

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF EPIC RESEARCH PVT. LTD.

In respect of:

Noticee no.	NAME	PAN
1	Epic Research Pvt. Ltd.	AADCE1112D
2	Nooruddin Bombaywala	ATMPB4763C
3	Mustafa Nadeem	AGKPN2154J
4	Apurva Gangwal	ASGPG0065M
5	Nisreen Nadeem	ATYPN6530B
6	Mohammed Husain Nadeem	ABAPN1418Q
7	Jamila Bombaywala	AFMPN5189E

(The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees")

1. The present proceeding is arising out of an *ex-parte ad interim* order dated December 18, 2019 (hereinafter referred to as "**the interim order**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), against Epic Research Pvt. Ltd. (hereinafter referred to as "**Epic**") and its Directors. The *Noticee no. 1* is registered as an Investment Adviser (hereinafter referred to as "**IA**"), under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**the IA Regulations**"), vide Registration no. INA000001225, with effect from March 10, 2014. The *Noticee nos. 2 to 7* are the Directors of the *Noticee no. 1*.

Order in the matter of Epic Research Pvt. Ltd.

2. An inspection of the *Noticee no. 1* was conducted by SEBI for the period of April 01, 2017 to March 29, 2019 (hereinafter referred to as “**inspection period**”), so as to examine the compliance of various regulatory stipulations laid down for an IA under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”), IA Regulations, circulars/guidelines frame thereunder, KYC requirements, etc., by the *Noticee no. 1*. Based on the inspection so conducted by SEBI, certain violations of provisions of securities laws were found to have been *prima facie* committed by the *Noticee no. 1*. The said *prima facie* findings, as recorded in the *interim* order are briefly mentioned herein below:

- i. Only 2 employees (out of 7) of the *Noticee no. 1*, who were providing the investment advice (Research Team), were having the requisite NISM certifications.
- ii. The selection of the products for the clients was being done by the non-qualified personnel working in Sales Consulting Team and not by the personnel in the Research Team.
- iii. The *Noticee no. 1* did not verify the information provided by the client for the purposes of risk profiling. Further, the risk profile questionnaire of the *Noticee no. 1* did not have complete list of information to adequately assess the risk bearing capacity of the client, as mandated under regulation 16 (a) of the IA Regulations.
- iv. The risk profiles of the clients were modified frequently and new product/service package is sold to the client before expiry of the earlier package.
- v. The *Noticee no. 1* has sold its products/service packages without ensuring the suitability of the advice to the clients in accordance with their respective risk profiles.
- vi. The *Noticee no. 1* has made unfair and unreasonable charges and has also levied service charges more than the amounts mentioned in the fee structure.

3. As per the *interim* order, the afore-stated acts and omissions on the part of the *Noticees* are found *prima facie* to be in violation of the following provisions:

- i. regulation 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “the **PFUTP Regulations**”);

- ii. regulation 7 (1), 7 (2), 15 (1), 15 (9), 15 (13), 16 (a), 16 (b), 16 (f), 17 (a), 17 (d), 17 (e), of IA Regulations and the Clauses 1, 2, 3,4, 5, 6 and 8 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations.
4. After recording the aforesaid *prima facie* findings of violations of various provisions *qua* the *Noticee no. 1*, the said *interim* order proceeded to issue the following interim directions:
 - i. The *Notices* are restrained from buying, selling or dealing in the securities market or associating themselves with securities market, in any manner;
 - ii. The *Notices* and the employees of *Epic* (*Noticee no. 1*) working in its investment advisory activity are directed to cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media as an IA; and
 - iii. *Epic* is directed not to dispose of or alienate any of its assets including the money lying in his bank accounts, except with the prior permission of SEBI.
5. The *interim* order also provided an opportunity to the aforesaid entities to file their objections to the said *prima facie* findings recorded therein. It is noted that in response to the said *interim* order, vide a common letter dated December 30, 2019, the *Notices* have filed a written reply to the said *interim* order. Further, the requests made by the *Notices* for inspection of the documents relied upon by SEBI was acceded to and accordingly, the inspection of documents relied upon while passing the said *interim* order was provided to the authorised representative of the *Notices* on January 09, 2020.
6. Subsequently, in accordance with the principles of natural justice, the personal hearing of the *Notices* was conducted through video conferencing on October 20, 2020. In the said hearing, the Authorized Representative of the *Notices* appeared and made oral submissions and based on such submissions, certain queries were posed to the *Notices*. The *Notices*, vide letter dated November 18, 2020, have filed their responses to the said queries. Further vide a separate letter dated October 24, 2020, a request for de-freezing the bank accounts has also been made by the *Notices*. Meanwhile, certain objections were filed vide a common letter dated July 07, 2020 by seven (07) employees of *Epic*. The copy of the said common letter containing those objections was forwarded to the *Notices* and they were advised to provide their comments on the said objections.

7. The arguments advanced on behalf of the *Notices* through their written as well as oral submissions are summarised herein below:

- i. The *interim* order has initiated drastic action for certain curable and unsubstantiated findings. The *interim* order was not warranted in the facts of the case. Reliance has been placed on the orders of Hon'ble Securities Appellate Tribunal passed in the matters of *Cameo Corporate Services Limited Vs. SEBI (Appeal no. 566 of 2019)*, *North End Foods Marketing Pvt. Ltd. and anr. Vs. SEBI (Appeal no. 80 of 2019)* etc.
- ii. The *interim* order has been passed without providing an opportunity of being heard and it has led to violation of principles of natural justice. Various judgments have been relied upon to buttress the said submissions, like: *Painter Vs. Liverpool Oil Gas Light Co. [(1836) 3 A & E 433]*; *A. R. Antulay Vs. R.S. Nayak [(1988) 2 SCC 602]*; *Canara Bank and Ors. Vs. Debasis Das and Ors. [Appeal (Civil) 7539 of 1999]*.
- iii. Only 142 individual complaints have been filed till date against *Epic*, which is only 0.56% of the total number of 25,000 clients. As on the date of passing of the said *interim* order, only one complaint is pending against *Epic* and the demand made in the said complaint is frivolous.
- iv. The *interim* order is in gross violation of Doctrine of Proportionality, as all the alleged violations are merely technical in nature.
- v. Copy of the inspection report has not been furnished, which needs to be furnished in compliance of the regulation 27 of the IA Regulations. Further, copy of complaint, preliminary examination report etc., also needs to be furnished.
- vi. The *Noticee no. 7*, Ms. Jamila Bombaywala has been appointed as Director of *Epic* only w.e.f January 17, 2019. She deserves exoneration as she was not a Director during the period of inspection.
- vii. As *Epic* is a registered intermediary under the IA Regulations, the direction for restraining it ought to have been passed under the SEBI (Intermediaries) Regulations, 2008.

- viii. The action of passing *interim* directions has adversely impacted the livelihood of the *Noticee no. 1* and its employees who were working with it and therefore the said directions are in violation of Article 19 (1) (g) of the Constitution of India.
- ix. The *interim* order has recorded erroneous findings with respect to NISM certification of employees of *Epic*. Mr. Manish Sharma had completed his NISM Level 2 Certification on September 28, 2015 and had afterwards joined services of *Epic* on November 02, 2015. Similarly, Mr. Mayank Chinchwadkar has a NISM Level 1 certification which is valid till March 25, 2022.
- x. The *interim* order has recorded wrong observation about the functioning of sales team. The sales team only explains the products' features and forward details of clients to the risk profiling team.
- xi. The service charge as per the fee structure and the fees collected from the investors does not have any co-relation with each other. The fee charged from the clients is reasonable.
- xii. The technical analysis based buy/sell signals are distributed by *Epic* in mass to subscribers and no tips are customised for the clients.
- xiii. Investment advice has been given based on the risk profiles of the clients.
- xiv. The observations made in the *interim* order are based on wrong assumptions. *Epic* does not have a pre-mediated device wherein the tele callers will approach the clients and afterwards unqualified employees of *Epic* would sell multiple products. The allegations have been made on the basis of conjectures and surmises and in this connection, reliance has been placed on the order of Hon'ble SAT passed in the matter of *Sterlite Industries (India) Ltd. Vs. SEBI [(2001) 34 SCL 485 (SAT)]*.
- xv. *Epic* has never sold conflicting product to any client nor has any product been ever resold before completion of the tenure of the first product.
- xvi. *Epic* has never manipulated the risk profile score of the clients.
- xvii. All the necessary information like age, investment objectives including time period, purpose of investment, income details, existing investments/assets, risk appetite etc.,

are obtained from the clients, and confidentiality of such information of clients were maintained.

- xviii. All employees who make representations before clients offering investment advice are having the requisite certifications.
- xix. The research team were insulated from interventions during the market hours and a dedicated infrastructure was created for them so as to enable them to be focused on analysis part.
- xx. The direct interaction of the research team with clients was restricted. All the clients were grouped based on their risk type and products eligible as per risk type were provided to them.
- xxi. The research analyst would select the product on which they want to provide the recommendation and such recommendation was provided to the group of clients using that product. Queries of any client was raised through a research question board and the research analyst used to respond to it through the board only. All details with respect to the advices generated are kept in digital form.
- xxii. For product selection, no human intervention was involved and suitability of the product was decided based on the risk profile. Products were developed by the research team, and such products differed from each other based on the investment requirement, risk appetite, holding period of the client etc.
- xxiii. The risk profiling of the clients was done through a software and based on the response of the clients on the questions, the risk score was auto generated and shared over email to clients.
- xxiv. Based on the leads of prospective clients, the consulting team interacts with them and also the said team also captures basic details of such individuals in the system.
- xxv. Whenever a client wanted to start a new service, a new Risk Profile Questionnaire was to be filled in by the client. It has also been a practice to give a 2 days' free trial to the clients before actual service is availed by such client.
- xxvi. Based on the classification of the client, all advices being generated for the said group are broadcasted through SMS and email to such client.

8. Besides the aforesaid, the objections raised by the seven (07) employees of Epic (hereinafter referred to as "**the employees**") as mentioned earlier, are highlighted herein below:

- i. It is incorrect to state that the research team being part of the process of investment advice, are also investment advisers.
- ii. The employees were never given the responsibility of acting as Research Analyst in strict sense and were only assisting the Research analyst. Their primary role was to gather information about the market sentiment and investment opportunities. It was not their role to prepare Research Reports, which was being prepared by a separate team.
- iii. They were confined to a separate room and interaction with clients was strictly prohibited.
- iv. Both, Mr. Mayank Chinchwadkar and Mr. Manish Sharma, have valid requisite NISM certifications.
- v. The employees are not part of the management of *Epic* and therefore a lenient view may be taken against them.

9. It is also noted from the records that vide letter dated February 04, 2021, the *Noticee no. 1* has intimated that it has applied for withdrawal for registration as an Investment Adviser.

10. I have carefully perused and considered the *prima facie* findings as recorded in the *interim* order and have also considered the above noted submissions made by the *Noticees*, as well as the employees of *Epic*. The charges so levelled in the present matter lead me to an examination of a limited issue, i.e., whether the *Noticee no. 1* has violated the provisions of the IA Regulations and the PFUTP Regulations while acting as an Investment Adviser?

11. Before I proceed to examine the aforementioned submissions of the *Noticees* and the employees, I find it worthwhile to recapitulate that the *interim* order has charged the *Noticees* with violation of the provisions of the IA Regulations and the PFUTP Regulations. In order to appreciate the import and significance of the said provisions, it would be appropriate to refer to the said provisions, having bearing on the allegations made against the *Noticees*. Accordingly, the said provisions are being reproduced hereunder for convenience and ready reference:

7. Qualification and certification requirement.

(1) An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:

- (a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or*
- (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.*

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

- (a) from NISM; or*
- (b) from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.:*

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

General Responsibility

Order in the matter of Epic Research Pvt. Ltd.

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.*

...

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

(13) *It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements under Regulation 7 at all times.*

16. *Investment adviser shall ensure that -*

(a) It obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

- (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.*

15. (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;*
- (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.*

17. Investment adviser shall ensure that,-

(a) *All investments on which investment advice is provided is appropriate to the risk profile of the client;*

...

(d) *It has a reasonable basis for believing that a recommendation or transaction entered into:*

- (i) meets the client's investment objectives;*

Order in the matter of Epic Research Pvt. Ltd.

- (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.

Code of Conduct

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.

3. Capabilities

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

6. Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

....

8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

12. It is noted from the records that in their common reply the *Notices* had made a demand that a copy of the inspection report be made available to them. In this connection, I find that all the major findings of the inspection report against the *Notices* have already been encapsulated and discussed in the *interim* order itself. Further, the *Notices* have also conducted an inspection of the documents relied upon by SEBI while issuing the said *interim* order. Therefore, non-availability of a copy of the inspection report cannot be stated to have caused any prejudice to the interests of the *Notices*. At this stage, I note that Hon'ble Securities Appellate Tribunal was confronted with the issue of supply/non-supply of copy of investigation report in the matter of *Shruti Vora vs. SEBI* (Date of decision: February 12, 2020) and the Hon'ble SAT while declining to accept the grievance of the appellant therein has *inter alia* observed as: "*In the instant case, the show cause notice relies upon certain documents which have been made available. Thus, the investigation report is not required to be supplied*"

13. In the present matter also, I note that copy of all the documents relied upon in the *interim* order have already been furnished to the *Notices* and by extending the aforesaid findings of Hon'ble SAT, I observe that there has been sufficient compliance of principles of natural justice and therefore the demand for supply of copy of entire inspection report is rejected being superfluous, redundant and baseless.

14. Before dwelling into the merits of the case, it is felt appropriate here to deal with the two preliminary objections raised by the *Notices*: first, that no emergent circumstances were existing necessitating issuance of an *interim* order which has been passed without according personal hearing to the *Notices*, and second, that restraining the activity of Investment Adviser is in violation of Article 19 (1) (g) of the Constitution of India.

15. As regards the contention pertaining to passing of the *interim* order is concerned, I observe that the power to pass *interim* orders emanates from the Section 11 (4) r/w 11 B of the SEBI Act, 1992. By virtue of the said provision, either pending investigation or inquiry, SEBI may take various actions as listed out therein, including the following:

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

.....

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation

16. I observe that the *interim* order in the present case has been issued after conducting a *prima facie* analysis of facts unearthed in the course of inspection governing the functioning of *Epic* as an investment adviser, which was perceived to be prejudicial to the interest of the investors. In exact terms, the *interim* order records that: “*Since the conduct of Epic 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... the very nature of the investment advisory activity being practised by Epic has been found to be prima facie in violation of the provisions of PFUTP Regulations and LA Regulations. In view thereof, allowing Epic to continue its services to its clients, regardless of whether they have complained against Epic or not, would tantamount to allowing the prima facie investment advisory activity of Epic to be operated by unqualified personnel, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the LA Regulations.*”

17. From the perusal of the *interim* order, it is observed that the conduct of *Epic* has not only been found to lacking compliance with the IA Regulations, but certain acts on its part have also been found to be *prima facie* in violation of provisions of the PFUTP Regulations. I observe that the *Notices* in their common reply have claimed that drastic action has been taken by passing of the said *interim* order and the findings/lapses so referred to in the said order are “curable”. In this respect, it is noted that though the *Notices* have asserted that the violations were not serious and could not be considered as sufficient warranting issuance of an *interim* order, however, I observe that nothing has been brought on record by the *Notices* with respect to the details of such lapses which according to them can be cured and the details of steps that could have been taken or have been taken by them in order to cure such lapses. The contention of the *Notices* that, there were no emergent circumstances based on which the said *interim* order was required to be passed, does not seem to be a strong argument. It is noted that the *interim* order has indicted *Epic* on various counts of serious violations and misconduct and on all such counts, the acts/omissions were aggravating enough for passing of those *interim* directions. For illustration, *Epic* was found to have modified the risk profile of as many as 83 clients and that too on multiple

times. The details of such acts would be discussed in detail in the later part of the order however, I may just make a quick reference to the glaring transgression made by *Epic* in changing the risk profiles of its clients on multiple occasions thereby exposing those clients to various risks which might not only be unsuitable to their profiles, but at the same time, was detrimental to the growth of a healthy and robust securities market. It is seen that even the ‘experience of investing’ was changed within a period of 2 months, from 1-3 years (in February, 2018) to 7-10 years (in April, 2018), which evidently posed an impossible situation, wherein the investors were at risk of getting advice on products that are not suitable to their requirements based on their actual limited period of experience of investing, which was wilfully changed to a larger period of experience only with a view to sell a riskier product to such clients.

18. I, at this stage note that in a matter of *Dr. Shivinder Mohan Singh Vs. SEBI* (date of decision: December 24, 2020), the Hon’ble SAT was confronted with a similar plea taken by the appellant therein stating that the *interim* order could be passed only if compelling circumstances existed. The Hon’ble SAT, while rejecting the said argument, have observed that: “...we find that the appellant did not challenge the ex-parte interim order dated March 14, 2019. Nothing prevented him from filing an appeal. The appellant was arrested much later on October 10, 2019 after passing of the confirmatory order. The said orders have been continuing against the appellant and there is no reason why the said order should not continue till the completion of the proceedings...” In the present case also, there were reasons sufficient enough warranting invocation of the powers to issue *interim* directions against *Epic* so as to protect the interest of the investors of securities market and to prevent the *Notices* from further putting the investors into unwarranted risks by way of its misleading advisory services. Moreover, the instant proceeding is not being conducted either in the exercise of any appellate or power of revision of order but in continuation of the *interim* order during which the allegations against the *Notices* shall be taken into logical conclusion after taking into consideration all the explanations offered and arguments advanced by the *Notices* with supporting evidences, furnished if any, hence the above noted contention of the *Notices* is liable to be rejected being baseless and devoid of merit.

19. It is further observed that the factual analysis about the activities of the *Notices* that provided compelling reasons for passing the *interim* order have been dealt with elaborately in the said order itself and in their replies, the *Notices* have not been able to negate such factual observations even at this stage before me. It is also pertinent to mention here that a post-decisional hearing has been duly accorded to the *Notices* for presenting their submissions, which

shows that adequate compliance with the principles of natural justice have been made, as have been laid down in following judgments of various courts:

- i. Hon'ble Supreme Court in the matter of *Liberty Oil Mills & Others Vs. Union of India & Other* (1984) 3 SCC 465 have *inter alia* observed as:
"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "
- ii. In the matter of *Anand Rathie & Others Vs. SEBI* [2002 (2) Bom CR 403], Hon'ble Bombay High Court has ruled categorically that a post decisional hearing would also show compliance of principles of natural justice. The exact observations of the Hon'ble High Court are:
"...31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded...."
- iii. The Hon'ble High Court of Judicature for Rajasthan at Jaipur also had an occasion to deal with the issue of post-decisional hearing in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC). In the said matter, the Hon'ble High Court have observed as: *"...Perusal of the provisions*

of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. ... The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act.”

20. In the present case, as noted above, a post-decisional hearing has been accorded to the *Notices* as stipulated under the second proviso to Section 11 (4), which reads as: “*Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.*”. Therefore, in light of the provisions of Section 11(4) and the aforesaid judgments, I have no hesitation to hold that the principles of natural justice have been adequately complied with in the present matter and all the submissions made by the *Notices* are being duly considered while concluding the present proceedings in this order. Under the circumstances, the submission of the *Notices* raising objections against the issuance of the *interim* order deserves to be rejected being *sans* any merit, whatsoever.

21. Another submission made by the *Notices* is that by issuing the restraint directions and preventing *Epic* from acting as an Investment Adviser, SEBI has acted in violation of Article 19 (1) (g) of the Constitution of India. It is observed that simultaneous to conferment of a fundamental right to practice any profession or to carry on any occupation, trade or business, the Constitution of India also stipulates that in the interest of general public, reasonable restriction on such a fundamental right can be imposed. It is noted that an identical issue came up for consideration before the Hon’ble High Court of Judicature for Rajasthan at Jaipur, in the matter of *M/S Punit Mercantile Pvt Ltd. Vs. Union of India and others* (29 October, 2010). In the said matter, the Hon’ble High Court while appreciating the whole scheme of SEBI Act, 1992, have *inter alia* observed as: “...*Perusal of aforesaid paras shows that the SEBI Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. A restrained order for some period from accessing the security market and prohibiting buying, selling and dealing in security was not held to*

be a penalty. Looking to the object of the SEBI Act, provisions of Sections 11(4) & 11(B) of the SEBI Act imposes a reasonable restriction in conformity to Clause (6) of Article 19 of the Constitution of India. This is in the larger interest of the investors and to achieve the objects of SEBI Act. In the light of aforesaid, we do not find that provisions of Sections 11(4) & 11(B) of the SEBI Act are violative of Article 19(1)(g) of the Constitution of India. Accordingly, challenge to the constitutional validity of the aforesaid provisions is not accepted. Thus, the provisions are held to be intra-vires...”

22. Although the aforesaid observations of the Hon’ble High Court were not made while dealing with case of a registered intermediary like an Investment Adviser in the present case, there cannot be any doubt in extending the said ratio to the present case, as provisions under Section 11 (2) (b) of SEBI Act, 1992 clearly provides that SEBI may take any measure as it thinks fit in order to regulate the working of investment advisers. Therefore, the submission that the *interim* order is in violation of the Article 19 (1) (g) does not hold any water and is thus rejected.

23. As the *Noticees* have not been able to make out any case in their favour by raising the aforesaid preliminary objections, the facts of the case and the *prima facie* findings recorded in the *interim* order need to be adjudged on its own merit in the backdrop of various written and oral submissions made by the *Noticees*.

24. It is noted that in terms of the regulation 7 (2) of the IA Regulations, an investment adviser registered with SEBI as well as representatives of such an IA shall have the necessary certification as specified therein either from NISM or from any other institution, provided such certificate is accredited by NISM. It is further noticed that the regulation 7 has provided a period of two years to the existing investment advisers, for complying with the aforesaid requirement pertaining to certification from NISM. Further, regulation 15 (3) of the IA Regulations cast a responsibility on the IA to ensure that its representatives and partners should mandatorily comply with the certification requirements as required under regulation 7. Similarly, Clause 8 of the Code of Conduct also mandates compliance with all the regulatory requirements by the investment adviser and its representatives.

25. In the present case, as noted from the *interim* order, the period of two years granted for the compliance with the aforementioned requirement got over on April 21, 2015, in terms of the applicable provisions of the IA Regulations. Further, as has been noted during the inspection of the *Noticee no. 1*, as many as seven (07) employees were engaged with *Epic* for the purposes of rendering the investment advisory services. The *interim* order, at page 3 tabulates specifically the

dates of obtaining certification by the aforesaid seven (07) employees, which are reproduced herein below:

Table no. 1

Sr No.	Name	Date of joining Epic	NISM certification date (Level II exam.)	Non- Compliance of Regulation 7 (in days*)
1	Lovelesh Sharma	18.04.2014	12.03.2015	-
2	Husain Hatim Ali Badshawala	10.11.2014	08.08.2015	108
3	Sachin Yadav	08.06.2015	09.07.2016	306
4	Mayank Chinchwadkar	12.05.2015	22.10.2016	437
5	Sunil Patel	08.04.2016	25.08.2018	779
6	Ritesh Jain	15.01.2013	06.01.2015	-
7	Manish Sharma	02.11.2015	28.09.2015	159

*Delay days calculated from April 21, 2015 being the trigger date for non- compliance as per IA Regulations. Two-year period was given as per IA Regulations with effect from April 21, 2013 for compliance of NISM certification requirements.

26. The *interim* order records that out of seven (07) employees who were working with the *Noticee no. 1* for providing investment advisory, only two (02) employees were compliant with the requirement of having the Level-II certification from NISM, as on the applicable date being April 21, 2015. However, in terms of the submission made by the *Noticees* as well as by the aforesaid employees, it is noted that the employee mentioned at Serial no. 7 of the above table, namely, Mr. Manish Sharma, was having the requisite certification from NISM as on September 28, 2015 and he had joined the services of *Epic* only in the month of November, 2015. From the aforementioned information given in the table, it is observed that out of seven (07) employees, as many as four (04) employees had belatedly achieved the requisite certification for which no justifiable explanation has been submitted by the *Noticee/ Epic*.

27. Further, from the dates of certification obtained by various employees as mentioned above, I note that the delay in such a compliance with the IA Regulations in acquiring the requisite certification ranged from 108 days to 779 days. As can be seen, Mr. Sunil Patel had joined the services of *Epic* on April 08, 2016 and was under an obligation to obtain the requisite

certification of NISM (Level -II Exam) before/on the date of joining. However, in complete disregard to the said requirement, the certification has been obtained by the said employee only on August 25, 2018, even though undisputedly he was rendering his services to the *Noticee/Epic* in the capacity of investment advisory before that period. It is observed that the *Noticees* have not been able to put forth any justification for such a blatant non-compliance with the stipulations of the IA Regulations. There is no doubt that the services of investment adviser are availed only with the purpose of walking on a guided path of investment, wherein such path is created by the individuals, who have better understanding and acumen of laying the bedrock, for wealth creation of the investor, which the investor himself may not be able to achieve on his own. I must add here that the purpose of mandating the acquisition of NISM certification by the employees who are involved in investment advisory services is to ensure that only appropriate, genuine and fair advice which aligns with the investment objective of the investor is provided to the investor by the investment adviser. Therefore, the omission on part of *Epic* in keeping in employment, persons who did not have the requisite certification or qualification during the respective periods, cannot be ignored, more particularly considering the fact that before the prescribed date of compliance as per the IA Regulations, i.e., April 21, 2015, only two of its employees were possessing the requisite certifications. Under the circumstances, I am constrained to observe that the *Noticee no. 1* has acted in gross violation of the provisions of regulation 15 (13) read with regulation 7 (2) of the IA Regulations, which deal with the basic eligibility criteria of a registered IA before indulging in activities of providing investment advisory.

28. Moving on to other allegations against the *Noticees*, the overall operations and functioning of *Epic* as an IA needs to be discussed first. I note from the *interim* order that based on IT tools, the concerned team of *Epic* used to generate a lead about the prospective clients while another team viz., Consulting Sales Team used to enter into discussions with such prospective clients. Thereupon, the Risk Profiling Team comes into play for the purpose of risk profiling and after completion of risk profiling; the Sales Consulting Team again interacts with such customers and sells a product or gives a free trial of 2 days. Afterwards, payment link is sent to the client and another team viz., Compliance and Client Service Team conducts the KYC. Lastly, a product which is “tagged” to all clients falling into the same risk profile is sold to such new client who falls into the said category of risk profile. For illustration, the following products have been assigned for a client who has been classified as a “Growth Investor”:

Table no. 2

Sr. No.	Product Type	Segment	Product Risk Type	Investor Type
1.	BTST Limited	Cash	High Risk	Growth Investor
2.	Premium Cash	Cash	Moderate Risk	Growth Investor
3.	BEP Pack	Commodity	High Risk	Growth Investor
4.	Copper Pack	Commodity	Moderate Risk	Growth Investor
5.	Stock Futures	Derivatives	High Risk	Growth Investor
6.	Bank Nifty Options	Derivatives	Moderate Risk	Growth Investor
7.	Forex Premium	Currency	High Risk	Growth Investor
8.	FOREX: NSE	Currency	Moderate Risk	Growth Investor

29. Once a product/package is sold to a client, all advices generated for the said product are broadcasted through the channels of SMS and emails to the said client. In this connection, it is noted from the replies filed by the *Notices* as well as by the submission made by its employees that there was no human interaction of the employees, (who were infact duly qualified to represent the *Notices* before its clients) and their only role was to develop the products and generate advice for such products, which was broadcasted to all users of such products.

30. I observe that in the present case, it has not been disputed that only the seven employees, who have been named in the *interim* order were the only employees of *Epic* who were having the mandatory required NISM certifications (if the delay in obtaining such certification is ignored for a while). Besides these seven employees, *Epic* was having a Sales Consulting Team of around 200 employees, who used to first interact with the prospective clients and after completion of the risk profile, these sales staff also used to “sell” the products to such clients. I note that *Epic* had claimed to have deployed much of automation in their operations which included digital marketing, lead generation, auto generation of the product etc. However, while embarking on the road of automation so aggressively, *Epic* has completely lost the essence of the spirit behind the regulatory framework governing the functioning of the investment adviser. In other words, *Epic* being a registered intermediary did not adhere to the regulatory stipulation laid down under regulation 7 (1) of the IA Regulations, which *inter alia* mandates that the “representatives” of the

investment adviser shall have the requisite NISM certifications at the time of engaging in the activities of investment advisory. However, in their practice, the *Notices* especially *Epic* seems to have given a complete go by to such an essential requirement of the said provision. The seven employees who were having the requisite NISM certifications, albeit belatedly even 1-2 years after joining *Epic*, were kept in a total insulated environment, with no direct interaction with the clients. Further, on the contrary to the said stipulations, the products of the IA, which were supposed to be suitably aligned with the investment objectives, risk appetite and other crucial parameters depending upon case to case profiles of investors, were being sold by the Sales Consulting Team, who were admittedly not having the requisite certification, nor apparently any expertise to dispense such advisory products to the investors. One may argue that in order to cater to a clientele of 6000-7000 individuals in a year, individual interaction of prospective clients with the Certified representatives may not be possible. In fact, it is observed that the root cause of non-adherence or the level of callousness of *Epic* towards adherence to the IA Regulations can be seen from the skewed ratio of the employees it had recruited in various categories. In other words, *Epic* being an IA was having a sales force of around 200 personnel, who were engaged in converting the leads (into potential clients) generated from the internet platform in which IA had invested heavily through digital marketing. However, for the core activity of picking up an investment product conducive to the specific investment objective of the client, which required the service of a certified staff, *Epic* relied merely on 7 employees, who too, did not have any room for interaction with clients. Undeniably, the most crucial and sensitive function of selling the advisory products was being handled by the Sales Consulting Team and not by professional investment advisors, whereas the sales team in my view, ought to have played only a limited role of bridging the gap between the clients and the research team comprising certified professionals who infact were entitled to deal with the clients as the actual investment advisers.

31. I note from the records that the *Notices* have not been able to justify their aforesaid flawed business model and infact have tried to defend themselves by claiming that the certified professionals (termed as research team) were insulated from external interventions to enable them to focus on the analysis part. I find the said submission to be completely unacceptable as the spirit of the IA Regulations mandates that based on the research reports or other tools, which a certified person is able to grasp and understand, only such qualified person can engage with and render advice to the investors. Going by this spirit regulation 7 mandates that even the

“representatives” of a registered IA shall have the mandatory certification. However, *Epic* has given scant regard to the said provisions, and it is the Sales Team which was actually representing *Epic* before the clients despite the fact that the said team was not having any person possessing the necessary qualification in terms of the said mandatory certification from NISM so as to be eligible to render any investment advice to investors. Unfortunately, those employees who were claiming to be possessing the requisite NISM certifications at the relevant time were in fact kept insulated from the clients and were not rendering any advice to the ultimate investors. Under the circumstances, the facts & evidence of the matter as borne out by the records and the feeble & unacceptable justifications advanced by *Epic* to defend their way of conducting business as Investment Advisor in response to the above noted allegations, constrain me to observe that by committing such glaringly wrongful business practice which is embedded in its basic business model itself, the acts of *Epic* stood in violation of regulation 15 (13) read with regulation 7 of the IA Regulations and Clauses 1, 2, 3 and 8 of the Code of Conduct for IA under the Third Schedule read with the Regulation 15 (9) of the IA Regulations.

32. The *interim* order also records adverse observations pertaining to the risk profiling of the clients by *Epic*. It is noted that regulation 16 (a) of the IA Regulations lists out 6 information parameters which an IA essentially needs to elicit/obtain from its clients, in order to provide investment advice. The said parameters include age, investment objectives, income details, existing investments/assets, risk appetite and liabilities/borrowing details. The purpose to mandate for obtaining such specific but basic information from the prospective clients is to emphasise on the regulatory intent that any person engaged in the activities of rendering investment advisory services is required to have clear picture about the investment objective, risk taking abilities, past history of investments done and overall financial goals & strength of each client, so as to be able to customise an investment advice as per the investment goal and requirement of the client, meaning thereby, by assessing and evaluating such basic minimum information about a client, an IA may be in a better position to suggest a product which would converge with the investment objective of the client. The aspect of assessment of risk is the most crucial factor for rendering useful investment advice to a client hence, ignoring or diluting such a critical factor by an Investment Advisor would render the whole purpose of creating an ecosystem of investment advisers for the securities market completely nugatory. It needs specific emphasis here that the present proceedings against the *Notices* have been initiated on account of non-compliance of regulatory provisions specifically envisaged for the purpose of guidance

of and adherence by the Investment Advisors. The essence of its compliances are mandatory irrespective of the fact whether such non compliances result in causing any actual loss to any investor or not. It is trite law that when a rule, law, regulation demands for certain things to be done in a particular manner by an Intermediary of the Securities Market, those acts or things are required to be done in that specified manner only. Any deviation from complying with the rules or any action deviant from the manner prescribed under such rules and regulations, would be a sufficient ground for inviting remedial or penal action against such deviation or non-compliances.

33. In the present case, *Epic* was using a software, whereby based on the responses provided by the investor to a select 10 questions, the risk score was auto generated. Based on such risk score, the clients were classified into the following risk categories:

Table no. 3

Risk profiling questionnaire score	Risk category of client
0 – 10	Defensive
10 – 16	Moderately Defensive
17 – 24	Balanced
25 – 34	Growth
35 – 42	High Risk and High Growth

34. I observe that the information parameters listed out under regulation 16 are mandatorily required to be elicited from the prospective clients and analysed with a view to ascertain the risk profile of a client. The parameters listed out in the above regulations are required to be complied with cumulatively as the said provision does not leave any scope for alternation thereof or for diluting in any manner any of the said information parameters prescribed to be collected under regulation 16 of the IA Regulations. The records before me in the present case, however clearly suggest that *Epic* was not at all collecting any information from its clients on at least two parameters viz., (a) existing investments/assets; and (b) Liability/borrowing details. Needless to state that information on these two parameters are of immense importance to ascertain the present net-worth and financial strength of a prospective client which would be helpful to an Investment Advisor to determine the investment needs and goals of a client. However, I find that the 10 questions that have been listed out by the *Noticee* for the purpose of determining the

risk score of a prospective client, did not contain any specific question on the aforesaid two factors prior to assessing the client's risk profile and before arriving at the conclusion about the kind the investment advice required to be rendered to a client. Resultantly, any risk score of the client which is deduced from an incomplete information matrix can never be termed to be an independent and self-sufficient score. Therefore, it cannot be said that *Noticee/ Epic* has done proper risk profiling of clients for the purpose of rendering investment advice to them. It is also noted that the answers from the clients were reportedly being elicited over telephonic call by the risk profiling team and fed into the system so as to arrive at a risk score. However, neither the recording of such calls is maintained by *Epic* nor any supporting document is obtained from the clients with respect to the responses so given by the clients. It is noted that such a serious deficiency on the part of the *Noticee* has also been noted in the past in the compliance audit report for the financial year 2017-18, conducted in pursuance of the regulation 19 (3) of the IA Regulations.

35. I note that when an investor is assigned a particular risk score by a registered investment adviser, he may not be having an acumen to judge that such a score assigned to him does not reflect a correct objective score based on his answers to the questions put to him by or on behalf of the Investment Advisor. The client may not be also in a position to ascertain that the questions so asked to him were not covering all the mandatory aspects of his risk profile as prescribed under the IA Regulations. However, in this case not only the risk score was being arrived at based on his answers to such insufficient number of questions, but also the product selection for him was being determined completely based on such an erroneous and misleading risk scores.

36. In view of the aforesaid, there is no doubt that when an incorrect risk score is generated, there is a rare possibility that the investor will get a product which is appropriately aligned to his actual risk profile. In the reply filed during the present proceedings, the *Notices* have not been able to throw any light as to how they have missed the afore noted two mandatory information parameters while undertaking risk profiling of their clients and have not been able to explain as to how the product selection made by them for their clients based on such deficient risk profiling can be termed to be a suitable product for a customer. Under the circumstances, by the said acts of lapses and omissions on the part of the *Notices*, the *prima facie* findings recorded in the *interim* order that *Epic* was acting in violation of regulation 16 (a) of the IA Regulations and clause 4 of Code of Conduct for IA as given under the Third Schedule read with the Regulation 15 (9) of

the IA Regulations, stand substantially vindicated. The next imputation made against *Epic* is again pertaining to the risk profiling. This time, it is seen that the risk profiles of the clients were being frequently modified within a short span of time, and further, due to such acts of revised risk scores being assigned at frequent intervals to the same client putting him into different categories of risk takers at different points of time, multiple products suitable for different investors having different risk scores, have been sold by *Epic* to the same client/investor. It is appalling to note here that the risk scores of clients have been tweaked as per the wish of the *Notices* without any regard for any regulatory norms. It is noted that the *interim* order at pages 11-13 records a detailed analysis of how risk score of an investor namely Mr. Nitin Shivankar has been changed multiple times. It is illustrated therein that in a span of two months, the annual income as well as the investment experience of the client has been tweaked, which was *ex-facie* manipulated, as can be seen from the following table:

Table no. 4

Risk profiling date	Client's willingness to take financial risk	Client's Annual Income mentioned in risk profiling	Client's investment experience	Risk Profile Score (out of 39)
12.02.2018	Low risk taker	1-5 Lakh	1 to 3 years	20
05.03.2018	High risk taker	5-10 Lakh	4 to 6 years	29
22.03.2018	Very high risk taker	Above 25 Lakh	>10 years	39
23.04.2018	Low risk taker	1-5 Lakh	1 to 3 years	20
24.04.2018	High risk taker	5-10 Lakh	4 to 6 years	28

37. The *Notices* have simply brushed aside the aforesaid illustrations made in the *interim* order and have preferred to remain silent without offering any comment on the issue as to how the income of the investor increased to above INR 25 Lakh within a period of one month or so, from an income level of INR 1-5 Lakh and it further went down in the next month. There is no explanation as to how the income of a person can have such wild fluctuation on a month to month basis. Another glaring infirmity is that even the prior investment experience of the investor is changed to more than 10 years in March, 2018, wherein just one-month prior, the said experience was recorded as 1-3 years. The purpose to manipulate/modify such risk profile can be deduced and linked to the details of the products sold every time such risk profile is

modified/manipulated. For the aforesaid investor, it can be seen from the *interim* order that each modification/manipulation in risk profiling resulted in changes in the category of the client from low risk taker to high risk taker and accordingly, a product/package from completely unrelated realm is sold to such client. To elaborate further, on April 23, 2018, the investor was falling into low risk category, however, on the very next day, i.e., April 24, 2018, he became a high risk taker investor with increased income as well as increased experience, leading to sale of fresh two products/packages to him costing total of INR 22,000. After witnessing the above noted tangible evidence of manipulative practice followed by the *Notices*, the contention of the *Notices* that the observations in the *interim* order have been made based on conjecture turns out to be an absurd claim which is not tenable. It is evident that the observation made in the *interim* order, though recorded on a *prima facie* basis at that point in time, considering the unsubstantiated and feeble responses now being offered in response to the same by the *Notices*, I can hold with assurance that the aforesaid findings of the *interim* order are infact based on cogent and uncontroverted evidence to establish that *Epic* was indeed not complying with the risk profiling requirement in spirit of the regulations. In fact, as it turns out now, I find that in the name of risk profiling, only empty formalities to tick out a checklist was being carried out by the *Notices*, which can be best termed as a sham compliance disregarding true essence of the regulatory requirements as prescribed under the IA Regulations. Besides, I observe that *Epic* has gone too far in violating the sanctity of its fiduciary role to behave in a fair & transparent manner vis-à-vis its clients by selling multiple products repeatedly to the same clients by frequently changing their risk profiles and also by offering the same product repeatedly to the same client even during the currency of the previous product. For example, on October 16, 2017, *Epic* has sold a Product/Service named as Swing MCX carrying a duration of 30 days to an investor. Surprisingly on the very next day, the same product albeit with duration of 100 days is again sold to the same investor. In total, in one year, 28 products which involved repeat entries have been sold to a single investor and an amount of INR 9,57,000 has been so received from the said investor in this manner.

38. The issue of modification/manipulation of risk profiling is not a one off incident. In terms of the information recorded in the *interim* order, a sample study of 83 clients has reflected that risk profiles of all such clients have been modified multiple times, details of which are as under:

Table no. 5

Change in risk profiling frequency	No. of clients
1 to 5 times	11
5 to 10 times	29
10 to 20 times	19
More than 20 times	24
Total	83

39. The *interim* order refers to an example of an investor (Mr. Amar Mehta) whose risk profile was changed by Epic 36 times in a year (from December 09, 2017 to December 31, 2018). It is noted that the investor was first shown to have had an investment experience of 4-6 years on December 11, 2017, which got reduced to 1-3 years on February 14, 2018 and strangely again increased to 7-10 years on April 25, 2018. Needless to say that apart from investment experience, other factors like income etc., were also modified and all such changes naturally impacted the risk score and selection of the product for the client. From the aforesaid discussion, more particularly the fact that the risk profiles of almost all those clients which were taken as a sample were found to have been modified/manipulated, I have no hesitation to observe that such manipulative acts on the part of *Epic* were nothing but a subterfuge created in order to sell multiple risky products to its investors irrespective of their actual capabilities and risk appetite and to earn huge amounts of fees from the clients who were conned into buy all such products. The hapless investors, believing in the authenticity of their risk profiles as prepared by *Epic* and having accepted in good faith various products from an investment adviser that was duly registered with SEBI, kept on paying the fees to the *Noticee no. 1* towards those investment products, under the belief that the *Noticee no. 1* was acting in a fiduciary capacity towards them. However, the *Noticee no. 1* has in reality kept aside the interest of investors and was primarily focussing on increasing its revenue by selling multiple products to the vulnerable investors.

40. From the above, it can be said that the *Noticee no. 1* by acting in such a callous and irresponsible manner has never been honest and fair in its dealing with investors as there was no reason or cause to modify the risk profiles, to say the least. The *Noticee* has not offered any acceptable justification for making such changes and modifications as narrated above. I may

recall here that neither the *Noticee no. 1* has sought any documents from its clients in support of the answers elicited from the clients to the risk profiling questionnaire posed to them nor has kept the call recordings of its executives who obtained those responses to such questionnaire. Thus, it exposes the inherent ill-intent of the *Noticee no. 1* who, by evading its basic duty of making appropriate documentation in support risk profiling done for its clients, has apparently instead, engaged in manipulating the risk profile scores as per its own sweet will, to suit its convenience and not the interest of investor. In view of the above discussion, I observe that the said acts of misconduct and breach of trust on the part of the *Noticee no. 1* clearly demonstrate that *Epic* and its officials have not acted fairly & transparently towards their clients. The *Notices* rather have acted in a manner to cause inducement to the investors to deal in securities by manipulating their risk scores and making them buy investment products contrary to their risk appetites in a fraudulent manner, which were glaringly in violation of regulation 4 (1) of the PFUTP Regulations. Consequently, the acts committed by the *Notices* as discussed above are also found to be in violation of regulation 15 (1), 16 (a), 16 (b), Clauses 1, 2 and 6 of the Code of Conduct as provided under Third Schedule read with regulation 15 (9) of the IA Regulations.

41. As noted from the aforesaid the low risk rated clients have been sold the products which were meant for the high risk category clients. As per the *interim* order, one investor (Mr. Amar Mehta) was classified on November 29, 2018 to be a Low Risk Taker. However, on the same day, a product named as “Stock Futures”, which as per the classification done by the *Noticee no. 1* was suitable for clients belonging to High Risk category, was sold to the said low risk taker investor. Such a gross disregard of the risk tolerance level of the investor shows that the *Noticee no. 1* acted in complete defiance of the rules of the game as prescribed in detail in the IA Regulations read with the code of conduct as specified under Third Schedule thereunder, and did not think about the actual risk appetite and actual requirements of its clients before advising them to deal with highly risky products in securities market. The said conduct of the *Noticee no.1* is clearly suggestive of indulging into unfair trade practices by the *Notices* without any respect for the genuine interests of the investors. There cannot be two opinions that for a low risk taker investor, a product involving Stock Futures, which by its inherent risk potential has been admittedly demarcated by the *Noticee no.1* itself as a product suitable for high risk taker category, is not appropriate to be recommended. It is now self-evident from the above stated facts and illustration that the *Noticee no.1* was carrying out the exercise of the risk profiling and classification of the products only as a matter of paper formalities without any care or due diligence or any

concern for the interest of its clients. I also find that is the *Notices* have offered no justifiable explanation during the present proceedings before me to controvert the above noted pinpointed incidences involving manipulation of risk profiles and mis-selling of multiple products to the same clients hence, I have been left with no other option but to say that such transgressions on the part of the *Noticee no. 1* are not only violative of regulation 17 (a), 17 (d) , 17 (e) and Clauses 1 and 2 of the Code of Conduct as specified under Third Schedule read with regulation 15 (9) of the IA Regulations, but are also in violation of regulation 4 (1) of the PFUTP Regulations, since the said acts of selling of misleading and inappropriate products to clients by manipulating their risk profiles are replete with fraudulent motive . The *Noticee no. 1* was clearly following an unfair practice of not disclosing the true and correct risk profiles to its clients before advising them to trade in a particular segment of securities market, which was found to be not suitable for such clients whose risk profiles were being changed frequently behind their back.

42. It is further noted that the *Noticee no. 1* had a defined fee structure in place for various products being offered by it, under which the *Noticee no. 1* was rendering its investment advisory services to various clients. Surprisingly however, it is noticed that apart from charging the clients as per the fee structure fixed by it for its various products, the *Noticee no. 1* has also charged fees from the investors under a category which did not find mention in its notified list of products. As noted from the *interim* order, an investor namely Mr. Pradeep Rawat has been sold a service package named as “Internal Calls” twice on August 01, 2017 and again on August 04, 2017. It is also observed that although the tenure for all such service packages was 360 days, however, different fees of INR 70,000; INR 80,000 and INR 32, 160 respectively have been charged towards purchase the said product on those three occasions. I observe that in response to the aforesaid specific finding made the *interim* order, the *Noticee no. 1* has not been able to furnish the details of the said product named as “Internal Calls” nor has it been able to explain before me the reason as to why such product was not mentioned in the notified list of products being offered by it. The *Noticee no. 1* has simply brushed aside the said finding by making a blatantly evasive statement that the said amounts of fee charged to the said client do not have not any correlation with the fee structure. In my view such an evasive stand in aquasi-judicial proceedings is not acceptable and such a stand taken by the *Noticee no.1* rather speaks volume about its conduct. Instead of throwing light and clarifying the intrinsic features of the said product and explaining the reasons for non-inclusion of such product in the list of products on it had already a pre-determined fee structure in place the *Noticee no. 1*, has preferred to respond in an audacious

manner almost refusing to explain the nature of such a product for reasons best known to it. I further observe that the *interim* order has arrived at the aforesaid findings by referring to only a few invoices taken up for consideration on a sample basis. In the light of the aforesaid and more particularly in the absence of any justifiable reasons for charging the clients with hefty sums of money as fees for a product that was not intimated to the clients in the declared list of products & corresponding fees/charges, I find that the *Noticee no. 1* has not acted in an honest and fair manner nor has it refrained itself from levying unreasonable & excessive charges from its clients. As the *Noticee no. 1* has preferred not to explain/clarify its stand on this issue, in the absence of any cogent justification available before me, I am constrained to observe that the *Noticee no. 1* has violated the regulation 15 (1) of the IA Regulations and it has also failed to adhere to Clause 1 and 6 of the Code of Conduct for an investment adviser as prescribed under regulation 15 (9) of the IA Regulations.

43. Before summarising my aforesaid observations, I must note here that an entity which is granted registration as an investment adviser, plays a crucial role in bridging the gap between the investment avenues and the resources that an investor has in its command. Based on his/its expertise & acumen to select a product appropriate to a naive person aspiring to become an investor in securities market, an investment adviser helps such investor achieve the level of investments what he, on his own may not be in a position to achieve. The consideration for rendering such a service to advise and hand hold an innocent investor should be as just as deserved by the investment adviser. As the arena of investment is fundamentally vast and complex, the IA Regulations have prescribed broad checks and balances so as to keep the interest of the investors protected from any kind of untoward treatment in the hands of unscrupulous Investment Advisors. The Code of Conduct spells out the general duties of the investment adviser to act honestly and fairly so as to serve the best interest of the clients in a fiduciary manner and to keep intact the integrity of securities market. The investment adviser ought to act with due care and skill by paying highest regard to the risk tolerance level of the investor and by objectively arriving at suitability of the product proposed to be suggested to different investors having different levels of risk appetites. Thus, an ecosystem needs to be developed in a way wherein advisory services are rendered in exchange of a fee from the client/investor, however, the interest of the investor is always kept as paramount.

44. I note that in the present case, the *Noticee no. 1* has made myriad submissions before me as to the extent of rich experience its founders possessed; as to how it has acted promptly to develop best in IT infrastructure; as to how it has enriched its employees who work on the product development; as to how it has invested in research tools for generation of research reports and as to how deeply it has indulged in digital and print media to establish its brand name and procure a large number of investors. However, apart from making such claims, no justification has been provided to controvert the specific findings made against the *Noticees* in the *interim* order as discussed in detail with illustrations above. The *Noticees* have not been able to explain with any credible justification as to why there was delay in obtaining the requisite certification by its employees; why the sales team, which was admittedly the contact point at the time of product selection was allowed to select any product for the client- a task for which they were not qualified for; why the risk profiling of the clients did not cover all the relevant aspects; why the risk profiling was manipulated frequently- a fact which is not at all possible; why the clients were sold products which did not match with their risk taking capacity; and why multiple products were sold to the same clients and so on. I note that the actions of manipulating the risk profile and selling totally unsuitable products to the clients, only for the sake of increasing revenue of the *Noticee no. 1*, speaks louder about its misconduct than the explanations furnished by it in writing to explain its conduct. The investment objective and the risk tolerance level of the investors have been kept aside while recommending products by the *Noticee no. 1* to its clients, which in my view are the most important aspect that need to be weighed upon while selecting a particular product for a client, who may be novice to the world of investments or at least not having expertise enough like an advisor, even though has necessary finance and willingness to be a part of the market and in turn contribute to the development of the securities market. It has been however noticed at various places in the present order that the acts of the *Noticee no. 1* were grossly detrimental to the interests of the investors, although protection of the interest of the investors was bestowed upon it as a sacrosanct duty while granting registration to it as an investment adviser.

45. The upshot of the foregoing analysis and discussions is that the *Noticee no. 1*, by its various manipulative acts and omissions has acted in gross violation of the provisions of the PFUTP Regulations and the IA Regulations. In my considered view the presence of such an entity who, by misusing the registration granted by SEBI, has disregarded the basic level of propriety and trust reposed in it and has acted in a manner only to increase its revenue by completely ignoring

the extant norms, is totally unwarranted. To permit such entities to continue in the regulated sphere of investment advisers would do more harm to the interest of gullible investors, who may not be able to identify the ill-intent of the *Noticee no. 1* underneath the registration certificate granted by SEBI.

46. Before closing my deliberations, I must also evaluate the roles and liabilities of the other *Noticees*, viz., *Noticee nos. 2 to 7*, who are the Directors of the *Noticee no. 1*. I note that in the present proceedings, the aforesaid *Noticees* have not taken any ground that they were either not aware of the acts which have been imputed as the basis of the alleged violations or that they were not in-charge of the day to day activities of the *Noticee no. 1*. The only defence that has been taken is with respect to the *Noticee no. 7*, who has claimed to be not on the Board of the *Noticee no. 1* during the alleged violations.

47. Insofar as the functioning of an artificial person, i.e., a company is concerned, it is an established position that it is the Board of Directors, which controls and manages the affairs of a company. Being an artificial person, a company can function only as per the directives of and under the superintendence of its Board of Directors which comprises natural persons with appropriate abilities and expertise to run the company. The Board of Directors is the source of the wisdom and thus, performs those functions for a company that are performed by a brain for an individual person. In view of the same, all commission and omissions on part of a company have to be necessarily attributed to its Directors who ran such a company at the time of the alleged violations. I find it apt to refer to the judgment of Hon'ble Supreme Court of India in *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152*, where Hon'ble Court, while dealing with the role of a director held: "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.*"

48. With regard to the liability of the *Noticee no. 7* (Ms. Jamila Bombaywala), it has been submitted that she came to be appointed as Director of the *Noticee no. 1* only on January 17, 2019

(DIN: 03409239, Ms. Jamila Nadeem) and thus cannot be held liable for the violations allegedly committed by the *Noticee no. 1*. In this connection, I recall that the inspection conducted by SEBI, based on which the present proceedings have been initiated, pertained to the period of April 01, 2017 to March 29, 2019. I also note that no argument has been put forth on behalf of the *Noticee no. 7* so as to segregate the alleged violations from the period of Directorship enjoyed by her. On the contrary, as recorded in the *interim* order at page 12 while dealing with the issue of selling multiple advisory packages to the same clients by the *Noticee no. 1*, it is noted that there have been instances of violations of provisions of the IA Regulations even during the period when the *Noticee no. 7* was on the Board of the *Noticee no. 1*. Thus, the facts of the matter suggest that the *Noticee no. 7* was very much a part of the management of the *Noticee no. 1*, so as to be held liable in the capacity of a Director for the aforesaid acts or omissions on the part of *Noticee no. 1*. Therefore, in light of the aforesaid guiding principles as articulated by the Hon'ble apex Court, I have no hesitation to hold that the *Noticee no. 2 to 7*, who were at the helm of the day to day affairs of the *Noticee no.1* during the commission of the violations as held above against *Noticee no.1*, are equally liable for those violative acts on part of the *Noticee no. 1*.

49. In view of the foregoing discussions on various acts of misconduct and fraudulent trade practices followed by the *Noticees* in contraventions of various statutory as well as regulatory provisions as alleged in the SCN and my observations thereon holding the said allegations of misconduct and fraudulent trade practices as established on facts & circumstances of the case, in order to achieve the avowed object of SEBI Act, 1992, and to protect the interest of investors, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby pass the following directions:

- i. The *Noticee nos. 1 to 6* are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of three (03) years from the date of this order. It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone on account of *interim* order shall be adjusted.
- ii. No further directions of restraint/prohibition against the *Noticee no. 7* are required to be passed.

Order in the matter of Epic Research Pvt. Ltd.

- iii. The *Noticee no. 1* is directed to resolve the complaints pending against it in the SCORES and otherwise, within the period of 30 days from the date of this order.
- iv. The *Noticee no. 1* shall within a period of 03 months from the date of this order, furnish a report to SEBI, duly certified by a Chartered Accountant, certifying that all the complaints against the *Noticee no. 1* have been resolved.
- v. In case of failure of the *Noticee no. 1* to comply with the aforesaid directions, the *Noticee no. 1* shall be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of 03 years.
50. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.
51. Subject to the above, the restraint imposed on the *Noticee no. 1* from alienating the assets including the money in bank accounts etc., is directed to be discontinued.
52. The directions issued under the *interim* order against the employees of the *Noticee no. 1* are directed to be discontinued.
53. The proceeding *qua* the *Noticee no. 7* is disposed of in terms of para 49 (ii) above.
54. The above order is without prejudice to the rights of SEBI to initiate other actions in accordance with law.
55. The Order shall come into force with the immediate effect.
56. A copy of this order shall be forwarded to the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: APRIL 19TH , 2021

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Order in the matter of Epic Research Pvt. Ltd.