WTM/AN/WRO/WRO/29258/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

1. **Mr. Ameet Savant (PAN: AOAPS0373N)**
2. **Crefin India Management Pvt. Ltd. (PAN: AAHCC3377N)**
3. **Mr. Jeevendra Kumar Poddar (PAN: AVEPP8927C)**
4. **Ms. Shipra Singh (PAN: BTKPS6899H)**

In the matter of unregistered portfolio management services activity by Ameet Savant (Proprietor of Ventura) and unregistered investment advisory activity by Crefin India Management Pvt. Ltd. and its directors

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A. BACKGROUND

1. In 2019-2020, Securities and Exchange Board of India ("**SEBI**") received complaints against Ventura Securities Limited ("**VSL**"), a SEBI registered stock broker, pursuant to which SEBI conducted an examination in the matter. Based on the examination report, a show cause notice dated February 10, 2022 ("**SCN**") was issued to Mr. Ameet Savant, proprietor of a firm named 'Ventura' ("**Noticee 1**"), Crefin India Management Pvt. Ltd. ("**Noticee 2**"), Mr. Jeevendra Kumar Poddar **("Noticee 3")** and Ms. Shipra Singh **("Noticee 4").** The said persons are collectively referred to as "**Noticees**" in this Order.

2. The SC**N** alleges that during the years 2016 to 2019 **N**oticee 1 provided unregistered portfolio management services and that **N**oticees 2 to 4 provided unregistered investment

advisory services, thereby violating provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), SEBI (Portfolio Managers) Regulations, 1993 ("**PM Regulations**") and SEBI (Investment Adviser) Regulations, 2013 ("**IA Regulations**"). The SCN also alleges that the Noticees devised a scheme ("**alleged fraudulent scheme**") to defraud investors and thereby violated provisions of the SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**").

3. Separately, in response to appeals filed against SEBI's response on SCORES platform, Hon'ble SAT *vide* its order dated July 24, 2023 in Cynthia Pinto De Andrade and Ors. vs. SEBI (Misc. Application No. 713 of 2021 and Appeal No. 390 of 2021) ("**SAT 2023 Order**") directed SEBI to conduct a detailed investigation *inter alia* concerning the role of VSL in the context of the alleged activities of Noticee 1. Further, *vide* order dated September 11, 2023, in appeal filed by SEBI against the SAT 2023 Order (Civil Appeal Nos.5504-5509/2023), Hon'ble SC has stayed the operation of the SAT 2023 Order. It is clarified that this Order is limited to the examination report and resultant SCN referred to in para 1 above; as such, any additional role of VSL in the alleged activities of Noticee 1, if any, or whether VSL violated any other provisions of securities law, are not subject matters of the present Order.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

SHOW CAUSE NOTICE

4. The SCN dated February 10, 2022 issued to the Noticees alleges the following:

4.1 Noticee 1 was appointed as an authorized representative of VSL *vide* agreement dated December 11, 2014. VSL is registered with SEBI as a stock broker. Noticee 1 cheated/ defrauded clients / investors by using the logo, seal, address, website address *etc.* of VSL, when in reality, Noticee 1 was transferring funds to a proprietorship firm formed by him in the name of "Ventura". Noticee 1 was obtaining cheques in the name of "Ventura" and money was also being transferred to account of "Ventura" (KYC obtained from Axis

Bank for account no. 9550). When VSL received complaints from clients/ investors, it terminated its contract with Noticee 1 *vide* letter dated June 06, 2019.

4.2 Six out of nine clients / investors were promised monthly return on their capital (some were specifically offered 2% monthly return) by the welcome letter issued by Ventura. In a few statement of accounts issued by Ventura to clients / investors, scheme name of "Ventura Index Based Option" is mentioned. The investments were done in the name of Noticee 1, and not in the names of individual clients, thus, Noticee 1 was running a portfolio management scheme without obtaining registration from SEBI.

4.3 As soon as funds were received in the bank account of Ventura (ending with no. 9550), some portion of funds were transferred to personal bank account of Noticee 1 (account no. ending with 3173) and then routed to VSL account no. 479A001 for trading. Noticee 1 has traded in cash segment of BSE Ltd. for gross value of Rs. 93 lakhs and on the NSE for a gross value of Rs. 34.12 crores. In addition to that, Noticee 1 has traded in futures & options segments of NSE as under:

Table 1

Instrument wise	**Buy value in Rs. crores**	**% to total trades in derivatives segment**	**Sell value in Rs. crores**	**% to total trades in derivatives segment**
OPTIDX (Notional TO)	77.47	44.17	70.52	42.57
FUTIDX	11.61	6.62	11.54	6.97
OPTSTK (Notional TO)	23.15	13.20	20.52	12.38
FUTSTK	63.15	36.01	63.09	38.08
Grand Total	**175.38**	**100.00**	**165.67**	**100.00**

4.4 The funds transferred by clients / investors to Noticees and *vice-versa* is tabulated below.

Table 2

#	**Clients / investors**	**Total amount alleged to be transferred by the clients / investors to Noticees 1 and 2**	**Total amount transferred by Noticee 1 to clients / investors**
1.	Rohit Chopra and Vinod Chopra (brothers)	Rs. 1,40,00,000	Rs 50,25,000 to Rohit Chopra and Rs 1,33,40,000 to Vinod Chopra
2.	Shyamalee Roy	Rs. 29,60,000	Rs. 14,69,667

#	Clients / investors	Total amount alleged to be transferred by the clients / investors to Noticees 1 and 2	Total amount transferred by Noticee 1 to clients / investors
3.	Shelly Madden	Rs. 30,00,000	Rs. 6,00,000
4.	Anita Elizabeth Mathew	Rs 1,00,00,000	Rs. 96,94,350
5.	Cynthia Pinto De Andrade	Rs. 28,00,000	Rs. 5,04,000
6.	Shreya Pinto De Andrade	Rs 55,00,000	Rs. 26,40,035
7.	Carl Pinto De Andrade	Rs. 1,30,00,000	Rs. 1,20,90,058
8.	Michael Pinto De Andrade	Rs. 2,90,00,000	Rs. 1,48,18,115
	Total	**Rs. 8,02,60,000**	**Rs. 6,01,81,225**

Thus, in addition to running an unregistered portfolio management scheme, by forging credentials of VSL and promising assured returns, Noticee 1 is alleged to have committed fraud.

4.5 Noticee 2 was incorporated in 2017. The directors of Noticee 2 are Noticees 3 and 4. Noticee 2 allegedly misrepresented to its clients that it was an investment adviser *vide* letters issued by it (Annexure 19 to SCN). The aforesaid letter also mentioned that Noticee 2 has partnered with VSL. Ms. Shelley Madden has submitted certificate of investment of "Ventura" and a copy of cheque of Rs. 30 lakhs issued in favour of "Ventura" on which Noticee 3 has given acknowledgement by putting sign and seal of Noticee 2 and recorded *"Received on 29/01/2018 & forwarded for investment".*

4.6 Though Noticee 2 has not taken service charges directly from the clients / investors, it is observed from its bank account statements that Noticee 2 and its directors (Noticees 3 and 4) have received money from Ventura which is owned by Noticee 1 as follows:

Table 3

Amount received from	Amount received by Noticee	Total amount (Rs.)
Ventura	2	9,86,000
Ventura	3	29,26,164
Ventura	4	2,85,22,581

4.7 Thus, Noticees 2 to 4 not only carried out investment advisory services without being registered but also together with Noticee 1 devised a fraudulent scheme to lure clients to invest in "Ventura" in the garb of providing assured returns.

5. The SCN was served on the Noticees as follows:

Table 4

#	Mode of delivery	Noticee 1	Noticees 2 to 4
1.	Delivery by post	Returned undelivered to SEBI with the description "unclaimed" on March 15, 2022.	Returned undelivered to SEBI with description "unclaimed" on February 28, 2022.
2.	Delivery by email	Email sent at ameetsavant1975@gmail.com on February 17, 2022 did not bounce back.	Email sent at jeevendra.poddar@crefinindia.com, jeevendra.poddar@vicinitybuildcon.com and jeevendra8@yahoo.com did not bounce back.
3.	Delivery by post	Delivery of SCN attempted again by way of letter dated June 29, 2022, which returned with description "unclaimed".	Delivery of SCN attempted again by way of letter dated May 06, 2022, which was delivered.
4.	Affixture	Attempted affixture on August 01, 2022, however, the affixture failed as there were no witnesses to sign the affixture reports.	NA
5.	Newspaper publication	Newspaper publication of SCN was made in Goa edition of Lokmat and Nitya Samay on September 10, 2022.	NA
6.	Delivery by post and email	Three new addresses and email IDs (savant@rediffmail.com and balajiinvestment27@yahoo.co.in) of Noticee 1 became available on record, hence, the SCN was issued again. The SCN issued at the three new addresses of Noticee 1 returned undelivered, however, the SCN sent to savant@rediffmail.com did not bounce back.	NA
7.	Delivery through Market Infrastructure Institutions (MIIs)	As no reply was received from Noticee 1 who was served SCN by (i) email on February 17, 2022 at ameetsavant1975@gmail.com; (ii) newspaper publication on September 10, 2022; and (iii) email on September 16, 2022 at savant@rediffmail.com, steps were taken under SEBI circular dated July 29, 2022 to serve the SCN on Noticee 1 through Market Infrastructure Institutions (MIIs). The delivery through MIIs could not be successful, hence, in terms of the provision of the aforesaid circular, the PAN of Noticee 1 was deactivated.	NA

REPLIES

6. Noticee 1 has not filed any reply or made any written submission in response to the SCN served on him. Whereas pursuant to the SCN, Noticees 2 to 4 *inter alia* requested for the examination report *vide* email dated February 22, 2022 which was duly provided *vide* letter dated August 02, 2022. Thereafter, Noticees 2 to 4 filed replies *vide* email dated May 30, 2022 ("**Reply 1**"), letter dated August 23, 2022 ("**Reply 2**") and email dated June 12, 2023 ("**Reply 3**") (collectively referred as "**Replies**"). Noticees 2 to 4 have denied that they had devised a fraudulent scheme to lure the investors to invest in Ventura and that they carried out unregistered investment advisory services. The relevant portions from the Replies are summarized below:

6.1 Contention 1: VSL should also be proceeded against in the present SCN

6.1.1 VSL had entered into an agreement dated December 11, 2014 with Noticee 1 appointing him as its authorized person and sub-broker. All complaints annexed to SCN are replete with serious allegations against VSL and its directors, but no action is deemed fit to be taken against them basis innocuous premise that VSL has filed a complaint with EoC, terminated the contract with Noticee 1 and suspended his trading terminals.

6.1.2 Perusal of bank account statement of Noticee 1 reflects transactions from proprietary account of Ventura (Annexure 4 of SCN) to VSL which shows that investments were received by VSL. VSL filing complaint against Noticee 1 with EOC, terminating his contract and suspending his trading terminal, does not justify non-arraignment of VSL to the present SCN, as all the said actions were taken after the date of actual transactions of clients / investors. Noticee 1 was a sub-broker/authorized person of VSL, whose portfolio management schemes were distributed by the Noticees 2 to 4 on the representation of Noticee 1, which was accepted in goodfaith to be indeed done for VSL.

6.1.3 The relationship of VSL with Ventura/Noticee 1 being distinct and separate are taken as an absolute truth *de hors* the records and facts. Noticee 1 was a sub-broker with VSL and during the same duration he traded in large amounts in his demat and trading account held with VSL, this should have raised red flags for VSL. Admittedly, the said amounts though received by Noticee 1/Ventura were also received by VSL from Noticee 1 and

used for trading, for this reason, VSL cannot wash of its hands on such innocuous assertions.

6.2 Contention 2: SCN is without jurisdiction

6.2.1 The present SCN has been issued basis the complaints filed by private parties before the EoC at Panaji, Goa. However, section 26 of the SEBI Act states that no court shall take cognizance of any offence punishable under the SEBI Act or regulations thereunder, except on a complaint made by SEBI.

6.2.2 For the investigation to be valid by EoC, the said complaints filed by private parties are not maintainable as there is no complaint filed by SEBI to date.

6.3 Contention 3: Noticee 1 has committed fraud in collusion with the bank

The following practices committed by the bank officials where account of Ventura was opened are questionable:

6.3.1 Opening of similar name proprietary firm account by Noticee 1 who is also authorised person of VSL.

6.3.2 No examination of large deposits made in account of Ventura and no reporting to Financial Intelligence Unit (FIU).

6.3.3 Official letter head of VSL was used to open the bank accounts in the name of Ventura proprietary wherein it is clearly visible at the footer of the letter that the registered address is of VSL and official website mentioned is of VSL (*i.e.*, www.ventura1.com) (KYC forms for opening of Ventura proprietary account is attached with Reply 2).

6.3.4 There were clear banking transactions showing narration of transactions as "Ventura Securities" along with investors name, but the bank did not mark these particular transactions as suspicious since it was happening in Ventura's proprietary bank account and bearing narration of "Ventura Securities".

6.3.5 The stock sub-broker mentioned in the industry description of bank account opening form was maliciously altered and changed to consultancy services. Any alteration done in the banking form requires signature of the client at the place of alteration made in the account opening form to validate the alteration, but in this case it was altered without any signature and stamp of the client, so it is evident this is done purely either to hide the facts or manipulate the KYC for ulterior motive of the bank employee (Account opening form of Kotak Bank Ltd. is attached with Reply 2).

6.3.6 CPV (Customer Point Verification) was done at the same shop where Noticee 1 was operating as sub broker for VSL, it is unclear how this was not noticed by the bank employee conducting the CPV. CPVs are done twice in the KYC form and they both differ from each other at certain points like nature of business in the initial CPV of M/s Ventura Proprietary is mentioned as "Trading", and subsequently, in the second CPV (which appears to be forged as it is missing the signature and branch stamp of the bank, without the signature and the bank branch stamp, the CPV is invalid) it is mentioned as "consultancy services for firms, project management services and facilitation services for import- export firms". Hence, in the same bank account opening form the nature of business of M/s Ventura Proprietary changes at three places: (i) in the account opening form it is mentioned as sub-broker; (ii) in the initial CPV, it is trading; (iii) further CPV shows "consultancy services for firms, project management services and facilitation services for import- export firms".

6.3.7 Noticee 1, in connivance with the bank officials, was successful in opening bank account in the name of "Ventura" in Axis Bank, in violation of all KYC norms. This opening of bank account was at the epicenter of beginning of the fraud by Noticee 1 in the name of 'Ventura'.

6.4 Contention 4: Opportunity to cross-examine the clients / investors should be granted to Noticees 2 to 4

Noticees 2 to 4 may be granted an opportunity to cross-examine the clients / investors whose statements are being relied upon by the authority for issuing the SCN without being tested.

6.5 Contention 5: There was no need for registration as an investment advisor as Noticees 2 to 4 were acting as mutual fund distributors

6.5.1 Noticees 3 and 4 are married.

6.5.2 Noticees 3 and 4 are certified as mutual fund distributors from NISM (certificates issued dated March 26, 2015 and July 13, 2014). They also hold registration nos. issued by the Association of Mutual Funds of India (AMFI) which entitles them to not only be mutual fund distributors but also independent financial advisors ("**IFA**"). Noticees 3 and 4 were IFAs, however, *vide* amendment to IA Regulations notified on July 03, 2020, usage of such nomenclature was prohibited. Hence, from the above date, Noticees 3 and 4 were not using the term "Adviser". A letter from CAMS allotting registration no. to Noticee 3 and ARN card of Noticee 4 is attached with Reply 3.

6.5.3 The products marketed by VSL are mentioned on the letter head of the VSL appointment letter/empanelment letter dated March 05, 2015 attached as Annexure 3, which states "equity, mutual funds, commodities". Noticees 3 and 4 were distributing regular products of other mutual fund companies during empanelment with the said AMC, eg: equity growth scheme, money market or liquid fund, debt mutual fund, balanced mutual fund, equity linked saving scheme, and portfolio management services. Details of the same can be fetched from Computer Age Management Services Pvt. Ltd. (CAMS) by quoting ARN number provided. VSL product distributed by Noticees 3 and 4 was a HNI product for high net worth individuals.

6.5.4 Noticees 3 and 4 have not rendered any investment advice for consideration or otherwise. The SCN does not state that Noticees 2 to 4 received any form of consideration for the alleged investment advice. The usage of the words "investment advisor" in the statements of complaints and letters at Annexures 7, 9 and 19 of the SCN are read out of context

and does not *ipso facto* render the Noticees 3 and 4 liable for violation of IA Regulations. Even if the above representation was made, the same was prior to July 03, 2020 (*i.e,* the date when regulation 3(3) of IA Regulations came to be notified). A mutual fund distributor cannot charge advisory fees or advice clients, therefore, the said usage has to be understood from the case of recommendations/incidental advice as permissible under the Code of Ethics laid down by AMFI and not the prohibition which was later notified *vide* the IA Regulations.

6.5.5 Noticee 4 worked as a financial partner with Yes Bank, when she resigned in 2014, she entered into a partnership deed dated September 23, 2014 with Noticee 1 with whom she was professionally acquainted. The partnership deed contemplated that a partnership at will is being constituted in the name of "M/s Credence Financials" for doing business of financial agency/franchisee/direct sales agent for loan/financial agent company leading into investments of mutual funds companies, sub-brokers, general insurance, portfolio management services *etc.* The said deed was registered with the Registrar, however, there was no business/operations done through the said partnership. Noticee 3 resigned from his job in HDFC Bank with effect from April 16, 2015. Since the partnership between Noticees 1 and 4 could not be worked out, the same was reconstituted *vide* reconstitution deed dated May 11, 2015. The said deed was also registered with the Registrar.

6.5.6 Looking at the growth of Noticees 3 and 4, Noticee 1 approached them in 2015, and represented that there was an asset management and stock brokerage company under the name of "Ventura Securities Ltd." which has appointed Noticee 1 as managing incharge as he has purchased the franchisee of VSL for Goa. The products offered by VSL were presented along with the remuneration for marketing the said products to clients pursuant to which commission will be offered.

6.5.7 After the said order, Noticees 3 and 4 found that VSL was registered with NSE and Noticee 1 was declared incharge/managing branch office of VSL having a sub-broker code. VSL through Noticee 1 issued an appointment letter dated March 05, 2016, to M/s Credence Financials, appointing them as sales franchise to source new business, appoint

referral partners, marketing, selling their products *etc*. While promoting the said product, the clients had complete discretion whether to invest or not. If the client agreed, the Noticees merely furnished contact details of Noticee 1. The client would directly meet with Noticee 1 and work out details of investment without participation of Noticees. For the clients who decided to invest with Noticee 1, Noticees 3 and 4 entered into MoUs for each transaction with copies of cheque attached. The MoUs mentioned that Noticee 1 is a sub-broker with VSL. It further stated that Noticee 1 guarantees that he shall pay an interest at 4% per month for 6 months from the date of signing of MoU (2% to account of Credence Financials and 2% to clients). Upon completion of 6 months till principal amount remains invested, Noticee 1 shall pay an interest at 5% per month (3% to Credence Financials and 2% to clients). Noticee 1 shall hand over to Noticees 3 and 4 the investment made by the client on demand within 10 working days post an investment locking for 6 months from execution of MoU. The returns will cease to be paid only when principal amount is redeemed by client at his discretion.

6.5.8 The MoUs were being complied with by Noticee 1 *viz* the clients and Noticees 3 and 4 until September 09, 2019. Being aggrieved by the registration of FIR and investigation against Noticees 3 and 4, they have filed criminal writ petition before Goa bench of Hon'ble Bombay HC which is pending for order.

6.5.9 Noticees 3 and 4 were in *bonafide* belief that they were distributing the recognized genuine product floated by VSL and that they were receiving fees for the same from VSL and not from 'Ventura Proprietary'. Noticees 2 to 4 nowhere in their replies have acknowledged receipt of commission from 'Ventura Proprietary'. Infact, Noticees 2 to 4 had no knowledge of existence of 'Ventura Proprietary' while conducting distribution business as for Noticees 2 to 4, it was VSL.

6.5.10 As regards the product, VSL (SEBI regulated securities firm) through its authorised and active representative made Noticees 3 and 4 believe that the said product was a portfolio management services product termed as 'PMS', which was especially for HNI. With respect to such type of product, the risk and reward is decided between the AMC *i.e.*, the

company floating that scheme and the client as per the contract between them and the Noticees 3 and 4 had no role to play in the same.

6.5.11 Noticees 3 and 4 had limited knowledge about the PMS to the extent explained by VSL The product was quite different in functioning than mutual funds, so they trusted the feature of product as explained by Noticee 1 acting on behalf of VSL. The said product was represented through Noticee 1, which was audited by VSL (a SEBI registered and regulated securities firm) which was subsequently audited by SEBI, so it was effectively as good as SEBI approved product. Since Noticee 1 was active member of VSL and not barred, banned or terminated as such, what he represented was *bonafidely* believed to be true and legal. Upon knowledge of Noticee 1's wrongdoing, they made a criminal complaint against him.

6.5.12 Regarding Noticee 3's acknowledgement on cheque issued by Ms. Shelley Madden (paragraph 6.3 of SCN read with Annexure 18), the same shows that the cheque was forwarded to VSL for investment which is not illegal. Noticees 2 to 4 deny that any acknowledgement was given on the copy of cheque to Ms. Shelley Madden. Noticees 3 and 4 never followed the practice of giving such acknowledgment. Only one Ms. Shelley Madden has the copy of such purported acknowledgment. No other client has copy of such acknowledgment. On January 29, 2018, Noticee 2 was not operational. As such, there cannot be any question of existence of any such seal of Noticee 2. Further, the first bank account of Noticee 2 was opened in March, 2018 and seal of the company was also made in March, 2018. There was no occasion of putting seal of Noticee 2 recording *"Received on 29/01/2018 & forwarded for investment"*.

6.5.13 Regarding receipt of funds from "Ventura" by Noticees 2 to 4, the same was received pursuant to the MoU between Noticees 3 and 4 to Noticee 1 which makes it clear that the same was a commission received directly from the AMC.

6.5.14 With respect to letters issued by Noticee 2 (Annexure 19 of SCN), the said letter only states the credentials of Noticees 2 to 4, and it does not amount to "investment advice" under IA Regulations.

6.6 Contention 6: Noticee 2 was never involved with Noticee 1 and Noticees 3 and 4 have not misrepresented in the offer letters

6.6.1 The entire role of the Noticee 2 is premised on the complaints of Ms. Shyamalee Roy and Ms. Shelley Madden.

6.6.2 The clients/investors have invested in Ventura proprietary/ VSL way before Noticee 2 was formed, thus, their claim of investing on advice of Noticee 2 is a lie and proves their malicious intent to extort money from Noticee 2. Further, the business of distribution of financial products done by Noticees 3 and 4 was done on individual basis as distributor for VSL products and not as directors of Noticee 2 which is evident from the fact that when investments of clients happened with Ventura Proprietary/VSL, neither Noticee 2 was formed nor Noticees 3 and 4 were directors of Noticee 2.

6.6.3 When Noticee 2 had mentioned "We" in offer letter (Annexure 19 to SCN), it is mentioned after mentioning VSL, so it is well understood fact that Noticee 2 is referring to VSL's experience and expertise in the respective field as well as their experience as a team together. Further, similarly, paragraph 4 of the offer letter wherein technical expertise in algorithm trading is stated, the same refers to the expertise of Noticees as a team. Regarding using the word "Investment Banker" in the offer letter, the same words have been used in the appointment letter issued by VSL describing itself as an "investment banker" So, offer letter issued by Noticee 2 is not describing Noticees 3 and 4 but VSL with which Noticees 3 and 4 in their *bonafide* belief had partnered with.

6.6.4 The amount mentioned in the SCN received by Noticee 2 from Ventura is neither brokerage nor advisory fees but management consultancy fees for its product management process outsourcing (MPO). Hence, Noticee 2 has nothing to do with the complaints/investments and all claims made are outright bogus. At the time of investment

made by clients in Ventura/VSL client/investors knew well that Noticees 3 and 4 are mutual fund distributors/IFAs. Also, these investors of Ventura/VSL had taken mutual fund SIPs and portfolio management schemes from Noticees 3 and 4, so it is evident that the clients were aware that their investment is done in the distribution model of marketing of financial products and not the advisory model of financial products. Noticees 3 and 4 have not charged any client any fees for investment advisory and never issued any offer letter or contract or agreement for being an adviser in their individual capacity but they were working purely as a distributor of financial products and were holding proper license and certifications.

6.6.5 With respect to the complaint of Ms. Shyamalee Roy, as provided in the examination report, Noticees 2 to 4 conveyed to the said complainant of the investment into VSL and not Ventura/Noticee 1 (Noticee 1 being a franchisee of VSL). With respect to her receiving a letter from Noticee 1 stating that her capital would be invested in index option funds which provides capital guarantee, monthly returns received by her for 2 years, amount transferred to Ventura's account (ending with no. 9550) are all in terms of the representation of Noticee 1.

6.6.6 With respect to the complaint of Ms. Shelly Madden as provided in the examination report, she is lying, as she was not referred to Noticee 1 through Noticees 2 to 4. She was the reference of Ms. Shyamalee Roy who also received every month commission for the said reference from Ventura. Therefore, the liability on the premise of the said letter *"we have partnered with Ventura"* is far-fetched and bogus, for the same is only for declaring the credentials of Noticees 2 to 4 so as to offer the investment, but which by no means can be stretched to mean that the same is a contract, which is accepted by her and in turn make Noticees 2 to 4 liable.

6.6.7 With respect to the complaint of Ms. Anita Elizabeth Mathew as provided in the examination report, Noticees 3 and 4 merely introduced her to Noticee 1. She performed her own due diligence, and decided to invest. Further, despite not receiving further

money, she still proceeded to invest with Noticee 1 with the full knowledge that the said monies are not being invested with VSL but being traded by Noticee 1.

6.6.8 Complaints of Ms. Cynthia Andrade, Ms. Shreya Andrade, Mr. Carl Andrade and Mr. Michael Andrade do not show any involvement of Noticees 3 and 4 except for introducing them to VSL through Noticee 1.

6.7 Contention 7: Noticees 2 to 4 have not carried out any fraudulent activity

6.7.1 This is a pure case of financial fraud, where Noticee 1 utilised his experience to exploit the investors and distributors alike by opening a proprietary firm Ventura having a similar brand name with VSL and misappropriated all funds in his Ventura proprietary account.

6.7.2 Noticees 2 to 4 did not have knowledge of Noticee 1 opening a similar brand name of as VSL as they did not have any rights in the proprietary firm Ventura. They could never come close to understanding the *modus operandi* of working of Noticee 1 and they were in the *bonafide* belief that Noticees 3 and 4 were working as distributor for products marketed by VSL. Amounts were collected and deposited by Noticee 1 in the form of cheques in the name of Ventura, which is the brand name of VSL as represented on their website www.ventura1.com (Attached as P-14 to the Reply 2).

6.7.3 If the intention was to defraud the investors, then Noticees 3 and 4 would have not executed the MOU's mentioned before, which was done for the sole purpose of safety of the funds of investors.

6.7.4 Thus, Noticee 1 directed all the business sourced by Noticees 3 and 4 in distribution for VSL to the fraudulent 'Ventura' opened by him. Noticees 2 to 4 cannot be held to be jointly or severally liable for contraventions committed by Noticee 1, particularly in the situation where the Noticees 3 and 4 were totally unaware about his misdeeds and about diversion of their sourcing in distribution meant for VSL to his own proprietary firm 'Ventura'. In all this, Noticees 3 and 4 never participated with Noticee 1 voluntarily nor had the access to full information. Material fact of the parallel existing Ventura was hidden and concealed

by Noticee 1. Noticee 1 came to Noticees 3 and 4 representing VSL and showed proof to establish his legal association with VSL, attached as Annexure 5 to Reply 3.

6.7.5 VSL is a SEBI registered securities firm, which had made Noticee 1 its authorized representative by entering into proper agreement and legally establishing the relationship between VSL and Noticee 1. So the action and representation of Noticee 1 was believed to be action and representation of VSL. Moreover, Noticee 1 was audited by VSL. Similarly, VSL was also audited by SEBI. So the actions and representation made on behalf of VSL were believed to be made under recognition of SEBI.

HEARING

7. As stated before, even though SCN was served on Noticee 1 by email on February 17, 2022 at ameetsavant1975@gmail.com and on September 16, 2022 at savant@rediffmail.com and by way of newspaper publication, no reply was received by him. Therefore, in the interest of principles of natural justice, Noticee 1 was granted an opportunity of personal hearing on May 30, 2023 which was published in newspapers. The public intimation of hearing granted to Noticee 1 was published on May 07, 2023 in Panaji and Mumbai in Navhind Times (English edition) and Lokmat (Marathi edition). However, Noticee 1 did not avail this hearing opportunity. With respect to noticees not appearing in proceedings before SEBI, in the case of Dave Harihar Kiritbhai vs. SEBI (Appeal no. 93 of 2014), decision dated December 19, 2014, Hon'ble SAT has observed that:

"....and since further it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of

all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal…."

Despite delivery of SCN and hearing notice, Noticee 1 has neither filed a reply to the SCN or availed the opportunity of personal hearing, and therefore, I shall proceed to examine the veracity of the allegations made in the SCN against him on the basis of material available on record.

8. As regards to Noticees 2 to 4, their authorized representative ("**AR**") appeared before the undersigned on May 30, 2023 and reiterated the submissions made *vide* Reply 1 dated May 30, 2022 and Reply 2 dated August 23, 2022. Further, certain clarifications were sought from AR which were provided by Noticees 2 to 4 *vide* Reply 3 (*i.e*, email dated June 12, 2023).

C. CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the SCN, replies of the Noticee, and other material available on record. Accordingly, the following issues emerge for consideration in the present matter:

Part I: Whether the preliminary contentions raised by Noticees 2 to 4 are tenable?

Part II:

Issue I: Whether Noticee 1 has violated regulation 3 of PM Regulations read with section 12(1) of SEBI Act?

Issue II: Whether Noticees 2 to 4 have violated regulation 3(1) of the IA Regulations read with section 12(1) of SEBI Act?

Issue III: Whether the Noticees have violated regulations 3(a), (b), (c), (d), 4(2)(s) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act?

Part I: Whether the preliminary contentions raised by Noticees 2 to 4 are tenable?

10. I find it appropriate to begin by dealing with the preliminary contentions raised by Noticees 2 to 4. Noticees 2 to 4 have argued that all complaints attended to the SCN are replete

with serious allegations against VSL and its directors, but no action has been taken against them basis the premise that VSL has filed a complaint with EoC, terminated the contract with Noticee 1 and suspended his trading terminals. They have further argued that the perusal of account statement of Noticee 1 reflects transactions from proprietary account of Ventura to VSL (Annexure 4 of SCN) which shows that investments were received by VSL. According to Noticees 2 to 4, the aforesaid actions taken by VSL do not justify non-arraignment of VSL to the present SCN. In this regard, from the SCN, I note that it is alleged that VSL's logo, image *etc* was used by Noticee 1 in communications issued to the investors. As mentioned at the outset, this Order is pursuant to the SCN issued against the Noticees for their role in unregistered investment advisory activity and the alleged fraudulent scheme. It is reiterated that the role of VSL in the alleged activities of Noticee 1, if any, or whether VSL violated any other provisions of securities law, are not subject matters of the present Order. Further, determination as to whether Noticees 2 to 4 are liable for the alleged infraction is certainly not based on whether a third person has been arraigned in the SCN. Noticees 2 to 4 have responded to the allegations on merits which are addressed in subsequent paragraphs of this Order.

11. The Noticees 2 to 4 have argued in detail that Noticee 1, in connivance with the bank officials, was successful in opening bank account in the name of 'Ventura' in Axis Bank, in violation of all KYC norms which was the beginning of the fraud by Noticee 1 in the name of 'Ventura'. I note that the violation of KYC norms in opening of account no. 9550, if any, is not subject matter of consideration in the present proceedings. In any case, SEBI is not the concerned authority to investigate into KYC non-compliances by banks. The attempt of Noticees 2 to 4 appears to be to divert attention from the allegations made against them. The weight of the evidence determining the culpability of Noticees 2 to 4 is not dependent on whether or not other persons were also responsible for the alleged fraudulent scheme.

12. Noticees 2 to 4 have also argued that the present SCN is without jurisdiction, as the SCN has been issued basis the complaints filed by private parties before the EOC at Panaji, Goa. However, section 26 of the SEBI Act states that no court shall take cognizance of

any offence punishable under the SEBI Act or regulations thereunder, except on a complaint made by SEBI. I note that Noticees 2 to 4 have erred in their reading of the SEBI Act and the SCN. The SCN has been issued under sections 11B(1), 11(4) read with section 11(1) of SEBI Act pursuant to an examination undertaken by SEBI (the examination report emanating from the said examination has been provided to Noticees 2 to 4). Section 11B(1) of SEBI Act states that after making or causing to be made an enquiry, if SEBI is satisfied that it is necessary in interest of investors or orderly development of securities market, it may issue directions *inter alia* to any person or class of persons referred to in section 12 or associated with the securities market. Further, section 11(4) of the SEBI Act, *inter alia* states that pending investigation or inquiry or on completion of such investigation or inquiry, SEBI has the power to take measures as stated therein by recording reasons in writing. Thus, for initiating quasi-judicial proceedings under section 11B(1) or 11(4) of the SEBI Act, SEBI is not required to file a complaint before a court.

13. Noticees 2 to 4 have also requested for an opportunity to cross-examine the clients / investors whose statements have been relied upon. In this regard, I note that Noticees 2 to 4 have not provided any evidence to suggest that the complaints are not representative of the actual events which took place. Unsubstantiated assertions are not sufficient to raise doubts that would warrant cross-examination. Further, I find that while the complaints submitted formed the basis for initiation of examination, evidence has been gathered during the course of examination such as bank statements, communications issued by Noticee 2 to clients / investors *etc* to allege violations against Noticees 2 to 4.

14. In view of the above conclusions, I do not find any of the aforementioned preliminary contentions to be tenable.

PART II: CONTENTIONS ON MERITS

15. Before proceeding to address the merits of the case, I find it appropriate to reproduce here the extracts of the provisions relevant to determine the liability, if any, of the Noticees.

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

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

12A. No person shall directly or indirectly—

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

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

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

PM Regulations

*2. **Definitions** - In these regulations, unless the context otherwise requires, —*

*(ca) "portfolio" means the total holdings of securities *[and goods] belonging to any person;*

(cb) "portfolio manager" means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a

*discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities *[or goods] or the funds of the client, as the case may be;]*
[Provided that the Portfolio Manager may also deal in goods received in delivery against physical settlement of commodity derivatives.]

** Inserted by the SEBI (Portfolio Managers) (Amendment) Regulations, 2019, w.e.f. 10-05-2019.*

REGISTRATION OF PORTFOLIO MANAGERS
3. Registration as portfolio manager.— No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations

IA Regulations

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,–
(g) "consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

(l) "investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

(m) "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons

and includes any person who holds out himself as an investment adviser, by whatever name called;

CHAPTER II REGISTRATION OF INVESTMENT ADVISERS

Application for grant of certificate.

3. (1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

**[***]*

***[(1A) Notwithstanding anything contained in sub-regulation (1), any application made by a person prior to coming into force of these regulations containing such particulars or as near thereto as mentioned in Form A of First Schedule shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly;]*

(2)…

** Omitted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020. Prior to its omission, regulation 3(1) proviso read as under; "Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation (2) within the said period of six months, till the disposal of such application."*

*** Inserted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020.*

PFUTP Regulations

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

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive

device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a [1][manipulative] fraudulent or an unfair trade practice if it involves [2][any of the following]:—

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

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by— (i) knowingly making a false or misleading statement, or (ii) knowingly concealing or omitting material facts, or (iii)knowingly concealing the associated risk, or (iv)not taking reasonable care to ensure suitability of the securities or service to the buyer

[1]Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020

[2]Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019.

Before the substitution the words read as "fraud and may include all or any of the following, namely".

[3]Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019. Before the substitution the provision read as follows "mis-selling of units of a mutual fund scheme; Explanation.- For the purpose of this clause, "mis-

selling" means sale of units of a mutual fund scheme by any person, directly or indirectly, by (i) making a false or misleading statement, or (ii) concealing or omitting material facts of the scheme, or (iii)concealing the associated risk factors of the scheme, or (iv) not taking reasonable care to ensure suitability of the scheme to the buyer."

16. From the SCN, I note that the violation alleged against Noticee 1 is providing unregistered portfolio management services and the violation alleged against Noticees 2 to 4 is providing unregistered investment advisory services. Further, it is alleged that the Noticees together crafted a fraudulent scheme to induce investors and collect funds from them by offering assured returns. I note that the evidence provided as annexures to the SCN are *inter alia* as follows:

(i) MoU entered between VSL and Noticee 1 dated December 11, 2014, letters terminating Noticee 1's contract and withdrawing his access to terminals;

(ii) Ventura's bank account statement ending with no. 9550 for the period April 29, 2015 to October 21, 2019 showing transactions with investors/ clients;

(iii) Statement of account issued by Ventura to the following clients/ investors regarding their investment in "Ventura Index Based Option" revealing existence of arrangement between Noticee 1/Ventura and clients/ investors:

- Issued to Ms. Shelley Madden dated March 01, 2018;
- Issued to Ms. Shyamalee Roy dated April 15, 2018;
- Issued to Ms. Shreya Pinto De Andrade dated May 10, 2019.

(iv) Certificate of investment / welcome letter issued by Ventura to the following clients/ investors also revealing existence of arrangement between Noticee 1/Ventura and clients / investors:

- Issued to Mr. Carl Pinto De Andrade dated July 08, 2016;
- Issued to Mr. Michael Pinto De Andrade dated September 01, 2016;
- Issued to Ms. Shreya Pinto De Andrade dated September 15, 2016;
- Issued to Ms. Shelley Madden dated February 06, 2018;
- Issued to Mrs. Cynthia Pinto De Andrade dated March 01, 2018.

(v) Investment agreement entered between client / investor, namely, Ms. Anita Elizabeth Mathew and Ventura dated June 15, 2019.

(vi) Undated letter issued by Noticee 2 to client / investors, namely, Ms. Shyamalee Roy and Ms. Shelley Madden signed by Noticee 3 wherein Noticee 2 has held itself out to be an "investment adviser".

In addition to the above, I have also taken into consideration the documents furnished by Noticees which are relevant to arrive at a finding in the context of the allegations.

Issue I: Whether Noticee 1 has violated regulation 3 of PM Regulations read with section 12(1) of SEBI Act?

17. The SCN alleges that Noticee 1 has *inter alia* violated regulation 3 of PM Regulations read with section 12(1) of SEBI Act. Regulation 3(1) of the PM Regulations states that no person shall act as a 'portfolio manager' without obtaining registration from SEBI. For a person to be regarded as a "portfolio manager" in terms of regulation 2(cb), the following must be demonstrated:

(i) Existence of a contract or arrangement with a client;

(ii) Contract or arrangement is for advising or undertaking on behalf of the client, the management or administration of a portfolio of securities or funds of the client, as the case may be.

Further, the term "portfolio" in regulation 2(ca) of PM Regulations means total holdings of securities belonging to any person.

<u>Arrangement between Noticee 1 and clients / investors</u>

18. From registration certificate of establishment issued by Labour Inspector, Panaji dated April 15, 2015 to "Ventura" *(wherein Noticee 1 is referred to as the employer)*, and from account opening form obtained for Ventura's bank account from Axis Bank for the account ending with no. 9550 dated April 26, 2015 *(wherein Noticee 1 has been referred as "Proprietor")*, I note that Noticee 1 had floated a sole proprietorship named as "Ventura".

19. I note from Annexure 11 to the SCN that an agreement was entered into between Ms. Anita and Ventura dated June 15, 2019. The recitals of the agreement *inter alia* states

that Ms. Anita intends to invest Rs. 40 lakhs for a "fixed" return for 1 year. Ventura has represented to Ms. Anita that it can invest the said amount for a "fixed" return of 7% per annum amounting to Rs. 23,350 per month.

20. I also note that the SCN states that Ventura had issued certain letters and statements of accounts to certain clients / investors. Regarding the statements of accounts, I note that Annexure 17 to the SCN contains a statement of account dated April 15, 2018 issued by Ventura to Ms. Shyamalee Roy which shows investment in "Ventura Index Based Option" of Rs. 29,60,000 on February 01, 2017. It also contains a column titled "amount paid" and the total amount reflected therein is Rs. 8,28,800 for the period March 04, 2017 to April 06, 2018. Further, Annexure 13 to the SCN also contains a statement issued to Ms. Shreya by Ventura dated May 10, 2019 which states that "amount invested" is Rs. 55,00,000 and Rs. 9,90,000 is the "amount paid" from April, 2018 to December, 2018 in "Ventura Index Based Option". Statement dated March 01, 2018, issued to Ms. Shelley Madden (Annexure 17 to the SCN) shows that "initial investment" on February 01, 2018 is Rs. 30,00,000 in "Ventura Index Based Option" and the "monthly payout" on March 05, 2018 is Rs. 60,000. Further, I note that all the aforesaid statements contain a "client ID", certain "amount invested", certain "amount paid", and mentions investment in "Ventura Index Based Option".

21. Regarding the letters issued by Ventura, the details of such letters are tabulated below:

Table 5

Sl. No.	Name of client / investor	Date of letter	Annexure no. to the SCN	Content of letter
1.	Shelley Madden	06.02.2018	9	*"…We are delighted to have you as our esteemed client. The investment amount as per our records is Rs 30,00,000/- (Thirty Lakhs only). We assure the performance of your investment with following agreed terms:* *The Funds are invested in Index Option Funds which provides you the capital guarantee and also provides you monthly return on or before 10th of every month after completing 1 month from date of investment."*

Sl. No.	Name of client / investor	Date of letter	Annexure no. to the SCN	Content of letter
2.	Cynthia Pinto De Andrade	01.03.2018	12	*"….We are delighted to have you as our esteemed client. The investment amount as per our records is Rs 20,00,000/- (Twenty Lakhs only). We assure the performance of your investment with following agreed terms:* *The Funds are invested in Index Option Funds and provides you the capital guarantee and provides you monthly return on or before 10th of every month and after 1 month from date of Investment"*
3.	Shreya Pinto De Andrade	15.09.2016	13	*"We thank you for your investment of Rs 55,00,000/- (Fifty Five Lakhs Only) with VENTURA and we assure the performance of your investments with the following agreed terms:* *The Funds are invested in Index option funds and provides you a guarantee on the capital invested and also provides you a monthly return of 2%. The returns will be paid on or before 10th of every month and after completing 1 month from date of Investment"*
4.	Michael Pinto De Andrade	01.09.2016	15	*"We thank you for your investment of Rs 105,00,000/- (One Crore Five Lakhs Only) with VENTURA and we assure the performance of your investments with the following agreed terms:* *The Funds are invested in Index option funds and provides you a guarantee on the capital invested and also provides you a monthly return of 2%. The returns will be paid on or before 10th of every month and after completing 1 month from date of Investment"*
5.	Carl Pinto De Andrade	08.07.2016	16	*"We thank you for your investment of Rs 1,30,00,000/- (One Crore Thirty Lakhs Only) with VENTURA and we assure the performance of your investments with the following agreed terms:* *The Funds are invested in Index option funds and provides you a guarantee on the capital invested and also provides you a monthly return of 2%. The returns will be paid on or before 10th of every month and after completing 1 month from date of Investment"*

22. From the above, I note that the welcome letter issued by Ventura states that the *"funds are invested in index option funds"* which indicates that client had given the management of the portfolio of funds and securities to the Noticee 1/Ventura. Further, statements of "Ventura Index Based Option" issued to certain clients / investors (Ms. Shyamalee Roy, Ms. Shelley Madden and Ms. Shreya Pinto De Andrade) shows that the said clients / investors were informed of the transaction executed using his/her money after it was

concluded. The reference to "index based option" in the letters and "index option funds" in the statements of accounts issued by Noticee 1/Ventura appears to have been done with the objective of misleading clients / investors to believe that Noticee 1/Ventura was in the business of managing portfolio of securities considering that "index options" and "index funds" are known to be related to the securities market. Clearly, therefore, Ventura/Noticee 1 had an arrangement with the aforesaid clients / investors regarding management/administration of their portfolio of securities and funds, satisfying the first condition of being categorized as a "portfolio manager".

Managing portfolio of securities or funds of clients / investors

23. I note that the SCN states that, Noticee 1 has the following 3 bank accounts: (i) Account with Axis Bank ending with no. 9550; (ii) Account with Axis Bank ending with no. 3173; and (iii) Account with HDFC Bank ending with no. 0528. As stated before, Noticee 1 was using the account with Axis Bank ending with no. 9550 for the purposes of Ventura. Hence, the said bank account for the period from April 29, 2015 to October 21, 2019 was examined.

24. The SCN states that one client / investor Ms. Cynthia had invested a sum of Rs. 28,00,000 for which Ventura had issued a letter agreeing to give her a monthly return of 2%. In this regard, from the bank account statement of Ventura ending with no. 9550, I note that on January 03, 2018, a credit of Rs 20,00,000 is reflected with the narration "By Clg 000078 HDF Panjim". On the same day, various debits from the said account can be seen, such as Rs 244,000 with the narration "INB/RTGS/UTIBR52018010300648694/MICHA EL PINENTURA", Rs 2,60,000 with the narration "INB/RTGS/UTIBR52018010300648705/CARL PINTO/VENTURA", Rs. 1,00,000 with the narration "INB/NEFT/AXIC 180038294266/Michael Pinto De/VENTURA", Rs 3,30,000 with the narration "INB/RTGS/UTIBR52018010300648774/Carl Pinto/VENTURA" etc. On the next day, Rs 14,60,132 was transferred to Noticee 3. Further, I note that Rs 8,00,000 was received on July 31, 2018 from Ms. Cynthia. On the same day, from the narration of bank entries, it appears that funds were transferred to different clients some of them being Timoteo Marwin, Shabnam Rodrigue *etc.* Thus, it

appears that as soon as funds were received from a new client, funds were immediately transferred to existing clients. Further, regarding the 2% monthly assured return, I note from the statement of Ventura's bank account ending with no. 9550 that she received Rs 40,000 from February, 2018 to August, 2018. Thereafter, she received Rs 56,000 monthly from September, 2018 to December, 2018 and in January, 2019.

25. The SCN also states that Ms. Shreya Pinto De Andrade had invested a sum of Rs. 55,00,000 for which Ventura has issued a letter agreeing to give her a monthly return of 2%. In this regard, from the bank account statement of Ventura ending with no. 9550, I note that on September 09, 2016, Rs.55,00,000 was received with narration "By Clg 423914 HDF PANJIM". I note from the said account, that she received Rs 1,10,000 monthly from October, 2016 to November, 2018 totaling to an amount of Rs. 26,40,035.

26. The SCN alleges that Mr. Carl Pinto De Andrade had invested a sum of Rs. 1,30,00,000 for which, Ventura had issued a letter agreeing to give him a monthly return of 2%. In this regard, I note from statement of bank account of Ventura ending with no. 9550, that on July 12, 2016, Rs. 1,30,00,000 was credited with the narration "B Cl 423878 HDF PANJIM". Further, from the said account, I note that Rs. 1,20,90,058 was transferred to Mr. Carl's account by crediting each month an amount of Rs. 2,60,000 or Rs, 3,30,000, which appears to be an assured monthly return.

27. In the SCN, it is stated that Mr. Michael Pinto De Andrade had invested a sum of Rs. 3,67,00,000 between May, 2016 to May, 2018 for which, Ventura had issued a letter agreeing to give him a monthly return of 2%. In this regard, I note from statement of bank account of Ventura ending with no. 9550, that a sum of Rs. 2,90,00,000 has been received in the said account, contrary to the amount alleged to be invested by Mr. Michael (*i.e*, Rs. 3,67,00,000). Discrepancies observed with regard to balance amount is mentioned below:

Table 6

Date/ month of alleged transfer	From the bank account of Mr. Michael (Provided in complaint)	Amount (Rs.)	Status
August 2016	Payment through Crefin	17,00,000/-	Noticee 2 was incorporated on December 26, 2017. Mr. Michael has alleged that the amount was paid to Noticee 2 prior to its incorporation.
12.07.2016	Paid through Crefin	5,00,000/-	
11.11.2016	Saraswat Bank	50,00,000/-	Both the transfer amount alleged by Mr. Michael were not available in the bank account of Ventura and Noticee 1.
01.02.2018	Corporation bank	5,00,000/-	

28. Further, I note that Rs. 1,48,18,115 was transferred from bank account of Ventura bearing no. 9550 to account of Mr. Michael from July 01, 2016 to January 21, 2019, which appears to be payment towards assured monthly return.

29. The SCN states that Ms. Shyamalee Roy on January 30, 2017 wrote a cheque for Rs. 29,60,000 in the name of Ventura and that she received a letter from Noticee 1 stating that her capital would be invested in index option funds which provides capital guarantee and monthly returns. In relation to the above, I note from bank account of Ventura ending with no. 9550 that the aforesaid cheque was credited on February 07, 2017. I note that immediately on the next day, Rs 10,00,000 were transferred from Ventura's account to account of Noticee 1 ending with no. 3173. I also note from perusal of the said annexure that the entries reflect that Rs 59,200 has been transferred to her from March, 2017 to February, 2018. Further, from March, 2018 onwards till December, 2018, a sum of Rs. 74,200 has been transferred monthly to her. The last transfer that can be seen is Rs. 17,267 on July 05, 2019.

30. Similarly, SCN states that Ms. Shelley Madden on January 29, 2018 gave a cheque of Rs.30 lakhs which was made out in the name of "Ventura". In this regard, I note that on January 31, 2018, an entry "B Cl 078728 229 Goa" of Rs 30,00,000 is reflected in the bank account statement of Ventura ending with no. 9550. I note from perusal of Annexure 4 that 10 entries containing debits in the name of Ms. Shelley Madden of Rs 60,000 each can be seen every month beginning from March, 2018 to December, 2018.

31. SCN also states that Ms. Anita Elizabeth Mathew gave a cheque of Rs 1,00,00,000 to Ventura for which she was given 2% interest on remaining capital in the middle of every month. In relation to the above, I note that Ventura's account ending with no. 9550 reflects that it was credited with an amount of Rs 1,00,00,000 on June 14, 2017. On the same day, an amount of Rs. 10,00,000 was transferred from the aforesaid account to account of Noticee 1. On June 16, 2017, another Rs 10,00,000 was transferred to account of Noticee 1. On June 19, 2017, another Rs. 10,000,000 was transferred to account of Noticee 1. Thus, the trail of funds from account of Ms. Anita Elizabeth Mathew to Ventura's account to account of Noticee 1 can clearly be seen. Further, it is also evident from Ventura's bank account no. ending with 9550 that certain payments were made to Ms. Anita Elizabeth Mathew regularly ranging from Rs. 13,000 to Rs. 15,00,000 between July 01, 2017 to July 16, 2019 amounting to total of Rs. 96,94,350, which appears to be assured monthly returns.

32. Additionally, apart from the above clients / investors, I note from the SCN that Mr. Rohit Chopra and Mr. Vinod Chopra were also clients / investors in Ventura. The SCN states that Mr. Rohit Chopra and Mr. Vinod Chopra (his brother) had cumulatively invested Rs. 1.4 crores with Ventura/ Noticee 1 and they were promised monthly return. I note from the bank statement for account ending with no. 9550 that it bears an entry on August 20, 2016 where Rs 60,00,000 was credited from Mr. Rohit Chopra. I note that 2 days after receipt of said funds, Rs 10,00,000 was transferred from Ventura's account to Noticee 1. Further, I note that 4 days after the receipt (*i.e,* on August 24, 2016), Rs 10,00,000 was transferred from Ventura's a/c no. 9550 to Noticee 1's bank account. The next 2 days transfer of Rs 8,00,000 on each day took place between the said accounts. Interestingly, Rs. 5,00,000 each were also transferred on August 24, 2016 and August 25, 2016 from Noticee 1's account to VSL's account. Thus, it can be seen that immediately on receipt of funds from Mr. Rohit Chopra, Noticee 1 transferred funds to his own account, and thereafter, to account of VSL. I note that the total amount transferred by Chopra's to Ventura's account as per the examination report is Rs. 1,47,50,000. On perusal of Annexure 4 to the SCN, I also note that monthly sums were transferred to Mr. Rohit Chopra and to Mr. Vinod Chopra from Ventura's account between the period of May 16,

2016 to November 13, 2018 which amounted to Rs. 50,25,000 and Rs. 1,33,40,000, respectively.

33. Thus, funds collected by Noticee 1/ Ventura from clients / investors and funds transferred to them have been examined in the preceding paragraphs. It has been observed in the previous paragraphs that funds received by Ventura in account no. 9550 were partly transferred to personal account of Noticee 1, and thereafter, they were transferred to VSL or used for trading. Taking all the above into account, I find that clients / investors had given the management of the portfolio of their funds and securities to the Noticee 1/Ventura *(as evident from the bank statement of Ventura ending with no. 9550)* because of which certain correspondences were issued by Noticee 1/Ventura to the clients / investors *(as evident from the welcome letter and statements issued by Ventura.* Therefore, I conclude that Noticee 1 has satisfied both the conditions for being classified as a "portfolio manager". As noted before, Noticee 1/Ventura does not hold registration under the PM Regulations. Thus, I find that Noticee 1/Ventura was offering unregistered portfolio management services in violation of the PM Regulations.

Issue II: Whether Noticees 2 to 4 have violated regulation 3(1) of the IA Regulations read with section 12(1) of SEBI Act?

34. Coming to the IA Regulations, I note that definition of the term "investment adviser" read with the term "investment advice" under regulation 2(1)(m) and 2(1)(l) of the IA Regulations, respectively, contains the following elements:

(i) Any person,

(ii) For consideration,

(iii) Who is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products,

(iv) Whether written, oral or through any other means of communication for the benefit of the client,

(v) Including entities which are holding themselves out as investment advisers.

35. With respect to consideration, Noticees 2 to 4 have contended that IA Regulations are not applicable to them as they have not received any consideration directly from the clients / investors. In this regard, I note that the word "consideration" has been defined under regulation 2(1)(g) of IA Regulations as follows:

(g) "consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

From account of Ventura ending with no. 9550, I note that Noticees 2 to 4 had received the following amounts from Ventura:

Table 7

Amount received from	Amount received by Noticee	Total amount (Rs.)
Ventura	2	9,86,000/-
Ventura	3	29,26,164/-
Ventura	4	2,85,22,581/-
	Total	**3,24,34,745**

36. Thus, indirectly, Noticees 2 to 4 have received economic benefit through Ventura/Noticee 1. Hence, this argument is not tenable. In view of the above, I hold that Noticees 2 to 4 were in receipt of consideration from clients / investors through Ventura. Additionally, I also note that there is another evidence available on record which relates to consideration- a cheque issued by Ms. Shelley Madden of Rs. 30 lakhs in favour of "Ventura" on which Noticee 3 has given acknowledgement of receipt by recording *"Received on 29/01/2018 & forwarded for investment",* placing his signature and placing the seal of Noticee 2. In this regard, Noticees 2 to 4 have argued that:

(i) The cheque was forwarded to VSL for investment which is not illegal.

(ii) No acknowledgement was given on the copy of cheque issued to Ms. Shelley Madden.

(iii) Noticees 3 and 4 never followed the practice of giving such acknowledgment. Only Ms. Shelley Madden has the copy of such purported acknowledgment. No other client has copy of such acknowledgment.

(iv) On January 29, 2018, Noticee 2 was not operational. Hence, there cannot be any question of existence of any such seal of Noticee 2. Further, the first bank account of Noticee 2 was opened in March, 2018 and seal of the company was also made in March, 2018. There was no occasion of putting seal of Noticee 2 recording *"Received on 29/01/2018 & forwarded for investment"*.

37. Regarding paragraph 36 (iv) above, I note from the data available on MCA that Noticee 2 was incorporated on December 26, 2017. Thus, Noticee 2 was duly incorporated on the date the aforesaid cheque was signed (*i.e,* on January 29, 2018). Further, Noticees 2 to have 4 have not adduced any evidence to support their contention that Noticee 2 was not functional or that the seal was made later. The date of opening bank account of Noticee 2 is irrelevant as the cheque was drawn in favour of "Ventura". With respect to the argument that such acknowledgment has only been claimed by Ms. Shelley and none of the other clients / investors, notwithstanding the acknowledgment, when other evidence available on record *(discussed in detail in paragraphs below)* is considered, it points towards close association of Noticees 2 to 4 with Noticee 1 in context of collecting money from clients / investors. Thus, this contention is not tenable.

38. I also note that undated letters issued to Ms. Shyamalee Roy and Ms. Shelley Madden by Noticee 2 are available on record which were provided as Annexure 19 to the SCN. The said letters provide general description of Noticee 2's business and do not appear to be customized. The letters *inter alia* read as follows:

"*I would like to personally thank you for reviewing and considering CREFIN India Management Private Limited, as an Investment Advisor for your financial goals.*

.....

To facilitate the best trading experience, we have partnered with Ventura Securities Limited, as our trading platform, considering their robust present in the market.

……. we as a team of investment bankers, holding two decades' experience of investment avenues & technical expertise in algorithm trading. We bring you this unique strategy of investment to give you best investment solutions available in the market.

Beyond investment avenues, we as a team is constantly committed to provide investors with access to timely & relevant research and data to ensure an informed and fruitful investment experience." *(emphasis supplied)*

39. From the above, I note that for investing in Ventura, Noticee 2 (and Noticees 3 and 4 being directors of Noticee 2) have issued letters to clients / investors, namely, Ms. Shyamalee Roy and Ms. Shelley Madden, representing themselves as "investment adviser". I note that the above amounts to 'holding themselves out as investment adviser' under the definition of "investment adviser" and violation of regulation 3(1) of IA Regulations. Therefore, contention of Noticees 2 to 4 that in the said letters they have only stated their credentials is incorrect.

40. Noticees 2 to 4 have contended that they cannot be held liable under the IA Regulations for not obtaining IA registration as during the relevant period Noticees 3 and 4 were mutual fund distributors ("**MFDs**") and MFDs were prohibited from using nomenclature of "Investment Advisers" or IFAs only from July 03, 2020. Therefore, after the said date, Noticees 3 and 4 were not using the term "Adviser". In this regard, I find that the exemption being referred to by the Noticees is present in regulation 3(3) and regulation 4(d) of IA Regulations. The same are reproduced below for ease:

***3(3) On and from the date of commencement of these regulations, no person, while dealing in distribution of securities, shall use the nomenclature "Independent Financial Adviser or IFA or Wealth Adviser or any other similar name" unless registered with the Board as Investment Adviser."*

*** Inserted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020.*

Exemption from registration.

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

(d) Any distributor of mutual funds, who is a member of a self regulatory organisation recognised by the Board or is registered with an association of asset management companies of mutual funds, providing any investment advice to its clients incidental to its primary activity;

41. I note that the IA Regulations neither defines the word "incidental" nor indicates what *"investment advice to its clients incidental to its primary activity"* means. Hence, the FAQs to IA Regulations dated August 07, 2023 along with earlier FAQs dated May 25, 2022 were looked into. Paragraph 14 of the said FAQ dated August 07, 2023, *inter alia* states that:

"Incidental activity with respect to distribution of mutual funds means providing basic advice pertaining to investment in mutual fund schemes limited to such schemes/ products being distributed by a mutual fund distributor to his clients/ investors or any other mutual fund product.

However, if a distributor of mutual fund is engaged in providing investment advice to general investors other than or in addition to mutual fund clients, and in securities (such as shares, debentures, bonds, derivatives, securitised instruments, structured products, units of AIF, REIT, InvIT, etc.) other than or in addition to mutual fund schemes distributed by him, then such distributor is required to get registration as an IA."

42. Thus, from the above, it is clear that the regulation nowhere states that a mutual fund distributor can hold itself as an "investment adviser" without registration. The exemption is applicable to a mutual fund distributor only when it renders investment advice incidental to its primary activity (*i.e,* even before the amendment of September 30, 2020, Noticees 2 to 4 could not have represented themselves as "investment adviser"). When the

language of a regulation is plain, and words are clear and unambiguous and give only one meaning, then effect should be given to that plain meaning. Thus, the plain meaning of regulation 4(d) of IA Regulations, would not permit Noticees 2 to 4 to shelter themselves under the designation of "mutual fund distributors" and blatantly use misleading terms such as "investment adviser". Notwithstanding the above, even if it is to be assumed that Noticees are eligible for claiming the said exemption, they are required to prove that they are: (i) either a member of self-regulatory organization recognized by SEBI or registered with an association of asset management companies of mutual funds; and (ii) providing any investment advice to its clients incidental to its primary activity, *viz.*, with respect to distribution of registered mutual fund units.

43. I note that Noticees 3 and 4 were members of AMFI bearing ARN nos. ARN-106225 (from October 31, 2015 to March 11, 2018) and ARN-91220 (from September 30, 2013 to September 02, 2017), respectively. However, as to the question whether activities of Noticees 2 to 4 could be considered as incidental to their primary activity of a mutual fund distributor, Noticees 2 to 4 have not adduced any evidence to show that they were advising only their mutual fund clients regarding mutual funds. In fact, even if they thought they were marketing VSL, it is to noted that VSL itself is only a broker, neither a registered AMC/ mutual fund, nor a registered PMS. The burden of proof lies on the person asserting facts, which I find that Noticees 2 to 4 have not discharged. In view of the above, I hold that contention of Noticees 2 to 4 that they cannot be held liable under the IA Regulations for not obtaining IA registration as during the relevant period Noticees 3 and 4 were MFDs is not acceptable. Further, it is odd that in the undated letters issued to Ms. Shyamalee Roy and Ms. Shelley Madden, Noticee 2 has referred itself and VSL as a *"team of investment bankers, holding two decades experience of Investment avenues & Technical Expertise in Algorithm Trading",* when it is also claiming that its directors were mutual fund distributor providing investment advice. The exact nature of products and services offered by Noticees 2 to 4 is not clear from their Replies.

44. Noticees 2 to 4 have contended that the business of distribution of financial products was undertaken by Noticees 3 and 4 on individual basis as distributor for VSL products not as

directors of Noticee 2. The aforesaid is evident from the fact that when clients invested with Ventura Proprietary/VSL, Noticee 2 was yet to be incorporated as a company. In this regard, I note that undated letters were issued to Ms. Shyamalee Roy and Ms. Shelley Madden (provided as Annexure 7 and Annexure 9 to the SCN) on the letterhead of Noticee 2 and signed by Noticee 3 in capacity of "managing director". The said letters provided general description of Noticee 2's business and do not appear to be customized. Thus, I find the issuance of letters by Noticee 2 addressing itself as "investment advisor", when it does not have the said registration, renders Noticee 2 liable for unregistered investment adviser activity. Further, Noticees 2 to 4 have argued that the claims made by them in the said letters with respect to their experience is in the context of expertise of Noticee 2 and VSL together. I find that the letters clearly show that the words "investment advisor" has been used only with reference to Noticee 2.

45. In view of the above, I find that Noticees 2 to 4 have received indirect consideration for collecting money for the purpose of investment in Ventura as described in detail in the preceding paragraphs. Further, Noticee 2 has held itself out as "investment adviser" without obtaining registration as discussed in detail in previous paragraphs, which when read with section 27 of SEBI Act, makes Noticees 2 to 4 liable for violation of the provisions of the IA Regulations.

Issue III: Whether the Noticees have violated regulations 3(a), (b), (c), (d), 4(2)(s) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act?

46. As has already been concluded in the preceding paragraphs, Noticee 1 and Noticees 2 to 4, were respectively, carrying out unregistered portfolio management and unregistered investment advisory activities.

47. I note from Annexure 1 and 2 to the SCN that *vide* agreement dated December 11, 2014 entered between VSL and Noticee 1, that Noticee 1 was appointed as an "authorized person". This agreement continued till its termination by VSL on June 06, 2019 apparently in light of the complaints received by VSL against Noticee 1. Noticee 1, who was associated with VSL as an "authorized person", had a proprietorship firm by the name –

'Ventura'. The choice of the proprietorship's name, bearing significant similarity to that of the registered stock broker (VSL), appears to have been a deliberate attempt to making investors/ clients believe that their transactions with Noticee 1 amounted to transacting with VSL. This deception becomes even more egregious when coupled with Noticee 1's misuse of VSL's logo, address, email *etc*. The bank statement available on record suggests that a portion of the funds collected by Ventura were in turn used to invest in the securities market - not in the name of the respective investors/ clients, but in the name of Noticee 1. Infact, as has been explained in previous paragraphs, it has been observed that after money from clients / investors were credited in Ventura's account (*ending with the number 9550*), some portion of the funds was transferred to VSL *via* Noticee 1's account. An analysis of bank statement belonging to Ventura suggest that monies received from one client/ investor was also used to pay other clients/ investors. The facts and analysis discussed above make it amply clear that Noticee 1 was engaged in a scheme or device to fraudulently induce clients/ investors to invest in the securities market.

48. I have also considered what role, if any, Noticees 2 to 4 have played in this fraudulent scheme. As submitted by Noticees 2 to 4, even prior to the incorporation of Noticee 2 (*Crefin India Management Pvt Ltd*.), its directors namely – Noticees 3 and 4 had entered into a business arrangement with Noticee 1. A partnership firm by the name of M/s. Credence Financials, *(whose partners were originally Noticees 1 and 4, and later Noticees 3 and 4)* is noted to have executed MoUs with Noticee 1 in the context of investments. Noticees 3 and 4 have admitted in their Replies that there was an appointment letter dated March 05, 2016, issued to M/s Credence Financials appointing them as a sales franchise for sourcing new businesses and clients. Entering into a partnership and later acting together for soliciting investments shows the close association of Noticee 1 with Noticees 3 and 4. Further, as brought out before, Noticees 2 to 4 cumulatively received Rs. 3,24,34,745 from the Ventura account ending with no. 9550 which further lends credence to the closeness of their association.

49. Noticees 2 to 4 have admitted in their Replies that if a client agreed to invest with them, Noticees 3 and 4 would furnish to such clients, the contact details of Noticee 1. For the clients who decided to invest with Noticee 1, Noticees 3 and 4 entered into MoUs for each transaction *(through their partnership firm)*. These MoUs were provided as Annexure P6 to Reply 1. On reviewing the same, I note that the MoUs were entered between Noticee 1 and M/s. Credence Financials represented by Noticee 3. The recitals of the MoU *inter alia* reads as "*AND WHEREAS, the Party of the First Part has represented to the Party of the Second Part that he has the necessary expertise in dealing with Investments in Securities and Trading and has requested the Party of the Second Part to invest in the said Ventura on behalf of its clients on the assurance and guarantee that the said investments would reap high returns keeping the Capital safe*". Further, it states that Noticee 1 guarantees that he shall pay interest at 4% per month for 6 months from the date of signing of MoU (*2% to M/s Credence Financials and 2% to clients*). Upon completion of 6 months till principal amount remains invested, Noticee 1 has agreed to pay interest at 5% per month (*3% to M/s Credence Financials and 2% to clients*). Noticee 1 has also agreed to hand over to M/s Credence Financials, the investment made by the client on demand within 10 working days post an investment period lock-in of 6 months from execution of MoU.

50. Thus, from the above, it is clear that Noticee 1 is obtaining funds from M/s. Credence Financials on the pretext that he would invest the said funds in securities market. Further, the MoU shows that Noticee 3 through M/s. Credence Financials was required to be involved if any client wanted to redeem his/her holding, which again points towards his joint role with Noticee 1 in taking money from clients with the purported aim of investing these funds. This is also admitted by Noticees 2 to 4 in Reply 2 wherein they have stated that *"For the clients of the answering Noticees trusted the Noticees and invested with the said VSL/Ameet Savant on the premise of the referrals"*. Curiously, even though Noticees 2 to 4 have claimed that the said MoUs were entered and registered for the *"safety and the security of the Noticees Clientele"*, the said clients / investors are not parties to the said MoUs.

51. As discussed in earlier paragraphs of this Order, Noticees 3 and 4 were admittedly mutual fund distributors affiliated with AMFI since October 31, 2015 and September 30, 2013, respectively and continued till March 11, 2018 and September 02, 2017, respectively. MCA website continues to represent that Noticees 3 and 4 are directors of Noticee 2. Both, Noticees 3 and 4, describe themselves as seasoned professionals of banking/ financial services market. However, as summarized above, when it comes to the nature of products offered by Noticee 1/Ventura, namely, *"Ventura Index Option Scheme"*, Noticees 2 to 4 have pleaded ignorance with respect to its features. I note that Noticees 3 and 4 who are market participants in the securities market can be reasonably expected to be in a position to discern what securities are genuine and what are not. They are also in a position to ascertain whether an entity is registered/ regulated or whether its activities/products/services are genuine. *'Ventura Index Option Scheme'* is clearly neither a security nor a registered fund. No such registered index fund or option scheme exists. Noticees 3 and 4, who were registered as mutual fund distributors and who have passed NISM certification examinations would clearly know what mutual funds are genuine/ legal. The list of registered mutual funds allowed to offer schemes is available in public domain including on SEBI's website. Therefore, the claim that they naively believed the features explained by Noticee 1, is implausible. A mutual fund distributor cannot promote/advertise a fabricated scheme that lacks existence in any conceivable manner and call it "incidental" to its primary activity. It appears that Noticees 2 to 4 wantonly coordinated with Noticee 1, by introducing clients / investors to Noticee 1 and executing MoUs with Noticee 1, using M/s Credence Financials, which was a partnership of Noticees 3 and 4.

52. Noticees 3 and 4 have argued that they were under the bonafide belief that they were receiving fees for distributing genuine product floated by VSL and not by proprietorship named 'Ventura'. They claim to be unaware that Noticee 1 has formed a similar brand as VSL by the name 'Ventura', as they had no rights in 'Ventura'. They have also claimed that, VSL (SEBI regulated securities firm) through its authorised representative led Noticees 3 and 4 to believe that the product was a portfolio management services product termed as 'PMS', which was especially intended for HNIs. Noticees 3 and 4 claim to have had limited knowledge about the PMS and that since the product was different in

functioning from mutual funds, they trusted Noticee 1 who was believed to be acting on behalf of VSL. The product represented through Noticee 1, was audited by VSL (a SEBI registered firm) which was subsequently audited by SEBI. Since Noticee 1 was active member of VSL, Noticees 3 and 4 claimed to have believed what he represented was true and legal and upon knowledge of Noticee 1's wrongdoing, they filed a criminal complaint against him.

53. The assertion that Noticees 2 to 4 were misled by Noticee 1 and that they assumed that Noticee 1 was genuinely working on behalf of a regulated entity – VSL and thereby would not have carried out illegal activities is clearly a desperate attempt to whitewash their conduct. A firm /company and persons who have history of working in the securities market and being affiliated with AMFI, and infact using that shield to avoid the requirement of registration as an IA, cannot now plead ignorance of basic facets of the securities market – particularly since they have passed the NISM certification. Their claim of being ignorant about the genuineness of *'Ventura Index Option Scheme'*, their deliberate resort to assuring returns to investors in securities market, and their close association with unregistered and illegal activities all lead to the only conclusion that they were acting hand in glove with Noticee 1 to defraud investors.

54. While the MoUs state that M/s. Credence Financials *(partnership firm of Noticees 3 and 4)* would receive 2% return on each of the investments, such clauses do not appear to provide the whole picture of the arrangement between Noticee 1 on the one hand and Noticees 2 to 4 on the other hand. The clauses in the MoU also state that the choice of redemption is within the control/discretion of M/s. Credence Financials or Noticee 3, which is absurd given that investments under the MoU were ostensibly made for each investor separately. Yet they do not provide the client / investor any rights over their investment. The entire arrangement reeks of a fraudulent scheme.

55. In view of the above detailed facts, circumstances and conclusions, I find that Noticees 1 to 4 have, in a coordinated manner for illegally collecting monies in the form of Ventura and its investment scheme, engaged in a fraudulent and manipulative device in violation

of regulations 3(a)(b)(c)(d) and regulation 4(2)(s) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act.

D. CONCLUSION

56. Having considered the material available on record along with the submissions of Noticees 2 to 4, I find that Noticee 1 was offering portfolio management services and Noticees 2 to 4 were offering investment advisory services without obtaining registration, and that therefore, Noticee 1 has violated regulation 3 of PM Regulations and Noticees 2 to 4 have violated regulation 3(1) of the IA Regulations read with section 12(1) of SEBI Act. Further, I find that the Noticees have violated regulation 3(a), (b), (c), (d) and 4(2)(s) of PFUTP Regulations read with section 12A(a), (b), (c) of SEBI Act.

57. I have no hesitation to hold that the Noticees by portraying themselves as authorized to collect money on behalf of a broker and engaging in unregistered portfolio management and investment advisory activities have induced gullible investors to hand over their hard-earned money under the pretext of investment in securities. From the material available on record, I note that an aggregate amount of Rs. 8,10,10,000 has been collected by Noticees from the clients / investors, out of which they have also transferred to clients / investors an amount of Rs. 6,01,81,225. Considering the seriousness of the fraudulent scheme along with the unregistered portfolio management and investment advisory activity by the Noticees, remedial directions for refund of monies along with interest are, in my view, warranted in this case.

58. From the Chargesheet no. 07 / 2019 dated April 06, 2022, I note that *inter alia* sections 3 and 5 of Goa Protection of Interests of Depositors (in Financial Establishments) Act, 1999 ("**GPID Act**") have been invoked against Noticee 1. In the present case before me, since GPID Act has been invoked under the Chargesheet against Noticee 1, it is possible that directing the Noticees to make refund under these proceedings may lead to overlap with directions, if any, under the GPID Act or under any other law. Further, I note from the press release dated January 21, 2022, that the Enforcement Directorate has attached assets of Noticees 3 and 4 under the Prevention of Money Laundering Act, 2002.

Therefore, any direction passed in this Order shall be subject to and shall not come in the way of any direction including for repayment of funds as directed by any authority / court under the GPID Act or by an authority / court under any other law.

E. DIRECTIONS

59. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of sections 11(1), 11(4) and 11B(1) read with of section 19 of the SEBI Act, hereby direct that:

59.1 The Noticees shall, within a period of three months from the date of this Order, jointly and severally, refund the net monies collected from clients / investors *(including from the clients / investors mentioned in this Order)* for investment into schemes floated by 'Ventura', along with simple interest at the rate of 12% per annum from the date of collection of monies till its refund;

59.2 The Noticees shall issue public notice in an English and Hindi daily newspaper having wide circulation and in one local daily newspaper with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this Order;

59.3 The repayments to the clients/ investors shall be effected only through banking channels (and no cash transfers), which ensures audit trail to identify the beneficiaries of repayments;

59.4 After completing the refund as directed in paragraph 59.1 above, within a period of 15 days, Noticees shall file a report detailing the amount refunded, which shall be addressed to Division Chief, SEC-5, Investment Management Department (IMD), SEBI, SEBI Bhavan-I, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai–400051 and Division Chief, Division of Post-Inspection

Enforcement Action, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7 G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment, names of the investors/clients refunded, their communication address, mobile numbers *etc.*;

59.5 The remaining balance amount that could not be refunded shall be deposited in an escrow account for a period of one year for the sole purpose of distribution to clients/ investors who make claims for refund of amounts invested in schemes of 'Ventura'. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;

59.6 Noticees 1 to 4, are restrained from selling their assets, properties and securities held by them in demat and physical form except for the sole purpose of making the refunds / depositing balance amount with SEBI as directed above, or for complying with the decision of any authority / court under GPID Act or any other law, as directed in para 59.8. Further, the banks are directed not to allow any debits in the bank account of Noticees, except for the sole purpose as stated above;

59.7 Upon submission of report on completion of refunds to clients / investors, the direction at paragraph 59.6 above shall cease to operate within 15 days thereafter;

59.8 The directions at paragraphs 59.1 to 59.7 above shall be subject to any other direction passed, under the GPID Act or under any other law;

59.9 Noticees 1 to 4, shall, with immediate effect, be restrained from accessing the securities market, directly or indirectly, and shall be prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any

manner whatsoever, till the conclusion of two years from the date of completion of refunds to clients / investors as directed at paragraph 59.1 above read with paragraph 59.8 above;

59.10 The **N**oticees shall, with immediate effect, be restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity, till the conclusion of two years from the date of completion of refunds to clients / investors as directed in paragraph 59.1 above read with para 59.8 above; and

59.11 The **N**oticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraphs 59.9 and 59.10 above, either directly or indirectly, portfolio management services or investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

60. This Order shall come into force with immediate effect.

61. A copy of this Order shall be sent to the **N**oticees, recognized stock exchanges, the banks, depositories and registrar and transfer agents of mutual funds to ensure that the directions given above are strictly complied with. A copy of this Order shall also be sent to the State Government of Goa and Goa Police.

DATE: SEPTEMBER 18, 2023 **ANANTH NARAYAN G.**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA