

WTM/AB/SRO/SRO/16308/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

In respect of:

Sl. No.	Name of the Noticee	PAN
1	Fortunescript Services Private Limited	AACCF6496N
2	Mr. Mithilesh Narayan	AGBPN5750B
3	Mr. Shiba Shankar Das	BAGPD0454A
4	Mr. Dilip Kumar Rajak	BYFPR7769R

In the matter of Unregistered Investment Adviser

(The aforesaid entities are hereinafter individually referred to by their respective name or Noticee number and collectively as “the Noticees”.)

1. The present proceedings emanate from an interim order cum show cause notice dated **August 04, 2020** (hereinafter referred to as “**the interim order**” or “**SCN**”) passed by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Fortunescript Services Private Limited (hereinafter also referred to as “**Fortunecrypt**”/ “**the Company**”) and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak wherein it was *prima facie* found that the Noticees were engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Further, in the interim order, the activities of the Noticees were *prima facie* found to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of 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**”).

By the interim order, *inter alia* following directions were issued to the Noticees:-

- 24.1. *“Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, are directed not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*
- 24.2. *Fortunescript Services Private Limited and its Directors, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, are directed to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders.*
- 24.3. *Fortunescript Services Private Limited is directed not to divert any funds raised from investors, kept in bank account(s) and/or in its custody until further orders.*
- 24.4. *Fortunescript Services Private Limited is directed 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.*
- 24.5. *Fortunescript Services Private Limited is directed to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, including websites, in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
- 24.6. *If Fortunescript Services Private Limited and its Directors have any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. Fortunescript Services Private Limited and its Directors are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*
- 24.7. *Fortunescript Services Private Limited is directed to provide a full inventory of all assets held in its name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.”*

2. The interim order was also in the nature of a show cause notice asking the Noticees to show cause as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act, 1992 and relevant SEBI Rules/Regulations, including directions for an appropriate period prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period, directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and direction to refund the amount collected from the investors/clients for its various schemes under Sections 11 and 11B (1) of SEBI Act, 1992 should not be issued against them.
3. I note that the following facts have been recorded in the interim order:
 - i. "Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint against Fortunescript Services Private Limited (hereinafter referred to as "**company**") *inter alia* alleging the following:
 - a. The complainant got a call from the company and they told her that it is a Bangalore based advisory company.
 - b. Subsequently she had transferred an amount of Rs. 60,000 on March 20, 2019 to the company and the company agreed to call her.
 - c. Complainant called the company when she did not receive any calls from it. The company informed her that the market is volatile and it is not possible to trade.
 - d. The complainant then sent an email to the company for discontinuation of the service and to process her refund. However, she did not receive any refund.
 - e. The complainant later learnt that the company is not registered with SEBI.
 - ii. In view of the complaint received, SEBI carried out a preliminary examination to ascertain whether unregistered investment advisory activities are being carried out by the company. To that end the website of the company, www.fortunescript.com, reply of company, its financial statements and particulars of its bank accounts and payment gateway were perused to gather information. The aforesaid website of the company was active till March 6, 2020. Currently the company's website is inactive. On visiting the website, the following message is displayed: "*This site can't be reached. fortunescript.com took too long to respond*". However, during the course of preliminary examination, print outs of web pages of the company's website was taken and have been placed on record.

- iii. SEBI's preliminary examination found as follows:
 - a. The company held itself as an Investment Advisor and collected subscription fees from investors for providing stock recommendations without obtaining a registration under SEBI (Investment Advisers) Regulations, 2013.
 - b. A total of 582 credits were received from different sources into the bank accounts of the company since September 1, 2015. The total credit received in the various accounts maintained by the company is approximately Rs.1.22 crore.
 - c. From the numerous credit transactions, it appears that a large number of investors are affected.”
4. Based on the above observations, the interim order/SCN has *prima facie* found that Fortunescript was engaged in investment advisory services without obtaining a certificate of registration from SEBI as an Investment Adviser under the IA Regulations, 2013. Moreover, the activities / conduct / act / practice of Fortunescript were *prima facie* found to be fraudulent and not in compliance with SEBI Act, 1992 and PFUTP Regulations, 2003. Since Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, being the directors of Fortunescript were *prima facie* responsible for the violations committed by Fortunescript, the interim order/SCN has alleged that these Noticees have violated the provisions mentioned in para 1.
5. The interim order/ SCN was served vide letter dated August 06, 2020 on Noticee no. 1 and 3 and vide letter dated July 05, 2021 on Noticee no. 2 and 4. Reply dated October 01, 2020, was received from Fortunescript signed by Noticee no. 3 *inter alia* stating that the Company was established in the month of September, 2015 for the purpose of providing financial advisory services like restructuring of companies, merger and acquisitions, financial advice on raising capital/ equities, venture capital, credit and loan syndication, procuring bank and institutional financial services and real estate investment advisory services. One of the objective of the Company was also to provide advisory services relating to buying and selling of shares of listed companies and the Company provided such services for first few weeks of its operation on nominal fees or even free of cost. But in about a month or so, when it was noted that the Company needs to take necessary permission from SEBI and the compliance of terms and conditions for providing

such services related to shares etc. were overwhelming, the Company dropped the idea of such financial advisory services and stopped all related operation since about December 2015. The Company further submitted that the website of the Company was not getting regularly rectified/modified by the concerned staff of the Company, due to lack of funds and as a result very old statements regarding Company's activities were wrongly shown on the website. The Company had stopped its activities at around mid of 2019 and hence, there was no question of the website being active till March 2020. Fortunescript also denied that it was acting as an investment advisor and collected subscription fees from investor for providing stock recommendations, without obtaining registration under IA Regulations. It submitted that the Company provided only general consultancy with regard to trends in the financial or securities market without giving any specific comments or opinions as to any particular securities or investment product and was therefore, exempted from getting registration in terms of Regulation 4(a) of IA Regulations, 2013. The Company also denied that there were 582 credits of total 1.22 crore in the various accounts of the Company. It is submitted that there were various inter account transactions by the Company and while calculating the amount all the incoming revenues have been taken in account. The Company also denied that a large number of investors are affected but admitted that except the sole complaint raised by the complainant nobody was affected by the activities of Fortunescript. The Company also submitted that the Noticees have never called the said Complainant for providing investment advice as alleged. Though, it is not denied that the Complainant had deposited Rs. 60,000/-. The Complainant was forcing the Company to provide financial service which comes under the purview of SEBI and the Company has refused to provide such services. The Company also submitted that the Complainant had never come forward to receive refund of the money deposited in Company's account. The Company has neither held itself out as an Investment Advisor nor acted as an Investment Advisor for consideration and it only provided general consultancy with regards to trends in the financial or securities market without giving any specific comments or opinions. The Company has not violated any provisions of IA Regulations, 2013 and PFUTP Regulations, 2003 and that SEBI has without giving an opportunity of hearing and recording

their evidence has *prima facie* construed the activities/ conduct/ act/ practice of the Company as fraudulent.

6. The Company, vide letter dated October 01, 2020 also sought a personal hearing with respect to the interim order. Thereafter, the matter was placed before me for obtaining a hearing date on August 09, 2021 and an opportunity of hearing was granted to the Noticees on November 17, 2021. On the said date the Authorized Representative of the Noticees no. 2, 3 and 4 i.e the directors of the Noticee no.1 appeared and made submissions. Hearing notice was served on Noticee no.1 through speed post, however, none appeared on behalf of Noticee no.1 nor any request for adjournment of hearing was received from Noticee no. 1. Thus, the hearing was concluded *qua* the Noticees.

Consideration of submissions and findings:

7. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein, reply received in the matter and submissions made by the Noticees during the hearing.
8. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 is as follows:

“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, Regulation 2(1)(l) of IA Regulations, 2013 states as follows:

“investment advice means 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:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;"

9. I note that, Noticees have not contested that the website www.fortunescript.com, was run by them.

10. The website *inter alia* claimed as follows:

- *"Fortunescript is one of the stock advisory firm promoted to help investors or traders to make money in these fast changing dynamic financial market. We are there to help you to reach your objectives with our knowledge by providing brief survey on stock/stock market. We have comprehensive ideas in the current business environment that can boost your potential for long term success. We do have a highly qualified specialised team who can also provide you with better tips & know the market very well.*
- *We provide the best stock recommendations.*
- *We are not says that we provide 100% accurate and sure shot Stock Market tips. Our accuracy is more than 80%. We always share disclaimer that do not invest in one call only. For safe side we always insist our customers to break out you fund to our all calls. That's why we are genuine stock market tips provider in Karnataka, India.*
- *Fortunecrypt is the most trusted AP (Authorized person in NSE) Registered Investment Advisory in India. Fortune Script service is a best stock advisory tips in India. The firm is one of the biggest players with a dominant position in both institutional and Retail. Company focuses on the business of study, info and intelligence. We've got created a shot at to bring you the highest technical, fundamental basics of stock.*
- Under the heading "WELCOME TO FORTUNESCRIPT FAMILY", the company claims as follows:
"Fortunescript Services Private Limited is a fast growing pioneering based stock advisory firm specialized in offering effective stock trading and investment tips to the stock traders and investors trading in NSE and BSE in India. Our Firm believes in facilitating all of our clients to gain something with good accuracy level. We offers stock advisory tips LIVE in the Indian stock market trading hours through calls and recommendations by SMS, mails by our professionals so that the traders get proper time to trade in the market.
Our firm having highly skilled professionals, having good fundamental and technical knowledge about a particular stock in the capital market. We offers shortterm, mid-term, long-term and diversified portfolio equity advisory services to our clients. We are

accepting cash transaction towards the service taken by the customers not for any guaranteed returns.”

- Under the heading “*Brief About Our Services*”, the Company claims to provide service under 3 categories namely: Cash Service, F&O Service and Commodity Service.
- Under the heading “*DIFFERENCE BETWEEN FORTUNESCRIPT SERVICES AND OTHER SERVICES*”, the company *inter alia* claims as follows:
 - *Real time entry and exit price through phone call.*
 - *Best growth in capital on consistent basis.*
 - *Personalized service: Personally Phone call entry and exit. Customized service: Providing services as per everyone’s requirement and capital.*
 - *Dedicated person available always to guide you in case of any query during live trading.*
 - *Personalized and customized services available in case you have different requirement from others.*
- Under the heading “*WHY FORTUNESCRIPT..?*”, the Company claims as follows:
 - *The fastest leading financial research house of India.*
 - *Our recommendation featured in the Economic Times.*
 - *Live market updates and trading recommendations.*
 - *Tech. support on call, chat and email.”*

11. Under the heading “WHAT WE LIKE TO DO- Our Services” the Company claimed as follows:

“INTRADAY CASH TIPS,
PREMIUM CASH TIPS
PREMIUM OPTION TIPS
POSITIONAL CASH TIPS
FORTUNE TIPS
POSITIONAL FUTURE TIPS
INTRADAY JACKPOT TIPS
NIFTY FUTURE TIPS
MULTIBAGGER TIPS
INTRADAY FUTURE TIPS
INTRADAY OPTION TIPS
PREMIUM JACKPOT TIPS
MONEY STOCK TIPS.”

12. From the above, I note that Fortunescript provided recommendations for trading in Indian stock and commodity market. Fortunescript claimed to offer stock trading tips. Fortunescript's website mentioned types of the tips provided, which included Nifty Options tips, Nifty Future Tips and Intraday Cash Tips. It claimed to have highly skilled professionals having good fundamental and technical knowledge about stocks in the capital market. It also claimed that it specialized in offering effective stock trading and investment tips to the stock traders and investors trading in NSE and BSE in India. As per the website of Fortunescript, these services were provided through mails, SMS and calls by their professionals. Fortunescript has contended that it provided only general consultancy with regard to trends in the financial or securities market without giving any specific comments or opinions as to any particular securities or investment product and was therefore exempted from getting registration in terms of Regulation 4(a) of IA Regulations, 2013. In this context, I note that, the website of Fortunescript provides that the Company provided customized services as per the requirement and capital of the clients. Further, as per the website, the Company also provided personalized service through phone call for entering and exiting stocks. The website also claims that Fortunescript offers stock advisory tips live in the trading hours through calls SMS and mails so that traders get proper time to trade in the market. Fortunescript also claimed the following on its website:

"Our firm having highly skilled professionals, having good fundamentals and technical knowledge about a particular stock in the capital market."

I note that Fortunescript letter dated October 01, 2020 has also admitted that they were providing advisory services relating to buying and selling of shares of listed companies to its clients during the initial period of their operations. In view of the above, the contention of Fortunescript that it provided only general consultancy and did not provide any specific comments or opinions as to any particular securities is not tenable. Hence, the contention of Fortunescript that it was exempted from getting registration in terms of Regulation 4(a) of IA Regulations, 2013 is not sustainable. I observe that, if an entity is engaged in providing 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 *in lieu* of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of 'Investment Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013.

13. In the present matter, investment advisory services were being offered by the Noticees in lieu of consideration. The company is providing services under two different categories viz., Trading Equi-Commo and Investment Advisory. As per the interim order, the pricing of various services offered by the Company as per its website is as under:

Service Name	Pricing				
	1 Month (Rs.)	3 Months (Rs.)	6 Months (Rs.)	12 Months (Rs.)	24 Months (Rs.)
A. Trading Equi-Commo					
a) FirstIdya	30,000	40,000	55,000	70,000	-
b) CashMotion	20,000	30,000	40,000	55,000	-
c) Maximore	35,000	50,000	70,000	85,000	-
d) Bull-Era	30,000	45,000	60,000	75,000	-
e) Postabyte	30,000	45,000	60,000	75,000	-
f) Profitfuzion	20,000	30,000	40,000	55,000	-
g) Kryptascript	35,000	50,000	65,000	1,00,000	-
h) Volatyne	25,000	35,000	55,000	75,000	-
i) Bonanziya	25,000	35,000	55,000	75,000	-
j) Neurocept	20,000	30,000	50,000	75,000	-
k) MILLENiO					
i. Standard	15,000	30,000	45,000	55,000	-
ii. Premium	25,000	50,000	60,000	75,000	-
l) SCRIPTO-COMBO Plan					
i. Standard	20,000	30,000	45,000	60,000	-
ii. Premium	25,000	40,000	60,000	75,000	-
B. Investment Advisory					
a) FUTURA-SIP ADVISORY SERVICES	-	15,000	25,000	40,000	50,000
b) Foleo-Bird Advisory Services	-	10,000	15,000	30,000	40,000

c) MPS+ PLAN	-	7,000	15,000	20,000	30,000
d) Over-Savior Advisory Services	-	20,000	35,000	55,000	75,000
e) C-B-P Advisory Services	-	30,000	50,000	75,000	1,00,000

I note that the Noticees have not contested above-mentioned details of the pricing of various services offered by the Company.

14. The website of the Company is not active. From the print out of the web pages of the Company's website, as available on record, the details of a few subscription packages are reproduced below:

Foleo- Bird Advisory Services-

Foleo-Bird is a flagship product of FortuneScript firm. In this package we would suggest you large caps and midcap stocks which would multiply your wealth in small time frame.

.....

All recommendations are given after complete research of stock, book value, Financial results, expansions, and volumes, technical as well as fundamentals of the company's stock.

.....

In this package profits would be unbeatable and if investor is having patience than within a year his investment amount may multiply several times.

SUITABLE FOR:

.....

Investors and traders want to speculate before the real event of the stock.

Who are ready to take moderate risk and want to book profit of 25%-40% on his ROI.

Investors who want to know the entry exit tricks in well researched calls.

ROI-MAXIMO PLAN-

All our tips are driven by complete and thorough analysis and study of the market and thus you could be content with our accurate recommendation. We give 100% sure shot news based research calls in this Service We offer maximum time to enter in the calls to maximize profits. It wants to fulfill need of investors and traders who want customized advised and highly personalized attention.

- Risk Reward Ratio is 1:4 (Stop Loss: Targets).*
- Monthly 5-10 calls will be taken.*

We contact our investors regularly over sms and Whatsapp services as well.

Every SMS would be offered with the entry price, 1 target and 1 stop loss only. Target would be modified if there is an option to earn more with the same trade. ROI-MAXIMO Stock Tips trading.

MPS + Plan-

Multibagger Portfolio Service Plus is a long term investment advisory plan of FortuneScript that contains potential multibagger stocks. Most successful investors and analysts believe more in investing than trading and had become millionaire by investing few thousand rupees in the fundamentally good company at right time. FS-MPS+ package follow the investment techniques used by these analysts and the stocks they invest in. These stocks tend to multiply several times in mid-term to long-term. Investors can expect following returns on every recommended stocks: 20%-100% in 1 year, 300%-1000% in 3-5 years.

USP's

- A strong analysis of the investor's cash flow is done and company will come out with a quarterly investment plan along with lumpy cash management.*
- Immediate updates on the changes in portfolio through mail and also Web-login will be provided to the investors, so that they can replicate the same on their Portfolios.*
- You will be assigned with a dedicated analyst who will look after your investments, risk appetite, cash flow and financial planning.*

15. The payment page of the Company's website had listed details of its bank accounts maintained with IDBI Bank, ICICI Bank, and HDFC Bank. Further, the page had link to EaseBuzz payment gateway through which payments can be made to the Company for availing its Investment Advisory services. From the information available on record, the transactions observed in the abovementioned bank accounts and payment gateway were as follows:

Account Number & Bank	Period for which bank statement is obtained	Total Credits (Rs.)	No. of credit transactions
50200014778779 HDFC Bank	1/9/2015 to 8/8/2019	12,15,065	71
107505500208 ICICI Bank	3/10/2015 to 31/07/2019	13,77,613	103
1544102000001731 IDBI Bank	20/9/2015 to 1/3/2020	27,12,686	272
EaseBuzz linked to IDBI account (Payment gateway)	19/12/2016 to 2/8/2019	34,66,920	NA
Total		87,72,284	446

16. I note that during the examination, the details of aforesaid bank account of the Noticees were gathered from ICICI Bank, HDFC Bank and IDBI Bank. A perusal of KYC form, account opening form and bank statement of the aforesaid bank account revealed the following:

- The bank accounts were in the name of the Company and the authorized signatories were Noticee no. 1 and 2.
- A total of 446 credits were received from different sources into the bank accounts and payment gateway of the company since September 1, 2015.
- The total credit received in the aforesaid accounts is approximately Rs. 87,72,824/- .
- It is observed that there are numerous credit transactions / large number of payments received in various bank accounts and payment gateway. From the narrative of the transactions, it appears that the payments have, *prima facie*, come from various investors / clients.

17. Further, I note the following from the information submitted by the company to SEBI vide its emails dated September 11, 2019:

- The Company was incorporated on September 9, 2015. It is observed from the MCA website that the status of the Company as on April 20, 2022, is active.
- Following are the Directors of the company:

Name	Date of Appointment	End Date	DIN
Mithilesh Narayan	9/9/2015	-	0007263144
Shiba Shankar Das	9/9/2015	-	0007263149
Dilip Kumar Rajak	6/11/2017	-	0007959675

18. The objects of the company as per the Memorandum of Association of the Company is as under:

- a) *To Provide financial advisory Services to financial institutions and body corporate in restructuring, mergers, spin offs, raising equity, wealth management, interest rate derivative product advisors, foreign exchange products and derivatives advisors, commodity products and derivatives advisors, equity shares and derivatives advisors, indices and derivatives advisors, venture capital and private equity investment advisors, alternative and other asset class advisors, credit advisors and loan syndication advisors, real estate investment advisors, stressed asset advisors.*

19. In addition to above objects, following matters are listed in the Memorandum of Association under matters which are necessary for furtherance of the objects:

1. *To provide the services of registrar to the issue, transfer agents, trustees, factors and custodian and to undertake portfolio management and advisory services and to do all the activities of the capital and finance markets subject to the approval of SEBI and other authorities.*
2. ...
3. *To provide in advisory service in investment, savings, stocks and shares, debenture and bonds, taxation, accounting, legal or other fields allied to the forgoing and to carry on the business of underwriting, broking of finance, shares, debentures and other money market securities, managing the raising of capital or loans by the government, bodies corporate, banks, institutions or other persons, finance, resources of persons and dealing, placing, buying and selling or speculating in shares, securities, debentures, deposits or other money market securities in India or abroad.*

20. From the aforesaid details, I note that Fortunescript is a Company whose directors are Mithilesh Narayan (Noticee no. 1), Shiba Shankar Das (Noticee no. 2) and Dilip Kumar Rajak (Noticee no. 3). The same has also not been denied by the Noticees.
21. As per the interim order, 582 credits of total amount of Rs. 1,22,39,204/- were received in the bank accounts directly as well as through the Easebuzz payment gateway of the Company. I note that the Easebuzz payment gateway of the Company is linked to the IDBI bank account of the Company. I further note that while calculating the total amounts credited in the bank accounts and payment gateway of the Company, the amounts credited through the Easebuzz payment gateway have been considered twice as these amounts were already included in the amounts credited in the IDBI account of the Company. Similarly, the number of credit entries received through the Easebuzz payment gateway have also been considered twice as these were already included in the number of credit transactions in the IDBI bank account of the Company. After taking in account the aforesaid error, the amount of credits and the number of credits entries received through the Easebuzz payment gateway have been deducted from the total amount of credits and total number of credit transactions mentioned in the interim order. After recalculation, I note that 446 credits were received in the bank accounts of the Company during the period September 01, 2015 to March 01, 2020 amounting to a total of Rs. 87,72,284/-. I note that the interim order had found, on the preponderance of probability, that the credits in the bank accounts of Fortunescript were received towards investment advisory services. I note that the Company has denied the same and submitted that there were various inter account transactions by the Company and while calculating the amount received towards investment advisory services all the incoming revenues have been taken in account. Fortunescript also submitted that the investment advisory services offered by the Company were stopped in December, 2015 and that the main purpose of setting up the Company was to provide financial advisory services like restructuring of companies, mergers and acquisitions of companies, financial advice of raising of capital, venture capital, and loan syndication matters etc. Though, the Company initially provided advisory services related to buying and selling of shares of listed Companies, since December, 2015, the Company stopped all activities regarding providing investment advisory services which requires registration with SEBI. The Company has also submitted that the

website of the Company was not getting regularly rectified/modified by the concerned staffs of the Company due to which the website of the Company was showing availability of investment advisory services long after the Company stopped offering such services in December 2015. In this regard, I note that the webpages of the Company's website accessed on June 06, 2020 show that the Company was offering investment advisory services. i.e. even after almost 5 years of the time period when the Company claimed to have initially provided investment advisory services. Moreover, the investor complaint filed against the Company in June 2019 pertaining to payment made for investment advisory services in March 2019 also indicates that the Company was offering investment advisory services even beyond December 2015 contrary to its claims. As regards the contention of the Company that there were various inter account transactions in its bank account, I note that the Company has not identified the incoming revenues which were inter account transactions and not towards the investment advisory services and also not provided any supporting document for their contention. Therefore, such transactions cannot be identified and hence all the credits received in the bank account of the Company are to be treated as fees. Moreover, the Company has not submitted any supporting document to show that it was engaged in any business other than providing investment advisory services. Thus, I find that the Company has merely made a bald statement that all the incoming revenues in its bank accounts were not towards investment advisory services. In the absence of any explanation of the source of the incoming revenues in the bank accounts of the Company, it is reasonable to conclude that all the credits received in the bank accounts of the Company are towards investment advisory services. Therefore, the contention of the Company is untenable.

22. From the aforesaid facts, I find that Fortunescript was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website-, www.fortunescript.com in lieu of consideration. Therefore, I find that in terms of Regulation 2(1)(I) of IA Regulations, 2013 the Noticees were providing "investment advice" through their website. I note that if an entity is engaged in providing 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 *in lieu* of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, the Noticees received Rs. 87,72,284/- in the bank accounts mentioned on its website for the investment advisory services provided by it. Hence, I find that these services were being offered by the Noticee no. 1 *in lieu* of the consideration, as noted above. Therefore, I find that Fortunescript, was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as investment adviser/s, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

23. I also note that, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

“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 obtained from the Board in accordance with the regulations made under this Act.”

24. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been framed by SEBI which 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 first obtain a certificate of registration from SEBI as mandated 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 it has to conduct its activities in accordance

with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory 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.

25. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

- (i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;
- (ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

- b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
- c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

- (iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

26. The activities engaged in by Fotunescript, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that Fotunescript was holding themselves out and was acting as an IA, although Fotunescript was not registered with SEBI in the capacity of IA. Hence, I find that these activities/ representations as were being made by Fotunescript without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.
27. In the present case, Fortunescript on its website has *inter alia* claimed more than 80% accuracy for its stock market tips. Fortunescript made various claims regarding accuracy of its advice and returns on investment through the investment advisor service packages advertised on its website. For instance, under the Roi-Maximo-Plan, Fortunescript claimed to give 100% sure shot news based research calls, customized advise and highly personalized attention. Under the MPS+ Plan, Fortunescript also claimed that Investors can expect returns of 20% - 100% in 1 year, 300% - 1000% in

3-5 years on every recommended stocks. Fortunescript also assured 20-40% profits under the Foleo-Bird Advisory Services plan. In this plan, Fortunescript has also claimed that profits would be unbeatable and if the investor is patient, then within a year his investment amount may multiply several times. I note that these services could be availed by the investors by taking subscription on paying fees through the payment gateways details of which were available on the websites of Fortunescript. Being in the business of financial markets, Fortunescript would have been well aware that investments in the securities market are subject to market risks and in spite of the same, assuring 80% accuracy and 100% sure shot calls for investment to investors was an active misrepresentation of the services provided by it. I note that such promise of very high accuracy and high profits act as an inducement to investors to avail the services of Fortunescript for dealing in securities and such non-genuine and deceptive representations by Fortunescript were made with an intent to influence the investor to avail its unregistered advisory services. In fact, given that there were 446 credit transactions and total credits of Rs. 87,72,284/- in the bank accounts of Fortunescript, I note that a large number of investors actually availed the services of Fortunescript.

28. Moreover, as stated 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 Fortunescript was not holding any certificate of registration from SEBI to act as an investment advisor. Thus, the claims/representations made by Fortunescript on their websites were misleading and were made only to allure the investors to avail investment advisory services being offered by it. Fortunescript has knowingly misrepresented on the websites floated by it and induced the investors to trade in securities by misrepresenting that they had a team of highly skilled professionals having good fundamental and technical knowledge about stocks in the capital market. Thus, Fortunescript offered their investment advisory services to investors, through their websites in an unauthorized manner, with the sole objective of raising money from the investors by way of subscriptions packages to their various plans though while offering such investment plans or any investment related advisor services Fortunescript were not holding any Investment Advisor registration certificate.

29. It is noted that the above discussed activities/ conduct/ act/ practice of Fortunescript, amount to violation of provisions of Regulation 4(2)(k) of PFUTP Regulations, 2003. Regulation 4(2)(k) provides that dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves even disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. In the present case, Fortunescript without holding a certificate of registration as investment adviser have knowingly held themselves out as an Investment Adviser on their website and induced investors to avail their services for dealing in securities by making non-genuine and deceptive representations. Thus, I find that Fortunescript have also violated Regulation 4(2)(k) of PFUTP Regulations, 2003.
30. In the present case, as noted in preceding paragraphs, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak are the Directors of Fortunescript. In terms of Section 27 of SEBI Act, 1992, 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 shall be deemed to be guilty of the contravention. In the present case, Mr. Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak, the directors of the Company were responsible to the Company for the conduct of the business of the Company. I note that Mr. Mithilesh Narayan and Mr. Shiba Shankar Das were also the authorized signatories for the bank accounts of the Company.
31. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. The following observation of Hon'ble Supreme Court of India in the matter of **N Narayanan vs. Adjudicating Officer, SEBI** decided on April 26, 2013 are relevant in this context:

“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.”

32. Thus, I find that directors of the Company are responsible for all the violations committed by Fortunescript. The violations committed by Fortunescript Services Private Limited which have been discussed above also pertain to the time period when Mr. Dilip Kumar Rajak was not a director of the Company. As per the MCA website, Mr. Dilip Kumar Rajak is a director of Fortunescript from November 06, 2017. However, Fortunescript has continued the unregistered investment advisory activity post his joining as a director of the Company. From the material available on record, I note that the last transaction in the bank accounts of Fortunescript is as on September 26, 2019 (IDBI Bank Ltd.). Additionally, as per the status of the company on MCA website, the Company is still active with its last AGM held on September 30, 2019. Thus, I find that Mr. Dilip Kumar Rajak along with the other 2 Directors of the Company namely, Mr. Mithilesh Narayan and Mr. Shiba Shankar Das are responsible for the violation committed by Fortunescript. Therefore, Fortunescript, Mithilesh Narayan, Mr. Shiba Shankar Das and Mr. Dilip Kumar Rajak are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013 and Regulation 4(2)(k) of PFUTP Regulations, 2003.
33. I note that Fortunescript have collected Rs. 87,72,284/- as discussed in para 21 above. Further, investment advisory services was the only business that the Company was engaged in. I also note that Fortunescript vide reply dated October 01, 2020 has submitted that the Company and its directors have approached Hon'ble High Court challenging the interim order, however, the Company has not provided copy of this petition and any further details like court in which the petition is filed, case number, and if any stay order has been passed in this matter. Further, during the personal

hearing conducted on November 17, 2021, the authorized representative of the directors of the Company did not submit that stay order has been passed in this matter.

DIRECTIONS

34. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:
- a. The Noticees shall within a period of three months from the date coming into force of this direction, jointly and severally, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
 - b. The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
 - c. The repayments to the complainants/ investors 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 beneficiaries of repayments;
 - d. 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/ complainants who were availing the investment advisory services from the Noticees, as directed in this order, from the bank accounts of the Noticees;
 - e. After completing the aforesaid repayments, within a period of 15 days, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief,

CIS Division, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051, duly certified by an independent Chartered Accountant and the direction at para 34(d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

- f. 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 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors as directed in para 34(a) above, whichever is later;
 - g. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 34(f) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.
35. The direction for refund, as given in para 34(a) above, does not preclude the clients/investors to pursue 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.
36. This order comes into force with immediate effect.
37. 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: May 06, 2022

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA