BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sr. No.	Name of the Entity	PAN
1	Dalal Merchandise Advisory Pvt. Ltd.	AAGCD5267K
2	Himanshu Bharatkumar Bhavsar	AJVPB0407A
3	Maulikkumar Rajeshkumar Prajapati	FHVPP0689B
4	Pinalben Himanshubhai Bhavsar	ARLPB8324N
5	Devki Stocks Pvt. Ltd.	AAGCD5268G
6	Devang Pareshbhai Vyas	AZIPV2102K
7	Vishwas Stocks Research Pvt Ltd	AAGCV2217H
8	Javed Lalmahamad Sindhi	GMCPS0364B

(The entities mentioned above are individually known by their respective name or Noticee number)

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

Background

1. The instant proceedings are arising out of and in compliance with the order dated April 26, 2021 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**SAT**") in Appeal No. 196 of 2015. The Hon'ble SAT, vide its order referred to above, have, *inter alia,* directed as under:

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

2. In pursuance of the aforesaid order of the Hon'ble SAT, Common Authorised Representative Shri Vedchetan Patil (hereinafter referred to as "AR") of the *Noticees* vide an email dated May 09, 2021 has submitted a common undated Application (for short "*application / representation*") on behalf of all the *Noticees,* specifying the constraints faced by the *Noticees* on account of directions issued by Securities and Exchange Board of India (for convenience "**SEBI**") vide an *ex-parte* Interim Order dated January 25, 2021 (hereinafter referred to as "*Interim Order / Interim Order* cum *SCN*"). Subsequently, in accordance with the principles of natural justice, a personal hearing of the *Noticees* was conducted through video conferencing mode on May 17, 2021, which was attended by the *Noticee no. 2* alongwith the said common AR of the *Noticees* and made their oral submissions on the lines of the *representation* already filed by them with SEBI. Pursuant to the aforesaid personal hearing, certain details pertaining to the client agreements and fees collected by the three *Noticees* viz. *Noticee no. 1, Noticee no. 5 and Noticee no. 7* (hereinafter collectively referred to as "***3 Noticee Companies***") were sought from the AR of the *Noticees*, in response to which a reply in the desired format was filed by the AR of the *Noticees* vide email dated June 02, 2021.

3. I note that the *Noticees* in their common *representation* have, *inter alia*, submitted various arguments. The arguments relevant to the present proceedings as advanced by *Noticees* through their written as well as oral submissions are summarised herein below:

a) *Noticee no. 2* is the actual and defacto owner and controller of the *3 Noticee Companies* and it is only *Noticee no. 2*, who is running the business of

Investment Advisory (for short "**IA**") through the above named *3 Noticee Companies*.

b) *Noticee no. 2* has obtained the registration as an Investment Advisor under the category of Individuals, under regulation 3 of the SEBI (Investment Advisers) Regulations, 2013 (for short "***IA Regulations, 2013***"). In fact, it was *Noticee no. 2* and not the *3 Noticee Companies* who were soliciting investors to deal in securities market. The said IA activities and the monies collected were indeed collected on behalf of the *Noticee no. 2* and the *3 Noticee Companies* were merely an interface.

c) *Noticee no. 2* had met an officer of SEBI who had informed the *Noticee no. 2* at the time of seeking registration, that after obtaining registration in his individual name, the *Noticee no. 2* can do the business in the name of his company. Therefore, *Noticee no. 2* was under a *bonafide* understanding that once the registration certificate was obtained in his individual name under *IA Regulations, 2013*, it was permissible for him to execute the IA services through Private Limited/incorporated Companies. Accordingly, *Noticee no. 2* incorporated 3 different companies namely *Noticees no. 1, 5 and 7* along with his wife (*Noticee no. 4*) where both of them were 50% shareholders.

d) In the month of August 2020, *Noticee no. 2* visited the SEBI western regional office (WRO) to inquire about the transfer of his personal registration in favour of the Company and also to inquire about obtaining separate IA registrations in favour of some of his acquaintances who were interested in carrying out the said business and upon such inquiry, *Noticee no. 2* was informed that SEBI does not permit the individual registration granted under the *IA Regulations, 2013* to be utilized for carrying out IA services through any incorporated entities. Accordingly, immediately upon receipt of such information, all the IA activities were ceased by the *3 Noticee Companies* and they only received some pending payments for the advisory services already given. It is needless to mention that after the meeting with SEBI officials in August 2020, *3 Noticee Companies* did not render any

advisory service but had only accepted pending payments for previously rendered commitments.

e) *Noticees no. 3, 6 and 8* were inducted in the respective companies as shareholders, only in June 2020. Immediately upon their induction, they (through *Noticee no.* 2) had requested the registration to be in the name of the respective companies. *Noticees no. 3, 6 and 8* though were appointed as Directors in December 2019, still they had not acted upon the said directorship as immediately upon their appointment, the lockdown was imposed within a period of 3 months. Further, though on *Noticees no. 3, 6 and 8* were appointed as directors, they only intended to actually intervene in the business in the administrative and financial manner, by infusing working capital, only upon the transfer of the shares of the said company, which only happened in June 2020. Hence, even otherwise, any action against *Noticees no. 3, 6 and 8* is not necessary as they were only in the process of entering in to the said business and before they could successfully even provide administrative assistance which would have any material bearing on the business, the Lockdown was imposed and naturally said *Noticees* could not act or perform any duties as director of the *3 Noticee Companies*.

f) Regarding the complaint filed by one Hareesha, *Noticees* have submitted that the said complaint was false as the said complainant was neither the customer of any of the *Noticees* nor said person who has supposedly represented himself to be the employee of *Noticees,* was ever an employee either directly or indirectly, of any of the *Noticees*. Further, the said complaint was resolved as soon as the said complainant had lodged a police complaint and the police machinery was utilized to settle his grievances.

g) *Noticee no. 2* through the *3 Noticee Companies* was providing IA Services to more than 415 customers and there are only 6 complaints against them on SEBI Complaint Redress System (for short "**SCORES**"). Further, all the aforementioned 6 SCORES complaints referred to the names of the *3 Noticee*

Companies, namely *Noticees no. 1, 5 and 7*, hence, SEBI was aware that the *Noticee no. 2* was running business in the name of the *3 Noticee Companies*. Therefore, it may not be appropriate to state that SEBI was not aware of *Noticee no. 2* running the business on the name of *3 Noticee Companies*.

h) *Noticees* have submitted that to ascertain whether the *3 Noticee Companies* were actually providing the IA Services without obtaining appropriate registration, corporate veil must be lifted and the actual person/entity providing the IA services through *3 Noticee Companies* may be identified. In this regard, *Noticees* have relied upon the judgements of Hon'ble Supreme Court in the matter of *State of UP vs Renusagar Power Co. and Ors. (1988) 4 SCC 59*.

i) No IA activity was carried out prior to registration of the *Noticee no. 2* and the amount of INR 9,76,298/- was not collected toward the Investment Advisory services as recorded in the I*nterim Order*. Further, the amount of credits received in the bank accounts of the *3 Noticee Companies* reflected in the *Interim Order* are not limited toward the sale of the IA services but also towards various loans taken by the *3 Noticee Companies* from third parties.

j) *Noticees* have further contended that one of the essential ingredients of the fraud and fraudulent conduct independent of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "***PFUTP Regulations, 2003***") is *mens rea* which in turn has to be supported with a motive to commit such fraud. In fact, when *Noticee no. 2* himself had the registration certificate, there was no need for the *Noticee no. 2* to commit any fraud in the name of the company. *Noticee no. 2* could have very well conducted the business on his own name, however, *he* was under a bonafide impression that he could conduct the business through companies, needless to mention that it was *Noticee no. 2* who was handling the IA services himself.

k) It has been further submitted that when the directors (*Noticees no. 3, 6 and 8)* of the *3 Noticee Companies* were under bonafide belief that the said services are provided by *Noticee no. 2* through *3 Noticee Companies*, the question of shifting the liability on the directors does not arise, unless specific allegation against *Noticees no. 3, 6 and 8* for such non-compliance is made out in crystal clear terms. It has also been submitted that *Noticees no. 3, 6 and 8* though were appointed as Directors of *Noticees no. 1, 5 and 7* respectively in December 2019, still they had not acted upon the said directorship as immediately upon their appointment, as the nationwide lockdown was imposed within a period of 3 months. As the whole doctrine of Section 179 of the Companies Act, 2013 is in root based upon the principles of lifting of corporate veil, invocation of Section 179 of the Companies Act, 2013 to hold the directors (*Noticees no. 3, 6 and 8)* of the *3 Noticee Companies* responsible while clandestinely overlooking the registration certificate of the *Noticee no. 2*, is unjust and erroneous.

l) Regarding the role of *Noticee no. 4*, it has been submitted that she had never exercised any control over the *3 Noticee Companies* and was only appointed as director for being the wife of *Noticee no. 2*. It has been further submitted that she was all throughout a sleeping and inactive director in all the *3 Noticee Companies* and has hence accordingly resigned in March 2020.

m) Presently the *3 Noticee Companies* jointly employed around 45 staff and if the *3 Noticee Companies* are allowed to continue with the business after obtaining appropriate Registration, it will be beneficial in the interest of more than 45 families.

n) While submitting the aforesaid arguments, *Noticees* have requested the following relief from the directions of the *Interim Order*:

i. Revoke the *Interim Order* passed against all the *Noticees;*

ii. All or either of the *3 Noticee Companies* (*Noticees no. 1, 5 and 7)* may be allowed to make appropriate application before the SEBI, to obtain

appropriate registration certificate as per provisions of the *IA Regulations, 2013*;

iii. Till the time either of the *3 Noticee Companies* is able to get the registration certificate on their name, *Noticee no. 2* may be allowed to conduct and provide the IA services business on his individual name in compliance with the *IA Regulations 2013*.

4. I have perused the *representation* made by the *Noticees* and the allegations *qua* them levelled in the *Interim Order* cum *SCN* and in compliance of the aforesaid directions of Hon'ble SAT, I proceed to dispose of the *representation*. However, before that I find it imperative to recall in brief, the relevant facts pertaining to the matter that have caused the issuance of the aforesaid *Interim Order* issued by SEBI under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act, 1992") which are as follows:

a) SEBI received a complaint dated August 5, 2020 through SCORES against Mr. Himanshu Bharatkumar Bhavsar (*Noticee no. 2*). The complainant had attached a copy of FIR lodged with Bangalore City, Cyber Crime Police Station along with his complaint. He had mentioned in the FIR that one Mr. Rahul Sharma called the complainant and promised assured returns on his investment of INR 8,00,000/-. Having induced by the promise of assured return, the complainant had transferred INR 8,18,550/- to various bank accounts of Vishwas Stocks Research Pvt Ltd (*Noticee no. 7*).

b) The 3 *Noticee Companies* held out themselves as Investment Advisors and collected subscription fees from various investors for providing stock recommendations although no registration was obtained by them in their own names for providing Investment Advisory services under *IA Regulations, 2013.*

c) It was further gathered that the *3 Noticee Companies* were hosting various contents on their respective websites wherein various services offered by them were described and all the *3 Noticee Companies* were holding

themselves out as Investment Advisers and were undertaking to offer advice related to investing in, purchasing and selling in securities and are also offering various investment packages for subscription. It was further revealed that the *3 Noticee Companies* have disclosed to possess SEBI Registration No. INA000011501 which they have displayed on their respective websites.

d) It was further revealed from the webpages of the respective websites of the *3 Noticee Companies* that the above stated SEBI Registered No. INA000011501 displayed on their websites actually pertained to the *Noticee no. 2* who is a common Director in the *3 Noticee Companies* and the said registration was granted by SEBI to him as an individual applicant. The legal status mentioned in the application of aforesaid registration number is "Individual".

e) *Noticee no. 4* was also a Director in the *3 Noticee Companies* alongwith *Noticee no. 2* till March 21, 2020. It was also observed that *Noticee no. 3*, *Noticee no. 6* and *Noticee no. 8* had joined as Director from December 21, 2019 in the *Noticee no. 1*, *Noticee no.* 5 and *Noticee no. 7* respectively.

f) Further, from an analysis of the bank statements of the aforesaid *3 Noticee Companies*, it was observed that the consolidated credit amount received in various accounts of the *3 Noticee Companies* was approximately INR 2.12 crore for *Noticee no. 1* and INR 1.19 crore for *Noticee no. 5* during the period from February 2018 to August 2020 and INR 93.89 lakh for *Noticee no. 7* during the period from January 2018 to August 2020.

g) On the basis of the aforesaid facts and allegations made in the complaint, *prima facie* it was observed in the *Interim Order* that the *3 Noticee Companies* have not only falsely held themselves out as Investment Advisers but have also indulged in rendering IA services for consideration for which no registration as mandated under the provisions of the *SEBI Act, 1992* and the *IA Regulations, 2013* was obtained by them. Therefore, the activities of the *3*

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

5. Accordingly, on the basis of the information gathered and considering the serious implications on the interest of the investors, illegal advisory activities undertaken by the *Noticees* without obtaining registration certificate from SBEI, it was thought proper to urgently pass an order and issue directions as preventive measures protecting the interest of investors of securities market and consequently, the following directions were issued against the *Noticees* in the aforesaid *Interim Order:*

a) *To cease and desist from acting as investment advisors including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;*

b) *Not to divert any funds raised from investors, kept in bank accounts and/or in their custody until further orders;*

c) *Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI;*

d) *To immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., physical or digital or on their website, in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders;*

e) *Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders;*

f) *To provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order, and*

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

6. It is pertinent to reiterate here that the instant proceedings have emanated from the directions of the Hon'ble SAT wherein *Noticees* have been granted liberty to file an application proposing for revocation/modification of the directions issued in the *Interim Order* for consideration and passing of an appropriate order by SEBI. Therefore, the limited purpose of this proceeding is to examine the submissions advanced by the *Noticees* and to consider as to whether based on the explanation submitted the *Noticees, the Interim order* dated January 25, 2021 deserve any modification/revocation, so far as the directions issued therein are concerned. In view of the above, the scope of the present proceedings is limited to the examination of the following issue:

- *Whether the explanations furnished by the Noticees on various grounds, warrant any interim relief and thereby any modification/revocation in the Interim Order?*

7. Before I proceed to examine the submissions of the *Noticees* so as to determine the issue delineated above, I find from the *Interim Order* that the *Noticees* have been charged with serious allegations of indulging in unregistered activities thereby violating the *SEBI Act, 1992, relevant regulations of PFUTP Regulations, 2003* and the relevant provisions of *IA Regulations, 2013* and further called upon them to explain as to why services offered by the *3 Noticee Companies* be not held as "Investment Advisory Services" in terms of the *IA Regulations, 2013* apart from conducting their businesses in a manner which can be treated as a fraudulent practice / act / conduct, in terms of *SEBI Act, 1992* and the *PFUTP Regulations, 2003*.

8. Now, I proceed to the deal with the submissions canvassed by the *Noticees* to make out a case for themselves while seeking modification/ renovation in the *Interim Order*. I find one of the contentions of the *Noticees* that in the course of discussions held with SEBI officials at the time of seeking registration, *Noticee no. 2* was told by an officer of SEBI that after obtaining IA registration in his individual name he can carry on his IA business in the name of a company. To start with, I note that the above submission is a mere bald statement having no basis to be relied upon. Even assuming the said submission to be true for a moment, I find no justification or explanation had been offered by the *Noticee no. 2* to explain as to why he chose to act on such an unsolicited opinion. It is the duty of the *Noticees* to carry out their business activities in accordance with the relevant provisions of laws laid down for operating as a registered IA in the Indian Securities Market. An activity, which is otherwise prohibited, cannot be permitted on the ground that such activity was pursued based on an unsolicited oral opinion of an officer of SEBI without furnishing any evidence to support such a claim. It is a trite law that doctrine of *estoppel* cannot be invoked for preventing an authority from acting in discharge of its duties under the *PFUTP Regulations, 2003*. It cannot be used to compel the authority or even a private party to do an act, which is otherwise prohibited and not permissible under the law. It is the obligation of an entity to do its own due diligence and understand the regulatory framework before undertaking any activity. In my view, the *Noticee no. 2* should have made his own due diligence to find out as to whether carrying on the activities of Investment Advisory Services in the name of a Corporate Body was within the scope of the applicable rules and regulations, when the registration was granted to him in his individual capacity. If it was not within the scope of the applicable law, then no amount of unsolicited advices by any person, even an oral advice from an officer of SEBI can create a right for the *Noticees* to claim that the *3 Noticee Companies* have conducted the business of Investment Advisory Service under a presumption of law, sans any such legal provision to support such a presumption. Further if it was the *Noticee no. 2* who was instrumental behind managing the affairs of the *3 Noticee*

Companies, these companies cannot use the Registration that was granted to the Noticee no. 2 to carry on IA services in his individual capacity and not to dispense those services in the names 3 separate corporate entities. Thus, the said claim of having received an advice / opinion from an officer of SEBI, would not create an enforceable right on his part to claim legalisation of acts committed by the *3 Noticee Companies* that were otherwise wrongful and illegal.

9. The *Noticees* have also tried to buttress the argument of their innocence and *bonafide* intention by submitting that they had ceased all the activities and postponed all plans of restarting the business of the *3 Noticees Companies* after August, 2020, when the *Noticee no. 2* during his visit to the WRO of SEBI was informed that he cannot provide IA services through a company after seeking registration certificate in the individual category. In this regards, I note from the records available before me including the observations in the *Interim Order* that the respective websites of the *3 Noticee Companies* were still live and functional as on the date of said *Interim Order* i.e. on January 25, 2021 and these websites were having actively inviting the clients to avail investment advisory services from them by claiming that they provide the finest stock market tips and help the clients achieve higher returns. I note from the *Interim Order* that the websites of the *3 Noticee Companies* also provided the details of all the products being offered by these 3 corporate entities and the details of fees charged for these products. These websites also provided a list of 11 bank accounts to which advisory fees can be paid, details of which have been specifically mentioned in the *Interim Order*. Thus, the claim of the *Noticees* that they had stopped the activities of rendering IA services post August 2020 is *prima facie* factually incorrect and false.

10. It has been submitted by the *Noticees* that upon coming to know the fact that the activities of Investment Advisory can't be done in the name of corporate entities when the certificate of registration is granted in the capacity of an individual, they had immediately stopped providing all kind of Investment Advisory services. They have further submitted that any payment received in the Bank accounts of the *3 Noticee Companies* i.e. *Noticees no. 1, 5 and 7* was received

against the services already rendered prior to August, 2020. However, on examination of the materials submitted by the *Noticees* vide email dated June 02, 2021 it is seen that the *3 Noticee Companies* were continuously receiving payment for different periods of service rendered even beyond August 2020 on a regular basis. A few instances observed from such details submitted by the *Noticees* are tabulated below:

Noticee no.	**Name of the client**	**Date of Service Agreement entered**	**Period of Service Agreement (From date to Date)**	**Fees collected from the client (in INR)**
Noticee no. 1	SANJAY C THAKOR	Details not provided by the *Noticees*	03-Nov-20 To 01-Feb-21	24,559
Noticee no. 1	SUNIL N PARMAR	Details not provided by the *Noticees*	25-Nov-20 To 23-Feb-21	49,000
Noticee no. 5	JAYESH M DODIYA	Details not provided by the *Noticees*	05-Dec-20 To 30-Nov-21	2,50,000
Noticee no. 5	NIMISHA BEN R KATARA	Details not provided by the *Noticees*	28-Oct-20 To 26-Jan-21	47,000
Noticee no. 7	ROHITJI THAKOR	Details not provided by the *Noticees*	02-Nov-20 To 31-Jan-21	24,000
Noticee no. 7	UREN P SHAH	Details not provided by the *Noticees*	08-Dec-20 To 06-Jun-21	50,000

11. Thus, I note from the aforementioned table that the aforesaid claim of the *Noticees* appear to be not correct and the *3 Noticee Companies* were continuously providing their IA services despite having come to know after the personal visit of *Noticee no. 2* to WRO that they cannot conduct IA business through corporate bodies when the certificate was granted in the name of an individual. Any activities of rendering advisory services related to investment in securities market would tantamount to indulging in unregistered activities. The aforesaid payment details submitted by the *Noticees* themselves explicitly indicate the *malafide*

intention of the *Noticees* as it has been admitted by them that they were very well aware about the illegality in conducting IA services through *3 Noticee Companies* without obtaining valid Registration Certificate under *IA Regulations, 2013* but continued with to provide those services unabatedly despite having come to know of the illegality of the same. If the *Noticees* were so compliant with regard to the extant regulatory guidelines, details of IA services including the Registration Certificate of *Noticee no. 2* should have been removed forthwith from the websites of the *3 Noticee Companies* as soon as they came to know the illegality of their activities and they should have stopped receiving fresh payments for the new service periods, from their clients, which belie the claim of the *Noticees* that the *3 Noticee Companies* stopped all activities immediately post August 2020. In view of the aforesaid factual observations about the way the *3 Noticee Companies* conducted their illegal IA Services, in my opinion, the submissions of the *Noticees* regarding their *bonafide* intention behind conducting IA services deserve to be rejected.

12. It has been submitted that it was *Noticee no. 2* and not the *3 Noticee Companies* who were soliciting investors to deal in securities market and the said IA activities undertaken and the monies collected from the clients were indeed being done on behalf of the *Noticee no. 2* in which the *3 Noticee Companies* were serving merely an interface. Therefore, *Noticees no. 1, 5 and 7* may also be exonerated. In this regard, first of all, it is an admitted fact that that the *3 Noticee Companies* were charging fees from various clients in name of IA services for which, no separate registration to operate as IAs was obtained by them. Further, the webpages of the *3 Noticee Companies* had displayed the SEBI registration number granted to the *Noticee no. 2,* who was registered with SEBI in an individual capacity. By displaying such registration number on their respective websites, the *3 Noticee Companies* misled the investors by claiming to be registered intermediaries with SEBI. It was also not qualified by any of the *3 Noticee Companies* on their website that the registration pertains to one of the directors and not to the entities. Moreover, the clients who approached the *3 Noticee Companies* for IA Services approached these entities believing them to be SEBI registered IAs and subscribed

to various services / packages offered by these companies in their corporate names and not in the individual name of *Noticee no 2*. Therefore, the contention that the *3 Noticee Companies* were merely an interface, is not a tenable claim but an afterthought to evade the outcome of this proceeding.

13. The *Noticees* have contended that it was the *Noticee no. 2* who was primarily managing the affaires of the *3 Noticee Companies* and it was he who was soliciting investors to avail the services, hence directions issued under the *Interim Order* deserve to be modified on the ground that he was *alter ego* to the *3 Noticee Companies*. After carefully considering this argument, I find no merit in the above submission as the same is in absolute contradiction to the very concept of corporate bestowed with a separate independent legal entity under law. I further note that it is after taking into cognizance of the fact that the individual and corporate as separate and distinct legal entities, the *IA Regulations, 2013* also provide for different criteria for their respective registration. It is pertinent to note that the *IA Regulations, 2013, inter alia*, provide for a framework for regulating the activity of entities who are in the business of providing investment advice in respect of securities and investment products. Further, *IA Regulations, 2013* also prescribe the eligibility criteria for registering as an Investment Advisor. I note that the regulation 7 of the *IA Regulations, 2013* clearly lays down the qualification and certification requirement for Investment Advisers. Similarly, regulation 8 of the *IA Regulations, 2013* mandates the minimum net worth criteria for different classes of IAs. For instance, the minimum net worth for the individual IA as per regulation 8 of the *IA Regulations, 2013* at the relevant time when the registration was sought by *Noticee no. 2* was INR 1 lac, however, the said regulation stipulates the minimum net worth of INR 25 lacs for a body corporate to be eligible for seeking registration as on Investment Adviser. It is also pertinent to note that the aforesaid provisions of Capital Adequacy to become eligible as an IA (Individual or non-Individual) are part of *IA Regulations, 2013* since its inception. Therefore, the contentions put forth by the *Noticees* (specifically *Noticee no. 2*) in their defense stating that although *Noticee no. 2* possessed a valid registration certificate in his individual name, the

investors were largely availing services considering him as the sole person behind the three companies and that the advisory business was undertaken by the *3 Noticee Companies* under a *bonafide* understanding that once the registration certificate was obtained in an individual name, it was permissible for him to render his advisory services through any Private Limited/Incorporated Companies, are nothing but a frivolous afterthought exercise to evade the outcome of this proceeding. In fact, in my opinion, it was a deliberate attempt by the *Noticees* to provide IA services through *3 different Noticee Companies* by using the registration certificate of *Noticee no. 2* without taking separate registrations for *3 Noticee Companies*, since all the *3 Noticee Companies (Noticees no. 1, 5 and 7*) would have been required to fulfil the net worth criteria independently for becoming eligible to apply registration as an IA, which would have necessitated additional financial resources and various other strict regulatory compliances. The *Noticees* have apparently chosen this fraudulent strategy to dispense advisory services under there different brand names or three different corporate entities by illegally displaying the registration number of *Noticee no. 2* which belonged to him in his individual capacity. Hence, such contentions of the *Noticees* to feign innocence and to prove their bonafide are devoid of any merit and liable to be rejected in *limine*.

14. One of the major argument of the *Noticees* is that the *3 Noticee Companies* could have got their certificates of registration to act as IA since admittedly, the investment advice provided through them was in fact being provided by the *Noticee no. 2* who was already qualified and was issued registration under regulation 7 of the *IA Regulations, 2013*. Therefore, the corporate veil must be lifted and the actual person/entity providing the investment advisory services may be discovered to ascertain as to whether the *3 Noticee Companies* were actually providing the IA services without obtaining appropriate registration. Before I deal with the aforesaid argument with respect to lifting of corporate veil, it would be proper to briefly dwell on the doctrine of lifting of corporate veil. When a company is incorporated, all dealings are done with the company as well as in the name of the company and all the persons behind the said company are disregarded,

however important positions they may be occupying in the said corporate body. This means that under the law, at all times there is a veil drawn between the company and its members and officer. The courts have repeatedly held that normally, the principle of corporate personality of a company has to be respected. However, when the people sitting behind a corporate entity start misusing this veil of corporate personality, it becomes necessary for the courts to pierce the corporate veil to expose those persons who are responsible for such misuse of corporate personality of an entity or who are in fact the real beneficiaries of those abusive acts. This well recognized principle of lifting of corporate veil or piercing the corporate veil is held to be valid only in extraordinary circumstances. Thus, the doctrine of lifting of the corporate veil means the owners or shareholders or members are separated from the corporate personalities when the status of a company is misused for illegal personal gains by such shareholder or members of the said company.

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

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

16. Therefore, application of the doctrine of lifting of corporate veil would invariably depend on the statutory provisions, the conduct of the parties, facts and circumstances of each case etc. and there is no straight jacket formula presented under any law to decide as whether this doctrine should be applied or not be applied. Accordingly, it is first necessary to ascertain as to whether or not, based on the specific facts of the instant matter, the said doctrine should be applied in the present proceedings before me. In this regard, I note that the Memorandum of Association ("**MoA**") of the company holds the vital key to get the know about the company's affairs. Under the law, MoA is the charter which contains the fundamental conditions based upon which a company can be incorporated and any action outside the scope of MoA will be *ultra vires*, beyond the powers of the company and hence will be held as void. As a matter of fundamental principle of law, the corporate veil can be lifted if the act of the company is found to be *ultra vires*. The MoA contains the benchmark salient features based on which, the company is incorporated or constituted and therefore, any act *de-hors* the object and other conditions stipulated in the MoA can be said to be *ultra vires* and for that purpose, the directors of the company shall be personally liable for all such acts which are beyond the scope for which the company was set up. The corporate veil under such circumstance necessarily has to be pierced and the members or natural persons who have committed such acts cannot be allowed to take shelter behind the corporate veil of the company. This proposition is fortified by a decision of the Supreme Court in case of *Dr. A. Lakshmanaswami Mudaliar & Ors. V/s. Life Insurance Corporation of India & Anr., reported in AIR 1963 SC*. Therefore, the inverse proposition of the aforesaid would be that if the act of the company is not *ultra vires* of the stated objects of other conditions of the MoA then it may not be a fit case to apply the doctrine of lifting the corporate veil.

17. Now in the context of the aforestated legal position pertaining to the principle of lifting of the corporate veil, a bare look at the MoA of the afore-stated *3 Noticee Companies* would reflect that the main object of these *3 Noticee Companies*, as recorded at para 5 of the *Interim Order*, was *inter alia,* to provide advisory services,

opinions, management services, portfolio management based on research, exchange of research for a consideration or otherwise to individuals, corporates, business houses, or any other legal entity formed within or outside the country with or without consideration. In the context of this main object of the *3 Noticee Companies* for which they have been set up as has been proclaimed in their respective MoA, what is observed from the records is that the *3 Noticee Companies* have acted within the mandate and objects of Memorandum and Articles of Association and have accordingly undertaken Investment Advisory activities though without obtaining a certificate of registration in this regard.

18. Further, Section 27 of the *SEBI Act, 1992* creates a deemed liability against all the persons who are in charge of the affairs of the company at the time of the commission of alleged violations by the company, without having to pierce the corporate veil. Thus, ordinarily, a director of a company would not be answerable for the acts of the company unless the director was in charge of and was responsible for the conduct of the business of the company at the time the said offence that was committed by the company. In this regard, it is noted from the *Interim Order* that:

> *"None of the Directors of the three companies are designated as Managing Director or Executive Director or Independent Director. Moreover, it is also observed from the material available on record that the companies do not have CEO, CFO or any other officer who is designated as key managerial personnel. Thus, on a preponderance of probability basis, all the Directors who have been appointed to the Board of the said three companies, are in charge and responsible for managing the affairs / business of the company. In light of the aforesaid discussion, it is prima facie, observed that all Directors of the companies in charge and responsible for the companies."*

19. The share holding pattern of the *3 Noticee Companies* as furnished by the *Noticees* show that the *Noticee no. 2* was holding 50% shareholding in all the *3 Noticee Companies*. The rest of the 50% shareholdings in these *3 Noticee Companies* namely, the *Noticee no. 1* (Dalal), the *Noticee no. 5* (Devki) and the *Noticee no. 7* (Vishwas) were held by the *Noticee no. 3* (Maulik Prajapati), *Noticee no. 6* (Devang P.

Vyas) and *Noticee no. 8* (Javedbhai Sindhi), respectively. The fact that it was only after the *Noticees no. 3, 6 and 8* became directors in the *3 Noticee Companies,* they have asked the *Noticee no. 2* to take steps and ensure registration of IA in the names of the three corporate bodies, not only fortifies the observations recorded in *Interim Order* but also refutes the claim made before me that it was the *Noticee no. 2* who was alone responsible for the acts of the *3 Noticee Companies* and other *Noticees* directors (*Noticees no. 3, 6 and 8)* had no say in the functionality of these companies. From, the aforesaid, in my considered view, the *Noticees* have failed to demonstrate any justifiable reason that might warrant any modification/revocation of the directions issued under the *Interim Order* at this stage, so far as the culpability of the other *Noticees* are concerned. Further, the *Noticee no. 2* has not brought anything new on record to demonstrate that the control and management of the afore-stated *3 Noticee Companies* were actually vested with the *Noticee no. 2* alone and the *Noticee nos. 3, 6* and *8* had absolutely no say in the affairs of the *3 Noticee Companies.*

20. It has been submitted that any action against the *Noticee nos. 3, 6* and *8* is not necessary as they were only in the process of entering in to the said business and before they could successfully even provide administrative assistance which would have any material bearing on the business, the lockdown was imposed and consequently said *Noticees* could not act or perform any duties as a director of the said *3 Noticee Companies* i.e. *Noticees no. 1, 5* and *7.* In this regard, I note that under Section 166 of the Companies Act, 2013 certain duties are spelt out with respect to the obligation of directors of a company. Perusal of this statutory provision would indicate that a director of a company shall exercise his duties with due and reasonable care, skill and diligence, and shall exercise independent judgment. Further, a director of a company shall not assign his office and any assignment so made in favour of others, shall be void. In the context of the above stated statutory provision dealing with the duty of a director under law, the other directors of the above mentioned *3 Noticee Companies* were supposed to take their office with due diligence on account of the fiduciary obligation being carried by them vis-à-vis the company. It is a well settled law that the position of a director of a company is

embodiment of a fiduciary relationship with the company and a director is under a legal obligation to observe utmost good faith towards the company in any transaction done with it or on its behalf. Therefore, under the facts and circumstances of the present matter, looking at the obligation of the other directors towards the *3 Noticee Companies*, they cannot plead ignorance completely about the affairs of those *3 Noticee Companies* (of which they held the position of a director), which have practically led those companies to a closure due to illegal Investment Advisory services rendered by them without obtaining registration from SEBI. It is also to be noted that such fiduciary obligation of a director does not cease with his/her resignation as a director. In this regard, the Hon'ble Supreme Court of India in the matter of ***N Narayanan vs. Adjudicating Officer, SEBI decided on April 26, 2013*** *held*:

> *"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

21. Further, I find it appropriate to refer to and rely on the decision of Hon'ble Gujarat High Court dated February 23, 2017 in the ***Special Civil Application No. 6580 Of 2016-Ajay Surendra Patel Vs. DCIT*** which *inter alia* held that:

> *"The fiduciary position of a director in a company does not permit the directors to throw always up their hands and say that we knew nothing as did not take part and therefore, considering this position of petitioner in the company we do not propose to allow such defence to be accepted. On the contrary, we feel that a director with a sizable amount of holding structure of the company can never be allowed to take*

such plea to keep himself away from the responsibilities under the guise of resignation."

22. Keeping the aforesaid factual as well as legal position in view, the fact that *Noticees no. 3, 6 and 8* have not submitted any documents to evidently prove that they had no role to play in the functioning of the *3 Noticee Companies* or to establish that the *3 Noticee Companies* had a CEO or CFO or any other officer who was designated as key managerial personnel or was responsible for day to day functioning of the *3 Noticee Companies* and the fact that the *3 Noticee Companies* were providing IA services in conformity with their MoA and charging fees from various clients till the passage of the *Interim Order*, the malafide role of the *Noticees no. 3, 6 and 8* in the whole scheme of fraud perpetrated on the clients while providing unauthorised IA services, cannot be ignored.

23. As regards the role of *Noticee no. 4*, it has been submitted that she had never exercised any control over the *3 Noticee Companies* and was only appointed as a director for being the wife of *Noticee no. 2*. It has been further submitted that she was all throughout a sleeping and inactive director in all the *3 Noticee Companies* and has resigned in March 2020. First of all, it needs to be clarified that unlike the Partnership Act, 1932, there is no concept of sleeping and inactive director in the Companies Act, 2013. Secondly, as already observed by me in the preceding paragraphs, in none of the *3 Noticee Companies*, neither any Director was assigned as Managing Director / CEO nor any other officer was categorized as key managerial person. In absence of the same, all the persons who served as directors during the relevant time including *Noticee no. 4* are liable to be held responsible for commission and omission on part of these *3 Noticee Companies*, who were rendering IA services without possessing any registration certificate in their names so as to be able to render such services in the Indian securities market.

24. In any case, the doctrine of lifting of the veil is required to be applied where natural persons are hiding their liability and accountability under the guise of a corporate entity. The instant is not such a case, where it is not possible to find out from the records as to who are the person responsible for the management and

affairs of *3 Noticee Companies*. Therefore, after considering the *representation* of the *Noticees* and the other materials available before me for the disposal of the *application* filed by the *Noticees* in pursuance of the order passed by the Hon'ble SAT, I am of the considered view that it is not a fit case for application of the doctrine of lifting of corporate veil to grant exoneration to the *Noticees no. 3, 4, 6 & 8* who were apparently very much seized of the affairs and business operations of the *3 Noticee Companies* during the period they served as directors of these *3 Noticee Companies*.

25. Regarding the contention of *Noticee no. 2* that no advisory activity was carried out prior to his registration as an IA and the amount of INR 9,76,298 /- was not collected toward the Investment Advisory services, I note that apart from making a bald assertion in this respect, the *Noticee no. 2* has not provided any proof/evidence to support his claim that the said amount of INR 9,76,298/- was collected from any other sources other than by way of rendering the Investment Advisory services. In fact, I note from the records available before me that the websites of the *Noticees no. 1, 5 and 7* were operational from April 27, 2018 onwards whereas, registration to *Noticee no. 2* in his individual capacity was granted only on August 23, 2018. As recorded in the *Interim Order*, from the bank statements of the *3 Noticee Companies*, narrations such as 'advisory', 'stock advisor' were observed against the credit entries. Therefore, the argument that *Noticee no. 2* was not involved in providing IA services prior to grant of Registration to him by SEBI is nothing but a false claim having no factual support, hence such a specious claim requires no further consideration.

26. *Noticees* have further claimed that the amount of credits received in the bank accounts of the *3 Noticee Companies* as recorded in the *Interim Order* are not limited to the sale of the Investment Advisory services but also includes various loans availed by the *3 Noticee Companies* from third parties. First of all, *Noticees* have not furnished any documentation such as loan agreements, loan confirmation statements, rate of interest, details of other parties, present status of loan, etc., to substantiate their claims that some of the amounts received in the accounts of the *3*

Noticee Companies were pertaining to the loans received by these *3 Noticee Companies*. Secondly, though the *Interim Order* has recorded that the *3 Noticee Companies* had cumulatively received an amounts to the tune of INR 4.26 crores (INR 4,26,22,789), the *Noticees* vide their *Application* have submitted that the *3 Noticee Companies* have cumulatively collected a total amount of INR 7.34 crores. Details of the same are placed below:

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

27. In the absence of any supporting evidence furnished by the *Noticees* to substantiate their claims of having availed some loans which were credited in the accounts of the 3 *Noticee Companies* and the fact that the *Noticees* have themselves admitted having received a cumulative sum of INR 7.34 crores in the accounts of the 3 *Noticee Companies,* it further corroborates the allegation that the *3 Noticee Companies* were *prima facie* providing the IA services to clients without obtaining any registration in their own names from SEBI.

28. The *Noticees* have also argued that the complaint filed by one Hareesha was false, as the said complainant was neither the customer of any of the *Noticees* nor the said person who has supposedly represented himself to be the employee of *Noticees* was ever employed either directly or indirectly with any of the *Noticees.* I note from the *Interim Order* that though the triggering point for the examination of the affairs of the *Noticees* started with was the aforesaid complaint, however, it is pertinent to note that no charges have been levelled against the *Noticees* in the *Interim Order* on the basis of such complaint and the allegations that have been made in the *Interim Order* are the outcome of *prima facie* examinations conducted by SEBI into the affairs and financial transactions of the *Noticees.* Therefore, the plea taken by the *Noticees* in the garb of the aforesaid complaint will not be of any help to them. The said complaint also does not require any deliberation in the instant proceedings as the allegations levelled against the *Noticees* in the *Interim Order* are

independent of the specific facts of the said complaint, which need to be confronted by the *Noticees* independent of the said complaint.

29. As regard the contention of the *Noticees* that one of the essential ingredients of the fraud and fraudulent conduct, independent of the *PFUTP Regulations, 2003* is *mens rea* which in turn has to be supported with a motive to commit such fraud, I am of the view that such an assertion is not relevant to be discussed at this stage of the proceedings. It would be sufficient to note that a perusal of the provisions of law as alleged to have been violated by the *Noticees*, don't require the presence of element of *mens rea* as an essential ingredient to allege the contravention of civil laws.

30. In view of the foregoing observation, I am constrained to conclude that the *Noticees* have not brought any logical reasoning while seeking revocation / modification of the *Interim Order*. Rather the materials submitted by the *Noticees* before me have further strongly exposed their *malafide* intention behind providing IA services through the *3 Noticee Companies (Noticees no. 1, 5 and 7)* without taking proper registration under the *IA Regulations, 2013* and by deliberately using the registration certificate granted to *Noticee no. 2* which was obtained by him under Individual category knowing very well that such an act of misusing a certificate of registration was not permissible at all under law. Such misconduct displayed by the *Noticees* have further reinforced the allegations that the acts of the *Noticees* were in violation of provisions laid down under *SEBI Act, 1992* and *IA Regulations, 2013*. The explanation put forth by the *Noticees* to make out a case of being under *bonafide* belief is found to be with no merit for the simple reasons; firstly, no plausible justification has been offered to show as to how a single certificate can be divided and utilised by three corporate entities (*3 Noticee Companies*), each of which is a separate and distinct legal entity and secondly, the provisions of *IA Regulations, 2013* mandated that separate registration has to be obtained by a corporate and an individual after complying with separately laid criteria, having separate rights, obligations and duties.

31. Under the circumstances, revocation of the directions issued under the Interim Order against all the *Noticees* does not arise. Regarding the request of the *Noticees* that all or either of the *3 Noticee Companies* (*Noticees no. 1, 5 and 7)* may be allowed to make appropriate application before the SEBI to obtain appropriate registration certificate, it is not disputed that the *Noticees no. 1, 3 and 5* were carrying out activities of Investment Advisory for which no registration was obtained by them. Further, in view of the observations recorded above that the *Noticees no. 1, 5 and 7* are not having registration to carry out the activities of Investment Advisory services which in fact caused the issuance of the *Interim Order*, permitting such entities at this stage to obtain registration of IA when the *Interim Order* proscribed them to undertake such activities, would be against the law, more so in the absence of any provision of law prescribing for regularisation of such illegality. I note that no such provision has been brought to my notice, hence the request of the *Noticees* are rejected as ex facie against the law. I see no prohibition on any individual or body corporate who conforms to the eligible criteria as laid down in the *IA Regulations, 2013,* from applying to SEBI for seeking IA registration certificate, which is further processed / examined and either approved or rejected after relevant scrutiny, as per the provisions laid down in the *IA Regulations, 2013*. Therefore, in my opinion, there is no requirement to deal with the said request under this proceeding.

32. Further, as already mentioned above in this Order, *Noticee no. 2* was not only the shareholder but also a director in all the *3 Noticee Companies,* from the time of their incorporation and is alleged to have indulged in IA activities by using these *3 Noticee Companies* in whose names no registration was obtained and the said facts have not been disputed by any of the *Noticee* directors. Considering the fact that the *3 Noticee* Companies were not having registration certificate and the *Noticee no. 2* has admittedly played a significant role in pushing the *3 Noticee Companies* to offer IA services in an illegal manner, in my opinion, it may not be in the interest of the investors and securities market that at this stage, the *Noticee no. 2* is allowed to conduct and provide the IA services business in his individual

capacity as well till the outcome of the proceedings arising out of the *Interim Order* is finally ascertained. Having considered the conduct and seriousness of violations charged in the *Interim Order* keeping in view and my observations as recorded above, I am of the view that by allowing the *Noticee no. 2* to commence providing IA services in any circumstances would not only send wrong signals to the market but may also further compromise as well as adversely affect prejudice the interest of the investors at large.

33. In view of the foregoing discussions on various acts of misconduct and *prima facie* fraudulent trade practices followed by the *Noticees* in contraventions of various statutory as well as regulatory provisions as alleged in the *Interim Order* and my observations in this Order, the a*pplication / representation* of the *Noticees* read with subsequent submissions are hereby disposed of. I find that the *Noticees* have failed to demonstrate grounds sufficient and lawful enough for necessitating any revocation/modification in the *Interim Order.*

34. A copy of this Order shall be forwarded to the *Noticees* for information and compliance.

-Sd-

DATE: JUNE 22, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA