective and expeditious preventive and remedial action is required to be taken by way of *ad interim ex -parte* order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to the existing investors but also to new / prospective investors.

47. It has already *prima facie* been found that many of FI's clients have been sold services promising assured returns / profits irrespective of their financial situation, investment objective and risk profiling. The selling of such plans goes against the customized advice which would be required based on the investors' risk profile. This requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. Exposing the existing clients to such advice, which has no co-relation to their risk profile, is against the interest of those investors. Further, FI has also *prima facie* manipulated the risk profile form to sell products which are not suitable to its clients. Thus, in order to prevent the existing as well as the prospective clients from getting such advice which has no co-relation to their risk profile, urgent steps need to be taken against FI. Further, as discussed hereinabove, the very nature of the investment advisory activity being practised by FI has been found to be *prima facie* fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing FI to continue its services to its clients, regardless of whether they have complained against FI or not, would tantamount to allowing the *prima facie* fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations.

48. It is noted that permitting an investor to receive a service from FI is *prima facie* not in consonance with the IA Regulations. Availing of FI's service is detrimental to investors

as FI is not acting in the best interest of its client but is only maximizing its revenue. The acts of FI are not honest and fair towards its clients and will result in irreparable detriment as FI does not disclose all the material information upfront and gives advice to investors which is not in accordance to their risk profile or as per their investment objective or as per client's financial health. Exposing investors to such service which is *prima facie* considered as fraudulent also has the effect of interfering with the development of securities market, as victim of such services tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.

49. Further if an ex-parte order is not passed, many prospective investors may have to part away with large fees and investment resulting into irreparable injury to themselves as the advice given by FI may not be as per their risk tolerance and the product offered to them may not be suitable as per their investment objectives and investment time horizon. However, if an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. It may be noted that one of the underlying differences between the ex-parte orders in the case of private suits and ex-parte public enforcement actions, is the identification of the injured party. In private damage suits, the injured individual, as "whole", is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. The potential loss of investment by the investors by following the advice of FI and resultant loss of investor's confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, FI is permitted to carry out its investment advisory service. Therefore, I consider the balance of convenience is also not in favour of the entity.
50. It is also noted that the IA has not fully cooperated with SEBI's examination. I, therefore find that pending conclusion of inquiry in the matter, in view of the alleged liabilities and the *prima facie* evidence against FI, it is also essential to take urgent

steps to prevent FI from alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous.

51. Considering the above, in my view, the balance of convenience lies against FI and immediate steps needs to be taken against FI to protect the investors / clients from freshly subscribing to or continuing to get such *prima facie* fraudulent investment advisory service by FI.

EXAMINATION OF COMPLAINTS AND RECORDS OF CONVERSATIONS BETWEEN FI'S REPRESENTATIVES AND CLIENTS

52. In addition to the emails, whatsapp communications, SMS and invoices examined above, SEBI also examined the complaints and records of telephonic conversation between the clients / complainants and the employees / representatives of FI.

The complaints and records of telephonic conversations, though have not been relied upon to arrive at the aforesaid *prima facie* findings against the IA, nevertheless have been reproduced below to have a holistic picture of the actions of IA.

Promising assured / guaranteed returns / profit to its client

53. On an examination of complaints, it was observed that FI has been promising assured returns / profit on the investment made by the clients and luring them to avail its services. The returns are promised based on the advice/ tips/ calls given by the IA. Some of the instances are reproduced below.
54. Extract of the relevant portion of the complaints and telephonic conversation is reproduced below which indicates that the clients have been promised assured returns.
- 54.1. Complaint of Mr.Vikash Pushkar received in SCORES on January 25, 2019 wherein the complainant has stated that FI assured him to double his investment and took Rs.9 lakh from him towards service charges.
- 54.2. Mr. Rajib Debnath in his complaint received in SCORES on November 16, 2019 has stated that FI had assured him profit of Rs. 6 lakh within 1 and half month. Mr. Rajib

Debnath, vide his email dated November 29, 2019, has furnished audio recording between him and FI employee, Ms. Pooja and Mr. Manish Prajapati -

10:57 "**FI:** Mein aapko yaha se mail dalva deta hu, theek hain, ki uske baad aapko amount kuch bhi nahi karna hain services theek hain, leekhit mein aapko mil jayega, yeh amount aap complete karvayiye, kal se apan kaam start karvata hu sir, teen working session mujhe dijiye, teen working session mein aapka 70 – 75 % tak ka amount market se recover karva ke deta hu. Ek accha return mere taraf se milega, iske liye mein baitha hu"

11:42 "**FI:** Aaj ki date mein 4500 rupaye ka investment lag raha tha, ek laakh ka profit diya sir, aaj aap yes se humne kaarvaya tha, theek hain"

19:38 "**Client:** Oos profile pe likha hain ke meri 10000 ki capacity hain, aur 10000 wala banda 50000 pe chala gaya, toh mein kaha se laoonga, ma'am, jab tak mujhe profit nahi dilwaooge mein kaha se paise pura karu.

FI: Sir, profit ke liye kaha kar rahi hu mana aapko, profit ke liye sir ek din mein ek lakh bhi aapka nikalva denge."

54.3. Complaint of Mr. Shalenidra Pal received in SCORES on April 8, 2019 wherein complainant has stated that FI asked to pay Rs. 5,100/- towards registration and buy shares of Rs. 50,000/- and he will get profit of Rs.1.50 lakh to Rs. 1.75 lakh within 2 to 3 years.

54.4. Complaint of Mr. Pranamya Joshi in SCORES received on May 16, 2019 wherein complainant has stated that FI had promised him returns of Rs. 60 lakh within a month.

55. In view of the above, I *prima facie* observe that there is further corroboration that FI has been making promise of assured return / profit. Assurance of returns are *prima facie* misleading. FI has made a false statement to its clients without having any reasonable ground for believing it to be true. Such promise has been *prima facie* made to lure the investors to deal in securities by subscribing to its services / products. The said act of the IA is *prima facie* in violation of provisions of regulation 4(1) read with regulations 2(1)(c)(1) (2) and (8) of PFUTP Regulations. Moreover, it is also observed that by promising its clients of assured returns / profit and not informing them about

the material aspect that their investment in the securities market is subject to market risk where their capital can even erode to zero, *prima facie* shows that the IA has engaged in an act which operates as fraud upon its client in connection with their dealing in securities market. The aforesaid manipulative scheme *prima facie* appears to be employed by the IA to defraud its clients with respect to their dealing in securities. Hence, the aforesaid act / scheme of the IA has *prima facie* led to the violation of provisions of regulations 3 (a), (b), (c), (d) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. Furthermore, the IA has also not been honest and taken due care in its dealings in the best interest of its clients. Thus, it appears that the IA has failed to act in a fiduciary capacity towards its clients, which has led to the violations of regulation 15(1), clauses 1 and 2 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

FI has been unfair in its dealing with the clients and has extorted money under different pretexts

56. Complaint of Mr. Rajib Debnath and Audio Recording

56.1. Mr. Rajib Debnath in his complaint dated October 31, 2019 has stated that FI first called him on October 24, 2019 and was informed that by paying registration fees of Rs. 4,000/-, he would get service related to stock market i.e. which stock to buy and sell. He was told that he would be given profit of at least Rs. 6 lakh within a month and a half. When he registered by paying Rs. 4,000/-, FI asked him to pay Rs. 13,750/- more to create a profile. If he did not pay, he would not get any services and Rs. 4,000/- paid by him would not be refunded. After paying Rs. 13,750/- he was once again asked to pay Rs. 13,750/- more. Mr. Rajib Debnath was again informed that he would not get any service and the amount of Rs. 17,750/- would not be returned back. After paying Rs. 13,750/-, he again paid Rs. 27,000/- in the name of GST. After that he was asked to pay Rs. 45,750/- more.

56.2. Vide email dated November 29, 2019 Mr. Rajib Debnath provided an audio recording (22:24 minutes) between Mr. Rajib Debnath and FI employee Ms. Pooja,

which clearly showed that FI is pressurizing the client to pay more to start the services.

At 7:21 minutes "**Future Investment (Ms.Pooja):** apne mujhe total jo diya hain woh 58,500 diya hain,

Client: Sun toh lo meri story toh, sun toh lo,

Future Investment: theek hain, toh 58,500 cchhod de kya apan, yeh bataiye.

Client: Sir, mere pass hain hi nahi, sir mein, mere pass, suno toh baat

Future Investment: Sir, maan raha hu, maan raha hu, prepaid kar bhi to kar sakte hain

Client: Mein prepaid 10000 mein hu, ek aadmi prepaid 10000 mein hain, 10000 se udke paanch guna, 50000 mein chala gaya, who toh kahi se laaya na paisa, app logo ke upar trust kar ke.

Future Investment: Mein samajhta hu Sir Acha yeh 50000 - 60000 jo mujhe diya hain who chala jayega aapka, services nahi melegi."

...

At 11:04 minutes "**Future Investment (Mr. Manish Prajapati):** Ye amount aap complete karvayiye, kal se mai aapka kaam start karvata hu sir, 3 working session muze dijiye, 3 working session me aapka 70 to 75% amount main market se recover karva ked eta hun."

56.3. Throughout the audio recording, client is pleading that he doesn't have money to pay additional service charges and urging to complete the promise of profit but FI employee is continuously demanding more money by saying that if not paid then services would be stopped and amount paid would be forfeited.

57. Apart from the above, following complainants have mentioned in their complaint that FI has taken money gradually by collecting initial amount of Rs. 5,500/-

- Jitendra Kumar Kuldeep SCORES complaint no. SEBIE/MP19/0000310/1
- Pankaj Bhasin SCORES complaint no. SEBIE/MP19/0000678/1
- Vinesh Kumar SCORES complaint no. SEBIP/MP19/0000208/1

55. In view of the above, I prima facie observe that there is further corroboration that FI was unfair in its dealings with his clients. FI is not giving all the information about its fees / service charges, taxes etc., to its clients upfront. Instead, it is *prima facie* observed that FI is enrolling clients with initial small amount of service charges and then gradually demands more and more amount in the name of GST, creation of

service ID, differential advance amount, etc. Further, if the client is not able to pay or willing to pay additional amount, FI is threatening client about forfeiting the amount paid saying “no refund policy”. In view of the above, FI has *prima facie* failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under regulation 15(1) of IA regulation and (b) failed to abide by clauses 1, 2, 5 and 6 of Code of Conduct of Schedule III read with regulation 15 (9) of IA Regulations. Further, the above acts of FI are *prima facie* done with the purpose of generating more and more service fees (income) for FI by defrauding its clients. Such act of FI is *prima facie* fraudulent and is covered within the definition of “fraud” as defined in regulation 2(1)(c) of PFUTP Regulations. Thus, FI has *prima facie* violated regulations 3 (a), (b), (c), (d) of the PFUTP Regulations read with Sections 12A(a),(b) and(c) of SEBI Act.

Risk profiling, communication of risk profiling and financial planning

56. It is *prima facie* observed from the audio recording submitted by Mohd. Aquib Khan that FI has not done his financial planning before selling him its services. Some of the communication between Mohd. Aquib Khan and FI employee is reproduced below:

- At 2.50 minute Mohd. Aquib Khan “*Aap ko dhai lakh rupaye pay kar chukka hun credit card se, aapko yakin nahi aayega, sach me mai itna pareshan hun depression mein aa gaya hun, mai pata hai dhai lakh rupaye wo pay kar chukka hun aur dedh se do lakh rupaye ka muze nuksan ho chukka hai,... aapko matlab ... pata hai ... meri sirf 27 hajar rupaye salary hai, maine salary slip tak bheji hai, socho mai kaise manage kar sakunga?... mai kahi ka nahi raha hun aur credit card ki payment aahi jati hai*”
- At 3.40 minute Mohd. Aquib Khan “*Mai itna nahi kar sakta hun afford, mere upar saade tin se char lakh ke upar karja ho chuka hai, aur aap bol rahe ho ki 30 se 40 hajar rupaye demat me daalo, mai 20 hajar rupaye bhi dalunga to credit card ko swipe kar ke dalunga.*”
- At 4.15 minute FI employee “*Dekh lijiye aap aapke hisab se daal dijiye, koi dikkat nahi hai, yaha se profit jaisa bhi hota hai, mai karvata hun.*”

- At 4.50 minute FI employee “*Ek kaam karo Demat me dalo 30 to 40 hajar रुपये, mai karva deta hun.*”

57. From the above, it is *prima facie* noted that FI has not done financial planning for the client as the client had to resort to take loans to pay the advice fees. In view of the above, it is *prima facie* observed that FI has failed to provide ‘investment advice’ as defined in the IA Regulations and has not done financial planning before selling products / services to the client. Thus, FI has sold its services to the client which is not consistent with client’s risk appetite and his capacity for absorbing loss which has *prima facie* led to the violation of regulations 17 (a) and 17 (e) of IA Regulations.
58. The aforesaid examination of complaints and records of telephonic conversations also shows that the conduct of FI is *prima facie* not in the interest of its clients / investors and securities market.
59. The aforesaid discussions have shown that the conduct / actions of FI are *prima facie* in contravention of provisions of PFUTP Regulations and IA Regulations. It has already been noted in preceding paragraphs that the balance of convenience lies against FI and immediate steps needs to be taken against FI. In view thereof, in the interest of investors and the orderly development of the securities market, it is necessary to pass suitable directions.

Order

60. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11, 11B (1) and 11D read with Section 19 of the SEBI Act, direct Ms. Pinky Kelva, proprietor of M/s Future Investment (PAN: ECYPK7182R) as under:
- 60.1. Ms. Pinky Kelva, proprietor of M/s Future Investment, is restrained from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any manner whatsoever or on behalf of any of her clients through their accounts, till further directions.

- 60.2. Ms. Pinky Kelva, proprietor of M/s Future Investment shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.
- 60.3. Ms. Pinky Kelva, proprietor of M/s Future Investment is directed to provide a full inventory of all assets held in her name or her proprietary firm's name i.e., M/s Future Investment, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.
- 60.4. Ms. Pinky Kelva, proprietor of M/s Future Investment is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets, held in her name or her proprietary firm's name i.e., M/s Future Investment, including money lying in bank accounts except with the prior permission of SEBI.
- 60.5. Ms. Pinky Kelva, proprietor of M/s Future Investment is directed not to divert any funds raised from investors, kept in bank account(s) and/or in her custody until further orders.
- 60.6. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts, of Ms. Pinky Kelva, proprietor of M/s Future Investment held jointly or solely. It is made clear that if M/s Future Investment or its proprietor, Ms. Pinky Kelva, has any open positions in any exchange traded derivative contracts, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that M/s Future Investment or its proprietor, Ms. Pinky Kelva can settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.
- 60.7. M/s Future Investment and its proprietor, Ms. Pinky Kelva are directed to immediately publicise through its website prominently that SEBI has passed interim order dated September 29, 2020 reproducing the directions mentioned in

paragraph 60 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.

60.8. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities / units held in the name of Ms. Pinky Kelva, jointly or severally, are not transferred / redeemed.

61. The above directions shall take effect immediately and shall be in force until further orders.

62. A copy of this order shall be served upon M/s Future Investment and its proprietor, Ms. Pinky Kelva, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

-Sd-

Date: September 29, 2020

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA