

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM EX PARTE ORDER

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

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

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

In respect of:

Sr. No.	Name of the Entities	Registration Number/DIN	PAN
1	Bull Research Investment Advisors Private Limited	INA000010210	AAHCB1200H
2	Ashif Shaikh	07733482	BGDPS3081F
3	Vinit Satpute	07737200	EBMPS2703F
4	Sandeep Kushwaha	08176753	PAN not available Address: 209, Karamchari Colony, Dewas, Madhya Pradesh -455001

In the matter of Bull Research Investment Advisors Private Limited

1. Bull Research Investment Advisors Pvt. Ltd, (hereinafter referred to as ‘**BRIA**’ or “**IA**”) is registered as an Investment Adviser (‘**IA**’) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as ‘**IA Regulations**’) with effect from April 2, 2018 having SEBI Registration No. INA000010210. Its registered office is at 209, Karamchari Colony, Dewas, Madhya Pradesh-455001. Its website address is www.bullresearch.in. BRIA is a company having CIN: U74999MP2017PTC042843 and its directors are Ashif Shaikh, Vinit Satpute and Sandeep Kushwaha.
2. SEBI has received complaints in SCORES against BRIA. The complainants alleged that the IA was offering assured returns and that they incurred loss due to inappropriate advice given by BRIA, IA was taking Payments in the name of family members, taking payments without due-diligence on risk appetite and financial condition, not refunding the service charges, etc. In view of the complaints received, SEBI conducted an examination in relation to the affairs of BRIA. The examination entailed, *inter alia*, an analysis of the details available on the website of BRIA, complaints filed by the complainants against BRIA and documents attached with complaints such as Risk Profiling Form (“RPF”), KYC, Invoices/Receipts issued to clients, etc. Based on the examination of documents / information provided by BRIA and complainants, SEBI *prima facie* observed the following:
 - 2.1 BRIA had offered assured returns/target returns to its clients and violated provisions of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”);
 - 2.2 BRIA had not carried out risk profiling and suitability assessment of clients as per the provisions of IA Regulations.
 - 2.3 BRIA had violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”)

CONSIDERATION & PRIMA FACIE FINDINGS

3. I have perused the material available on record regarding risk profiling and suitability assessment of clients and assured/target returns. In this context, *prima facie*, the following issues arise for determination:

3.1 Issue No: 1 Whether BRIA has prima facie violated any provisions of IA Regulations?

3.2 Issue No.2: Whether BRIA has prima facie violated any provisions of SEBI Act read with PFUTP Regulations?

3.3 Issue No.3: If the answer to issue no. 1 or 2 is in the affirmative, who are responsible for the violations?

3.4 Issue No.4: If the answer to issue no. 1 or 2 is in the affirmative, whether urgent directions, if any should be issued against those responsible for the violations?

4. Before dealing with the aforesaid issues, it is appropriate to refer to the relevant provisions of SEBI Act, IA Regulations and PFUTP Regulations:

IA REGULATIONS:

Regulation 15(1) *An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

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

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness: *An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*

2. Diligence: *An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

- (a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/borrowing details.*
- (b) it has a process for assessing the risk a client is willing and able to take, including: (i) assessing a client's capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; .*

Regulation 17 Suitability:

Investment adviser shall ensure that,-

- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client;*
- (b) It has a documented process for selecting investments based on client's investment objectives and financial situation;*
- (c) It understands the nature and risks of products or assets selected for clients;*
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into: (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance; (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.*
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss*

SEBI Act, 1992

“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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

PFUTP REGULATIONS, 2003

Regulation 2(1)(c):

“(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly ...”

“Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

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

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

ISSUE NO. 1: Whether BRIA has prima facie violated any provisions of IA Regulations?

5. Assured Returns:

5.1 It is noted from the invoices submitted by BRIA and by the complainant that the IA has offered Targeted Returns in absolute monetary terms to the complainant and his family members and the service tenure of the product/service is linked to the said target. For instance, in one of the Invoice/Payment receipt issued by BRIA to its client Mr. Yagnesh Rawal, the service offered was Platinum Fortune Service (Cash) and payment of Rs. 92,311.50/- was received. In the same Invoice, BRIA mentioned that “*Target (Not Guaranteed/Not Assured) is Rs. 26,00,000*”. Further, the said Invoice also mentioned the service tenure as “*249-899 Trading Sessions or Target as mentioned in Point no.14 whichever occurs earlier*”

5.2 Following table depicts such instances of target returns promised in the payment receipts/ Invoices of the clients:

Target Returns Promised to the Clients

Client Name	Proposed investment as per Risk Profile	Payment date	Name of the service	Target Return (in Rs)	Service Fee (in Rs) Exclusive of GST (18%)
Mr. Yagnesh Rawal	< 1Lac	07/01/2019	Platinum Fortune Service (Cash)	26,00,000	92,311.50
Mr. Yagnesh Rawal	< 1Lac	08/01/2019	Platinum Fortune Service (Cash)	26,00,000	1,35,593.20

Mr. Yagnesh Rawal	< 1Lac	09/01/2019	Platinum Fortune Service (Cash)	26,00,000	1,18,471.20
Mr. Yagnesh Rawal	< 1Lac	11/01/2019	Fortune Platinum Stock (Cash)	26,00,000	2,99,000.00
Mr. Yagnesh Rawal	< 1Lac	23/04/2019	Superb Premium Cash	8,97,500	2,99,000.00
Total	<5 Lac			1,12,97,500	9,44,375.90
Mr. Paras Rawal	1-2 Lac	21/01/2019	Fortune Platinum (Stock Options)	19,50,000	6,50,000
Mr. Paras Rawal	1-2 Lacs	10/05/2019	Elite Premium Future Service	17,46,500	4,23,729
Total	2-4 Lacs			36,96,500	10,73,729
Mr. Janak Rawal	1-2 Lacs	26/04/2019	Elite Premium Services (Stock Cash)	17,46,500	4,21,500
Mrs. Devilaben Rawal	1-2 Lacs	21/01/2019	Fortune Platinum (Stock options)	26,00,000	6,50,000
Mrs. Devilaben Rawal	1-2 Lacs	29/01/2019	Superb Platinum (Stock Cash)	8,97,000	2,33,052
Mrs. Devilaben Rawal	1-2 Lacs	10/05/2019	Rapid Premium Future Service	4,97,500	1,62,489
Total	3-6 Lacs			39,94,500	10,45,541

5.3 Though, BRIA has mentioned the amount of Rs. 26 lacs as ‘not guaranteed/not assured’, BRIA has specified the said amount as the target. Though the BRIA states that the target is not guaranteed/not assured, the fact that the service is promised to continue till the target is achieved, indicates an assurance that the target would be achieved. Further, there appears to be no basis for indicating the target amount as Rs.26,00,000/-, especially when the proposed investment amount is less than Rupees One lakh. Similarly, BRIA has indicated a target return of Rs.17,46,500/- to Mr.Janak Rawal on a proposed investment amount of Rs.1-2 lakh.

5.4 BRIA being a SEBI registered intermediary, is well aware that any form of returns, whether targeted/assured, 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 BRIA turns out to be incorrect due to market risk. Even if there are disclaimers, its conduct of mentioning “targeted” returns belie its actual intent and acts as an implied assurance that client will achieve the particular return mentioned as ‘Target’ by acting upon the investment advice given by BRIA. If its objective was not to mislead investors, it should not have made such reckless and careless claims. Further, I note that the commitment to the client that the service offered will continue till the ‘targeted return’ is achieved tantamount to offering an implied assurance/guarantee of return on investments made by the clients.

5.5 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. 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 the IA is nothing but *prima facie* appears to be an attempt to induce the client to subscribe to its advisory service by showing profit numbers which *prima facie* is an act to mislead the client as full disclosure is not made by the IA that the proposed investment of the client may incur loss. This act *prima facie*, appears to have done with an intention to bring in more customers and thereby increasing the income of the IA.

5.6 The above conduct on the part of BRIA is not in the best interest of the clients. In view of the above, BRIA has *prima facie* failed in its responsibility to act in fiduciary capacity to its clients which is entrusted upon him under regulation 15 (1) of IA Regulations. Such implied assurance of target returns indicates that the BRIA, *prima facie*, failed to act honestly, fairly and in the best interests of its clients and in the integrity of the market. Therefore, BRIA has *prima facie* failed to abide by Clauses 1 and 2 of Code of Conduct for Investment Advisors as specified in Schedule III of IA Regulations read with regulation 15 (9) of IA Regulations.

6. **BRIA has taken payment before doing KYC and Risk Profiling of clients.**

6.1 Regulation 16 of IA Regulations states that IA shall carry out risk profiling of the client for ascertaining client's risk tolerance, income, loss absorbing capacity, capacity of accepting loss of capital, liabilities/borrowing, etc. Further, it also states that the risk profiling should be communicated to the client after risk assessment is done. It is noted that the primary purpose of the same is that the respective client is given an opportunity to assess/be satisfied with his risk profile before agreeing to accept the advice for products/services.

6.2 Regulation 17 of IA Regulations, inter alia, states that all investments on which investment advice is provided is appropriate to the risk profile of the client. It should be, inter-alia, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance.

6.3 It is noted from the documents obtained from the complainant and BRIA that it has received part payments for the products/services even before KYC and Risk profiling has been done. The details of such instances are brought out as below:

Sl. No.	Date of Payment in Invoice	Amount (including GST) as per Invoice in Rs.	Date in KYC	Date of Risk Profiling and Suitability Assessment	Services Sold
Yagnesh Rawal					
1	05/01/2019	6,018	6/1/2019	7/1/2019	Stock Cash
Paras Rawal					
2	21/01/2019	7,67,000	26/1/2019	26/1/2019	Fortune Platinum (Stock Options)
Janak Rawal					
3	26/04/2019	4,97,370	2/6/2019	2/6/2019	Elite Premium Services (Stock Cash)

Leena Rawal					
4	14/01/2019	7,67,001	21/01/2019	21/1/2019	Fortune Platinum (Stock Cash)
Devilaben Rawal					
5	21/01/2019	7,67,000	2/2/2019	2/2/2019	Fortune Platinum (Stock options)
6	29/01/2019	2,75,002	2/2/2019	2/2/2019	Superb Platinum (Stock Cash)
		30,79,391			

6.4 As seen from the above table, BRIA has raised invoices for subscribed services and collected fees even before doing the KYC, Risk Profiling and Suitability Assessment of its clients. In some cases, the difference between the date on which payment was received and risk profiling was done, was more than two months. It appears that the same has been done by BRIA to earn advisory fees / profits by selling products without caring for the needs of the clients. As per regulations 16(a),16(b)(ii) read with regulation 17(a) of IA Regulations, rendering of Investment Advice shall be done only after obtaining information from the client for carrying out his risk profiling, identifying whether client is unwilling or unable to accept the loss of capital for ensuring that investment advice provided is appropriate to the risk profile of the client. In the case of BRIA, it is seen that the package/service (suitability) is decided upfront and fee is collected even before doing the KYC and the risk profiling. Therefore, from the above it is *prima facie* found that the products sold by BRIA to its clients could be completely inappropriate to the clients' need, as the risk profiling has not been completed for the client before selling the product. Thereby, IA has not acted with due skill, care, diligence, honesty and in the best interest of its clients while selling investment advice appropriate to the clients' risk profile and had also failed to seek information from its clients about their financial situation, investment experience and investment objectives before selling them certain investment advices / services.

6.5 In view of the above, BRIA has *prima facie* (a) failed to sell the investment advice appropriate to the clients' risk profile in accordance with regulation 16(a),16(b)(ii) read with regulation 17(a) of IA Regulations and (b) failed to abide by clauses 1, 2 and 4 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Therefore, I find that BRIA has *prima facie* violated the provisions of regulation 16(a), 16(b)(ii) and 17(a) of IA Regulations

and clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

7. **BRIA is not doing Risk Profiling and Suitability of the clients appropriately:**

7.1 From the documents obtained from the complainant and from BRIA, it is noted that the Risk Profiling has not been done appropriately and products/services were offered without assessing the appropriate risk bearing capacity of the clients. In RPF of clients, BRIA has recorded contradictory answers of the risk assessment questions. Some of the questions in the Risk Profile Forms (RPF) of Mr. Yagnesh Rawal and his family members are reproduced below:

Question	Answer
Yagnesh Rawal	
Experience in Market Products ?	Stock, Derivative Stocks
What is your experience with equity investments ?	No Experience
What is your experience with Commodity investments?	No Experience
What is your experience with Forex investments?	No Experience
What is your experience with past investments?	Moderate
Risk Tolerance ?	Low
Proposed Investment Amount	< 1 Lac
Paras Rawal	
Experience in Market Products ?	Stock
What is your experience with equity investments ?	No Experience
What is your experience with Commodity investments?	No Experience
What is your experience with Forex investments?	No Experience
What is your experience with past investments?	Moderate
Risk Tolerance ?	Low

Proposed Investment Amount	1-2 Lacs
Janakbhai Rawal	
Experience in Market Products ?	Stock
What is your experience with equity investments ?	No Experience
What is your experience with Commodity investments?	No Experience
What is your experience with Forex investments?	No Experience
What is your experience with past investments?	Bad
Risk Tolerance ?	Low
Proposed Investment Amount	1 – 2 Lacs
Leena Rawal	
What is your experience with equity investments ?	No Experience
What is your experience with Commodity investments?	No Experience
What is your experience with Forex investments?	No Experience
What is your experience with past investments?	Bad
Risk Tolerance ?	Low
Devilaben Rawal	
Experience in Market Products ?	Stock
What is your experience with equity investments ?	No Experience
What is your experience with Commodity investments?	No Experience
What is your experience with Forex investments?	No Experience
What is your experience with past investments?	Moderate
Risk Tolerance ?	Low
Proposed Investment Amount	1-2 Lac

7.2 It is noted from the response to the question in RPF ‘What is your experience in Equity/Commodity/Forex’ markets, all the clients have responded that they had no experience in Equity, Commodity and Forex markets. Further, it is noted from the same RPF documents that the clients have responded to the question ‘Experience in Market Products’ as ‘Stock and/or Derivatives’. It shows that the responses recorded by BRIA are contradictory and demonstrates that BRIA has not done adequate due diligence in the process of risk profiling.

7.3 Further, it is also observed from the RPF documents of the clients that all the entities have responded to the question ‘Risk Tolerance’ as ‘low’. However, it is observed from the invoices raised by BRIA that the clients Risk Profile has been mentioned as ‘HIGH’ i.e. the assessment of the risk taking capacity of the clients based on the weights allotted by BRIA is categorized as ‘HIGH’ by BRIA.

Suitability

7.4 I note that IA shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client. IA should also have documented process for selecting investments based on the client’s investment objectives and financial situation. It understands the nature and risks of products or assets selected for clients.

7.5 However, in the present case it is noted that BRIA is taking a ‘Suitability Assessment’ declaration from its clients which appears to be in the nature of waiver. The same is reproduced as under:

“Suitability Assessment

- *"Despite of your Age, Income and Occupation, you with your free consent have agreed to work in high risk profile services*
- *It is clearly been communicated to you that high risk profile services may be more risky but you still has opted that.*

- *In case you disagree with the suitability assessment done. kindly revert us back with your dissent else it will be assumed as accepted & suitable for you in case you fail to revert us back with your dissent within 24 hours.*

Note: You with your free consent & sound state of mind accept the services & willingly want to work upon our services despite of your age and risk profile''

7.6 I note that the obligation to ensure suitability of service is imposed by virtue of the IA Regulations, on the IA. Reg. 17(e) further places an obligation on the IA while giving a recommendation for buy, to ensure that the recommendation is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. The suitability of advice, in this regard, among other things, is dependent on the proper assessment of risk. Such risk assessment is dependent on, inter alia, on both subjective criteria and objective criteria. For instance, Reg 16(b) insists upon a process for assessment of risk which the client is willing to take (subjective criteria) and able to take (objective criteria). There may be cases where the client is willing to accept the risk of capital (subjective criteria), however, he may not have the capacity to absorb the loss (objective criteria). The perusal of clause 17(e) of IA Regulations on suitability requirement, indicates that the recommendation has to consistent with his “capacity for absorbing loss” (objective criteria) and appropriate with the risk profile of the client (Reg 17(a)) which can include the willingness to take risk (subjective criteria). However, such blanket waivers as in this case, only nullifies the protection given to the investors by mandating the IA to follow the mix of mandatory criteria and subjective criteria for selection of suitable products. Therefore, seeking the blanket waivers directly go against the obligation to ensure “suitability”, since the advice given on the basis of waiver relies upon solely the subjective willingness of the investor/client. I note that other than this the IA Regulations do not envisage complete waiver of suitability requirement through ‘waiver clauses’.

7.7 From the above, it is *prima facie* found that BRIA has not done any due-diligence with respect to the Risk Profiling and Suitability Assessment of the clients. The IA has recorded responses in the RPF which are contradictory and offered services/products on suitability waivers being taken from the clients rather than conducting an objective assessment of the

risk appetite of its clients. It appears that BRIA has taken the Risk Profiling and Suitability Exercise as enumerated in IA Regulations as mere formality and did not follow the procedure as envisaged in regulation 16 and 17 of IA Regulations. It is also *prima facie* found that by not carrying out Risk Profiling of clients and suitability assessment of services appropriately, BRIA failed to act with due skill, care, diligence, honesty, fairness and in the best interest of its clients while selling products/services to its clients. In view of the same, BRIA has *prima facie* (a) failed to carry out Risk Profiling of clients in accordance with Regulation 16 of IA Regulations and (b) failed to carry out risk suitability assessment of services provided to its clients in accordance with Regulation 17 of IA Regulations. Therefore, I, *prima facie* find that BRIA has violated Regulations 16 and 17 of IA Regulations.

ISSUE No. 2: Whether BRIA has, prima facie, violated any provisions of SEBI Act read with PFUTP Regulations?

8. In the instant matter, it is prima facie found that:
 - 8.1 BRIA has been providing assurance of target or approachable profit to the clients and is providing commitment to continue its service of providing recommendations till the time the target or implied assurance of profit is achieved.
 - 8.2 BRIA had sold its advisory products and collected fees from the clients, even before it had carried out the KYC and risk profile for its clients. In some cases, the difference between the date on which payment was received and risk profiling was done, was more than two months.
 - 8.3 Risk Profiling has not been done appropriately and products/services were offered without assessing the appropriate risk bearing capacity of the clients. In RPF of clients, BRIA has recorded contradictory answers of the risk assessment questions without due diligence.
 - 8.4 BRIA has relied upon waiver of suitability of products/services rather than truly assessing the clients age, income, financial condition, eligibility to trade, investment objectives and suitability of various products.

9. As per Regulation 3 of PFUTP Regulation, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud in connection with dealing in securities; or engage in any act, practice, course of business which operates as fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules and the regulations made thereunder.
10. The modus operandi adopted by IA discussed hereinabove, *prima facie*, shows that IA was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/ her financial situation, risk appetite, financial goal, etc. However, it is *prima facie* found that IA is knowingly and in a deceitful manner:
- 10.1 Implying/ assuring targets/ profits to investors.
- 10.2 selling products / services to its clients before undertaking KYC of clients, Risk Profiling of clients and suitability assessment of services;
- 10.3 selling products to its clients which are not appropriate to their risk profile.

The above activities, *prima facie*, are the devices adopted by the IA to defraud its clients in connection with their dealings in the securities. Hence, IA is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.

- 11 Thus, the findings of the preliminary examination and the overall modus operandi discussed in this order, *prima facie*, shows that a scheme is knowingly employed by BRIA to defraud its clients in connection with their dealings in the securities and to maximize its revenue generation at client's expense. Thus, the above discussed non-genuine and deceptive activities of IA are, *prima-facie* fraudulent and are covered under the definition of "fraud" under regulation 2(1)(c) of the PFUTP Regulations. BRIA through its fraudulent act / scheme as discussed above, has *prima facie* violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

Summary

- 12 In summary, following *prima facie* findings are observed:

- 12.1 That BRIA has sold products/services to clients and implied assurance of huge target/returns to clients by giving the assurance to clients that services will continue till target returns promised by BRIA are achieved.
- 12.2 BRIA sold products and charged advisory fees from the clients without knowing the suitability of said services for respective clients and has taken payment even before carrying out KYC, Risk Profiling of clients and suitability assessment of services.
- 12.3 BRIA has not done the Risk Profiling of the clients appropriately
- 12.4 BRIA has relied upon the waiver of suitability of products/services.
- 12.5 That the above activities, prima facie, are the devices adopted by the BRIA to defraud its clients in connection with their dealings in the securities. Hence, BRIA is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.
- 12.6 The above activities are in violation of provisions of the SEBI Act, IA Regulations and PFUTP Regulations.

ISSUE NO. : 3 If answer to issue no. 1 is in affirmative, who are all responsible for the violations?

- 13 I note that BRIA is responsible for the abovementioned, *prima facie*, violations of the provisions of SEBI Act and IA Regulations and PFUTP Regulations.
- 14 I 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.”

- 15 The directors are statutorily expected 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. Here, I would like to refer to the observations of the Hon’ble High Court of Delhi in the matter of *Santanu Ray vs. Union of India* decided on August 12, 1989, wherein the Hon’ble Court observed as follows:

“12. In Pennington's Company Law, 5th edition, at page 58, the topic of evasion of obligation imposed by law is discussed. The courts have ignored separate legal personality of the company if it was formed or used to facilitate the evasion of legal obligations. The American courts have disregarded a company's separate legal personality when it was clearly formed or acquired to facilitate a breach of the general law. In CIT v, Meenakshi Mills Ltd., their Lordships expressed that it is well established that in a matter of this description, the income-tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transaction. It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But, in certain exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade.”

- 16 I also place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs. Escorts Limited* (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed: “90. ... *the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.*”
- 17 I note for the contravention of law committed by the company, apart from the company, the Directors of company who at the time of contravention, were having knowledge of the said contravention or the directors whose neglect contributes to the contravention of law, are also liable for said contravention of law committed by the company. The said principle is embodied in Sections 27(1) and 27(2) of SEBI Act.
- 18 In the present case, Ashif Shaikh, Vinit Satpute and Sandeep Kushwaha are the directors of BRIA. Further, from the material available on record, it is observed that none of the Directors of company are designated as Managing Director or Executive Director or Independent Director. Therefore, all of them, *prima facie*, are in charge and responsible for managing the affairs / business of the company. Therefore, they are, *prima facie*, liable under the principles of Section 27 (1) of SEBI Act.
- 19 I also note that the liability of the Directors also arises if the offence/ contravention is attributable to any neglect on the part of them. There is no material on record to, *prima facie*, indicate that the directors in the instant case have taken any steps to prevent BRIA from committing the violations, *prima facie*, observed against the company. Therefore, all the directors are, *prima facie*, liable under this ground also.
- 20 Further, as per the Code of Conduct prescribed in the IA Regulations, the senior management of a body corporate, which is registered as an IA, shall bear primary responsibility for ensuring

the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

- 21 I note that Ashif Shaikh, Vinit Satpute and Sandeep Kushwaha are the directors of BRIA and persons in charge of the affairs of the Company. I note that the above mentioned violations are continuing in nature and hence, I note that these directors are *prima facie* responsible for the violations of IA Regulations and PFUTP Regulations committed by BRIA.
- 22 I also note that Ashif Shaikh, Vinit Satpute and Sandeep Kushwaha are also, *prima facie* in violation of Clause 9 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

ISSUE NO. 4: If answer to issue no. 1 & 2 is in affirmative, whether urgent directions, if any should be issued against those responsible for the violations?

- 23 An IA has to comply with all the provisions of IA Regulations which enables the IA to effectively discharge its functions in the interest of the investors. In all the aforesaid, BRIA has fallen short of requirements as envisaged under IA Regulations. Further, the intermediary should not abuse the certificate of registration granted to it, in any manner.
- 24 It is observed that the website of the IA is functioning and it is one of the medium via which new / prospective clients may subscribe to the services of the IA. As discussed in preceding paragraphs, the conduct of the IA has *prima facie* found to be fraudulent in nature and also in violation of IA Regulations. Thus, it is imperative that the new / prospective clients are required to be safeguarded from the activities of IA, which are *prima facie*, found to be not as per the provisions of applicable laws.
- 25 As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of BRIA and its directors, mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and the fraudulent scheme, plan, device and artifice as *prima facie* found in this case, I

am convinced that this is a fit case where effective and expeditious preventive and remedial action is required to be taken by way of ad interim ex -parte order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to the existing investors but also to new / prospective investors.

- 26 It has already *prima facie* been found that many of existing clients of BRIA have been sold services without any consideration of clients' financial situation, investment objective and risk profiling. The selling of such plans goes against the customized advice which would be required based on the investors' risk profile. This requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. Exposing the existing clients to such advice, which has no correlation to their risk profile, is against the interest of those investors. Thus, in order to prevent the existing as well as the prospective clients from getting such advice which has no correlation to their risk profile, urgent steps need to be taken against BRIA and its directors. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by BRIA has been found to be *prima facie* fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing BRIA to continue its services to its clients would tantamount to allowing *prima facie* fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations.
- 27 It is noted that permitting an investor to receive a service from BRIA is *prima facie* not in consonance with the IA Regulations. Availing of BRIA's service is detrimental even to the existing investors as BRIA is not acting in the best interest of its client but is only maximizing its revenue / income through fee. The acts of BRIA are not honest and fair towards its clients and give advice to investors which is not in accordance to their risk profile or as per their investment objective or as per client's financial health. 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.

- 28 Further if an ex-parte order is not passed, many prospective investors may have to part with large fees and investment resulting into irreparable injury to themselves as the advice given by BRIA may not be as per their risk tolerance and the product offered to them may not be suitable as per their investment objectives and investment time horizon. 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 exparte 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. The potential loss of the investors by following the advice of BRIA and resultant loss of investor’s confidence and reliability of securities market, cannot be retrieved, if, prima facie, BRIA is permitted to carry out its irregular investment advisory service. Therefore, I consider the balance of convenience is also not in favour of the entity.
- 29 I, therefore find that pending conclusion of enquiry in the matter, in view of the prima facie evidence against BRIA, it is essential to take urgent steps to prevent BRIA and its directors from acting as an investment advisor and/or representing through any media as an investment advisor and/or participating in securities market activities. It is also essential to take urgent steps to prevent BRIA 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.
- 30 Considering the above, in my view, the balance of convenience lies against BRIA and immediate steps needs to be taken against BRIA and its directors viz., Ashif Shaikh, Vinit Satpute and Sandeep Kushwah, to protect the investors / clients from freshly subscribing to or

continuing to get such prima facie fraudulent/inappropriate/unsuitable investment advisory service by BRIA.

Order

31 In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B (1) and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby direct by way of this *interim ex-parte order*, the following directions, which shall be in force until further orders:

31.1 Bull Research Investment Advisors Private Limited and its directors viz., Ashif Shaikh, Vinit Satpute and Sandeep Kushwah are directed to:

- a. not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly;*
- b. 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;*
- c. not to divert any funds collected from investors, kept in bank account(s) and/or in their custody;*
- d. 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 its name, including money lying in bank accounts except with the prior permission of SEBI.*
- e. immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc. in relation to their investment advisory activity in the securities market.*
- f. 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.

- g. remove all contents from its website immediately and display only the content in its website that SEBI has passed interim order dated January 25, 2021 reproducing the directions mentioned in paragraph 31 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

31.2 If BRIA or its directors have any open position in any exchange traded derivative contracts, they are permitted to close out/ square off such open positions within three months from the date of receipt/knowledge of this order or at the expiry of such contracts, whichever is earlier. They 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.

31.3 The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by:

- a. Bull Research Investment Advisors Private Limited*
- b. Ashif Shaikh either individually or jointly*
- c. Vinit Satpute either individually or jointly*
- d. Sandeep Kushwah either individually or jointly*

31.4 The Registrar and Transfer Agents are directed to ensure, till further directions, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by:

- a. Bull Research Investment Advisors Private Limited*
- b. Ashif Shaikh either individually or jointly*
- c. Vinit Satpute either individually or jointly*
- d. Sandeep Kushwah either individually or jointly*

32 This order shall come into force with immediate effect and shall be in force until further orders.

- 33 The *prima facie* observations contained in this Order, pending enquiry, are made on the basis of the material available on record. In this context, the entities may file their objections, if any, within 21 (twenty-one) days from the date of this Order and, if they so desire, avail themselves of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made in that regard.
- 34 This Order is without prejudice to the right of SEBI to take any other action that may be initiated against BRIA and its directors in accordance with law.
- 35 A copy of the order shall be served upon the entities, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: January 25, 2021

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA