BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and11B of the Securities and Exchange Board of India Act, 1992
In re Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993
in respect of

S.No	Name	PAN
1.	Secure Success Plan Private Ltd	AAQCS5085E
2.	Mr. Shreyas Manjunath	BOXPS6610G
3.	Mrs. Annapurna Mathkur Venkatachalaiah	AIMPA4343C

CASE FACTS:

1. Securities and Exchange Board of India **('SEBI')** received a reference from Reserve Bank of India (RBI) vide letter dated August 07, 2015 regarding fund mobilization by Secure Success Plan Pvt. Ltd. (hereinafter referred to as **Secure Success Plan/the Company**) from the public by opening "*Risk free Management Account"*. RBI also forwarded a complaint (dated July 03, 2015) filed by one Mr. Sanjeev Kumar Tyagi, wherein it was *inter alia* alleged that:
   - The complainant deposited an amount of Rs. 20,000 in *"Risk Free Management Account"* of *Secure Success Plan,* wherein they offered 5-8% monthly bonus on the investment,
   - *Secure Success Plan* failed to refund the principal amount and the assured bonus to the complainant, despite repeated requests for refund by the complainant.

2. RBI vide the aforesaid letter dated August 07, 2015, forwarded Brochures, etc. issued by Secure Success Plan. RBI, vide the said letter also informed *inter alia* that:
   - *Secure Success Plan* is not registered with RBI as an NBFC,
   - On an incognito visit to the office of *Secure Success Plan* by RBI officials, it was found that the company is in the business of trading in shares and that they are accepting public deposits by opening "*Risk Free Management"* Account,
   - The entity is promising returns of 5- 8% per month. The company officials informed that an investor would get Rs. 5000/- per month for investment of Rs. 1 lakh,

3. Thereafter, SEBI received several other complaints against *Secure Success Plan, inter alia* alleging *inter alia,* that *Secure Success Plan* along with its sister concerns, i.e. Secureji Commodities Pvt. Ltd., Secureji Broking Pvt. Ltd. and Sri Bheemeswara Securities Pvt. Ltd. cheated more than 400 investors in Bangalore, promising returns from investment into stock market through auto trading. On a request of refund, Secure Success Plan failed to refund even the invested amount.

4. Pursuant to the same, SEBI conducted a preliminary examination of the activities of Secure Success Plan, with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") and the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 ("**PMS Regulations**"). SEBI obtained information regarding *Secure Success Plan*, its directors, group companies, etc. from the Facebook account, websites operated by *Secure Success Plan*, Secureji Commodities Pvt. Ltd., Secureji Broking Pvt. Ltd. and Sri Bheemeswara Securities Pvt. Ltd and also from Registrar of Companies **(RoC).**

5. SEBI, vide letter dated February 24, 2016, *inter alia*, advised *Secure Success Plan* to furnish certain information/documents as well as forwarded the copies of the complaints received by SEBI against *Secure Success Plan.* SEBI also advised them to redress the said complaints. The copies of the said letters were also forwarded to Secureji Broking Pvt. Ltd. and Secureji Commodities Pvt. Ltd. As no reply was received from them, a reminder was issued to the aforesaid entities vide SEBI's letter dated March 15, 2016.

6. Thereafter, *Secure Success Plan* vide their letter dated March 12, 2016 (received by SEBI on March 16, 2016) stated:

   a) "*Funds were never collected for portfolio management or to give the returns from stock market, but there were running investments which were collected and used for property purchase, real estate venture, etc.*
   b) *Public funds were never collected in any of our companies name, it was only collected in the personal levels of director's accounts*.

c) *Secure Success Plan is into the business of providing recruitment and placement, selecting, interviewing and employing all types of executives, middle management staff, Junior Level Staff, Workers, Labourers, Skilled/unskilled required by various industries .....*

d) *There were no sister concerns having registered with SEBI and they do not offer any guaranteed return scheme*."

7. In respect of the complaint filed by Mr. Sanjeev Kumar Tyagi, the company vide the aforesaid reply dated March 12, 2016, provided the statement by one of its directors, *viz.* Mr. Shreyas Manjunath, wherein he states:

"*He* [Sanjeev Kumar Tyagi] *is not a client to any of our companies, he is known to me personally from online Facebook. And at the being* (sic) *of career as a helping friend, on 20/07/2012 he lend Rs. 20,000/- into my ICICI Account Number:……..name: Shreyas M. Account Type : Savings Account. Latter I tried several times to his cell phone number….but he was not available. Later I deposited Rs. 1430/- on 21/09/2012 and Rs. 1395 on 18/10/2012 as part payment to his account No. ….with PNB Bank, Muzaffarnagar. But meanwhile, Sanjeev Kumar misunderstood and started sending e-mails to me and my staffs damaging my reputation….I paid Rs. 20,000 -full payment to him and apologized for the delay in returning the loan amount. By that time, he gave written complaints to RBI and other agencies. An on my request, he gave a letter to me and to RBI by saying that he was misguided. He requested to withdraw his complaint. It is not true that I received Rs. 20,000 as a deposit for my business."*

8. In respect of complaint filed by Mr. Safdar Raza Riyaz Ali, the aforesaid director, *viz.* Mr. Shreyas Manjunath states: "*We will be settling the dues before April 2016."* Further, vide the aforesaid letter dated March 12, 2016, *Secure Success Plan* also furnished *inter alia*, a copy of the letter dated September 5, 2015 of Mr. Sanjeev Kumar Tyagi addressed to RBI, wherein he *inter alia* requested to withdraw his complaint dated July 3, 2015 against *Secure Success Plan.*

9. In the meanwhile SEBI again received several complaints against *Secure Success Plan* and Mr. Shreyas Manjunath (one of the directors of the Company), alleging that they are not refunding the amounts deposited by the complainants in the plan/scheme offered by the company wherein

they promised 5-8% monthly returns. The complainants also forwarded the copies of various letters sent by *Secure Success Plan* to them.

10. Pursuant to the analysis of the Annual Returns for the period 2011-2012, 2012-2013, 2013-2014 of the Company, SEBI vide letter dated April 26, 2016, sought comments from *Secure Success Plan* in respect of the certain aspects noted in the accounting entries:

    a) *"Details of the long term loans and advances of Rs. 15,50,000/- as shown for the period 2012-2013 along with the proof;*
    b) *List of clients to whom dividends were paid and explain the nature of such dividend paid to the clients as shown for the period 2011-2012;*
    c) *Details of other expenses of Rs.36,27,388/- shown for 2012-2013;*
    d) *The nature of trade receivables and corresponding entries during Financial Years 2011-2012 and 2012-2013."*

    Vide the aforesaid letter, *Secure Success Plan* was *inter alia*, also advised to provide their comments on Brochures issued by Secure Success Plan for "*Risk free Management Account*", Certificate issued to complainant, website advertisements, etc.

11. Copies of the aforesaid letter dated April 26, 2016 were also forwarded to Secureji Broking Pvt. Ltd. and Secureji Commodities Pvt. Ltd.

12. Vide letter dated July 1, 2016, *Secure Success Plan*, stated *inter alia*, the following:

    a) *"**Long Term Loans and Advances of Rs. 15,00,000/-:** The amount has been advanced to a land owner for the purchase of land. However, later this transaction did not happen due to various reasons and amount have been received back from party during the financial year 2013-2014.*
    b) ***Dividend and Brokerage Paid:** Those were commission paid to various parties (real estate brokers) for helping in search of lands for the real estate activities and which were wrongly classified under the head brokerage and dividends by the accountant.*
    c) ***Other Expenses:** Those were commissions, consultancy, travelling and conveyance and out of pocket expenses paid to various parties in relation to purchase of land.*

d) ***Trade Receivable:*** *This is a real estate commission receivable from various parties accounted. Corresponding entries are not there during the Financial Year 2011-2012 and 2012-2013 as there was no such income receivable. However this income were denied to have been received due to non-happening of the transaction.*

e) *Secure Success Plan has not issued any kind of business promotion brochures through any media, if found may be issued by sales person without the knowledge of rules and regulations. And statements for the fund received from customer on friendly basis to my real estate and to hold the transactions details transparently irrespective of funds received on directors name by mistakenly without the proper legal advice the statements were issued.*

f) *Bank Statements from year 2013 to 2015 are being extracted and the same will be forwarded once the complete list is available.*

g) *There is no relationship between Secure Success Plan and the intermediaries, viz.* M/s. *Secureji Broking Pvt. Ltd., M/s. Secureji Commodities Pvt. Ltd. and M/s Sri. Bheemeshwara Securities P. Ltd, as the said entities are independently managed and no relation with the day to day activities of Secure Success Plan.*

h) *The complaint filed by Mr. J Vinay Kumar was resolved and full payment has been made to him on May 03, 2016 and the same may be treated as closed,*

i) *The complaint filed by Mr. Safar Raza Riyaz Ali, an amount of Rs. 50,000/- has been transferred to client on May 12, 2016 (IMPS Transaction: 613316054928). The client has accepted for the part payment. Email transcript confirmation of the client is enclosed".*

13. SEBI vide email dated February 02, 2016 had advised NSE, BSE, MCX, NSDL and CDSL to provide copies of statements in respect of the transactions (for the period October 20, 2011 till February 2, 2016), if any carried out by *Secure Success Plan* through M/s Secureji Broking Pvt. Ltd., M/s. Secureji Commodities Pvt. Ltd. and M/s Sri. Bheemeshwara Securities P. Ltd. (Member NSE).

14. NSE vide e-mail dated February 2, 2016 stated that *Secure Success Plan* and its director, *viz.* Shreyas Manjunath were not registered with the member, M/s Sri. Bheemeshwara Securities P. Ltd. Further, vide e-mail dated February 25, 2016, NSE stated that *Secure Success Plan* had

transacted through the members, *viz.* Edelweiss Broking Ltd. and Unicon Securities Pvt. Ltd. during 2011 to 2012 (client IDs: EX503506 and I13292). Vide the said email, NSE also forwarded the trade log details of the transactions executed by *Secure Success Plan* through the said members.

15. MCX vide e-mail dated February 2, 2016 and March 28, 2016 stated that *Secure Success Plan* was not registered with M/s Secureji Commodities Pvt. Ltd. However, *Secure Success Plan* was a registered client of Edelweiss Comtrade Ltd. and Unicon Commodities Pvt. Ltd. MCX also forwarded the copies of the details containing the transactions executed by *Secure Success Plan.*

16. BSE vide e-mail dated February 3, 2016 stated that *Secure Success Plan* had not dealt in Cash and Derivative Segment of the Exchange, during the period October 20, 2011 till date.

17. NSDL vide letter dated February 3, 2016 stated that one demat account was found to be held in the name of *Secure Success Plan*. They forwarded the copies of KYC documents and also the transaction statements for the period October 20, 2011 to February 02, 2016.

18. CDSL vide e-mail dated February 3, 2016 stated that 2 demat accounts were registered in the name of *Secure Success Plan*, but the accounts did not hold any shares during the period, October 20, 2011 to February 02, 2016. CDSL also forwarded the copies of KYC documents including the Memorandum of Association **(**MoA**)** filed by *Secure Success Plan* with them.

19. SEBI vide e-mail dated July 21, 2016 sought the bank account statements of *Secure Success Plan* from HDFC Bank, Yelahanka Branch, Bangalore. HDFC Bank vide e-mail dated July 22, 2016 provided the copies of the bank account statements of *Secure Success Plan* bearing no. 03712560000508.

20. *Prima facie findings/allegations in brief*: Pursuant to the aforesaid examination and perusal of complaints received by SEBI along with the documents contained therein and the correspondence exchanged with *Secure Success Plan*, and the information obtained from the website of *Secure Success Plan*, the RoC, documents forwarded by NSE, BSE, MCX, NSDL, CDSL and HDFC Bank, SEBI passed an interim order dated January 19, 2017, against Secure

Success Plan and its Directors Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah (hereinafter referred to as Noticees), wherein the following *prima facie findings/allegations* were recorded:

a) *Secure Success Plan* was incorporated on October 20, 2011 (CIN No.U74900KA2011PTC060883). It has its registered office at 27/28, Kamadenu, 1st A Cross, Chikkabommasandra, Yelahanka New Town, Bangalore- 560065, Karnataka. The authorised capital of the company is Rs.1,00,000/-.Mr. Shreyas Manjunath and Mrs. Annapurana Mathkur Venkatachalaiah are the directors of *Secure Success Plan*. They are also directors of the following companies/entities:
   - Secureji Broking Pvt. Ltd.; (incorporated on December 24, 2014),
   - Secureji Commodities Pvt. Ltd**.;** (incorporated on November 25, 2014), and
   - Sri Bheemeswara Securities Pvt. Ltd.; (incorporated on November 20, 1997), a trading member NSE.

   Both the companies *viz.* Secureji Broking Pvt. Ltd and Secureji Commodities Pvt. Ltd**.** share their registered office with *Secure Success Plan*.

b) *Secure Success Plan* operated websites in the name and style of http://securebank.in/; www.money.securebank.in and http://secureji.com/. They also had a Facebook account (with web link: https://www.facebook.com/SecureBank).

c) Secure Success Plan invited deposits from the public in the name of "Risk Free Management Account", through their Facebook Account, websites operated by them and also by circulating brochures.

d) Secure Success Plan was offering monthly returns of 5-8%to their investors. They also assured 100% guarantee on principal amount deposited by the investors as mentioned in a "Welcome Letter" issued by Secure Success Plan to its investors. Secure Success Plan was soliciting money from investors and investing them in securities with promise to share the profits generated.

e) *Secure Success Plan* had been receiving funds from various individuals by cash deposits; cheque deposits and NEFT transfers, etc. (of amounts ranging between Rs. 50,000 to Rs. 30,00,000/-) in the bank account which was in the name of "M/s Secure Success Plan Pvt. Ltd.". The said amounts were transferred to the accounts of the various trading members at MCX and NSE. As per the trade log details furnished by NSE, vide email dated February 25, 2016, *Secure Success Plan* had transacted through Edelweiss Broking Ltd. and Unicon Securities Pvt. Ltd. during the period 2011 to 2012 (client IDs: EX503506 and I13292) and had entered into buy side transactions in the F&O segment of NSE's platform through the aforesaid members for Rs. 20,74,83,050/- and Rs. 8,02,30,323/-, respectively. As per data furnished by MCX vide email dated March 28, 2016, transactions were entered into at MCX through the trading members, Edelweiss Comtrade Ltd. and Unicon Commodities Pvt. Ltd.(client ID:33604450 and I13292) for the period of 2012-2013.

f) Funds were transferred from the bank accounts of the trading members to the account of *Secure Success Plan,* as well as from the bank account of *Secure Success Plan* to the investors, through online transfers.

g) SEBI has received several complaints from investors for non-refund of their moneys deposited in the "Risk Free Management Account" operated by Secure Success Plan. Even though the company has stated to have resolved two of the complaints, that of Mr. Sanjeev Kumar Tyagi and Mr. Safdar Raza Riyaz Ali, the company has been receiving large amounts of money in their account (from investors), which have been invested in stock market and commodities market through certain brokers.

h) The aforesaid complaints and the bank account statements forwarded by the complainants indicate that the following amounts were invested by the said complainants with *Secure Success Plan,* in their Risk Free Management Account, and their related/associated entities:

S. No.	**Complainant**	**Amount invested** (in Rs.)
1)	Mr. Mujahid Pasha N.A.	1,61,00,000

2)	Mr. Baban Ganu Keni	47,00,000*
3)	Mr. B Manjunath	2,00,000
4)	Mr. Safdar Raza	12,10,000
5)	Mr. Naseem Khan	50,000
6)	Mr. J Vinay Kumar	50,000

**Deposited in the accounts of Secure Success Plan, Secureji Broking Pvt. Ltd, Secureji Commodities Pvt. Ltd. and Mr. Shreyas Manjunath*

i) *Secure Success Plan* has failed to produce any evidence in support of their claim as stated in their reply dated March 12, 2016, that the funds were collected and used for property purchase, real estate venture etc.

j) *Secure Success Plan* has provided Portfolio Management service without obtaining the certificate of registration from SEBI. Therefore, Secure Success Plan, has violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.

21. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated January 19, 2017 against Secure Success Plan Pvt. Ltd. (PAN:AAQCS5085E) and its Directors, Mr. Shreyas Manjunath (PAN: BOXPS6610G) and Mrs. Annapurna Mathkur Venkatachalaiah (PAN:AIMPA4343C) with immediate effect:

a) to cease and desist from acting as a portfolio manager and not to solicit or undertake such activity or any other unregistered activities in the securities market, directly or indirectly, in any matter whatsoever;

b) immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, website, etc. in relation to their portfolio management activities or any unregistered activity in the securities market;

c) not to divert any funds raised from the investors; kept in bank account(s) and/or in the custody of the company;

d) not to dispose of any of the properties or alienate the assets owned by the company;

e) to furnish all the information/details sought by SEBI vide letters dated February 24, 2016 and April 26, 2016 within 21 days from the date of receipt of this order including:

- *Bank Statements of Secure Success Plan.*
- *present Asset Under Management (AUM) of each of the services offered by Secure Success Plan from the date of initiation,*
- *break up of AUM under various asset classes,*
- *details of clients availing various schemes offered by them, such as names, joining date, name of scheme, end date, KYC particulars etc.,*
- *client-wise details of fund mobilized till date.*

22. The interim order was directed to be treated as a show cause notice and Secure Success Plan Pvt. Ltd. and its Directors Mr. Shreyas Manjunath and Mrs. Annapurana Mathkur Venkatachalaiah were advised to show cause as to why appropriate directions, under the SEBI Act, 1992 and relevant SEBI Rules/Regulations including prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, should not be issued against them.

23. Further, Secure Success Plan Pvt. Ltd and its abovementioned directors were advised to file their reply, if any, to the Order within 21 days from the date of receipt of the Order and to also indicate whether any of them desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

24. *Service of interim order and hearing notice***:** The interim order dated January 19, 2017was sent vide letters dated January 23/24, 2017 which were returned undelivered. Therefore, the same were affixed and further, vide notifications dated October 15, 2017, published in the newspapers *The Times of India* and *Vijaya Karnataka,* the said Noticees were informed of the issuance of interim order against them, advising them to file reply and were also granted an opportunity of personal hearing by SEBI on November 8, 2017 at the time and venue mentioned therein. It was also mentioned that in case the Noticees failed to appear for the hearing, SEBI shall proceed ex-parte on the basis of material available on record.

25. *Hearing and submissions*: None of the Noticees replied to the interim order and further, the entities did not avail of the opportunity of personal hearing granted on November 8, 2017.

26. I have considered the allegations, and materials on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:

I. *Whether Secure Success Plan Pvt. Ltd was providing Portfolio Management Services.*
II. *If so, whether Secure Success Plan Pvt. Ltd has violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.*
III. *If the findings on Issue No. II are found in the affirmative, who are liable for the violation committed?*

I. Whether Secure Success Plan Pvt. Ltd was providing Portfolio Management services

27. I have perused the interim order dated January 19, 2017 for the allegation of unregistered Portfolio Management Services. I note that SEBI obtained information regarding *Secure Success Plan*, its directors, group companies, etc. from the Facebook account, websites operated by *Secure Success Plan*, Secureji Commodities Pvt. Ltd., Secureji Broking Pvt. Ltd. and Sri Bheemeswara Securities Pvt. Ltd and also from Registrar of Companies **(RoC).**

28. I note that Secure Success Plan operated websites in the name and style of http://securebank.in/; www.money.securebank.in and http://secureji.com/ (not operating presently).They also had a Facebook account (with web link: https://www.facebook.com/SecureBank). On examining the Facebook account and websites operated by *Secure Success Plan*, I note the following details:

> "*Secure Success Plan Pvt. Ltd. - Investing Service – Commercial Bank*
> *A First time in India we have started Automated Trading Platform without any human intervention in NSE /MCX.*
> *SecureBank.in – Trade Daily, Earn Daily*
> *Lowest Brokerage Charges in India*
> *Open Equity or Commodity Trading/Demat Account with us and Get Free Research-Based Investment Advice on trading- free for Lifetime"*

I find that *Secure Success Plan* has used the word "bank" as part of its name, and in connection with its business and appears to have violated section 7(2) of the Banking Regulation Act, 1949. I am of the opinion that the matter may be referred to RBI for any necessary action in this regard.

29. I note from the Brochure issued by *Secure Success Plan* that the Company had stated the following:

    - "*Secure Bank (Secure Success Plan Pvt. Ltd.) is broking cum Investment Company. Risk free management Account, one of the preferable scheme to maximize returns. It offers returns of 5-8% dividend on monthly basis…*
    - ***Services**: Open Equity or Commodity Trading demat account with Fully Automated System (Robotic Trading) …*(emphasis supplied)*"*

30. From a copy of the "*Welcome Letter"* and other letters issued by *Secure Success Plan* to the investors, I note *inter alia*, the following:

    - *"We provide recommendations in Stock Cash, Futures, Nifty Futures, Commodities,…We also trade on behalf of customer and disclose the profit/loss on the fund deposited by customer to trade in market.*
    - *Grow your wealth with Secure PMS (Portfolio Management) through its Risk Free Management Account" (RFMA).*
    - *The Portfolio Management Schemes of the Company offer Discretionary Schemes for individuals, Corporate Bodies…etc. We maintain your investment by investing funds to intraday market of NSE Cash segment, F&O and MCX. Please find the in-depth information on Risk Free Management Account"*
    - *Minimum investment is Rs.50,000 and maximum is unlimited*
    - *Principal fund will be 100% safe irrespective of the market. We give guarantee only on principal fund value.*
    - *You can transfer the amount to our any bank accounts via online banking (mentioned in our official website)*
    - *We guarantee only on principal fund value deposited by customer. Returns of 5% to 8% are not guaranteed income. It depends only on market performance,*

- *There by the investments in the Risk Free Management Account are subjected to market and other risks and there can be no assurance that the objectives of the any funds will be achieved.*(emphasis supplied)*"*

31. From the aforesaid I find that *Secure Success Plan* invited investments from the public in the name of "Risk Free Management Account", through its Facebook Account, its websites and also by circulating brochures and Welcome Letters to investors. The brochures also indicate that *Secure Success Plan* was offering monthly returns of 5-8% to their investors assuring 100% guarantee on principal amount deposited and investing them in securities to generate profits.

32. From the bank account statements for account no. 03712560000508 (for the period November 3, 2011 to July 20, 2016) received from HDFC Bank, I note that:
    a) The bank account is in the name of "M/s Secure Success Plan Pvt. Ltd." (*Secure Success Plan),*
    b) *Secure Success Plan* had been receiving funds from various individuals by cash deposits; cheque deposits and NEFT transfers, etc. (of amounts ranging between Rs. 50,000 to Rs. 30,00,000/-)
    c) *The* amounts so received from various individuals had been transferred to the accounts of trading members, *viz.* Edelweiss Broking Ltd., Edelweiss Comtrade Ltd., Unicon Securities Pvt. Ltd. and Unicon Commodities Pvt. Ltd.

33. From the *trade log* details furnished by NSE vide e-mail dated February 25, 2016, I note that:
    - *Secure Success Plan* had transacted through Edelweiss Broking Ltd. and Unicon Securities Pvt. Ltd. during the period 2011 to 2012 (client IDs: EX503506 and I13292).
    - *Secure Success Plan* had entered into buy-side transactions in the F&O segment on NSE's Platform through the members, *viz.* Unicon Securities Pvt. Ltd. and Edelweiss Broking Ltd. for Rs. 8,02,30,323/- and Rs. 20,74,83,050/- respectively during the said period of 2011-2012.

34. Similarly, from the data furnished by MCX vide e-mail dated March 28, 2016, I note that *Secure Success Plan* had transacted through Edelweiss Comtrade Ltd. and Unicon Commodities Pvt. Ltd. (client ID:33604450 and I13292) during the period 2012 -2013.

35. From the bank account statements for account no. 03712560000508 (for the period November 3, 2011 to July 20, 2016) received from HDFC Bank, I further note that:
    a) Funds were also found to have been transferred from the bank accounts of the aforesaid trading members to the account of *Secure Success Plan*.
    b) Similarly, various debit entries were also seen from the bank account statements of *Secure Success Plan* indicating that funds/returns so received from the trading members were being transferred to the investors through online transfers.

36. I further note, from the complaints and the bank account statements forwarded by the complainants I also find that the amounts as given in paragraph 20(h) of this Order were also invested by the said complainants with *Secure Success Plan*, in their Risk Free Management Account. I note that the complainants have stated that certain investments were received in the accounts of Secureji Broking Pvt. Ltd, Secureji Commodities Pvt. Ltd. and Mr. Shreyas Manjunath as well. From the records obtained from MCA21 portal, I note that both Secureji Broking Private Limited and Secureji Commodities Private Limited have the same registered office as *Secure Success Plan.* Moreover, both the Companies have the same directors, viz. Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah. In this regard, I note that appropriate proceedings have been/will be initiated against these intermediaries. If payments made by clients of *Secure Success Plan* were found to have been received by these intermediaries, the said proceedings shall cover appropriate remedy for repayment of such clients from these intermediaries.

37. On perusal of the above, I find that *Secure Success Plan* collected funds from their clients/investors and made frequent trades on behalf of their clients/investors through their broking accounts (maintained by *Secure Success Plan* with brokers mentioned above) by using the funds collected from the clients/investors.

38. On perusal of the Annual Returns of *Secure Success Plan* for the period of 2011-2012, 2012-2013 and 2013-2014, as furnished by the Company, I note that the Statements showed expenditure in the nature of "Dividend paid to clients". Upon enquiry, I note that *Secure Success Plan* has submitted vide its letter dated July 1, 2016, that the said expense "*were commission paid to various parties (real estate brokers) for helping in search of lands for the real estate activities and which were wrongly classified under the head brokerage and dividends by the accountant.*" Further, I note that *Secure Success Plan* vide its letter dated March 12, 2016, had stated that funds were never collected for portfolio management or to give returns from the stock market, and that the funds were collected and used for property purchase, real estate venture, etc. However, I find that *Secure Success Plan* has not submitted any evidence in support of the aforesaid claims of real estate transaction or commission paid to parties or commission receivable by it for the purported real estate transactions. Therefore the claims of the company do not have any merit and remain unsubstantiated. It also did not substantiate by providing any documentary evidence to support its claim made in its letter dated March 12, 2016 that it is actually carrying out the business of providing recruitment and placement, selecting, interviewing and employing all types of executives, middle management staff, etc. required by various industries. On the contrary, I have perused evidence, which includes *inter alia*, the websites, social media account, welcome letter and brochures of *Secure Success Plan*, which clearly show that the Company was engaged in providing Portfolio Management Services.

39. I have perused the definition of Portfolio Manager as given in regulation 2(cb) of the PMS Regulations, which states that 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 the funds of the clients, as the case may be.*" It is noted that the definition of portfolio manager includes advising the management of the portfolio of securities.

40. In light of the aforesaid examination I find that *Secure Success Plan* invited investments from the public in the name of *"Risk Free Management Account*", through their Facebook Account, websites operated by them and also by circulating brochures. The amounts so deposited by the investors were in turn invested by the company in the Stock market and Commodities market on

behalf of the clients/investors. The transactions were carried out by the company through the brokers, *viz.* Edelweiss Broking Ltd., Unicon Securities Pvt. Ltd., Edelweiss Comtrade Ltd. and Unicon Commodities Pvt. Ltd. Therefore, it is clear that Secure Success Plan has undertaken on behalf of its clients the management and administration of a portfolio of securities on behalf of the clients. Secure Success Plan by undertaking this activity falls within the definition of Portfolio Manager.

41. In light of the above examination and the documents obtained from NSE, MCX, NSDL, CDSL and HDFC Bank, the documents provided by RBI, documents forwarded by various complainants, etc., I find that *Secure Success Plan* had been soliciting money from investors and investing them in securities to generate profits, thereby engaging in providing *Portfolio Management Services* to the investors.

II. If so, whether Secure Success Plan, has violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations:

42. I note that as a measure of investor protection, it is imperative on any person providing Portfolio Management services, to obtain registration and conduct its activities in accordance with the provisions of the SEBI Act and the PMS Regulations.I have perused of Section 12(1) of the SEBI Act which states that

> "*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.*"

43. Further, I note that as per regulation 3 of the PMS Regulations, "*No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations*."

44. *Secure Success Plan* by its own admission vide reply dated March 12, 2016, does not have registration as a portfolio manager with SEBI. The proviso to regulation 3 of the PMS Regulations states that "*a merchant banker acting as a portfolio manager immediately*

before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application." The PMS Regulations came into force w.e.f Jan 7, 1993. Secure Success Plan was incorporated on October 20, 2011. Therefore, I find that *Secure Success Plan* does not fall in the scenario envisaged in the proviso to regulation 3 of the PMS Regulations. Therefore, *Secure Success Plan* ought to have provided Portfolio Management services only after obtaining the certificate of registration from SEBI.

45. Therefore, I find that Secure Success Plan, has violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.

III. If the findings on question No. II are found in the affirmative, who are liable for the violation committed?

46. I note from the MCA21 website that Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah were directors of the *Secure Success Plan* from October 20, 2011 and are continuing as directors till date. To determine whether the said directors were liable for the breach of the securities laws by the Company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in Madhavan Nambiar vs. Registrar of Companies (2002 108 Cas 1 Mad):

"*13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*"

47. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah therefore cannot wriggle out from the liability

that may ensue by allowing *Secure Success Plan* to provide unregistered portfolio management services. Accordingly, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah were responsible for all the deeds/acts of *Secure Success Plan* and are obligated to ensure refund of all amounts collected by *Secure Success Plan* under its portfolio management service schemes.

48. In view of the foregoing, *Secure Success Plan* and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are liable for the aforesaid violations of section 12(1) of the SEBI Act along with regulation 3 of the PMS Regulations.

49. In respect of the complaints received by SEBI, which have been forwarded to *Secure Success Plan* for their comments, I note that the company vide letter dated March 12, 2016 has replied that Mr. Sanjeev Kumar Tyagi was not a client of *Secure Success Plan* but was personally known to Mr. Shreyas Manjunath, the director of *Secure Success Plan*. It was also submitted that Mr. Shreyas Manjunath had not accepted an amount of Rs. 20,000/- as a deposit but had merely borrowed the amount from Mr. Sanjeev Kumar Tyagi. It was submitted that Mr. Shreyas Manjunath returned the money in parts on September 21, 2012 and October 18, 2012, and then finally returned the entire amount personally to Mr. Sanjeev Kumar Tyagi. In support of this claim, Mr. Shreyas Manjunath also submitted a copy of a letter dated September 5, 2015 from Mr. Sanjeev Kumar Tyagi to the RBI, wherein Mr. Tyagi has withdrawn his complaint against *Secure Success Plan.*

50. Further, I note that *Secure Success Plan* vide its reply dated July 1, 2016 has forwarded a copy of a "Full and final Settlement Agreement" received from Mr. J Vinay Kumar, that the complaint filed by him was resolved and full payment has been made to the client on May 3, 2016.

51. In respect of the complaint filed by Mr. Safdar Raza Riyaz, the company in their letter dated July 1, 2016 stated that Mr. Safdar Raza Riyaz had accepted the proposal put forth by the company for the part payment of the deposit made by the complainant. The company in this

regard, also enclosed a copy of e-mail sent by Mr. Safdar Raza Riyaz accepting the part payment proposal of the company.

52. Even though the company is stated to have resolved some of the complaints forwarded to them by SEBI, it cannot be ignored that the company has been receiving large amounts of money in their accounts from investors which were found to have been invested in stock market and commodities market through certain brokers. It is also relevant to note that SEBI has received several other complaints from investors for non-refund of their moneys deposited in the "*Risk Free Management Account"* operated by *Secure Success Plan*.

53. On perusal of the bank account statements of *Secure Success Plan*, I find that a total credit of Rs. 3,99,79,384/- was made during the period from November 3, 2011 to July 20, 2016. In view of the above, I find it appropriate to direct *Secure Success Plan* to refund the amount of Rs. 3,99,79,384/-. I note that credits were made to the bank account of *Secure Success Plan* by its trading members during the period of November 3, 2011 to July 20, 2016. However, despite advising *Secure Success Plan* vide SEBI letter dated February 24, 2016, to submit the total amount of money collected from its clients, details of fees charged for various products/services offered, etc., the Company has failed to provide the same. In the absence of the aforesaid details I am of the view that the entire amount credited to the bank account of *Secure Success Plan* is liable to be refunded to investors. However, the refund amount may be higher if more material is brought on record. Further, I find that from the aforesaid credits to the account of *Secure Success Plan*, an amount of Rs. 35,53,001 was credited to the account of Mrs. Annapurna Mathkur Venkatachalaiah, and an amount of Rs. 4,00,600 was credited to the accounts of Mr. Shreyash Manjunath, during the aforesaid period of November 3, 2011 to July 20, 2016. Appropriate directions with respect to the said amounts is being made in this Order. I also note that certain repayments have been made to the investors, as has been claimed by *Secure Success Plan*. However, no documentary evidence has been provided in relation to the same. Appropriate directions with respect to the same are being given in this Order.

54. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For

achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude.

55. Section 11B and Section 11(4) of SEBI Act are functional tools in the hands of the Board. In effect, Section 11B and Section 11(4) SEBI Act are some of the measures available to SEBI to enforce its prime duty of investor protection. SEBI is empowered to issue directions in the interests of investors to any person or class of persons referred to in Section 12 of the SEBI Act or associated with the securities market.

ORDER:

56. Therefore, I, in exercise of the powers conferred under section 19 of the SEBI Act read with sections 11(1), 11(4),and 11B of the SEBI Act, hereby issue the following directions:

a) Secure Success Plan Pvt. Ltd. shall forthwith refund Rs. 3,99,79,384/- and any other amount of money received from its clients in respect of the unregistered Portfolio Manager Services carried out by it and submit a certificate from a peer reviewed Chartered Accountant who is in the panel of any public authority or public institution, within a period of 3 months. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

b) If Secure Success Plan Pvt. Ltd. had repaid the investors, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 56(c) to 56(p), shall be applicable for the amounts still due to be returned to the investors. However, such prior repayments should have been made by the Company as per the requirement laid down in paragraph 56(c) below, with clear identification of the beneficiaries, and the same shall be certified by Chartered Accountants, as directed in paragraph 56(a).

c) Secure Success Plan Pvt. Ltd and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah, on behalf of the Company, shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one

local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

d) The repayments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels with clearly identified beneficiaries.

e) Secure Success Plan Pvt. Ltd. and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah, on behalf of the Company, are directed not to divert any funds raised from investors, kept in bank account(s) and/or in their custody, except for the purpose of refunds to the clients.

f) Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are directed to credit the amount of Rs. 4,00,600 and Rs. 35,53,001, respectively, to the account of Secure Success Plan Pvt. Ltd.

g) Banks are directed that no debit shall be made, in respect of the bank accounts held jointly or severally, by Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah, except to the extent of Rs. 4,00,600 and Rs. 35,53,001, respectively, till completion of such credit to the account of Secure Success Plan Pvt. Ltd.

h) Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are prevented from selling mutual funds/shares/securities held by them in demat and physical form, except for the purpose of credit of Rs. 4,00,600 and Rs. 35,53,001, respectively, till completion of such credit to the account of Secure Success Plan Pvt. Ltd.

i) Depositories are directed that no debit shall be made in respect of the demat accounts held jointly or severally, by Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah, except for the purpose of credit of Rs. 4,00,600 and Rs. 35,53,001, respectively, till completion of such credit to the account of Secure Success Plan Pvt. Ltd.

j) Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are prevented from selling assets and properties held by them except for the purpose of credit of Rs. 4,00,600 and Rs. 35,53,001, respectively, till completion of such credit to the account of Secure Success Plan Pvt. Ltd.

k) The Banks are directed that no debit shall be made in respect of the bank accounts held by Secure Success Plan Pvt. Ltd. except for the sole purpose of depositing the amount of Rs. 3,99,79,384/- in an Escrow Account opened with a nationalized Bank, for the sole purpose of making the refunds, as directed in paragraph 56(a), till the completion of the credit.

l) Secure Success Plan Pvt. Ltd. and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah on behalf of the Company, are prevented from selling the mutual funds/shares/securities held by the Company in demat and physical form, except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

m) Secure Success Plan Pvt. Ltd. and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah on behalf of the Company, are prevented from selling the assets and properties of the Company, except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

n) In case of failure of Secure Success Plan Pvt. Ltd. to comply with the aforesaid directions, SEBI, on expiry of three months period from the date of this Order may recover such amounts from Secure Success Plan Pvt. Ltd., as specified in paragraph 56(a), and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah, to the extent as specified in paragraph 56(f) of this Order, in accordance with section 28A of the SEBI Act, including such other provisions contained in securities laws.

o) Secure Success Plan Pvt. Ltd. and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are directed not to, directly or indirectly, access the securities market, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 4 years from the date of refund of the money as directed in paragraph 56 (a) above and

its promoter/directors Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah are also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 years from the date of refund of the money as directed in paragraph 56 (a).

p) Secure Success Plan Pvt. Ltd. and its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah shall not undertake, either directly or indirectly, unregistered Portfolio Manager Services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 56(n).

q) This directions from paragraph 56(a) to paragraph 56(n) will take effect as final order against the Noticees on the expiry of 30 days from the date of service of this order, unless the Noticees within such period of 30 days from the date of service of this order file their objections, with respect to refund. If objections are filed, the following directions shall be applicable against the Noticees, till the time of disposal of the said objection:

   i. not to divert any funds raised from the investors; kept in bank account(s) and/or in the custody of the Company, and in the bank accounts and/or in the custody of the directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah ;

   ii. not to dispose of any of the properties or alienate the assets, or sell any of the mutual funds/shares/securities owned by the company or by its directors, Mr. Shreyas Manjunath and Mrs. Annapurna Mathkur Venkatachalaiah;

r) The above directions shall come into force with immediate effect.

57. Copy of this Order shall be forwarded to the RBI, Banks, recognized stock exchanges, depositories, and registrar and transfer agents, for information and necessary action.

DATE: April 25, 2018
PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA