

**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**

**In Re: Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993
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	MSS Trading System Centre and its Proprietor Shri Valerian Louis Mendanha	ANOPM8570A

In the matter of MSS Trading System Centre

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1. Securities and Exchange Board of India (“**SEBI**”) had received a reference letter dated June 27, 2019 from Economic Offences Cell (‘**EOC**’) of Panaji Goa, wherein EOC had forwarded a complaint of Shri Deron Almeida against MSS Trading System Centre (hereinafter referred as “**MSS**”) and its Proprietor Shri Valerian Louis Mendanha (PAN: ANOPM8570A) having office at Villa No. 11, Aditya Garden Villas, Duler, Mapusa, Goa for accepting investment of Rs. 2.25 lakh from the complainant for conducting Bank Nifty Future trading on intra-day basis. EOC also mentioned that trading was conducted by MSS through M/s. R.K. Global Shares & Securities Ltd. (hereinafter referred as “**R.K. Global**”), a SEBI registered stock broker who was handling Demat account of the complainant, Shri Deron Almeida.

2. Upon receipt of the complaint, SEBI conducted an examination in relation to the affairs of MSS, Proprietor Shri Valerian Louis Mendanha (hereinafter referred to as “**Noticee**”) to ascertain any possible violation, if any, of the provisions of SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and rules and regulations made thereunder. SEBI vide letter dated June 28, 2019 had sought various documents / information from MSS in relation to its business activity. The examination entailed, *inter alia*, an analysis of agreements entered between MSS and its clients, KYC documents of MSS, bank account statement of MSS and documents submitted by MSS vide letters dated July 15, 2019, July 19, 2019 and August 01, 2019. The prima facie findings based on the examination are noted in the subsequent paragraphs.
3. 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:
 1. ***Whether MSS, proprietor Mr. Valerian Louis Mendanha is acting as portfolio manager without obtaining certificate of registration and is carrying on unregistered portfolio management activities, and thereby has prima facie, violated the provisions of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as “PM Regulations”) and provisions of SEBI Act?***
 2. ***Whether MSS, proprietor Mr. Valerian Louis Mendanha is promising assured returns to its clients, thereby 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 provision of SEBI Act?***
 3. ***Whether MSS, proprietor Mr. Valerian Louis Mendanha as an Authorized Person of R.K. Global has prima facie violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009?***
 4. ***If answer to issue no. 1, 2 or 3 is in affirmative, whether urgent directions, if any should be issued against MSS, proprietor Mr. Valerian Louis Mendanha?***

ISSUE No. 1: Whether MSS, proprietor Mr. Valerian Louis Mendanha is acting as portfolio manager without obtaining certificate of registration and is carrying on unregistered portfolio management activities, and thereby has prima facie, violated the provisions of PM Regulations and provisions of SEBI Act?

4. Upon examination the following *prima facie* findings are observed:

4.1. MSS vide letter dated July 15, 2019 has *inter alia* submitted that Shri Valerian Louis Mendanha (PAN: ANOPM8570A) is the proprietor of MSS and started its operations in the year 2013. The only product is proprietary advisory software (MSS Trading System) developed by Shri Mendanha for intra-day trading only. There are no branches, group or associate company linked to the firm. MSS has provided the list of 80 clients to whom such services were provided since start of operations and fees charged.

4.2. Agreement entered between MSS and its client:

4.2.1. MSS vide letter dated August 01, 2019 had submitted some of the copies of agreement entered between MSS and its client. Upon analysis of agreement entered between MSS and its client, following terms of the agreements are noted:

- 4.2.1.1. MSS through its proprietary advisory software (MSS Trading System) will make intraday trading calls.
- 4.2.1.2. Trading shall be done on NSE only (F&O) by MSS.
- 4.2.1.3. No client is allowed at the centre.
- 4.2.1.4. A prospective client has to pay towards booking the seat (Rs. 25,000/- or Rs. 50,000/- one time), MSS subscription fee (Rs. 1,00,000/- or Rs. 2,00,000/- MSS Trading System Centre fee for 1 year), funding of trading account (Rs. 50,000/- or Rs. 75,000/-), training fee (Rs. 25,000/- one time) and staff salary (Rs. 7,500/- or Rs. 10,000/- per month). Thereafter, a fee of 15% shall be charged for the subsequent profits above 100%.
- 4.2.1.5. Client shall authorize the use of their ODIN trading account by the staff appointed at the centre.

4.2.2. Thus, from the above terms of the agreement, it is *prima facie* observed that clients have to maintain funds in their trading account and MSS would execute intraday trades on behalf of its clients.

4.3. Collection of fee / fund:

4.3.1. MSS vide letter dated July 15, 2019 has provided the list of 80 clients to whom proprietary advisory software services (MSS Trading System) were provided since start of operations and fees charged. However, from the said list of 80 clients it is noted no amount was mentioned against 29 clients, thus it is *prima facie* appearing that MSS has collected fees from 51 clients. Further, MSS vide letter dated July 19, 2019 had submitted year-wise details of fees collected from 51 clients. The amount of fees collected is summarized as under:

Calendar Year	No. of clients	Fees collected
2013	5	3,85,000
2014	7	10,70,000
2015	7	5,70,000
2016	5	9,57,000
2017	20	44,80,000
2018	4	18,25,000
2019 (upto 19.07.2019)	3	11,20,000
Total	51	1,04,07,000

4.3.2. During the examination, it is noted that MSS has bank account with Union Bank of India, Mapusa, Goa bearing CAGEN a/c no. 611401010050109. SEBI vide letter dated September 10, 2019 has sought bank statement from Union Bank India for the period from inception till the date of the letter. As per bank statement obtained from Union Bank, the total amount received in the aforesaid bank account of MSS from April 17, 2012 to September 09, 2019 is Rs.1,60,90,091/-.

4.3.3. MSS vide letter date July 15, 2019 submitted that the operations were started in 2013 however, as per the bank statement of MSS, the amounts were received since April 2012. Thus, it is *prima facie* observed that MSS had started its operation since April 2012.

5. From the above, it is *prima facie* observed that clients were to maintain funds in their trading account and employees of MSS would execute intraday trades on behalf of its clients. The total amount / fees received in the bank account of MSS from April 17, 2012 to September 09, 2019 is Rs.1,60,90,091/-. Thus, pursuant to a contract, MSS, on behalf of its clients, has undertaken the management of funds as well as the securities of its clients and executed intraday trades on behalf of its clients since April 2012.
6. The definition of Portfolio Manager as given in regulation 2(cb) of the PM Regulations, which states that Portfolio Manager means “*any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients, as the case may be.*” It is noted that the definition of portfolio manager includes undertaking of management of the portfolio of securities or funds of the clients.
7. Thus, from paragraphs 4 & 5 above, there is prima facie evidence that MSS through its proprietor Shri Valerian Louis Mendanha is acting as portfolio manager and is engaged in ‘portfolio management services’, which falls under the definition of portfolio manager as defined under Regulations 2(cb) of PM Regulations.
8. The regulation 3 of the PM regulations, states that “*No person shall act as a portfolio manager unless he holds a certificate granted by the Board under these regulations.*”
9. In order to ensure that no investor falls prey to the assurances and allurements provided by random entities, it is imperative that any person acting as portfolio manager and carrying out portfolio management services has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) states that “*No stock broker, sub -broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with*

securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act”

10. Thus, as per regulation 3 of PM Regulations and Section 12(1) of SEBI Act, any person acting as portfolio manager and carrying out portfolio management services has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI regulations i.e. the registration of portfolio manager is mandatory.
11. The activities of MSS, proprietor Shri Valerian Louis Mendanha, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions shows that MSS, proprietor Shri Valerian Louis Mendanha has acted as Portfolio Manager. However, no material was available on record to indicate that MSS, proprietor Shri Valerian Louis Mendanha had a certificate of registration as a Portfolio Manager. Therefore, pursuant to a contract between MSS and its clients, MSS on behalf of its clients has undertaken the management of funds as well as the securities of its clients and executes intraday trades on behalf of its clients since April 2012 *prima facie* indicates that MSS is acting as unregistered portfolio manager and is engaged in providing unregistered portfolio management services.
12. It is noted that MSS, proprietor Shri Valerian Louis Mendanha is not registered with SEBI in the capacity as a portfolio manager. The characteristics and features of the business activity carried out by MSS, proprietor Shri Valerian Louis Mendanha as discussed in the preceding paragraphs, *prima facie*, leads to the conclusion that MSS, proprietor Shri Valerian Louis Mendanha had provided services of a portfolio manager without a certificate of registration during the period April 2012 till date and has collected an amount of Rs.1,60,90,091/- as fee.
13. 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. PM 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. PM Regulations *inter alia* seek to create a structure within which portfolio managers will operate and also make them duly accountable for their portfolio management services by requiring portfolio managers to comply with the criteria set out in the relevant provisions of the PM Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.

14. In the instant case, there is reasonable evidence that MSS, proprietor Shri Valerian Louis Mendanha is acting as portfolio manager without obtaining certificate of registration and carrying out unregistered portfolio management services, thereby, *prima facie*, is in violation of the provisions of Section 12(1) of the SEBI Act and regulation 3 of the PM Regulations.

ISSUE No. 2: *Whether MSS, proprietor Mr. Valerian Louis Mendanha is promising assured returns to its clients, thereby has prima facie, violated the provisions of PFUTP Regulations and provision of SEBI Act?*

15. It is noted that Regulation 2(1)(c) of the PFUTP Regulations defines ‘*fraud*’ and ‘*fraudulent*’ which state 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 ... ”

16. It is also noted that fraudulent activities / dealings are prohibited under the provisions of section 12A(a), (b) and (c) of the SEBI Act, 1992 and regulations 3 (a), (b), (c), (d), 4(2)(k) and 4(2)(s)(i) of the PFUTP Regulations. The provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(2)(k) and 4(2)(s)(i) 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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1)

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

.....

- (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
- (s) mis-selling of securities or services relating to securities market;

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

- (i) knowingly making a false or misleading statement

Note: Regulation 4(2)(k) and 4(2)(s)(i) of PFUTP Regulations is effective from 01.02.2019

17. Upon examination the following *prima facie* findings were observed:

17.1. **Agreement entered between MSS and its client:**

17.1.1. MSS vide letter dated August 01, 2019 had submitted some of the copies of agreement entered between MSS and its client. Upon analysis of agreement entered between MSS and its client, it is noted that MSS had offered / provided

three types of services to its all clients. The characteristic of three types of services are as under:

Type 1	Type 2	Type 3
a. Rs. 25,000/- on booking the seat. This is for setting up only (incl. equipment) and not for staff training. One time only b. Rs. 50,000/- funding of your trading account (your trading capital) c. Rs. 1,00,000/- MSS fee for one year for first 100% returns calculated cumulatively, inclusive of salary @ Rs. 90,000/- per year. Thereafter a fee of 15% will be charged for the subsequent profit over 100%. d. Rs. 25,000/- training fee. One time only. e. Staff salary: Rs. 7,500/- per month	a. Rs. 50,000/- on booking the seat. One time only b. Rs. 75,000/- funding of your trading account c. Rs. 2,00,000/- MSS fee for one year for first 200% returns calculated cumulatively. Thereafter a fee of 15% will be levied on the profits above the limit. d. Rs. 25,000/- training fee. One time only. e. Staff salary: Rs. 10,000/- per month	a. Rs.1,50,000/- full payment. B, b. The account is created and trading done with a monthly return of Rs. 20,000/- . c. The validity is for a period of one year only.

17.1.2. It is noted that in Type 3 service of the agreements entered between MSS and its clients has clause of assured / guaranteed returns. For example, on page 6 Schedule 3 of agreement dated June 24, 2019 between MSS and Shri Vijay D. Tahmankar one of clause mentioned is that “Rs. 1,50,000/- full payment. The account is created and trading done with a monthly return of Rs. 20,000/-”.

17.1.3. Thus, from the above, it is observed that there is *prima facie* evidence which indicates that MSS, proprietor Mr. Valerian Louis Mendanha is promising assured returns to its clients.

18. It is noted that the performance/ return / profits on investment / trading in securities such as future & option cannot be predicted and is subject to market risk. Further, from MSS letter dated July 15, 2019, it is also noted that Shri Valerian Louis Mendanha, proprietor of MSS has developed proprietary advisory software for intra-day trading and started its operation in 2012-13. Thus, it is observed that Shri Valerian Louis Mendanha has acted as an expert in field of trading in securities market since 2012-13. Therefore, MSS proprietor Mr. Valerian Louis Mendanha, despite knowing very well that investments / trading in securities market

are subject to market risk, has promised assured returns / profits to its clients on the investments / trading made by the clients. Thus, this act of assuring of returns by MSS to its clients is *prima facie*, for the purpose of luring customers in its net.

19. A portfolio manager whether registered or unregistered cannot make a false statement without reasonable ground for believing it to be true as mandated in PFUTP Regulations. It is noted that MSS had made promise in the agreement with client, about delivering monthly return of Rs. 20,000/- to its clients, on trading done by MSS on behalf of its client through its proprietary advisory software (MSS Trading System). Thus, there is *prima facie* evidence which indicates that MSS, proprietor Mr. Valerian Louis Mendanha had promised assured returns to its clients. MSS, proprietor Mr. Valerian Louis Mendanha was falsely assuring returns to investors / clients knowing fully well that all investments in securities such as future & option are subject to market risk. A portfolio manager whether registered or unregistered cannot sell services by assuring returns to investors as was being done by MSS, proprietor Mr. Valerian Louis Mendanha in the present case. Hence, giving assurance of returns from securities markets is knowing misrepresentation of truth tantamounting to fraud as defined in Regulation 2(1)(c) of PFUTP Regulations.

20. In my view, an unregistered portfolio manager like MSS, proprietor Mr. Valerian Louis Mendanha in the present case, can put investors at great risk by misleading them. In the present case, MSS, proprietor Mr. Valerian Louis Mendanha has knowingly misrepresented in the agreement with clients, about delivering monthly return of Rs. 20,000/- to its clients, on trading done by MSS on behalf of its client through its proprietary advisory software (MSS Trading System). Further, without holding any registered portfolio manager certificate, they held themselves out as portfolio manager and offered services to investors / clients with the objective of raising money through subscriptions / fees.

21. From the findings of the examination, it *prima facie* appears that MSS, proprietor Mr. Valerian Louis Mendanha was knowingly making false representations in the agreement with clients about assured returns on investment / trading in securities market, thereby luring and

inducing investors to deal in securities by availing their services. Such *modus operandi* is being continuously used by MSS which is evident from the fact that there are continuous credits in MSS bank accounts.

22. Thus, MSS, proprietor Mr. Valerian Louis Mendanha 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), (d), 4(2)(k) and 4(2)(s)(i) of the PFUTP Regulations.

ISSUE No. 3: *Whether MSS, proprietor Mr. Valerian Louis Mendanha as an Authorized Person of R.K. Global has prima facie violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009?*

23. Economic Offences Cell of Panaji Goa vide letter dated June 27, 2019 mentioned that trading was conducted by MSS through R.K. Global, a SEBI registered stock broker who was handling Demat account of the complainant, Shri Deron Almeida. Accordingly, during the examination, information was sought from R.K. Global regarding the relationship of MSS, proprietor Mr. Valerian Louis Mendanha with R. K. Global, list of clients introduced by Mr. Valerian Louis Mendanha and details of complaint received against MSS, proprietor Mr. Valerian Louis Mendanha, if any.

24. R.K. Global vide email dated August 16, 2019 has submitted following documents:

- 24.1. Authorized Person agreement between R.K. Global and Shri Valerian Louis Mendanha (Prop. of MSS) dated November 14, 2013.
- 24.2. Details of 81 clients introduced by Shri Vaelrian Mendanha / MSS since 2013 and the details of volume of business done by MSS since inception.

25. Upon perusal of agreement between R.K. Global and Shri Valerian Louis Mendanha (Prop. of MSS) dated November 14, 2013, it is noted that Shri Valerian Louis Mendanha is entitled to act as an 'Authorized Person' within the meaning and subject to the SEBI

circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009. Thus, Shri Valerian Louis Mendanha (Prop. of MSS) is an Authorised Person of R.K. Global,

26. Further, SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 states that *“The authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the stock broker and he shall not charge any amount from the clients.”*

27. MSS vide letter dated July 15, 2019 submitted the list of clients from whom fees have been collected by them. MSS further vide letter dated July 19, 2019 had submitted year-wise details of fees collected from 51 clients. The amount of fees collected is summarized as under:

Calendar Year	No. of clients	Fees collected
2013	5	3,85,000
2014	7	10,70,000
2015	7	5,70,000
2016	5	9,57,000
2017	20	44,80,000
2018	4	18,25,000
2019 (upto 19.07.2019)	3	11,20,000
Total	51	1,04,07,000

28. Further, as per bank statement obtained from Union Bank, the total amount received in the bank account of MSS from April 17, 2012 to September 09, 2019 is Rs.1,60,90,091/-. Furthermore, agreement of MSS with clients also reveals that MSS is charging fees and other charges from its clients.

29. Thus, in my view, as per the agreement between R.K. Global and Shri Valerian Louis Mendanha (Prop. of MSS) dated November 14, 2013 read with SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009, MSS proprietor Shri Valerian Louis Mendanha was not permitted to receive any amount such as fees, charges, commission, salary, etc from its clients. However, as per the MSS letter dated July 19, 2019, Bank statement of MSS and agreement of MSS with clients, it is noted that MSS had charged fees and other charges from its clients to the tune of Rs.1,60,90,091/- from April 17, 2012 to September

09, 2019. Hence, MSS, proprietor Mr. Valerian Louis Mendanha, has *prima facie* violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009.

ISSUE NO. 4: *If answer to issue no. 1, 2 or 3 is in affirmative, whether urgent directions, if any should be issued against MSS, proprietor Mr. Valerian Louis Mendanha?*

30. 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. PM 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. PM Regulations *inter alia* seek to create a structure within which portfolio managers will operate and also make them duly accountable for their services by requiring portfolio managers to comply with the relevant provisions of the PM Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market. Similarly, the PFUTP Regulations seeks to curb fraudulent and manipulative activities in the securities market in order to boost investor confidence in the securities market and to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy.

31. It is noted that MSS vide its letter dated July 15, 2019 submitted that all operations have been stopped. However, from the bank statement of MSS for September – October 2019, it is noted that there is a credit transaction of Rs. 1,09,000/- from Edna Mendhana on September 19, 2019, one of the clients of MSS as per client list attached to its letter dated July 15, 2019. Further, during September – October 2019, debit transactions are also noted from the following persons. It is noted that following persons are clients of MSS as per client list attached to its letter dated July 15, 2019.

Sl. No.	Date of debit transaction	Name of the client	Amount (Rs.)
1	19.09.2019	Lazarces D'Souza	50,000
2	23.09.2019	Claudio Pacheco	75,000
3	03.10.2019	Danzil Carasco	1,50,000
4	04.10.2019	Ranjit Usgaonkar	30,000
5	13.11.2019	Bosco M. D'Souza	50,000

32. Thus, from the above, it is observed that MSS, proprietor Mr. Valerian Louis Mendanha is continuing its business of unregistered portfolio manager even after its submission dated July 15, 2019. Since the conduct of MSS, proprietor Mr. Valerian Louis Mendanha, mentioned above is not prima facie, in the interest of investors and the securities market, therefore, urgent necessary action has to be taken against MSS, proprietor Mr. Valerian Louis Mendanha immediately, else it may lead to loss of investors' trust in the securities market. Further, in view of the paragraph 31 and also facts and circumstance of the case, one cannot lose sight of the fact that the violations discussed hereinabove are ongoing and there is possibility that MSS, proprietor Mr. Valerian Louis Mendanha is still continue to carry out this business of unregistered portfolio manager, in contravention of PM Regulations, which may lead to its engaging with more investors and may continue to raise money from investors in the pretext of providing securities market related services. Furthermore, in case of default by MSS, proprietor Mr. Valerian Louis Mendanha, apart from the regulatory protection to investors, the normal remedies available to investors while dealing with a SEBI registered portfolio manager such as invoking the grievance redressal mechanisms, referring the matters to appropriate forum such as arbitration, etc. would not be available to the investors dealing with unregistered portfolio manager. Therefore, the impact of threat of investors getting lured and affected by the unregistered portfolio management services is still looming large and is imminent. Further, the total amount of money, prima facie, observed to have been collected in the bank account of MSS is approximately Rs.1,60,90,091/-, which also indicates the magnitude of the prospective threat to the investors

33. It is noted that permitting the investors to receive a portfolio management service from an unregistered entity, in effect means, the same is received from an unqualified person without following the safeguards mentioned in the PM Regulations. An investor receiving a service from unregistered portfolio manager not in consonance with the PM Regulations vis a vis an investor who receives such service from registered portfolio manager following the PM Regulations stands in a disadvantageous position in respect of his protection as investor as envisaged under the PM regulations. An unregistered portfolio manager has not even satisfied the Regulator that he is a fit and proper person to hold the certificate of registration as portfolio manager. Availing of service from such persons are detrimental to investors and such unqualified service could result in irreparable detriment of the investors' interest as money is invested based on unqualified and un-regulated service, which could result in loss. As exposing investors to such service also has the effect of interfering with the development of securities market, as victim of such services tend to lose faith in the securities market. Such an injury to the development of the securities market also qualifies as "irreparable injury" or "irreparable detriment" as the objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.
34. Further, if an ex-parte order is not passed, many prospective investors may subscribe by parting with significant fees and handing over control over their funds / securities and this may cause irreparable injury to themselves as discussed earlier. However, if an ex-parte order is passed, what is at stake is right of the current Noitcee herein vis-a-vis multitude of prospective and current clients of the Noitcee. It may be noted that one of the underlying differences between the "ex-parte orders in the case of private suits" and "ex-parte public enforcement actions", is the identification of the injured party. In private damage suits, the injured individual, as "whole", is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. Though, it can be argued that a final remedy by way of refund is available, as against the step of passing an ex-parte interim order, the potential loss of investment by the investors under portfolio management services from an

unqualified person and resultant loss of investor's confidence and reliability of securities market, cannot be retrieved, if prima facie unregistered portfolio management services is permitted to be extended to the investors by not passing an *ex parte-interim order* at this stage. Therefore, I consider the balance of convenience is also not in favour of the Noitcee.

35. 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, effective and expeditious preventive and remedial action is required to be taken by way of *interim ex parte order* to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to investors but also to preserve the integrity of the market.
36. As noted earlier, in the present case, prima facie violations of provision of section 12(1) of SEBI Act read with Regulation 3 of the PM Regulations, Section 12A(a), (b) and (c) of the SEBI Act, and Regulations 3 (a), (b), (c), (d), 4(2)(k) and 4(2)(s)(i) of the PFUTP Regulations and provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 have been noticed on the basis of the examination carried out by SEBI. It is pertinent to mention that complaints have been filed against MSS, proprietor Mr. Valerian Louis Mendanha alleging perpetration of fraud and the complainants have claimed refund of the money paid by them towards subscription of the services / products being offered by MSS. One of the directions that can be passed against MSS, proprietor Mr. Valerian Louis Mendanha, 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 MSS, proprietor Mr. Valerian Louis Mendanha from their clients.
37. With the initiation of quasi-judicial proceedings, it is possible that MSS, proprietor Mr. Valerian Louis Mendanha may divert the money collected from the subscribers / 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. It therefore becomes necessary for SEBI to take urgent steps to prevent MSS, proprietor Mr. Valerian Louis Mendanha from diverting the money collected from the subscribers / clients. It is also essential to take urgent

steps to prevent them from alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous. In view of the facts and circumstances discussed hereinabove, and considering the interests of already existing clients of MSS, proprietor Mr. Valerian Louis Mendanha and also the interests of those who may fall prey to the unregistered portfolio management services being carried out by MSS, proprietor Mr. Valerian Louis Mendanha, the balance of convenience lies against MSS, proprietor Mr. Valerian Louis Mendanha, which requires immediate action against them including not to divert the money collected from the subscribers / clients.

38. Further, as the bank account of MSS is active, the balance of convenience demands the preventive measure of stopping the collection of money in the bank account of MSS from investors. The same can be effectively achieved by an appropriate direction of stopping the credit into the bank account of MSS. As MSS has already evaded the jurisdiction of SEBI by prima facie, acting as unregistered portfolio manager, the balance of convenience also demands that MSS is to be prevented from diverting the funds collected from the investors through the fraudulent and unauthorized investment advisory activity. Accordingly, an appropriate direction stopping the debit from the bank account of MSS, proprietor Mr. Valerian Louis Mendanha has been incorporated

ORDER:

39. In view of the foregoing, pending enquiry, in order to protect the interests of investors and integrity of the securities market, 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, hereby direct by way of this *interim ex-parte order*, the following directions: -

39.1. MSS, proprietor Mr. Valerian Louis Mendanha (PAN: ANOPM8570A); are directed:-

39.1.1. to cease and desist from acting as an portfolio manager including the activity of acting and representing through any media (physical or digital) as a portfolio

manager, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever, until further orders;

39.1.2. not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders;

39.1.3. 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.

39.1.4. to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, digital contents, communications etc., in relation to their portfolio management services activity or any other unregistered activity in the securities market until further orders.

39.1.5. 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;

39.1.6. If MSS and Mr. Valerian Louis Mendanha have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. MSS and Mr. Valerian Louis Mendanha are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

39.1.7. 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.

- 39.2. *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of MSS, proprietor Mr. Valerian Louis Mendanha held jointly or severally.*
- 39.3. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Funds units, held in the name of MSS, proprietor Mr. Valerian Louis Mendanha, jointly or severally, are not transferred or redeemed.*
- 39.4. *Banks including Union Bank, wherein bank account is held in the name of MSS, proprietor Mr. Valerian Louis Mendanha (PAN: ANOPM8570A), are directed not to allow any debits / withdrawals and credits from the bank account number 611401010050109, without the permission of SEBI, until further orders. The Banks are also directed to ensure that this direction is strictly enforced.*
40. This Order shall also be treated as a Show Cause Notice and MSS, proprietor Mr. Valerian Louis Mendanha are show caused as to:
- 40.1. why the act of MSS, proprietor Mr. Valerian Louis Mendanha promising assured returns to its Clients in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations;
- 40.2. why the services floated by MSS, proprietor Mr. Valerian Louis Mendanha should not be held as “Portfolio Management Services” in terms of the PM Regulations and thereby the activity of MSS, proprietor Mr. Valerian Louis Mendanha be treated as unregistered activity under the SEBI Act and relevant Regulations;
- 40.3. why suitable directions / prohibitions under Sections 11(1), 11(4), 11B and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including the following, should not be issued / imposed against MSS, proprietor Mr. Valerian Louis Mendanha, for the alleged violation of provision of SEBI Act, PFUTP Regulations and PM Regulations as discussed above in this order:
- 40.3.1. Suitable directions for prohibition from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for an appropriate period;

40.3.2. Directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever;

40.3.3. Direction to refund the amount collected along with the promised returns from the subscribers / investors / clients for its various services / activity; and

40.3.4. Any other directions as it deemed necessary.

41. The *prima facie* observations contained in this Order, are made on the basis of the material available on record. In this context, MSS, proprietor Mr. Valerian Louis Mendanha 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.

42. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MSS, proprietor Mr. Valerian Louis Mendanha in accordance with law.

43. The above directions shall take effect immediately and shall be in force until further orders.

44. A copy of this order shall be served upon MSS, proprietor Mr. Valerian Louis Mendanha, stock broker R.K. Global Shares & Securities Ltd., Banks, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

-Sd-

DATE: JULY 29, 2020

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA