

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
INTERIM EX PARTE ORDER**

Under Sections 11(1), 11(4), 11B and 11D of the Securities and Exchange Board of India Act, 1992 and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

**In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
and
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of:

S. No.	Name of the Entity	PAN
1	M/s. Money Desire Research	AAYFM6388F
2	Mr. Anoop Kumar Tiwari	ALLPT5927F
3	Mr. Raghvendra Singh	CHPPS6375C

In the matter of Money Desire Research

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1. M/s Money Desire Research, (hereinafter referred to as “**MDR**” / “**IA**”) is registered as an Investment Adviser under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations**”) with effect from December 05, 2014 under SEBI Registration No. INA000002454. MDR is a partnership firm having Mr. Anoop Kumar Tiwari and Mr. Raghvendra Singh as partners. The registered office of MDR is at 63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh-452001. Its website address is <http://moneydesireresearch.in>.

2. Securities and Exchange Board of India (“SEBI”) has been receiving a number of complaints against MDR. Till October 23, 2019, a total of 129 complaints have been received against MDR in SCORES portal, out of which 100 are unique complaints. It is noted that the complaints are, at times, trigger points for conduct of enquiry. There could be cases where the complaints might have been settled. However, the regulatory/enforcement issues raised by the complaints need to be addressed from enforcement perspective. The number of complaints pending for resolution by MDR as on October 23, 2019 is as under:

Year	Pending Investors Complaints as on October 23, 2019
2018	3
2019	8
Total	11

3. SEBI conducted an examination in relation to the affairs of MDR. The examination entailed, *inter alia*, an analysis of the details available on the website of MDR, complaints filed by the complainants against MDR & documents attached with complaints, Risk Profiling Form (hereinafter referred as “RPF”), KYC, invoices, emails correspondence, etc. and bank account details of MDR. The prima facie findings based on the examination are noted in the subsequent paragraphs.
4. In view of the facts and circumstances of the case and a preliminary examination of the material available, the following issues arise in the instant matter on a *prima facie* basis:
- Whether MDR has, prima facie, violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”) and IA Regulations?***

2. *If answer to issue no. 1 is in affirmative, whether the partners of MDR are responsible for the violations committed by MDR?*
3. *If answer to issue no. 1 & 2 is in affirmative, whether urgent directions, if any should be issued against Money Desire Research and its partners?*

ISSUE NO. 1: Whether MDR has prima facie, violated the provisions of PFUTP Regulations and IA Regulations?

5. Upon examination the following *prima facie* findings are observed against Money Desire Research:

Examination of the details available on website of MDR:

6. From the details available on the website of the MDR, it is observed that -
 - 6.1. The advisory business of MDR is based on 'subscription model';
 - 6.2. The fees charged is based on the product/ package subscribed and the subscription period for the product is quarterly, half-yearly, etc.;
 - 6.3. MDR provides stock tips to its client through SMS;
 - 6.4. MDR provides telephonic and online assistance to its clients.
 - 6.5. MDR offers packages namely Stock Cash/Futures/Options, Index Futures/ Options, MCX (Classic/HNI), NCDEX (Classic/HNI), Currency Futures etc. to its clients as part of its advisory activity.
 - 6.6. The charges for the aforesaid packages depends upon the period of subscription. The advisory fee varies from Rs. 15,000/- p.m. to Rs. 7,00,000/- p.a.
 - 6.7. The payment to subscribe to the services can be made directly to the bank accounts opened in the name of Money Desire Research with HDFC Bank (A/c No. 50200011985657), ICICI Bank (A/c No. 024105501575), Axis Bank (A/c No. 917020056411464), Bank of India (A/c No. 885320110000323) the details of which were mentioned on their website.

MDR promised committed/expected and target returns to its clients:

7. Upon analysis of complaints filed by the complainants against MDR & documents attached with the complaints, it is observed that MDR while interacting with clients has been conveying expected returns/committing target returns to its clients on the investment made by the clients based on the advice/ tips given by MDR.
8. Extract of the relevant portion of the complaints is reproduced below which shows that the complainants were given to understand that committed/expected returns will be delivered by MDR.

8.1. Complaint of **Mr. Kiran Aravalli** (SEBIP/MP18/0000300/1):

- 8.1.1. Vide letter dated July 16, 2018 (attached to SCORES complaint), Mr. Kiran Aravalli has inter-alia alleged that MDR has made false promise of returns of Rs. 1 crore within 3 months. He has also mentioned in the said letter that he is a differently-abled person and submitted certificate of the same and in spite of knowing this fact, MDR looted him and made a loss of Rs.18.50 lacs by giving fake promises. He has submitted the proof of payment made to MDR of Rs.18.50 lacs.
- 8.1.2. Complainant, Mr. Kiran Aravalli has submitted copy of email dated July 15, 2017 sent by MDR. The extract of the email is produced below:

*“Equity Umbrella:- Customer will get all equity product with intraday, BTST, weekly levels and short term holdings.
Required Investment: 5 Lac
Expected Return: 1 to 1.5 lac/day
Management Charges: 8 lac”*

- 8.1.3. Thus, from the above prima facie it appears that MDR has conveyed expected returns/profits to the complainant, Mr. Kiran Aravalli.

8.2. Complaint of **Mr. Ajay Sharma** (SEBIE/MP18/0002006/1):

8.2.1. Vide complaint dated June 30, 2018, Mr. Ajay Sharma has inter-alia alleged that MDR has charged Rs.2,25,000 (plus Rs. 5,000 for registration) but did not provide the service as per the commitment.

8.2.2. Vide email dated September 23, 2019, Complainant, Mr. Ajay Sharma has submitted evidence of email of MDR dated May 23, 2018 wherein it is mentioned that MDR is launching auto points plan having following features and thereby committing returns of Rs.10 Lacs. The extract of the email is produced below:

“We provide 1000 Redeemed points in this plan Each point would be calculate of rs.1000.

Completing of our 1000 points You will get $1000 \times 1000 = 10,00,000/-$ (10-12 lakh.)

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Our best experience to cover these whole points with in 50 to 60 trading session or whenever you will not get the whole profit according to the commitment till the time your services not going to be end.

Our charges on whole 1000 points is INR- 2,25,000/- excluding GST.”

8.2.3. Thus, from the above prima facie it appears that MDR has induced complainant, Mr. Ajay Sharma by promising committed returns/profits.

9. It is noted that the aforesaid analysis of the complaints are on sample basis. However, apart from above referred complaints, there are various other complainants in SCORES wherein complainants have alleged that MDR is luring them by promising committed/expected returns and extorting more and more amount towards service charges.

10. Further, upon perusal of the various products/services displayed on the website of MDR <http://moneydesireresearch.in> it is observed that as a product feature, most of the products also include % of accuracy. The details of which are as follows:

➤ In “About us” page it is mentioned that *“We assure more than 90% accuracy in our recommendations and provide second to none customer support.”*

➤ In premium service Rhodium Cash it is mentioned as *“We provide 3-4 intraday cash call in this service with a accuracy of more than 90% in NSE/BSE you will get”* In “Swing Cash+” product it is mentioned *“We provide you around 3-4 cash positional based calls in a week” “High return of 8-9% on each call”.*

- In its product “Swing Future+” it is mentioned that “We provide you around 3-4 positional Future Calls in a week, Target of Rs.8000-9000”
- Further, in its product “Premium Swing Options+” it is mentioned that “We provide you around 3-4 positional stock options calls in a week, Target of Rs.5000-7000”
- In its product “Premium Stock Future”, “Premium Stock Options”, “Rhodium Future” it is mentioned that “2-3 premium positional Futures Calls per week, you will get 3-5% average return on positional calls”

11. It is noted that MDR provided tips/ tele-messages pertaining to products of different segments of securities market viz. equity cash segment, equity derivatives segment, index derivatives, commodity derivatives, etc., which are traded on the exchange platform. The performance/ return / profits on investment in such securities cannot be predicted and is subject to market risk.

12. Thus, from the above it is observed that MDR, while knowing very well that the investment by clients based on the advice given by IA, is subject to market risk, has promised committed/expected and target returns / profits to its clients on the investments made by the clients. It is a well-known fact that returns / profit on investments in stocks/ products in equity derivatives, currency derivatives and commodity derivatives are subject to market risk. It is noted that even the claims of “expected returns” or the commitment of target returns in the securities market gives false and misleading information to the public investors. 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. This act of conveying expected returns/committing target returns is prima facie, indulged for the purpose of luring more customers in its net and thereby increasing the income of the Investment Adviser.

13. In view of the above, MDR has prima facie failed in its responsibility to act in fiduciary capacity to its clients which is entrusted upon him under Regulation 15 (1) of IA Regulations. The above conduct is also an act of being dishonest on the part of MDR and also not acting

in the best interest of the clients. MDR has prima facie failed to abide by clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with Regulation 15 (9) of IA Regulations. Thus, MDR has prima facie violated the provision of clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations referred in paragraph 39.

14. An investment adviser is required to comply with SEBI Act and other applicable Regulations. An IA cannot make a false statement without reasonable ground for believing it to be true as mandated in PFUTP Regulations. An investment adviser cannot sell products by conveying expected returns/committing target returns to investors as was being done by MDR in the present case. MDR was falsely conveying expected returns/committing target returns to investors knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk. Such assurance of high returns is *prima facie* fraudulent and is covered within the definition of ‘fraud’ as defined in Reg. 2(1)(c) of PFUTP Regulations which states that *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment*. I also peruse Regulation 4(1) of the PFUTP Regulations which states as follows:

“4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Thus, by conveying expected returns/committing target returns to investors MDR has prima facie violated the provisions of Regulation 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992.

Unfair Dealings with Clients

15. Upon examination, it is observed that MDR has lured its clients to buy/subscribe multiple packages. It is noted that MDR had sold same services / product to its clients even though the subscription period for products earlier bought was not yet over. MDR acted in the said manner with an objective to maximize its fees and with an objective of keeping its own

interest ahead of his client's interest. Some of the instances where MDR has sold multiple services/products to clients are as under:

15.1. Client: Mr. Amar Ghosalkar

15.1.1. As per the invoices raised by MDR in the name of client, Mr. Amar Ghosalkar, the details of services sold by MDR to the said client are noted as below:

Sr. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	08-Jun-18	INV291	Stock Option	08-Jun-18 to 16-Jul-18	31,250/-
2	08-Jun-18	INV292	Stock Option	08-Jun-18 to 16-Jul-18	31,313/-
3	08-Jun-18	INV294	Stock Option	08-Jun-18 to 31-Aug-18	57,347/-
4	14-Jun-18	INV301	Stock Option	14-Jun-18 to 28-Sep-18	45,000/-
				Total	1,64,910/-

15.1.2. From the above table, it is observed that the Stock Option product in respect of client, Mr. Amar Ghosalkar, has been repeatedly sold for the same or overlapping period for which service charges have already been collected through earlier invoice by MDR.

15.1.3. It is also observed that within a period of 7 days, the client Mr. Amar Ghosalkar has been sold the same product and made to pay around 4 times. The total payment made by the client as per the invoice is Rs. 1,64,910/-.

15.1.4. It is also observed that the clients are made to pay for multiple subscriptions to the same package on the same day. For example, on June 08, 2018, MDR had sold Stock Option product to client Mr. Amar Ghosalkar twice for the same duration i.e. from 08.06.2018 to 16.07.2018 and again for an extended duration i.e. from 08.06.2018 to 31.08.2018, similarly after 6 days on June 14, 2018, MDR had again sold Stock Option product to client Mr. Amar Ghosalkar for the duration 14.06.2018 to 28.09.2018, which overlapped with the previous subscription.

15.2. Client: Mr. Tabish Khan

15.2.1.As per the invoices raised by MDR in the name of client, Mr. Tabish Khan, the details of services sold by MDR to the said client are noted as below:

Sr. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	June 19, 2018	569	All Equity	1 month	7,500/-
2	June 19, 2018	570	All Equity	3 months	40,000/-
3	June 19, 2018	571	All Equity	6 months	60,000/-
4	June 20, 2018	584	All Equity	6 months	52,000/-
5	June 21, 2018	585	All Equity	1 year	1,01,011/-
6	June 21, 2018	587	All Equity	1 year	15,000/-
7	July 05, 2018	827	Stock Option + Future	1 month	7,500/-
8	July 12, 2018	836	Stock Option + Future	3 months	60,000/-
9	July 17, 2018	841	Stock Option + Future	3 months	65,100/-
10	July 28, 2018	853	Stock Option + Future	6 months	1,25,000/-
				Total	5,33,111/-

15.2.2.From the above table, it is observed that service in respect of client Mr. Tabish Khan, has been upgraded to next package and MDR has sold same services/products to said client before the expiration of the earlier service.

15.2.3.It is also observed that within a period of 2 months, client Mr. Tabish Khan has been sold 2 different products and made to pay 10 times. The total payment made by the client as per the invoice is Rs. 5,33,111/-.

15.2.4.It is also observed that service charges are collected disproportionately for the product “All Equity” i.e. for 1 month service charges are Rs. 7,500/-, for 3 months it is Rs. 40,000/-, and for 6 months it is Rs. 60,000/-. Further, “All Equity” product

was sold 6 times between June 19, 2018 to June 21, 2018, the duration of which ranged from 1 month to 1 year. It is clear that the same product was sold multiple times to Mr. Tabish Khan. It is also observed that the duration for which the product “All Equity” was sold overlapped.

15.2.5. Also, service charges are collected disproportionately for the product “Stock Option + Future” i.e. for 1 month service charges are Rs. 7,500/-, for 3 months service charges are Rs. 60,000/- and for 6 months it is Rs. 1,25,000/-. Further, “Stock Option + Future” product was sold 4 times between July 05, 2018 and July 28, 2018. It is clear that the same product was sold multiple times to Mr. Tabish Khan. It is also observed that the duration for which the product “Stock Option+Future” was sold overlapped.

15.3. Client: Mr. Rathva Maheshbhai

15.3.1. As per the invoices raised by MDR in the name of client, Mr. Rathva Maheshbhai, the details of services sold by MDR to said client are noted as below:

Sr. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	April 19, 2018	INV 194	Stock Option	19-Apr-18 to 31-May-18	35,500/-
2	May 04, 2018	INV-MAY2018006	Cash	Not mentioned	20,000/-
3	May 09, 2018	INV-MAY20180013	Cash	Not mentioned	20,000/-
4	May 16, 2018	INV-MAY20180027	Cash	Not mentioned	20,000/-
5	May 18, 2018	INV-MAY20180032	Cash	Not mentioned	20,200/-
6	May 26, 2018	INV 265	Cash Premium	28-May-18 to 31-Dec-18	1,40,000/-

Sr. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
7	May 28, 2018	INV 266	BTST/STBT	28-May-18 to 24-Aug-18	2,10,203/-
8	May 28, 2018	INV 267	Nifty Future	28-May-18 to 23-Nov-18	1,26,202/-
9	June 29, 2018	INV-JUNE20180133	Cash	Not mentioned	30,000/-
				Total	6,22,105/-

15.3.2. From the above table, it is observed that MDR in respect of client Mr. Rathva Maheshbhai, has sold multiple products within short period of time and before completion of the service period of the earlier product sold. In the month of May, 2018, client has been sold services 7 times. Further, out of 9 invoices issued, period of service is not mentioned in 5 invoices though same product namely i.e. Cash, was sold.

15.3.3. It is also observed that within a period of 3 months, the client, Mr. Rathva Maheshbhai has been sold 5 different products and made payment 9 times. The total payment made by the client as per the invoice, is Rs. 6,22,105/-.

16. From the above it is noted that MDR has not been fair in its dealing with the clients. The amount of fees charged by MDR from its client is unreasonable, arbitrary and unfair as multiple payment for overlapping duration has been taken from clients for the same service. Such payment can only be described as arbitrary as it does not stand to reason why double or multiple payments have to be taken for a duration of service for which the client has already paid the fee. In order to determine the “reasonableness” of the fee charged by the Investment Adviser, I note that while no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness, it cannot also be stated that the

reasonableness of the fee charged cannot be judged at all. The IA Regulations provides for the principle based determination of fee by the Investment Adviser indicating that such fees have to be fair and reasonable and the same can be tested as a violation of the Code of Conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determination. While determining the reasonableness of the fee, the same has to be seen from the perspective of various factors such as proportionality, uniformity, multiplicity etc. However, the test of “reasonableness” of the fee, in my view does not mean, the same has been “agreed to and paid”. If such standard is adopted, the reasonableness of the fee cannot be tested if the client has agreed to and paid the same.

17. In the instant case, following is noted with respect to the unreasonable and arbitrary fee charged by MDR:

17.1. In respect of client Mr. Amar Ghosalkar, as per the invoices dated 08/06/2018, for the product of Stock Option, MDR had charged Rs. 31,250/- and Rs. 31,313/- service fee for 39 days, and Rs. 57,347/- service fee for 85 days however for the same product i.e. Stock Option as per the invoice dated 14/06/2018, MDR had charged Rs. 45,000/- service fee for 107 days. The fee charged does not answer the test of “uniformity”. Hence, I am of the prima facie view that fee charged by MDR is arbitrary.

17.2. In respect of client Mr. Tabish Khan, for the product “All Equity” as per the invoice dated 19/06/2018, MDR had charged Rs. 7,500/- service fee for 1 month, however MDR, as per the invoices dated 19/06/2018, had charged Rs. 40,000/- service fee for 3 months and Rs. 60,000/- service fee for 6 months and vide invoices dated 21/06/2018, had charged Rs. 1,01,011/- and Rs. 15,000/- service fee for 1 year. Thus, considering Rs. 7,500/- service fee for 1 month, the service fee for 3 months, 6 months and 1 year comes out to be Rs. 22,500/-, Rs. 45,000/- and Rs 90,000/- respectively. The fee charged does not answer the test of “uniformity”. Such a disproportionate fee was charged within three days of its first day i.e., 19/06/2018. Further, for the product “Stock Option + Future” as per invoice dated 05/07/2018, MDR had charged Rs. 7,500/- service fee for 1 month, however as per invoices dated 12/07/2018, 17/07/2018 and 28/07/2018, MDR

had charged Rs. 60,000/- and Rs. 65,100/- service fee for 3 months and Rs. 1,25,000/- service fee for 6 months respectively. Thus, considering Rs. 7,500/- service fee for 1 month, the service fee for 3 months and 6 months comes out to be Rs. 22,500/- and Rs. 45,000/- respectively. Here again, the fee charged does not answer the test of “uniformity”. Hence, I am of the prima facie view that fee charged by MDR is arbitrary.

17.3. In respect of client Mr. Rathva Maheshbhai, for the product “Cash”, the same product was sold 5 times vide invoices dated 04/05/2019, 09/05/2019, 16/05/2019, with service fee of Rs. 20,000/- each and vide invoice dated 18/05/2019 and 29/06/2018 with service fee of Rs. 20,200/- and Rs. 30,000/- respectively. in the course of 2 months without mentioning the period of service. Non-mentioning of the period of service indicates that the client will not be able to establish for the payment of fee relates to which of the period indicating that MDR can arbitrarily choose the said payment for any period. Hence, I am of the prima facie view that fee charged by MDR is arbitrary and unreasonable.

18. Such way of charging fees, in my view, qualifies to be called as “unreasonable” and “arbitrary”. Similarly, if the test of proportionality is applied, the fees for the same service over a period should be proportional to the period. Though, the “reasonableness” can accommodate the commercial realities where “discounts” for longer commitment of the clients in terms of money and duration with the IA are extended, the same cannot be termed as “reasonable” where the clients commit to a longer relationship with the IA and effectively pay more for their longer commitment for instance as in the case of Mr. Tabish Khan. However, the same was not so in the present case.

19. Similarly, the adoption of “fee” as a tool to force the investors to stay with the IA without any opportunity to sever their ties in case of dis-satisfaction, would in my view, surely be considered as “unreasonable”. In a scenario like this, even if the fee is not “unreasonable” in absolute standard, but the means by which it is collected should also qualify as reasonable. There are instances, *prima facie*, where in order to force the client to continue with the IA, even before the service period for the particular product has expired, the same product is sold

again, so that the client has no option but to continue with the IA. In my view such practice of using fee as tool to force the client to continue with the IA should also qualify as “unreasonable”.

20. MDR has adopted dishonest business practices by making the client subscribe to multiple subscriptions to the same package on the same day and charging unreasonable and arbitrary fee for the same service/product. These acts of MDR are *prima facie*, 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 MDR has collected an unreasonable quantum of fees from its clients in an unfair manner without having any regard to client’s best interest and the fiduciary capacity in which an IA is supposed to be associated with its client.
21. In view of the above, MDR has *prima facie* (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under Regulation 15(1) of IA regulation and (b) failed to abide by clauses 1 and 6 of Code of Conduct of Schedule III read with Regulation 15 (9) of IA Regulations. Thus, MDR has *prima facie* violated the provision of clauses 1 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations
22. Further, the above acts of MDR namely adopting dishonest business practices by making the client subscribe to multiple subscriptions to the same package, adoption of “fee” as a tool to force the investors to stay with the IA without any opportunity to sever their ties in case of dissatisfaction were *prima facie* done with the purpose inducing clients to deal with Noticees. Such act of MDR is *prima facie* fraudulent and is covered within the definition of “fraud” as defined in regulation 2(1)(c) of PFUTP Regulations. The adoption of such practices are nothing but contrivance/device/deceit for manipulatively forcing the clients to deal with the Noticee. Thus, MDR has *prima facie* violated regulations 3 (a), (b), (c), (d) of the PFUTP Regulations, 2003 read with section 12A(a),(b) and(c) of SEBI Act.

Irregularities in Risk Profiling of the clients and Suitability Assessment of products given to its clients:

23. As per Regulation 16 of IA Regulations, Investment Adviser shall carry out risk profiling of the client for ascertaining client's risk tolerance, income details, loss absorbing capacity, capacity of accepting loss of capital, liabilities/borrowing, etc; Further, the risk profiling should be communicated to the client before the client agrees to accept the advice. In addition to that, Investment Adviser shall ensure that information provided by clients and their risk assessment has been updated periodically.
24. As per Regulation 17 of IA Regulations, Investment Adviser shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client. It should be, inter-alia, based on client's investment objectives and his financial situation. The investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance. Further, whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with client's experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.
25. Upon analysis of complaints filed by the complainants against MDR along with RPF and invoices of the clients and the Suitability Assessment Policy of MDR, it is observed that MDR has not done risk profiling of the client correctly and is not selling products which are appropriate as per their risk taking ability.
26. Risk Profiling of clients not done properly:
- 26.1. Vide complaint (SEBIP/MP18/0004671/1) dated 27/10/2018, **Mr. Dhananjay Vaid** has mentioned that MDR advised him to buy premium services since his risk appetite is high and also informed that after making payment his KYC shall be forwarded to SEBI. In this regard, on October 22, 2019, MDR has submitted RPF and KYC document through

SCORES as part of final ATR. On the perusal of RPF it is observed that MDR is not assessing the risk capacity of the client correctly. In RPF of clients, MDR is recording contradictory answers of the risk assessment questions. Some of the questions in the RPF of Mr. Dhanajay Vaid are reproduced in the below table:

Question	Answer	Weightage
Risk Tolerance	High	5
How would you honestly describe yourself as a risk taker?	Low risk taking capability (I'd have a hard time tolerating any losses)	2
Assume that you have invested rupees one lac in a share that goes down by 10% the next day.	Do not bother because you have done enough research on the company	4

26.2. From the above table, it is observed that the client has mentioned he has a low risk taking capability and would have a hard time tolerating losses. However, the answer to the question 'Risk Tolerance' is mentioned as 'High' which totally contradicts the above statement. MDR has categorized the client under High Risk category amid these contradictory answers. Thus, it prima facie appears that MDR has not done the risk profiling of the clients properly.

26.3. Apart from the above complaint, the risk profiling of clients Mr. Tabish Khan, Mr. Kiran Aravalli, Mr. Yogesh Joshi, Mr. Amar Ramesh Ghosalkar and Mr. Maheshbhai Rathva has also been done by MDR in similar manner.

27. Suitability Assessment of Clients:

27.1. **Mr. Amar Ghosalkar:** MDR has posted its Suitability Assessment Policy on its website. It has categorized various products as per the risk category i.e. High risk and Medium risk. It has a product named as Stock Option which is categorized under High Risk category. MDR has sold the Stock Option product of high risk category to Mr. Amar Ghosalkar whose risk category is Medium Risk as per risk profiling form.

27.2. **Mr. Maheshbhai Rathva:** MDR has sold the 'BTST/STBT' product (as mentioned in the invoice) and Stock Option product, both of high risk category, to Mr. Maheshbhai Rathva whose risk category is Medium Risk as per risk profiling form.

28. From the above, it is observed that:

28.1. MDR has not done risk profiling of the clients correctly as mentioned in Regulation 16 of IA Regulations.

28.2. The products sold by MDR to clients are not matching with the risk tolerance level of clients as mentioned in Regulation 17 of IA Regulations. Investment advice provided by MDR to its clients are not appropriate to the risk profile of the client.

29. It is the duty of Investment Adviser to act with due skill, care and diligence in the best interests of its clients whereas it is seen that MDR has failed to take due care and diligence to ascertain the risk profile of the client and to offer him suitable advice. MDR has kept his own interest at higher pedestal compared to the interest of his clients. In view of the above, MDR has *prima facie* failed to comply with Regulations 15(1), 16(d), 17(a), 17(e) of IA Regulations and has also *prima facie* failed to abide by Clause 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

30. In summary, following *prima facie* findings are observed:

30.1. That despite knowing the fact that the investment by clients based on the advice given by Investment Adviser is subjected to market risk, MDR has been conveying expected returns/committing target returns to its clients on their investments.

30.2. That MDR has not been fair in its dealing with the clients. The amount of fees charged by MDR from its clients is unreasonable, arbitrary and unfair. MDR has adopted dishonest business practices by making the client subscribe to multiple subscriptions to the same package on the same day for overlapping periods.

30.3. That MDR has failed to take due care and diligence to ascertain risk profile of the client and to offer him suitable advice.

31. The definition of investment adviser as given in regulation 2(m) of the IA Regulations, states that investment adviser means “*any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called*”. Regulation 2(l) of the IA Regulations defines investment advice as “*advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.*”
32. On a perusal of these definitions, it becomes clear that the role of an “investment adviser” envisaged under IA Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from its clients, which is also stipulated under the Code of Conduct for investment advisers under the IA Regulations.
33. 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 PFUTP Regulations. An investment adviser cannot sell products by conveying expected returns/committing target returns to investors as was being done by MDR in the present case. MDR was falsely conveying expected returns/committing target returns to investors knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk.

34. From the findings of the preliminary examination and the overall modus operandi discussed in this order, *prima facie*, it appears that MDR was running a pre-meditated device, plan or scheme wherein, employees/ representatives of MDR would lure innocent investors by conveying expected returns/committing target returns and then more money would be extracted from them by making them subscribe to additional packages, etc. MDR by conveying expected returns/committing target returns was inducing the investors to deal in securities and was thereafter also charging unreasonable and arbitrary fee from them, thereby increasing its income at the expense of the best interests of its clients.
35. The above discussed non-genuine and deceptive activities of MDR viz., conveying expected returns/committing target returns, Unfair dealings with clients and failure to ascertain risk profile of the client 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 ...”

36. I also take note of some of the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations, which are reproduced below:

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 recognized 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.

37. Thus, MDR through its fraudulent activities/ dealings as discussed above, has *prima facie* violated the above mentioned provisions of 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.

38. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he/she/it operates and it ill-behooves him to become a party to any market misconduct. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts. Under 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 for an investment adviser prescribed under the IA Regulations.

39. The relevant provisions of IA regulations are reproduced below:

IA Regulations:

Regulation 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.*

Regulation 16: *Investment adviser shall ensure that:-*

(a)

(b)

(c)

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

- (i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
- (ii) questionnaire is not structured in a way that it contains leading questions.

Regulation 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)
- (c)
- (d)
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss

Regulation 15(9): An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

CODE OF CONDUCT FOR INVESTMENT ADVISER

(Regulation 15(9) of IA Regulations)

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.

.....”

41. Looking at the activities and manner of operation of MDR in the present case, which have been discussed in detail in the preceding paragraphs, I am of the *prima facie* view that MDR has failed to abide by the Code of Conduct on all counts mentioned above. I, therefore, find that MDR while carrying out his activities as an investment adviser has, *prima facie*, violated the provisions of Regulations 15(1), 16(d), 17(a) and 17(e) of IA Regulations and Clauses 1, 2 and 6 of the Code of Conduct for investment advisers as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

ISSUE NO. 2: *If answer to issue no. 1 is in affirmative, whether partners of MDR are responsible for the violations committed by MDR?*

42. As per section 4 of Indian Partnership Act, 1932, '*partnership*' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them for all; persons who have entered into partnership with one another are called individually '*partners*' and collectively '*firm*' and the name under which their business is carried on is called the '*firm name*'. As per section 2(a) of Indian Partnership Act, 1932 an '*Act of Firm*' means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. In terms of section 25 of the Indian Partnership Act, 1932, "*Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.*" Therefore, MDR being a partnership firm, I am of the view that the partners of MDR namely, Mr. Anoop Kumar Tiwari and Mr. Raghvendra Sindh are *prima facie* responsible for the violations committed by MDR.

ISSUE NO. 3: *If answer to issue no. 1 & 2 is in affirmative, whether urgent directions, if any should be issued against Money Desire Research and its partners?*

43. As a regulator of capital market, 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. IA Regulations have been formulated with the main objective of regulating such activities to safeguard the interests of investors and hence registration of such activities with SEBI has been made mandatory. IA Regulations *inter alia* seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring investment advisers to comply with the relevant provisions of the IA Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.

44. Since the conduct of MDR, mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market, therefore, urgent necessary action has to be taken against MDR and its partners immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of the present matter and on the basis of *prima facie* findings, it is necessary to prevent, MDR from collecting any more funds from the public and luring innocent investor to avail its services under false / misleading commitment of return. I note that the website of MDR is still active and complaints of similar nature from the investors, are still flowing in to SCORES. Therefore, the probability of investors reaching MDR through a website is high. Further, it is also noted that the bank accounts details are mentioned in website to receive credit for investment advisory services. Therefore, the threat of investors getting lured to the registered advisory services is still looming large and is imminent especially when such services are not in conformity with the IA regulations and the Noticee is providing service in a fraudulent way. Therefore, the present and prospective investors need to be protected from such services urgently. Further, as per the information available on website, investors can become prey to the different packages offered by MDR.

45. Thus, considering the facts and circumstances of this case and such a fraudulent scheme, plan, device and artifice as, *prima facie*, found in this case, I am convinced that this is a fit case where, pending detailed examination, effective and expeditious preventive and remedial action is required to be taken by way of *ad interim ex parte order* against Money Desire Research and its partners for preventing them from collecting funds and indulging in investment advisory services; to protect the interests of investors and preserve the safety and

integrity of the securities market. Such action needs to be taken to prevent any further harm to investors. In order to protect prospective investors and present investors from making payment or further payment to the bank accounts of MDR, credit into bank accounts through any channels also needs to be stopped.

46. It is pertinent to mention that a number of complaints have been filed against MDR alleging perpetration of fraud on the clients and in almost all the complaints, the complainants have claimed refund of the money given by them to MDR. One of the directions that can be passed against Money Desire Research, subject to the adjudication of the allegation on the merits in the final order, under Sections 11(1), 11(4), 11B and 11D of SEBI Act is that of direction to refund the money collected by Money Desire Research from their clients. With the initiation of quasi-judicial proceedings, it is possible that Money Desire Research may divert the money collected from its clients. The same may result in defeating the effective implementation of the direction of refund, if any, to be passed after deciding the matter on merits. Non-interference by the Regulator at this stage would therefore result in irreparable injury to interests of the securities market and the investors. It therefore becomes necessary for SEBI to take urgent steps of stopping the debits from the bank accounts of Money Desire Research and its partners Mr. Anoop Kumar Tiwari and Mr. Raghvendra Singh.

ORDER:

47. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby direct by way of this *interim ex-parte order*, the following directions: -

- 47.1. *Money Desire Research (PAN: AAYFM6388F) and its partners Mr. Anoop Kumar Tiwari (PAN: ALLPT5927F) and Mr. Raghvendra Singh (PAN: CHPPS6375C) are directed: -*

- 47.1.1. to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;
- 47.1.2. not to access the securities market and buy, sell or otherwise deal in securities or associate themselves with securities market, either directly or indirectly, in any manner whatsoever, until further orders; If Money Desire Research and its partners, named in this order have any open position in any exchange traded derivative contracts, they are permitted to close out/ square off such open positions within one month from the date of receipt/knowledge of this order.
- 47.1.3. not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders;
- 47.1.4. to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.
- 47.1.5. not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI
- 47.2. Banks including HDFC Bank Limited, ICICI Bank, Axis Bank and Bank of India, wherein Money Desire Research (PAN: AAYFM6388F) and its partners Mr. Anoop Kumar Tiwari (PAN: ALLPT5927F) and Mr. Raghvendra Singh (PAN: CHPPS6375C) are holding bank accounts, are directed not to allow any debits / withdrawals and credits from the said accounts, without the permission of SEBI, until further orders. The Banks are also directed to ensure that all the above directions are strictly enforced.
- 47.3. Any person while working under MDR or under its 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.*
- 47.4. *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of MDR, and its partners named in this order, held jointly or severally.*
- 47.5. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Funds held in the name of MDR, and its partners named in this order, jointly or severally, are not transferred or redeemed.*
48. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Money Desire Research and its partners in accordance with law.
49. The *prima facie* observations contained in this Order, pending enquiry, are made on the basis of the material available on record. In this context, Money Desire Research and its partners may, within 21 days from the date of receipt of this Order, file their reply/objections, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.
50. The above directions shall take effect immediately and shall be in force until further orders.
51. A copy of this order shall be served upon Money Desire Research and its partners, Banks, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

-Sd-

Date: January 15, 2020

Place: Mumbai

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