

**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 (1) and 11D of the Securities and Exchange Board of India Act, 1992

**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:

Sl. No.	Name of the Entity	PAN
1	Fortunescript Services Private Limited	AACCF6496N
2	Mr. Mithilesh Narayan	AGBPN5750B
3	Mr. Shiba Shankar Das	BAGPD0454A
4	Mr. Dilip Kumar Rajak	BYFPR7769R

In the matter of Fortunescript Services Private Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint against Fortunescript Services Private Limited (hereinafter referred to as “company”) *inter alia* alleging the following:
 - 1.1. The complainant got a call from the company and they told her that it is a Bangalore based advisory company.
 - 1.2. Subsequently she had transferred an amount of Rs. 60,000 on March 20, 2019 to the company and the company agreed to call her.

- 1.3. Complainant called the company when she did not receive any calls from it. The company informed her that the market is volatile and it is not possible to trade.
- 1.4. The complainant then sent an email to the company for discontinuation of the service and to process her refund. However, she did not receive any refund.
- 1.5. The complainant later learnt that the company is not registered with SEBI.

SEBI's EXAMINATION

2. In view of the complaint received, SEBI carried out a preliminary examination to ascertain whether unregistered investment advisory activities are being carried out by the company. To that end the website of the company, www.fortunescrypt.com, reply of company, its financial statements and particulars of its bank accounts and payment gateway were perused to gather information. The aforesaid website of the company was active till March 6, 2020. Currently the company's website is inactive. On visiting the website, the following message is displayed: "*This site can't be reached. fortunescrypt.com took too long to respond*". However, during the course of preliminary examination, print outs of web pages of the company's website was taken and have been placed on record.
3. SEBI's preliminary examination found as follows:
 - 3.1. The company held itself as an Investment Advisor and collected subscription fees from investors for providing stock recommendations without obtaining a registration under SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**").
 - 3.2. A total of 582 credits were received from different sources into the bank accounts of the company since September 1, 2015. The total credit received in the various accounts maintained by the company is approximately Rs.1.22 crore.
 - 3.3. From the numerous credit transactions, it appears that a large number of investors are affected.

CONSIDERATION and PRIMA FACIE FINDINGS

4. I have perused the materials available on record, achieved information available on the website, reply of the company, its financial statements and information obtained from various Banks and payment gateway. A preliminary examination of the material available

on record was made in order to verify whether Fortunescript Services Private Limited has offered investment advisory services and has collected money from various investors without obtaining registration from SEBI. In this context, *prima facie*, the following issues arise for determination in the instant matter:

- 4.1. *Whether Fortunescript Services Private Limited is prima facie holding itself out and / or acting as an investment adviser?*
- 4.2. *If answer to aforesaid issue is in affirmative, whether Fortunescript Services Private Limited has, prima facie, violated any provisions of SEBI Act read with IA Regulations and provisions of PFUTP Regulations?*
- 4.3. *If answer to issue no. 2 is in affirmative, whether urgent directions, if any should be issued against Fortunescript Services Private Limited and its Directors?*

Issue No. 1: *Whether Fortunescript Services Private Limited is prima facie holding itself out and / or acting as an investment adviser?*

5. As regards the first issue, I note the following from the material available on record:

5.1. As per the information gathered from the website of the company, the following claims are noted:

- 5.1.1. *Fortunescript is one of the stock advisory firm promoted to help investors or traders to make money in these fast changing dynamic financial market. We are there to help you to reach your objectives with our knowledge by providing brief survey on stock/stock market. We have comprehensive ideas in the current business environment that can boost your potential for long term success. We do have a highly qualified specialised team who can also provide you with better tips & know the market very well.*
- 5.1.2. *We provide the best stock recommendations.*
- 5.1.3. *We are not says that we provide 100% accurate and sure shot Stock Market tips. Our accuracy is more than 80%. We always share disclaimer that do not invest in one call only. For safe side we always insist our customers to break out you fund to our all calls. That's why we are genuine stock market tips provider in Karnataka, India.*

5.1.4. *...Fortune Script service is a best stock advisory tips in India. The firm is one of the biggest players with a dominant position in both institutional and Retail. Company focuses on the business of study, info and intelligence. We've got created a shot at to bring you the highest technical, fundamental basics of stock.*

5.1.5. Under the heading "WELCOME TO FORTUNESCRIPT FAMILY", the company claims as follows:

"Fortunescript Services Private Limited is a fast growing pioneering based stock advisory firm specialized in offering effective stock trading and investment tips to the stock traders and investors trading in NSE and BSE in India. Our Firm believes in facilitating all of our clients to gain something with good accuracy level. We offers stock advisory tips LIVE in the Indian stock market trading hours through calls and recommendations by SMS, mails by our professionals so that the traders get proper time to trade in the market.

Our firm having highly skilled professionals, having good fundamental and technical knowledge about a particular stock in the capital market. We offers short-term, mid-term, long-term and diversified portfolio equity advisory services to our clients. We are accepting cash transaction towards the service taken by the customers not for any guaranteed returns."

5.1.6. Under the heading "Brief About Our Services", the company claims to provide service under 3 categories namely: Cash Service, F&O Service and Commodity Service.

5.1.7. Under the heading "DIFFERENCE BETWEEN FORTUNESCRIPT SERVICES AND OTHER SERVICES", the company *inter alia* claims as follows:

5.1.7.1. *Real time entry and exit price through phone call.*

5.1.7.2. *Best growth in capital on consistent basis.*

5.1.7.3. *Personalized service: Personally Phone call entry and exit. Customized service: Providing services as per everyone's requirement and capital.*

5.1.7.4. *Dedicated person available always to guide you in case of any query during live trading.*

5.1.7.5. *Personalized and customized services available in case you have different requirement from others.*

5.1.8. Under the heading “WHY FORTUNESCRIPT..?”, the company claims as follows:

5.1.8.1. *The fastest leading financial research house of India.*

5.1.8.2. *Our recommendation featured in the Economic Times.*

5.1.8.3. *Live market updates and trading recommendations.*

5.1.8.4. *Tech. support on call, chat and email.*

5.2. On a further perusal of the website, it is observed that the company is providing services under two different categories viz., Trading Equi-Commo and Investment Advisory. The pricing of various services offered by the company as per its website is as under:

Service Name	Pricing				
	1 Month (Rs.)	3 Months (Rs.)	6 Months (Rs.)	12 Months (Rs.)	24 Months (Rs.)
A. Trading Equi-Commo					
a) FirstIdya	30,000	40,000	55,000	70,000	-
b) CashMotion	20,000	30,000	40,000	55,000	-
c) Maximore	35,000	50,000	70,000	85,000	-
d) Bull-Era	30,000	45,000	60,000	75,000	-
e) Postabyte	30,000	45,000	60,000	75,000	-
f) Profitfuzion	20,000	30,000	40,000	55,000	-
g) Kryptascript	35,000	50,000	65,000	1,00,000	-
h) Volatyne	25,000	35,000	55,000	75,000	-
i) Bonanziya	25,000	35,000	55,000	75,000	-
j) Neurocept	20,000	30,000	50,000	75,000	-
k) MILLENiO					
i. Standard	15,000	30,000	45,000	55,000	-
ii. Premium	25,000	50,000	60,000	75,000	-
l) SCRIPTO-COMBO Plan					
i. Standard	20,000	30,000	45,000	60,000	-
ii. Premium	25,000	40,000	60,000	75,000	-
B. Investment Advisory					
a) FUTURA-SIP ADVISORY SERVICES	-	15,000	25,000	40,000	50,000
b) Foleo-Bird Advisory Services	-	10,000	15,000	30,000	40,000
c) MPS+ PLAN	-	7,000	15,000	20,000	30,000

d) Over-Savior Advisory Services	-	20,000	35,000	55,000	75,000
e) C-B-P Advisory Services	-	30,000	50,000	75,000	1,00,000

5.3. A few illustrations of subscription packages provided by the company and the plans for the same are as under:

5.3.1. Trading Equi – Commo - Maximore

Maximore calls are a combination of both FirstIdya and CashMotion advisory services. Here, our script belongs to both technical and fundamental values. Our core team will always guide you to trade safe in this volatile market with medium risk. It is especially designed for those traders who want to earn in a monthly basis with the market move.

Service Features:

- *Frequency of Calls – 10-15 calls / month with stop loss.*
- *Risk Level – Medium: with 3-9% profit per call.*
- *Accuracy – 92-97% irrespective of market trend.*
- *Delivery Mode – SMS, Email, WhatsApp and Yahoo Messenger*
- *Support – 24/7 live support*

5.3.2. Investment Advisory – MPS + Plan

Multibagger Portfolio Service Plus is a long term investment advisory plan of FortuneScript that contains potential multibagger stocks. Most successful investors and analysts believe more in investing than trading and had become millionaire by investing few thousand rupees in the fundamentally good company at right time. FS-MPS+ package follow the investment techniques used by these analysts and the stocks they invest in. These stocks tend to multiply several times in mid-term to long-term. Investors can expect following returns on every recommended stocks: 20% - 100% in 1 year, 300% - 1000% in 3-5 years.

5.3.3. Investment Advisory – Foleo Bird Advisory Services

Foleo-Bird is a flagship product of FortuneScript frm. In this package we would suggest you large caps and midcap stocks which would multiply your wealth in small time frame.

...

In this package profits would be unbeatable and if investor is having patience than within a year his investment amount may multiply several times.

5.4. Further, I note the following from the information submitted by the company to SEBI vide its emails dated September 11, 2019:

5.4.1. The company was incorporated on September 9, 2015. It is observed from the MCA website that the status of the company as on July 7, 2020, is active.

5.4.2. Following are the Directors of the company:

Name	Date of Appointment	End Date	DIN
Mithilesh Narayan	9/9/2015	-	0007263144
Shiba Shankar Das	9/9/2015	-	0007263149
Dilip Kumar Rajak	6/11/2017	-	0007959675

5.4.3. The objects of the company as per the Memorandum of Association of the company is as under:

a) To Provide financial advisory Services to financial institutions and body corporate in restructuring, mergers, spin offs, raising equity, wealth management, interest rate derivative product advisors, foreign exchange products and derivatives advisors, commodity products and derivatives advisors, equity shares and derivatives advisors, indices and derivatives advisors, venture capital and private equity investment advisors, alternative and other asset class advisors, credit advisors and loan syndication advisors, real estate investment advisors, stressed asset advisors.

5.4.4. In addition to above objects, following matters are listed in the Memorandum of Association under matters which are necessary for furtherance of the objects:

- 1. To provide the services of registrar to the issue, transfer agents, trustees, factors and custodian and to undertake portfolio management and advisory services and to do all the activities of the capital and finance markets subject to the approval of SEBI and other authorities.*
- 2. ...*
- 3. To provide in advisory service in investment, savings, stocks and shares, debenture and bonds, taxation, accounting, legal or other fields allied to the forgoing and to carry on the business of underwriting, broking of finance, shares, debentures and other money market securities, managing the raising of capital or loans by the government, bodies corporate, banks, institutions or other persons, finance, resources of persons and dealing, placing, buying and*

selling or speculating in shares, securities, debentures, deposits or other money market securities in India or abroad.

5.5. Moreover, the payment page of the company's website had listed details of its bank accounts maintained with IDBI Bank, ICICI Bank, and HDFC Bank. Further, the page had link to EaseBuzz payment gateway through which payments can be made to the company. The transactions observed in the abovementioned bank accounts and payment gateway are summarized as under:

Account Number & Bank	Period for which bank statement is obtained	Total Credits (Rs.)	No. of credit transactions
50200014778779 HDFC Bank	1/9/2015 to 8/8/2019	12,15,065	71
107505500208 ICICI Bank	3/10/2015 to 31/07/2019	13,77,613	103
1544102000001731 IDBI Bank	20/9/2015 to 1/3/2020	61,79,606	272
EaseBuzz (Payment gateway)	19/12/2016 to 2/8/2019	34,66,920	136
Total		1,22,39,204	582

5.6. From the analysis of Banks and payment gateway statements, the following is observed:

5.6.1. A total of 582 credits were received from different sources into the bank accounts and payment gateway of the company since September 1, 2015.

5.6.2. The total credit received in the aforesaid accounts is approximately Rs. 1.22 crore.

5.6.3. It is observed that there are numerous credit transactions / large number of payments received in various bank accounts and payment gateway. From the narrative of the transactions, it appears that the payments have, *prima facie*, come from various investors / clients.

6. In light of the aforesaid discussions, I *prima facie* observe from the contents of company's website (print outs of webpages) wherein various services offered by the company has been described that Fortunescript Services Private Limited is *prima facie* holding itself out as an investment adviser. Further, it is also *prima facie* observed from the company's

webpages that it claims to have accuracy of more than 80% in providing tips, it provides returns that an investor can expect on their stock recommendation and it also claims to multiply investors' wealth in a small time frame. Currently, though the website of the company is not active, it is noted from the print outs of the webpages that it offered various tips / services to its clients in the securities market through emails, SMSs including a dedicated person always available to guide the client in case of any query during live trading. Considering the above facts and circumstances, especially the content of the website of the company, its Memorandum of Association coupled with the credit transactions in the bank accounts and payment gateway, *prima facie*, it is inferred that the fees / funds credited to the bank accounts and by payment gateway, were for the purpose of availing the services indicated on the website of Fortunescript Services Private Limited.

7. In this factual context, I have perused the definition of Investment Adviser as given in regulation 2(m) of IA Regulations, which 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*". Further, I have perused regulation 2(l) of the IA Regulations which 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.*"
8. In light of the aforesaid definitions, it is observed from the contents of the website of the company that the company is holding itself out as investment adviser by *prima facie* offering to provide investment advice as defined under regulation 2(l) of IA Regulations by offering to give advice related to investing in, purchasing and selling in securities and is also offering various investment packages for subscription. Further, as noted from various bank accounts and payment gateway mentioned on its website that there are multiple credit entries which when seen together with the contents of the website and its Memorandum of Association leads to a *prima facie* conclusion that the credit entries

in the bank accounts and payment gateway are for consideration for the investment advice given by the company to its clients. Thus, *prima facie* the company is an investment adviser as defined under regulation 2 (m) of IA Regulations.

9. Therefore, the activity of the company by virtue of its website contents is holding itself to be giving trading tips, stock specific recommendations, etc. to the investors and general public. The fact that the objects of the company as stated in its Memorandum of Association states that one of the objects of the company is to provide financial advisory services to financial institutions and body corporate in equity shares and derivatives , commodity products and derivatives etc. and the receipt of money in its bank accounts which was mentioned in the website as bank accounts for the purpose of sending the consideration, *prima facie* shows, on preponderance of probability that the credit of money is in fact the fee for the investment advisory services rendered by the company. Therefore, the company has not only held itself out as investment adviser but has also acted as an investment adviser for consideration.

Issue No. 2: *If answer to aforesaid issue is in affirmative, whether Fortunescript Services Private Limited has, prima facie, violated any provisions of any provisions of SEBI Act read with IA Regulations and provisions of PFUTP Regulations?*

10. In order to ensure that the investors who receive investment advice are protected, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. Section 12(1) of SEBI Act reads as under:

*“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.”*

Further, as per regulation 3(1) of IA Regulations, the registration of the investment advisers is mandatory. It provides that, *“On and from the commencement of these*

regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations”.

11. The activities of the company, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that Fortunescript Services Private Limited was holding itself out as an investment adviser and also has been acting as an investment adviser. However, no material is available on record to indicate that Fortunescript Services Private Limited has a certificate of registration as investment adviser or has applied to SEBI for the same. In this context, it is noted that Fortunescript Services Private Limited is not registered with SEBI in the capacity of an investment adviser or in any capacity. The characteristics and features of the business activity carried out by Fortunescript Services Private Limited, as discussed in the preceding issue, *prima facie*, leads to the conclusion that Fortunescript Services Private Limited is holding itself out and acting as an investment adviser without a certificate of registration from SEBI. In my view, these activities/ representations of Fortunescript Services Private Limited are, *prima facie*, in violation of Section 12(1) of SEBI Act read with regulation 3(1) of the IA Regulations.

12. Before proceeding further, I would like to refer to the provisions of Sections 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) and regulations 3 (a), (b), (c), (d) and regulations 4(1) and 4(2)(k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”). The text of the aforesaid provisions is reproduced below:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly:

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device

or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

...

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

13. In my view, an unregistered investment advisor like Fortunescript Services Private Limited can put investors at great risk by misleading them. Without having a registered investment advisor certificate, Fortunescript Services Private Limited is holding itself out as an investment advisor and offers services through its website to investors with the objective of making money / collecting fees through subscriptions. From the Memorandum of Association of the company it is noted that in order to provide advisory services and to do all the activities of the capital and finance market will be subject to the approval of SEBI and other authorities. Thus, *prima facie*, it appears that Fortunescript Services Private Limited is knowingly concealing the fact that it is not registered with SEBI as an investment advisor and is also making representations in a reckless and careless manner, thereby luring and inducing investors to deal in securities by availing its services. Furthermore, the company has claimed the following:

13.1. *“We are not says that we provide 100% accurate and sure shot Stock Market tips. Our accuracy is more than 80%.”*

13.2. Best growth in capital on consistent basis.

13.3. Under the subscription package, Investment Advisory – MPS + Plan, the company has claimed that the investor can expect following returns on every recommended stocks: 20% - 100% in 1 year, 300% - 1000% in 3-5 years.

13.4. Under the subscription package, Investment Advisory – Foleo Bird Advisory Services the company has claimed that it would suggest large caps and midcap stocks to its clients which would multiply clients wealth in small time frame. In this package, the company has further claimed that the profits would be unbeatable and if the investor is patient, than within a year his investment amount may multiply several times.

Thus, by making the aforesaid claims, Fortunescript Services Private Limited is inducing investors to deal in securities by availing its services. Such *modus operandi*

is being continuously used by Fortunescript Services Private Limited which is evident from the fact that there are continuous credits in its bank accounts.

14. It is observed that the company has claimed that its accuracy is more than 80% in providing stock market tips. The same is *prima facie* not supported by any evidence as available on the webpages of the company. Even, if it were true, it is *prima facie* observed that the conduct of the company in claiming that its accuracy is more than 80% in providing stock market tips and it has best growth in capital on consistent basis is not a full disclosure and is an active concealment of the material fact that past performance, is not a guarantee of future result. In other words, historical performance, if any, when presented, is purely for reference purposes and it is inaccurate to simply assume that these will extend into the future. Every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Similarly, the claim of the company to provide a specific return on client's investment or to claim to multiply clients wealth in small time frame, is *prima facie* an active concealment of the material fact that every investment in the market is subject to market risk. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment. This act of conveying specific returns or multiplying wealth in a short period of time, is *prima facie*, indulged for the purpose of luring customers in its net and thereby increasing its income. In light of the same, the acts of the company to make incomplete disclosure and active concealment of material information, are non-genuine and deceptive acts and have been *prima facie* made with an intent to influence the client to avail its advisory services.
15. The above discussed non-genuine and deceptive activities of Fortunescript Services Private Limited are *prima facie* fraudulent and are covered under the definition of 'fraud' defined under regulation 2(1)(c) of PFUTP Regulations which reads as under:
- "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 behavior 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 noted that *prima facie* fraudulent activities / conduct / act / practice of Fortunescript Services Private Limited as discussed above are *prima facie* in violation of provisions of Sections 12A (a), (b), (c) of SEBI Act and regulations 3 (a), (b), (c), (d) and regulations 4(1) and 4(2)(k) of PFUTP Regulations.

Issue No. 3: *If answer to issue no. 2 is in affirmative, whether urgent directions, if any should be issued against Fortunescript Services Private Limited and its Directors?*

17. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. The PFUTP Regulations and the IA Regulations have been formulated with the main objective of preventing fraudulent activities and regulating investment advisory activities to safeguard the interests of investors and hence registration of investment advisory activities with SEBI has been made mandatory. The 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 criteria set out in 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. In the instant case, Fortunescript Services Private Limited is soliciting and inducing the investors to deal in securities market on the basis of investment advice, stock tips, intra day calls etc., *prima facie*, without having the requisite registration / certification as mandated under the IA Regulations. 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. Further, it is noted from material available on record that the last transaction in the bank accounts of Fortunescript Services Private Limited is as on September 26, 2019 (IDBI Bank Ltd.). Moreover, on March 6, 2020, an attempt was made by SEBI to pay Re.1 through the payment gateway and the transaction was successful. Additionally, as per the status of the company on MCA website, the company is still active with its last AGM held on September 30, 2019. Furthermore, the details of the company including its location, email (enquiry can be sent to the firm by an email), telephone number and employee strength are available on <https://www.yelu.in/company/933011/fortune-script-services-pvt-ltd>. This, *prima facie*, indicates that Fortunescript Services Private Limited not only continues to carry on its activity of holding itself to be an unregistered investment adviser, but is also continues to be acting as an unregistered investment advisor.

18. I, further note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. Here, I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs.*

Adjudicating Officer, SEBI decided on April 26, 2013, wherein the Court observed as follows:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

19. In the present case, as noted in preceding paragraphs, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak are the Directors of Fortunescript Services Private Limited. Consequently, the said Directors are statutorily required to exercise due care and diligence as expected from a prudent person which among other things entails running the affairs of the company within the four walls of the relevant statutory provisions. In the extant matter, *prima facie* the company is holding itself out and acting as an investment adviser without a certificate of registration from SEBI which is *prima facie* not in compliance with SEBI Act and IA regulations. Moreover, the activities / conduct / act / practice of Fortunescript Services Private Limited has been *prim facie* found to be fraudulent and is not in compliance with SEBI Act and PFUTP Regulations. The *prima facie* violations committed by Fortunescript Services Private Limited which have been discussed above also pertain to the time period when Mr. Dilip Kumar Rajak was not the Director of the company. However, considering Fortunescript Services Private Limited has continued its service, post his joining as a Director of the company, therefore, he along with the other 2 Directors of the company namely Mr. Mithilesh Narayan and Mr. Shiba Shankar Das, who are also holding 50% each of the shareholding of the company and are Promoter – Directors of the company, are *prima facie* responsible for the violations committed by Fortunescript Services Private Limited.

20. It is noted that permitting the investors to receive an investment advisory service from an unregistered entity, in effect means, the same is received from the unqualified person without following the safeguards mentioned in the IA Regulations. An investor receiving a service from registered investment advisor in consonance with the IA Regulations vis-a-vis an investor who receives such service from unregistered investment adviser stands at a disadvantageous position in respect of his protection as an investor as envisaged under the IA regulations. An unregistered investment adviser has not satisfied the Regulator that he is a fit and proper person to hold the certificate of registration as investment adviser. Availing of service from such persons is detrimental to investors and such unqualified service results in irreparable detriment as the investors' money is invested based on unqualified and un-regulated service. 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/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.
21. Further if an ex-parte order is not passed, many prospective investors may have to part away with large fees and investment resulting into irreparable injury to themselves as discussed earlier. However, if an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. 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 by following the advice from an unqualified person and resultant loss of investor's confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, unregistered investment advice 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 entity.

22. Considering the facts and circumstances of the present matter and on the basis of the *prima facie* findings, it is necessary to take urgent preventive action in this matter and to take immediate steps to prevent Fortunescript Services Private Limited from collecting any more funds from the public and indulging in unauthorized investment advisory activities. As noted in the preceding paragraphs, monies were being received in the bank account of the company and its bank accounts are still active, it is observed that as recently as March 6, 2020 money could be credited to the company. Moreover, the company is an active company with its last AGM held on September 30, 2019. Furthermore, the details of the company including its location, email (enquiry can be sent to the firm by an email), telephone number and employee strength are available on <https://www.yelu.in/company/933011/fortune-script-services-pvt-ltd>. Thus, though the company's website is not active, investors can reach it through telephone and email. The same *prima facie* demonstrates that Fortunescript Services Private Limited can still lure investors to deal through it in the securities market and probability of investors reaching Fortunescript Services Private Limited is still high. Therefore, the threat of investors getting lured towards the unregistered activity of Fortunescript Services Private Limited in the securities market is still in existence and imminent. The amount of money, *prima facie*, observed to have been collected by Fortunescript Services Private Limited is approximately Rs. 1.22 crore and indicates the magnitude of the prospective threat to the investors. Therefore, even today, investors can become prey to the different packages/ services offered by Fortunescript Services Private Limited. In light of the same, I find that there is no other alternative but to take recourse through an *interim ex parte* order against Fortunescript Services Private Limited for preventing it from collecting funds by defrauding investors and by indulging in unauthorized investment advisory services without obtaining the mandatory registrations from SEBI in accordance with the law. As the bank accounts are active, the balance of convenience demands the preventive measure of stopping the collection of money in the bank accounts of the company from investors. The same can be effectively achieved by an

appropriate direction of stopping credit into the bank account of the company. As Fortunescript Services Private Limited has already evaded the jurisdiction of SEBI by *prima facie* acting as unregistered investment adviser, the balance of convenience also demands that the company 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 the company has been incorporated.

23. With the initiation of quasi-judicial proceedings, it is imminent that the Noticees 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 Noticees 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 these Noticees and also the interests of those who may fall prey to the unregistered investment advisory by reaching the company through email or telephone, the balance of convenience lies against the Noticees, which requires immediate action against them including not to divert the money collected from the subscribers / clients / investors.

ORDER

24. In view of the foregoing, pending enquiry post representation(s) received from the entities, if any, I, in order to protect the interests of investors and integrity of the securities market, in exercise of the powers conferred upon me under Sections 11, 11(4), 11B (1) and 11D read with Section 19 of the SEBI Act hereby issue by way of this *interim ex-parte order*, the following directions:

- 24.1. *Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, are directed not to access the*

securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

24.2. *Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, are directed 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.*

24.3. *Fortunescript Services Private Limited is directed not to divert any funds raised from investors, kept in bank account(s) and/or in its custody until further orders.*

24.4. *Fortunescript Services Private Limited is directed 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.*

24.5. *Fortunescript Services Private Limited is directed to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, including websites, in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*

24.6. *If Fortunescript Services Private Limited and its Directors have any open positions 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. Fortunescript Services Private Limited and its Directors 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.*

24.7. *Fortunescript Services Private Limited is directed to provide a full inventory of all assets held in its 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.

- 24.8. *IDBI Bank (A/c no. – 1544102000001731), ICICI Bank (A/c no. – 107505500208) and HDFC Bank (A/c no. – 50200014778779) and payment gateway EaseBuzz, wherein Fortunescript Services Private Limited is holding an account, are directed not to allow any debits/ withdrawals from and credits to the said accounts, without the permission of SEBI. The Banks and payment gateway are directed to ensure that these directions are strictly enforced.*
- 24.9. *The Depositories are directed to ensure that till further directions no debits and credits are made in the demat accounts of Fortunescript Services Private Limited and its Directors.*
- 24.10. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of Fortunescript Services Private Limited and its Directors are not transferred or redeemed.*
25. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Fortunescript Services Private Limited and its Directors.
26. This Order shall be treated as a Show Cause Notice and Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak are show caused as to why the various representations made/ services offered by Fortunescript Services Private Limited in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, why the investment advisory plans floated by them should not be held as “Investment Advisory Services” in terms of the IA Regulations and thereby the activity of Fortunescript Services Private Limited be treated as unregistered activity under the SEBI Act and relevant Regulations.
27. Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak are also show caused as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including directions for an appropriate period for the

prohibition on them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period, directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and why any direction to refund the amount collected from the investors/clients for its various schemes under Sections 11 and 11B (1) of SEBI Act, should not be issued against them.

28. The *prima facie* observations contained in this Order are made on the basis of the material available on record. In this context, Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak may, within 21 days from the date of receipt of this Order, file reply, 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.
29. The above directions shall take effect immediately and shall be in force until further orders.
30. A copy of this order shall be served upon Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, IDBI Bank, ICICI Bank and HDFC Bank, EaseBuzz, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: August 4, 2020

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA