

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, SEBI (Portfolio Managers) Regulations, 1993, and SEBI
(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market)
Regulations, 2003**

In respect of:

Sr. No.	Name of the Entities	Registration Number/DIN	PAN
1	3M Team Research Pvt. Ltd. (formerly known as 3M Team Security Services Pvt. Ltd.)	INA000002199	AAACZ5112B
2	Mr. Rakesh Sethi, Director	-	ATIPS2321R
3	Mr. Pramod Jain, Director	-	AOAPJ9120L

Background:

1. 3M Team Securities Services Pvt. Ltd. (hereinafter interchangeably referred to as “3M/ IA / 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 September 09, 2014. The name of the company was changed

to 3M Team Research Private Limited with effect from December 30, 2016. The present Directors of the company are Mr. Rakesh Sethi and Mr. Pramod Jain. The company has its registered office at 325, Milinda Manor, RNT Marg, Opposite Central Mall, Indore - 452001. Its website address is <http://www.3mteam.in>.

2. A total of eight (08) complaints were received against the Noticee from the start of its registration till date through SCORES. Out of these complaints, six (06) complaints have been lodged by one complainant, namely, Mr. Vikas Jain on various dates. Five (05) complaints were disposed of for want of documents/ information from the complainants. Thereafter, Mr. Vikas Jain, vide his letter dated October 31, 2018, submitted additional documents to SEBI in support of his allegations made against the Noticee. The said letter was taken as a fresh complaint and the following allegations have been made by the complainant:
 - a. Vide email dated January 29, 2014, the complainant e-mailed the Noticee to enquire about some short term and long term delivery based investment stocks. The complainant has alleged that Mr. Rakesh Sethi, director of the Noticee, insisted on opening a Demat and Trading Account for him in Arihant and vide e-mail dated February 07, 2014, the Noticee enclosed the account opening forms for further processing.
 - b. Thereafter, vide e-mail dated April 04, 2014, the Noticee enclosed the details of the 'Wealth Creator BTST Scheme' to the complainant. Further, the Noticee has taken Rs. 20,000/- on April 02, 2014, in the name of providing Portfolio Management Service (PMS) and offered assured returns to the tune of 200-400 percent per annum. The complainant has stated that he also paid Rs. 2 lakhs to Arihant for trading purposes.
 - c. Mr. Rakesh Sethi, CEO of the Noticee represents himself as a SEBI Registered Portfolio Manager and a registered Sub-Broker of Arihant Capital Markets Ltd. (hereinafter referred to as "Arihant"). The complainant submitted that the Noticee started trading on his account and handled his portfolio, due to which there were losses in his account.

- d. The complainant submitted the webpage from the website of the Noticee depicting the salient feature of the PMS Advisory Service offered by it. The complainant has also provided screenshots of job openings advertisement for PMS Executives made by the Noticee on recruitment websites. The complainant also submitted e-mails sent to Mr. Rakesh Sethi, director of the Noticee and to the broker Arihant.

Examination into the affairs of the Noticee and prima facie findings:

3. Based on the above mentioned details, a preliminary examination into the affairs of the Noticee was carried out. The observations in this regard are given in the succeeding paragraphs.

A. Offering unregistered portfolio management services:

4. From the screenshots of the website of the Noticee submitted by the complainant, it can be seen that the Noticee, as part of its services, is holding itself out as a portfolio manager by claiming to offer PMS Advisory Service. While the present website does not have such a service offering, the archives of the website of the Noticee were examined. It is observed that in the year 2014, the Noticee had advertised on its website that it offers PMS Advisory Services.
5. The complainant has also submitted an invoice dated April 02, 2014, issued by the Noticee, wherein he has paid Rs. 20,000/- to the Noticee for a product termed as 'PMS'. An email dated April 08, 2014, sent from the Accounts Department of the Noticee to the complainant, mentions that the invoice pertains to payment in PMS Service.
6. From the above mentioned material available on record, there is a *prima facie* finding that the Noticee has held itself out to be a portfolio manager. I note here that the Noticee is not registered with SEBI as a portfolio manager. There is evidence that, *prima facie*, the Noticee has (a) held itself out as a portfolio manager, (b) provided the portfolio management service

to its client(s) and (c) charged service fee from client(s) for the same without obtaining the necessary certificate of registration as mandated under Section 12(1) of the SEBI Act, 1992, and Regulation 3 of the SEBI (Portfolio Managers) Regulations (hereinafter referred to as the “PMS Regulations”). These provisions are reproduced below:

3. Registration as portfolio manager.—

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations...

Section 12 (1) of the SEBI Act, 1992:

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

7. In view of the above, I note that the Noticee has, *prima facie*, violated provisions of Section 12(1) of the SEBI Act, 1992, read with Regulation 3 of the PMS Regulations.

B. Offering unrealistic/ assured returns:

8. It is observed from archives of the website of the Noticee that it has a scheme called the “Wealth Creator Stock Future/BTST/STBT Scheme”, which, while comparing itself with other investment avenues such as Bank FDs, mutual funds, etc., claims to provide a returns to the tune of 200 to 400 percent per annum. The complainant, Mr. Vikas Jain, was also provided the details of this scheme by the Noticee. While presently the details of this scheme on the website of the Noticee do not mention any potential returns, it is observed from archives that

potential returns from this scheme have been advertised in the years 2014, 2015, 2016, 2017 and 2018. The following claims are made as part of the salient features of this scheme:

- a. One Daily Call in Future...*with sure shot and money making call.*
- b. In One Quarter: *Return Per Month: 40000-50000*

It is mentioned that using this scheme unexpected and unbelievable return can be generated.

- 9. Further, as part of the offering of PMS Advisory Services, it is mentioned that in the Equity and Commodity markets there will be an Assured Return of 10% per month and an Expected Return of 20% to 40% per month.
- 10. Scrutiny of the website of the Noticee shows that the Noticee is presently advertising a service/product named 'Modi 2019 to 2024 (Multibagger calls)' and one of the feature of this service/product is an expected return of 100-200 percent.
- 11. The role of an "investment adviser", as envisaged under the IA Regulations, is to merely render investment advice to its clients, which is based on their financial situation, investment experience, investment goals, etc. The Regulations do not envisage any such scheme or practice through which the Investment Adviser will attract clients by committing any unrealistic/ assured returns to the clients. I note that the website of the Noticee has displayed messages of its services being able to generate unrealistic returns to the tune of 200-400%. The website of the Noticee also presently displays the message that a certain service offered by it can fetch an expected return of 100-200%. The Noticee has displayed such messages despite being fully aware that any investment in the securities market is subject to market risk. It is noted that even the claims of "expected return of 100-200%" in the securities market gives false and misleading information to the public investors. In any case it can be, *prima facie*, considered that the Noticee has made a representation in a reckless and careless manner. The said information is likely to influence the decision of investors dealing in securities. Any information that a SEBI registered intermediary puts out for the consumption of its existing

and prospective clients has to be done with great responsibility and should be of such a nature that it enables investors to take reasoned and unbiased decisions regarding their investment. There is a preponderance of probability that in order to lure clients to avail its services, the Noticee has displayed messages of unrealistic returns on its website.

12. In view of the above, there is a *prima facie* finding that the Noticee has offered unrealistic returns to its clients. An investment adviser is required to comply with SEBI Act and other applicable Regulations. An investment adviser cannot make a false statement without reasonable ground for believing it to be true as mandated in the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations). An investment adviser cannot sell services/ products with expected returns to investors as was being done by the Noticee in the present case. Knowing fully well that all investment in stocks, derivatives, commodity derivatives, etc., in respect of which it was offering investment advice are subject to market risk, the Noticee was falsely promising unrealistic returns on investments and has displayed the same on its website.
13. The above discussed activity of the Noticee is, *prima facie*, fraudulent and is covered under the definition of 'fraud' under Regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("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 ...”*

14. It is noted that the *prima facie* fraudulent activity of the nature discussed as above is 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, the provisions of which are reproduced hereunder:

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”

15. In view of the material available on record, I, therefore, *prima facie* find that the Noticee has contravened 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.

16. Further, in terms of Regulation 15(9) of the IA Regulations, every investment adviser shall abide by the Code of Conduct specified in the Third Schedule, the 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. ...

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. ...

17. In view of the above, by displaying messages of unrealistic returns, I find that the Noticee is also in *prima facie* violation of Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the IA Regulations.

C. Activities of Mr. Rakesh Sethi, Director of the Noticee:

18. It is observed that the complaint of Mr. Vikas Sethi was referred for arbitration at the National Stock Exchange (NSE) against Arihant Capital Markets Ltd. and its Authorized Person (AP), Mr. Rakesh Sethi. The initial arbitration award dated January 30, 2019, and appellate arbitration award dated April 26, 2019, have been passed against Arihant and Mr. Rakesh Sethi, with the following findings:

- a. The complainant has opened a trading and demat account with Arihant only due to the assured high return offered by the Noticee and confirmation given by its employees.

- b. The control over the funds in the trading account of the complainant vested with Mr. Rakesh Sethi.
- c. No trade instructions have been given by the complainant and the effective investment decisions in the account were taken by Mr. Rakesh Sethi. As such, the entire trading activity in the account of the complainant is unauthorized.
19. It is observed from the Action Taken Report (ATR) filed by the Noticee in SCORES, the total claim of Rs. 1,33,952/- awarded to the complainant has been paid towards full and final settlement. Hence, the arbitration award has attained finality and in the absence of any appeal against the award, its findings have been accepted by Mr. Rakesh Sethi.
20. From the findings in the arbitration awards and on the basis of the material available on record, I find that, *prima facie*, Mr. Rakesh Sethi, in his capacity as director of the Noticee, has used the contents of the website of the Noticee stating assured returns and the services of the employees of the Noticee who have confirmed such assured returns, to lure the complainant to open a trading and demat account with Arihant. The arbitration award concludes that the trading in the account of the complainant is unauthorized, Mr. Rakesh Sethi had control over the funds in the trading account of the complainant and all decisions regarding the same have been taken by Mr. Rakesh Sethi. The act of Mr. Rakesh Sethi in inducing the complainant by misusing the corporate entity's website and employees for his own personal gain as an AP, amounts to *prima facie*, a scheme or artifice to defraud investors like the complainant. Hence, Mr. Rakesh Sethi has, *prima facie*, engaged in a manipulative and deceptive practice by way of which he has defrauded the complainant, who is an investor in the securities markets.
21. I, therefore, *prima facie* find that Mr. Rakesh Sethi has contravened Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) of the PFUTP Regulations.

22. 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.
23. From records available, it is seen that the Noticee has submitted an application for the surrender of its IA registration and requested SEBI to change its structure from company to proprietorship under Mr. Rakesh Sethi, which is tantamount to a change in constitution of the Noticee. This application has been kept on hold pending the current examination going on. It is observed that the website of the Noticee is still active and as already mentioned above, one of the services offered by the Noticee mentions the expected return to be 100-200%. The Noticee also has a page on Facebook and is active on the same, with the last post being as recent as November 19, 2019. Hence, the likelihood of existing and new investors being attracted to this service and availing the same continues. The conduct of the Noticee as mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market. Necessary action needs to be taken in this matter to prevent the Noticee from taking any new clients and also protect the existing investors.
24. I note that as per submissions of Arihant, Mr. Rakesh Sethi is no longer associated as an AP with it. However, the risk of him using different kinds of *modus operandi* to defraud unsuspecting investors in the securities markets and carrying out unauthorized trades in their trading accounts or on their behalf still exists. Further, as Mr. Rakesh Sethi continues to be the director of the Noticee, the risk of him luring investors using the unrealistic/ assured returns advertised by the Noticee also exists. The conduct of Mr. Rakesh Sethi as mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market. Necessary urgent action needs to be taken in this matter to protect investors in the securities market from Mr. Rakesh Sethi.

25. Hence, 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 an *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 investment adviser and the balance of convenience is not in favour of permitting the Noticee to carry out investment advisory activities without imposing suitable restrictions. Such action needs to be taken not only to prevent any further harm to existing clients of the Noticee but also to protect prospective clients. Similarly, the balance of convenience is also not in favour of permitting Mr. Rakesh Sethi to be active in the securities market in any manner.

Order

26. 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, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby issue the following directions:

- a. The Noticee and its present directors, and any person while working under it/ them or under its/ their instructions as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.
- b. The Noticee, as ensured by the present directors, shall remove all references made by it through any media (physical or digital) regarding (i) holding itself out as a portfolio manager and (ii) expected returns from services/ products offered by it.
- c. Mr. Rakesh Sethi, director of the Noticee, is restrained from buying, selling or dealing in the securities market or associating himself with the securities market, either directly or indirectly, in any manner whatsoever, till further directions.

d. The Noticee shall display the contents of this Order on its website and other social media platforms immediately.

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

28. 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.

29. A copy of the Order shall be sent to all Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure that all the above directions are strictly enforced.

Date: November 26, 2019

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA