WTM/MB/WRO/WRO/5439/2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 and Regulation 35, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In Re: Violation of provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003

In respect of:

Sr. No.	Name of the Entities	Registration Number	PAN
1	**Star India Market Research (Proprietor Mr. Dharmendra Kumar)**	**INA000003627**	**AJZPL7369K**

Background:

1. Star India Market Research, proprietor Mr. Dharmendra Kumar (hereinafter interchangeably referred to as "Star India/ IA / Mr. Dharmendra Kumar/ Noticee") is registered as an Investment Adviser ("IA") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "IA Regulations") with effect from October 12, 2015. It has its registered office at 302, Mainashri Apartments, Nx janki Nagar, Indore, M.P. - 452001. Its website address is https://www.starindiaresearch.com.

2. Securities and Exchange Board of India ("**SEBI**") has been receiving complaints against Star India Market Research in SCORES portal wherein allegations viz., fraud, non-rendering of services, etc., have been made against the IA. While the complaints are forwarded to the IA for redressal in SCORES portal, taking into account the number and nature of complaints received against the IA, it has been felt necessary to examine the nature of the complaints, business model of the IA and the documents/ information submitted by IA at the time of seeking registration with SEBI. The year-wise details of the complaints received against the Noticee are as below:

Year	**Complaints received from investors**	**Complaints pending**
2015	2	Nil
2016	17	Nil
2017	60	Nil
2018	54	07
2019 (as on November 06, 2019)	68	31
Total	**201**	**38**

3. The observations made from the preliminary examination of the material on record are mentioned in the forthcoming paragraphs.

A. Business model of Star India:

4. The website of the Noticee states that:

a. The advisory business of the Noticee is based on 'subscription model'.
b. The fees charged is based on the product/ package subscribed and the subscription period.
c. In the name of advice, the Noticee provides tips/calls to its client.
d. The tips/ calls are given to clients through SMS and/or telephone support.
e. The tips/ calls, as per records available, are based upon technical analysis.

5. The Noticee, as part of its advisory activity, sells to its client's several packages, such as, Stock Cash, Blue Chip Tips, Swing Trades, Stock/Nifty Option, Commodity Market (MCX/NCDEX), HNI/Combo Pack etc., at various price points depending upon period of subscription. As per the details available on the website, the advisory fee varies from Rs 6,947/- to Rs 94,500/- and it offers all services through SMS and E-mail.

B. <u>Submission of incorrect experience details by the Noticee at the time of seeking Registration as an IA:</u>

6. As part of the preliminary examination made into the activities of the Noticee, the documents submitted by it at the time of seeking registration as an IA with SEBI were examined.

7. For the purpose of grant of Certificate of Registration as an Investment Advisor, an applicant has to satisfy the eligibility conditions laid down under Regulations 6 and 7 of the IA Regulations. The relevant provisions are produced below:

<u>Consideration of Application and eligibility criteria</u>

Regulation 6: For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —

(a)…

(b) whether in case the applicant is an individual, he is appropriately qualified and certified as specified in Regulation 7.

(c)…

(f) whether the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

Qualification and certification requirement

Regulation 7 (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.

8. The Noticee, which is a proprietorship, has been registered with SEBI as an investment adviser since October 12, 2015. It is observed from records available with SEBI that the proprietor, Mr. Dharmendra Kumar, holds a degree in Bachelor of Science from the Devi Ahilya University, Indore. At the time of seeking registration, the applicant had submitted an experience certificate of Arihant Capital Markets Limited (a SEBI registered Stock Broker) signed by one Mr. Krishna Yadav in his capacity as a SEBI registered sub-broker of Arihant Capital Markets Limited. It was certified in the experience letter that the applicant had worked at Arihant Capital Markets Ltd., under the sub-broker as a Supporting Financial Advisor from October 1, 2009 to February 5, 2015.

9. To determine the veracity of the said experience certificate, confirmation was sought from Arihant Capital Markets Limited regarding the authenticity of the experience certificate

submitted to SEBI by Mr. Dharmendra Kumar. In response, the compliance officer of Arihant Capital Market Limited has submitted the following:

a. Mr. Dharmendra Kumar was not working with Arihant Capital Markets Limited as mentioned in the experience certificate.
b. The certificate issued by the sub-broker has never been authorized by it.
c. The said sub-broker, Mr. Krishna Yadav, was registered with SEBI on 12.03.2010 and has been cancelled by SEBI on 30.12.2014.

10. Arihant Capital Markets Ltd. was also advised to obtain the comments of the sub-broker who confirmed that the said experience certificate was issued by him to Mr. Dharmendra Kumar.

11. The compliance officer of Arihant Capital Markets Ltd. further submitted that the sub-broker had no turnover after FY 2011-12 and application for cancellation of his registration was filed on 18.03.2014 and approved by SEBI on 30.12.2014.

12. As per the IA Regulations, one of the eligibility criteria for grant of registration is that where an applicant is an individual, he/ she shall be appropriately qualified and certified. The IA Regulations further require that an applicant who is a graduate in any discipline must have an experience of "*at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management*".

13. The experience letter submitted by Mr. Dharmendra Kumar states that "*This is to certify Mr. Dharmendra Kumar was working at Arihant Capital Markets Ltd. Under Mr. Krishna Yadav Sub Broker. As a Supporting Financial Advisor from 1st Oct 2009 to 5th Feb 2015.*" The Noticee, by virtue of this submission as the applicant has, *prima* facie, knowingly made an untrue and inaccurate representation of the facts on the following grounds:

a. While the experience letter mentions that Mr. Dharmendra Kumar was working under the sub-broker from October 01, 2009, till February 05, 2015, it appears that the operations

of the sub-broker have been inactive after March 31, 2012, in view of his nil turnover, as reported by the broker. In the absence of any active clients and no transactions being executed through the sub-broker, there is a preponderance of probability that after March 31, 2012, *prima facie*, the Noticee has had no occasion to gain any experience under the sub-broker as the operations have ceased. Therefore, if the Noticee, Mr. Dharmendra Kumar was working under the sub-broker from 12.03.2010 (the date of registration with the Broker) till 31.03.2012, then it would, *prima facie*, mean that Mr. Dharmendra Kumar had at most two years of actual experience of working in the securities markets as against the minimum requirement of five years. However, the fact that the sub-broker was not active should be known the Noticee in view of the absence of transactions after March 31, 2012, through the sub-broker. Despite this knowledge of the Noticee, he still misrepresented in his application for registration that he had five years of experience under the sub-broker. Therefore, the Noticee knew that he did not meet the minimum requirement of five years' experience and has knowingly misrepresented his experience details to SEBI when seeking registration.

b. The submission that he was working at Arihant Capital Markets Ltd., has also been denied by the broker and it has also submitted that the issuance of the experience letter was never authorized by it.

14. In view of the above, it appears that, *prima facie*, Mr. Dharmendra Kumar has not submitted true and accurate facts of his experience to SEBI at the time of seeking registration as an IA and that he was not appropriately qualified to seek registration. In effect, by obtaining registration from SEBI on the basis of, *prima facie*, incorrect information, the Noticee has also knowingly misrepresented to investors that he is competent to possess the certificate of registration as an investment adviser under the IA Regulations. Therefore, it can be, *prima facie*, held that the Noticee, by submitting incorrect information has obtained registration from SEBI as an investment adviser and has, *prima facie*, violated one of the conditions of certificate and the ensuing provisions of Regulation 13 of the IA Regulations. These provisions are reproduced below:

Conditions of certificate

Regulation 13: The certificate granted under Regulation 9 shall, inter alia, be subject to the following conditions:

(a) the investment adviser shall abide by the provisions of the Act and these regulations;
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted

15. Further, as per Schedule II of the SEBI (Intermediaries) Regulations, 2008, the criteria to determine a fit and proper person is as below:

Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter and the key management persons by whatever name called –

(a) integrity, reputation and character;
(b) absence of convictions and restraint orders;
(c) competence including financial solvency and networth
(d) absence of categorization as a wilful defaulter.

16. The submission of, *prima facie*, incorrect information at the time of seeking registration from SEBI, raises questions on the 'integrity and character' of Mr. Dharmendra Kumar. Further, his, *prima facie*, inadequate experience to function as a registered investment adviser also raises serious questions on his 'competence'. While the 'fit and proper person' criteria is

required to be satisfied at the time of seeking registration, I note that the requirement of satisfying the 'fit and proper person' criteria, being an ongoing requirement, the Noticee is required to satisfy the same continuously. I note that the questions raised on the integrity, character and competence of the Noticee would adversely affect his status as a 'fit and proper person' to operate as investment adviser.

17. The IA Regulations, *inter alia*, provide the framework for regulating the activity of entities who are in the business of providing investment advice in respect of securities and investment products. These Regulations seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring them to comply with the criteria set out in the relevant provisions. In view of this, requiring the investment advisers to have certain minimum qualifications indicating their competence and proficiency in the field of finance is imperative for the protection of interests of investors and to safeguard the integrity of the securities market. In the instant case, the Noticee is soliciting and inducing the investors to deal in securities market on the basis of his investments advice, stock tips etc., *prima facie*, without having the requisite qualifications as mandated under the IA Regulations. In view of this, it is apprehended that investors at large could be misled on account of the advice given by the Noticee as, *prima facie*, he lacks the knowledge and experience in financial products.

18. In view of the above observations, I find that, *prima facie*, the Noticee does not satisfy the requirements under Regulations 6(b) and 6(f) read with Regulations 7(1)(b) and 13(a) of the IA Regulations.

C. <u>Investor complaints received against the Noticee:</u>

19. The complaints received against the Noticee have been examined and the observations made in this regard are mentioned in the forthcoming paragraphs.

20. **Promising assured/guaranteed return to its clients:** It is observed that, *prima facie*, the Noticee has been promising assured high returns over telephone on the investment made by the clients and luring them to make even bigger investments by borrowing funds. The high returns are promised based on the advice/ tips/ calls given by the Noticee. The details of a few complaints received by SEBI are given below:

Client Name	Payment date	Name of the service	Return Assured (in Rs.)	Service Fee charged (in Rs.)
Venugopal V.J	June 2016 onwards	Panel Service Plan	Three time profit of the service fee	4,37,000
Shakthiyvelan	12.12.2018 to 15.12.2018	HNI Tips	20-30 lakhs	4,35,000
Mangal Marandi	30-05-2018 to 23-07-2018	Platinum Cash, HNI Tips	Huge profit	11,38,521
T P Srinivasa Vardhan	31.05.2018 to 29.10.2018	Stock Cash, Blue Chip Tips	1 crore	11,83,321

a. Complaint of Venugopal V.J: The complainant has attached a brochure of the Noticee on a service called "Panel Service Plan" in which it is stated that the client "*may get 3 times profit of the subscription amount till then your service will be continuing*". The client has stated that he paid around Rs.4.37 lacs to the Noticee as service fees and has lost around Rs.2 lacs in the market.

b. Complaint of Shri Shakthiyvelan: The complainant has stated that the Noticee has cheated him and made huge loss initially and then forced to upgrade packages for recovery of losses. He has paid around Rs. 4,35,000/- as fees in 3-4 days towards HNI tips packages for assured profit of Rs.20-30 lacs.

c. Complaint of Mr. Mangal Marandi: The complainant has stated that the Noticee took around Rs. 12 lacs from him with commitment of big profit. Initially they contacted him to buy their basic services for Rs.14333/- but they did not start the service after payment and lured him to subscribe to complicated services like HNI tips. Also, the Noticee has

caused him a loss of Rs. 1 lac in his demat account. Complainant has taken Rs. 10 lacs loan to pay the fees to the Noticee.

d. Complaint of Mr. T P Srinivasavaradan: The complainant has stated that he has paid Rs. 12 lacs for the advisory services of the Noticee and they told him that he would get a return of Rs. 1 crore. The Noticee also took the login credentials of the complainant and they have traded in his account and created loss of Rs. 3 lacs.

21. The Noticee, being a SEBI registered intermediary, is well aware of the fact that performance/ return on any investment in the securities market is subjected to market risk. In spite of knowing this, the Noticee has lured its clients by assuring them returns in lieu of subscriptions to its services. An investment adviser cannot sell services/ products by assuring returns to investors as is being done, *prima facie*, by the Noticee in the present case. I find that, *prima facie*, the Noticee has failed in its responsibility to act in fiduciary capacity towards its client and has failed to act honestly, fairly and in the best interests of the clients and in the integrity of the market.

22. **Charging unreasonable fee for same package:** It is observed that, *prima facie*, Star India has adopted unethical business practices/ modus operandi to hoodwink the clients into buying/ subscribing to the same package by promising either to make profits or to recover losses in order to maximize its fees. The details of such fees charged to certain clients who have complained to SEBI are mentioned below:

T P Srinivasavaradan					
Invoice date	**Service product**	**Duration**			**Service Charges (in Rs.)**
		Start	**End**	**No. of Days**	
31-05-18	Stock Cash	04-06-18	26-06-18	23	10001
12-06-18	Blue Chip Tips	02-07-18	10-07-18	9	15045
15-06-18	Blue Chip Tips	11-07-18	18-07-18	8	21664
15-06-18	Blue Chip Tips	19-07-18	07-08-18	20	70000
20-06-18	Blue Chip Tips	08-08-18	27-08-18	20	70000
25-06-18	Blue Chip Tips	28-08-18	26-09-19	29	100000
29-06-18	Blue Chip Tips	27-09-18	07-11-18	42	129339

30-06-18	Blue Chip Tips	08-11-18	04-02-19	89	205000
02-07-18	Blue Chip Tips	05-02-19	25-02-19	21	68000
02-07-18	Blue Chip Tips	26-02-19	26-02-19	1	2000
17-07-18	Blue Chip Tips	27-02-19	16-09-19	202	456164
29-10-18	Blue Chip Tips	17-09-19	03-10-19	17	36108

Dilip Raghunath Patil					
Invoice date	**Service product**	**Duration**			**Service charges (in Rs.)**
		Start	**End**	**No. of Days**	
29-08-18	Star One Shot Plan	03-09-18	05-09-18	3	6018
29-08-18	Star One Shot Plan	06-09-18	24-09-18	19	50001
30-08-18	Star One Shot Plan	25-09-18	12-11-18	49	124572
31-08-18	Star One Shot Plan	13-11-18	19-11-18	7	12036
05-09-18	Star One Shot Plan	20-11-18	10-12-18	21	49106
07-09-18	Star One Shot Plan	11-12-18	27-12-18	17	50009
08-09-18	Star One Shot Plan	28-12-18	15-01-19	19	50009
14-09-18	Star Short Term Plan	21-09-18	22-10-18	32	145635
22-10-18	Star One Shot Plan	16-01-19	18-03-19	62	120360
04-12-18	Star One Shot Plan	19-03-19	20-03-19	2	5055

V L Shakthiy Velan					
Invoice date	**Service product**	**Duration**			**Service charges (in Rs.)**
		Start	**End**	**No. of Days**	
12-12-18	HNI TIPS	17-12-18	17-12-18	1	3000
13-12-18	HNI TIPS	18-12-18	26-12-18	9	30000
13-12-18	HNI TIPS	27-12-18	30-01-19	35	150000
13-12-18	HNI TIPS	31-01-19	04-02-19	5	10000
13-12-18	HNI TIPS	05-02-19	07-02-19	3	10000
14-12-18	HNI TIPS	08-02-19	14-02-19	7	22000
14-12-18	HNI TIPS	15-02-19	11-03-19	25	100000
15-12-18	HNI TIPS	12-03-19	04-04-19	24	110000

Mangal Marandi					
Invoice date	**Service product**	**Duration**			**Service charges (in Rs.)**
		Start	**End**	**No. of Days**	
30-05-18	Platinum Cash	11-06-18	15-06-18	5	14333
31-05-18	Platinum Cash	18-06-18	22-06-18	5	16000
31-05-18	Platinum Cash	25-06-18	30-06-18	6	100000
01-06-18	Platinum Cash	31-07-18	27-08-18	28	80000

01-06-18	Platinum Cash	28-08-18	05-09-18	9	20000
01-06-18	Platinum Cash	06-09-18	12-09-18	7	16000
01-06-18	Platinum Cash	13-09-18	14-09-18	2	5000
04-06-18	Platinum Cash	17-09-18	25-09-18	9	20000
04-06-18	Platinum Cash	26-09-18	11-10-18	16	40000
07-06-18	Platinum Cash	12-10-18	15-11-18	35	107000
07-06-18	Platinum Cash	16-11-18	23-11-18	8	27000
07-06-18	Platinum Cash	26-11-18	30-11-18	5	10000
07-06-18	Platinum Cash	03-12-18	01-07-19	211	101000
08-06-18	Platinum Cash	02-07-19	18-07-19	17	50000
08-06-18	Platinum Cash	19-07-19	29-07-19	11	20000
08-06-18	Platinum Cash	30-07-19	06-08-19	8	8000
08-06-18	Platinum Cash	07-08-19	16-08-19	10	26800
11-06-18	Platinum Cash	19-08-19	22-08-19	4	10000
11-06-18	Platinum Cash	23-08-19	26-08-19	4	5000
14-06-18	Platinum Cash	27-08-19	02-09-19	7	10000
15-06-18	Platinum Cash	03-09-19	09-09-19	7	10000
15-06-18	Platinum Cash	10-09-19	11-09-19	2	5000
15-06-18	Platinum Cash	12-09-19	19-09-19	8	20000
15-06-18	Platinum Cash	20-09-19	23-09-19	4	6000
16-06-18	Platinum Cash	24-09-19	26-09-19	3	9000
22-06-18	HNI Tips	23-07-18	24-07-18	2	10000
22-06-18	Platinum Cash	27-09-19	07-10-19	11	20000
23-06-18	Platinum Cash	08-10-19	10-10-19	3	9055
23-06-18	Platinum Cash	11-10-19	14-10-19	4	5000
23-06-18	Platinum Cash	15-10-19	16-10-19	2	5000
28-06-18	HNI Tips	25-07-18	16-10-18	84	333333
23-07-18	HNI Tips	17-10-18	23-10-18	7	20000

23. The following observations can be made from the above tables:

a. While the duration of the first subscription to the package has not even started, the client has already been subscribed multiple times to the same package for different durations. For e.g., the client Mr. T P Srinivasavaradan was first subscribed to the "Blue Chip Tips" package on June 12, 2018, for a duration of 9 days starting from July 02, 2018. Even before the start of the duration of this first subscription, the client has been subscribed six more times to the same package for a different durations and has been charged a service fee of Rs. 5,96,003/-. Similarly, the client Mr. V L Shakthiy Velan has been subscribed

seven times to the same package, "HNI Tips", even before the first subscription has started. A total service fee of Rs. 4,35,000/- has been charged to the client.

b. The client is charged an advance fee for a service which will start 3-4 months after the payment. For e.g., the client Mr. T P Srinivasavaradan has been charged Rs. 2,05,000/- on June 30, 2018, for a service which will start after 4 months in November 2018. Similarly, Mr. Mangal Marandi has been charged Rs. 1,07,000/- on June 07, 2018 for a service which will start after 4 months in October 2018.

c. The client has been charged for the same package multiple times on the same day for different durations which will start in the future. For e.g., Mr. V L Shakthiy Velan has been cumulatively charged Rs. 2,00,000/- on the same day for four subscriptions to the same package for different durations in the future. Similarly, client Mr. Mangal Marandi has been charged Rs. 2,45,000/- on the same day for four subscriptions to the same package for different durations in the future.

d. It appears that Star India does not to have a consistent fee model and duration for the packages being offered.

24. As per the prescribed Code of Conduct, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Charging of reasonable fees includes not only the quantum of fees to be charged for a particular service but also the mode or manner in which the fees are levied on the clients. From the above observations, it can be seen that the Noticee has accumulated a huge amount of service fee from the clients by allotting multiple subscriptions of the same package in a very short span of time even before the service is delivered to the client. It is also observed that the clients are made to pay for multiple subscriptions to the same package on the same day. It would be in the best interests of the client that instead of being charged in advance for services that are to be delivered much in the future, the payment for any subsequent service is taken only after the period of the current subscription/ service has ended and the client has had the opportunity to use and experience the service first. I find that,

prima facie, the manner in which the Noticee has charged fees to its clients is purely meant to generate more and more service fees for itself and is clearly not in the best interests of the clients. Therefore, I am of the, *prima facie*, view that the Noticee has collected an unreasonable quantum of fees from its clients in an unfair manner.

25. **Clients forced to pay additional fees:** It is observed that, *prima facie*, the Noticee has lured the client to make part payments towards subscriptions for its packages and thereafter refuses to provide the service unless the client makes additional payment. The details of such complaints made to SEBI are mentioned below:

    a. In his complaint made in SCORES, Mr. Shakthiy Velan has stated that he was given a strict deadline to make the payment else the package would be become void. Further, he has stated that after he had made part payment towards the package, he was forced to make additional payment and only then tips would be provided.

    b. In his complaint made in SCORES, Mr. Manoj Shrivastava has stated that the Noticee initially asked him to pay Rs. 18,000/- for assured benefits of 5-6 times this amount. After he made this payment, the Noticee informed him that he would not be given any service for Rs. 18,000/- but he has to deposit another Rs. 1.09 lacs for assured service.

26. From the details gathered from the complaints received against the Noticee, it appears that, *prima facie*, the Noticee has adopted dishonest business practices/ modus operandi, such as, (a) promising assured returns, (b) threatening to not provide services until additional payment is made in order to lure the clients into buying/ subscribing to multiple subscriptions of the same package and (c) charging unreasonable fees to its clients. These acts of the Noticee are in complete disregard to the responsibility entrusted on it under the IA Regulations to act in fiduciary capacity and in the best interest of its clients. It appears that the Noticee has kept its own interest ahead of the client's interest.

D. Non-rendering of advice even after receipt of fees

27. There are complaints against the Noticee stating that the client has paid the required services fees but in return the Noticee has neither rendered any advisory services nor has refunded the money. The details of a few such complaints are mentioned below:

    a. Complaint of Mr. Rajesh Kumar: The complainant has stated that he has paid fees amounting to Rs. 2,94,547/- in tranches to avail the services; however, neither has the Noticee rendered any advisory services nor has it refunded the money.

    b. Complaint of Mr. Tejas Mohan Bhasme: The complainant has stated that he has paid amounting to Rs. 7,23,662/- in tranches for subscription packages. He has been forced to upgrade to premium services and the services were also changed without his knowledge. He has requested for refund of money from the Noticee who has not paid any heed to his request nor has provided him with any services.

28. I note that in terms of Regulation 15 (1) of the IA Regulations, an investment adviser shall act in a fiduciary capacity towards its clients. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct prescribed for an Investment Adviser under the IA Regulations, relevant provisions whereof are reproduced below:

Code of Conduct for Investment Adviser

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.

...

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. ...

29. In view of the preceding observations regarding the dealings of the Noticee with its clients, I find that, *prima facie*, the Noticee has failed in its primary responsibility to act in fiduciary capacity towards its clients and thereby has violated Regulation 15 (1) of the IA Regulations. I am also of the, *prima facie*, view that the activities of the Noticee are not in the best interests of the clients and thereby the Noticee has contravened Clauses 1, 2, 6 and 8 of the Code of Conduct, Schedule III, read with Regulation 15 (9) of the IA Regulations.

E. Fraudulent activities of the Noticee

30. It, *prima facie*, appears that the proprietor of the Noticee, Mr. Dharmendra Kumar, has knowingly given incorrect information to SEBI at the time of seeking registration as an investment adviser. This raises questions on the 'integrity and character' of Mr. Dharmendra Kumar. Moreover, his, *prima facie,* inadequate experience to function as a registered investment adviser seriously erodes his 'competence'. These, *prima facie*, leads to questions on his ability to satisfy the requirement of a 'fit and proper person', on an ongoing basis, and to operate in the securities market. By obtaining registration from SEBI on the basis of submitting, *prima facie*, incorrect information, the Noticee has also knowingly misrepresented to investors that he is competent to possess the certificate of registration of an investment adviser under the IA Regulations.

31. I also note that an investment adviser cannot make a false statement without reasonable ground for believing it to be true, as mandated in SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations). Knowing fully well that all investment in the securities market in respect of which it was offering investment advice are subject to market risk, the Noticee has lured its clients by assuring them returns in lieu of them subscribing to its services. The activities of the Noticee discussed above, *prima facie*, show that it was actually not practicing investment advisory in the manner envisaged under the IA Regulations. From the findings of the preliminary examination, it, *prima facie*, appears that the Noticee was running a pre-meditated device/ plan/ scheme whereby, the tele-callers/ employees/ representatives of the Noticee would lure gullible investors by making unrealistic profit commitment and then more and more money would be extracted from them by refusing to provide any services if further payment was not made. Moreover, the business model of the Noticee is focused on extracting more and more service fee from its clients, in a short span of time, by subscribing them to services which would start much later in time and by doing so, the Noticee has charged unreasonable fees to its clients. Further, I, *prima-facie*, find that the Noticee by knowingly furnishing incorrect information to SEBI has in effect made a representation to the investing public that it is competent to possess the certificate of registration as investment adviser with required experience.

32. The above discussed activities of the Noticee are, *prima-facie*, fraudulent and are covered under the definition of 'fraud' under Regulation 2(1)(c) of the PFUTP Regulations, which provides as under:

> *"(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 …"

33. I also refer and rely on the below mentioned provision relating to the prevention of fraud under the SEBI Act and the PFUTP Regulations:

SEBI Act, 1992

"12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(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"

34. It is noted that, *prima facie*, the fraudulent activities/ dealings of the nature discussed above are prohibited under the provisions of Section 12A (a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations. Therefore, I find that the Noticee has violated these provisions.

35. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. The IA Regulations have been formulated with the main objective of regulating the activities of investment advisers so as to safeguard the interests of investors and hence the requirements/ conditions laid down therein have to be mandatorily followed.

36. Since the conduct of Star India Market Research, Proprietor Mr. Dharmendra Kumar, mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market, necessary action has to be taken against him immediately, else it may lead to loss of investors' trust in the securities market. The, *prima facie*, finding that the proprietor Mr. Dharmendra Kumar has knowingly misrepresented to SEBI information regarding his experience at the time of seeking registration, is not in the interest of investors. If a person who is not adequately experienced as required under the IA Regulations and his/ her competence in providing investment advice is in serious question, then permitting such a person to continue to render investment advice is not in the interest of the investors who are seeking his investment advice. Further, there are also the, *prima facie*, findings that the Noticee is defrauding investors by assuring returns on investments in the securities market and charging them unreasonable fees. Considering the facts and circumstances of the case, I am convinced that this is a fit case where, pending detailed examination, effective and expeditious preventive action is required to be taken by way of *ad interim ex-parte* order to protect the interests of investors and preserve the safety and integrity of the securities market. There is an urgent need to stop the investment advisory activities of the Noticee and the balance of convenience is not in favour of permitting the Noticee to carry out such activities without imposing reasonable restrictions on him.

37. While action needs to be taken not only to prevent any further harm to existing clients of the Noticee but also to protect prospective clients, it also needs to be ensured that existing clients who have already made payment to the Noticee for its services are not inconvenienced. Permitting the investment advice to be delivered to the existing clients may not be against the

interest of those investors as it is also observed that the Noticee has been registered with SEBI since October 12, 2015, and as such has been in the field of investment advisory services for four years. Though this cannot supplant the original requirement of experience, however, the same need not come in the way of permitting the Noticee to extend the investment advisory services to the existing clients, to the extent of services already paid for, especially as the same is in order to avoid inconvenience to the existing clients.

Order

38. In view of the above, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11B and 11D of the SEBI Act, 1992, and Regulation 35 of Chapter VI of the SEBI (Intermediaries) Regulations, 2008, hereby issue the following directions against the Noticee, Mr. Dharmendra Kumar, proprietor of Star India Market Research (SEBI Registration Number: INA000003627 and PAN: AJZPL7369K):

    a. The Noticee and any other employee/ person working under him/ under his instructions shall cease and desist from soliciting/ acquiring any fresh clients for investment advisory services and undertaking the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.

    b. The Noticee and any other employee/ person working under him/ under his instructions shall cease and desist from offering any new investment advisory services to its existing clients for which fresh payment is required to be made by these clients. It is clarified that the services for which the existing clients have already made payment to the Noticee shall be duly delivered to these clients and no renewal of these services shall be permitted.

    c. The Noticee and any other employee/ person working under him/ under his instructions shall discharge all their obligations, as required under the SEBI (Investment Adviser) Regulations, 2013, towards the existing clients in respect of the investment advisory services that it has to deliver as mentioned in para 38 (b) above.

d. The Noticee shall circulate a copy of this Order to all its existing clients and display the contents of the same on its website immediately.

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

40. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entity in accordance with law. The person against whom this Order has been passed may file his objections, if any, within twenty one days from the date of this Order and, if he so desires, avail himself of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request, received from the said person.

Date: November 13, 2019 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA