

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

CONFIRMATORY ORDER

Under Sections 11, 11B (1) and 11D of the Securities and Exchange Board of India Act, 1992

In Re: 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:

Name of the Entity	PAN
Mr. Nishant Chopra, Proprietor Dezire Research	AGXPC3196L

In the matter of M/s. Dezire Research

Background

1. Mr. Nishant Chopra, Proprietor Dezire Research ("**Dezire Research**") is registered as an Investment Adviser ("**IA**") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**") with effect from February 04, 2016 under SEBI registration number INA000004104. Dezire Research is a proprietorship firm and its proprietor is Mr. Nishant Chopra. The registered office of Dezire Research is at '501, 5th Floor, B Block Metro Tower, Scheme No. 54, Vijay Nagar Indore-452010, Madhya Pradesh'. Its website address is <http://www.dezireresearch.com>.
2. SEBI conducted an inspection in relation to the affairs of Dezire Research during March 2019 at the registered address of Dezire Research to ascertain possible violation, if any, of the provisions of SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and rules and regulations made thereunder. During the inspection, documents/information pertaining to KYC, Risk Profiling, Risk Profiling acceptance by client, Change in risk profiling, Client Master, Invoices, SMS logs, employees list, Compliance audit report, NISM certification etc., were sought on test check basis. The inspection of Dezire Research was conducted on random sampling

basis and analysis of such samples & related records on test checking basis as well as written/oral submissions of Dezire Research, it's employees and clients.

Consideration and Prima Facie Findings in SEBI's Examination

3. Pursuant to the examination, SEBI passed an Interim Ex Parte Order dated February 03, 2021, (herein after referred as "**Interim Order**") against the Noticee as the Noticee:

3.1. had not carried out risk profiling and suitability assessment of clients as per the provision of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**");

3.2. had not charged fair and reasonable fee from clients as per the provision of IA Regulation;

3.3. had also triggered the Code of Conduct for Investment Advisers by virtue of above activities.

4. In view of the above observations, it was *prima facie*, found that the Noticee has violated the respective provisions of the following Regulations as mentioned in the interim order:

4.1. SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**");

4.2. SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**")

Service of the interim order, hearing and replies of the Noticee

5. Copy of Interim order dated February 03, 2021, was duly served to the entity and a reply was received vide letter dated February 20, 2021. The Noticee sought personal hearing and inspection of documents and inspection was duly granted on March 22, 2021. Thereafter, the Noticee submitted its written submissions vide letter dated June 8, 2021, and personal hearing was held on June 09, 2021.

Additional submissions have been made vide letter dated July 23, 2021. The submissions of the Noticee are summarized below:

- 5.1. On and after February 2020, they have closed down their activities.
- 5.2. Inspection by SEBI was not based on sampling of documents but after thorough analysis of documents and details of our clients. Out of the alleged violation of 47 clients, 30 clients had registered their complaint in SCORES. As on date, these complaints are not part of SCORES.
- 5.3. It was their first inspection and all data and details were provided to the inspection team as and when required.
- 5.4. Inspection findings have not been provided to it, which is required as per Regulation 27 of the IA Regulations. The directions restraining it should have been passed under the SEBI (Intermediaries) Regulations, 2008.
- 5.5. At the time of the interim order, only 14 investor grievances were pending and the same pertain to frivolous demands from clients.
- 5.6. Directions are not proportional to the findings mentioned in the order and the same have been issued without giving it a hearing. The order is based on conjectures, surmises and probabilities.
- 5.7. Only 195 unique complaints received i.e., 2.55% of the clients served and the same is normal compared to fee collected of Rs. 30 crores in FY 2017-18 and FY 2018-19. On July 23, 2021, only 4 complaints are pending.
- 5.8. Purpose of inspection is not punitive and objective is to make the intermediary comply with procedural requirements. Objective of inspection can be achieved by pointing out the irregularities at the time of the inspection itself. Every irregularity does not call for initiation of penalty proceedings.
- 5.9. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. As this was the first inspection of the Noticee, the deficiencies recorded ought to have been communicated to it.
- 5.10. There is no urgency to pass the interim order in the instant case and the Noticee should have been heard before any action was taken.
- 5.11. With regard to allegation that Noticee could not provide proof of communication of risk profiles in 37 out of 47 instances, Noticee has submitted the following:

- 5.11.1. SEBI orally sought sample of such communications and hence only 10 were provided. SEBI never sought the remaining 37 instances and the same are provided now. Information was sought by SEBI vide email dated October 03, 2019, and we requested for extension in time as following days were weekend and festivals but the request was rejected. Hence, readily available data for 10 clients was provided. No deficiency was found at that point and no further reminder was sent by SEBI.
 - 5.11.2. It can be seen that the risk profiling has been done at the relevant time and hence, finding that risk profiling has not been done for 37 clients is not sustainable.
 - 5.11.3. Third party products were used for domain hosting and email. Due to employee negligence and virus attack, data in email has been lost during 2020.
 - 5.11.4. To provide email log of emails of communicating risk profiles to 30 clients, Noticee tried to procure data back-up from Gmail. Google has informed that the same cannot be provided and hence, they are unable to submit the email logs.
 - 5.11.5. As Noticee kept screenshots of welcome emails sent to clients, the same have been provided.
- 5.12. With regard to allegation that IA services have been provided prior to communication of risk profiling, the Noticee has submitted the following:
- 5.12.1. Client and Noticee enter in a relationship only after payment is received. Questions are first asked telephonically and services are offered based on score.
 - 5.12.2. Risk profile and suitability is sent to clients after fees are paid.
 - 5.12.3. Details w.r.t. risk profiling, payment and commencement of service for 30 clients is provided.
- 5.13. With regard to allegation that Noticee provided IA services without paying attention to client risk profile and suitability, the Noticee has submitted the following:

- 5.13.1. Noticee has advised client as per risk profile and suitability assessment.
 - 5.13.2. Risk profiling gets modified over a period of time for e.g., client may fall in low risk in FY 2017-18 and high risk in FY 2018-19.
 - 5.13.3. Subrat Sahoo: Client herself requested vide email dated August 05, 2018, to activate service of MCX and F&O for her.
 - 5.13.4. Mohammad Shaikh: Client himself requested vide email dated August 25, 2018, to activate service of Options for him.
 - 5.13.5. Noticee cannot be held liable when clients themselves have requested for such services.
- 5.14. With regard to allegation that Noticee charged unfair and unreasonable advisory service fee from clients, the Noticee has submitted the following:
- 5.14.1. Fees charged are competitive reasonable and at par with the cost standards. If they were not, then Noticee would have not got such a good response from clients.
 - 5.14.2. SEBI has not prescribed any rule for fees.
 - 5.14.3. Noticee has a proper fee structure. Though Noticee had a No Refund policy, it has provided refund to some clients who did not want to avail services due to certain reasons.
 - 5.14.4. Clients are professional traders and opt for multiple packages and hence, due to customized packages, cost of service increases.
 - 5.14.5. Client has to pay higher fees when he/ she is willing to take long term services and subscribe for longer duration.
 - 5.14.6. Services charges increases when client is satisfied with one service and opts for more services one by one.
- 5.15. With regard to allegation that Noticee sold the same advisory product/service more than once with overlapping subscription period, the Noticee has submitted the following:

- 5.15.1. Overlapping can be done if Noticee offers more than one service at the same time. Package is customized as per individual need and risk profile of client.
- 5.15.2. Noticee has never provided overlapping services.
- 5.15.3. Xavier Nadar: Noticee has provided customized package and there is no overlap of even a single day.
- 5.15.4. Abdul Khan: Noticee has provided customized package and there is no overlap of even a single day.

5.16. With regard to allegation that advisory service was provided by Noticee after a considerable period of delay, the Noticee has submitted the following:

- 5.16.1. Kali Charan: Client has two different numbers and SEBI has only considered messages sent to one number and has not considered the messages given to the second number.
- 5.16.2. Jayant Sahoo: Client opted for premium option services but due to error, invoice was raised with HNI Standard MCX. However, client was provided with correct service and no complaint has been made by him.

6. The Noticee has prayed that it may be discharged of all the alleged charges and directions issued against it may be vacated.

Consideration of Issues:

7. I have considered the oral and written submissions made by the Noticee. The issue to be considered at this stage is as follows:

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

No proof of communication of risk profiles to clients:

8. It is prima facie found that the Noticee has not communicated risk profile score for 37 out of 47 instances and therefore, it had sold the products to those clients without following due procedure mandated under IA Regulations. The Noticee has submitted that due to time constraints during the inspection, it could only provide documents only for 10 clients and now it has submitted documents for the remaining 37 clients. I have perused the material on record and the following observations are made:

8.1. The Noticee was informed vide email dated October 03, 2019, to provide, for 47 clients, their risk profile forms (RPFs), emails vide which RPF was communicated to them and acknowledgement received from the client. Hence, the submission of the Noticee that SEBI orally sought details from the Noticee cannot be accepted.

8.2. During inspection the Noticee could only submit screenshots of the welcome emails sent to 10 clients, which contain an attachment named 'RP'. The Noticee provided this part data to SEBI vide email dated October 09, 2019, and the point regarding sending part data has not been clarified to the inspection team. Further, irrespective of whether the inspection team raised any query or sent a reminder, it was the duty of the Noticee to furnish the remaining welcome email screenshots at the earliest, which it has failed to do so.

8.3. Separately, at the time of inspection, the Noticee also provided RPFs for all the 47 clients mentioned by SEBI; however, I note that these forms are undated. Further, the pdf files of RPFs of the ten clients, who were communicated through email by the Noticee was provided to SEBI at the time of the inspection. These pdf RPFs were verified to see the time its creation. The following is observed in this regard:

Sr. No.	Client Name	Date of email when RPF was purportedly sent to client	Creation date of RPF file as per 'Document Properties'
1	Gajendra Singh	May 08, 2018	October 09, 2019
2	Jitendra Singh	July 17, 2018	October 05, 2019

Sr. No.	Client Name	Date of email when RPF was purportedly sent to client	Creation date of RPF file as per 'Document Properties'
3	Mahesh Waman	December 07, 2017	October 05, 2019
4	Mukesh Singh	November 14, 2017	October 05, 2019
5	Prabhakar Maheshwaram	July 17, 2018	October 05, 2019
6	Subrat Sahoo	July 19, 2018	October 05, 2019
7	Umed Chand Gidiya	July 29, 2018	October 05, 2019
8	Vikas Kumar Singh	June 20, 2018	October 05, 2019

8.4. From the above table it can be seen that the RPF files given to SEBI during the inspection appear to have been created AFTER this information was sought by SEBI (email of SEBI is dated October 03, 2019). If these files had been sent along with the email, then the creation date should have been on or before the date of the email sent by the Noticee to its above said clients.

8.5. Noticee has now submitted screenshots of the welcome emails sent to 30 more clients out of the 47 clients as it has claimed to have lost all the actual emails due to employee negligence and malware attack. The screenshots provided appear to show that the email had two attachments viz., Suitability assessment of the client and Risk Profiling Form of the client. As the Noticee has claimed to have lost the actual emails, the attachments are not available and their contents cannot be examined. Given the finding at paragraphs 8.3 and 8.4 above, I note that *prima facie* no credibility can be given to the documents relating to the proof of communication of risk profiles submitted by the Noticee.

9. To summarize, the Noticee has furnished 47 RPFs to the SEBI inspection team; however, as seen on a sample basis, these RPFs appear, *prima facie*, to have been created after the information was sought by SEBI.

10. Moreover, I note that the Noticee has not furnished any confirmation from the clients for the risk profile sent to them.

11. In view of the above, the submissions of the Noticee cannot be accepted and I hold that the Noticee *prima facie* (a) failed to comply with Regulation 16 (e) of IA Regulations; and (b) failed to abide by Clauses 1 and 5 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Dezure Research has *prima facie* violated the provision of Regulation 16 (e) and Clauses 1 and 5 of

Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

12. Further, in view of the observation at paragraphs 8.3 and 8.4 above, SEBI shall further examine whether the Noticee has provided the furnishing false information to the regulator during inspection.

Advisory Services Offered Prior to communication of Risk Profiling:

13. It has been alleged that the Noticee collected fees/ started IA services even before communicating the risk profile to the client. Noticee has denied the allegation and has provided data regarding communication of risk profiling and start of services for 30 clients.
14. I note that the Noticee has submitted that its employees carries out the risk profile by asking questions over telephone to the clients. However, it was observed during inspection that the Noticee did not provide any records of such telephonic communications to the inspection team.
15. I note that in the interim order details of ten clients were provided where the payment for the services was collected prior to communicating the risk profile to the client. For e.g., in the case of client Mr. Kali Charan, the first payment from the client was collected on November 21, 2017, while the risk profile was sent to him on March 09, 2018. The Noticee in its submissions has not provided any explanation for these ten instances. Instead, the Noticee has provided a list with names and dates regarding communication of risk profiling and start of services for completely different 30 clients; however, it has not provided any documents in support of this data viz., the document vide which the risk profile was communicated and the first invoice sent to the client.
16. I note that taking service fee by selling the product before communication of the risk profile to the clients has invariably given away the right of the client to dispute or disagree, where the advisory fees has already been paid by the clients and there is also no refund policy. The client is stuck with the Noticee with no right to dispute as the payments have already made much before the communication by Noticee.

As per the IA Regulations, the IA shall ensure suitability of the investment advice such that it is appropriate to the risk profile of the client. This essentially means that for objective assessment of suitability of product/services, the risk profiling should precede suitability assessment. Moreover, the IA Regulations also require that the IA has to communicate the risk profile of the client after risk assessment is done. The objective of this is to let the investor rule out any ambiguity between the client and the IA vis-à-vis client's inputs for risk assessment. However, in the instant matter, the advisory fees are being collected from the client before communication of risk profiling, which defeats the objective of IA Regulations. I note that, though the IA Regulations do not stipulate a time line for communication of risk assessment, selling of a product before communication of risk assessment defeats the objective of communication which eradicates the possible errors of inputs forming the basis of risk assessment. Therefore, accepting fee before the risk profiling is communicated can result into unsuitable product being sold to the clients due to input disparities as explained above, particularly in the context of no refund policy under which the investor is locked into the services even if his/her risk assessment is inappropriate and he/she learns of this after having paid for the services. This is in violation of the IA Regulations which casts the responsibility on the IA acting in a fiduciary capacity towards the clients for compliance with the objectives and principles of risk profiling and suitability assessment, which if not done can lead to unsuitable and inappropriate services being offered to the clients.

17. It has already been brought out in the interim order as well as above paragraphs the objective and principles of appropriateness of risk profiling and suitability assessment, importance of communication of risk profile and suitability assessment, etc. I also note that the very premise of having an Investment Adviser is to ensure that the clients get professional assistance in the financial market in the most comprehensive manner abiding by the regulations framed thereunder. However, I note that Noticee has failed in its responsibility to act in a fiduciary capacity towards its clients, which is entrusted to it. Further as a registered IA, it is the duty and responsibility of the IA to act honestly and fairly in the best interests of its clients and integrity of the securities market. However, it is observed that the Noticee has not conducted its operations honestly and fairly in the best interest of the clients and violated the regulations, for its own interest and benefits and has

not acted in a prudent manner while dealing with the clients. Further, if the Noticee had a well-documented process of selecting investments products/services based on the risk profile of the client, the same would have involved proper communication of the risk profile to the client before any investment advice/ product/ subscription is sold to the clients, confirmation/consent of the client for the risk profile and suitability assessment and a more reasoned financial planning of the clients. The confirmation/ consent of the client for the risk profile and suitability assessment is important considering the fact that the Noticee carries out the risk profiling of clients by asking them questions telephonically and that no record of this telephonic communication could be furnished to the inspection team.

18. In view of the above, the submissions of the Noticee do not have any merit and cannot be accepted and I hold that the Noticee *prima facie* (a) failed to provide the investment advice appropriate to the clients' risk profile in accordance with Regulation 17 (a) of IA Regulations; and (b) failed to send risk profile statements / forms to the clients in accordance with Regulation 16(e) of IA Regulations; and (c) failed to abide by Clauses 1 and 2 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Dezire Research has *prima facie* violated the provisions of Regulation 17(a) and (b), 16 (e) and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

Services provided without paying attention to client risk profile and suitability:

19. It has been alleged that the Noticee provided IA services without paying any attention to the risk profile and suitability of the advice to the client. Noticee has denied the allegation by stating that clients have themselves opted for such services and hence, Noticee cannot be held responsible for the same. Further, Noticee has submitted that risk profile of the client undergoes a change with time.

20. I note that in the interim order three examples were shown wherein the Noticee has provided services that pertained to high risk products to clients who had a moderate risk category. Noticee has submitted that in the case of clients Mohd. Shaikh and Subrat Sahoo, they have opted for the high risk services and hence,

Noticee is not responsible for the same. I note that in the case of Mohd. Shaikh, he has opted for a trial of the option services, while Subrat Sahoo has opted for the services in the MCX, options and futures packages. In both cases, the Noticee has not provided any documents to show that the risk profile of the client has undergone any changes and hence, as per its own policy, the Noticee should not have provided this service to these clients. Further, in the case of client Mohd. Shaikh, he has only opted for a trial and the Noticee has not furnished any documents to show that the client subsequently agreed to opt for the full service. The Noticee has not furnished any explanation for the third example cited in the interim order.

21. At the very least, the Noticee should have explained the risks involved in these services to these clients and then obtained their informed consent for these services. The Noticee has not furnished any document conveying or communicating to the clients that the product/services chosen/offered are not appropriate and suitable based on their risk appetite. Further, the IA Regulations cast the responsibility on the IA of suitability assessment appropriate to the risk profile of the client in an objective manner commensurate with the facts and financial conditions of the clients rather than just relying on willingness of the clients, particularly, when the clients financial condition does not show loss taking ability.

22. In view of the above, the submissions of the Noticee do not have any merit and cannot be accepted and I hold that the Noticee *prima facie* (a) failed to adhere to suitability of services provided to its clients in accordance with Regulation 17 of IA Regulations; and (b) failed to abide by Clauses 1 and 2 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Dezire Research has *prima facie* violated the provision of Regulations 17 of IA Regulations and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

Unfair and unreasonable advisory service fee charged from the client:

23. It has been alleged that the Noticee has charged fees disproportionate to the annual income/proposed investment amount of the clients, as disclosed in the

respective risk profile forms of the clients. Five examples were given in the interim order, which are summarized as follows:

Name	Proposed investment amount (Rs.)	Annual income (Rs.)	Advisory fees charged (Rs.)	Period
Anoop Abraham	1-2 lakhs	5-10 lakhs	32 lakhs	Aug 2017-Jan 2019
Xavier Nadar	1-2 lakhs	-	18 lakhs	May 2017-Dec 2017
Kamal Gupta	1-2 lakhs	-	15 lakhs	Apr 2017-Sep 2017
Mohd. Shaikh	< 1 lakh	< 1 lakh	> 3 lakhs	Aug 2018
Shivakumar Chougule	< 1 lakh	-	> 27 lakhs	Aug 2017-Jan 2018

24. I note that the Noticee has not explained the lack of proportion between the proposed investment amount and the amount of advisory fees collected in the period mentioned. For e.g., in the case of client Xavier Nadar, his proposed investment amount is Rs. 1-2 lakhs but the Noticee has collected Rs. 18 lakhs in 8 months. The Noticee has not provided any explanations for the same.

25. While SEBI has not prescribed any rule for fees (at the time of passing of interim order), the Code of Conduct for IAs requires that fees have to be fair and reasonable. The interim order clarifies that while determining the reasonableness of the fees charged by the Noticee, the same has to be seen from the perspective of various factors such as proportionality etc. The submissions of the Noticee that the cost increases when clients take customized packages or higher fees are charged when clients take long term services or fees increase when clients opt for more services do not answer the lack of proportionality between the fees collected and the proposed investment amount of the client. I note here that the Noticee has also not provided any explanation on the allegation that the Noticee was locking in clients by collecting fees in advance for services that would commence 2/3 years after the payment.

26. With respect to advisory fees being charged several multiples times of the client's proposed investment amount and beyond his gross annual income, the Noticee has not presented any explanation or rationale on why it was selling these multiple

products/services in which case the advisory fees was beyond the investment amount/gross annual income of the client. The Noticee has also failed to provide any documentary evidence or justification or communication to the investors indicating how these multiple products/services are achieving the objectives and goals of the investors, risk associated with the products/services and why the investors need to avail these multiple products/services upfront. Also, the IA Regulations require that the IA should charge “fair and reasonable fee”; however, charging the clients with advisory fees even beyond the clients income capacity and proposed investment, violates the principle that investment advisers are required to act with care due to their fiduciary relationship with their clients. Further, in view of the instant cases, not only the Noticee is observed to be maximizing its income by selling multiple advisory services with advisory fees being charged in several multiples of the client’s investment amount, within a short period of time and even before completion of the earlier service and that too without paying regards to the clients’ financial condition.

27. With respect to the allegation of providing overlapping service period for the same service, the Noticee has submitted that overlapping can be done if it provides more than one service at the same time and has denied the allegation. I note from the interim order that the allegation of overlapping service periods pertains to the same service being sold for overlapping periods, viz., for client Xavier Nadar, Noticee sold service ‘Customized Service’ for period of Aug 28-Sep 14, 2017, for Rs. 80,000/-, while it again sold the same service to the client for period of Aug 31-Sep 20, 2017, for Rs. 50,000/-. Therefore, the submission of the Noticee that there is no overlap of even a single day is incorrect. The Noticee has submitted that it was providing customized package to this client; however, the same does not explain the overlap in the service. The Noticee has not provided any explanation as to how each subscription of the same service/ product was customized and therefore different from each other. The Noticee has not explained its rationale for selling another subscription of the same service to the client, while an earlier subscription for the same service for an overlapping period is active.

28. It has been alleged in the interim order that advisory service was provided by Noticee after a considerable period of delay. In this regard, I note the following:

28.1. **Kali Charan:** It was observed that the service duration for this client was to commence from November 22, 2017, however, no messages/ tips were provided till April 2018. Noticee has submitted that SEBI has not considered the messages that were sent to the second mobile number of the client. While the Noticee has provided details of both the mobile numbers of this client, it has not furnished the message log that would cover the period from November 22, 2017, till April 2018. Hence, the reply of the Noticee for this client cannot be accepted as no supporting document was submitted by the Noticee.

28.2. **Jayant Sahoo:** It was observed that the invoices mentioned services for HNI MCX, while analysis of the message log showed that no service for MCX products for given. Messages/ tips related to equity option segment was sent to the client. Noticee has replied that the client had only opted for premium option service and the invoice was incorrectly generated. It further stated that the client has not complained in this regard. I note that if the Noticee has raised incorrect invoice, then it should submit the rectified invoice. However, the Noticee has not furnished the rectified invoices. Further as per the own submissions of the Noticee, there is a huge difference in the monthly charges for 'HNI MCX' and 'Options Premium Service'. Further, as per SCORES, a complaint of this client is on record wherein he has mentioned that he initially took a basic advisory service and has alleged that the Noticee then extracted more fees from him by denying to provide service. Further, as mentioned in the interim order there I note that during inspection, Noticee has raised 13 invoices, of different dates, for the HNI MCX service for Jayant Sahoo which cannot be co-incidental. Therefore, the claim of the Noticee that the invoice was incorrectly raised cannot be accepted.

29. In view of the above, the key submissions of the Noticee do not have merit and cannot be accepted and I hold that the Noticee *prima facie* (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon it under Regulation 15(1) of IA Regulation and (b) failed to abide by Clauses 1, 2 and 6 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Dezire Research has *prima facie* violated the provision of Clauses 1, 2 and

6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations.

30. I note that the Noticee has submitted that the purpose of inspection is not punitive and objective is to make the intermediary comply with procedural requirements. Objective of inspection can be achieved by pointing out the irregularities at the time of the inspection itself and every irregularity does not call for initiation of penalty proceedings. It has been submitted that if there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. As this was the first inspection of the Noticee, the deficiencies recorded ought to have been communicated to it. The Noticee has referred to certain judgments of the Hon'ble Securities Appellate Tribunal (SAT) in support of these submissions. The Noticee has also referred to certain adjudication orders passed by Adjudicating Officer of SEBI wherein these orders have been relied upon.

31. I have perused these judgements and I note the following:

31.1. In the matter of Religare Securities Ltd. vs. SEBI, the Hon'ble SAT has held that the purpose of inspection is not punitive and the objective is to make the intermediary comply with procedural requirements. Objective of inspection can be achieved by pointing out the irregularities at the time of the inspection itself. However, the Hon'ble SAT has also held in this order that SEBI is free to proceed against the appellant if it finds serious lapses during the inspection.

31.2. In the matter of UPSE Securities Ltd. vs. SEBI, the Hon'ble SAT has held that every irregularity/ deficiency noticed during inspection does not call for initiation of penalty proceedings. Purpose of inspection can be better served if the entity were advised at the time of the inspection itself. However, the Hon'ble SAT has also held that SEBI is free to take appropriate penal action if serious lapses are discovered.

31.3. In the matter of DSE Financial Services Ltd. vs. SEBI, the Hon'ble SAT has held that the violations observed were technical in nature, some were solitary instances and for others, the appellant has taken corrective measures.

- 31.4. In the matter of Piramal Enterprises Ltd. vs. SEBI, the Hon'ble SAT has held that if there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. A reasonable benefit of doubt should be given to the entity instead of mechanically imposing a penalty.
32. The common point of the above mentioned judgments is that if the violations observed by SEBI during an inspection are technical or merely procedural in nature, then the inspection team may point out the same to the entity at the time of the inspection itself and advise the entity to take corrective measures. These judgments are applicable where the observed violations are such that they can be corrected at the time of the inspection itself and are procedural in nature. However, the Hon'ble SAT has also noted that where the observed violations are serious in nature, then SEBI is within its rights to take action as it deems fit.
33. In the instant case, the violations observed, as enumerated in the interim order, are not of such nature that they could be rectified at the time of the inspection itself. For e.g., the violation that the Noticee has collected fees from clients prior to communication of risk profiling is not a technical or procedural lapse and cannot be rectified at the time of the inspection. As already mentioned above, this violation can lead to unsuitable and inappropriate services being offered to the clients and the same cannot be undone in any manner as irreparable damage would have already been caused to the client. Similarly, the violation of the Noticee having charged unfair and unreasonable advisory service fee from clients far in excess of their financial capability cannot be rectified at the time of an inspection.
34. I also note here that, *prima facie*, violations of key regulations of the IA Regulations have been observed to have been committed by the Noticee. Regulations 15(1), 15(9), 16, 17 and the Code of Conduct are the very foundation of the framework that govern the activities of investment advisers vis-à-vis their clients. While Regulation 16 aims to ensure that an investment adviser obtains information, as necessary, from the client to assess his/ her risk taking ability, Regulation 17 builds on this by mandating the investment adviser to ensure that the services provided to the client are strictly in accordance with his/ her risk profile. These two regulations, along with Regulation 15(1) – IA to act in fiduciary capacity towards

clients – and the compliance with Code of Conduct, form a few of the core of the safeguards put in place to ensure that the investment adviser puts the interests of his/ her clients foremost at all times. Any violations of these regulations are serious in nature and will have a significant impact on the clients as well as on their faith in the integrity of the securities markets.

35. The Noticee has also submitted that there was no urgency in passing an interim order and that it should have been heard before such an order was passed. Following case laws have been quoted in this regard:

35.1. In the matter of Cameo Corporate Services Ltd. vs. SEBI, the Hon'ble SAT held that SEBI is empowered to pass interim orders only in extreme urgent cases and this power should be used sparingly.

35.2. In the matter of North End Foods Marketing Pvt. Ltd. vs. SEBI, the Hon'ble SAT held that in every case an interim order should not be passed on the pretext that it was necessary to protect investor interests, as such orders have substantial and serious consequences on the entity. It was held that in the absence of in depth analysis based on evidence, there was no urgency to pass an interim order.

35.3. In the matter of Pancard Clubs Ltd. vs. SEBI, the Hon'ble SAT held that SEBI can pass interim orders upon showing the existence of circumstances which warrant such a drastic measure.

35.4. Judgments in the matter of Painter vs. Liverpool Oil Gas Light Co., A. R. Antulay vs. R. S. Nayak, Canara Bank and Ors. vs. Shri Debasis Das and Ors., which bring out the well settled law that no one should be condemned unheard and that notice must be given prior to taking any action.

35.5. In the matter of Sterlite Industries (India) Ltd. vs. SEBI, where the Hon'ble SAT held that mere conjectures and surmises are not adequate to hold a person guilty of a serious offence.

36. As already mentioned in the interim order, existing clients of the Noticee have been sold services without any consideration of their financial situation, investment objective and risk profiling. The selling of such plans goes against the concept of customized advice which would be required to be provided 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. Further, the very nature of the investment advisory activity being practiced by the Noticee has been found to be fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. Therefore, allowing the Noticee to continue providing its services to its clients, regardless of whether they have complained against the Noticee or not, would be tantamount to allowing the 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. Hence, the interim order was passed in order to protect the interests of existing as well as prospective clients of the Noticee. Further, the Noticee has been provided an opportunity of hearing and his submissions in defence of the interim order have been dealt with adequately in the preceding paragraphs. It is also noted that the interim order was not issued based on conjectures and surmises but on the basis of data collected during the inspection. In view of the same, in my humble view the judgments referred to by the Noticee are not applicable in the instant case.

37. The Noticee has also submitted that it had stopped its business in February 2020; however, this would not have prevented the Noticee from starting its business again at any point in time and thereby putting at risk its existing clients as well as any prospective clients. Hence, this submission also does not alter in any manner the justification for SEBI to pass the interim order.

38. It has further been contended that the inspection findings have not been provided to it, which is required as per Regulation 27 of the IA Regulations and that the directions restraining it should have been passed under the SEBI (Intermediaries) Regulations, 2008. I note here that Regulation 27 of the IA Regulations does not mandate that the inspection's findings need to be shared with the entity. Further, the interim order is based on the documents gathered during the inspection of the Noticee and I also note that the Noticee has taken inspection of all the data and records on the basis of which the interim order was passed. Therefore, the relied

upon materials have been inspected by the Noticee. Further, invocation of SEBI (Intermediaries) Regulations, 2008, is essential if the proposed action is suspension/cancellation of the certificate of registration. However, at the stage of interim order, Section 11B of the SEBI Act, 1992 can be invoked. It is an established position of law that SEBI is empowered to pass ex-parte interim orders in most deserving cases of urgency.

39. In view of the consideration of material available on record including submissions made by the Noticee, the findings in the interim order continue to stand at *prima facie* level. Hence, I find that the Noticee is, *prima facie*, in contravention of various provisions of the IA Regulations and the PFUTP Regulations, as outlined in the Interim Order. Therefore, there is no justifiable reason to revoke or modify the directions issued against Mr. Nishant Chopra, proprietor of M/s Dezire Research vide the interim order. The Noticee shall furnish data/ information that is still a gap, as identified in this order, to SEBI to assist it in its ongoing enquiry in the matter.

Order:

40. In view of the foregoing paragraphs, pending conclusion of enquiry, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11B and 11D thereof, hereby confirm the directions issued vide ex-parte ad interim order dated February 03, 2021, against Mr. Nishant Chopra, proprietor of M/s Dezire Research.

41. This order shall come into force with immediate effect. A copy of this order shall be served upon all the Noticee, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Sd/-

Date: August 20, 2021

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA