SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF THE EQUICOM FINANCIAL RESEARCH PRIVATE LIMITED

In respect of:

Noticee no.	NAME	PAN
1	**The Equicom Financial Research Private Limited**	**AAECT4400E**
2	**Mr. Amit Kukda**	**BOHPK6437B**
3	**Mr. Akhilesh Raghuvanshi**	**ALDPR2234H**

(*The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees*")

1. The present proceeding emanates from the *ex-parte ad interim* order dated January 21, 2020 (hereinafter referred to as "**the interim order**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), against The Equicom Financial Research Private Limited (hereinafter referred to as "**Equicom**") and its Directors. The *Noticee no. 1* is registered as an Investment Adviser (hereinafter referred to as "**IA**"), under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the " **IA Regulations**"), vide Registration no. INA000001639, with effect from April 25, 2014. The *Noticee nos. 2* and *3* are the Directors of the *Noticee no. 1* and 100% shareholding of the *Noticee no. 1* is held by the *Noticee nos. 2* and *3*.

2. In order to ascertain compliance with various regulatory mandates as laid down under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI**

Act"), IA Regulations etc., an inspection of the *Noticee no. 1* was conducted by SEBI, for the period of April 01, 2015 to March 20, 2017. For the purpose of said inspection, the details available on the website of the *Noticee no. 1*, complaints filed by the clients of the *Noticee no. 1*, Risk Profiling Forms, Invoices issued by the *Noticee no. 1*, emails, audio call recordings etc., were examined. Basis the said inspection, numerous violations of securities laws were noticed, pursuant to which an *interim* order came to be passed. The transgressions on the part of the *Noticee no. 1*, as recorded in the *interim* order are briefly stated below:

i. The Risk Profiling of clients executed by the *Noticee no. 1* was irregular and the Suitability Assessment of the products/service was also not aligned to the Risk Profiles.

ii. The *Noticee no. 1* was running its operations just like a call centre and its employees were persuading the clients to make multiple payments under different pretexts. The *Noticee no. 1* was also taking payments from the clients, for which services were supposed to be commenced far away in future.

iii. The *Noticee no. 1* also sought share of profits from the clients and threatened to stop the advisory services in case of non-payment of such amounts.

iv. The *Noticee no. 1*, in order to persuade the clients to purchase its service packages offered by it, has offered assured returns on the investments made on the lines of advisory issued by it.

v. The representatives of the *Noticee no. 1* were providing advice/tips over telephone and no records with respect to such advice or rationale behind such advice was maintained by the *Noticee no. 1*.

vi. The advisory services/tips were also being given by the employees who were not holding the requisite certification/qualifications.

3. As per the *interim* order, the aforesaid acts and omissions on the part of the *Noticee no. 1*, were found to be *prima facie* in violation of following provisions of securities law:

i. regulations 3 (c), (d), 4(1) and 4(2) (k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**");

i. regulations 7 (1), 7 (2), 15 (1), 15 (9), 16, 17 (a), 17 (b), 19 (e) and 19 (f) of IA Regulations and the Clauses 1, 2, 5, 6 and 8 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations.

4. As the *Noticees* were *prima facie* observed to have violated the relevant provisions of laws, rules and regulations pertaining to securities market vide the aforesaid *interim* order, the following interim directions have been issued with a view to protecting the interest of investors of securities market:

i. The *Noticees* were directed to cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media as an IA;
ii. The *Noticees* were restrained from buying, selling or dealing in the securities market or associating themselves with securities market, in any manner;
iii. The *Noticees* were restrained from diverting any funds raised from the investors, kept in the bank account;
iv. *Noticees* were directed not to dispose of or alienate any of their assets except with the prior permission of SEBI; and
v. The employees of the *Noticee no. 1* were directed to cease and desist from undertaking the activities of investment advisory services

5. As the *interim* order was passed ex-parte, the *Noticees* were given an opportunity to file their objections to the observations and various allegations made in the said *interim* order. Subsequently, the *Noticees* vide their letter dated January 24, 2020, have made certain submissions and have also requested for inspection of the documents which were relied upon while issuing above stated directions in the *interim* order. In view of the said request, inspections of various documents (including the audio call recordings in a CD) relied upon in the said *interim* order was granted to the *Noticees* on February 03, 2020. Subsequently, the *Noticees*, vide their letters dated February 13, 2020, August 31, 2020 and November 19, 2020, have made a few more submissions as well as have offered explanation with respect to their business operations. Meanwhile, a personal hearing was also granted to the *Noticees* on October 20, 2020 during which oral presentations were made before me on behalf of the *Noticees* which were broadly made on similar lines as per the written submissions made by the *Noticees* in the afore-mentioned written communications addressed on various dates.

6. The arguments advanced on behalf of the *Noticees* through their written as well as oral submissions are summarised herein below:

i. Various documents like copy of the investigation report, copy of complaints received by SEBI, copy of invoices issued by the *Noticee no. 1*, copy of emails exchanged with SEBI etc., have not been provided.

ii. The *interim* order has been issued without giving an opportunity of personal hearing and directions which are serious in nature and consequences have been issued. The acts of issuing such direction without affording opportunity of being heard are in violation of the principles of natural justice. Various judgments have ben relied upon to buttress the said submissions, like: (i) *Painter Vs. Liverpool Oil Gas Light Co. [(1836) 3 A & E 433]; (ii) A. R. Antulay Vs. R.S. Nayak [(1988) 2 SCC 602]; and (iii) Canara Bank and Ors. Vs. Debasis Das and Ors. [Appeal (Civil) 7539 of 1999]*.

iii. The *interim* order has been passed on conjectures and surmises. Strong proof is required to support such findings, as held by Hon'ble SAT in the matter of *Sterlite Industries (India) Limited Vs. SEBI [(2001) 34 SCL 485 (SAT)]*.

iv. Any action against the *Noticee no. 1* ought to have been issued under the IA Regulations, as it is a registered intermediary.

v. By restraining the *Noticee no. 1* from acting as an investment adviser, the livelihoods of many persons have been adversely affected. The action of SEBI is *ultra vires* to the Article 19 (1) (g) of the Constitution of India.

vi. The directions restraining disposal or alienation of the assets is against the Section 11 (4) (e) of the SEBI Act, 1992 as no approval from the Judicial Magistrate First Class has been obtained.

vii. As on October 14, 2020, the total complaints pending in SCORES system is only 4 out of which, 3 complaints are in the process of being resolved and 1 is a repeated complaint. The total complaints received by the *Noticee no. 1* till October 14, 2020 are 123 and out of which, 117 complaints have been resolved and 2 complaints have been withdrawn. Only 97 complaints are from unique investors and rest 24 are repeated complaints.

viii. For the period of 2014-15 to 2020-21, the *Noticee no. 1* has served 12600 clients and it has received only 97 complaints, which is miniscule (0.8%) to the total number of clients. All complaints as referred in the *interim* order have been resolved.

ix. The *Noticee no. 1* has a total no. of 49 employees, out of which 26 are in Sales Department and 5 are in the Research and Development Department.

x. Research and Development Team provides services to the clients of the *Noticee no. 1*, via SMS. The Sales Department and Customer Satisfaction Department play a role of bridge between the clients and the Company over telephone.

xi. The *Noticee no. 1* incentivises its employees through various methods. Cash as well as non-cash benefits are extended to the employees based on their performances.

xii. The prospective clients are first offered free trial and after that the executive of the *Noticee no. 1* discusses about the various packages with such prospective client. The KYC and Risk Profiling of such a client is done and based on certain questionnaire, the Risk Profiling and Suitability Form is filled by the *Noticee no. 1* and clients have also the option to fill such Risk Profile and Suitability Form. Based on automated process, the Risk Profiling Score of the client is generated and based on the Risk Profiling Score and Suitability of Service, client purchases the product (s) as per his risk bearing capacity and interest. Finally, payment is made by the client and the client starts receiving the services via SMS.

xiii. The *Noticee no. 1* has emerged as a leading player in providing best equity and commodity tips in the market. Based on the investment objectives and risk tolerance, the *Noticee no. 1* provides access to certified researchers' investment decisions and recommendations through SMS.

xiv. The complaints arise due to various reasons like the clients want to act on their own discretion; the SMS are not timely delivered; the clients do not provide risk profiling details like investment goal, risk tolerance etc. In case of any issue with the client, the concerned employee is notified and steps are taken to resolve such issue.

7. It is noted from the records that after conducting the inspection of documents, as aforesaid, the *Noticees* vide their letter dated February 13, 2020, had made a request seeking for

certain other documents viz., copy of investigation report, copy of complaints and their annexures, copy of invoices relied upon by SEBI, copy of e-mails exchanged between the *Noticee no. 1* and SEBI, and statement of any person recorded by SEBI. A perusal of the said request and the records suggests that copies of all the documents which have been relied upon to substantiate the allegations while passing the *interim* order have already been furnished to the *Noticees* during the course of inspection of documents conducted by them. Therefore, there are no documents left which have been used and relied upon in the proceedings that have not been shared with the *Noticees*. From a perusal of the requisition of additional documents demanded by the *Noticees,* I can observe that either some of such documents do not exist (e.g. no statement has been recorded from any person) or the document *per se*, belongs to the *Noticee no. 1* itself (like copy of invoices, emails etc.). Further, all the relevant findings from the inspection of the business affairs of *Noticee no.1* conducted by SEBI have already been extracted/reproduced and communicated to the *Noticees* through the *interim* order with supporting documents. Under the circumstances, I observe that the said request made by the *Noticees* for providing the aforesaid documents is not supported by any rationale or *bonafide* reasons and is an irrelevant and redundant request having no merit for acceptance. The *Noticees* have also not been able to demonstrate as to how, in the absence of those documents, their interest in defending their case before me is prejudiced. Hence, such a request for documents made by the *Noticees* as stated above is liable to be rejected.

8. I have carefully considered the *interim* order, the submissions made by the *Noticees*, as well as various other materials available on record. In my considerate view, the only issue that needs to be adjudged in the present matter is whether the acts of the *Noticee no. 1* as imputed in the *interim* order, have violated the provisions of IA Regulations and PFUTP Regulations while acting as an Investment Adviser or not?

9. Before adverting to the merits of the present case, in order to evaluate the strength of the submissions made in the present proceedings in the backdrop of the charges so levelled against the *Noticees*, it would be appropriate to first refer to the relevant provisions of law. Accordingly, the extracts of the regulations, relevant to the present proceeding are reproduced hereunder for ease of reference:

IA Regulations

7. Qualification and certification requirement.

(1) *An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:*

(a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or

(b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or
(b) from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.:

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

General Responsibility

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

…

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

16. *Investment adviser shall ensure that -*

(a) It obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i) age;
(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment;
(iii) income details;
(iv) existing investments/ assets;
(v) risk appetite/ tolerance;
(vi) liability/ borrowing details.

16. (b) *It has a process for assessing the risk a client is willing and able to take, including:*

(i) assessing a client's capacity for absorbing loss;
(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

17. Investment adviser shall ensure that,-

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

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

…

(d) *It has a reasonable basis for believing that a recommendation or transaction entered into:*

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

19 (1) An investment adviser shall maintain the following records,-

…

(e) Investment advice provided, whether written or oral;

(f) Rationale for arriving at investment advice, duly signed and dated;

…"

Code of Conduct

1. Honesty and fairness

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

2. Diligence

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

5. Information to its clients

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

6. Fair and reasonable charges

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

….

8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly

…"

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

…

(k) *disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities"*

10. At the outset, the *Noticees* have raised a few technical/preliminary objections against the *interim* order as listed below which deserve to be dealt with in seriatim:

(a) Principles of natural justice have been violated as no hearing was granted before passing the *interim* order.

(b) The restraint imposed vide the *interim* order has resulted in halting the business operation of the *Noticee no. 1 and* such an action is in violation of the Article 19 (1) (g) of the Constitution of India.

(c) SEBI has not obtained permission from Judicial Magistrate for restraining the *Noticees* from disposing of the assets, as mandated under Section 11 (4) (e) of the SEBI Act, 1992.

11. Insofar as the submission with respect to the principles of natural justice is concerned, I observe that Section 11 (4) of the SEBI Act, 1992 in explicit terms empowers SEBI to pass *interim* directions either during pendency of inquiry or investigation or on completion thereof. A plain reading of the said provision suggests in clear and unambiguous terms that pending investigation or inquiry, SEBI has powers to initiate actions *inter alia* including the following:

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

12. In the present case, it is noted that the *interim* order proceeds on the numerous acts of misconduct and omissions on the part of the *Noticee no. 1* pertaining to its functioning as an investment adviser, which have been *prima facie* found to be prejudicial to the interest of the

investors of securities market. The said observations have been premised on various documents like invoices, risk profiling, complaints filed by investors against the *Noticee no. 1* etc. In terms of the *interim* order, such acts of the *Noticees* have been found to be *prima facie* violative of IA Regulations and PFUTP Regulations. I can observe that the directions in the *interim* order have not been issued to the *Noticees* merely on feeble reasons, rather, after considering the totality of the specific facts, *prima facie* factual evidences available in hand pertaining to the illegal way of functioning of *Noticee no.1* as well as the attendant circumstantial evidences as recorded in the *interim* order, which indeed provided strong justification for taking such an urgent action restraining the *Noticee no. 1* forth with, from acting as an investment adviser, so as to protect the interests of the investors of the securities market. I find the reasons and the exigencies that warranted for passing of the *interim* order have already been recorded in detail in the said *interim* order, the merit of which is going to be adjudged appropriately in the present proceedings, after considering the written replies and oral submissions made before me by the *Noticees* in their own defence.

13. There is yet another contention of the *Noticees* that the *interim* order has been passed without hearing them and in fragrant violation of principles of nature justice. Therefore, the said order deserves to be set aside. In this regard, it has been observed above that the provisions under the SEBI Act duly empower SEBI to pass such *interim* order if there is a need for passing such an order without loss of any time, in the interest of market and to protect the interest of investors, and keeping in view the urgency of the matter on hand, granting of an opportunity of hearing is not essential at the stage of passing of such order. The issue requiring granting of hearing at the stage of passing *interim* order has come up for consideration and scrutiny before the judicial forum time and again on several occasions. Based on the findings recorded by the Hon'ble Courts, it is now settled that granting of personal hearing at the time of passing of an order at *interim* stage can be dispensed with. It has been held in a catena of judgments that even grant of post-decisional hearing is sufficient compliance with the principles of natural justice. Some of such judgments and the relevant findings therein are quoted below for reference and reliance:

i. Hon'ble Supreme Court in the matter of *Liberty Oil Mills & Others Vs. Union of India & Other (1984) 3 SCC 465* have *inter alia* observed: *"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation*

that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

ii. Similarly, in *SEBI Vs. Alka Synthetics Ltd* (1999) 19 SCL 460, the Hon'ble Gujarat High Court has observed that SEBI is empowered to take all *interim* measures and issue direction for protecting the interest of investors and to regulate securities market. While issuing such measures, SEBI need not give pre-decisional hearing at the time of issuing direction of *interim* nature. The said observations have been approved in the matter of *Anand Rathi & Others Vs. SEBI [2002 (2) Bom CR 403]*, wherein the Hon'ble Bombay High Court has observed:*"…31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded…."*

iii. Further, the Hon'ble High Court of Judicature for Rajasthan at Jaipur had also an occasion to deal with the issue of requirement of post-decisional hearing in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors (D.B. Civil WP No. 5135/2010 Raj HC)*. In the said matter, Hon'ble High Court while approving the measures taken by SEBI without granting pre-decisional hearing observed as follows: *"…Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons*

concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. … The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act."

14. In the context of the present proceedings, it may be noted that the proviso to Section 11 (4) mandates that for passing of the *interim* order, SEBI can, either before or after passing such order, provide an opportunity of hearing to the persons concerned. As noted earlier, the *Noticees* herein have been duly provided the opportunity of personal hearing, which has also been availed by them. Under the circumstances, as the extant law enables SEBI to pass *interim* directions in an *ex parte manner* in the interest of the investors and after passing the said *interim* order, opportunities for personal hearing should be provided to the *Noticees*, which has been duly provided and the same has also been availed by the *Noticees* to present their case, the objection of the *Noticees* with respect to violation of principles of natural justice is not tenable and has to be rejected as being without any merit, whatsoever.

15. I, at this stage, also rely on the observations made by the Hon'ble Securities Appellate Tribunal in the matter of *Dr. Shivinder Mohan Singh Vs. SEBI (date of decision: December 24, 2020)*, wherein it was observed by Hon'ble SAT that: "….*we find that the appellant did not challenge the ex-parte interim order dated March 14, 2019. Nothing prevented him from filing an appeal. The appellant was arrested much later on October 10, 2019 after passing of the confirmatory order. The said orders have been continuing against the appellant and there is no reason why the said order should not continue till the completion of the proceedings…"* In the present case as well, I have already noted earlier that there were various compelling reasons which constrained SEBI to invoke the powers to issue *interim* directions to the *Noticees* with a view to protecting the interest of the investors of securities market. Moreover, the instant proceeding is not being conducted either in the exercise of any appellate or revisional exercise of power, but in continuation of the said *interim* order so as to take the findings and allegations made in the *interim* order to their logical conclusions by way of adjudication, hence, the above noted contentions and grievances of the *Noticees* against the *interim* or the present proceedings are liable to be rejected being baseless and devoid of merit.

16. The next objection/submission of the *Noticees* pertain to their right of carrying on occupation, business etc., as has been conferred by the Constitution of India under the Article 19 (1) (g). In this connection, there is no dispute to the fact that the Constitution of India confers on every citizen, a right to carry on a trade or profession of their choice. However, it needs to be noted that the said right is not an unfettered right and is further subject to the reasonable restriction, which can be imposed by virtue of Article 19 (6) of the Constitution of India. In this context, I find it apt to seek guidance from the observations of Hon'ble High Court of Judicature for Rajasthan at Jaipur, passed in the matter of *M/S Punit Mercantile Pvt Ltd. Vs. Union of India and others (29 October, 2010)*. In the said matter, Hon'ble High Court while appreciating the whole scheme of SEBI Act, have *inter alia* observed: "…*Perusal of aforesaid paras shows that the SEBI Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. A restrained order for same period from accessing the security market and prohibiting buying, selling and dealing in security was not held to be a penalty. Looking to the object of the SEBI Act, provisions of Sections 11(4) & 11(B) of the SEBI Act imposes a reasonable restriction in conformity to Clause (6) of Article 19 of the Constitution of India. This is in the larger interest of the investors and to achieve the objects of SEBI Act. In the light of aforesaid, we do not find that provisions of Sections 11(4) & 11(B) of the SEBI Act are violative of Article 19(1)(g) of the Constitution of India. Accordingly, challenge to the constitutional validity of the aforesaid provisions is not accepted. Thus, the provisions are held to be intra-vires…"*

17. I must add here that the aforesaid observations are not passed with respect to the functioning of an intermediary. However, it cannot be disputed that such observations will always be a guiding principle to deal with the issue of business of an investment adviser, more so when the SEBI Act, under Section 11 (2) (b) envisages that SEBI may take any measure as it thinks fit in order to regulate the working of investment advisers. In view of the foregoing discussion, I have no hesitation to hold that the *interim* restraint imposed on the *Noticees* to act as investment adviser cannot be said to be violative of the Article 19 (1) (g).

18. The last technical objection that has been sought to be made by the *Noticees* is that SEBI has not obtained permission from the appropriate court prior for attaching the bank accounts/assets, as has been mandated under Section 11 (4) (e). In this connection, I find it

relevant to refer to another provision, i.e., Section 11 (4) (f), which empowers SEBI to pass such a restraint on *Noticees* preventing them from disposal of assets, as rightly passed under the *interim* order. The Section 11 (4) (f) reads as:

11 (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

….

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation

19. Thus, a plain reading of the aforesaid provision would indicate that as an *interim* measure, a direction against an intermediary may be passed restraining it from alienation of its assets. Therefore, the contention of the *Noticees* as discussed above is completely misplaced on law, since a specific provision to that effect already exists empowering SEBI to take action to prevent entities from alienating their assets, which has been erroneously challenged by the *Noticees*.

20. In view of the aforesaid discussion, I observe that the *Noticees* have not been able to make out a convincing case in their favour by placing the above noted preliminary/technical objections against the *interim* order or even the present proceedings on a right foot by presenting any credible & convincing arguments supported by law and facts. Therefore, I shall now evaluate the indictments made against the *Noticees* in the *interim* order on merit based on the facts and circumstances as adduced in the *interim* order. To begin with, I reproduce the observations made in the *interim* order with respect to the business model followed by the *Noticee no. 1*:

i. The advisory business of Equicom is based on 'subscription model';
ii. The advisory fee was charged from clients based on the product subscribed and the subscription period.
iii. Advice given by the IA is through SMS and/or telephone support.
iv. Equicom offers packages viz., Stock Tips, Stock Future Tips, Nifty Future Tips, Option Tips, Commodity Tips, Agri Tips, MCX Tips, NCDEX Tips, Premium Pack and Super premium Pack, etc. to its clients as part of its advisory activity.

v. The charges for the aforesaid packages depends upon the period of subscription. For instance, the advisory fee for providing stock tips for a month is shown as Rs. 8,000/-; Similarly, fee for three months service is shown as Rs.20, 000/-; Fee for six months' service is shown as Rs. 38,000/- and fee for one year subscription is shown as Rs.70,000/-.

21. In this respect, it is noted that regulation 15 of the IA Regulation lays down that an investment adviser shall act in a fiduciary capacity towards its clients and shall also abide by the Code of Conduct specified in the Third Schedule of the said regulations. It is further noted that the regulation 16 (a) of the IA Regulations imposes an obligation on the registered IA to seek necessary information from its clients, which is necessary for the purpose of rendering the act of investment advice. The said regulation also lists out certain parameters, information pertaining to which needs to be first gathered by the investment adviser from his/its prospective clients before indulging in the act of rending any investment advice to those clients for investment in securities. The said parameters include age, investment objective, income details, risk tolerance etc. Further, regulation 16 (b) of the IA Regulations stipulates that the investment adviser shall have a process in place to assess the risk that a client is willing and able to take. After assessment of the risk tolerance of respective clients, the investment adviser needs to ensure that any investments for which advice is to be provided to the clients, is appropriate and proportionate to the risk profile of the corresponding client.

22. In the present case, as noted from the *interim* order, the *Noticee no. 1* had the following products to offer to its clients which have been categorised for various categories of the investors, based on their risk profiles:

Table no. 1

Very aggressive investor	Aggressive Investor	High growth Investor	Moderate Investor
Cash Super Premium, Future Super Premium, Option Super Premium, Nifty Super Premium, MCX Super Premium, Agri Super Premium	Cash Super Premium, Future Super Premium, Option Super Premium, Nifty Super Premium, MCX Super Premium, Agri Super Premium	Cash Premium, Future Premium, Option Premium, MCX Basic, Agri Basic	Cash Basic, Future Basic, Option Basic, MCX Basic

23. As noted earlier, the assessment of risk profile of the client is the most vital and crucial aspect of the whole process of rendering investment advice. Based on such risk profile assessment, which is further dependent on multiple factors, an investment adviser goes on to select the product/service package which has to be in alignment with the risk profile, risk appetite, financial goals and financial capacity of the investor. In the present case, the *interim* order records a *prima facie* finding that the *Noticee no. 1* has sold those products/service packages actually meant for the investors falling in the category of "Very Aggressive Investor", to the investors falling in the category of "High Growth Investor". The *interim* order discusses as an illustrative example, as to how the *Noticee no. 1* has sold products/service packages worth INR 5.93 Lakh to an investor viz., Mr. Mukesh H. Agarwal, who as per the risk profiling carried out by the *Noticee no. 1* itself, falls in the category of "High Growth Investor". In the process, the *Noticee no. 1* has sold several products which are appropriate for the category of "Very Aggressive Investor" to the abovesaid investor, though as per risk profiling carried out by the *Noticee no.1* itself, the said investor belonged to the category of "High Growth Investor".

24. It is observed that the *Noticees*, in the present proceedings have made a few bald assertions to deny the above said allegations made in the *interim* order. It has been merely submitted that they have not acted in violation of provisions of securities law, as have been alleged in the *interim* order however, the said assertions are only general statements without offering any concrete supporting material to controvert those allegations made in the *interim* order. Apart from these general denials to the allegations made in the SCN, the *Noticees* have made certain objections to the *interim* order on technical and procedural grounds, which I have already discussed and found no merit therein, hence, have rejected the same for the reasons recorded in the preceding paragraphs. Needless to mention that the *Noticee no. 1* has been confronted with a serious allegation of having sold wrong products to its clients, and keeping in view the seriousness of the present proceedings, the *Noticee no. 1* is supposed to make out a strong case in its favour by furnishing reasoning with supporting documents adequate enough to rebut the allegations made against it. However, I find the *Noticee no. 1* has preferred to only deny the allegation and in support thereof, has filed a brief compilation of the status of redressal of various complaints referred to in the *interim* order and by filing such an updated status of such complaints, it has been asserted that most of such complaints have been

resolved except for only a few complaints which are pending against them, hence, it would not be justified to allege that *Noticee no. 1* has acted in violations of provisions of IA Regulations. Thus, the *Noticee no.1* in response to a serious allegation of selling products to its clients that are not commensurate with the risk profiling of its clients, has chosen to file a status report of the pending complaints against it. The *Noticee no.1* has preferred to remain silent on the above said specific allegation of mis-selling of investment products without offering any explanations on the veracity of the said allegations or alternatively, justifying its action by explaining as to under what circumstances, it has sold those investment products/packages to certain clients which were not commensurate with the risk appetite of those clients based on the risk profiling done by the *Noticee no. 1* itself. Given the fact that no plausible justification has been advanced by the *Noticee no.1* to repudiate the said allegation and in the absence of any rebuttal of such allegations, it constrains me to conclude that the *Noticee no. 1* has no explanation to offer in its defence against the allegation of indulging in mis-selling of products. Therefore, the said allegation made in the *interim* order has to be held as established as well as justified.

25. One can appreciate that the task of risk profiling of the clients and selection of the appropriate investment products suitable to the risk profile of the respective clients is a critical aspect of investment advisory services that needs to be rigorously complied with by every investment adviser in letter and spirit. When the risk profiling of a prospective investor indicates that he is a high growth investor, the same is sufficient to indicate that his risk tolerance may not be equated with an investor who is willing to take more risk in pursuit of greater returns. The risk profiling of the client also needs to be shared by the investment adviser with the respective clients. It is noted that the *Noticee no. 1* has been found to have sold products/services package to various clients which are suitable to totally different categories of investors, and which were not in alignment with the investment need and investment appetite of those clients. As stated above, the investment adviser is under a statutory as well as fiduciary obligation to sell only those products which are conducive to the risk profile of the client so that the client is in a position to bear the risk that is inherent in the said product. However, in this case, there have been notable instances from the complaints lodged with SEBI, where it has been found that the *Noticee no. 1* has either not conducted the risk profiling of the client at all or has not shared the risk profiling form with the client and instead has indulged in selling products to such clients before conducting risk profiling and before assessing the ability of the

clients to take risk in the securities markets. Therefore, it is clear that the interests of the investors have been compromised in the whole process with the sole motive to increase the revenue of the *Noticee no. 1* even at the cost of mis-selling various investment products to different clients regardless of their risk appetites and levels of risk tolerance.

26. It has also been observed that even wherever risk profiling was carried out prior to rendering investment advice, various investment products/packages were sold regardless of the category to which such clients belonged and in the process, no diligence was observed to verify if the said products/packages might impact adversely the interest of such clients and ultimately prove to be detrimental to the growth of securities market. I find such a conduct on the part of *Noticee no.1* grossly lacks honesty, fairness & transparency, and the *Noticee* has blatantly failed to exercise due skill, care and diligence while dealing with its clients. The above acts of misconduct on the part of the *Noticee no. 1* has not only amounted to transgression of breach of trust reposed by the client through his contract with the *Noticee no.1,* but by indulging in such act of mis-selling of investment products, the *Noticee no. 1* has acted against the interest of securities market, irrespective of whether such acts of the *Noticee* have actually resulted in incurring any quantifiable loss by any investor. It should be noted that when the law (SEBI Act, IA Regulations etc) specifically prohibits such acts of misconduct and frowns upon such ill-intentioned motive on the part of investment advisors, the exact consequences of such violative acts would not be material when it comes to bringing a charge against an entity (the *Noticee herein)* for indulging in such illegal acts, for the purpose of adjudication.

27. It is a trite law that when provision of law forbids certain acts, the same is required to be honoured in letter and spirt. Law does not provide any exception to anyone to indulge in such prohibited acts, hence, if the provisions under the IA Regulations specifically mandate that the risk profiling of clients has to be done before rending the advisory services, the *Noticee no.1* has no option but to comply with such requirement without any exceptions. Any deviation from such norms for whatsoever reason would not be viewed lightly and would require to be dealt with firm hand as a matter of proactive, preventive and curative measures so as to prevent the *Noticee* from causing any further harm to the interest of its clients and also to protect the overall interest of the investors of the securities markets. Therefore, in the absence of any worthwhile explanation offered by the *Noticee no.1* to justify the way it has conducted its affairs while rendering investment advices to its clients unsuitable to their risk taking abilities,

without adhering to the basic regulatory mandates, I have to necessarily concur with the findings recorded in the *interim* order stating that the *Noticee no. 1* has acted in violation of the regulation 15 (1) and Clause 1, 2, 5, 6 and 8 of the Code of Conduct as mentioned in the Third Schedule read with regulation 15 (9), regulation 16, regulation 17 (a) and 17 (b) of the IA Regulations.

28. I note from the *interim* order that the *Noticee no. 1* was allegedly receiving multiple payments and taking instant payments from its clients against promise for future services. The *interim* order specifically at page numbers 6-8 records excerpts from various telephonic conversations that were held with the clients of the *Noticee no. 1*. The said conversations reflect gross misconduct on the part of the *Noticee no. 1,* as its employees could be heard repeatedly persuading the existing clients to make further payments to the accounts of the *Noticee no. 1*. In the said conversations, the employees have been heard attempting to persuade its clients to even take loan for making payment to the *Noticee no. 1*. Further, a strict deadline for making the payments were being given to the clients by the employees of the *Noticee Company*. I would like to reproduce one extract of such telephonic conversation of the employee of the *Noticee Company* for the purpose of ready reference: "*Aapke paas aaj raat tak ka time hai, kal 12 baje tak dedo, warna next level nahi dunga*".

29. It is further noted that not only the employees have been observed to have indulged in pestering the clients to make multiple payments; the *Noticee no. 1* has also issued various invoices against which the services were expected to be commenced on a far future date. For instance, an investor namely Mr. Umesh Kurundkar has been issued an invoice with payment date of April 16, 2016 mentioned therein, for which, the services were supposed to start in November, 2017, i.e., after 19 months of issuance of such invoice. Apart from this, there have been instances where the employees of the *Noticee no. 1* could be heard asking for more payment from the clients if they wanted to continue the services just because the earlier advice issued by the *Noticee no.1* had resulted in profits. The tenor of the conversation is highly unbecoming of an investment adviser as can be seen from the following excerpt of one such conversations: "*aapko 2.6 lakh ka kaam karwa dia hai HINDALCO me. Aap aur jama karwa do, tabhi aage kaam ho paaega"*. In this connection, I observe that if a client has subscribed/purchased a particular product after already paying the required/agreed fees as demanded by the *Noticee* at the time of selling the said product, and such product results into

some profit for the client, it is highly unbecoming for the IA to threaten the investor to discontinue the services in order to extort more money from the said client, on the ground that the advice rendered had brought profit to the client. I would add here that all the payment related issues and schedule of delivery of services have to be agreed upon in the beginning of entering into a contractual service and prior to rendering investment advice and parties to the said agreement including the IA are under an onerous obligation to adhere to such schedule of services and payments as already agreed upon prior to rendering services to its clients.

30. The *interim* order further records and alleges that the employees of the *Noticee no. 1* have made misrepresentations before the clients by claiming that the credit of certain amount of money made to the account of a particular client has been given from the account of another client. In exact words, the conversation goes on like this: "*Mere sir ne aapke naam se Rs. 1 lakh ka amount extra dalwaya hai, unke apne relation waale client se lekar. Jab aapka profit nikal jaega, aap remaining 1 lakh de dena…Aap Deepak Goel se baat kar lena, jo meri company ke head hain."*

31. It is a basic understanding that the role of the investment adviser is limited to only dispensing investment advices to the clients, so as to enable them to make an informed decision with respect to their investments. However, by making statements before the clients such as having credited money to one client by taking money from the account of another client is evident of the fact that the *Noticee no.1* was functioning beyond its regulatory mandate and fiduciary duties of giving investment advice. The said acts of the entity rather expose that it was acting in total disregard to and beyond the remit of the provisions of the IA Regulations. It is also noted from the *interim* order that Mr. Deepak Goel, who has been named in the afore-quoted telephonic conversation as the purported Head of the Company, is neither a Director nor a shareholder of the *Noticee no. 1*. Some other instances of the call record extract show that the employees of the *Noticee no. 1* were seeking more money from the existing clients claiming that they belong to different department and not from the department with which the client had earlier interacted, so as to justify the demand of fresh payments. Such a conduct on the part of the *Noticee no. 1* as is emerging out the aforesaid conversations with the clients further reinforces the allegation made in the *interim* report that the *Noticee no.1* was paying scant regard to the interest of investors and its employees have ruthlessly endeavoured to pursue the sole objective to maximise its revenue and in this process were extorting money from the clients on one pretext or the other.

32. The IA Regulations mandate that an IA needs to observe high standards of integrity, fairness, ethics and to act professionally. However, it emerges from the aforesaid display of the conduct of the *Noticee no. 1* that it was focussed primarily on maximising its revenue and in order to accomplish the said mission, it was even coercing the investors to pay additional money by threatening to discontinue its services to them. The aforesaid findings are also corroborated from the fact that the *Noticee no.1* was raising invoices even for those services which were scheduled to be started as far as after 19 months, and also from the fact that the employees of the *Noticee no.1* were indulged in illegal act of demanding a share in the profit earned by its clients even after taking full consideration prior to selling the said investment product/package which brought some profit to the client. Under the circumstances, the *Noticee no. 1* is clearly found to have acted in violation of regulation 15 (1), and the Clauses 1, 2 and 6 of the Code of Conduct as mentioned in Schedule III read with regulation 15 (9) of the IA Regulations.

33. Moving on further, I note that the *Noticee no. 1* was allegedly assuring huge returns to the clients, if such clients made investments on the lines of the investment packages provided by the *Noticee no. 1*. The *interim* order records an illustration when an employee of the *Noticee no. 1* is heard assuring profit, as big as INR 8.5 Lakh to a client. There are no two opinions that all the financial investments are always subject to market risks which may vary from product to product. There cannot be any investment product, which can assure a high level of return with certainty as was being assured by the *Noticee no. 1*. It is essential that being an investment adviser, the *Noticee no. 1* ought to have made its clients aware about the risks that may arise out of investing in any product advised by it so that the investor could have taken an informed decision. However, contrary to the said responsibility, the *Noticee no. 1* is found to have assured huge return to the clients on the products/packages sold by it thereby inducing them to buy its investment products/packages and violating regulation 15 (1), 15 (9) read with Clause 1 of the Code of Conduct as mentioned in the Third Schedule of the IA Regulations.

34. Before adverting to the next allegation, I would make a quick reference to regulation 7 of the IA Regulations. The said regulation stipulates that the partners and representatives of the investment advisers registered with SEBI, who are offering investment advice, should possess the prescribed qualifications and the necessary certifications, as provided thereunder. In the present case, the *Noticee no.1*, during an earlier inspection carried out by SEBI during

March, 2017, had furnished names of four individuals who were reportedly having the requisite qualification and certifications. The said names are: Mr. Amit Kukda, Mr. Rahul Gehlot, Mr. Anshuk Solanki and Mr. Ritesh Chouskey. Further, during the subsequent/latest inspection conducted by SEBI, the *Noticee no. 1* did not intimate any change/addition in the said list of four individuals who had the necessary qualifications backed by the requisite certifications to work as investment advisors. However, as recorded in the *interim* order, there have been many instances where other employees of *Noticee no.1* were seen to be providing investment advice to the clients whose names are not covered in the aforesaid list of four qualified/certified employees. In other words, the *Noticee no. 1* was using the services of several employees for providing investment advices to its clients in an illegal/unauthorised manner and not all such employees rendering advisory services on behalf of *Noticee no.1* were having necessary qualifications or possessing the certifications required under the regulation to render services of an investment advisor. It is to be noted that the sacrosanct purpose of using the services of a registered investment adviser gets defeated when the person who is issuing advice is not at all qualified to assess the risk appetite and profile of the clients so as to render appropriate advice to the clients. Under the circumstances, such an irresponsible act of leaving the clients to the mercy of the unqualified employees who have rendered investment advice to such clients in an unauthorised manner is in gross violation of regulation 7 (1) and 7 (2) of the IA Regulations.

35. It is further noted that the *Noticee no. 1* has been found to be casual and careless in maintenance of its records. The *interim* order records that on a comparison of the track sheets provided by the *Noticee no. 1* vide its email dated March 22, 2019, with the complaints filed by the clients, it is observed that there have been apparent gaps and gross deficiencies in keeping a record of all the advices that have been generated by the *Noticee no. 1* for its clients. The analysis of the call recordings, as enumerated in the *interim* order is sufficient to establish that the advices which were being issued were not backed by any kind of research or rationale nor the same was maintained in the track sheets of the *Noticee no. 1*. In this respect, on considering that the *Noticee no. 1* has not furnished any satisfactory explanation to contradict the aforesaid allegation, I am constrained to observe that the failure of maintaining complete records with respect to the investment advices provided has resultantly violated regulation 19 (e) and 19 (f) of the IA Regulations, which mandates that the investment adviser shall keep the records of the investment advices provided by it as well as the records pertaining to the rationale/back

ground factual analysis carried out prior to arriving at the specific investment advice to be so rendered to the clients.

36. In the preceding paragraphs, I have discussed as to how, the *Noticee no. 1* has made assurance of huge amounts of returns to the investors; has resorted to illicit activities to extract more and more money from its clients on different pretexts; has misrepresented facts before its clients so as to influence their decision making; and how it has taken payment from the clients in lieu of services promised to be rendered at a distant future. I find that all the complaints, allegations and the detailed findings from inspections pursuant to which the *interim* order was passed, have remained uncontroverted and undisputed by the *Noticees* since, most of the submissions of the *Noticees* revolved around certain objections on technical and procedural grounds that have been discussed by me at length in the previous paragraphs and, the *Noticee no.1* has remained largely evasive in its responses with respect to so many specific allegations of violations of securities law brought out in the *interim* order. The *Noticees* have not been able to throw any light with respect to any of those aforesaid instances of violations discussed in the *interim* order through illustrations and has simply brushed aside the findings of the *interim* order by claiming that most of the complaints have been resolved.

37. To sum up the misdeeds of *Noticee no.1* as a SEBI-registered investment advisor, by following such an unscrupulous business practice as have been discussed in the foregoing paragraphs, where the employees of the *Noticee no. 1* are seen to have blatantly side lined the interest of its clients and by disregarding the interests of investors of the securities market in general, have acted in a deceitful manner only with a motive to induce the clients to buy their investment products/packages irrespective of their risk taking abilities, for maximising the revenue of the *Noticee no. 1*. It is also observed that all the findings as recorded above are based on cogent evidence, and factual support with tangible illustrations which have been marshalled very well into the *interim* order to point out glaring infirmities in the conduct of the *Noticee no. 1*, which the *Noticees* have not been able to controvert. Such manipulative acts, misrepresentations, inducements and omissions exhibited by the *Noticees* as discussed above sufficiently suggest that the *Noticee no.1* has acted in terms of an artificial device that was invariably deployed by it while dealing with the clients, so as to create all possible inducements in the minds of the gullible investors to seek their investment advice under different packages that were not suitable to their risk profile or investment goals. Under the circumstances, I am

constrained to hold that the *Noticee no. 1* has also violated has regulations 3 (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations.

38. It has to be appreciated that the IA Regulations stipulate a basic minimum educational qualification and experience, that a person must possess so as to be eligible for being registered as an investment adviser. As noted earlier, in terms of the regulation 7, not only the investment adviser, but its partners as well as the representatives who are supposed to deal with the clients also need to have the requisite qualifications. Further, as the underlying service of the investment adviser has a critical bearing on the ultimate financial health of the investor, the investment adviser is obliged to act in fiduciary capacity and has to act with honesty, due skill, care and diligence and is also under an obligation to make disclosures of relevant information while dealing with the clients. I note that the regulation 16 and 17 together form the cornerstone of the overall interaction between the investment adviser and the investors. Regulation 16 illustrates certain important factors/parameters, on which the investment adviser needs to seek information from the investors. Such factors include income details, investment objective of the client and other relevant factors, based on which the risk profile of the investors can be made out by the investment adviser. Further, in terms of regulation 17, an investment adviser is supposed to give investment advice which is appropriate to the risk profile of the client and is also under an obligation to have in place, a documented process in order to create suitable investment products for the clients based on clients' investment objectives and financial conditions. The IA Regulation lays down an ecosystem wherein an investor may utilise the expertise and prowess of the investment adviser to make his investment decision, for which the investment adviser is entitled to charge fair and reasonable amount of fees from the clients. The protection of the interest of the investors undoubtedly is the most important and core feature of the IA Regulations which can't be allowed to be compromised at any cost.

39. I observe that despite categorically codifying the obligations of the investment adviser towards its clients by way of the afore discussed regulations, certain entities like the *Noticee no. 1*, do not wish to comply with the said provisions, neither in letter nor in spirit. In order to enrich itself, it has been seen from several instances highlighted in the foregoing paragraphs, *Noticee no. 1* had created a subterfuge whereby the gullible investors were induced to pay it more and more money under various pretexts apart from paying the fees for the investment

products/packages sold to them by the employees of *Noticee no.1*. While doing so, the interest of the investors has been patently ignored. Not only the *Noticee no. 1* has failed to act in a manner it ought to have acted *qua* its clients, but also has failed to even put up any defence to explain its conduct with respect to the violations committed by it as alleged against it in the *interim* order. The submissions made by the *Noticee no. 1* boil down to only technical and procedural objections along with a claim that the complaints of the investors, as have been discussed in the *interim* order have been resolved. In any case being a registered intermediary, the *Noticee no. 1* was under a bounden obligation to resolve the complaints of its clients/investors and therefore, resolution of such complaints cannot be accepted as a defence against those specific charges levelled against it nor can it provide any ground to the *Noticee no.1* to escape from its liability for acting in violation of the provisions of the SEBI Act and PFUTP regulations as well as the IA regulations and the Code of Conduct prescribed thereunder. In my view irrespective of the resolution of such complaints, the acts of transgression on the part of the *Noticees,* the details of which do not require reiteration at this stage, have actually resulted into violation of IA Regulations and PFUTP Regulations for which the *Noticees* have offered no *bonafide* explanation in their defence.

40. As the acts of the *Noticee no. 1* has been found to be in violation of the IA Regulations and PFUTP Regulations, the said violations are *ipso facto*, directly ascribed to the *Noticee nos. 2* and *3*, who being the Directors of the *Noticee no. 1* during the relevant time, were controlling its day to day affairs. Further, neither of the said two *Noticees* has pleaded ignorance of such violations nor has taken any other defence to plead discharge from the liability emanating from the said acts and omissions of the *Noticee no. 1*. It is an established principle of legal jurisprudence that the Directors are the repository of wisdom and brains behind all acts of a company which is merely an artificial person, hence, the *Noticee nos. 2* and *3* are to be held equally liable for the deeds and misdeeds of the *Noticee no.1* as an investment advisor. I may make a reference to the judgment of Hon'ble Supreme Court of India in *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152,* where Hon'ble Court have *inter alia* observed that: "33. *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated*

personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

41. Thus, in totality, the proceedings before me have resulted into establishment of the charges against the *Noticees* herein. The *Noticees* have not been able to persuade me as to how they cannot be held liable nor have they put any explanatory submissions so as to justify the acts so imputed to them by way of the *interim* order. Under the circumstances, I am constrained to observe that the gullible investors need to be protected from the violators like the *Noticees* and the securities market is required to be insulated from the likes of the *Noticees*, who have scant regard to the regulatory framework governing the spheres of the investment advisory business.

42. In view of the above, I find it appropriate that in order to achieve the avowed object of the SEBI Act and to protect the interest of investors, powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 be exercised and accordingly, I hereby pass the following directions:

i. The *Noticee nos. 1* to *3* are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of three (03) years from the date of this order. It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone on account of *interim* order shall be adjusted.

ii. The *Noticee no. 1* is directed to resolve the complaints pending against it in the SCORES and otherwise, within the period of 30 days from the date of this order.

iii. The *Noticee no. 1* shall within a period of 03 months from the date of this order, furnish a report to SEBI, duly certified by a Chartered Accountant, certifying that all the complaints against the *Noticee no. 1* have been resolved.

iv. In case of failure of the *Noticee no. 1* to comply with the aforesaid directions, the *Noticee no. 1* shall be restrained from accessing the securities market and further prohibited

from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of three (03) years.

43. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

44. Subject to the above, the restraint imposed on the *Noticee no. 1* from alienating the assets including the money in bank accounts etc., is directed to be discontinued.

45. The directions issued under the *interim* order against the employees/other persons working with the *Noticee no. 1* are directed to be discontinued.

46. The above order is without prejudice to the rights of SEBI to initiate any other in accordance with law.

47. The Order shall come into force with the immediate effect.

48. A copy of this order shall be forwarded to the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: APRIL 19TH , 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA