

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Name of the Entity	PAN
1	Dalal Merchandise Advisory Pvt. Ltd.	AAGCD5267K
2	Himanshu Bharatkumar Bhavsar	AJVPB0407A
3	Maulikkumar Rajeshkumar Prajapati	FHVPP0689B
4	Pinalben Himanshubhai Bhavsar	ARLPB8324N
5	Devki Stocks Pvt. Ltd.	AAGCD5268G
6	Devang Pareshbhai Vyas	AZIPV2102K
7	Vishwas Stocks Research Pvt Ltd	AAGCV2217H
8	Javed Lalmahamad Sindhi	GMCP50364B

(The aforesaid Noticees are hereinafter referred to by their respective name / Noticee number and collectively referred to as "Noticees", unless the context specifies otherwise)

In the matter of Vishwas Stocks Research Private Limited, Dalal Stocks Advisory Private Limited and Devki Stocks Private Limited

Background

1. The present proceedings have emanated from an *ex-parte ad-interim* order dated January 25, 2021 (hereinafter referred to as "*Interim Order*") passed by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against

the *Notices*, as the unregistered Investment Advisory (hereinafter referred to as “**IA**”) activities of the *Notices* were *prime facie* found to be in violation of the provisions of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Further, in the *Interim Order*, the activities of the *Notices* were also, *prima facie*, found to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of the *SEBI Act, 1992* and regulations 3 (a) (b), (c) & (d) and regulations 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”).

2. I find that the *Interim Order* passed in the matter contained following observations with respect to the *Notices*:

- a) SEBI received a complaint dated August 5, 2020 through SCORES against Mr. Himanshu Bharatkumar Bhavsar (*Noticee no. 2*). The complainant had attached a copy of FIR lodged with Bangalore City, Cyber Crime Police Station along with his complaint. The complainant had mentioned in the FIR that one Mr. Rahul Sharma called the complainant and promised assured returns on an investment of INR 8,00,000/-. Having got induced by the promise of assured return, the complainant had transferred INR 8,18,550/- to various bank accounts of Vishwas Stocks Research Pvt Ltd (*Noticee no. 7*).
- b) *Notices viz. Noticee no. 1, Noticee no. 5 and Noticee no. 7* (hereinafter collectively referred to as “**3 Noticee Companies**”) were hosting various contents on their respective websites wherein various advisory services offered by them were described and were undertaking to offer advice related to investing in, purchasing and selling in securities and are also offering various investment packages for subscription.

- c) Through the display and hosting of the afore-stated contents on their websites, the afore-noted 3 *Noticee Companies* held themselves out as Investment Advisors and commenced collecting subscription fees from various investors for providing stock recommendations, although no registration was obtained by them in their own names for providing Investment Advisory services, as required under *IA Regulations, 2013*. It was also revealed that the aforesaid 3 *Noticee Companies* have disclosed on their respective websites that they possess SEBI Investment Advisor Registration No. INA000011501.
- d) It was further revealed from the webpages of the respective websites of the above noted 3 *Noticee Companies* that the SEBI Registration No. INA000011501 referred to above displayed on their websites, actually pertained to the *Noticee no. 2* in his individual capacity who is a common Director in the 3 *Noticee Companies* and the said registration was granted by SEBI to him as an individual applicant. The legal status mentioned in the application of aforesaid registration number is “Individual”. Therefore, the 3 *Noticee Companies* were not SEBI registered Investment Advisors.
- e) It was also observed that *Noticee no. 3* and *Noticee no. 6* were Directors in the *Noticee no. 1* and *Noticee no. 5* respectively, since December 20, 2019. Similarly, *Noticee no. 8* was a Director in *Noticee no. 7* since December 21, 2019. Further, *Noticee no. 4* was also a Director in the *Noticee no. 7* till March 21, 2020.

3. On the basis of the aforesaid facts, allegations and the information gathered it was, *prima facie*, observed in the *Interim Order* that the 3 *Noticee Companies* were indulged in rendering IA services for consideration for which no registration as mandated under the provisions of the *SEBI Act, 1992* and the *IA Regulations, 2013* was obtained by them. Further, the corporate entities i.e. 3 *Noticee Companies* have falsely held themselves out as Investment Advisors by displaying on their websites, the SEBI Registration held by *Noticee no. 2* in his individual capacity. Therefore, the activities of the 3 *Noticee Companies* alongwith other *Noticees* (who

were Directors in the 3 *Noticee Companies* at some point of time during the relevant period) were *prima facie* observed to be in violation of provisions of Section 12(1), 12A (a), (b), (c) of *SEBI Act, 1992* alongwith regulations 3 (a), (b), (c), (d) and regulations 4(1) and 4(2)(k) of *PFUTP Regulations, 2003* and regulation 3(1) of the *IA Regulations, 2013*.

4. As the *Noticees* were *prima facie* observed to have violated the relevant provisions of laws, rules and regulations pertaining to securities market vide the aforesaid *Interim Order*, the following interim directions have been issued with a view to protecting the interest of investors of securities market:

- a) *To cease and desist from acting as investment advisors including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;*
- b) *Not to divert any funds raised from investors, kept in bank accounts and/or in their custody until further orders;*
- c) *Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI;*
- d) *To immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., physical or digital or on their website, in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders;*
- e) *Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders;*
- f) *To provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments,*

immediately but not later than 5 working days from the date of receipt of this order, and

- g) *To submit the number and details of clients who have availed their investment advisory services and to submit details of fees collected from each such client, immediately but not later than 5 working days from the date of receipt of this order*

5. The above *Interim Order* issued to the *Noticees* was also in the nature of a Show Cause Notice (hereinafter also referred to “*SCN*”) whereby the *Noticees* were provided with the opportunity to file their objections/reply, if any, within 21 days from the date of the *Interim Order* and were also provided with an opportunity of personal hearing before SEBI in that regard. Before, I proceed further on facts of the case, it is pertinent to note that subsequent to the issuance of the afore-stated *Interim Order*, *Noticees* approached the Hon’ble Securities Appellate Tribunal (hereinafter referred to as the “*SAT*”) against the directions of the *Interim Order*. The Hon’ble SAT vide its order dated April 26, 2021 (Appeal No. 196 of 2015), *inter alia*, directed as under:

“2. Without going into the merits of the case at this stage, we are of the opinion that the appellants should apply for revocation of ex-parte ad-interim order dated January 25, 2021 before the authority concerned. We consequently, dispose of the appeal directing the appellants to file an application for revocation / modification of the order dated January 25, 2021 within two weeks from today. If such an application is filed, the authority will consider and pass an appropriate order after giving an opportunity of hearing within six weeks thereafter.”

6. In pursuance of the aforesaid order of the Hon’ble SAT, a Common Authorised Representative (hereinafter referred to as “*AR*”) of the *Noticees* has submitted a common Application (hereinafter referred to as “*Application*”) on behalf of all the *Noticees*, specifying therein the constraints being faced by the *Noticees* on account of directions issued under *Interim Order*. In compliance with the afore-stated directions of Hon’ble SAT, the common submissions filed on behalf of the *Noticees* were examined and after having considered the written submissions and after having heard the *Noticees*, the *Application* seeking interim

relief from the directions of *Interim Order*, was disposed of vide order dated June 22, 2021 (hereinafter referred to as "*Additional Order*") recording that no grounds could be made out by the *Notices* seeking modification in the directions issued under the *Interim Order*.

7. I note from the records available before me that the *Interim Order* / SCN was duly served upon the *Notices* by SPAD / email dated January 28, 2021. Subsequently, the AR vide a common letter dated January July 20, 2020 on behalf of all the *Notices*, has filed certain submissions to SEBI. In conformity with the principles of natural justice, a personal hearing was also conducted through video conferencing mode on July 20, 2021, which was attended by the *Noticee no. 2* alongwith the said common AR of the *Notices* during which, oral presentations were made before me on behalf of the *Notices* broadly on similar lines as per the written submissions earlier made by the *Notices* on various dates. Subsequently vide emails dated August 30, 2021 and September 03, 2021, the AR of the *Notices* has submitted certain documents and has relied upon judgements of the Hon'ble SAT to further press their arguments.

8. I note that the *Notices* in their common replies have, *inter alia*, submitted certain arguments, which were also part of their *Application* submitted to SEBI subsequent to the above noted directions issued by the Hon'ble SAT vide its order dated April 26, 2021. Further, the *Notices* while submitting their replies during the present proceedings have, *inter alia*, requested to consider their earlier submissions made in the said *Application*. Keeping in view, all the above stated submissions made before me, both written and oral, I find the facts of the case and the arguments advanced on behalf of the *Notices* are broadly as follows:

- a) *Noticee no. 2* has obtained the registration as an IA under the category of "Individual", under regulation 3 of the SEBI *IA Regulations, 2013*. He is the actual and *de facto* owner and controller of the above noted 3 *Noticee Companies*. Therefore, it is only *Noticee no. 2*, who was running the business of Investment Advisory (for short "*IA*") through the above named 3 *Noticee Companies*. The said IA activities and the monies collected from such

activities were indeed collected on behalf of the *Noticee no. 2* and the above said 3 *Noticee Companies* were acting as an interface, through which such IA activities were being performed.

- b) At the time of seeking registration for himself, the *Noticee no. 2* got an impression that after obtaining registration in his individual name, he can do the business in the name of his companies. Therefore, *Noticee no. 2* was under a *bonafide* understanding that once the registration certificate was obtained in his individual name under *IA Regulations, 2013*, it was permissible for him to execute IA services through Private Limited/incorporated Companies. Accordingly, *Noticee no. 2* incorporated 3 different companies namely *Noticees no. 1, 5 and 7* along with his wife (*Noticee no. 4*) and both of them were holding 50% shares each, in each of those 3 *Noticee Companies*.
- c) In the month of August 2020, *Noticee no. 2* visited the Western Regional Office (WRO) of SEBI to enquire about the transfer of his personal registration in favour of the 3 *Noticee Companies* and upon such enquiry, *Noticee no. 2* was informed that SEBI does not permit the individual registration granted under the *IA Regulations, 2013* to be utilized for carrying out IA services through any incorporated entities. Accordingly, immediately upon receipt of such classification, all the IA activities were ceased by the 3 *Noticee Companies* and subsequent to that they only received some pending payments for the advisory services had already been given. It is needless to mention that after the meeting with SEBI officials in August 2020, 3 *Noticee Companies* did not render any advisory service but had only accepted pending payments for previously rendered commitments. *Noticees* have further contended that only because Invoices are issued at a later date does not mean that the service commitment did not exist prior to August 2020.
- d) *Noticee no. 2* through the 3 *Noticee Companies* was providing IA Services to more than 415 customers and there are only 6 complaints against them on SEBI Complaint Redress System (for short “SCORES”). Further, all the

aforementioned 6 SCORES complaints referred to the names of the 3 *Noticee Companies*, namely *Notices no. 1, 5 and 7*, hence, SEBI was aware that the *Noticee no. 2* was running business in the name of the 3 *Noticee Companies*. Therefore, it may not be appropriate to state that SEBI was not aware of *Noticee no. 2* running the business in the name of 3 *Noticee Companies*.

- e) *Notices no. 3, 6 and 8* were inducted in the respective 3 *Noticee Companies* i.e. *Notices no. 1, 5 and 7* as shareholders, only in June 2020. Immediately after their induction, they (through *Noticee no. 2*) had requested for the registration to be transferred in the name of the respective companies. Though *Notices no. 3, 6 and 8* were appointed as Directors in December 2019, still they had not acted upon the said directorship, as immediately upon their appointment, Covid related lockdown was imposed within a period of 3 months. Further, though *Notices no. 3, 6 and 8* were appointed as directors, they had not intended to actually intervene in the business or in the administrative and financial manner of those companies but were only desirous of infusing working capital after the transfer of the shares of the said company, which only happened in June 2020. Hence, even otherwise, any action against *Notices no. 3, 6 and 8* is not necessary as they were only in the process of entering in to the said business and before they could successfully provide any administrative assistance which would have any material bearing on the business, the Lockdown was imposed and consequently, said *Notices* could not act or perform any duties as director of the 3 *Noticee Companies*. It has been further submitted that a director can only be made liable if any specific allegation of fraud is made against the director. However, as the *Notices no. 3, 6 and 8* entered into the respective companies with an intent to have the IA license in the name of such companies, no case of fraud can be made against them.
- f) Regarding the role of *Noticee no. 4*, it has been submitted that she had never exercised any control over the 3 *Noticee Companies* and was only appointed as a director, being the wife of *Noticee no. 2*. It has been further submitted

that she was all throughout a sleeping and inactive director in all the 3 *Noticee Companies* and accordingly has resigned in March 2020

- g) Regarding the complaint filed by one Hareesha, *Notices* have submitted that the said complaint was false as the said complainant was neither the customer of any of the *Notices*, nor the said person who has represented himself to be an employee of the *Notices*, was ever an employee either directly or indirectly, of any of the 3 *Noticee Companies*. Moreover, the said complaint was resolved as soon as the said complainant had lodged a police complaint and the police machinery was utilized to settle his grievances.
- h) No IA activity was carried out prior to the IA registration received by the *Noticee no. 2* and the amount of INR 9,76,298/- was not collected by way of rendering any Investment Advisory services as recorded in the *Interim Order*. Further, the amounts of credits received in the bank accounts of the 3 *Noticee Companies* as recorded in the *Interim Order* have not been received exclusively from the sale of the IA services but also by way of various loans taken by the 3 *Noticee Companies* from third parties.
- i) *Notices* have further contended that one of the essential ingredients of the fraud and fraudulent conduct, independent of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “*PFUTP Regulations, 2003*”) is *mens rea* which in turn has to be supported with a motive to commit such fraud. In fact, when *Noticee no. 2* himself had the registration certificate, there was no need for the *Noticee no. 2* to commit any fraud in the name of the 3 *Noticee Companies*. *Noticee no. 2* could have very well conducted the business on his own name, however, he was under a *bonafide* impression that he could conduct the business through companies, needless to mention that it was *Noticee no. 2* who was handling the IA services himself.
- j) It has been further submitted that when the directors (*Notices no. 3, 6 and 8*) of the 3 *Noticee Companies* were under *bonafide* belief that the said services

are provided by *Noticee no. 2* through the said 3 *Noticee Companies*, the question of shifting the liability on the directors does not arise, unless specific allegation against *Noticees no. 3, 6 and 8* for such non-compliance is made out in clear terms. It has also been submitted that *Noticees no. 3, 6 and 8* though were appointed as Directors of *Noticees no. 1, 5 and 7* respectively in December 2019, still they had not acted upon the said directorship since after their appointment, a nationwide lockdown was imposed within a period of 3 months. Invocation of Section 179 of the Companies Act, 2013 by lifting the corporate veils of the 3 *Noticee Companies* while clandestinely overlooking the registration certificate of the *Noticee no. 2*, has been unjustifiably and erroneously done to hold the directors (*Noticees no. 3, 6 and 8*) of the 3 *Noticee Companies* responsible.

- k) *Noticees* have further argued on the power vested in SEBI to issue directions for refund of monies to the clients / customers of 3 *Noticee Companies*. In this regard, they have submitted that regulation 27 of the *IA Regulations, 2013* confers power on the Board to issue directions to refund the monies to the “concerned clients” and the term “concerned clients” would have to be interpreted from the phrasing used in the regulation 23 of the *IA Regulations, 2013*, wherein it is contemplated that the Board may inspect the company either suo moto or on receipt of a complaint by a client/s. Therefore, if any complaint of a client is received by SEBI and if SEBI finds that the company / Investment Advisor is in breach of any provisions of law or *IA regulations, 2013* then the board may direct the IA to issue refund to the concerned client i.e. the client who complained. As there are no such complaints of clients seeking refund of monies, issuing any directions to refund the monies to all clients against the *Noticees* may not even arise. In this regard, for the purpose of interpretation of statutes, *Noticees* have referred to judicial observations of Hon’ble Supreme Court in the following matters:

- In the matter of *Nathi Devi vs. Radha Devi Gupta* (AIR 2005 SC 648);
- In the matter of *Ram Rattan vs. Parma Nand* (AIR 1946 PC 51);

- In the matter of *Hari Prasad Shivashanker Shukla vs. A.D. Divelkar* AIR 1957 SC 121);
- l) In order to ascertain as to whether the 3 *Noticee Companies* were actually providing the IA Services without obtaining appropriate registration, corporate veil must be lifted and the actual person/entity providing the IA services through the 3 *Noticee Companies* may be identified. In this regard, *Noticees* have relied upon the judgements of the Hon'ble Supreme Court of India in the matter of *State of UP vs. Renusagar Power Co. and Ors.* (1988) 4 SCC 59.
- m) *Noticees* have also submitted that all of their clients were aware that it was *Noticee no. 2* who holds the SEBI registered certificate and was providing IA services through the 3 *Noticee Companies*. In this regard, the *Noticees* have submitted letters and affidavits from some of their clients.
- n) *Noticees* have pleaded that on account of the IA business carried out by 3 *Noticee Companies*, no loss was caused to the securities market and there were no illegal gains. Further, all the monies earned have been taxed and various expenses like salaries, maintenance expenses, etc. have been legally incurred, and the 3 *Noticee Companies* are otherwise compliant with all relevant provisions of law. Therefore, as a period of more than 6 months has elapsed since the *Interim Order* came into operation and the *Noticees* have already suffered immense loss, they do not deserve any further suspension. *Noticees* have further submitted letters and affidavits from certain clients to prove their innocence.
- o) *Noticees* have further contended that in the instant case, the charges are not serious enough warranting heavy punitive actions and therefore SEBI should not resort to a more stringent measure since that would destroy the business of the *Noticees* and would bring it to a standstill. *Noticees* have further referred to the judicial observations of Hon'ble SAT in the following matters to take a lenient view against the *Noticees*:

- In the matter of *Shyam Sundar Dalmia vs. SEBI* [2005];
- In the matter of *Sterlite Industries (India) Ltd vs. SEBI* [2001];
- In the matter of *Libord Finance Ltd vs. Whole Time Member* [2008];
- In the matter of *UBS Securities Asia Ltd vs. SEBI* [2005];
- In the matter of *Arcadia Share & Stock Brokers Pvt Ltd vs. SEBI* [2009];
- In the matter of *Rajeev Singh Rajput vs. SEBI* [2019]

p) *Noticees* have further submitted that, in any case, any direction or measure so taken by SEBI, especially in the nature of a penalty, must be commensurate with the gravity of misconduct and any penalty disproportionate to the gravity of misconduct would be violative. In this regard, *Noticees* have referred to the judicial observations of the Hon'ble Supreme Court of India in the following matters while requesting for application of the principle of proportionality:

- In the matter of *Bhagat Ram vs. State of Himachal Pradesh* AIR 1983 SC 454;
- In the matter of *Ranjit Thakur vs. Union of India* AIR 1987 SC 2386;
- In the matter of *B.C. Chaturvedi vs. Union of India* (1995) 6 SCC 749;
- In the matter of *Union of India vs. G. Ganayutham* (1997) 7 SCC 463;
- In the matter of *Excel Crop Care Ltd vs. Competition Commission of India* (2017) 8 SCC 47;
- In the matter of *Jameel vs. State of Uttar Pradesh* (2010) 12 SCC 532.

9. 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*. The charges so levelled in the present matter lead me to an examination of a limited issue, i.e., whether the *Noticees* have violated the relevant provisions of the *SEBI Act, 1992*, the *IA Regulations, 2013* and the *PFUTP Regulations, 2003* while acting as an Investment Adviser?

10. Before I proceed to examine the aforementioned submissions of the *Notices* and other materials available on record, I find it worthwhile to recapitulate that the *Interim Order* has charged the *Notices* with violation of the SEBI Act, 1992 alongwith relevant provisions of the *IA Regulations, 2013* and relevant provisions of the *PFUTP Regulations, 2003*. 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 *Notices*. Accordingly, the said provisions are being reproduced hereunder for convenience and ready reference:

SEBI Act, 1992

Section 12 (1)

“No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration.”

Section 12A: *No person shall directly or indirectly:*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

IA Regulations, 2013

Regulation 3(1)

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

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange; (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*

.....

- (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors”.*

11. As stated in the preceding paragraphs, SEBI received a complaint, against *Noticee no. 2*, in which the complainant, *inter alia*, had alleged that the complainant had paid cumulative amount of INR 8,18,550/- to various bank accounts of *Noticee no. 7* as the said *Noticee* had promised to give assured returns on the investments of the complainant. From a preliminary examination conducted by SEBI, it emerged that the *Noticee no. 2* who is a common Director in all the 3 *Noticee Companies*, is a SEBI registered Investment Advisor having Registration No.: INA000011501. The said Certificate of Registration was granted by SEBI to *Noticee no. 2* on August 23, 2018 as an individual applicant. Perusal of the same shows that the application submitted by *Noticee no. 2* while seeking the registration was in the status of an “Individual” and not “Corporate”.

12. From a further scrutiny, it was gathered that the 3 *Noticee Companies* through their respective websites, were hosting various contents pertaining to their IA services, which are tabulated below:

Name of the <i>Noticee</i>	Details mentioned on the website
<i>Noticee no. 7</i> Vishwas Stocks Research Pvt Ltd	www.vishwasstocksresearch.com Under the heading “Our Goal”, the following is mentioned: “Our Goal is to achieve higher returns on our customer investments. customer's trust and <u>provide them with the finest Indian stock market tips</u> , services which are economically and financially beneficial to them”. Under the heading “Who We Are”, the following is mentioned: “...The company comprises of a flock of ignited brains having experience of more than 10 years in the capital market. What else do you want for <u>sure shot profit strategies?</u> ... We aim to achieve higher returns on our customer investments. customer's trust and <u>provide them with the finest Indian Stock Market Tips.</u> ” It is observed from the content of the website that they provide 24x7 support.

Noticee no. 1 Dalal Merchandise Advisory Pvt. Ltd.	www.dalalmerchandiseadvisory.com One the main page of the website the following is mentioned: “Dalal Merchandise is a research house and <u>investment advisory company carrying out operations in the Indian Equity & Commodity market.</u> We are a trusted name in the financial services arena.” Under the heading “Our Goal”, the following is mentioned: “We want to earn and be worthy of our customer’s trust and <u>provide them with the finest Indian Stock Market Tips and achieve higher returns on our customer investments / trading capital.</u>” It is observed from the content of the website that they provide trade alerts via SMS every day and live tips.
Noticee no. 5 Devki Stocks Pvt. Ltd.	www.devkistocks.com Under the heading “Who We Are”, the following is mentioned: “... On the other side <u>we distribute Live Tips via High Speed SMS Gateway,</u> which ensures the instant delivery of message without any loss of time so, the clients get adequate time to enter the trade and fetch the profit... As a result, <u>using our tips our clients have been gaining excellent profits.</u> We also throws diversified range of services as per the requirement of an investor, intraday traders and brokers with the best customer support. We believe in giving each and every client a special treatment by providing online and telephonic assistance during market hours and the performance of our Products and Services are different and unique from those of our competitors. Some of these products and services are inventions of a kind. The Unique Selling Proposition is Best quality”.

13. I also note that the following pricing details/ fee structure for availing various securities market related services were also stated on the websites of the said 3 corporate Noticees:

Vishwas

Sl. No.	Product	Monthly Package (Rs)	Quarterly Package (Rs)	Half Yearly Package (Rs)	Yearly Package (Rs)
1	Bulls stock cash	1,25,000/-	2,25,000/-	3,25,000/-	4,25,000/-
2	Rhino Intraday	15,000/-	50,000/-	1,50,000/-	3,60,000/-
3	Blazer Stock Future	2,50,000/-	4,50,000/-	NA	NA

Final order in the matter of Vishwas Stocks Research Private Limited, Dalal Stocks Advisory Private Limited and Devki Stocks Private Limited.

4	Infinity base metal energy	60,000/-	1,20,000/-	1,80,000/-	2,40,000/-
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Dalal

Sl. No.	Product	Monthly Package (Rs)	Quarterly Package (Rs)	Half Yearly Package (Rs)	Yearly Package (Rs)
1	Stock cash BTST	16,999/-	41,999/-	71,999/-	1,11,999/-
2	Intraday cash	8,999/-	21,999/-	36,999/-	51,999/-
3	Future positional	16,999/-	41,999/-	71,999/-	1,21,999/-
4	Mcx Combo pack	2,51,999/-	3,51,999/-	4,51,999/-	5,51,999/-

Devki

Sl. No	Product	Monthly Package (Rs)	Quarterly Package (Rs)	Half Yearly Package (Rs)	Yearly Package (Rs)
1	BTST-STBT Future	22,656/-	45,076/-	85,196/-	1,65,436/-
2	MCX Combo	52,156/-	1,41,836/-	2,77,536/-	5,32,416/-
3	Nifty Bank Nifty	29,736/-	82,836/-	1,53,636/-	2,95,236/-
4	Stock cash	15,576/-	29,736/-	56,876/-	1,11,156/-

14. In addition to the above, from the respective websites of the said 3 *Noticee Companies*, I note that the 3 *Noticee Companies* were accepting payments in their various bank accounts as well as through payment gateways. Though the *Interim Order* has recorded that the 3 *Noticee Companies* had cumulatively received an amounts to the tune of INR 4.26 crores (INR 4,26,22,789), the *Noticees* vide their *Application* have submitted that the 3 *Noticee Companies* have cumulatively collected a total amount of INR 7.34 crores. Details of the same are placed below:

<i>Noticee no.</i>	Amount (in INR)
1	42, 140, 388 /-
5	17,650,353
7	13,643, 178 /-
Total	7,34,33,919/-

15. I further note from some of the credit transactions in the bank accounts of the 3 *Noticee Companies*, that such credit entries are supported by narrations which indicate that these credit entries represented the payments of IA services and were received from various investors / clients. An illustrative list of such narrations observed in the bank account of the said 3 *Noticee Companies* is tabulated below:

Transaction Date	Narration	Credit (Rs.)
Dalal (ICICI Bank)		
9/7/2019	BIL/INFT/001749562855/ <u>Advisory Fees</u> /	2600
16/7/2019	BIL/INFT/001754681088/For <u>advisor</u> /	2100
18/7/2019	NEFT-N199190879000094-VIDYA VINOD SHARMA <u>ADVISORY</u>	10000
Devki (SBI)		
1/8/2018	BY TRANSFER- <u>Share tips fee</u> --	10000
12/9/2018	BY TRANSFER-INB IMPS825518793289/9910004548/XX2960/ <u>Stock advi</u> --	3700
18/9/18	BY TRANSFER-INB IMPS826118833207/9910004548/XX2960/ <u>Stock advi</u> --	6000
Vishwas (ICICI Bank)		
18/4/2018	BIL/001434435632/ <u>Investment</u> /NSP	5500
14/5/2018	BIL/001452078215/ <u>Investment</u> /NSP	6000
24/12/2018	BIL/INFT/001604667868/ <u>Week 1 stock tips</u>	5000

16. From the aforesaid factual details as have been extracted from the websites, bank accounts and also from the details submitted by the *Noticees* themselves, I find that 3 *Noticee Companies* were engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, as was proclaimed by them through their respective websites. At this juncture, it is pertinent to look at the definition of Investment Adviser (or short “IA”) as articulated in regulation 2(m) of the *IA Regulations, 2013* which states that Investment Adviser means “any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called”. Further, I have also perused regulation 2(l) of the *IA Regulations, 2013* which defines Investment Advice as “advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.”

17. In the light of the aforesaid definitions and the content published on the website of the *Noticees* about the advisory services provided by them, the consideration received by them by offering such services as visible from the bank accounts as well as the allegations imputed in the *Interim Order*, I note that the 3 *Noticee Companies*, through their websites were clearly offering investment advice as defined under regulation 2(l) of the *IA Regulations, 2013* by offering to give advice related to investing in, purchasing and selling of securities and were also offering various service packages to the investors at large, inviting them to take subscription for availing the services of investment advisory, being rendered by them as proclaimed on their websites.

18. I note that the *Noticees* have nowhere during the proceedings denied that the 3 *Noticee Companies* were not involved in providing IA services to their clients / investors. In fact, it has been vehemently admitted that it was *Noticee no. 2* who was soliciting investors to deal in securities market through the 3 *Noticee Companies* and the said IA activities undertaken by the 3 *Noticee Companies* and the monies collected from the clients by them were indeed being undertaken and collected on behalf of the *Noticee no. 2* for which, the 3 *Noticee Companies* were serving as an interface. Therefore, it is an admitted fact that the 3 *Noticee Companies* were charging fees from various clients in name of IA services for which, no separate registration to operate as IAs was obtained by them. Further, the webpages of the 3 *Noticee Companies* had displayed the SEBI registration number granted to the *Noticee no. 2*, who was registered with SEBI in his individual capacity. By displaying such registration number on their respective websites, the 3 *Noticee Companies* have misled the investors by claiming to be registered intermediaries with SEBI. It was also not qualified by any of the 3 *Noticee Companies* on their website that the registration number actually pertains to one of the directors and not to the entities themselves in whose names IA services were being rendered. Moreover, the clients who approached the 3 *Noticee Companies* for IA Services approached these entities believing them to be SEBI registered IAs and subscribed to various services / packages offered by these companies in their corporate names

and not in the individual name of *Noticee no 2*. There was no way for the investors / clients to know that it was *Noticee no. 2* only who was legally entitled to render IA services as the clients / investors subscribed to the packages offered by the 3 *Noticee Companies*.

19. In view of the above, I have no doubt that the 3 *Noticee Companies* were providing IA services, in lieu of consideration which was received in their respective Bank Accounts and as discussed earlier, in terms of regulation 2(l) of *IA regulations, 2013* such kind of advice was in fact “investment advice”. Therefore, there is no ambiguity left that the 3 *Noticee Companies* were engaged in the business of providing investment advice to the public, in lieu of monetary consideration and were thus, acting as an ‘investment adviser’, as defined under regulation 2(m) of the *IA Regulations, 2013*.

20. The *Interim Order* has alleged that the 3 *Noticee Companies* were not SEBI registered IA, however they were involved in providing IA activities to clients / investors and by displaying the IA certificate of *Noticee no. 2* on their respective websites, the 3 *Noticee Companies* were holding themselves out as SEBI registered IA. Therefore, such acts of the 3 *Noticee Companies* were found to be in violation of *SEBI Act, 1992* and *IA Regulations 2013*. At this juncture, it will be of foremost importance to discuss the true intent and significance behind regulation of activities of IAs by SEBI. In order to protect the interest of investors and to preserve the integrity of the securities market, *IA Regulations, 2013* provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to obtain registration from SEBI as required under regulation 3(1) of the *IA Regulations, 2013*, which, *inter alia*, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and also has to conduct its activities in accordance with the provisions of *IA Regulations, 2013*. Further, various safeguards provided under *IA Regulations, 2013* to protect the interests of investors include continued minimum

professional qualification and net-worth requirement for investment adviser, disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients for 15 days after such advice is given, risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

21. It is not a disputed fact that the 3 *Noticee Companies* were involved in providing IA services without having IA registration certificate their names. However, I note that the *Noticees* have contended that as *Noticee no. 2* was holding a IA registration and was primarily managing the affairs of the 3 *Noticee Companies* including soliciting investors to avail the services, the IA activities carried out by 3 *Noticee Companies* can't be held illegal and therefore, all the *Noticees* may be exonerated from the proceedings. With regard to the afore-stated contention, it is important here to note that similar argument was put forth by the *Noticees* while filling the *Application* after the issuance of *Interim Order* and after a careful consideration the same was rejected in terms of the *Additional Order*. Though the said argument has already been dealt in the *Additional Order*, for the purpose of convenience, I am dealing with the same herein again in brief. I note that, after taking into cognizance of the settled law that an individual and a corporate body are separate and distinct legal entities, the *IA Regulations, 2013* provide for different eligibility criteria to be applied for their respective registration as IA by SEBI. I note that the regulation 7 of the *IA Regulations, 2013* clearly lays down the qualification and other requirements for applying for a certificate of registration as an Investment Adviser. Similarly, regulation 8 of the *IA Regulations, 2013* mandates the minimum net worth criteria for different classes of IAs. Therefore, the contentions put forth by the *Noticees* in their defense stating that as the *Noticee no. 2* possessed a valid registration certificate in his individual name, the advisory business was undertaken by the 3 *Noticee Companies* under a *bonafide* understanding that once the registration certificate was obtained in an individual

name, it was permissible for him to render his advisory services through any Private Limited/Incorporated Companies, are nothing but an afterthought exercise to evade the adverse outcome of this proceeding. The *Noticees* have apparently chosen this deceptive strategy to offer advisory services under three different brand names and in the names of three different corporate entities with an apparent motive to capture maximum numbers of clients by illegally displaying the registration number of *Noticee no. 2* which belonged to him in his individual capacity. Hence, such contentions of the *Noticees* by feigning innocence of law thereby trying to prove their *bonafide* are devoid of any merit and liable to be rejected in *limine*.

22. The activities of the 3 *Noticee Companies*, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the 3 *Noticee Companies* were holding themselves out and acting as SEBI registered IAs. However, the fact remains that the *Noticees* have never got themselves registered with SEBI in the capacity of IA. Hence, I find that these activities of IA being carried out and the representations as were being made out by the 3 *Noticee Companies* without holding any certificate of registration from SEBI to perform the job as investment adviser, are in violation of Section 12(1) of *SEBI Act, 1992* read with regulation 3(1) of the *IA Regulations, 2013*

23. I further note that the *Interim Order* has alleged that the aforesaid conduct of the *Noticees* has amounted to perpetrating fraud upon the investors / clients since, such conduct is also found to be in violation of *PFUTP Regulations, 2003*. In this regard, it is important to visit the definition of 'fraud' as provided under *PFUTP Regulations, 2003* which reads as under:

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

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

And "fraudulent" shall be construed accordingly"

24. As already discussed in the preceding paragraphs that by displaying SEBI registration number on their websites, which belonged to one of its individual Directors, the 3 *Noticee Companies* had misled the investors by claiming to be corporate registered intermediaries who were never registered with SEBI. The information related to SEBI registration number, was also not duly qualified clarifying to the public that the said registration number actually pertains to one of its Directors and not to any of the three companies. In the absence of any such qualification, considering that the websites belonged to the 3 *Noticee Companies*, a reasonable person / investor will understand / gather that the registration referred to on the websites pertained to these 3 *Noticee Companies*. In other words, the 3 *Noticee Companies* have claimed / represented themselves to be registered with SEBI as investment advisory companies thereby instilling a presumption in the minds of the investors that they follow all the norms prescribed by SEBI for corporate investment advisors that are required for investors' protection. Thus, the 3 *Noticee Companies* have proclaimed before the investors at large misleading

information and have concealed the fact that they are not registered with SEBI as investment advisors and were thus making those representations knowing them to be false, only for luring and inducing investors to deal in securities. The above discussed acts of the 3 *Noticee Companies* are fraudulent in nature and are very well covered under the definition of 'fraud' as defined under regulation 2(1)(c) of *PFUTP Regulations, 2003*. Therefore, in my opinion, the fraudulent acts / conduct of the 3 *Noticee Companies* as discussed above have certainly been committed in violation of provisions of Sections 12A (a), (b), (c) of *SEBI Act, 1992* read with regulations 3 (a), (b), (c), (d) and regulations 4(1) and 4(2)(k) of *PFUTP Regulations, 2003*.

25. With regard to the role of the other *Noticees*, I note that the *Interim Order* has alleged that as the other *Noticees* (*Noticees no. 2, 3, 4, 6 and 8*) were holding the positions of Directors during the relevant period of time when those unregistered IA activities were being conducted by the 3 *Noticee Companies*, such Director *Noticees* also have to become liable for the violations committed by the said *Companies*. To further ponder upon the roles of these *Noticees*, it is important to look at their respective tenures of directorship in the said 3 *Noticee Companies* during the relevant period, which are indicated as below:

Name of the Company	Name of the Director	Tenure
Vishwas (<i>Noticee no. 7</i>)	Himanshu Bharatkumar Bhavsar (<i>Noticee no. 2</i>)	21-12-2017 till date
	Javedbhai Lalmahamad Sindhi (<i>Noticee no. 8</i>)	21-12-2019 till date
	Pinalben Himanshubhai Bhavsar (<i>Noticee no. 4</i>)	21-12-2017 till 21-03-2020
Dalal (<i>Noticee no. 1</i>)	Himanshu Bharatkumar Bhavsar (<i>Noticee no. 2</i>)	24-01-2018 till date
	Maulikkumar Rajeshkumar Prajapat (<i>Noticee no. 3</i>)	20-12-2019 till date
	Pinalben Himanshubhai Bhavsar (<i>Noticee no. 4</i>)	24-01-2018 till 21-03-2020
Devki (<i>Noticee no. 5</i>)	Himanshu Bharatkumar Bhavsar (<i>Noticee no. 2</i>)	24-01-2018 till date

	Devangkumar Pareshbhai Vyas (Noticee no. 6)	20-12-2019 till date
	Pinalben Himanshubhai Bhavsar (Noticee no. 4)	24-01-2018 till 21-03-2020

26. I note from the records available before me that *Noticee no. 2 and Noticee no. 4* (till 21.03.2020) were common directors in all the 3 *Noticee Companies*. Subsequently, *Noticees no. 3, 6 and 8* became Directors of *Noticee no. 1*, the *Noticee no. 5* and also of the *Noticee no. 7* respectively in December 2019. In this regard, I observe that the *Noticee no. 2* was holding 50% shareholding in all the 3 *Noticee Companies* and the rest of the 50% shareholdings in these 3 *Noticee Companies* namely, the *Noticee no. 1*, the *Noticee no. 5* and the *Noticee no. 7* being held by the *Noticee no. 3*, *Noticee no. 6* and *Noticee no. 8*, respectively. It is important to note that any company being an artificial juristic person and an inanimate legal entity cannot act by itself and it can act only through its Individual Directors, who are expected to discharge their responsibilities on behalf of the company with utmost care, skill and diligence. Further, in terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things which the company is legally authorised to exercise and do. Therefore, the Board of Directors, being the repository of wisdom and decision making abilities and responsible for the conduct of the day-to-day business of a company, shall be liable for any non-compliance of law and such liability shall be upon the individual Directors who comprise the board of the company and are in control of the affairs of the company. In this regard, I would like to refer to the provisions of the section 27 of the SEBI Act, 1992 while attributing the contraventions committed by a company to the role played by the Directors of such a company which are placed below:

Contravention by companies

27. (1) *Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as*

well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained provided in this in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

27 (2) *Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*

Explanation: For the purposes of this section, – (a) “company” means anybody corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.”

27. Thus as per SEBI Act, 1992, for the contravention of law committed by a company, apart from the company, the Directors of the company who at the time of the said contravention were having knowledge of the said contravention or any negligence on their part has resulted in the said contravention, are also liable for said contravention of law committed by the company. In this case, from the material available on record, it is observed that none of the Directors of the 3 *Noticee Companies* was designated as Managing Director or Executive Director or Independent Director. It is also observed from the material available on record that during the relevant period, the 3 *Noticee Companies* did not have a CEO or CFO or any other officer who could have been designated as key managerial personnel. Therefore, all the Directors who were on the Board of the 3 *Noticee Companies* were practically in charge and were responsible for managing the affairs / business of those respective companies.

28. With regard to role of *Noticee no. 2*, there is now no dispute at all that he was not only involved in managing the IA activities of the 3 *Noticee Companies*, but also has been playing all the key roles starting from applying for registration Certificate from SEBI in his individual name to floating the 3 *Noticee Companies* for providing

unregistered IA services through these companies which make it glaringly evident about the role of *Noticee no. 2* in carrying out all those illegal activities through those 3 *Noticee Companies*. The *Noticees* have vehemently argued that though *Noticees no. 3, 6 and 8* were appointed as directors of the 3 *Noticee Companies*, they intended to intervene in the business of those 3 *Noticee Companies* by infusing working capital, only after the completion of transfer of the shares of the respective company in their names, which happened only in June 2020 and therefore, no action should be taken against *Noticees no. 3, 6 and 8*. In this regard, I note that under Section 166 of the Companies Act, 2013 certain duties have been spelt out with respect to discharge of the obligation by the directors of a company. Perusal of this statutory provision would indicate that a director of a company shall exercise his duties with due and reasonable care, skill and diligence, and shall exercise independent judgment. In the context of the above stated statutory provision dealing with the duty of a director under law, the above noted directors of the above mentioned 3 *Noticee Companies* were supposed to discharge their functions as Directors with due diligence on account of the fiduciary obligation inherently thrust upon them under law, vis-à-vis the company. It is a well settled law that the position of a director of a company is embodiment of a fiduciary relationship with the company and a director is under a legal obligation to observe utmost good faith towards the company in any transaction done with it or on its behalf. Therefore, under the facts and circumstances of the present matter, looking at the statutory and fiduciary obligation that the above mentioned *Noticee* Directors were expected to discharge towards the 3 *Noticee Companies*, they cannot plead ignorance completely about the unauthorised IA activities of those 3 *Noticee Companies* (of which they held the position of a director), which have practically led to closure of those companies due to the said illegal Investment Advisory services being rendered by them without obtaining necessary registration from SEBI. It is also to be noted that such fiduciary obligation of a director does not cease with his/her resignation as a director. In this regard, the Hon'ble Supreme

Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI decided on April 26, 2013* 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.

29. Keeping the aforesaid factual as well as legal position in view, the fact that Noticees no. 3, 6 and 8 have not submitted any documents to evidently prove that they had no role to play in the functioning of the 3 Noticee Companies or to establish that the 3 Noticee Companies had otherwise a CEO or CFO or any other designated key managerial personnel in place who was responsible for the day-to-day functioning of the 3 Noticee Companies, the malafide role of the Noticees no. 3, 6 and 8 in the whole scheme of fraud perpetrated on the clients by the 3 Noticee Companies while providing unauthorised IA services, cannot be ignored.

30. As regards the role of Noticee no. 4, it has been submitted that she had never exercised any control over the 3 Noticee Companies and was only appointed as a director as she was the wife of Noticee no. 2. It has been further submitted that she was all throughout a sleeping and inactive director in all the 3 Noticee Companies and has resigned from those Companies in March 2020. First of all, it needs to be clarified that unlike the Partnership Act, 1932, there is no concept of sleeping and inactive director in the Companies Act, 2013. Secondly, as already observed by me in the preceding paragraphs, in none of the aforesaid 3 Noticee Companies, neither any Director was assigned as Managing Director / CEO nor there was any other

officer categorized as a key managerial person who can be held to have been in charge of the day-to-day business affairs of those 3 *Noticee Companies*. In absence of the same, all those persons who served as directors of those 3 *Noticee Companies* during the relevant time including the *Noticee no. 4*, are to be held as liable and responsible for the commissions and omissions on part of these 3 *Noticee Companies*, who were rendering IA services to their clients in an unauthorised manner without obtaining any registration certificate in their names from SEBI.

31. *Noticees* have further argued on the power of SEBI under the *IA Regulations, 2013* to issue directions to them for refund of monies to the clients / customers of the 3 *Noticee Companies*. In this regard, they have submitted that in terms of the provisions of *IA Regulations, 2013*, SEBI can direct the companies to refund amount to only such clients who have made specific complaints to SEBI and SEBI has found out from its inspections that such companies are indeed in breach of any provisions of law or *IA Regulations, 2013* qua those complaints. I further note that the aforesaid argument has been adverted on the basis of a combined reading of regulations 23 and 27 of the *IA Regulations, 2013*. In this regard, for the purpose of interpretation of statutes, *Noticees* have referred to judicial observations of the Hon'ble Supreme Court of India in matters such as *Nathi Devi vs. Radha Devi Gupta*, *Ram Rattan vs. Parma Nand*, *Hari Prasad Shivashanker Shukla vs. A.D.Divelkar*, etc. First of all, having gone through the above referred cases as cited by the *Noticees*, I find that most of these cases are not relevant to the facts and circumstances and the proceedings in the instant matter. Secondly, the *IA Regulations, 2013* set out the rules and regulations to be followed by the IAs while providing IA services in the securities market subsequent to registering themselves under the said regulations. Next is Section 11B of the *SEBI Act, 1992*, the provisions of which strongly enables the regulator to take all the pivotal measures possible for the purpose of investors protection including issuing directions for refund as a remedial tool to protect the interests of investors. Thus, in my view, the set of measures that can be taken under Section 11B of the *SEBI Act, 1992*, can include issuing direction to refund the amounts collected from the investors/ clients by way of providing services in an

unauthorised and illegal manner. In the instant matter, it is a matter of fact that the 3 Noticee Companies have not registered themselves under the IA Regulations, 2013 and have provided IA services without having requisite registration and thus have acted in violation of provisions of SEBI Act, 1992 and IA Regulations, 2013. Therefore, the attempt of the Noticees to shelter themselves under a narrow and misleading interpretation of IA Regulations, 2013, under which they have deliberately not registered themselves, will not come to their rescue to exonerate them from the unauthorized IA activities they had indulged in a fraudulent manner to induce investors to avail their IA services.

32. The Noticees have further argued that in order to ascertain as to whether the 3 Noticee Companies were actually providing the IA Services without obtaining appropriate registration the corporate veil of those 3 Noticee Companies must be lifted and the actual person/entity functioning behind those 3 Noticee Companies and providing the IA services through 3 Noticee Companies may be identified. It is pertinent to note that such an argument pressed upon by the Noticees regarding lifting of the corporate veil, has been dealt in the Additional Order, wherein I have rejected the aforesaid argument of the Noticees. Nevertheless, for the sake of convenience I am briefly dealing with the said argument of the Noticees in the subsequent paragraphs.

33. Doctrine of lifting of corporate veil indicates that when the people sitting behind a corporate entity start misusing this veil of corporate personality, it becomes necessary for the courts to pierce the corporate veil to expose those persons who are responsible for such misuse of corporate personality of an entity or who are in fact the real beneficiaries of those abusive acts. This well recognized principle of lifting of corporate veil or piercing the corporate veil is held to be valid only in extraordinary circumstances. Thus, the doctrine of lifting of the corporate veil means the owners or shareholders or members are separated from the corporate personalities when the legal status of a company as a juristic person is

misused for illegal personal gains by such shareholder or members of the said company.

34. I further note that while arguing for lifting of corporate veil, *Noticees* have strongly relied upon the judgements of the Hon'ble Supreme Court in the matter of *State of UP vs Renusagar Power Co. and Ors.* (1988) 4 SCC 59. Having gone through the above judgement referred to by the *Noticees*, I note that the facts and circumstances of the above cited case are completely distinguishable from the facts of the instant matter. In the case of *Renusagar Power (supra)*, after disallowing the request for exemption from levy of electricity duty under U.P. Electricity Duty Act, 1952, the State Government of Uttar Pradesh issued notice of demand asking Renusagar Power Co., to pay electricity duty on the energy supplied by it to Hindalco, for industrial purposes. Being aggrieved by the decision of the State Government, the Renusagar and Hindalco filed a writ petition before the Hon'ble High Court, wherein the demand notice raised by the State Government of Uttar Pradesh was quashed by the Hon'ble High Court. Being aggrieved by the decision of the High Court, the State Government moved a Special Leave Petition before the Hon'ble Supreme Court of India for relief, wherein the Hon'ble Supreme Court, *inter alia*, held that Renusagar, a 100% subsidiary of Hindalco, wholly owned and controlled by Hindalco was generating and providing energy to Hindalco, therefore, the person generating and the person consuming the energy were the same hence, the corporate veil should be lifted. From the aforesaid facts, I note that, the above cited case was about granting relief on the ground that after lifting the corporate veil, both the entities were found to be the same entity. However, in the instant matter, the 3 *Noticee Companies* after providing unregistered IA services are trying to take shelter under their argument of lifting of corporate veil, to state that one of their Directors was holding registration Certificate in his personal capacity hence the unauthorised IS services provided by them are justified under law. In the preceding paragraphs of this Order, I have already dealt with the significance and importance of the rational for keeping separate registration requirement for Individuals and Body Corporates under *IA Regulations, 2013*. It has

been already pointed out that the *IA Regulations, 2013* have prescribed separate criteria for eligibility, net worth and various other conditions for an individual as distinct from a company seeking IA registration from SEBI. Therefore, it is blatantly a mischievous idea even to think that the IA registration obtained by an Individual can be used by a company for dispensing IA services. The eligibility conditions of a corporate applicant are much more onerous under *IA Regulations, 2013* than the eligibility conditions prescribed for an Individual applicant. Therefore, the above cited judgement referred to by the *Notices* is of no use in the instant matter and the argument of the *Notices* that the 3 *Notices Companies* ought to be treated synonymous with the *Noticee no. 2* whose registration number was displayed on their websites, is untenable and against the very concept of treating corporate as a separate legal entity.

35. Further, it is a well settled principle that the aforesaid doctrine is to be applied as an exception than as a rule and only in extraordinary circumstances when a natural person is seeking to evade his responsibility under the guise of a corporate entity. In this regard, I note that the Hon'ble Supreme Court of India in *Life Insurance Corporation of India v. Escorts Ltd. & Ors., (1986) 1 SCC 264* *inter alia* held:

".....Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

emphasis supplied

36. I further note that the Hon'ble Supreme Court of India in the matter of *Arcelormittal India Private Ltd V. Satish Kumar Gupta And Others, (2019) 2 SCC*

1 (DoD: October 04, 2018) has *inter alia* held that where the statute itself lifts the corporate veil or where the protection of public interest is important or where a company is formed to evade obligations imposed by law, the court will disregard the corporate veil. The observations of Hon'ble Supreme Court in the afore-stated matter are placed below:

34. *"It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole."*

37. In view of the above, the doctrine of lifting the veil is required to be applied where natural persons are hiding their liability and accountability under the guise of corporate entity. The instant matter is not the case, where there can be a necessity to find out from the records as to who are the natural persons responsible for the management and affairs of the 3 Noticee Companies so as to examine only those natural persons and their role in the alleged IA activity and exonerate all the 3 Noticee Companies, even though these companies have directly dealt with the investors for rendering IA services. Therefore, I am of the considered view that there is absolutely no necessity for application of the doctrine of lifting of corporate veil, in this case.

38. Noticees have further contended that in the instant case, the charges are not serious enough warranting heavy punitive actions and therefore SEBI should not resort to a more stringent measure since that would destroy the business of the Noticees and bring it to a standstill. To support the above, judgment of the Hon'ble SAT in the matters of *Shyam Sundar Dalmia vs SEBI* (2005), *Sterlite Industries (India) Ltd vs SEBI* (2001), *Libord Finance Ltd vs. Whole Time Member* (2008), *UBS Securities Asia Ltd vs SEBI* (2005) and *Arcadia Share & Stock Brokers Pvt Ltd vs SEBI* [2009] have been relied upon by the Noticees. Further, Noticees have also submitted that, in any case, any direction or measure so taken by SEBI, especially in the nature of a

penalty, must be commensurate with the gravity of misconduct and any penalty disproportionate to such gravity of misconduct would be violative. In this regard, *Noticees* have, *inter alia*, referred to the judgements of the Hon'ble Supreme Court in the matters of *Bhagat Ram vs State of Himachal Pradesh* (AIR 1983 SC 454), *Ranjit Thakur vs Union of India* (AIR 1987 SC 2386), *B.C. Chaturvedi vs Union of India* (1995 6 SCC 749). Having gone through the submissions of the *Noticees* and the aforesaid judgements referred to by the *Noticees*, I note that none of those judgements has dealt with matters pertaining to unregistered IA services. To appreciate the gravity of the illegal activities indulged in by the *Noticees* wherein fees have been charged from the clients / investors by the 3 *Noticee Companies* against their investment advisory services for which no requisite registration was obtained from SEBI by the said 3 corporate bodies. The *IA Regulations, 2013* have prescribed broad checks and balances so as to keep the interest of the investors protected from any kind of untoward treatment or unscrupulous acts by dishonest 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 the 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 genuine advisory services are rendered in exchange of a fee, to the clients/investors in a fair, transparent and objective manner by those IAs who are qualified & eligible to render IA services only after being registered by SEBI, to carry out such activities. However, the interest of the investor has to be always kept as of paramount importance by the IAs. One must not forget that the law provides for mandatory registration for such entities that are willing to act as intermediaries between the regulator and investors. In case any entity that pretends to have registration and thereby becomes successful in giving a misleading impression that it possesses the requisite registration which upon

examination/investigation/ enquiry is found to be false, deserves no leniency merely for the reason that no complaint of having caused any loss to the investors has been received. In view of the above, by not getting the 3 *Noticee Companies* duly registered under the *IA Regulations, 2013*, the *Noticees* have evaded themselves from the afore-mentioned checks and balances. Therefore, I find no merit in the argument advanced by the *Noticees* seeking leniency and application of doctrine of proportionality against them and the such requests of the *Noticees* are bound to be rejected.

39. *Noticees* have also submitted that all of their clients were aware that it was *Noticee no. 2* who holds the SEBI registered certificate and was providing IA services through the 3 *Noticee Companies*. In this regard, *Noticees* have also submitted letters of their clients stating that the they (clients) were aware about the fact that the IA certificate registration belonged to *Noticee no. 2* and the business of IA services was being carried out by *Noticee no. 2* through the 3 *Noticee Companies*. I note that to verify the aforesaid claim of the *Noticees*, SEBI on a random basis had contacted 92 clients of the *Noticees* through telephonic calls on the mobile numbers as provided by the *Noticees*. The findings/observations made after making such telephonic calls are mentioned below:

Wrong number	39
Switched off/not available/call disconnected	35
Client identified however denied for providing letter	18
Total	92

40. I see from the aforementioned table that the mobile numbers provided by *Noticees* for most of the clients were either not correct number or not in existence. Out of 92 different clients to whom such calls were made, only 18 confirmed their identity as mentioned in the data provided by the *Noticees*. Surprisingly, none of the 18 clients whose identity was matched through stated that they had availed IA services from the 3 *Noticee Companies*, strongly denied the authenticity of the letters

provided to SEBI in their names. Those clients out rightly denied that they have issued any such letter addressed to SEBI or even to the *Noticees*. The aforesaid exercise conducted by SEBI in turn belies the argument put forth by the *Noticees* that all of their clients were aware about the fact that the IA certificate belonged to *Noticee no. 2* and the IA services were being carried out by *Noticee no. 2* through the 3 *Noticee Companies*. In fact, the aforesaid verification brings me to a conclusion that all such documents including letters and affidavits produces by the *Noticees* are nothing but an afterthought exercise by the *Noticees* to evade the adverse outcome if any, of this proceedings.

41. Another contention of the *Noticees* is that one of the essential ingredients of the fraud and fraudulent conduct, independent of the *PFUTP Regulations, 2003* is *mens rea* which in turn has to be supported with a motive to commit such fraud and in the instant case, as *Noticee no. 2* himself had the registration certificate, hence there was no need for the *Noticee no. 2* to commit any fraud in the name of any of the company. In this regard, I would like to refer to the observations of the Hon'ble Supreme Court in the case of *Kanaiyalal Baldev Bhai Patel vs. SEBI [2017] 143 SCL 124 (SC) (DoD- 20/09/2017)* in which, while dealing with the definition of "fraud" as provided under *PFUTP Regulations, 2003*, the Apex court observed as under:

"...The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required...."

The Hon'ble Supreme Court have further observed that:

"...14. To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of

probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in Securities and Exchange Board of India vs. Kishore R. Ajmera(supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified...."

42. Therefore, as laid down by the Hon'ble Supreme Court, the test to examine as to whether the alleged "fraud" has been actually committed is a matter of preponderance of probability. In fact, in the instant matter, in my opinion, it was a deliberate attempt by the *Noticees* to provide IA services through 3 different *Noticee Companies* by using the registration certificate of *Noticee no. 2* without taking separate registrations for the said 3 *Noticee Companies*, since all the 3 *Noticee Companies* (*Noticees no. 1, 5 and 7*) would have been required individually to fulfil onerous the net worth criteria and would have to independently abide by various other eligibility entities as prescribed under the *IA Regulations, 2013* for corporate applicants for becoming eligible to apply registration as an IA, which would have necessitated additional financial resources and various other strict regulatory compliances. Whereas by not obtaining separate registration and by misleadingly heading out to the public the IA registration of *Noticee no. 2* to be their own registration, the 3 *Noticee Companies* have been successfully inducing the potential investor to approach them and avail their IA services in big numbers.

43. The *PFUTP Regulations, 2003* and *IA Regulations, 2013* have been formulated with the main objective of prohibiting fraud in the securities markets and regulating investment advisory activities to safeguard the interests of investors and hence, registration of investment advisory activities with SEBI has been made mandatory. The *IA Regulations, 2013 inter alia*, seek to create a structure within which investment advisers will have to operate and the said regulations make them duly accountable for the investment advice rendered by them by requiring the investment advisers to comply with various criteria prescribed in the relevant

provisions of the *IA Regulations, 2013*, as the same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.

44. As already discussed in the foregoing paragraph above, *SEBI Act, 1992* and *IA Regulations, 2013* mandate that an Investment Advisor has to hold a certificate of registration to act as such. However, as already pointed out above, I find that the 3 *Noticee Companies* were not holding any certificate of registration from SEBI to act as Investment Advisors. Although the *Noticee no. 2*, who was one of the shareholders and Directors in all the 3 *Noticee Companies*, that were involved in providing IA services, was a SEBI registered Investment Adviser and might have been rendering IA services on behalf of the said 3 *Noticee Companies*, the said registration taken in his personal name was of no help to the 3 *Noticee Companies*, who had deliberately chosen not to obtain any IA registration in their respective corporate names, before they started out to conduct the business of IA activities in the securities market. Nevertheless, while issuing directions against the *Noticees*, the aforesaid mitigating factors, viz: that *Noticee no. 2* had an IA registration in his personal capacity and was actively associated in the business operations of the 3 *Noticee Companies*, needs to be taken into due cognizance. Further, I also note from the records that apart from the complainant Hareesha, 3 other complainants had filed the complaints against the *Noticee no. 2* and the 3 *Noticee Companies* through SCORES platform, which have been reportedly disposed of.

45. In view of the foregoing discussions and my observations, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B (1) and 11D, read with of Section 19 of the *SEBI Act, 1992* and regulation 11 of the *PFUTP Regulations, 2003*, while disposing of the allegations levelled in the *Interim Order cum SCN*, hereby direct the following:

- a) The *Noticees* shall within a period of 30 days from the date of this Order cause the issuance of a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, inviting claim of all sorts from the clients to whom services of investment advisory were rendered;

- b) The aforesaid public notices shall contain the details of the contact person such as names, addresses (including email address) and contact details, inviting attention of clients/investors to lodge complaint, in case having grievances against the *Noticees* in relation to the rendition of investment advisory services. The period to lodge complaint shall remain open for a period of three months from the date of the public notice;
- c) After receipt of the grievances and complaints as mentioned above, the *Noticees* shall ensure that the same is resolved within a period of 30 days from the closure of period to lodge complaint. In case the complaints are pertaining to finance / refund, same shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the redressal;
- d) After completing the aforesaid redressal exercise, the *Noticees* shall file a report of such completion with SEBI addressed to the Division Chief, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of the grievance / complaint redressal exercise as mentioned at sub paragraph (c) above. Such report shall be duly certified by an independent Chartered Accountant.
- e) The *Noticees* are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors who were availing the investment advisory services from the *Noticees*, as directed in this Order, from the bank account of the *Noticees*, wherein debit has been frozen by virtue of *Interim Order* dated January 25, 2021;

- f) The restraint on sale of assets in sub paragraph (e) shall cease to operate once the redressal to the complaints / grievances is completed;
- g) The *Noticees* are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of redressal exercise and filing of report to SEBI as directed in sub-paragraph (d) above, whichever is later;
- h) The *Noticees* are also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of redressal exercise and filing of report to SEBI as directed in sub-paragraph (d) above, whichever is later; and
- i) The *Noticees* shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in sub-paragraph (g) and (h) above, either directly or indirectly, investment advisory services or any other activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities law.

46. The direction as given in paragraph 45 above, does not preclude the clients/investors from pursuing the other legal remedies available to them under any other law, against the *Noticees* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

47. This Order comes into force with immediate effect.

48. 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.

49. A copy of this Order shall be sent to the *Noticees*, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

-Sd-

DATE: DECEMBER 13, 2021

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA