

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of 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:

Sl. No.	Name of Noticee	SEBI Registration No.
1	M/s Highbrow Market Research Pvt. Ltd. (Ways 2 Capital)	INA000001134

In the matter of Highbrow Market Research Pvt. Ltd.

Background

1. The present matter emanates from show cause notice dated May 30, 2023 (hereinafter referred to as “**SCN**”) issued to Highbrow Market Research Pvt. Ltd. (hereinafter referred to as “**Highbrow / Noticee**”) under regulation 27(1) of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”). Highbrow is registered with SEBI as an Investment Adviser Stock broker since February 21, 2014 bearing registration no. INA000001134.
2. Vide the above mentioned SCN, Highbrow was called upon to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as “**DA**”) or any other direction as deemed fit should not be issued/imposed on it in terms of regulation 27 of the Intermediaries Regulations. The issued SCN enclosed therewith the report of the DA dated March 31, 2023 made with respect to Highbrow.
3. The DA in his report had observed the following against Highbrow:
 - 3.1. Highbrow promised assured returns to its clients;
 - 3.2. Highbrow has sold multiple packages to clients with the threat of forfeiture and has charged unreasonable and undisclosed fees;

- 3.3. Highbrow has manipulated the risk profiles of its clients and has failed to abide by the principles of suitability;
- 3.4. Highbrow has charged unreasonable fees to its clients and has forcefully captured their card details;
- 3.5. Highbrow has failed to redress investor grievances.
4. Based on the aforesaid findings, the DA held that Highbrow has violated the following provisions of law during the period for the period February 21, 2014 to December 27, 2021 (hereinafter referred to as the "**Examination Period**"):
- 4.1. Sections 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").
- 4.2. Regulations 3(a), (b), (c) and (d), 4(1), 4(2) (k) and (s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").
- 4.3. Regulations 15(1), 15(9), 16, 17, 21(1) and clauses 1, 2, 5 and 6 as specified under Third Schedule of Code of Conduct for Investment Adviser of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "IA Regulations").
- 4.4. SEBI Circular CIR/OIAE/2014 dated December 18, 2014.
5. The DA in his report has made the following recommendation:
- "...I recommend that the Noticee i.e. Highbrow Market Research Private Limited, SEBI registration no. INA000001134) may be debarred from carrying out investment advisory activities for a period of five years (5 years). However, considering that the Noticee has been restrained from the securities market from May 23, 2019, the 5 years period may be calculated taking the said period in account."*
6. As stated above that a SCN based on the Enquiry Report was issued to Highbrow. However, the said SCN sent to the last known address of Highbrow could not be served upon it. Thereafter, the SCN was served on the Authorised Representative (hereinafter referred to as "**AR**") of Highbrow vide an email dated

July 20, 2023. Highbrow was given a weeks' time to reply to the SCN. However, no reply was received from Highbrow.

7. Considering the facts and circumstances of the matter, a personal hearing was scheduled in the matter on August 30, 2023. The hearing notice along with the SCN was served on the AR of Highbrow vide an email dated August 3, 2023.
8. On the day of the scheduled hearing, the AR along with Rahul Trivedi, Director of Highbrow appeared for the hearing. The AR reiterated the submissions made vide the reply dated February 13, 2023. The said reply was submitted before the Adjudication Officer in a parallel proceeding in the instant matter.

Reply of Highbrow

9. Highbrow in its reply dated February 13, 2023 while denying the allegation levelled against it *inter alia* submitted as follows:

9.1. As no investigation report is served on the Noticee, it is assumed that investigation is pending in the matter. In view of pendency of the investigation, it may not be appropriate to initiate any action to penalize the Noticee.

9.2. Attention is invited to the Judgment dated February 8, 2023, passed in the matter of *Bull Research Investment Advisors Pvt. Ltd. vs. SEBI* (Appeal No. 62/2022). Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") was pleased to clarify the difference between "target returns" and the interpretation applied by SEBI that "target returns" amounts to assured returns. In view of the said, it is submitted that SEBI needs to review its position against the Noticee.

9.3. Most of the complaints were lodged post passing of the Interim Order dated May 23, 2019 (hereinafter referred to as "**Interim Order**"). The said complaints were lodged as Noticee was barred by the Interim Order to carry out any advisory services.

9.4. The Noticee through its website has publicly displayed the terms and conditions along with disclaimer and disclosures, which were always available to the clients. It is further submitted that even all the documents

including the MoUs, Payment receipts and email correspondence, clearly communicate to the client that the investments are subject to market risks and no assured profits are promised by the Noticee.

9.5. The term “Approachable Profit” cannot be taken as guaranteed and assured. The service tenure, which is mentioned in the receipt, refers to the original tenure of the package, which the clients have subscribed, but the company was still open to provide complementary services at no extra cost if it was required. It must be noted here that, the service tenure was to be extended “if required”. This shows the Noticee’s openness to continue to provide service in the larger interest of its customer. The same need not be read as any assurance of any nature.

9.6. The target profit / approachable profit are scientifically derived figures wherein various factors are taken into consideration.

9.7. The Noticee was free to charge the fees as per its own merits. The only rider on the fees to be charged was that it was expected to be reasonable. Nothing is produced on record to show that the said fees are unreasonable.

9.8. It is requested that the call recordings submitted by the complainants should not be taken as evidence as the same appears to be bogus and manufactured. As the original call records of the Noticee are no more available with the Noticee, it is not in a position to appropriately deal with the same.

9.9. Clients have made payments of their own free consent and have willingly opted for upgraded service. Clients were satisfied with the service of Highbrow and have earned decent profit. As a result, the clients have opted for multiple services by themselves.

9.10. It submitted that the IA services are not linked to the amount of investment. The SCN has failed to distinguish between Service based model of fees and Commission charged by the brokers.

9.11. No purpose is served by creating two risk profiles. If the end result of the risk profile has not changed, there cannot be any presumption toward

manipulation of the risk profile. Hence, the only plausible reasons for existence of two risk profile is the correction of a prior mistake.

9.12. It is submitted that the two questions highlighted as leading questions, can no in manner be called to be leading questions as two clear alternatives are contemplated where client has a clear choice. The said questions are necessary to understand the aggressiveness of the client and his real intent behind staying invested in the market.

9.13. When a lead is generated a preliminary risk profile is undertaken, which is informed to client and based upon that a product is recommended. Once, the client confirms his intention to subscribe services thereafter again risk profile is re-conducted or preliminary risk profile is reconfirmed from client, on which client signs. Hence, the observations that the products are sold without risk profile are baseless and false.

9.14. It is submitted that Noticee had always taken into consideration of the proposed investment amount and financial strength of the clients. Client have opted for the services and after getting satisfied or having enough profits from the services, clients with their own wish and free consent have opted for the additional services. Further, fees are not charged based upon the amount of investment.

9.15. After the risk profile, in many instances, clients do increase their investment threshold. Hence, proposed investment as per risk profile may not be treated as underlying factor to judge the fees charged. Else, it beats the common sense and all reasonable logic that a client, who is intending to invest INR 1-2 lakh in the market, would pay INR 22 lakh toward fees.

9.16. Noticee has never asked for any details of relatives of any of its clients. It is observed that if any of its clients is satisfied with its services, he must have referred his relatives or friends to opt for the services. Every single entity was a unique client for Highbrow.

9.17. With respect to the capturing card details of the client, it is submitted that it is the client who can provide the OTP for the transaction. Therefore, if the transaction was processed, it was with the consent of the client.

Furthermore, there were instances where the client due to certain technical discrepancies provided the card details. All the acknowledgment for the payment received were sent to the clients.

9.18. Noticee states that it has almost submitted the first action taken report of almost every complaint within 7 days highbrow has never delayed in submitting ATR within prescribed time, though the time limit to submit the action taken report is 30 days.

9.19. Noticee has always intended to resolve the complaints received from any sources or SCORES. In case of long pending complaints, the complaints must be pending either with SEBI officials or with the complainant.

Consideration of Issues and Findings

10. I have carefully perused the post Enquiry SCN including the Enquiry Report served on the Noticee and reply submitted by the Noticee. After considering the allegation levelled against the Noticee in the instant matter, the following issues arise for consideration in the present proceeding:

10.1. Whether Noticee was providing assured returns to its clients?

10.2. Whether Noticee was selling multiple services to its clients?

10.3. Whether Noticee had manipulated the risk profiles of its clients?

10.4. Whether Noticee had failed to abide by the principles of Suitability while advising its clients?

10.5. Whether Noticee had charged unreasonable fees from its clients?

10.6. Whether Noticee had forcefully captured the card details of its clients?

10.7. Whether Noticee had failed to promptly redress its clients' grievances?

10.8. Whether Highbrow has violated provisions of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act?

11. Before proceeding to adjudicate the allegation levelled against the Noticee, I shall first deal with the submission of the Noticee that since no investigation report is served on the Noticee, it is assumed that the investigation is pending in the matter.

Hence, no action to penalize the Noticee should be initiated. In this regard, I note that examination in the matter has been completed post collection of information and documents from the Noticee and its Directors. Pursuant to the completion of the examination, enforcement actions have been initiated against the Noticee under Sections 11(1), 11(4) and 11B(1) of SEBI Act, Adjudication proceedings and the instant Enquiry proceedings. Hence, the submission of the Noticee that investigation is pending in the matter is incorrect.

12. In order to address the issues at hand, it would be relevant to reproduce the legal provisions which are alleged to have been violated by the Noticee. The same are reproduced below:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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 security listed or proposed to be listed in a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.—For the removal of doubts, it is clarified that any act of diversion, mutualisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

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

...

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

...

(s) mis-selling of securities or services relating to securities market

Explanation - For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

- (i) knowingly making a false or misleading statement, or*
- (ii) knowingly concealing or omitting material facts, or*
- (iii) knowingly concealing the associated risk, or*
- (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer*

Investment Advisers Regulations

General responsibility.

15.(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.

...

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

Schedule.

Risk profiling.

16. Investment adviser shall ensure that,-

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

- (i) age;*
- (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ;*
- (iii) income details;*
- (iv) existing investments/ assets;*
- (iv) risk appetite/ tolerance;*
- (vi) liability/borrowing details.*

(b) it has a process for assessing the risk a client is willing and able to take, including:

- (i) assessing a client's capacity for absorbing loss;*

(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii) questionnaire is not structured in a way that it contains leading questions.

(e) risk profile of the client is communicated to the client after risk assessment is done;

(f) information provided by clients and their risk assessment is updated periodically.

Suitability

17. Investment adviser shall ensure that,-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Redressal of client grievances.

21.(1) An investment adviser shall redress client grievances promptly.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

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.

2. Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

...

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

6. Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

SEBI circular no. CIR/OIAE/2014 dated December 18, 2014

9. All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

10. The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company / SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company / SEBI registered intermediary, for future reference.

11. Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

13. Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

Issue No. 1: Whether Noticee was providing assured returns to its clients?

13. The DA has found that Highbrow had been promising targeted returns / for a profit of (terming them as “approachable profit”) under various pre-defined packages on the investments made by the clients. The terms listed in the payment receipts which specify the target returns were —

“The service tenure is of 20 days, 131 days, or 181 days on minimum basis, after this period advisor company will provide complementary services for rest of the approachable profit, if required”.

Further, a sample of the service fee charged to clients vis-à-vis the target return is tabulated hereunder:

Table No. 4

Client Name	Payment date	Name of the service	Target Return / for a profit of (in INR)	Service Fee (in INR) exclusive of GST (18%)
Mohammad Alanoor	16-01-2018	Admire Forex Package	10,60,500	3,03,000
Routhu Sriramulu Naidu	22-08-2017	Radiant Option Package	6,50,000	2,60,000
Sujeet Chandrvar	05-10-2015	Bonanza Mcx Platinum	16,25,000	3,25,000
Kelvin Wilson	04-01-2018	Crack Future Package	10,99,000	3,14,000
Lakshmi Narain Singh	27-10-2016	Tip Top Future Package	21,76,000	5,44,000
Jai Prakash Singh	26-06-2018	Future Leader Package	6,50,000	2,60,000

14. With respect to the aforesaid allegation, Highbrow has submitted that it has never promised or assured any profits to the clients. It had publicly displayed the terms and conditions along with its disclaimer and disclosures which were always available to the clients. All of the investment related documents such as MoUs and payments receipts clearly communicate to the client that the investments are subject to market risks and no assured profits are promised. Further, Highbrow has submitted that in case the “approachable profit” was not achieved, Highbrow would continue to provide the said client with complimentary services till the time approachable profit was achieved. It shows the openness of the Noticee to continue to provide service in the larger interest of its customer.

15. In this regard, I note from the payment receipt dated October 27, 2016 of Lakshmi Narain Singh that his service tenure would be for a minimum of 180 days, and after that period, Highbrow would provide complimentary services for the balance of the approachable profit. This is an indication that Highbrow was enticing the clients with the prospect of achieving high returns irrespective of the tenure of the service,

by terming them 'approachable profits'. Further, Highbrow has submitted that its commitment to continue service post the tenure of package was motivated by its commitment to serve its client to his satisfaction. The said submission is untenable. Highbrow was under a contractual obligation to provide services to its client for consideration till the tenure of the service. The promise of continued service till the 'approachable profit' was reached, suggests that a particular profit is achievable provided the client avails the service of Highbrow. In effect, Highbrow was making a representation to its client that, irrespective of the dynamics of the market, the specified profit was achievable. To infer otherwise would mean that Highbrow which has a commercial relationship with its client was magnanimous enough to forego its fees for the same service which it was been charging its client. Highbrow's conduct lent the impression that clients would get high returns within short span of time basis the advice provided by Highbrow. This impression was aided by the offer of "complimentary service" to achieve a definitive target (in terms of a specified amount).

16. The submission of Highbrow that the term 'approachable profit' is not equivalent to guaranteed profit and the calculation for the same is based upon scientific data and past records of the company, is unconvincing. If Highbrow was not inducing its clients by the optics of high returns, then there would be no need for the IA to quantify the return / profit. The very fact that a particular sum was quantified shows that the client was lured in by giving the impression that a specific high return can be achieved by availing the services of the IA. Moreover, the submission that Highbrow's calculation for 'approachable profit' is based upon scientific data and past records of the company is devoid of any merit as securities market returns are volatile and unpredictable, particularly in the short term. Being a registered IA, Highbrow can be reasonably expected to know the fundamental principle of the securities market, that all investments in securities market are subject to market risks and that returns cannot be assured no matter how much and for how long the investment is made. Yet, the IA committed to achieve an 'approachable profit', which can be regarded as nothing but an act of enticing its clients.

17. Thus, on a perusal of the material available on record, I conclude that irrespective of the nomenclature used by Highbrow, I am of the view that its conduct shows that

it was enticing the clients with the prospect of high and quick returns. However, I note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of *Bull Research Investment Advisors Pvt. Ltd. vs. SEBI* (Appeal No. 62/2022, Order dated February 06, 2023) has held as follows:

"8. The finding in the impugned orders is, that the appellants were providing assured returns. This finding is based on a payment receipt in which the appellant has used the word "target" and, on this basis, the WTM has come to the conclusion that the word "target" indicates that it is an assured return. Further, a finding has been given that the payment receipt also indicates the fact that the service is promised to continue till the target is achieved and, on this basis, a presumption has been arrived that the appellant is giving an assurance that the target would be achieved and, therefore, providing assured returns. Apart from this document there is no other document to show that the appellant is providing an assured return. There is no evidence to show that a fixed amount was being given to the investors either on a monthly basis or quarterly basis or yearly basis.

9. Further, the word "target" does not mean assured return. As per Webster Dictionary "target" means an object, usually marked with concentric circles, to be aimed at in shooting practice or contests. What it means in the given context is a marker. The payment receipt shows "target (not assured/ not guaranteed)" meaning thereby that no assurance or guarantee is given for reaching the projected target. In another receipt, we find that it specifically states that the Company does not provide any kind of guarantee or assured returns.

10. In the light of the aforesaid, we find that WTM has cherry picked a word "target" to come to a prima facie finding that this amounts to an assured returns without considering the words "not assured / not guaranteed" and without considering the contention that the Company does not provide any guarantee or assured returns. Such non-consideration of the entire sentence and cherry picking a single word from the sentence in our opinion is unwarranted."

18. I note that the aforesaid Order of Hon'ble SAT has not been challenged by SEBI.

I note that the facts in SEBI's order dated January 25, 2021 in the matter of Bull Research Investment Advisors Private Ltd. (which was appealed against and led to the aforesaid SAT order) has similarities to the facts in this Order in the context of the allegation of assured returns. In deference to the aforesaid Hon'ble SAT order, notwithstanding my views and conclusions arrived at in previous paragraphs, the Noticee cannot be said to have assured clients of the prospect of high and quick returns on the basis of the material on record. Therefore, Highbrow cannot be said to have violated regulation 15(1) and clauses 1 and 2 as specified under Third Schedule of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

Issue No. 2: Whether Highbrow was selling multiple services to its clients?

19. The DA has found that in the very first month of the client's association with Highbrow, large number of packages were sold and substantial amount by way of fee was extracted by Highbrow from the clients. Analysis of the fees collected from the clients (sample basis) **in the first month of their association** with Highbrow is provided hereunder:

Table No. 5

S. No	Name	Date	No. of product/ package sold	Proposed investment as per Risk Profile (INR)	Amount of fees collected (INR)
1.	Mohammad Alanoor	29/11/2017 to 29/12/2017	03	2-5 lakh	3,24,702
2.	Routhu Sriramulu Naidu	22/08/2017 to 20/09/2017	04	1-2 lakh	7,34,538
3.	Sujeet Chandrvar	06/07/2015 to 06/08/2015	07	Risk profile not filled	8,87,962
4.	Ayush Kumar Agrawal	24/09/2018 to 24/10/2018	06	5-10 lakh	8,33,023

20. With respect to the aforesaid finding of the DA, I note from table no. 5 that several clients were sold multiple packages within a month of availing the advisory services. Further, the fees charged is much more than the proposed investment

amount (except in one instance). In this regard, Highbrow has submitted that it was the choice of the clients to opt for multiple services and the clients have subscribed to multiple packages after being satisfied with the services and earning profit based on the advice. I find it difficult to believe that several clients, within days of availing the services of the IA, were satisfied such that all of them enrolled for multiple services and ended up paying fees which is much more than their proposed investment amount. Further, all of the clients subscribing to various packages made profits within a few days of availing the services of the IA across segments of securities markets (derivatives, equity, forex, etc.). The aforesaid raises red flags with respect to the way the IA was operating its business. The conduct of the IA shows that the moment a new client has enrolled, the IA sells him multiple packages irrespective of the clients' proposed investment amount or his / her gross annual income. Considering that the IA was expected to carry out risk profiling of its clients, it was expected to be aware of the gross annual income details and proposed investment amount of the clients, yet multiple services were sold within a month for a consideration which was almost equivalent to their gross annual income. For. e.g. as per the risk profiling form of Mohammad Alanoor and Ayush Kumar Agarwal, it is noted that their gross annual income was INR 5 lakh and INR 10 lakh, respectively whereas the fees charged by the IA within a month is INR 3.24 lakh and INR 8.33 lakh, respectively. Paying up an amount almost equivalent to the gross annual income, cannot be by any stretch of imagination, in the best interest of the client. Rather it only furthers the interest of the IA towards maximising its revenue from a single client within a short span of time. The aforesaid conduct of Highbrow also reinforces the conclusion drawn in the preceding paragraphs that the clients are being enrolled / sold multiple services by enticing them with the prospect of abnormally high returns which is achievable by availing the services of the IA, irrespective of their proposed investment amount. There is no other rational explanation that can justify the actions of the clients of simultaneously subscribing to multiple services, if not for Highbrow, giving them the impression of achieving super normal returns. Thus, the conduct of Highbrow is in complete disregard to the interests of its clients.

21. The email correspondences that the IA has submitted in support of its submissions showing consent given by its clients merely states that the client has availed of a

particular service and paid a particular price. The client then expressed his desire to shift to a new service and transfer of the earlier paid amount to that new service. In response to the client's email, the IA replied that the client of his own free consent has upgraded from one service to another. Few such email correspondences of the IA with its clients are reproduced in the table below:

Table No. 6

Sl. No.	Client Name	Clients Email	Highbrow's email
1	Mohammed Alanoor	Email dated December 14, 2017: <i>"This is to inform you that I am Mr. MD Alaoor have paid INR 5900/- for STOCK CASH SERVICE in your company. Now kindly SHIFT my service from STOCK CASH to OPTION SIGNATURE PACK INR 229999/- and Transfer my paid amount in OPTION SIGNATURE PACK."</i>	<i>"... As per telephonic conversation held with your concerned executive and acknowledged by you, you have willingly upgraded your service from Stock Cash to Options Signature Package. The amount of Rs. 1,10,848/- paid by you for up gradation of services is with your free consent and with sound mind."</i>
2	Ayush Agrawal	Email dated September 26, 2018: <i>"I have paid INR 27.612/- for Primo Option Package. Kindly issue the Payment Receipt and relevant Document. And PAN is BCNXXXXX6J".</i>	<i>"... As per telephonic conversation held with your concerned executive and acknowledged by you, you have willingly upgraded your services from Options to Primo Option Package. The amount of Rs. 27,612/- (INR 23,400/- +GST INR 4,212/-) paid by you for up gradation of services is with your free consent and with sound mind."</i>
3	Dipak Bharvad	Email dated December 10, 2018: <i>"TODAY I HAVE PAID (INR RS. 20502.50/-) FOR CANDIT CASH, KINDLY PROVIDE ME PAYMENT RECEIVED & AT THIS MY EARLIER AMOUNT (INR RS. 5900/-) IN TO CANDIT CASH, PLEASE REVERT BACK IMMEDIATE."</i>	<i>"... As per telephonic conversation held with your concerned executive and acknowledged by you, you have willingly upgraded your services from Stock Cash to Decisive Cash Package. The amount of Rs. 20,503/- (INR 17,375/- +GST INR 3,128/-) paid by you for up gradation of services is with your free consent and with sound mind."</i>
4	Bhagirath Mal	Email dated November 24, 2018: <i>"My name is Bhagirath Mal & Today I paid INR 30,500.00 FOR Decisive Cash Pack (INR 2,60,000.00)."</i>	<i>"... As per telephonic conversation held with your concerned executive and acknowledged by you, you have willingly upgraded your services from Stock Cash to Decisive Cash Package. The amount of Rs. 30,499/- (INR 25,847/- + INR 4,653/-) paid by you for</i>

Sl. No.	Client Name	Clients Email	Highbrow's email
			<i>up gradation of services is with your free consent and with sound mind."</i>

22. From the aforesaid email correspondences following is noted:

22.1. The client asked to be shifted from one service to another.

22.2. The client had engaged in a telephonic conversation with an employee of the IA, content and background of which is unknown.

Considering that all of email correspondences listed in the table above are on similar lines, the content of the emails appears to be a standard template of the IA, likely positioned as a formality to the client, creating the pretence of voluntary and informed consent of the client.

23. Highbrow has submitted that there is no co-relation between the investment amount and the service fees as the fees are not based on the amount proposed to be invested by the client but was dependent on the service provided to the client. Further, according to Highbrow there is nothing on record to show that the fees charged by Highbrow was unreasonable. It is observed that while offering its services to a client, the IA has to take into consideration a host of factors related to a client that are broadly covered by doing risk profiling of the client and adhering to the principles of suitability. The client's capacity to absorb loss is an important factor. The IA, has the obligation, under the IA Regulations, to act in the best interests of its clients. In a situation like the one in hand, if the client has paid in fees, an amount which is almost equivalent to his total annual income within a month, and higher than his/ her investable surplus, then how would the client invest any amount and how he would be in a position to absorb any loss. The IA has a fiduciary duty towards its clients to see that the client is not exposed to unnecessary economic hardship due to the IA knowingly charging him fees that is beyond client's source of income. Thus, in the overall scheme of things and the nature of relationship between the IA and his client, there does exist a relation between the proposed investment amount and the fees that an IA can charge from his client. Moreover, there are enough material in the form of risk profile of clients showing

their proposed investment amount, gross annual income, payment receipts showing the kind of services sold, time gap between multiple services sold and tenure of services sold which when cumulatively seen shows that the fees charged by Highbrow from its clients were unreasonable. Further, the fact that the fees charged by Highbrow was mostly equivalent to the gross annual income and was more than the proposed investment amount of the client also shows that Highbrow has not taken reasonable care to ensure that the client is able to bear any related investment risks consistent with its investment objectives and financial capacity.

24. In view of the aforesaid discussion, I find that Highbrow by selling multiple packages to its clients within a short period of time and by charging unreasonable fees, has failed to act in a fiduciary capacity towards its clients as its interest of maximising revenue was in direct conflict with the interests of its clients. Further, the aforesaid act of Highbrow shows that it was not honest in its dealings with its clients and has failed to exercise due care, skill and diligence while advising its clients. Hence, it is held that Highbrow has violated regulation 15 (1) of IA Regulation and has also failed to abide by Code of Conduct under regulation 15(9) of IA Regulations read with clauses 1, 2 and 6 of Code of Conduct for Investment Adviser.

Issue No. 3: Whether Highbrow had manipulated the risk profiles of its clients?

25. The next finding of the DA against Highbrow pertains to the issue of manipulating risk profiles of its clients. It is noted that Highbrow had created two risk profiles of its clients and thereby it is alleged that the risk profiles were manipulated in order to sell a particular product. Further, it has also been alleged that the risk profile questionnaire of the IA contains two leading questions. The same were as follows:

- i. What is your preference w.r.t securities with low risk, low return over high risk, high return?*
- ii. When market is not performing well do you prefer to buy risky investments and sell less risky investments?*

26. With respect to the finding of manipulation of risk profile, I note from records (on a sample basis) that Shahjad Ahmed Khan and Jai Prakash Singh had two risk profiles. In the case of Shahjad Ahmed Khan, in one of the risk profile (December 27, 2018), it has been noted that the client has very less experience with forex

investment unlike other risk profile (January 02, 2019) of the client which provides that client has extensive experience with the forex investment. The same shows disparity in the two risk profiles of the same client done within a week's time.

27. In this regard, Highbrow has submitted that no purpose is served by creating two risk profiles, if the risk category does not change, which is the instant case. Further, it is not the mandate of the IA Regulations that forex services can be sold only to those who have extensive experience in the forex market. To sell an ideal forex package, category of risk profile must be high as it is high risk segment and in both the risk profile assessments, the risk category of Shahjad Ahmed Khan was high.

28. The aforesaid contentions of the IA are not tenable. I have perused the risk profile forms of Shahjad Ahmed Khan as available on record. It is noted that both the risk profile forms are specific to a particular product / service offered by Highbrow as opposed to being general in nature as noted in certain other instances. The risk profile form (December 27, 2018) is for the product "Options" and under the head "Experience in market products" it has been mentioned as "Derivative Stocks". The other risk profile (January 02, 2019) of Shahjad Ahmed Khan is for the service "Ideal Forex Package" and hence the need to show "Forex" under the head "Experience in market products". The aforesaid cannot be a coincidence. The submission of Highbrow that no purpose is served by creating two risk profiles if the risk category does not change, is without any merit as selling to a client who has experience in derivative segment of the market, a product related to forex, is against the wisdom of asking him about his experience in market products. Therefore, it can be inferred that the risk profile of the client was manipulated to ensure that the product, which is being sold to him, is considered suitable for him.

29. The objective of Regulation 16 of IA Regulations which deals with risk profiling of the investors, is that the IA should be able to ascertain the risk appetite of the client and then recommend a product/service suitable to a client having such risk profile. Further, the regulation also provides that the IA should have a process for assessing that the client is able to bear the risk related to the investments, being recommended by the IA to the client. Thus, the overall risk category as well as the questions about various aspects pertaining to financial condition of the client and experience of the client in various segments of the market, are relevant. Thus, the

contention of Highbrow with respect to selling of forex package to Shahjad Khan, is untenable.

30. With respect to the risk profile forms of Jai Prakash Singh, the following is noted:

- 30.1. Proposed Investment Amount has been changed from less than INR 1 lakh to INR 5 – 10 lakh.
- 30.2. Gross annual income has been changed from INR 1-5 lakh to INR 5-10 lakh.
- 30.3. Investment experience has been changed from less than 3 years to more than 5 years.
- 30.4. Risk tolerance has been changed from medium to high.
- 30.5. Occupation has been changed from Government sector to Private Sector.

31. Regarding the risk profiles of Jai Prakash Singh, Highbrow has made similar submissions as made for Shahjad Ahmed Khan that modifications of answers to certain questions in the risk profile questionnaire, has not changed the risk category of the client. As noted in preceding paragraphs, the risk category cannot be seen in isolation. It has to be always read with the answers given in the risk profile form as certain answers of the client, would help the IA in arriving at an informed decision about the product to be recommended to the client. For e.g., answer of the client to the question about experience in securities market would show his inclination towards a specific category of security. From the changes in the risk profile of Jai Prakash Singh, I note that the changes that have taken place are all material in nature viz., proposed investment amount, gross annual income, investment experience and occupation. All the aforesaid will have a considerable bearing on the product which can be advised by the IA to him and the said parameters cannot be brushed aside as being irrelevant by merely stating that the modified answers to them, has not led to the change in the risk category of the client.

32. Highbrow has submitted that only after communicating the provisional risk profile to the client, it used to process the fees. Further, Highbrow contends that once the client confirms his intention to subscribe to the services, his risk profile was re-conducted or preliminary risk profile is reconfirmed from the client. In this regard, I

note that Highbrow has not submitted any documented proof of following the practice of having provisional risk profile of the client or any process flow where it would be mentioned that provisional risk profiling has to be done by its employees before processing the fees or any communication with its clients demonstrating that the risk profiling which was done is only provisional. Moreover, once the client has paid the fees, he has no option but to confirm the provisional risk profile since as per material available on record, Highbrow does not have a policy of giving refund / cancellation / transfer policy. Thus, the submission of Highbrow is untenable.

33. Highbrow has contended that the delayed communication of risk profile does not mean that the package is sold upfront without any risk profiling and suitability assessment. Accordingly, fee would be charged based on risk assessment and then the same communication is being forwarded to the client over email. I note that the very purpose for which the IA Regulations mandate that the IA must necessarily carry out risk profiling before selling his services, is that in the first place the IA has to verify the information submitted by the prospective clients and thereafter, it must give informed advice to the client which will be in the best interest of its client. Processing fees or selling services by the IA even before communicating the risk profiling of the client to the client, demonstrates that the IA has scant regard for conducting any due diligence and for the sacrosanct regulatory principle that any kind of investment advice can be offered only after thorough analysis of the risk profile of the client. Therefore, selling of a product prior to communicating risk profile to the client is not an informed investment advice.

34. In view of the aforesaid discussion, I note that the risk evaluation and the category of risk assigned to the clients was done by Highbrow in a reckless and careless manner without paying any heed to the responses given by its clients during the risk assessment process. It can be inferred based on the actions of Highbrow that it was pre-decided to sell a particular service to the prospective clients without placing reliance on the response of the client or on any objective metric to determine the risk profile of a client. Thus, Highbrow was keeping its own interest at higher pedestal at the cost of the interest of its clients, which shows that Highbrow was not acting honestly while advising its client. The same also shows that Highbrow's interest is in conflict with the interests of its client, which is a failure of fiduciary duty of Highbrow.

35. The Noticee has submitted that after the risk profile, in many instances, clients do increase their investment threshold. Else, it beats the common sense and all reasonable logic that a client, who is intending to invest INR 1-2 lakh in the market, would pay INR 22 lakh toward fees. It is observed that there may be instances where the client would like to increase the proposed investment amount after the risk profile. In such situations, the IA has the fiduciary duty to see whether the proposed increase in the investment amount is within the financial capacity of the client or not, will the client be able to bear the associated risk with the increased investment amount and whether the related investment risks is consistent with the investment objective and risk tolerance of the client. If need be a fresh risk profile needs to be done and at the very least there has to be proper documentation of the reason for the said increase in the investment amount. The Noticee has not submitted any material to demonstrate that it has carried out its aforesaid fiduciary duty in cases where the client has increased his investment amount or any correspondences with its clients which would show that the proposed increase in the investment amount by the client was an informed decision. Hence, the submission of the Noticee is untenable.

36. Regarding having two leading questions in the risk profile form, Highbrow has submitted that the said two questions do not affect the overall assessment of the risk appetite of the client. According to Highbrow, the said questions are necessary to understand the 'aggressiveness' of the client. I note from the risk profile form that there are 21 questions which a client has to answer. As observed earlier, one has to read the entire risk profile form holistically before a product is advised to the client. Thus, when a product has to be advised to the client, reliance would not be placed merely on the alleged two leading questions but on the overall information provided by the client. In any case, Highbrow has stated that the aforesaid two questions were intended to gauge the 'aggressiveness' of the clients. Thus, with respect to specific allegation of including leading questions in the risk profile form, I do not draw any adverse inference against Highbrow. However, in view of the other observations and conclusions arrived above, I find that Highbrow has failed to abide by clause 1 of Code of Conduct for Investment Adviser as mentioned in Schedule III read with regulation 15 (9) of IA Regulations.

Issue No. 4: Whether Highbrow had failed to abide by the principles of Suitability while advising its clients?

37. The next finding of the DA against Highbrow is that it has not followed the requirement of suitability of advice to its clients. The DA found that the Noticee did not do any financial planning of its clients, did not consider client's investment objective while selling multiple services. Further, multiple services were sold to the clients within short span of time and most of such services are active at a given point of time.

38. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear the investment related risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of the advice he needs and expects from the IA. Thus, there is a clear onus on the IA to reasonably satisfy itself of the suitability of its investment advice with respect to every specific client, keeping in mind the factors as stated above.

39. I note from the available record that Highbrow has sold investment products to its clients without taking into consideration even the client's annual income and proposed investment amount. The same shows lack of financial planning done by the IA for its clients. The details of some such instances are tabulated below:

Table No. 7

Sl. No.	Client Name	Annual Income (in INR)	Proposed Investment amount (in INR)	Fees charged by the IA (in INR)
1.	Mohammad Alanoor	5 lakh	2-5 lakh	8,65,011
2.	Routhu Sriramulu Naidu	5 lakh	1-2 lakh	22,32,018
3.	Ayush Kumar Agrawal	10 lakh	5-10 lakh	8,33,023
4.	L N Singh & Family	1-5 lakh	0-1 lakh	78,38,050

40. As noted from the instances highlighted in the above table no. 7 and table no. 5 under the heading "Selling multiple packages to clients" that the IA has knowingly

disregarded the sacrosanct parameters as prescribed under regulation 17 of IA Regulations, such as client's financial situation, his investment objectives, his risk appetite etc. and kept on selling multiple products and charging unreasonable fees from its clients, turning a blind eye to the actual financial status and investment needs of such clients. The instances shown in table no. 7 shows that there is no rationale or justification behind charging fees to the tune of INR 22.32 lakh from a client (Routhu Sriramulu Naidu) whose Annual Income as disclosed to the IA is INR 5 lakh and proposed investment amount was INR 1-2 lakh. Further, 4 investment products were sold to Routhu Sriramulu Naidu, as noted in table no. 5, whose proposed investment amount was INR 1-2 lakh. On the other hand, Mohammad Alnoor whose proposed investment amount was higher, was sold less number of products implying that the former client, Routhu Sriramulu Naidu was more amenable and vulnerable to be influenced and exploited by the IA, than other clients. The only reasoning one can derive from the aforesaid irrational and inconsistent conduct of Highbrow is that the IA was more interested in generating income for itself by unduly influencing and giving inappropriate investment advice rather than acting honestly, fairly and in the best interests of its clients. The said act of Highbrow was also in complete disregard to client's investment objectives and financial situation. Further, it is noted that substantial amount of service fee was extracted from the client by allotting multiple packages in a very short span of time even when the tenure of initial package was still continuing, which is evidently in complete disregard to the intended investment amount and annual income declared by the client. Moreover, a client who does not have a substantially high gross annual income and intends to invest a small portion of its gross annual income in the securities market but actually ends up paying the IA fees which is significantly much more than his gross annual income, only goes on to show that the IA has enticed him to part with unusually high fees by showing the prospect of high and quick returns which is achievable. On the other hand, the conduct of Highbrow shows that it has paid no heed to whether or not the client has the capacity to absorb the loss or the fact that whether or not the client has the necessary experience and knowledge to simultaneously handle multiple products related to securities market.

41. From the table no. 7, it is noted that while the clients have mentioned their proposed investment amount in the risk profiling form, Highbrow has charged service fees which are much more than their proposed investment amount and in certain cases, more than even their annual income, in complete disregard to their financial capacity. In this regard, Highbrow has submitted that it has always taken into consideration the proposed investment amount and the financial strength of the clients. Further, according to Highbrow the clients have made the payment with their free consent and after making profits. I note that the figures in the above table speaks for themselves that the fees charged by Highbrow was disproportionate to the gross annual income and to the proposed investment amount. There is no reasonable basis to believe that a client whose gross annual income is INR 5 lakh will be able to bear any related investment risks after paying INR 8.65 lakh in fees. Thus, the submission of Highbrow that it always taken into consideration the proposed investment amount and the financial strength of the clients, is not supported by its conduct of charging exorbitant fees from its clients. Highbrow was under a legal obligation to charge fees to its clients that is fair and reasonable. Even if one were to accept the incredulous argument that the clients gave consent to be charged unreasonable fee, such a consent does not permit the registered IA to ignore the clear obligation cast on it by the IA Regulations. Highbrow cannot waive of the obligation under the IA Regulations.

42. The allegation that multiple services were sold to the clients within a short span of time, it is noted from the services sold to a client, Kelvin Wilson that apart from selling him multiple services within a few days, he was sold same service within a couple of days. Not only was he charged different fees but the tenure of the services were overlapping as they had the same duration. The following table shows the relevant details:

Table No. 8

Sl. No.	Date	Payment Amount (including GST)	Adjusted Amount	Remaining amount + GST (18 % on Remaining amount)	Name of the Service	Period of service as per bills provided	Quoted profit amount
1.	29/09/2017	5,900	Nil	26000	Stock Cash	12 months	NA
2.	03/10/2017	7,080	5000	20000	Stock Cash	12 months	NA
3.	05/10/2017	15,600	11000	235780	Decisive Cash Package	50 trading session	6,50,000
4.	09/10/2017	25,000	24220	214594	Decisive Cash Package	50 trading session	6,50,000
5.	10/10/2017	49,160	45406	2,13,933	Bounce Cash Service	NA	10,53,500
6.	12/10/2017	45,000	87067	175797	Bounce Cash Package	NA	10,53,500
7.	13/10/2017	9,200	125203	168000	Bounce Cash Package	NA	10,53,500

43. With respect to the above, the IA has merely reiterated his submission that its client had subscribed to multiple services out of his own free will and after earning profit. The email correspondence submitted by the IA with the client does not show that the client has subscribed to multiple packages after making profits. Rather the email correspondence is in the standard format as noted in the preceding paragraphs of the Order. One interesting thing to note from table no. 8 is that if the client is making profit from a particular service then why he would again subscribe to the same service at a different fee for the same duration. The said action of the client does not make any rational sense. Therefore, the true objective appears to be for the IA to maximise its fees from a particular client within a short period of time and the means to achieve the same was enticing the clients with the prospect

of high and abnormal returns, in complete disregard to the inherent market risks involved in making investments in the securities market.

44. In light of the aforesaid, I am constrained to find that Highbrow's conduct as noted from the afore discussed transactions is in glaring violation of regulations 15 (1) and 17 (d) (i), d (ii) and (e) of IA Regulations and clause 1 of Code of Conduct read with regulation 15(9) of IA Regulations.

Issue No. 5: Whether Highbrow had charged unreasonable fees from its clients?

45. The DA found that Highbrow was following a practice of obtaining details of relatives of the clients. These relatives were also treated as clients. The payment received from the primary client and services provided is then split among the relatives to show that Highbrow was not charging exorbitant fee from a single client. Some of the instances in which payments have been taken from the family members of the client, is tabulated as under:

Table No. 9

Sl. No	Clients name	Relative's name	Relationship
1	L N Singh	Kusum	Wife
2	L N Singh	Usha	Daughter
3	L N Singh	Nisha	Daughter
4	Sujeet Sunder Chandavar	Vrinda Chandavar	Mother

46. Highbrow has submitted that it has always treated every client as separate entity and family members opted for its service only after being satisfied with the service. With respect to LN Singh, Highbrow has submitted email correspondences with him showing that LN Singh was satisfied with the service of Highbrow and one P&L Sheet. It is noted that the email correspondence nowhere states that LN Singh would be referring his family members to Highbrow. Therefore, the said email correspondences are not relevant to the submission that the client referred the family members. Further, the P&L Sheet submitted by Highbrow *prima facie* appears to be a ledger maintained by Highbrow. In any case, it is not supported by a demat statement and hence cannot be taken on record. Similarly, the P&L Sheets of Kusum Singh and Nisha Singh is not supported by any independent statement and hence cannot be accepted. The extract of P&L sheets of Kusum Singh and Nisha Singh are reproduced below:

Figure No. 1

Service	From	To	Profit
Crack Future	2016-10-26	2016-11-25	312487.5
		Total Profit	312487.5

*I am satisfied with the services.
I got the profit of INR 281230.75
Rajni*

Service	From	To	Profit
Primo	2017-08-29	Till (27/Mar/18)	2754866.55
HNI Options	2017-09-12	2018-03-12	2046753.95
HNI Future	2017-09-12	Till (27/Mar/18)	2700200.65
Smudge MCX	2017-11-01	Till (23/Mar/18)	443208
		Total Profit	7945029.15

*I am satisfied with the services.
I got the profit of INR 7150526.24
Nisha*

The acknowledgement on the said P&L Sheets appears to be signed by the same person as seen in the figure below. With respect to the contention of Highbrow that Usha Singh was a separate client, it has submitted a service agreement of Usha Singh. It is observed that from the available records one cannot ascertain whether it has been signed by Usha Singh as her signature in other documents is not available. In view of the above, the records submitted by Highbrow to support its claim that each of the family members of LN Singh were its separate clients, does not appear to be genuine.

47. It is observed from the risk profile of LN Singh that his gross annual income is between INR 1-5 lakh. However, the fees collected from him is INR 78,38,050/-. The said fees is highly disproportional to the gross annual income of LN Singh. Further, Highbrow has not submitted any response to the material fact whether or not the wife and daughters of LN Singh had independent source of income. Therefore, in the given facts and circumstances of the case, on a preponderance of probability it can be held that the family members of LN Singh were on-boarded by Highbrow to justify exorbitant fees charged by it from the client.

48. Highbrow's submission regarding Vrinda Chandavar is that she has given her consent of her own free will and has submitted an email correspondence to that effect. The said email on its own accord is not adequate to substantiate the submission of Highbrow especially in the absence of any background to the said email and lack of any documents to show independent source of her income. On the other hand it is noted that the gross annual income of Sujeet Sunder Chandavar is between INR 5-10 lakh and the fees collected from him is INR 38,26,409/-. The said fees is highly disproportionate to the gross annual income of Sujeet Sunder Chandavar. Therefore, in the given facts and circumstances of the case, on a

preponderance of probability it can be held that the family members of Sujeet Sunder Chandavar were on-boarded by Highbrow to justify exorbitant fees charged by it from the client.

49. It has been contended by Highbrow that prior to the year 2020, there was no law to treat family members as a single client. Irrespective of whether or not there was any law to treat all family members as one client, the conduct of the IA shows that it did try to treat the family members as separate clients in its attempt to justify the astronomical fees charged from a single member of that family.

50. In view of the aforesaid discussion I note that by charging abnormal fees to its clients without paying any heed to their gross annual income or proposed investment amount and by not taking adequate care and diligence to ensure that the client is able to bear any related investment risks consistent with his investment objectives, leads to a conclusion that Highbrow has failed in its fiduciary duty towards its client. It has prioritised its own interest of maximising its revenue over the best interest of its clients. Further, Highbrow has induced its clients with the optics of abnormally high and quick return within a short span of time and by providing “complimentary services” post the tenure of the service as no reasonable person would part with unreasonable fees unless the said person is not enticed with high returns. Hence, I find that Highbrow has violated regulation 15 (1) of IA Regulations and has failed to abide by clauses 1, 2 and 6 of Code of Conduct read with regulation 15 (9) of IA Regulations.

Issue No. 6: Whether Highbrow had forcefully captured the card details of its clients?

51. It is noted from the Examination Report that Highbrow had used the card details of a client to make huge payments. Highbrow has submitted that assuming that card details had been taken, it is the most secure system from RBI that without OTP, payment cannot be made. OTP always comes on the registered mobile number with the bank. Therefore, the transaction was processed with the consent of the client. It is observed that the onus of not sharing the card details and OTP lies with the clients. The Examination Report does not record whether the mobile phone of clients were also accessed by the Noticee. In the absence of adequate evidence to support this allegation, I cannot draw any adverse inference against Highbrow.

Issue No. 7: Whether Highbrow had failed to promptly redress its clients' grievances?

52. The DA has noted that Highbrow has failed to redress client grievances promptly. It is noted from the Examination Report that, a total of 148 unique complaints are pending against the IA. The year wise break up of unique complaints received and pending are provided as under:

Table No. 10

Sl. No.	Year	Complaints from unique investors	Complaints pending
1	2014	6	-
2	2015	42	-
3	2016	52	-
4	2017	66	-
5	2018	75	56
6	2019	76	75
7	2020	13	13
8	2021	5	4
Total		335	148

53. The DA has also found that Highbrow has not submitted the ATR in a time bound manner as prescribed by SEBI.

54. Highbrow has submitted that the number of investor complainants is miniscule (2.56%) compared to its clientele. Hence, majority of its clients are satisfied with its services. It is observed that aforesaid submission of Highbrow is irrelevant to the allegation of non-redressal of investor complaints as even if the majority of clients of the IA are satisfied still it has to resolve the complaints of its clients who have some grievance against it.

55. Highbrow has further contended that there was a surge (3.72%) in number of complaints post the *Interim Order* only on account of suspensions of its activities. From the records, I note that as on date there are 155 complaints pending against Highbrow out of which 93 complaints were unresolved prior to passing of the *Interim Order* dated May 23, 2019. Thus, 60% of the unresolved complaints are prior to the *Interim Order* that Highbrow has failed to resolve.

56. Highbrow has also submitted that it has mostly submitted the action taken report of most complaints within 7 days. On a sample basis, 31 complaints out of 93 unique complaints filed against Highbrow prior to passing of *Interim Order* were checked. In two complaints, Highbrow did not submit the final action taken report. In other complaints, Highbrow has submitted final action taken report but after submission of action taken report, Highbrow was again advised to resolve the complaint and submit action taken report. However, Highbrow did not subsequently submit any action taken report. I note that merely submitting an action taken report without adequately resolving the investor complaint is paying lip service to the provision of law related to redressal of client grievances. Therefore, when SEBI directs to submit a revised action taken report after resolving the complaint, it is mandatory for the IA to submit the same within the timelines as prescribed under the SEBI Circular which in the instant case Highbrow has failed to do so with respect to at least 31 complaints.

57. It is noted from the aforesaid that there are at least 93 investors' complaints which were forwarded to Highbrow on SCORES and it has failed to resolve the said complaints. I note that SEBI registered intermediaries, to whom complaints are forwarded through SCORES, are under the statutory obligation to take immediate steps on receipt of a complaint, for its resolution, in a prompt manner. Failure to do so would adversely affect the confidence in the integrity of the securities market. Hence, the importance of complaints redressal cannot be undermined and its sanctity has to be maintained by all the registered intermediaries. In the instant matter, as per available records, the default to redress investors' grievances in question has continued for a considerable period of time, well beyond the time period stipulated under the applicable regulations and circular. Therefore, I find that Highbrow has violated regulation 21 (1) of IA Regulations and provisions of SEBI circular no. CIR/OIAE/2014 dated December 18, 2014.

Issue No. 8: Whether Highbrow had violated provisions of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act?

58. The DA has found that Highbrow has violated the provisions of PFUTP Regulations. Central to the said allegation is that Highbrow has assured / promised returns to its clients and to that effect, it has manipulated the risk profile of its clients

and has sold them multiple services by charging them unreasonable fees and without paying any heed to the principles of suitability. It has been noted in the preceding paragraphs that in light of the Hon'ble SAT Order in the matter of *Bull Research Investment Advisors Pvt. Ltd. (supra)* and in the facts and circumstances of the case, the allegation of providing assured returns against Highbrow has not been established. Consequently, it cannot be held that Highbrow has violated provisions of PFUTP Regulations read with SEBI Act. Since the other allegations levelled against Highbrow are also flowing from the primary allegation of providing assured returns, the said allegations would also not meet the requirement of PFUTP Regulations read with SEBI Act. Therefore, I am constrained to find that Highbrow has not violated regulations 3 (a), (b), (c) and (d) and regulations 4(2)(k) and (s) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act.

Conclusion

59. In the instant matter, as noted in the preceding paragraphs, Highbrow has violated various provisions of IA Regulations with the sole aim of generating more income for itself at the cost of its clients. Not only were the clients induced and their grievances not resolved within the prescribed timelines, even their risk profiling was done in a reckless manner without following any objective standards and investment advice in the form of various packages was given to the clients without paying any heed to the principles of suitability as envisaged under IA Regulations. Further, by giving the impression of abnormally high and quick returns to the clients, Highbrow has placed the interest of its clients at great risk. Such acts of Highbrow not only cast a shadow of doubt over its operations but also jeopardises the integrity of the market and the confidence of the investors to deal in the securities market.

60. It is also noted from records that multiple FIRs have been filed against Highbrow at Indore for cheating and criminal breach of trust and SEBI has received reference from Office of the Commissioner of Police, Cyberabad whereby it has been informed that several complaints/FIRs have been filed by investors alleging cheating by Highbrow. It has also been learnt that one of the Directors of Highbrow namely, Swapnil Prajapati was arrested by the Police in connection with alleged cheating/fraud by Highbrow. Further, there are numerous complaints that have

been filed by various clients of Highbrow in the SCORES portal. The aforesaid is reflective of the systemic issues in the way Highbrow was conducting its business.

61. I note that the DA has recommended that Highbrow may be debarred from carrying out investment advisory activities for a period of five years (5 years). However, considering that the IA has been restrained from the securities market from May 23, 2019, the 5 years period may be calculated taking the said period into account. I agree with the recommendation given by the DA. However, the commencement of the suspension shall be regarded from the date of this Order.

Directions

62. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 12 (3) and 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 (5) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration granted to Highbrow Market Research Private Limited (registration no. INA000001134) for a period of 1 (one) year from the date of this Order.

63. The Order shall come into force with immediate effect.

64. A copy of this order shall be forwarded to Highbrow Market Research Private Limited, all recognized stock exchanges, depositories, registrar and transfer agents and BSE Administration and Supervision Ltd. (BASL) for ensuring compliance with the above directions.

-Sd-

Date: September 20, 2023
Place: Mumbai

ANANTH NARAYAN G.
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA