

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF

NOTICEE	REGISTRATION NO.
3M TEAM RESEARCH PVT. LTD.	INA000002199

IN THE MATTER OF UNREGISTERED PORTFOLIO MANAGEMENT SERVICES BY 3M TEAM RESEARCH PVT. LTD.

Background

1. Securities and Exchange Board of India (“SEBI”) received complaints dated February 15, 2016 and March 26, 2017, on the SEBI Complaints Redress System (“SCORES”) platform in respect of 3M Team Research Pvt. Ltd. (formerly known as 3M Team Research Services Pvt. Ltd.) (“3M Team”/“Noticee”), which was registered with SEBI as an investment adviser. It was *inter-alia* alleged in the complaint that the Noticee was presenting itself as a SEBI registered portfolio manager. SEBI conducted a preliminary examination of the activities of 3M Team to examine the veracity of the allegations made in the complaint.
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. Subsequent to the passing of the Interim Order, after granting a post-decisional hearing to the Noticee, SEBI confirmed the directions against the Noticee vide its Order dated December 7, 2020 (“**Confirmatory Order**”). It was also directed 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 Noticee. Subsequently, a Final Order in the matter was passed on August 4, 2022, wherein it was held that the charges alleged against the Noticee in the SCN stood established.
4. Simultaneously with the aforesaid proceedings, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations**”) and appointed a Designated Authority (“**DA**”) to enquire into whether the alleged violations by the Noticee warranted suspension or cancellation of the Certificate of

Registration granted by SEBI or any other action provided in Chapter V of the Intermediaries Regulation. On completion of the proceedings, the DA submitted a Report dated February 27, 2023 (“**DA Report**”) recommending that the Certificate of Registration granted to the Noticee be suspended for a period of one year.

5. Pursuant to this, a post enquiry SCN (“**P–SCN**”) dated March 17, 2023, was issued to the Noticee, under Regulation 27(1) of the Intermediaries Regulations, to show cause as to why action as recommended by the DA or any other action as considered appropriate by the Designated Member should not be taken against the Noticee. A copy of the DA Report was also forwarded along with the P–SCN and the Noticee was advised to file its reply, if any, within 21 days from the date of receipt of the said SCN.
6. The P–SCN was served on the Noticee at the address available on record with SEBI. The Noticee submitted its reply to the SCN vide e–mail dated April 18, 2023. The summary of written submissions made on behalf of the Noticee is given below:
 - a. It was submitted that the Show Cause Noticee and the Hearing Notice issued by the Designated Authority was not received by the Noticee, and therefore the recommendations made in the DA Report were made ex parte.
 - b. Noticee submitted that it had already ceased its operations in compliance with the directions contained in the Interim Order.
 - c. It was also submitted that SEBI had separately also passed a penal order dated August 4, 2022, imposing a monetary penalty of Rs. 10 Lakh.
 - d. Considering the penalty already imposed on the Noticee, the suspension recommended by the DA would be excessive.
 - e. The Noticee also requested that an opportunity of personal hearing be granted in the matter.
7. Accordingly, the Noticee was provided an opportunity of personal hearing on three instances –May 26, 2023, June 13, 2023 and July 3, 2023. It is, however, noted that the Noticee failed to appear for the hearing on all three occasions. Given the same, I note that sufficient opportunities have been provided to

Noticee to present its case and I am, therefore, proceeding to consider the findings in the DA Report based on the written submissions made by the Noticee and other material available on record. It is noted that Noticee had filed a reply in the 11B proceedings initiated by SEBI. The contentions made in the said reply, wherever appropriate, will also be considered while considering the findings in the DA Report.

Consideration

Unregistered Portfolio Management Service

8. During the examination conducted by SEBI, it was noted from the archival data of the website which was maintained by the Noticee that the following claims were made therein: -

“PMS is a discretionary portfolio service where we independently manage your funds 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 3M Team Portfolio Management”

9. From the records, it was observed from the job opening advertisements posted by the Noticee for job openings, 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 was also observed from archived records that the Noticee had placed similar job advertisements on its website as well. It was 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 that the complainant had initiated arbitration proceedings against Arihant and Rakesh Sethi (one of the Directors of the Noticee), who was an AP of Arihant, under NSE's arbitration platform, and the Independent Arbitrator vide an 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 that 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 – Assured Return -10% per month, Expected Return 20% to 40% per month (depend on Market opportunity). In BTST segment minimum amount was Rs. 1 lakh and Future segment it was Rs. 2 lakh. Further Rs. 20000/- was charged as PMS fee. 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 advisors 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 Noticee, in the 11B proceedings, in respect of this allegation is that "*PMS*" was only a term used by the Noticee to describe the investment advisory services that were being offered. It was submitted that the complainant had alleged that the Noticee was offering portfolio management services only based on this. 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 the Noticee had not preferred an appeal due to commercial considerations and not because it had accepted the findings contained therein.

12. Having considered the reply of the Noticee to the allegation 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, who is a director of the Noticee Company, to execute trades on behalf of the complainant.
14. Given the above, I am of the considered view that there is sufficient material on record to hold that the Noticee was having effective control over the funds/securities of the complainant. In view of the same, I hold that the activities undertaken by the Noticee come within the definition of the term "*portfolio manager*" under the 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. It is reiterated 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 Noticee 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 noted from the DA Report that schemes offering unrealistic/assured returns were advertised on the website of the Noticee. It is noted that a scheme labelled “*Wealth Creator Stock Future/BTST/STBT Scheme*” was advertised which offered returns to the tune of 200% to 400% 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. I note that the Noticee had during the 11B proceedings, contended that the allegations regarding offering of unrealistic/assured returns were based on an incorrect reading of the contents of the website. It was submitted that the Noticee had never promised assured returns and the returns advertised on the website were only estimates which were made based on the available financial tools.

18. Before moving forward to address this issue, it will be appropriate to refer to the relevant provisions of the SEBI Act, the PFUTP Regulations and the IA Regulations alleged to have been violated by the Noticee:-

SEBI Act

“12A. No person shall directly or indirectly—

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

PFUTP Regulations

“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.”*

“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 securities²;

IA Regulations

“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. *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.

19. Section 12A(a)–(c) of the SEBI Act read with Regulation 3(a)–(d) of the PFUTP Regulations, *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, 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

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, 2022 w.e.f. January 25, 2022

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.

20. Having considered the arguments made on behalf of the Noticee, 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, a SEBI registered investment adviser, to advertise assured/unrealistic returns. The Noticee cannot seek to escape liability, after making such tall claims, by hiding behind the argument that the claims were only estimates based on available financial models.
21. Such misleading claims, I note, were made on the website of the Noticee to induce the clients to seek investment advisory services and unregistered portfolio management services that were being offered. The Noticee has, therefore, knowingly advertised on its 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 Noticee is deceptive and fraudulent in nature and is covered within the definition of “*fraud*” as defined under Regulation 2(1)(c) of the PFUTP Regulations. I am therefore of the considered view that the above discussed fraudulent conduct/ act of the Noticee amounts to violation of the provisions of Section 12A(a)–(c) of the SEBI Act read with Regulation 3(a)–(d) and Regulations 4(1) and 4(2)(k) of the PFUTP Regulations and the Clauses 1 and 8 of the Code of Conduct under Schedule III to the IA Regulations.

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

22. It is alleged in the SCN that Rakesh Sethi, one of the Directors of the Noticee, had executed trades on behalf of the Noticee’s clients in his capacity as an AP of Arihant. In terms of Regulation 22 of the 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 arm’s 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.”*

- 23. I note from the records that the complaints received against the Noticee had alleged that it was inducing clients to open a trading account with Arihant where the Noticee’s director was an AP. It is also noted that an employee of the Noticee, vide e-mail dated February 7, 2014, had forwarded Demat and Trading Account opening forms to the complainant for signature.
- 24. Further, as noted from the Arbitration Order referred above, it was held therein 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 Noticee has failed to segregate its investment advisory service and the execution service stands established and, consequently, the Noticee has not complied with the provisions of Regulation 22 of the IA Regulations, as it then stood.
- 25. I shall now proceed to consider the directions that should be issued against the Noticee that would be commensurate with the violations established in this Order. The IA Regulations have been formulated with the main objective of regulating advisory activities related to securities with a view to safeguard the interests of investors. Registration of investment advisers under the IA Regulations has been mandated so as to provide protection to investors trading in the securities market relying on the advice rendered by such entities. Registration requirements are intended to ensure that only registered

investment advisors, in compliance with the terms and conditions of the Certificate of registration and by fulfilling the prudential norms, risk profiling measures, disclosure and other requirements mandated under the Regulations, carry out advisory activities. However, as noted in this Order, the Noticee has contravened the provisions of the IA Regulations, SEBI Act and PFUTP Regulations by promising assured returns, by providing execution services and by offering unregistered services to its clients. Given the above, I am inclined to accept the recommendation in the DA Report that the Certificate of Registration granted to the Noticee be suspended for a period of one year.

DIRECTIONS

26. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, hereby suspend the Certificate of Registration of **3M Team Research Pvt. Ltd. (INA000002199)** for a period of one year.
27. This Order shall come into force with immediate effect.

Place: Mumbai
Date: September 20, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA