BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2024-25/31311

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

In respect of:
Basant Maheshwari Wealth Advisers LLP
(PAN: AAPFB3856K / SEBI Registration Number: INA000018498)

In the matter of Basant Maheshwari Wealth Advisers LLP

A. BRIEF BACKGROUND

1. Inspection of Basant Maheshwari Wealth Advisers LLP (hereinafter also referred to as "BMWAL" / "Noticee" / "Entity" / "IA") was carried out on December 29, 2023 by a team comprising of SEBI and BASL officials. The period of inspection was October 19, 2023 to December 31, 2023. Subsequently, post inspection analysis was carried out by SEBI.

2. Pursuant to the said inspection, based on the examination in the matter by SEBI, briefly stated, it was inter alia observed by SEBI that the Noticee had allegedly violated various provisions of SEBI (Investment Advisers) Regulations, 2013 {"SEBI IA Regulations, 2013" / "SEBI IA Regulations" / "IA Regulations"}, and circular issued by SEBI 1992 viz.,

   2.1. Regulation 15A of SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred to as "IA Regulations").
   2.2. Para 9 of Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023.
   2.3. Regulation 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013.

Accordingly, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of SEBI Act, 1992 (hereinafter also referred as "SEBI Act") for the alleged violations of the provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of SEBI Act read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as 'SEBI Rules'), the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") vide order dated June 18, 2024 to inquire into and adjudicate under Section 15EB of the SEBI Act, 1992, for the aforesaid alleged violations of the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing no. SEBI/EAD-5/AN/RG/20854/1/2024 dated June 26, 2024 ("SCN"), was served upon the Noticee through Speed Post with Acknowledgment Due ("SPAD") and digitally signed email dated June 26, 2024, under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15EB of the SEBI Act, for the violations alleged to have been committed by the Noticee.

5. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

"

.....

4. Findings and Observations by SEBI and alleged violations thereto in respect of the Noticee

4.1. Fees and Charges during the inspection period:

4.1.1. In this regard, the Noticee submitted that:

"As per our understanding of the client data, there are 22 unique clients (with 2 portfolios each) who have subscribed to an AUA & fixed fee portfolio between 19th Oct 2023 to 31st December 2023. Please clarify if there is any inaccuracy in this data by sharing the exact list of clients that were considered in this observation.

Our submission : Regulations: Link (Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 issued on 23-Sep-20 making the guidelines effective from 30-Sep-20)

1. The Regulations clearly allow the RIA to charge the fee in either of the two modes - AuA based or fixed fee based, as mentioned in the first para of the above image. Under points (A) & (B) above (specific text highlighted above), the maximum amount of fees that the IA can charge the client has been defined. The definition says that the max limit has to be applied for a client across ALL services offered by IA, under a particular fee mode. Thus, if an IA provides multiple services to a client, the maximum limit has to be checked for all the services provided under a particular fee mode, not just a single service in that fee mode. This means that the regulations envisage a situation where there are multiple services provided by an IA to a client in the same period. Hence, there can be multiple advisory services that a client avails from the IA in the same period.

2. Further in point b. of "General conditions under both modes" (specific text highlighted above), it has been defined that the IA shall charge fees from a client by only one mode (on an annual basis). It is important to note that there is no mention of the fact that this choice of mode for charging fees has to be done across ALL services. And since the regulations explicitly envisage a situation where multiple advisory services can be availed by a client in the same period (based on the explanation in the above point), the choice in the mode of charging the fees has to be made for each service and not across ALL services - If the intent of the regulations were such that the same mode of charging fees had to be applied across ALL services/products availed by a client, then it would have explicitly mentioned the same - as in the case of points (A) & (B). There is no reason to assume otherwise.

3. Further, it is only logical that the flexibility in the mode of charging fees is made available/applicable for each service. It would be in the interest of the client, otherwise they would not be able to avail services under a product just because they have also subscribed to a separate product/service with different fee type.

4. Thus, upon a joint understanding of all the points above:

a. The max fee limit is for a client across ALL services in that particular mode

b. The choice of mode of charging fee is for each service and not across ALL services

5. In the recommended portfolio that we offer as different services/products to our clients

a. Each subscription is a separate service since the user onboarding process including the agreement execution is separately performed - client agrees and signs a separate agreement for each of the services.

b. Each service can be priced differently, while ensuring that overall fee charged under ALL the services offering AuA fee mode is less than 2.5% and overall fee charged under ALL the services offered under fixed fee mode is less than 1.25L.

c. The overall limits of the fee that can be charged to a client across ALL services in a particular mode are followed.

Clarification: As per our understanding of the client data, the total number of users on the AuM plan after 19th October for which AuA is not added, is 52 clients. Please clarify if there is any inaccuracy in this data by sharing the exact list of clients that were considered for this observation.

Submission: For the clients where the AuA data is not added their AuA at the end of the analysis period is Zero. It is because clients have already exited/not invested in their portfolios on or before the end of analysis period

In regards to query of BASL that fees has been charged from 62 clients even though AuA has not been provided, the IA has provided following reply:

For our portfolios with AuA-based pricing, we charge a quarter's fee in advance inline with the applicable IA regulations. The advance fee is offset against the fee calculated based on the AuA of the client, i.e, the client doesn't pay any additional fee till their total AuA fee exceeds the advance fee. As per clause c. under General conditions under both modes, IAs are allowed to charge fees in advance for 2 quarters. Additionally, as per clause d., IAs are allowed to charge a breakage fee of up to one quarter fee. Inline with the above clauses, a one time advance quarterly fee is charged to the client at the beginning of the advisory services.The client doesn't pay any additional fee till their total AuA fee exceeds the one time advance fee."

4.1.2. In this regard, SEBI observed that:

32 clients were charged fee from both the methods fixed fee and AuA mode. Details of 32 clients were sent by BASL to the IA.

Para 1.2 h (iii) of the master circular clearly states that IA can charge fees from the clients in either of the two modes: A) Assets under Advice (AUA) mode

(B) Fixed fee mode. Under general conditions, it is again reiterated that IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode. However IA has charged fees from the same client using both the modes which is a violation of the aforesaid Para of master circular and Regulation 15A of SEBI (Investment Advisers) Regulations.

The reply of the IA that multiple advisory services is being offered to client and the regulation envisages a situation where there are multiple services provided by an IA to a client in the same period is incorrect as the master circular clearly states that IA shall charge fees from a client under either mode on annual basis which further can be changed only after 12 months of on boarding/last change of mode. However in the instant case, the IA has charged fees from both modes citing each subscription offered by the IA as a separate service. This is a violation as the condition of either of the two modes is being breached.

Details of 62 clients wherein AuA has not been provided by IA, is sent to IA by BASL.

The IA has initially stated that AuA is zero as clients have exited /not invested in their portfolios.

However pursuant to the query of BASL that the AUA amount is ZERO, however, IA collected the fee from 62 clients during inspection period, the IA has then stated that it has charged a quarter's fee in advance inline with the applicable IA regulations. The advance fee is offset against the fee calculated based on the AuA of the client, i.e, the client doesn't pay any additional fee till their total AuA fee exceeds the advance fee.

It may be noted that the master circular allows IA to charge fees in advance however; the AuA details are to be provided to the client and records for the same are to be maintained. Annexure A of Master circular provides the terms and conditions to be incorporated in the Investment Advisory Agreement. Point 17 of Annexure A provides for Terms of fees and billing to be included in the agreement viz.

i. The quantum and manner of payment of fees for investment advice rendered.

ii. Fee modalities and periodicity, by attaching a detailed fee schedule to the agreement;

iii. Illustration(s) on how the fee will be determined;

iv. whether payment to be made in advance;

v. Type of documents evidencing receipt of payment of fee;

vi. Periodicity of billing with clear date and service period

Thus charging advance fees on AuA basis with AuA as zero is irrational as fees under AuA mode is capped at 2.5% of AUA per annum per client across all services offered by IA. If he AUA is zero, the fees itself becomes zero however in the instant case, fees has been charged.

Further, the reply of IA that clients have already exited/not invested in their portfolios on or before the end of analysis period is inconsistent with their later reply that they charge a quarter's fee in advance.

4.1.3. In view thereof, it is alleged that the Noticee has violated Regulation 15A of SEBI (Investment Advisers) Regulations, 2013.

4.2. Code of Advertisement:

Videos with exaggerated captions and in non compliance with advertisement code have been published by the IA on its youtube channel (Annexure 6).

4.2.1. Noticee in its reply to the findings of the Inspection submitted that:

"We submit that the videos telecasted in our YouTube channel are only meant for general public for educational purposes and built only for knowledge- sharing motives and updates about the stock market. It does not influence any investor or general public at large to buy or sell any particular stock. Those are not in any way linked/ created for advertising purposes. Therefore, the videos uploaded on the youtube channel for the knowledge enrichment of general public does not fall within the ambit of advertisement as provided in the SEBI/HO/MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023.

Moreover, the speaker, Mr. Basant Maheshwari, who delivers his insights/ views on different securities/ stocks, through his videos, generally provides the latest news / updates on the securities / stocks and have always stated that he is not recommending any stock for its purchase or sell. Besides this, he has never given any commitments towards any stock/ securities performances in the market thereof.

We once again reiterate that the advertisement code as stated above is not applicable to the Youtube channel of Mr. Maheshwari. However, for better awareness of the general public, we have voluntarily added the Standard Disclaimer Clause as per the SEBI Circular in the Description box of our channel. A screenshot of the said Disclaimer Clause is annexed herewith for your kind consideration. Considering our aforesaid submissions, we request your good office to drop the observation as the same is not applicable in our case."

4.2.2. In this regard, SEBI observed that:

As per Para 9.1 (a) (i) of master circular, Advertisement shall include all forms of communications, issued by or on behalf of IA, that may influence investment decisions of any investor or prospective investor. Para 9.1 a (ii) states that form of communication include social media platforms.

Mr. Basant Maheshwari is the designated partner and principal officer of the IA - Basant Maheshwari Wealth Advisers LLP. Additionally, Mr. Basant Maheshwari has been providing link to his smallcase website in the description of his youtube channels with the statement "Invest in our smallcase". Thus, he is influencing investors and thereby the Youtube videos are advertisements issued by Mr. Basant. Thus, the reply of IA that advertisement code is not applicable is invalid.

He has been uploading videos on youtube with exaggerated captions such as: (Flag A/1)

1. 100x Portfolio - 3 Saal Mei? Kaise Kiya?

2. 10 Saal Mei 10 Guna Aur 20 Saal Mei 100 Guna!! Kaise Kare??

3. कैसे बनाया ₹50 Lakh से ₹10 crore ?

4. 1 Crore Ko Double Kaise Kare?? Explained in 2 Minutes

5. Kaise Banaya ₹150 crores Sirf Trading kar ke ?

Adv. Code prohibits statement that is exaggerated or is inconsistent with or unrelated to the nature and risk and return profile of the product.

The IA has replied that standard disclaimer has been added in description of the channel. However, it is observed that the disclaimer is not clearly brought out in the description as it has been uploaded through a pdf link on the description. Additionally, videos uploaded by Mr. Basant do not provide the disclaimer in the description box of each of his youtube videos.

Further, other disclosures mentioned at Para 9.1 b of the master circular are not displayed in the videos.

The youtube channel of Mr. Basant - https://www.youtube.com/@bmtheequitydesk has 3400 videos (as displayed on the youtube). He has been providing analysis of shares and stock market without complying with advertisement code and additionally he has been prompting investors to invest in his smallcase by providing link to his smallcase in description of youtube videos.

4.2.3. In view thereof, it is alleged that the Noticee has violated Para 9 of Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023.

4.3. Annual Audit:

IA was providing investment advice under PMS registration by seeking exemption provided in Regulation 4(g) of IA Regulations, however has not undertaken annual audit in respect and hence has not complied with Chapter III of IA Regulations as required in aforesaid Regulation 4(g).

4.3.1. Noticee in its reply to the findings of the Inspection submitted that:

"With regards to this observation, while on-boarding advisory clients (under the relaxation provided to registered portfolio managers), we have been following all the applicable advisory regulations including doing their risk profiling, suitability assessment, KYC check, signing advisory agreement, following the applicable advisory fee limits, etc.

Given, we were offering the IA services under the relaxation provided to the registered portfolio managers as per the IA regulations, we got the audit of our PMS business done inline with the applicable PMS regulations. We have the practice of getting the Internal Audit done for our PMS business and have done the same for FY 2022-23. We are attaching herewith a copy of the same for your kind perusal as Annexure - A.

Given, we got the IA license in the current fiscal year. We would be conducting the audit for the same in line with IA regulations this fiscal onwards. If you wish to check, we are happy to provide you any details with respect to compliance with the IA regulations like risk profiling, KYC, advisory agreement etc for the period when we were offering the IA services under the relaxation provided to portfolio managers as per IA regulations."

4.3.2. In this regard, SEBI observed that:

The IA has been undertaking investment advisory business without IA registration by using its Portfolio Manger registration and by seeking exemption provided to Portfolio Managers under the IA Regulations. The IA while undertaking advisory business has also been charging fees from clients before it had registration with SEBI as an IA by seeking the aforesaid exemption. However, the IA has not undertaken annual audit in respect of compliance with the IA regulations and circulars issued thereunder. It may be noted that Regulation 4(g) of IA Regulations provides exemption to portfolio managers however it states that PM must comply with Chapter III of IA Regulations. Chapter III of IA regulations at Regulation 19(3) require an IA to conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

The master circular additionally states that adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA, shall be reported to respective SEBI office. It is understood that the purpose of annual audit is to ensure self-compliance by IAs. Additionally, observations emanating from the inspection may also have been identified along with corrective action by the IA, if such annual audit had been conducted.

Non conduct of annual audit by the IA while undertaking investment advisory business is a violation of Reg 19 (3) and Reg 4(g) of IA Regulations.

4.3.3. In view thereof, it is alleged that the Noticee has violated Regulation 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013.

...."

6. Vide email dated July 08, 2024, the Noticee sought inspection of documents and the Noticee was provided the opportunity of inspection of documents on July 10, 2024.

7. In the interest of principles of natural justice, vide Hearing Notice dated July 24, 2024, the Noticee was provided an opportunity of hearing on August 02, 2024 and the Noticee was advised to submit the reply to the SCN atleast 2 working days prior to the scheduled date of hearing. Vide email dated July 26, 2024, the Noticee sought extension to the date of hearing and the hearing was rescheduled to August 20, 2024.

8. Subsequently, vide email dated August 13, 2024, the Noticee again sought extension citing another pre-scheduled hearing. Considering the Noticee's request, the hearing was rescheduled to August 22, 2024.

9. Vide letter dated August 20, 2024, the Noticee submitted its reply to the SCN. The key submissions made by Noticee as reply to the SCN, are as under:

"…

A. FEES AND CHARGES

15. The Notice alleges that the Noticee has (1) charged fees in both fixed and AuA mode to 32 clients and (2) has failed to provide AuA details for 62 clients. Accordingly, the Notice alleges that the Noticee has violated Regulation 15(A) of the IA Regulations. The two allegations are dealt with submissions made herein below.

(1) CHARGING FEE FROM BOTH MODES

16. With regard to the allegation that the Noticee has charged fees in both fixed and AuA mode, it is submitted that the Noticee has never violated the regulatory framework for charging of fees as; (a) provisions on charging of fee must be interpreted literally, (b) it is in clients' interest to charge different fee modes for different types of services, and (c) the fee structure being charged to the client was always commensurate with the services availed.

(a) Provisions on charging of fee must be interpreted literally.

17. The relevant provisions stated under paragraph 1.2(h)(iii) of the Master Circular are reproduced below:

Regulation 15A of the IA Regulations provides that IAs shall be entitled to charge fees from a client in the manner as specified by SEBI. Accordingly, IAs shall charge fees from the clients in either of the two modes:

> *"(A) Assets under Advice (AUA) mode*
>
> *(a) The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.*
>
> *(b) IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.*
>
> *(c) Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.*
>
> *(B) Fixed fee mode*
>
> *The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA."*

18. From a plain reading of the above, it is abundantly clear that for a particular service offered, the IA is afforded with the choice to charge either fixed fee or AuA mode. Further, it is abundantly clear that for all the services offered by the IA to a particular client, the same must be within the caps prescribed, i.e., 2.5% of AuA under the AuA mode, or INR 1,25,000/- per annum per client under the fixed fee mode.

19. It is submitted that a logical extension of the above would mean that if an IA is providing multiple services to a client, the maximum limit must be complied with, for all services provided to a client under that particular fee mode. The choice in the mode of charging the fees must be made for each service and not across all services.

20. It may be appreciated that the law explicitly envisages a situation where multiple advisory services can be availed by a client during the same period. If it was intended that the same mode of charging fees had to be applied across all services / products availed by a particular client, the same would have been explicitly mentioned. However, the law is notably silent in this regard, moreover, there is no regulatory guidance on a methodology to charge fees when an IA is offering multiple types of services. Therefore, it follows that an IA can charge different fee modes for different types of services, as long as the caps for all services provided to a client under that particular fee mode are adhered to. It is submitted that this aligns with the literal interpretation of the regulatory provision, therefore, the Noticee cannot be held liable for following this fee structure.

(b) It is in clients' interest to charge different fee modes for different types of services.

21. It should be noted that in terms of the Noticee's business model, each service requires a separate subscription. The client onboarding process, including the agreement execution, is separately performed, and a client agrees and signs a separate agreement for each of the services. Hence, it would only be logical and in the interest of investors that flexibility in the mode of charging fee is made available / applicable for each service.

22. Keeping the above in mind, it is submitted that a client is free to choose any type of service it wishes to avail from an IA. It follows that if an IA offers multiple services (which are charged under different fee modes), there would arise situations where a client voluntarily avails services being charged under the fixed fee mode and the AuA mode. It is respectfully submitted that if the Notice's interpretation of paragraph 1.2(h)(iii) of the Master Circular were to be accepted, it would lead to an absurd scenario where a client is precluded from availing certain services being charged under one mode, merely because they had also availed services being charged under the other mode. It is

submitted that this would be both unfair and against the interest of a client, moreover the law does not contemplate such a scenario. Hence, the Notice's interpretation of paragraph 1.2(h)(iii) of the Master Circular creates a grey area in the law, as nowhere in the IA Regulations or circulars issued thereunder does it specify that an IA is proscribed from offering certain services of a particular fee mode to a client, if said client has already availed services being charged under the other fee mode.

23. Further, it is submitted that a legal provision must be construed according to the intention of the legislature, which is arrived at by considering the meaning of the words used in the applicable law.

24. Reference may be drawn to the case of B. Premanand & Ors. v. Mohan Koikal & Ors., which observed the following:

"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g., the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI."
"24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language…. In other words, the literal rule of interpretation simply means that we mean what we say, and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other."

25. The observations of the Hon'ble Supreme Court of India in Gurudevdatta VKSSS Maryadit v. State of Maharashtra are also pertinent in this regard:

> *"26. ….it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the lawgiver. The courts have adhered to the principle that efforts should be made to give meaning to each, and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute." (Emphasis supplied)*

26. In light of the above, it is reiterated that the choice in the mode of charging the fees should be made for each service and not across all services is a fair interpretation of the law.

(c) The fee structure being charged to the client was commensurate with the services availed.

27. The Noticee submits that the fee structure was always fair and reasonable, as it was charged with the consent and agreement of the clients and commensurate with the services being voluntarily

availed by said clients. It is relevant to note that at no time the Clients had objected or raised any complaints whatsoever.

28. Without prejudice to the above submissions, it is humbly submitted that the Noticee only adopted the following practice as it was practical and logical, and in the interest of clients. However, from March 2024 onwards, for onboarding new clients, the Noticee has been ensuring only to charge fees as per the fixed fee model. Moreover, to ensure a client does not subscribe to both AuA and fixed fee based services, the Smallcase platform (i.e. the platform where the Noticee provides its advisory services) automatically restricts a client from availing services being charged under two different fee modes, by displaying a pop-up restriction on the platform. Therefore, SEBI should take the Noticee's bona fides into consideration and set aside this allegation. A screenshot of the pop-up restriction on the Smallcase platform is enclosed herewith as Annexure B.

29. In light of the above, it is submitted that the Noticee is not in violation of Regulation 15A of the IA Regulations, for charging fees from clients using both modes. Accordingly, the said allegation deserves to be set aside.

(2) CHARGING ADVANCE FEE ON AUA BASIS WITH AUA AS ZERO

30. The Notice alleges that the Noticee has failed to provide AuA details for 62 clients. It is alleged that charging advance fee on AuA basis with AuA as zero is 'irrational' as fees under AuA are capped at 2.5% of AuA per annum per client across all services offered by IA. Further, it is alleged that if the client's AuA is zero, the fees itself become zero however in the present case, the fees were charged. Accordingly, the Notice alleges that the Noticee has violated Regulation 15A of the IA Regulations.

31. At the outset, it is submitted that the said allegation cannot be sustained as (a) the Notice levels a charge which does not find any legal basis, and (b) the said 62 clients had either exited or never availed the services of the Noticee, which is why the AuA reflected as 0.

(a) The Notice levels a charge which does not find any legal basis.

32. At the outset, it is submitted that the Notice attempts to drive home a charge which does not find any legal basis. While the Notice alleges that the Noticee has violated Regulation 15A of the IA Regulations, which states that an IA shall be entitled to charge fees for providing investment advice from a client in the manner as specified by SEBI, the Notice has failed to spell out the specific clause that the Noticee has violated, which can sustain a violation of Regulation 15A.

33. Therefore, it is respectfully submitted that the allegations in the Notice do not identify the exact legal obligation that the Noticee has breached or failed to abide by, rendering the alleged charges to be vague and ambiguous. It is a settled position of law that a show cause notice must be clear and specific in its terms and cannot be vague, so as to enable the Noticee to understand the charges and effectively respond to them. In this regard, it is relevant to note that the Hon'ble Supreme Court in the matter of UMC Technologies Private Limited vs Food Corporation of India , while adjudicating on validity of a show cause notice proposing to blacklist the appellant, stated the following:

> *"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being*

affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr. MANU/SC/0377/1980 : (1980) 3 SCC 1, has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard."

34. Furthermore, the Hon'ble Securities Appellate Tribunal ("SAT"), has in a few instances, disposed of SEBI proceedings against noticees on the basis of the Notice being vague and ambiguous and the same resulting in violation of noticees' right of being heard. For instance, in Swaranganga Trading Pvt. Ltd. v. AO, SEBI, the Hon'ble SAT correctly observed that:

"Having heard the authorised representative of the appellant and the learned counsel for the respondent, we are satisfied that the show cause notice that was issued to the appellant was as vague as it could be and did not spell out the charge which the appellant was required to meet. Paragraph 2 of the show cause notice which has already been reproduced hereinabove only states that the appellant had colluded with certain brokers for transacting in the shares of the company and that it created false and misleading appearance of trading in the scrip. No further details have been provided to the appellant. Who are the brokers with whom the appellant colluded and in what manner did the appellant create a misleading appearance in the trading of the scrip of the company is not spelt out in the show cause notice. On a plain reading of paragraph 2 of the show cause notice it is not possible for the delinquent to offer his explanation as the allegations made therein are vague. ……."

"….A show cause notice is meant to contain the precise charge that is levelled against the delinquent in a concise manner so that he could reply to the same. This is the basic requirement of the principles of natural justice. As pointed out earlier, paragraph 2 of the show cause notice leveling the charge of violating Regulation 4 of the regulations is vague and we are satisfied that it violated the principles of natural justice. The show cause does not spell out the precise case against the appellant which it was required to meet. In this context we may refer to the observations made by the Apex Court in Canara Bank v. Debasis Das, (2003) 4 SCC 557 wherein the learned Judges made the following observations which are relevant for our purpose— "The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time."

35. In the present case the Notice has alleged that charging advance fee on AuA basis with AuA as zero is 'irrational' however this is not a legal standard or regulatory obligation that the Noticee has violated. Thus, in view of the above, it is respectfully submitted that the Notice fails to clearly and specifically identify the charges against the Noticee, hence the Noticee is unable to effectively raise a defense against the same.

(b) The said 62 clients had either exited or never availed services of the Noticee, which is why the AuA reflected as 0.

36. Without prejudice to the above, it is submitted that for the said 62 clients where the AuA was reflected as 0, the same was due to the fact that those clients had either voluntarily exited / cancelled the Noticee's services or never invested with the Noticee.

37. Thus, while SEBI attempts to make out a case that the same is 'irrational', it is submitted that this simply occurred since services for such clients were never fully rendered despite an advance fee being charged, which is why the AuA of such clients had to be recorded as 0. It is clarified that the reason why services were never rendered was completely due to the clients' own decision to stop / refrain from availing the Noticee's services. Moreover, it may be noted that there have been no investor complaints from said 62 clients, in this regard.

38. Given the above, it is submitted that the aforesaid violation has not been made out and hence, deserves to be set aside.

B. CODE OF ADVERSEMENT

39. The Notice alleges that videos with exaggerated captions and in noncompliance with the advertisement code have been published by the IA on its YouTube channel. Accordingly, the Notice alleges that the Noticee has violated paragraph 9 of the Master Circular.

40. At the outset, the allegation is denied completely as; (a) the Noticee's videos do not fall within the definition of advertisements, (b) the Notice cherry-picks the titles of the videos and fails to appreciate the true meaning and import behind such videos, and (c) mere reference to Mr. Maheshwari's small case does not tantamount to influencing investors. It is humbly submitted that SEBI has failed to adjudicate the videos in its entirety and merely attributed that the videos published are in violation of paragraph 9 of the Master Circular which is ex-facie untenable.

(a) The Noticee's videos do not fall within the definition of 'advertisements'.

41. The Notice presumes that the videos uploaded by the Noticee on their YouTube channel are 'advertisements' as defined under paragraph 9.1(a)(i) of the Master Circular. In this regard, the definition of an advertisement is reproduced below.

> *"Advertisement shall include all forms of communications, issued by or on behalf of IA, that may influence investment decisions of any investor or prospective investor."*

42. It is submitted that none of the Noticee's YouTube videos amount to 'advertisements' as the sine qua non for a communication to be an advertisement is for it to affect the investment and trading decisions of the viewer/investor. The videos published by the Noticee do not have the effect of

influencing the investment/trading decisions of the viewer. On the other hand, the videos are educational in nature, and cover a wide range of topics relating to financial matters. For instance, some of the videos on the Noticee's YouTube channel are as follows:

- *Out Of India Settle Hone Mei Kitna Paisa Lagega??*
- *Budget 2024 ke Baad Ab Kya Kare??*
- *Desh ki Trajectory Sahi Nahi Jaa Rahi!!*

43. While the Noticee has over 4600 videos uploaded on its channel, it is submitted that none of the videos recommend buying or selling any particular security, which would affect a viewer to invest in such security. Further, in none of the videos does the speaker, i.e., Mr. Maheshwari, ever give any commitments towards any stock / securities performance in the market. The videos are uploaded for the sole purpose of knowledge enrichment for the general public, focused on covering relevant topics in the financial market. Hence, such a genre of videos in no manner can be linked to any advertisement purposes. It is also submitted that none of the investors of securities market have ever come forward attributing any wrongdoing by the Noticee.

44. It is submitted that SEBI's intention behind regulating advertisements was never to include educational videos under its remit. In this regard, reference may be drawn to the SEBI Consultation Paper on 'Association of SEBI Registered Intermediaries / Regulated Entities with Unregistered Entities (Including Finfluencers)' issued in August 2023, wherein it was found that 'finfluencers' (i.e. financial influencers) may be "enticing their followers to purchase products, services, or securities in return for undisclosed compensation platforms or producers". Yet, in the same breath, SEBI recognized that some may be "genuine educators." The carve-out for such entities ultimately finds way in the SEBI Board Minutes on this proposal which was issued on June 27, 2024 ("Finfluencer Proposal"), which states as follows:

> *"It is acknowledged that there is need to clarify that the proposed policy shall not restrict the association of SEBI regulated entities or their agents with other persons who are solely involved in providing the education or services which are not linked to advice or recommendations related to security or securities under the purview of the SEBI."*

45. Therefore, while SEBI has now approved the Finfluencer Proposal, it is not applicable to any person who is engaged in investor education, provided that such person is not, directly or indirectly, providing advice or recommendation or making any implicit or explicit claim of return or performance in respect of or related to a security or securities, unless such person is otherwise permitted by SEBI.

46. Moreover, it may be noted that the Finfluencer Proposal also recognize that "SEBI registered entities who are also incidentally considered to be finfluencers are subject to the advertisement code as specified by the SEBI, Stock exchanges or the concerned administrative and supervisory bodies and hence no further guidelines may be required for them at this juncture." Therefore, reading both laws harmoniously, it is understood that a SEBI registered entity engaged in investor education is intended to be excluded from the ambit of regulations governing advertisements. In fact, considering a registered entity's educational content as 'advertisements' would render the exemption laid out in the Finfluencer Proposal redundant. Therefore, any communications for investor education cannot be considered as content which influences investors.

47. Thus, it is vehemently contested that the Noticee's videos on YouTube are advertisements. Accordingly, the requirements to furnish a standard disclaimer in compliance with the advertisement code does not get triggered in the present case.

(b) The Notice cherry-picks the titles of the videos and fails to appreciate the true meaning and import behind such videos.

48. The Notice alleges that the Noticee has uploaded videos on YouTube with exaggerated captions such as:

- *100x Portfolio – 3 Saal Mei? Kaise Kiya?*
- *10 Saal Mei 10 Guna Aur 20 Saal Me 100 Guna!! Kaise Kare??*
- ***कैसे बनाया*** *₹50 Lakh* ***से*** *₹10 crore ?*
- *1 Crore Ko Double Kaise Kare?? Explained in 2 Minutes*
- *Kaise Banaya ₹ 150 crores Sirf Trading kar ke?*

49. It is submitted that the Notice blindly goes by the title of the videos to prematurely conclude that the same are in violation of the advertisement code. However, the Notice fails to consider the actual context of the videos. In this regard, set out below are certain excerpts along with an analysis of the meaning and import behind each of the videos:

Sr. No.	Title of Video	Time Stamp	Translation of Excerpt[1]	Meaning and import behind video
1.	**100x Portfolio – 3 Saal Mei? Kaise Kiya?[2]**	0:08-0:40	*"…During the week, we have one on one discussion, our aim is to know how to increase the money that we have made in the future. The aim is to understand from them how they made this money and if anyone needs any help then how can we provide that help. So today, after many days, after many weeks, after many months,* ***I found a person with Rs. 100 crores and this story of Rs. 100 crores is a very amazing story, he had Rs. 1 crore in his portfolio, he had a portfolio of crores, he had it around in July, August, September 2020****. In three and a quarter years he made Rs. 100 crore from Rs. 1 crore, now it remains to be seen how he made it…"*	It evident from the introductory comments at the start of the video that Mr. Maheshwari is telling a story based on a real-life experience and he does not provide any kind of misleading assurances / directions to viewers to invest in any particular stocks or plan. Mr. Maheshwari refrains from delving into details of the person who made Rs. 100 crores and is only using the story as a way to provide generic advice relating to financial planning. Therefore, it cannot be stated that the video has the potential to unduly influence viewers, since there are no take-away concrete tips or recommendations. In fact, Mr. Maheshwari tells viewers to be careful when trying to make money, and even cautions viewers to not get swayed by recommendations from YouTube videos.
		4:48-4:54	*"In a small cap company, if you are not a big operator, then where you will buy shares from the promoter, the goods will come to you at a cheap price and you will not even know about it. In a microcap company, the promoter gets the news of getting the shares till Friday, so if someone is invested in microcap and you have to exit, then you should exit by Thursday and your selling should be completed by Friday. So, taking into account a net calculation, their money became Rs 100 crores today. Now how did it happen?* ***There is no use in sharing the actual details."***	

[1] Kindly note that excerpts have been translated from Hindi to English and might not be a verbatim narration of what Mr. Maheshwari is saying during the video.

[2] The video can be accessed at; https://youtu.be/OItYJxC18wM?si=6ljzLMXcTjnmedLm.

Sr. No.	Title of Video	Time Stamp	Translation of Excerpt[1]	Meaning and import behind video
		31:10-31:27	*"But money is made in the same way. **Money cannot be made while sitting comfortably in an AC room. No financial planner can make you money. No broker of yours can make you money by giving you news. Money is not made for free on YouTube. One thing is sure, if someone trying to influence you, then you are trapped**."*	
2.	**Kaise Banaya Rs. 50 Lakh Se Rs. 10 crore[3]**	10:33-11:02	*"The biggest problem is that this happens in the share market. This happens in life. The person who does not have this fear, then we say that you are very afraid, be afraid of your heart, but be afraid in the bear market, be afraid in business, be afraid in business. If you control people, then you will manage the risk. If you don't control, then the risk will not be managed by you and there will be one way traffic in your life. You will feel that nothing can go wrong with you, and the day something goes wrong, you will not be able to handle yourself because you have not managed risk."*	The summary of the video is captured in the description box which states as follows: "*This is a life account of a person who came to our office yesterday for a one hour paid consultation. It's a fascinating account of huge ambitions backed by calculated risk taking. It also tells us how a person who doesn't know any fundamental analysis can still go on to make big money from the market. Life isn't all about academics only but also about big ambitions and calculated risk taking.*" The advice given in the video is generic advice on making money. It does not delve into specifics on investing in the securities market nor does it provide any false assurances / concrete tips with respect to investing.
		24:25 -24:47	*"I have seen in share market that the one who genuinely works for money is a very good person and the one who does tricks and goes back and forth, his money is taken out. The market is late, so whoever has made money here by stealing, he could not keep the money, it is not right, either he has not made money at all, it looks like he has made it, but the one who made it has a contract with his money"*	
3.	**Kaise Banaya Rs. 150 crores Sirf Trading Kar Ke[4]**	0:00-0.16	"…***We will talk about this person who came to meet us, he made Rs. 5, lakh 10 lakh, 20 lakh, 1 crore, 2 crore, 10 crore 50…Further, I will not disclose his details as his personal privacy should not be disclosed***."	This video makes it clear that Mr. Maheshwari is not promising to provide information/directions to viewers on how to make inflated gains. Rather, the video is a case-study of a rare example where a person made a lot of money in the stock market. However, through the video, Mr. Maheshwari always takes due precautions to safeguard sensitive details such as refraining from disclosing the name of the individual in the story and refusing to disclose the name of the crypto which the individual invested in, such that viewers do not get unduly influenced.
		21:27-21:59	*"**Do you think that someone will make you rich by selling you a course for Rs. 1000 or Rs. 1000. He is selling the course to 55000 people. And if he is selling the course to 55000 people, then do you think all the 5000 will become rich. Then India's GDP will become Rs. 10000. We will cross Switzerland. We will cross Luxembourg. We will compete with the US. This cannot happen. So many people cannot make money by using the same pattern and the same skill. If you want to make money in trading, if you want to make money in investing, your theory should be unique. Your theory should be different. Your theory should be mix and match**."*	
		15:29	*He got some lakhs and he invested in crypto…**I won't take the name of the crypto because I am scared you will invest in it**…"*	
		29:04 – 29:21	*"It's a hearsay thing, you should not act on it, **you should not get influenced, you don't have to act on a recommendation**, first go and listen to it from someone else, otherwise someone will think that Basant Maheshwari is spreading*	

[3] The video can be accessed at; https://youtu.be/pB7BKZ8h4_w?si=iPqMaMJx1mdyK06S.

[4] The video can be accessed at; https://youtu.be/og7Nm6-3SNc?si=joh4EGQyojJfUoRU.

Sr. No.	Title of Video	Time Stamp	Translation of Excerpt[1]	Meaning and import behind video
			rumours. Someone may go on to inform SEBI about this…"	
		32:20 – 32:32	*"I thought that today is Sunday and I found the story very amazing, I don't know how you all will like it but I thought that I should discuss about how a person starts from zero and reaches where he is, let's keep it till here, I will meet you again tomorrow, till then thank you."*	
4.	**1 Crore Ko Double Kaise Kare?? sExplained in 2 Minutes[5]**	[The video is for a duration of 1:59]	*Mr. Maheshwari reads out a comment* "*If I want to invest Rs. 1 crore in the stock market and I want to double, triple it and leverage it..how do I do it?*" *Mr. Maheshwari responds to this comment* "*Sir with this much effort you cannot plan so far ahead… You cannot classify things so strictly. Start in the market and market will make things happen for you. You cannot plan like this. If with Rs. 1 crore you are taking 20-40 lakhs over this, it is risky… If you take a loan of Rs. 40 lakhs and the market conditions change, it is risky. In this kind of market, you put in money and sit calmly. Everything does not go as planned. If the market goes up you may sell but all of this is theoretical and the actual implementation differs…"*	The title of the video comes from a specific question posed to Mr. Maheshwari, which he reads aloud at the start of the video. The video actually cautions against planning steps to try and double investments, stating that the same is risky and market conditions change. Mr. Maheshwari only advices viewers that the safest thing one can do is to invest in the stock market and be patient.
5.	**10 Saal Mei 10 Guna Aur 20 Saal Mein 100 Guna!! Kaise Kare??[6]**	[The video is for a duration of 2:30]	*Mr. Maheshwari reads out a comment from individual named Piyush Prajapati* "*Sir Ramdev Aggarwal says very confidently on TV that in 10 years you can make 10 times gains and in 20 years you can make 100 times gains – is this possible and if so, how do we do it?*" *Mr. Maheshwari responds to this comment* "*See the question is not whether it's possible or not, the question is how to do it. If you take any number and plug it in, excel can run any number. Any figure is possible that way. But how to do it? The most dangerous thing isn't that money will not increase. The most dangerous thing is the demons that sit at home are us – if we have Rs. 15 lakhs at home we want to buy a car like an SUV, because a sedan becomes beneath us…when money increases our needs and wants increase. When you get more money, you want to buy a sofa, then you will make a down payment for a house…You become insecure in your mind. If people tell you to leave your job you don't simply leave it right? You need to take responsibility yourself. Even if you see our small case and you take 5 stocks, you can keep it for 5 years. My view now is that it is positive now but what if it is negative later? The market is very dynamic. Today if you keep one thing, not for certain that in 5 years or 10 years it will stay the same…"*	The title comes from a specific question posed to Mr. Maheshwari which he reads aloud at the start of the video. The video actually cautions viewers to be careful about the increasing needs and wants which naturally arise when a person starts to make money. The video also warns viewers that the market is dynamic and positions taken in the market may not always stay the same.

50. Hence, as is evident from the above, none of the videos of the Noticee can amount to influencing the investment decisions of viewers, given that they are educational videos which at most, provide

5 The video can be accessed at; https://youtu.be/xtLdyPh7Z6U?si=NL4npw_N7VlEwyNc.

6 The video can be accessed at; https://youtu.be/OT0EKKN5bW0?si=IOH3YxwGxw2aJ5Rg.

generic advice about the financial market, and never delve into any specificities regarding any investment patterns, scrips, shares, etc. Moreover, the Notice has failed to appreciate that in some cases, the alleged exaggerated titles are actually the questions / comments which were posed by viewers to Mr. Maheshwari, and he merely reads such questions allowed and proceeds to debunk the statements or explain that there is no straitjacket formula to achieve such types of returns.

51. The Notice has blindly cherry-picked the title of the videos to affix liability on the Noticee, whilst failing to appreciate that the actual message and import behind the videos are aimed at educating viewers. It is submitted that the running themes in all of the Noticee's videos inter alia include cautioning viewers against making risky investments and advising viewers not to succumb to sources promising to give assured returns such as YouTube courses. In this broader context, it is clear that the Noticee has always operated keeping the best interests of investors and potential investors. Hence, SEBI must appreciate that the Noticee's ethos and philosophy behind uploading such videos was always bona fide, as in posting such type of educational content, the same would hopefully dissuade viewers from being misled or exploited by other sources.

52. In this regard, reference may be drawn to the order of the Hon'ble SAT in Bull Research Investment Advisors Pvt. Ltd. & Ors. vs SEBI, wherein SEBI had alleged that by providing assurance of "target" / approachable profit to clients, the IA was providing assured returns. However, in dismissing this observation of SEBI, the Hon'ble SAT observed the following:

> *"10. In the light of the aforesaid, we find that WTM has cherry picked a word "target" to come to a prima facie finding that this amounts to an assured returns without considering the words "not assured / not guaranteed" and without considering the contention that the Company does not provide any guarantee or assured returns. Such non-consideration of the entire sentence and cherry picking a single word from the sentence in our opinion is unwarranted."*

53. Likewise, it is submitted that in the present case, the Notice cannot divorce the title of the videos from the actual content and must consider the message and import behind the videos, when making any claims against the Noticee.

54. Additionally, it is submitted that the contention that the titles are "inconsistent with or unrelated to the nature and risk and return profile of the product has not been made out" is completely untenable, given that none of the Noticee's videos are based on any particular product and are rather in the nature of generic, broad-based advice.

(c) Mere reference to Mr. Maheshwari's small case does not tantamount to influencing investors.

55. The Notice alleges that Mr. Maheshwari has been providing a link to his Smallcase website in the description of his YouTube channels with the statement "Invest in our Smallcase." Thus, it is alleged that in doing so, the Noticee is influencing investors.

56. Given the above submissions, it is reiterated that the videos on YouTube do not constitute 'advertisements' under the advertisement code. Hence, the mere reference to Mr. Maheshwari's small case does not tantamount to influencing investors, moreover there is no explicit bar on IAs furnishing such types of statements.

57. Moreover, it is submitted that the Noticee never intended to commercialize this platform. It is reiterated that the sole intention behind the videos is for knowledge enrichment of the general public. As has been analyzed above, the broad takeaways behind most of the Noticee's videos are in investors' interests, with the message behind most videos being; (i) that no one can provide assured returns, (ii) that making high returns in a short span of time is not realistic, and (iii) that a safe and stable approach should be adopted when investing in the securities market. Thus, it must be appreciated that the Noticee has never attempted to lure investors with misleading messages or attempted to sell any of its services or courses through its videos. Further the Noticee has never resorted to tactics to boost its views, such as inviting guest speakers who are well-known in the finfluencer space. Thus, the bona fides of the Noticee must be duly considered in the present case.

58. For the reasons above, it is submitted that the claim that the Noticee has violated paragraph 9 of the Master Circular is unwarranted and untenable both in fact and law and accordingly deserves to be set aside.

C. ANNUAL AUDIT

59. The Notice alleges that the Noticee was providing investment advice under its PMS registration by seeking the exemption provided in Regulation 4(g) of the IA Regulations, however it had not undertaken the annual audit and hence had not complied with Chapter III of the IA Regulations. Hence, it is alleged that the Noticee has violated Regulation 19(3) and Regulation 4(g) of the IA Regulations.

60. Before delving into the submissions, the relevant provisions on conducting an annual audit, i.e., Regulation 19(3) of the IA Regulations, states as follows:

> *"An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and submit a report of the same as may be specified by the Board."*

61. Furthermore, Paragraph 1.2(vii) of the Master Circular states as follows:

"Audit

> *(a) As per regulation 19(3) of the IA Regulations, IA shall ensure that annual audit in respect of compliance of the IA Regulations and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year.*
>
> *(b) The adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA, shall be reported to respective SEBI office (based on the registered address of IA) within a period of one month from the date of the audit report but not later than October 31st of each year for the previous financial year starting with the financial year ending March 31,2021."*

62. The Noticee submits that during the financial year of 2022-23, the Noticee was registered as a portfolio manager with SEBI. In this regard, Regulation 30(2) and Regulation 30(3) of the SEBI (Portfolio Managers) Regulations, 2020, ("PMS Regulations") stipulate that the books of accounts and portfolio accounts of a portfolio manager are to be audited annually.

63. Thus, while the Noticee carried out the annual audit for the financial year of 2022-2023 in line with the applicable PMS Regulations, the Noticee's independent auditor, who was a member of the member of the Institute of Chartered Accountants, had also reviewed the books of accounts and

operations of the Noticee, in line with Chapter III of the IA Regulations. The independent auditor had thereby confirmed that the Noticee had met with the provisions outlined in Chapter III of the IA Regulations. Specifically, the independent auditor had recorded 10 observations, none of which were adverse in nature. Hence, the requirement under paragraph 1.2(vii) of the Master Circular to report adverse findings of the audit along with action taken thereof, would not have arisen in any case. A copy of the relevant chapter from the independent auditor's report is enclosed herewith as Annexure C.

64. Therefore, it is submitted that the Noticee had substantively complied with the requirement of conducting an annual audit in line with the IA Regulations, given that the independent auditor had provided its findings on meeting the provisions in Chapter III of the IA Regulations. Accordingly, the allegation that the Noticee has not undertaken the annual audit as prescribed under the IA Regulations is devoid of merit and deserves to be set aside.

D. FACTS OF THE PRESENT CASE DO NOT WARRANT IMPOSITION OF MONETARY PENALTY

65. Without prejudice to any of our submissions above, it is submitted that the facts of present matter, even if borne out, do not constitute a suitable case for imposition of monetary penalty on the Noticee.

66. It is humbly submitted that any adverse action would tarnish the reputation that has been painstakingly built up by the Noticee, backed by Mr. Maheshwari over the years, and this would have a detrimental effect on the investor confidence in the Noticee. As has been observed by the Hon'ble SAT, when there is an allegation which has the propensity to affect the reputation of a market participant, there must be a "convincing preponderance of evidence" for such party to be found guilty.

67. Further and without prejudice to the submissions above, it is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of an administrative/cautionary advice and does not require imposition of warrant penalty under the SEBI Act.

68. Further, from the aforesaid facts, as also from the Notice itself, with reference to Section 15J of the SEBI Act, it becomes abundantly clear that the Noticee has not defrauded any investor or market participant, nor made unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally.

69. Without prejudice to any of the foregoing provisions, reference may also be made Cabot International Capital Corporation vs. Adjudicating Officer, SEBI. The Hon'ble SAT considered the scope of Sections 15I and 15J of the SEBI Act in the context of unintentional failure on the part of the appellant therein to comply with a regulatory requirement and held:

> *"On a perusal of section 15-1 it could be seen that imposition of penalty is linked to the subjective satisfaction discretion of the adjudicating officer. The words in the section that "he may impose such penalty" is of considerable significance, especially in view of the guidelines provided by the Legislature in section 15J. "The adjudicating officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the adjudicating officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in subsection (1) of section 15-1, to impose penalty.*

It is left to the discretion of the adjudicating officer, depending on the facts and circumstances of each case." (emphasis supplied)

70. In Adjudicating Officer, SEBI v. Bhavesh Pabari, the Hon'ble Supreme Court held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Factors other than those can also be considered in mitigating the quantum of penalty sought to be imposed.

71. Further, in Piramal Enterprises Limited v. SEBI, the Hon'ble SAT held as follows:

24. "…SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty…" (emphasis supplied)

72. In the above background, it is relevant to note the observations of Hon'ble SAT in the matter of Samrat Holdings Limited vs SEBI as under:

"As already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."

73. In view of the aforesaid and the judicial precedents cited hereinabove, it is humbly submitted that this is not a fit case for imposition of monetary penalty and any adverse action from SEBI will cause irreparable prejudice to the Noticee's reputation. As such, the Notice ought to be disposed of without any adverse findings or directions against the Noticee.

E. CONCLUSION

74. In light of the above, it is evident that the facts of the current case do not justify imposition of any penalty under the SEBI Act. Further, it has been sufficiently established that none of the alleged violations are on account of any wilful default on part of the Noticee. In fact, the Noticee has always acted in the best interest of its investors. Yet, SEBI ascribes a mala fide intent on the Noticee in issuing this Notice. Therefore, it is humbly submitted that any finding by SEBI upholding the allegations made against the Noticee in the present instance would be inconsistent with the relevant provisions of law and the facts and circumstances of the case.

75. Under the given facts and circumstances, we would like to state that there are no justifiable grounds or basis to issue any observations or impose any penalties against the Noticee. The submissions made above are briefly mentioned below:

- *The Noticee was allowed to charge different fee modes for different types of services, and it was in clients' interests to charge different fee modes for different types of services.*

- *By alleging that the practice of charging advance fee with AuA as 0 is 'irrational', the Notice levels a charge which does not find any legal basis. Without prejudice to the same, the 62 clients which were charged an advance fee had either voluntarily exited or never invested with the Noticee.*

- *The Noticee's YouTube videos do not fall within the definition of advertisements. Moreover, the Notice cherry-picks the titles of the videos and fails to appreciate the true meaning and import behind the videos.*

- *The Noticee had substantively complied with the requirement of conducting an annual audit in line with the IA Regulations, as its independent auditor had reviewed the books of accounts and operations of the Noticee, in line with Chapter III of the IA Regulations.*

76. In view of the foregoing, it would follow that there is no case at all to be made against the Noticee. We respectfully request that the proceedings against the Noticee be disposed of without any adverse finding or imposition of penalty.

…"

10. On the rescheduled date of hearing viz., August 22, 2024, the Noticee availed the opportunity of hearing through its Authorized Representatives (AR) viz., Ms. Shruti Rajan (Advocate), Ms. Rebecca Cardoso (Advocate) and Ms. Rashmi Choudhary, wherein the ARs appeared in person and inter alia relied upon and reiterated the written submissions made vide letter dated August 20, 2024. Further, the ARs sought time till August 30, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed. The ARs inter alia informed that they intended to file the settlement application in the instant matter, in respect of which the Noticee was advised to be guided by extant applicable provisions of SEBI (Settlement Proceedings) Regulations, 2018.

11. Vide email dated August 27, 2024, the Noticee informed that it had filed settlement application in the instant matter.

12. Subsequently, vide letter dated August 30, 2024, the Noticee made additional submissions as follows:

"…

2. During the course of the hearing, the Noticee, Basant Maheshwari Wealth Advisers LLP, submitted that it would furnish transcripts of the five YouTube videos uploaded on the Noticee's YouTube channel, which have also been referred to, at paragraph 4.2.2, page 9 of the Notice.

3. In this regard, a copy of the transcripts for the videos has been enclosed as Annexure A to these written submissions.

4. It is humbly submitted that the Noticees videos do not constitute as advertisements as set out under the advertisement code in terms of Paragraph 9 of Master Circular number SEBI/HO/MIRSD/PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023. As such, the allegations raised in the Notice do not merit any consideration and deserve to be set aside.

…"

13. Vide email dated January 16, 2025, it was informed by SEBI that the Noticee had withdrawn its settlement application and accordingly, the pending proceedings could resume.

D. CONSIDERATION OF ISSUES AND FINDINGS

14. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee had violated the provisions of SEBI IA Regulations and SEBI Circular, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

Issue No. I: Whether the Noticee had violated the provisions of SEBI IA Regulations and SEBI Circular, as alleged?

15. The following was inter alia observed and alleged in respect of the Noticee:

15.1. Fees and Charges during the inspection period:

15.1.1. In this regard, it was inter alia observed and alleged that IA had charged fees in both fixed and AUA mode to 32 clients during the inspection period.

It was also observed and alleged that IA had failed to provide AUA details for 62 clients.

Therefore, it was alleged that the Noticee had violated the provisions of Regulation 15A of SEBI (Investment Advisers) Regulations, 2013.

15.1.2. In this regard, I note that Regulation 15A of SEBI (Investment Advisers) Regulations, 2013 reads as under:

"…

Fees.

15A. *Investment Adviser shall be entitled to charge fees for providing investment advice from a client [40][, including an accredited investor]in the manner as specified by the Board.]*

…

(iii) Fees

Regulation 15A of the IA Regulations provides that IAs shall be entitled to charge fees from a client in the manner as specified by SEBI. Accordingly, IAs shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

(a) The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.

(b) IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

(c) Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

(a) In case "family of client" is reckoned as a single client, the fee as referred above shall be charged per "family of client".

(b) IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

(c) If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.

…"

15.1.3. As regards the allegation that IA had failed to provide AUA details for 62 clients, the Noticee has submitted that, "…*62 clients where the AuA was reflected as 0, the same was due to the fact that those clients had either voluntarily exited / cancelled the Noticee's services or never invested with the Noticee*…*while SEBI attempts to make out a case that the same is 'irrational', it is submitted that this simply occurred since services for such clients were never fully rendered despite an advance fee being charged, which is why the AuA of such clients had to be recorded as 0. It is clarified that the reason why services were never rendered was completely due to the clients' own decision to stop / refrain from availing the Noticee's services…"*

15.1.4. In this regard, the Noticee has also contended that, "…*While the Notice alleges that the Noticee has violated Regulation 15A of the IA Regulations, which states that an IA shall be entitled to charge fees for providing investment advice from a client in the manner as specified by SEBI, the Notice has failed to spell out the specific clause that the Noticee has violated, which can sustain a violation of Regulation 15A…the allegations in the Notice do not identify the exact legal obligation that the Noticee has breached or failed to abide by, rendering the alleged charges to be vague and ambiguous…"*.

15.1.5. In this regard, having regard to the material available on record and to the submissions of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

15.1.6. As regards the allegation that IA had charged fees in both fixed and AUA mode to 32 clients during the inspection period, the Noticee has submitted that, "…*From a plain reading of the above, it is abundantly clear that for a particular service offered, the IA is afforded with the choice to charge either fixed fee or AuA mode. Further, it is abundantly clear that for all the services offered by the IA to a particular client, the same must be within the caps prescribed, i.e., 2.5% of AuA under the AuA mode, or INR 1,25,000/- per annum per client under the fixed fee mode.*

It is submitted that a logical extension of the above would mean that if an IA is providing multiple services to a client, the maximum limit must be complied with, for all services provided to a client under that particular fee mode. The choice in the mode of charging the fees must be made for each service and not across all services…"

15.1.7. In this regard, I note that SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 reads as under:

"…

(iii) Fees

Regulation 15A of the IA Regulations provides that IAs shall be entitled to charge fees from a client in the manner as specified by SEBI. Accordingly, IAs shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

(a) The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.

(b) IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

(c) Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

…

(b) IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

…"

In view of the above, I note from the plain reading of the text of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 that IAs shall charge fees from the clients in either of the two modes viz., AUA mode or fixed fee mode. Therefore, the Noticee's contention, "…*for a particular service offered, the IA is afforded with the choice to charge either fixed fee or AuA mode…"* is devoid of merit and hence not acceptable.

15.1.8. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in the matter of Premanand & Ors vs Mohan Koikal & Ors, wherein it was held:

"…*24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language…. In other words, the literal rule of interpretation simply means that we mean what we say, and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other…"*

15.1.9. Further in this regard, I note that the Noticee's submission, "…*It may be appreciated that the law explicitly envisages a situation where multiple advisory services can be availed by a client during the same period. If it was intended that the same mode of charging fees had to be applied across all services / products availed by a particular client, the same would have been explicitly mentioned. However, the law is notably silent in this regard, moreover, there is no regulatory guidance on a methodology to charge fees when an IA is offering multiple types of services*…" is devoid

of merit as it has been clearly stated in SEBI Master Circular SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 dated June 15, 2023 that IAs shall charge fees from the clients in either of the two modes viz., AUA mode or fixed fee mode and no flexibility has been provide with respect charging fees in different modes for different services from the same client.

15.1.10. I further note that the Noticee's submission, "…*it is humbly submitted that the Noticee only adopted the following practice as it was practical and logical, and in the interest of clients. However, from March 2024 onwards, for onboarding new clients, the Noticee has been ensuring only to charge fees as per the fixed fee model*…" would not exempt the Noticee from complying with the extant applicable provisions of securities laws violated, which Noticee was required to comply with and can at best be considered as mitigating factors.

15.1.11. In view thereof, I find that the allegation that IA had charged fees in both fixed and AUA mode to 32 clients during the inspection period, stands established. Therefore, I hold that the Noticee had violated the provisions of Regulation 15A of SEBI (Investment Advisers) Regulations, 2013.

15.2. Code of Advertisement:

15.2.1. In this regard, it was inter alia observed and alleged that videos with exaggerated captions and in non compliance with advertisement code had been published by the IA on its youtube channel.

Therefore, it was alleged that the Noticee had violated the provisions of Para 9 of SEBI Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023.

15.2.2. In this regard, I note from the material available on record that SEBI had observed that the Noticee had been uploading videos on youtube with exaggerated captions such as:

1. 100x Portfolio - 3 Saal Mei? Kaise Kiya?
2. 10 Saal Mei 10 Guna Aur 20 Saal Mei 100 Guna!! Kaise Kare??
3. **कैसे बनाया** ₹50 Lakh **से** ₹10 crore ?
4. 1 Crore Ko Double Kaise Kare?? Explained in 2 Minutes
5. Kaise Banaya ₹150 crores Sirf Trading kar ke ?

SEBI also observed that the disclaimer was not clearly brought out in the description as it has been uploaded through a pdf link on the description. Additionally, videos uploaded by Mr. Basant did not provide the disclaimer in the description box of each of his youtube videos.

It was further observed by SEBI that Mr. Basant Maheshwari had been providing link to his smallcase website in the description of his youtube channels with the statement "Invest in our smallcase". Thus, he was influencing investors and thereby the Youtube videos were advertisements issued by Mr. Basant Maheshwari.

15.2.3. In this regard, the Noticee has submitted that, "…*none of the Noticee's YouTube videos amount to 'advertisements' as the sine qua non for a communication to be an advertisement is for it to affect the investment and trading decisions of the viewer/investor*…" and "…*The videos are uploaded for the sole purpose of knowledge enrichment for the general public, focused on covering relevant topics in the financial market. Hence, such a genre of videos in no manner can be linked to any advertisement purposes…"*

In this regard, I note that as per Para 9.1 (a) (i) of SEBI Master Circular for Investment Advisers dated June 15, 2023, an Advertisement shall include all forms of communications, issued by or on behalf of IA, that may

influence investment decisions of any investor or prospective investor. Para 9.1 a (ii) states that form of communication include social media platforms.

In this regard, I note from the material available on record that the Noticee had been uploading videos on youtube with exaggerated captions and had been providing link to his smallcase website in the description of his youtube channel with the statement "Invest in our smallcase". Thus, the Noticee was influencing investors and thereby the Youtube videos were advertisements issued by the Noticee. Therefore, the Noticee's submissions are devoid of merit and hence not acceptable.

15.2.4. Further in this regard, the Noticee has submitted that, "…*The Notice has blindly cherry-picked the title of the videos to affix liability on the Noticee, whilst failing to appreciate that the actual message and import behind the videos are aimed at educating viewers. It is submitted that the running themes in all of the Noticee's videos inter alia include cautioning viewers against making risky investments and advising viewers not to succumb to sources promising to give assured returns such as YouTube courses…Hence, SEBI must appreciate that the Noticee's ethos and philosophy behind uploading such videos was always bona fide, as in posting such type of educational content, the same would hopefully dissuade viewers from being misled or exploited by other sources…"* and "…*while SEBI has now approved the Finfluencer Proposal, it is not applicable to any person who is engaged in investor education…"*

In this regard, I note from the material available on record that the Noticee had uploaded videos on youtube with exaggerated captions and that the disclaimer was not clearly brought out in the description as it has been uploaded through a pdf link in the description. I further note from the material available on record that other disclosures mentioned at Para 9.1(b) of the SEBI Master Circular for Investment Advisers dated June 15,

2023, are not displayed in the videos the Noticee had been providing link to his smallcase website in the description of his youtube channels with the statement “Invest in our smallcase”. Thus, the Noticee was influencing investors and thereby the Youtube videos were advertisements issued by the Noticee.

In this regard, I further note that as per para 9(c) of SEBI Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023, the advertisement shall not contain statements which are false, misleading, biased or deceptive etc. In this regard, as dealt with and brought out in the foregoing, I note that the Youtube videos were advertisements issued by the Noticee and that the Youtube videos had exaggerated captions.

15.2.5. In this regard, the Noticee has contended that, “…*The Notice has blindly cherry-picked the title of the videos to affix liability on the Noticee, whilst failing to appreciate that the actual message and import behind the videos are aimed at educating viewers*…” and has relied upon the judgment of Hon’ble SAT in Bull Research Investment Advisors Pvt. Ltd. & Ors. vs SEBI.

In this regard, I note that each matter may be peculiar and /or unique in its facts and circumstances based on which the violations are ascertained. Though certain portion of the orders have been cited however the Noticee has neither demonstrated as to how these orders were applicable in the instant matter nor has it demonstrated as to what are the relied upon findings in the respective orders which had a bearing on the alleged violations against the Noticee. Accordingly, the submission of Noticee are observed to be generic in nature and hence not tenable.

15.2.6. In view thereof, I find that the allegation that videos with exaggerated captions and in non-compliance with advertisement code had been

published by the IA on its youtube channel, stands established. Therefore, I hold that the Noticee had violated the provisions of Para 9 of SEBI Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023.

15.3. Annual Audit:

15.3.1. In this regard, it was inter alia observed and alleged that IA was providing investment advice under PMS registration by seeking exemption provided in Regulation 4(g) of IA Regulations however had not undertaken annual audit in respect and hence had not complied with Chapter III of IA Regulations as required in Regulation 4(g) of IA Regulations.

Therefore, it was alleged that the Noticee had violated the provisions of Regulation 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013.

15.3.2. In this regard, I note that Regulation Regulation 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013 reads as under:

"…

4.The following persons shall not be required to seek registration under regulation 3 subject to the fulfillment of the conditions stipulated therefor,—

…

(g) Any stock broker or sub-broker registered under SEBI (Stock Broker and Sub-Broker) Regulations, 1992, portfolio manager registered under SEBI (Portfolio Managers) Regulations, 1993 or merchant banker registered under SEBI (Merchant Bankers) Regulations, 1992, who provides any investment advice to its clients incidental to their primary activity:

Provided that such intermediaries shall comply with the general obligation(s) and responsibilities as specified in Chapter III of these regulations:

Provided further that existing portfolio manager offering only investment advisory services may apply for registration under these regulations after expiry of his current certificate of registration as a portfolio manager;

…

19. (3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India [43][and submit a report of the same as may be specified by the Board]

…

(vii) Audit

a. As per regulation 19(3) of the IA Regulations, IA shall ensure that annual audit in respect of compliance of the IA Regulations and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year.

…"

15.3.3. In this regard, the Noticee has submitted that, "…*while the Noticee carried out the annual audit for the financial year of 2022-2023 in line with the applicable PMS Regulations, the Noticee's independent auditor, who was a member of the member of the Institute of Chartered Accountants, had also reviewed the books of accounts and operations of the Noticee, in line with Chapter III of the IA Regulations. The independent auditor had thereby confirmed that the Noticee had met with the provisions outlined in Chapter III of the IA Regulations… A copy of the relevant chapter from the independent auditor's report is enclosed herewith as Annexure…C*"

In this regard, on perusal of Annexure C submitted by the Noticee, I note that the document submitted by the Noticee is dated May 06, 2024 and pertains to independent auditor's report with respect to compliance with IA Regulations.

In this regard, I note that as per SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall ensure that annual audit in respect of compliance of the IA Regulations and circulars issued thereunder is conducted and that the audit shall be completed within six months from the end of each financial year. Therefore, the annual audit should have been completed by September 2023, i.e. within six months from the end of the financial year. However, as brought out in the foregoing, the report submitted by the Noticee is dated 06 May 2024.

15.3.4. In view thereof, I note that the Noticee has not demonstrated with relevant details and documents if it had undertaken annual audit in respect of compliance with SEBI IA Regulations within 6 months of FY 2022-23, as required under Regulation 19 (3) of SEBI IA Regulations. Therefore, the Noticee's contention is devoid of merit and hence not acceptable.

15.3.5. In view thereof, I find that the allegation that IA was providing investment advice under PMS registration by seeking exemption provided in Regulation 4(g) of IA Regulations however had not undertaken annual audit in respect, stands established. Therefore, I hold that the Noticee had violated provisions of 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of the SEBI Act, 1992?

16. As it has been established in the foregoing paragraphs that Noticee had violated the provisions of securities laws as alleged in the SCN and as reproduced below, the Noticee is liable for payment of a monetary penalty in terms of Section 15EB of the SEBI Act, 1992.

16.1. Regulation 15A of SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred to as "IA Regulations").

16.2. Para 9 of Master Circular number SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 for IAs dated June 15, 2023.

16.3. Regulation 19 (3) and Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013.

17. In this regard, the Noticee in its submissions as reply to the SCN has submitted that, "…*without prejudice to the submissions above, it is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of an administrative/cautionary advice and does not require imposition of warrant penalty under the SEBI Act*…". In this regard, the Noticee has inter alia cited the judgments of Hon'ble Securities Appellate Tribunal ('SAT') in Cabot International Capital Corporation vs. Adjudicating Officer, SEBI, Piramal Enterprises Limited v. SEBI, Samrat Holdings Limited vs SEBI and judgment of Hon'ble Supreme Court in Adjudicating Officer, SEBI v. Bhavesh Pabari.

In this regard, I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. Noticee has merely cited and mentioned about the Orders, however, the Noticee has neither demonstrated as to how the cited orders was applicable in the instant matter nor demonstrated as to what are the relied upon findings in the respective orders which have a bearing on the alleged violations against Noticee in instant matter. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire category of the intermediary viz., SEBI Registered Investment Advisers and not just about minor procedural aspects specific to the Noticee.

18. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.....*"

19. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section 15EB of SEBI Act which provides as following:

"…

15EB: Penalty for default in case of investment adviser and research analyst.

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

…"

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

SEBI Act

"……..

Factors to be taken into account while adjudging quantum of penalty.

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

a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b. the amount of loss caused to an investor or group of investors as a result of the default;

c. the repetitive nature of the default.

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

……..."

21. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee being a SEBI registered Investment Adviser had failed to comply with

the extant applicable provisions of securities law, as dealt with and brought out in the foregoing which SEBI is duty bound to enforce compliance of. Such failure and non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

22. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

Name of the Noticee	Penalty under Section	Penalty (in Rs.)
Basant Maheshwari Wealth Advisers LLP	Section 15EB of the SEBI Act	4,00,000/- (Rupees Four Lakhs only)

23. The Noticees shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

DATE: March 25, 2025 **AMAR NAVLANI**
PLACE: MUMBAI **ADJUDICATING OFFICER**