

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

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

In Re: Violation of provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, SEBI (Portfolio Managers) Regulations, 1993, and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

In respect of:

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

Background:

1. 3M Team Securities Services Pvt. Ltd. (hereinafter interchangeably referred to as “**3M/ IA/ Noticee**”) is registered as an Investment Adviser (“IA”) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations**”) with effect from September 09, 2014. The name of the company was changed to 3M Team Research Private Limited with effect from December 30, 2016. The present Directors of the company are Mr. Rakesh Sethi and Mr. Pramod Jain. The company has its registered office at 325, Milinda Manor, RNT

Marg, Opposite Central Mall, Indore - 452001. Its website address is <http://www.3mteam.in>.

2. Mr. Vikas Jain (hereinafter referred to as the “**complainant**”) filed a complaint with SEBI against the Noticee and submitted documents in support of his allegations. The following allegations have been made by the complainant:

- 2.1. Mr. Rakesh Sethi, director of the Noticee, insisted on opening a Demat and Trading Account for him in Arihant Capital Markets Ltd. (hereinafter referred to as “**Arihant**”).

- 2.2. The complainant was provided with details of the ‘Wealth Creator BTST Scheme’ by the Noticee and he paid Rs. 20,000/- to the Noticee in the name of providing Portfolio Management Service (PMS).

- 2.3. Mr. Rakesh Sethi represents himself as a SEBI Registered Portfolio Manager and a registered Sub-Broker of Arihant. The complainant submitted the webpages from the website of the Noticee depicting the salient feature of the PMS Advisory Service and job openings for PMS Executives offered by it.

3. Based on the above mentioned details, a preliminary examination into the affairs of the Noticee was carried out. Based on the findings of this preliminary examination, vide interim order dated November 26, 2019, the following, *prima facie*, observations were made against the Noticee and its Directors, Mr. Rakesh Sethi and Mr. Pramod Jain:

- 3.1. The Noticee has (a) held itself out as a portfolio manager, (b) provided the portfolio management service to its client(s) and (c) charged service fee from client(s) for the same without obtaining the necessary certificate of registration.

- 3.2. The Noticee was found to be offering assured returns by making representation to that effect on its website.

- 3.3. The complaint of Mr. Vikas Jain was referred for arbitration at the National Stock Exchange (NSE) against Arihant and its Authorized Person (AP), Mr. Rakesh Sethi. From the findings in the arbitration awards and on the basis of the material available on record, it was held that Mr. Rakesh Sethi, in his capacity as director of the Noticee, has misused the Noticee's website for his own personal gain as an AP in order to induce the complainant and the same amounts to a scheme or artifice to defraud investors like the complainant.
4. Based on the above observations, the Noticee and its Directors, Mr. Rakesh Sethi and Mr. Pramod Jain, were, *prima facie*, held to be in violation of the following provisions of securities laws:
- 4.1. The Noticee was held to be in violation of Section 12(1) of the SEBI Act, 1992, read with Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as the "**PMS Regulations**").
- 4.2. The Noticee was held to be in violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) and 4(2) (k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").
- 4.3. The Noticee was held to be in violation of Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the IA Regulations.
5. Mr. Rakesh Sethi, Director of the Noticee, was found to be, *prima facie*, in contravention of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) of the PFUTP Regulations.
6. In view of the above observations, the following directions were issued against the Noticee and its present Directors, Mr. Rakesh Sethi and Mr. Pramod Jain:

6.1. The Noticee and its present directors, and any person while working under it/ them or under its/ their instructions as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

6.2. The Noticee, as ensured by the present directors, shall remove all references made by it through any media (physical or digital) regarding (i) holding itself out as a portfolio manager and (ii) expected returns from services/ products offered by it.

6.3. Mr. Rakesh Sethi, director of the Noticee, is restrained from buying, selling or dealing in the securities market or associating himself with the securities market, either directly or indirectly, in any manner whatsoever, till further directions.

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

7. Replies of the Noticee and both its Directors were received vide their letters dated December 16, 2019. An opportunity of hearing was also sought and the same was granted on July 15, 2020. The personal hearing was conducted via video-conferencing in view of the Covid-19 pandemic and the same was attended by the Authorized Representative for the Noticee and its Directors. Time was granted till July 30, 2020, to make additional submissions and the same have been received vide July 29, 2020. The submissions of the Noticee and both its Directors post the interim order and post the personal hearing are similar in nature and are mentioned below:

7.1. Complaint of Mr. Vikas Jain:

7.1.1. Apart from the said complainant, no complaints have been made by any of our clients to SEBI which indicates that we have always acted in a

righteous manner and not deceived any of our clients. This fact ought to be taken into consideration.

- 7.1.2. The complainant approached us to enquire about short and long term delivery based investment stocks. We addressed the query and provided information and advice. The complainant was satisfied and we merely suggested the name of Arihant for handling broking on behalf of the complainant and we deny that we insisted that broking account should only be opened with Arihant. As complainant was desirous of opening trading account with Arihant, we forwarded demat and trading account opening forms.
- 7.1.3. It cannot be concluded that we insisted on opening account with Arihant. It can be alleged that we facilitated account opening process. The complainant could have always opened account with another intermediary. If we had insisted, then complainant could have challenged the alleged “insisting”. Hence, the same is an afterthought and the observations are erroneous and need to be disregarded.
- 7.1.4. We deny that we received Rs. 20000/- in the name of PMS or offered assured returns to the tune of 200-400% p.a. Email dated 04.04.2014 clearly states that we shall provide advisory services and we have not represented ourselves as a portfolio manager in the email or the enclosed scheme. It is evident that the complainant has misrepresented the facts.
- 7.1.5. Even though the invoice bears the words “PMS”, it cannot be construed to mean that we have provided PMS. It is apparent that we have only provided advisory services.
- 7.1.6. The complainant could have verified that Regulation 15(1A) of the PMS Regulations requires any portfolio manager not to accept from clients, funds or securities worth less than Rs. 25 lacs/- and hence, the allegation and conclusion of the Ld. WTM falls flat as we had offered investment advisory services and taken Rs. 20000/-.

7.1.7. Further, there is no copy of the agreement which is pre-requisite as per Regulation 14(1a) of the PMS Regulations.

7.1.8. The complaints at NSE filed by the complainant have been settled since we have already paid the appellate award claim. It was orally agreed by the complainant that he shall withdraw all complaints against us from all forums as the dispute had been resolved. The conduct of the complainant reflects that he has never approached any forum with clean hands and never had any inclination to resolve the dispute. It is humbly submitted that the cause of action against us stood vitiated on the issue of the appellate award and the present proceedings against us for the same cause of action amount to double jeopardy.

7.2. Unregistered Portfolio Management:

7.2.1. We vehemently deny that we are holding out as a portfolio manager. We reiterate that on the website it is clearly mentioned that we offer PMS Advisory Services which makes it apparent that we merely provided advisory services towards long term investments to our clients and not manage the portfolio, as is wrongly alleged. It was strictly an advisory service and cannot be interpreted to mean that we are offering services of a portfolio manager. The term has attained a wrong nomenclature.

7.2.2. Under this section we have provided general information as to what comprises PMS and it should not be construed as providing PMS since we have never admitted that we provided PMS.

7.2.3. PMS and advisory services related to PMS are distinct and separate services and our services could never be deemed to be portfolio management. Assuming that we were offering PMS, Regulation 15(1A) and 14(1a) of the PMS Regulations could never be applied to us since we had not fulfilled any condition to be recognized under PMS. As per Regulation 15(1A), a portfolio manager cannot accept funds/ securities

worth less than Rs. 25 lacs from a client. We have only taken Rs. 20000/- from the complainant, which is for providing advisory services.

- 7.2.4. Regulation 2(l) of the IA Regulations defines “investment advice” which amongst others includes advice on investment portfolio containing securities or investment products i.e., it was advisory services for creating a portfolio. Apart from that we were also advising client with respect to reshuffle, rearrange, and reconstruct investment which is within the scope of the definition of investment advice.
- 7.2.5. We have taken measures to eliminate misrepresentation, if any, by redesigned our website and the impugned order has rightly concluded that as of date our website does not have such offering.
- 7.2.6. As regards advertisement on naukri.com, we state that the same was for executives who shall assist in providing advisory services and it cannot be construed to connote that we were offering PMS.
- 7.2.7. Regarding the invoice of Rs. 20000/- from our Account Department, the term “PMS” is short for PMS Advisory Services provided to the complainant. One of the employed sales personnel had unwittingly sent an email without permission of the Administration Department and we most humbly pray that the ignorant conduct of one such person may not be held as the general reflection on our conduct. The term used may be given liberal interpretation in lieu of the fact that we are IAs and do not provide any portfolio management services and there has been no complaint from any of our other clients apart from the complainant.
- 7.2.8. The complainant has paid Rs. 2 lacs to Arihant and it is a misconception that we were in receipt of Rs. 2 lacs from the complainant.
- 7.2.9. We deny that we have held ourselves as a Portfolio Manager or provided any PMS services to our clients or charged fee for PMS from our clients. We have only charged fees towards advisory services. We deny having Section 12 (1) of the SEBI Act read with Regulation 3 of the PMS

Regulations as we were not required to hold a certificate of registration for portfolio management.

7.3. Offering assured returns:

- 7.3.1. With respect to “Wealth Creator Stock Future/BTST/STBT Scheme”, perusal of scheme document shows that we are providing advisory services and moreover, the returns set out are probable returns derived as per the available financial tools and comparative estimate and that there was no promise of the assured returns, as alleged. Further, the complainant was never a party to the scheme and has no locus standi to complain.
- 7.3.2. The returns mentioned as part of PMS Advisory Services are expected returns and were never meant to be assured returns and are merely projected estimated returns as per available financial tools.
- 7.3.3. With respect to our advertising of a service/ product named ‘Modi 2019 to 2024 (Multibagger calls)’ on our website where one of the feature of this service/ product is an expected return of 100-200 percent, the contents are based on mere assumptions and on this ground alone, the allegations are liable to be disregarded. We never made any promises to any of our clients for any assured returns.
- 7.3.4. We always advise clients not to trade in intraday and also discourage frequent trading in market. Based on experience of Mr. Rakesh Sethi, we recommend power of investment by Rule of 72 and power of compounding effect. Rule of 72 is a simple way to determine how long an investment will take to double given a fixed annual rate of interest and is reasonably accurate for low rates of return.
- 7.3.5. The BTST/STBT scheme was recommended to clients who were looking for quick returns on a daily basis/ having horizon of 2 days. Strategy was based on assumption that recommendations will result in profit on around

15-16 days out of 20 trading days in a month and on remaining 4-5 days, trades may result in loss/stop loss trigger. Accordingly, trades in this scheme will result in an overall profit. However, we have disclosed to all clients that the above expected returns are based on our trading experience of over 20 years and are subject to market risks. The Wealth Creator scheme has a holding period of 10 to 30 years.

- 7.3.6. We merely render investment advice to the clients and have never provided any schemes of unrealistic/ assured returns. The scheme document has been misinterpreted and the estimates are based on financial tools available and we have not made any promises of such returns. Therefore, we have not made any reckless and careless representation. We deny that we have made any false statements without reasonable ground for believing it to be true and have never intended to sell products/ services with expected returns. We deny that we have indulged in any manipulative or deceptive practice or employed any scheme to defraud any person.
- 7.3.7. None of the general obligations and responsibilities, as defined in Regulation 15(1) of the IA Regulations, have been breached. Neither does Regulation 15(1) nor the Code of Conduct deal with returns and any reference to these is out context. We deny that have violated Regulation 15(9) read with the Code of Conduct for IAs. We have always followed the Code of Conduct.
- 7.3.8. We deny we have made any false statements without reasonable ground for believing it to be true and have never intended to sell services/ products with expected returns to investors. We have merely provided investment advice.
- 7.3.9. We have neither indulged in any manipulative nor deceptive practice or employed scheme to defraud nor engaged in any act, practice, course of business which operates or would operate as fraud upon any person. We

have not disseminated any false or misleading information or advice likely to influence the decision of investors dealing in securities.

- 7.3.10. Our Director, Mr. Rakesh Sethi, has been associated with the stock market for the last 30 years and has a background in the banking industry as well.
- 7.3.11. We are not only advising but also educating people in areas of investment in the stock market.
- 7.3.12. We deny that we have violated provisions of Sections 12A(a), (b) and (c) of the SEBI Act and provisions of the PFUTP Regulations.

7.4. Additional submissions of Mr. Rakesh Sethi, Director of Noticee:

- 7.4.1. I deny that I have given any sort of confirmation to the complainant pertaining to assured returns.
- 7.4.2. I further state that the allegation of the complainant that I started trading in his account and handled his portfolio which resulted in losses is completely erroneous and misleading. All trades of the complainant were executed through Arihant.
- 7.4.3. I deny that the investment decisions in the complainants account were taken by me and I was only associated for providing investment advice. I have no involvement in the trading done on behalf of the complainant and no conclusion can be drawn against me.
- 7.4.4. I deny the findings of the arbitration award.
- 7.4.5. I deny that in the absence of any appeal against the arbitration award, the findings are deemed to be accepted by me. It is a matter of fact and record that the matter was settled between the complainant and the company and therefore the present proceedings clear tantamount to double jeopardy as allegations are based on the same grounds as already been settled.

- 7.4.6. It is pertinent to note that merely by not appealing against the appellate arbitral award can never be concluded as admission of liability since it was a business call so as to avoid stress in the legal recourse, legal fees, court fees and incidental fees attached thereto.
- 7.4.7. I deny that in my capacity as a Director of the company, I have used the contents of the website stating assured returns to lure the complainant to open trading and demat account. The complainant has failed to place credible evidence in his complaint to SEBI that the company or I had insisted that he should open account with Arihant.
- 7.4.8. I deny that I had control over the funds in the trading account of the complainant. The allegation is a bald statement without any proof of my control over the funds. The complainant has miserably failed to prove the same. It does not stand to reason to conclude that I was in control of the funds because neither I nor the company was POA holders to the bank account of the complainant.
- 7.4.9. The allegation that all decisions were taken by me for my personal gain remain unsubstantiated. At the most, what could be alleged is that the company received Rs. 20000/- towards advisory fees and nothing beyond that. The allegation is open to scrutiny since there are no documents on record to conclude that I have made personal gains. In the absence of credible evidence, the conclusion arrived at in the order lacks merit. I deny that I had induced the complainant or any person in any manner whatsoever or had devised any scheme to defraud investors using the company's website.
- 7.4.10. I deny that I have indulged in manipulative or deceptive practice or employed scheme to defraud any person. I deny that I have violated Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

8. Pursuant to personal hearing, the Mr. Rakesh Sethi, Director, has made the following additional submissions:

8.1. The complainant had provided an authority letter for trading in favour of Mr. Rakesh Sethi. The said letter, signed and filed with the broker, authorized Mr. Rakesh Sethi to accept and execute securities dealing orders on behalf of the complainant.

8.2. The complainant has never denied receipt of all SMS and Electronic Contract Notes as well as periodical statements from the broker.

CONSIDERATION OF ISSUES:

9. I have considered the material on record/ replies/ oral submissions/ written submissions filed by the Noticee and its Directors. The issue to be considered at this stage is as follows:

9.1. Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Noticee and its Directors in response thereto, the directions issued against the Noticee and its Directors vide the interim order need to be confirmed, revoked or modified in any manner?

9.2. Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Noticee and its Directors in response thereto, the prayers of the Noticee and its Directors need to be granted or denied?

10. The consideration of the issues in light of the material on record/ replies/ oral submissions/ written submissions made by the Noticee and its Directors is contained in subsequent paragraphs.

Unregistered Portfolio Management:

11. It was observed in the interim order that the Noticee, *prima facie*, as part of its services, is holding itself out as a portfolio manager by claiming to offer PMS Advisory Services. It was also held that, *prima facie*, the Noticee has provided PMS to its client(s) and has charged service fee from client(s) for the same. The evidence that was available in this regard is the contents of the website of the Noticee, where the service/ product “PMS Advisory Services” was mentioned, advertisement given by the Noticee for recruitment of PMS Executives and the invoice and email sent by the Noticee to the complainant saying PMS.
12. The Noticee has submitted that “PMS Advisory Services” is strictly an investment advisory service and they merely provided advisory services towards long term investments of their clients and did not manage their portfolio. The Noticee has further submitted that PMS Advisory Service falls within the definition of “investment advice” as per Regulation 2(l) of the IA Regulations. The Noticee has accepted that the term “PMS Advisory Services” has attained a wrong nomenclature and that it has made changes to its website to eliminate any misrepresentation. With respect to the job advertisement placed by the Noticee on its website, it has been submitted that the advertisement was for executives who shall assist in providing advisory services. As regards the mentioning of PMS on the invoice given to the complainant, the Noticee has submitted that PMS was a short form for PMS Advisory Services. Further, the email sent by the Accounts Department of the Noticee mentioning that the invoice pertains to payment for PMS Service was an inadvertent error on part of its employee.
13. In the instant case, from the archived pages of the website, it was observed that the Noticee had advertised on its website that it offers PMS Advisory Services. It is also observed from archived records that the Noticee had placed job advertisement for PMS Executives on its website. I note here that such terms cannot be used lightly, least of all by an entity which is registered with SEBI. Hence, I am unable to accept the contention of the Noticee that it has not held itself out as a portfolio manager.

14. Here, I take note of Regulation 3 of the PMS Regulations, which states the following:

“3. Registration as portfolio manager .— No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:”

15. I note that though the requirement to get the certificate of registration triggers in before any one acts as a portfolio manager, the breach of the regulation would require, *prima facie*, evidence of some constituent acts towards acting as a portfolio manager. At this stage, details of any such constituent act, viz., agreement with the clients, collection of funds or control of funds pursuant to any such agreement with the clients, or evidence of construction of portfolio for clients are not available on record.

16. While I find certain merit in the submissions of the Noticee that the use of the term “PMS Advisory Services” may have been wrongly interpreted to mean that it has been providing portfolio management services, I note that pursuant to personal hearing the Noticee has furnished an authority letter which has purportedly been given by the complainant in favor of the Director, Mr. Rakesh Sethi. The said authority letter is submitted to support the case of Mr. Rakesh Sethi that he was given authority to accept and execute securities dealing orders on behalf of the complainant.

17. Here, I refer to the Regulation 2(cb) of the PMS Regulations, which defines “portfolio manager” as:

“2 (cb) “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 goods or the funds of the client, as the case may be;”

18. I note that for portfolio management services to be provided by the Noticee, as per the PMS Regulations, the control/ management of funds/ securities is one of the main features for the portfolio management services.

19. In view of the above definition, the above mentioned authority letter needs further examination. It also needs to be examined to find out whether pursuant to the above mentioned authority letter, Mr. Rakesh Sethi had control over the funds/ securities of the complainant. Therefore, I am of the view that further examination into the execution and use of such an authority letter vis-à-vis the act of the Noticee for acting as portfolio manager needs to be carried out.

20. I note that the Noticee has contended that it has not held itself and/ or acted as a portfolio manager as it has not complied with certain provisions of the PMS Regulations, viz., Regulations 15(1A) and 14(1a), which are required to be complied by a registered portfolio manager. I note that this contention cannot be accepted as the test to determine whether an entity has acted as an unregistered portfolio manager is to peruse of the scope of the definition of the "portfolio manager" and whether the act of the Noticee falls within the same. The fact that Noticee has not followed certain regulatory requirements, which are required to be complied with post registration, is irrelevant consideration for determination of whether the Noticee has held itself and/ or acted as an unregistered portfolio manager.

Offering assured returns:

21. I note here that the Noticee and its Directors have not denied the fact that they have advertised certain returns as part of the services offered by them viz., returns to the tune of 200-400% from the "Wealth Creator Stock Future/BTST/STBT Scheme", assured returns of 10% per month from the PMS Advisory Services, expected return of 100-200% from service/ product "Modi 2019 to 2024 (Multibagger calls)". Instead, the Noticee has contended that these are probable/ expected returns derived as per the "available financial tools" and are a comparative estimate and that there was no promise of the assured returns. For the service/ product "Modi 2019 to 2024 (Multibagger calls)", the Noticee has contended that the contents are based on "mere assumptions" and it never made any promises to any of its clients for any assured returns.

22. During the personal hearing, the Noticee was advised to specifically provide the basis on which these “probable/ expected” returns have been arrived at for each service/ product. The same should be in a format that can be verified and is backed up with data. I note here that the Noticee has submitted that it recommends investment in market by the Rule of 72 and power of compounding effect. The Noticee has submitted that this Rule of 72 is a simple way to determine how long an investment will take to double given a fixed annual rate of interest. However, I note that this rule is used for fixed return instruments like fixed deposits, bonds, etc., where there is no market risk. I note that the Noticee has not provided the basis on which the returns of 200-400% could be arrived at from its “Wealth Creator Stock Future/BTST/STBT Scheme” or 100-200% returns could be achieved from service/ product “Modi 2019 to 2024 (Multibagger calls)”.

23. I note here that the Noticee, being a SEBI registered intermediary, is well aware that any form of returns, whether probable/ expected, cannot be committed or indicated for any investment service/ product since all investments in the securities market are subject to market risks. There may be a scenario where the capital deployed by the investor gets eroded as the investment advice provided by the Noticee turns out to be incorrect due to market risk. In this regard, I take note of the submissions of the Noticee regarding how expected returns have been calculated for the “Wealth Creator Stock Future/BTST/STBT Scheme”. The Noticee has submitted that the strategy for this scheme was based on the “assumption” that recommendations will result in profit on around 15-16 days out of 20 trading days in a month and on remaining 4-5 days, trades may result in loss/stop loss trigger. Accordingly, trades in this scheme will result in an overall profit.

24. The inherent assumption of the Noticee that 15-16 trades in a month will result in profit is grossly incorrect and there is always a risk that all the trades may result in a loss. In such a scenario, the entire capital deployed by an investor may be eroded and the investor is left with no possibility of it being recovered. I note that the Noticee has submitted that it has denied making any false statements without reasonable ground

for believing it to be true; however, with respect to the statement that returns of 100-200% could be achieved from product/ service “Modi 2019 to 2014 (Multibagger calls)”, the Noticee has submitted that the same was based on mere “assumptions”. The “reasonable grounds” for believing why this statement is true have not been provided by the Noticee. Mere assumptions cannot be a reasonable ground for stating the above mentioned returns. The language used by the Noticee is misleading and is meant to imply that such returns can be achieved from this product/ service.

25. The Noticee has also stated that it has disclosed to its clients that these expected returns are based on its trading experience of over 20 years and are subject to market risk. I note here that although the Noticee was advised during the personal hearing to provide data that is verifiable to back up its claim, it has failed to do so. Further, by merely informing its clients that returns are subjected to market risks, the Noticee cannot absolve itself of its liability in making such a reckless and careless misrepresentation to prospective clients, especially when the same is meant to give prospective clients a preliminary idea of its performance/ service. The Noticee cannot take shelter under its submission that it has given due disclaimers to its clients, as its conduct of mentioning “expected/ probable” returns belie its actual intent. If its objective was not to mislead investors, it should not have placed such reckless and careless claims in its service/ product brochure and on its website.

26. Hence, in view of the above, I note that mentioning any form of returns, whether probable/ expected, to the investor is a reckless and careless misrepresentation. The Noticee cannot sell services/ products, with such assured returns, to investors.

27. Therefore, I hold that Noticee has contravened Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations.

28. I note that the Noticee has contended that neither does Regulation 15(1) nor the Code of Conduct of the IA Regulations deal with “returns” and hence, reference to these

provisions of the IA Regulations is out of no consequence. I note that the interim order does not contain any reference to Regulation 15(1) of the IA Regulations. It has been held in the interim order that by displaying messages of assured returns, the Noticee has contravened Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the IA Regulations. Clause 1 of the Code of Conduct requires an investment adviser to act honestly, fairly and in the best interests of its clients and in the integrity of the market, while Clause 8 requires the investment adviser and its partners, principal officer and persons associated with investment advice to comply with all applicable regulatory requirements. Regulation 15(9) requires the investment adviser to abide with the Code of Conduct.

29. As already held above, the Noticee is found to have displayed returns from investments in the securities market to investors, which is a reckless and careless misrepresentation by it. The same is not in the best interests of its clients and the market. Further, by such a reckless and careless misrepresentation, the Noticee is also found to have contravened certain provisions of the PFUTP Regulation. Hence, it is clear that the Noticee is in contravention of Clauses 1 and 8 of the Code of Conduct read with Regulation 15(9) of the IA Regulations.

30. The submissions of the Noticee with regard to these, *prima facie*, findings are devoid of any merit and therefore, cannot be accepted.

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

31. It was observed in the interim order that, *prima facie*, Mr. Rakesh Sethi, in his capacity as director of the Noticee, has used the contents of the website of the Noticee stating assured returns to lure the complainant to open a trading and demat account with Arihant. It was also observed that the arbitration award has attained finality and in the absence of any appeal against the award, its findings have been legally accepted by Mr. Rakesh Sethi. As mentioned in the interim order, the act of Mr. Rakesh Sethi in inducing the complainant by misusing the corporate entity's website for his own

personal gain as an AP, amounted to, *prima facie*, a scheme or artifice to defraud investors like the complainant. Hence, Mr. Rakesh Sethi has, *prima facie*, engaged in a manipulative and deceptive practice by way of which he has defrauded the complainant, who is an investor in the securities markets.

32. I note that the crux of the, *prima facie*, findings against Mr. Rakesh Sethi is that he has, *prima facie*, lured the complainant by misusing the facilities of the Noticee, such as its website wherein assured returns have been displayed and the brochure of the scheme "Wealth Creator Stock Future/BTST/STBT Scheme", for his own personal gain as an AP. As already held above, the, *prima facie*, finding of having displayed returns from investments in the securities market to investors stands established against the Noticee and the Noticee is found to have indulged in a fraudulent activity. While it cannot be conclusively proved that the complainant was forced to open an account with Arihant, at this stage of, *prima facie*, findings, considering the material available on record viz., the display of returns on the website of the Noticee, the brochure of the scheme "Wealth Creator Stock Future/BTST/STBT Scheme" shared with the complainant, which mentions the returns to be in the range of 200-400%, I am of the view that the, *prima facie*, finding against Mr. Rakesh Sethi of having used the contents of the website and brochure of service/ product of the Noticee to lead the complainant to avail his own services as an Authorized Person stands established. Thereafter, in his capacity as an Authorized Person of Arihant, he has opened the trading and demat account of the complainant with Arihant and his personal gain would be the commission received from the stock broker.

33. I note that Mr. Rakesh Sethi has denied that in the absence of any appeal against the arbitration award, the findings are deemed to be accepted by him. He has submitted that it was a business call to not appeal against the award so as to avoid any further costs. Further, he submitted that as the matter was settled through arbitration, therefore the present proceedings are tantamount to double jeopardy as allegations are based on the same grounds as already been settled.

34. While I am inclined to accept his submission regarding reasons for not appealing against the award, nevertheless I note that he is legally bound by the findings of the arbitration award. I note here that the interim order relied on the arbitration award only with respect to the finding that the complainant opened his trading and demat account with Arihant due to the assured return offered by the Noticee. This, *prima facie*, finding also stands established independent of the arbitration award in view of the fact that the Noticee has indeed displayed returns from investments in the securities market on its website and in the brochure of its service/ product. Further, I note that the subject matter of the arbitration award was the unauthorized trades in the account of the complainant, while the present proceedings involve the conduct of the Noticee with respect to its activities as an investment adviser and that of its Director, Mr. Rakesh Sethi, in luring the complainant to use the facilities of the Noticee. Also, an oral agreement with the complainant that he will withdraw all complaints against Mr. Sethi cannot be the reason for SEBI not proceeding against Mr. Sethi for his defaults as the director of a SEBI registered intermediary. The cause of action for SEBI to proceed with, *prima facie*, determination of a violation is not the complaint. The complaint only triggers SEBI's examination for ascertaining the facts leading to any violation which stands as cause of action. Further, without prejudice to the above, it may be noted that the principle of double jeopardy is limited only to criminal prosecution and is not applicable in this case.

35. In view of the above, I do not find any merit in the submissions of Mr. Rakesh Sethi and therefore, I do not accept the same. Therefore, I hold that Mr. Rakesh Sethi has contravened Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) of the PFUTP Regulations.

36. The Noticee and the Directors have stated that on the basis of their submissions the findings of the interim order do not stand. In view of the above mentioned discussions, I note that the, *prima facie*, finding against the Noticee of having held itself as an unregistered portfolio manager stands, while whether the Noticee acted as portfolio

management services for consideration needs further examination in view of the authority letter submitted by the Noticee. The, *prima facie*, finding of the Noticee having displayed assured returns on its website and in its service/ product brochures stands established. The conduct of the Noticee is not in the interest of investors and the securities market and as the Noticee is still a SEBI registered investment adviser, the imminent threat of existing and new investors being attracted to the services offered by the Noticee and availing the same continues. Hence, I am convinced that this is a fit case where, pending further examination, the directions issued against the Noticee and its present directors, Mr. Rakesh Sethi and Mr. Pramod Jain, issued vide the interim order should continue to be in force.

37. As regards Mr. Rakesh Sethi, Director of the Noticee, it has been established that his conduct leading to the complainant to avail the investment advisory services of the Noticee is not in the interest of investors and the securities market. Registered intermediaries are required to comply with the securities laws as part of the Code of Conduct. Mr. Rakesh Sethi, being the director of a corporate entity, is required to ensure that the corporate entity complies with the Code of Conduct. In the instant case, there is a, *prima facie*, fraud by misrepresentation. The abstention from fraud goes to the root of the conduct expected out of a SEBI registered intermediary. One of the objectives of the SEBI is to curb such “frauds” in the securities market. Mr. Rakesh Sethi, being the director of a SEBI registered intermediary whose conduct is attributed to the company, has already been, *prima facie*, found to be in non-compliance with its Code of Conduct as regards abstention from fraud. The prospective investors who may have securities transactions with Mr. Rakesh Sethi need to be prevented from the effect of such conduct, till further orders, as a preventive measure. As stated earlier, there is a floating multitude of investors whose interests vis-à-vis the interest of Mr. Rakesh Sethi need to be protected and, therefore, in order to prevent such floating multitude of investors from the effect of conduct fraught with, *prima facie*, fraud, I note that the balance of convenience is not in favor of permitting Mr. Rakesh Sethi to access the securities market in any manner, directly or indirectly.

Order:

38. In view of the foregoing paragraphs, pending further examination, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11B and 11D and Regulation 35, Chapter VI of the SEBI (Intermediaries) Regulations, 2008, thereof, hereby confirm the directions issued vide ex-parte ad interim order dated November 26, 2019, in the matter of 3M team Securities Services Pvt. Ltd. and its Directors, Mr. Rakesh Sethi and Mr. Pramod Jain.

39. A copy of the Order shall be sent to the Noticees, all Stock Exchanges, Depositories and Registrar and Transfer Agents for compliance.

Sd/-

Date: December 07, 2020

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA