National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/53214	Date: August 04, 2022
Circular Ref. No: 103/2022	

To All NSE Members

Sub: Final Order in the matter of 3M Team Research Private Limited

This is with reference to NSE circular No NSE/INVG/42736 dated November 26, 2019, referring to SEBI Order No. WTM/MB/WRO/WRO/5737/2019-20 dated November 26, 2019, NSE circular No NSE/INVG/42764 dated November 27, 2019 referring to SEBI Order No. WTM/MB/WRO/WRO/5737A/2019-20 dated November 27, 2019 and NSE circular No NSE/INVG/46575 dated December 08, 2020 referring to SEBI Order no. WTM/MB/WRO/151/2020-21 dated December 07, 2020.

SEBI now vide its order no. WTM/AB/WRO/WRO/18254/2022-23 dated August 04, 2022, has hereby debarred the following entities from accessing the securities market, directly or indirectly, and they are prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of one (1) year from the date of this order or till the expiry of one (1) year from the date of completion of refunds to complainants/ investors as directed in sub-paragraph (i) of the order, whichever is later.

Sr. No.	Name of the Entity	Registration No./PAN
1	3M Team Research Pvt. Ltd.	INA000002199/AAACZ5112B
2	Rakesh Sethi	ATIPS2321R
3	Pramod Jain	AOAPJ9120L

The Order shall come into force with the immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

National Stock Exchange of India

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Vaishali Gupta (Extension: 23460), Mr. Anand Jangir (Extension: 22385)

Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

Annexure

Final Order in the matter of 3M Team Research Private Limited

WTM/AB/WRO/WRO/18254/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

SL. NO.	NOTICEE	REGISTRATION NO. /PAN
1.	3M Team Research Pvt. Ltd.	INA000002199/ AAACZ5112B
2.	Rakesh Sethi	ATIPS2321R
3.	Pramod Jain	AOAPJ9120L

(Aforesaid entities are referred to in this order individually by their respective names or Noticee numbers and collectively as "the Noticees".)

IN THE MATTER OF UNREGISTERED PORTFOLIO MANAGEMENT SERVICES BY 3M TEAM RESEARCH PRIVATE LIMITED

Background

1. Securities and Exchange Board of India ('**SEBI'**) received complaints on the SEBI SCORES platform in respect of 3M Team Research Private Limited (formerly known as 3M Team Research Services Pvt. Ltd.)(**'3M Team'/'Noticee Company'**), which was earlier registered with SEBI as an investment adviser. It was *inter-alia* alleged in the complaint that the Noticee Company was presenting itself as a SEBI registered portfolio manager. SEBI conducted a preliminary examination of the activities of 3M Team and its directors Rakesh Sethi ('**Noticee No. 2**') and Pramod Jain ('**Noticee No. 3**') wherein it was noted that the Noticees were not registered with SEBI as a portfolio manager.

2. Based on the findings of the initial examination, SEBI passed an ad-interim ex-parte order dated November 26, 2019 ('**Interim Order**'), *prima facie*, observing the following:-

"a. *3M Team was holding itself out as a SEBI registered Portfolio Manager without obtaining the necessary certificate of registration and its acts were observed to be in violation of Section 12(1) of the SEBI Act, 1992, read with Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as the '**PMS Regulations'**).*

*b. 3M Team was observed to be offering assured returns by making representation to that effect on its website 3mteam.in, which were also observed to be in violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 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 the '**PFUTP Regulations'**) read with Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the SEBI Investment Adviser Regulations, 2013 (hereinafter referred to as '**IA Regulations'**).*

*c. Mr. Rakesh Sethi, also an Associated Person (hereinafter referred to as '**AP**') of Arihant Capital Markets (hereinafter referred to as '**Arihant**'), was observed to be offering/ promising assured returns and had lured investors including the complainant to open a trading and demat account with them and thereby observed to have acted in contravention of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) and 4(1) of the PFUTP Regulations."*

3. Vide the aforesaid Interim Order, the Noticees were also directed to cease and desist from undertaking the activity of investment advisory services and also display the contents of the Order on its website and other social media platforms. Rakesh Sethi, one of the directors of the Noticee Company, was also restrained from buying, selling or dealing in securities till further directions. Subsequent to the passing of the Interim Order, after granting a post-decisional hearing to the Noticees, SEBI confirmed the directions against

the Noticees vide its order dated December 07, 2020 ('**Confirmatory Order**'). It was also detailed in the Confirmatory Order that an examination/enquiry/investigation into the activities of the Noticee Company will be conducted by SEBI. Pursuant to the completion of the examination undertaken by SEBI, a Show Cause Notice ('**SCN**') dated April 20, 2022, was issued to the Noticees.

4. In the meanwhile, Noticees moved the Hon'ble Securities Appellate Tribunal ('**SAT**') challenging the Interim and Confirmatory Orders passed by SEBI. SAT vide order dated May 11, 2022, dismissed the appeal noting that a SCN had already been issued by SEBI in the matter. SAT also directed the Noticees to submit their reply to the SCN on or before June 1, 2022, and SEBI was directed to grant a hearing within 3 weeks of receipt of the reply and, thereafter, pass a final order in the matter within 4 months.

5. The Noticees submitted their replies vide letter dated May 25, 2022. An opportunity of hearing was granted subsequently to the Noticees on June 15, 2022, wherein they were represented by Ms. Poonam Gadkari, Advocate. Substantially, similar arguments were made on behalf of all the three Noticees. However, in some respects, certain additional submissions were made on behalf of Noticee No. 2. The summary of the submissions made on behalf of the Noticees is given below:-

Arguments made on behalf of all the Noticees

a. 3M Team was earlier registered with SEBI as an investment adviser. The complainant had approached 3M Team for seeking investment advice. As part of providing investment advice, the name of Arihant was suggested for opening the trading account of the complainant.

b. Noticees denied the allegation that he had forced the complainant to open an account with Arihant.

c. Noticee Company denied the claim that a sum of Rs. 20,000 was received from the complainant for providing portfolio management services. It was instead submitted that the payments were received towards rendering investment advisory services.

d. Regulation 15(1A) of the PMS Regulations requires any portfolio manager not to accept from clients, funds or securities of an amount less than Rs. 25 lakh. It can be gauged that the payment of Rs.2,00,000 which was made by the complainant was made directly to Arihant and the payment of Rs. 20,000, which was made to 3M Team, was for availing investment advisory services.

e. Noticees also submitted that the complainant had admitted on record that the SMSs and emails from Arihant in respect of the trades carried out in the Demat account were received by the Complainant.

f. The allegation regarding promising assured returns in the range of 200- 400 % per annum was also denied. The Noticees also denied that they offered assured returns of 10% - 40% per month. It was submitted that these were only projections made based on available information. In response to these allegations made in the SCN, the Noticees submitted that the returns indicated were probable returns derived as per the available financial tools and comparative estimates.

g. Noticees also submitted that they had a clean track record and there was no other complaint made against them.

h. It was further submitted that it can be noted from the contents hosted on the website of the Noticee Company that the service advertised was PMS Advisory Service which makes it apparent they had merely provided advisory services and were not managing the portfolio of clients. It was also submitted that just on account of the use of the term 'PMS' on their website, it did not mean that they were offering portfolio management services.

i. Noticees also submitted that they had never disseminated any false or misleading information or advice likely to influence the decision of investors dealing in securities. In view of the same, it was denied that they had violated Sections 12A(a), (b) and (c) of the SEBI Act and the provisions of the PFUTP alleged in the SCN.

Additional arguments made on behalf of Notice No. 2

a. Noticee submitted that the allegation of the complainant that he was operating the account of the complainant and executing trades was completely erroneous and misleading.

b. Noticee also denied the allegations that the investment decisions pertaining to the trades executed in the complainant's account were taken by him.

c. The findings in the arbitration award were also disputed by the Noticee. It was submitted that an appeal was not preferred against the arbitral award due to commercial considerations and mere non-appeal cannot be construed as an admission of the conclusions reached therein.

d. It was further contended that the Noticee had not made investors open Demat accounts and trade with Arihant based on the returns that were indicated on the website of 3M Team.

e. Noticee also denied that he had control over the funds in the trading account of the complainant.

Consideration

6. I have considered the allegations made in the Interim and Confirmatory Orders, the findings of the examination conducted by SEBI, the replies received in the matter and the

submissions made by the Noticees during the personal hearing. I shall now proceed to consider the issues on merit.

Unregistered Portfolio Management Service

7. I note from the material available on record that a complaint was received by SEBI *inter-alia* alleging that the Noticee Company was providing unregistered portfolio management services. Pursuant to receiving the complaint, an examination was undertaken by SEBI. It was noted during the examination, from the archival data of the website which was maintained by the Noticee Company, that the following claims were made on the site,-

"PMS is a discretionary portfolio service where <u>we independently manage your funds</u> so you do not have to worry about the results as your money is in expert hands. PMS is a sophisticated investment vehicle that offers a range of investment strategies to capitalise on the opportunities in the equity as well as capital market. The portfolio management services combined with competent fund management, dedicated research & technology ensures an experience for its clients. A portfolio management service is one of such service that is fast gaining eminence as an investment avenue of choice of high net worth investors.

At 3M TEAM we provide solutions which we help you relax while your money continues to work for you through the <u>3M Team Portfolio Management</u>"

8. It is further noted from the SCN that it was recorded in a receipt provided by the Noticee Company to the complainant, acknowledging payment of a sum of Rs. 20,000, that the payments were received for availing the service 'PMS'. I note that similar claims were made in the emails dated April 04, 2018, and April 08, 2014, sent by the accounts team of the Noticee Company to the complainant, wherein also it was stated that the invoice pertains to payments received for availing the service 'PMS'.

9. I further note from the records that it was observed from the job opening advertisements posted by the Noticee Company, on job portals naukri.com, wisdomjobs.com and simply hired, that it was looking to hire executives for offering services related to "*PMS & Wealth Management, PMS accounts, investment planning & management of PMS accounts"*. It is also observed from archived records that 3M Team had placed similar job advertisements on

its website as well. It is further noticed that in the advertisement under the head "Position Title", the description *"Efficient Management of corporate desk and PMS"* was included.

10. It is also noted from the records that the complainant had initiated arbitration proceedings against Arihant and Rakesh Sethi (Noticee No. 2), who was an Associated Person ('**AP**') of Arihant, under NSE's arbitration platform, and the Independent Arbitrator vide Order dated January 30, 2019, had awarded a sum of Rs. 66,976/- to the complainant. Further, on an appeal preferred by the complainant, it is noted, the appellate authority revised the amount to Rs. 1,33,952/- in favour of the complainant. It is noted that vide the Order dated January 30, 2019, the arbitrator had, *inter-alia,* observed as under:-

> "*3M Team Securities and Services Pvt Ltd had been maintaining a website '3mteam.in/services' offering various types of PMS, Wealth Management and growth schemes. The firm was assuring various types of high returns under PMS Advisory Services – <u>Assured Return -10% per month, Expected Return 20% to 40% per month (depend on Market opportunity).</u> In BTST segment minimum amount was Rs. 1 lakh and Future segment it was Rs. 2 lakh. <u>Further Rs. 20000/- was charged as PMS fee.</u> In terms of operation of the scheme, which was forwarded by Sr. Executives of 3M the investment decisions, were to be taken by team of experts of 3M".* It was also stated that *"Trades were carried out by the team 3M in account of claimant from April 14 to June 15 (around 15 months)".*
>
> *"A perusal of the impressive print outs of the site of the Team 3M advisors and subsequent confirmations as to Operation of Scheme for assured returns by executives of Team 3M, the outfit effectively owned and managed by Sub executives of Team 3M, had clearly indicated that all Investment Decisions for transaction in the account shall be taken by the experts of Team 3M advsiors only. The effective control over management of funds placed in trading account with TM vested with sub broker and his outfit."*

11. I note that the main defence that has been offered by the Noticees in respect of this allegation is that 'PMS' was only a term used by the Noticees to describe the investment advisory services they were offering. And merely because of the use of the term 'PMS' the complainant was trying to drag them under the definition of 'portfolio manager'. A similar explanation, I note, was offered in respect of the contents of the job advertisements as well. Further, as regards the findings in the arbitration award, it was submitted that they had not preferred an appeal due to commercial considerations and not because they had accepted the findings contained therein.

12. Having considered the reply of the Noticees to the allegation made in the SCN regarding offering unregistered portfolio management services, I think it would be appropriate at this juncture to refer to the definition of the 'portfolio manager' as contained under Regulation 2(cb) of the SEBI(Portfolio Management Service) Regulations, 1993, ('**PMS Regulations**, 1993') (which has since been repealed and replaced by the SEBI(Portfolio Managers)Regulations, 2020) which is as follows:-

"portfolio manager" means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or the funds of the client, as the case may be"

13. I note from the definition of the term "portfolio manager", as defined in the now repealed PMS Regulations, 1993, that the critical test that needs to be satisfied for coming within its purview is the control of the manager over the securities/funds of the clients. In the present matter, it is noted that there were claims made on the website of the Noticee Company that 3M Team would be independently managing the funds of the clients. Further the arbitral awards, referred above, also held that the control of the trading account of the complainant was with the employees of 3M Team. Apart from the above, I also note that the Noticee Company vide letter dated July 29, 2020, had admitted that the complainant had filed an authority letter with the broker authorising Rakesh Sethi (Noticee No. 2), who is a director of the Noticee Company, to execute trades on behalf of the complainant. A copy of the authorisation letter was also filed along with the said reply.

14. Given the above, I am of the considered view that there is sufficient material on record to hold that the Noticees were having effective control over the funds/securities of the complainant and, therefore, the contention made on behalf of the Noticees that 'PMS' was only a term used by them to describe their investment advisory service is liable to be rejected. In view of the same, I hold that the activities undertaken by the Noticees come

within the definition of the term 'portfolio manager' under PMS Regulations, 1993. In terms of Section 12(1) of the SEBI Act, it is imperative for any person carrying out portfolio management activities to obtain a certificate of registration from SEBI and carry on its activities in compliance with the regulations framed by SEBI in this regard. I note that the PMS Regulations, 1993, have since been repealed by regulation 42 of the PMS Regulations, 2020. Regulation 42(2)(a) of the PMS Regulations, 2020, further, provides as under:-

"(2) Notwithstanding such repeal, —

(a) anything done or any action taken or purported to have been done or taken including registration or approval granted, fees collected, registration or approval, suspended or cancelled, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;"

15. In view of the same, I note that violation of the provisions of the PMS Regulations, 1993, can be continued after the repeal of the said regulations under the corresponding provisions of the PMS Regulations, 2020. I, therefore, find that the activities undertaken by the Noticees no. 1, 2 and 3 without holding the mandatory certificate of registration as portfolio manager, are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3 of the PMS Regulations, 1993 and Regulation 42 of the PMS Regulations, 2020

Offering Unrealistic/assured returns

16. It is alleged in the SCN that during the examination conducted by SEBI, it was noted that schemes offering unrealistic/assured returns were advertised on the website of 3M Team. I note from the records that a scheme labelled "*Wealth Creator Stock Future/BTST/STBT Scheme*" was advertised which offered returns to the tune of 200 to 400 per cent per annum. The salient features of the scheme, as advertised on the website, included the following claims:-

"a. One Daily Call in Future…with sure shot and money making call.

b. In One Quarter: Return Per Month: 40000-50000"

17. It is also noted that in connection with the offering of 'PMS Advisory Services', 3M Team had mentioned on their website that in the equity and commodity markets there would be an assured return of 10% per month and an expected return of 20% to 40% per month. 3M Team, it was observed, had also advertised a service/ product named 'Modi 2019 to 2024 (Multibagger calls)' and one of the features of this service/ product was an expected return of 100-200 per cent.

18. I note that the Noticees have contended that the allegations regarding the offering of unrealistic/assured returns, made in the SCN, are based on an incorrect reading of the contents of the website. It was submitted that the Noticees had never promised assured returns and the returns advertised on the website were only estimates which were made based on the available financial tools.

19. Before moving forward to address this issue, it will be appropriate to refer to the relevant provisions of the SEBI Act, the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Related to the Securities Market) Regulations, 2003 ('**PFUTP Regulations'**) and the SEBI (Investment Advisers) Regulations, 2013 ('IA Regulations') alleged to have been violated by the Noticees:-

Section 12A of the SEBI Act *inter-alia* states as under:-

"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;"

Regulation 3 (a), (b), (c), and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 *inter-alia* states as under:-

"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 research 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."

Regulation 4(1) and 4(2)(k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 *inter-alia* states as 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 manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—

(a)…

(b)…

…

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investor;[1]

(k)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[2]*;"*

Clauses 1 and 8 of the Code of Conduct read with Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013, *inter-alia* states as under:-

"15(9). An investment adviser shall abide by Code of Conduct as specified in Third Schedule."

………….

Third Schedule

Code of Conduct for Investment Adviser

[1] Clause (k) as it read prior to being substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019

[2] Clause (k) as it read prior to being substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022w.e.f. January25, 2022

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

   …..

8. *Compliance - An investment adviser including its partners, principal officer and persons associated with investment advice shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.*

20. Section 12A(a)–(c) of the SEBI Act read with Regulation 3(a)–(d) of the PFUTP Regulations, 2003 *inter-alia* prohibit employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Regulation 4(1) of the PFUTP Regulations, 2003, provides for prohibition on indulging in fraudulent or unfair trade practices in securities while Regulation 4(2)(k) states that misleading and false news/advertisements designed to influence the decision of investors to purchase of the securities shall be deemed to be fraudulent. The Code of Conduct for Investment Advisers under Schedule III of the IA Regulations requires registered investment advisers to act honestly and fairly and in the interest of the clients.

21. I have considered the arguments made on behalf of the Noticees and I am of the view that they lack merit and are liable to be rejected. It goes without saying that any reasonable form of financial modelling to estimate returns should take into consideration the risk factors associated with investing in equities, including the prospect of incurring capital losses. I note that it was improper on the part of 3M Team, which was in fact earlier registered with SEBI as an investment adviser, to advertise assured/unrealistic returns in the range of 200% to 400%. The Noticees cannot seek to avoid liability, after making such tall claims, by blandly stating that they were only estimates based on available financial modes.

22. Such misleading claims, I note, were made on the website of the Noticee Company to induce the clients to seek investment advisory services and unregistered portfolio

management services offered by the Noticee Company. The Noticees have, therefore, knowingly advertised on their website schemes offering unrealistic and assured returns only with an intention of misleading the investors and inducing them to make investments in the securities markets. Such misleading representations made by the Noticees are deceptive and fraudulent in nature and are well covered within the definition of "fraud" defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 . I am therefore of the view that the above discussed fraudulent activities/ conduct/ act/ practice of the Noticees, amount to violation of provisions of Section 12A (c) of SEBI Act, 1992 and regulations 3(d) and regulations 4(1) of PFUTP Regulations, 2003. Such acts, I hold, are also deemed fraudulent under regulation 4(2)(k) of the PFUTP Regulations, 2003.

Providing execution service to the complainant without keeping Investment Advisory Services segregated

23. It is alleged in the SCN that Rakesh Sethi, while serving as a director of a registered investment adviser, had executed trades on behalf of the clients of 3M Team in his capacity as an AP of Arihant. In terms of regulation 22 of IA Regulations, as it then stood, if a body corporate registered as an investment adviser was providing execution services, then it was required to keep the investment advisory service and execution service segregated. The text of the provision is extracted below:-

"Segregation of execution services.
22 Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:
Provided that such distribution or execution services can only be offered subject to the following:

(a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.
(b) The investment adviser shall maintain arms length relationship between its activities as investment adviser and distribution or execution services.
(c) All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through the investment adviser."

24. I note from the records that the complaints received against Noticee Company alleged that it was inducing clients to open a trading account with Arihant with Noticee No. 2 as its AP. It is also noted that an employee of the Noticee Company, vide email dated February 7, 2014, had forwarded Demat and Trading Account opening forms to the complainant for signature.

25. I, also, note that the Arbitration Order, referred above, held that the *effective control over management of funds placed in trading account with TM vested with sub broker and his outfit i.e. 3M Team*. In view of the same, I note that the allegation that the Noticees have failed to segregate their investment advisory service and the execution service offered by its director stands established and, consequently, the Noticees have not complied with the provision of regulation 22 of the IA Regulations, as it then stood.

Fees collected by the Noticee Company

26. It is noted from the records and the replies filed by the Notice Company that a sum of Rs. 89.4 lakh was received as fees by 3M Team during the period starting from the date it was granted the certificate of registration as an Investment Adviser (September 09, 2014) till the date of passing the Interim Order. The details of the fees received are provided in the table below:-

Table 1		
Sl. No.	**Period-Year wise**	**Amount (Rs.)**
1.	2014-15	43.93 lakh
2.	2015-16	24.49 lakh
3.	2016-17	17.77 lakh
4.	2017-18	3.21 lakh
Total amount collected		Rs. 89.4 lakh

27. I note that even though the Noticees were called upon to provide information related to the client maser data and other related information to enable SEBI to segregate the amount

collected by 3M team out of advisory services and from unregistered portfolio management services, no such data was submitted. Noticees submitted in this regard that they were unable to provide the information as they had shut down their business and office. In view of the same, as the break-up of fees collected by the Noticees was not provided, I am constrained to conclude that the entire fees collected by the Noticees, as detailed in Table 1, have been on account of promises related to assured returns and unregistered portfolio manager activities carried on by the Noticees.

28. I, therefore, hold that the amount of Rs. 89.4 lakh collected by Noticees has been from activities they had engaged-in in contravention of regulation 3 of SEBI (Portfolio Managers) Regulations, 1993 read with Regulation 42 of the PMS Regulations, 2020, Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the IA Regulations and section 12 (1) of the SEBI Act.

Conduct of Rakesh Sethi, Director of 3M Team

29. It is also noted that Rakesh Sethi, director of 3M Team, using the contents of the website promising assured returns induced customer including complainant to uses open a trading account with Arihant where he was an AP. Further, as stated above, the Noticee Company, vide email dated February 7, 2014, forwarded Demat and Trading Account opening forms to the complainant for his signature.

30. It is also noticed that the following observations are made in the arbitration award dated January 30, 2019, and the Appellate Panel award dated April 26, 2019, passed by the appellate authority of NSE against Arihant and its then AP, Rakesh Sethi, director of 3M Team:-

a. The complainant had opened a trading and Demat account with Arihant Capital Markets only due to the assured high return offered by 3M Team and confirmation given by its employees.

b. The control over the funds in the trading account of the complainant vested with Rakesh Sethi.

c. No trade instructions have been given by the complainant and the effective investment decisions in the account were taken by Rakesh Sethi. As such, the entire trading activity in the account of the complainant is unauthorized.

31. In view of the above, it is noted that Rakesh Sethi, in his capacity as director of the 3M Team had made use of the claims of unrealistic/assured returns made on the website of 3M Team to lure investors to open a trading and Demat account with Arihant. It is also observed that Rakesh Sethi had control over the funds in the trading account of the complainant and all decisions regarding the same have been taken by Rakesh Sethi.

32. In view of the above, I hold that Rakesh Sethi has indulged in a manipulative and deceptive practice by way of which he has defrauded the complainant, who is an investor in the securities markets. Accordingly, I hold that Rakesh Sethi has contravened Section 12A (c) of the SEBI Act, 1992, and Regulations 3(d) and 4(1) of the PFUTP Regulations.

Monetary Penalty

33. The SCN had also called upon the Noticee to show cause as to why penalty under Section 15HA and 15HB of the SEBI Act should not be imposed against it. The relevant extracts of the aforesaid provisions are reproduced below:-

"Penalty for fraudulent and unfair trade practices.
15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher

Penalty for contravention where no separate penalty has been provided.
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

34. For the imposition of penalty under the provisions of the SEBI Act, Section 15J of the SEBI Act,1992 provides as follows:-

"Factors to be taken into account while adjudging quantum of penalty.
15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.
Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

35. In this regard, I find that SCN does not mention the amount of disproportionate gain or unfair advantage made or the amount of loss caused to an investors as a result of the default. However, as stated in paragraph 28, Noticees had collected an amount of Rs. 89.4 lakh in contravention of the provisions of the PMS Regulations, 1993 and the IA Regulations and refund directions are being issued in respect of the said amount. In view of the same, I am of the considered view that the imposition of a penalty of Rs. 8,00,000 under Section 15 HA and Rs. 2,00,000 under Section 15 HB of the SEBI Act would be commensurate with the violations committed by the Noticees.

Directions

36. I, in exercise of powers conferred upon me under sections 11(1), 11 (4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby direct that: –

i. The Noticees shall within a period of three months from the date of coming into force of this order, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of their investment advisory activities or unregistered portfolio management services;

ii. The Noticees shall issue a 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 order. A period of two months from the date of the public notice, as stated above, shall be provided to the investors/clients for submitting any claims;

iii. The repayments to the investors /clients 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;

iv. 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 from the bank accounts of the Noticees, only for the purpose of making refunds to the investors /clients who were availing the investment advisory services or unregistered portfolio management services from the Noticees;

v. After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, Division of Post - Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C-7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of this order, duly certified by an independent Chartered Accountant and the direction at sub-paragraph (iv) above shall cease to operate upon filing of such report on completion of refunds to investors /clients, to the satisfaction of SEBI;

vi. Noticees No. 1, 2 and 3 are debarred from accessing the securities market, directly or indirectly, and are prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of one (1) year from the date of this order or till the expiry of one (1) year from the date of completion of refunds to complainants/ investors as directed in sub-paragraph (i) above, whichever is later.

vii. Noticees No. 1, 2 and 3 shall also, jointly and severally, be liable to pay monetary penalty, as specified hereunder:-

PROVISIONS UNDER WHICH PENALTY IMPOSED	**PENALTY AMOUNT (IN RUPEES)**
SECTION 15HA OF SEBI ACT	RS. 8, 00, 000/- (RUPEES EIGHT LAKH)
SECTION 15HB OF SEBI ACT	RS. 2,00,000/- (RUPEES TWO LAKH)
TOTAL	RS. 10, 00, 000/- (RUPEES TEN LAKH)

37. This Order is without prejudice to any other action that SEBI may initiate.

38. The direction for refund, as given in paragraph 36 (i) above, shall not act as a bar on the clients /investors to pursue any other legal remedy 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.

39. The above directions shall come into force with immediate effect.

40. A copy of this Order shall be forwarded to:-

i. all the recognised Stock Exchanges, registered Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions; and

ii. the Government of Madhya Pradesh for action, if any.

Place: Mumbai
Date: August 04, 2022

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA