

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

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

**In Re: Securities and Exchange Board of India (Investment Advisers) Regulations,
2013 and SEBI (Alternative Investment Funds) Regulations, 2012**

In respect of:

Sl. No.	Name of the Entity	PAN
1	HBJ Capital Services Private Limited	AACCH3450L
2	Mr. Kumar Harendra	AJSPK3749B
3	Ms. Amrita Singh	BDPPS4879G
4	Mr. Abhishek Kumar Singh	BGJPS4452C
5	Mr. Jitendra Kumar	AVVPJ1321K
6	HBJ Capital Ventures LLP	AAFFH9963E

In the matter of HBJ Capital Services Private Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) passed an interim order dated June 15, 2015, in respect of HBJ Capital Services Private Limited (hereinafter referred to as “**HBJ**”) and its Directors namely Mr. Kumar Harendra, Ms.

Amrita Singh, Mr. Abhishek Kumar Singh, Mr. Jitendra Kumar, Ms. Arunmozhi Gopalan and Mr. Ponnuraj Gokulraj and HBJ Capital Ventures LLP (hereinafter referred to as “**HBJ LLP**”) and its designated partners namely Mr. Kumar Harendra and Ms. Amrita Singh (hereinafter collectively referred to as “**Noticees**”) wherein it was held that HBJ and its Directors and HBJ LLP and its Partners/Directors have acted as investment advisers and alternative investment funds without obtaining registration from SEBI in violation of provisions of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”) and regulation 3 of SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as “**AIF Regulations**”).

2. The said interim order, *inter alia*, rendered the following findings qua the aforesaid Noticees:

- 2.1. “...it is evident that the activities of HBJ Capital and its directors (as detailed in paragraph No. 11.1 (i) to (vii) above), of giving trading tips, stock specific recommendations, etc. to the investors clearly indicate that they are engaged in providing investment advisory services to investors on payment of fees, which *prima facie* fall under the definition of “investment adviser” as defined by Regulation 2(m) of the Investment Advisers Regulations...

- 2.2. ...it is evident that the activities of the equity investment vehicle promoted by HBJ Capital, viz. HBJ Capital LLP (as detailed in paragraph No. 11.2 (i) to (viii) above), of pooling funds from HNI partners/investors and investing in listed/unlisted equities in accordance with a defined investment policy for the benefit of its investors/partners, clearly indicate that they are running a scheme, which *prima facie* falls under the definition of “Alternative Investment Fund” as defined by Regulation 2(1) (b) of the SEBI(Alternative Investment Funds) Regulations, 2012...”

3. In view of the *prima facie* findings on the violations, the following directions were issued

in the said interim order with immediate effect:

- 3.1. *"...cease and desist from acting as an Investment Adviser and Alternative Investment Fund and cease to solicit or undertake such activities or any other unregistered activities in the securities market directly or indirectly, any manner whatsoever;*
- 3.2. *immediately withdraw and remove all advertisements, representations, Literatures, brochures, materials, publications, documents, websites, etc. in relation to those schemes/activities (investment adviser and Alternative Investment Fund) or any unregistered activity in the securities market,*
- 3.3. *not to divert any funds raised from investors, kept in bank account(s) and/or in the custody of HBJ Capital or its directors and HBJ Capital LLP and its designated partners;*
- 3.4. *furnish all the information sought by SEBI, vide letter dated August 6, 2014 including.*
 - 3.4.1. *the details of various services offered by the company/LLP,*
 - 3.4.2. *present Asset Under Management (AUM) of each of the services offered by HBJ Capital LLP from the date of initiation,*
 - 3.4.3. *break up of AUM under various asset classes,*
 - 3.4.4. *details of clients availing various schemes offered by them, such as names, joining date, name of scheme, end date, KYC particulars etc.,*
 - 3.4.5. *client-wise details of fund mobilized,*
 - 3.4.6. *demat accounts statements of HBJ Capital and HBJ Capital LLP*
- 3.5. *furnish copies of LLP agreements,*
- 3.6. *provide PAN No of Mr. Ponnuraj Gokulraj.*
- ...

4. The said interim order was treated as show cause notice and the Noticees were called upon to show cause as to why the investment plans and existing schemes identified in the interim order should not be held as "Investment Advisory Services" and "Alternative

Investment Fund" in terms of respective regulations and why appropriate directions under Sections 11 and 11B of the SEBI Act and relevant SEBI Rules/Regulations including directions, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and to refund the amount collected from the investors/clients/partners for its existing schemes should not be issued against them.

5. HBJ and HBJ LLP and its aforementioned Directors/Partners were given the opportunity to file their replies, if any, within 15 days from the date of receipt of the interim order-cum-show cause notice. The interim order-cum-show cause notice further stated that in the event the Noticees intend to avail an opportunity of personal hearing, they may indicate the same in their reply. The interim order-cum-show cause notice was served on all the Noticees.

Reply and Hearing

6. In response to the interim order-cum-show cause notice, HBJ and HBJ LLP vide their common reply dated June 22, 2015 through their authorized representative (hereinafter referred to as "**AR**") Joby Mathew & Associates *inter alia* submitted as follows:

- 6.1. At the outset, it is submitted that very drastic and severe directions have been passed against them and their Directors/Partners; however, before passing such drastic and severe directions that have effectively brought their activities to a standstill, no charges were framed against them and no opportunity of personal hearing was given to them. The present reply is being submitted in the absence of and without the benefit of referring to the documents and records relied upon by SEBI to arrive at the allegations and charges against them; therefore, they reserve their right to make further submissions as and when these are provided to them. However, the said order is against the well-recognized Principles of Natural Justice and therefore, ought to be recalled on this ground alone.

- 6.2. HBJ Capital is in the business of providing quality and in-depth research on equity shares of companies listed on the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited and advisory services relating to investment and trading in such shares to subscribers.
- 6.3. HBJ Capital is promoted by Mr. Kumar Harendra, who is a Software Engineer by training and an ex-employee of Infosys Limited. HBJ started off its business in 2009-10. As on date, HBJ has more than 12,000 clients who have subscribed to their advisory and research services; these clients are serviced by more than 500 employees. The present turnover of HBJ is more than ₹ 23 crore. It may be noted that HBJ has not raised any funds through private equity investments or borrowed moneys for business expansion; rather, the growth of the company has been financed almost entirely through internal accruals. It is also pertinent to note that HBJ has always been in the forefront to educate investors and the general public by highly insightful articles numbering more than 4,000 in their blogs/websites. Through their research reports and articles HBJ has helped to spread the globally renowned value investing philosophy among Indian retail investors. During the said period, HBJ also won several awards and recognitions for its quality research and for the advisory services provided by it.
- 6.4. HBJ provides quality research by using tools such as-ACE Equity, Bloomberg, Capital IQ, Sumzero etc. on equity shares of mid cap and small companies listed on the BSE and NSE. The research conducted by HBJ may be divided into 2 parts:
- 6.4.1. Primary Research conducted by the well trained, qualified and experienced research associates of HBJ Capital in the markets for the products or services offered by the companies being researched upon. The associates visit vendors, customers, distributors and management of the companies to obtain inputs
- 6.4.2. Secondary Research conducted using business analysis, financial analysis,

financial modelling and valuations.

6.5. Based on the research conducted by HBJ, the company provides advisory services to its clients/subscribers. Advice on investment is provided to subscribers based on the following criteria:

- (a) Risk Profile of the client
- (b) Investment Horizon
- (c) Knowledge of the stock market
- (d) Amount that the client proposes to invest or the clients' investment capability
- (e) Portfolio of the client, if any
- (f) Investment objective

6.6. The process of evaluating the above criteria in respect of our clients is set out in the annexure. The various investment & trading advisory products offered by HBJ to its clients, along with details of the same are set out in annexure. The same investment advice is given to all clients/ subscribers who have chosen/ subscribed to a particular product; however, personalised advice is given to each client based on their specific needs or requirements. A typical investment advice given to HBJ clients/ subscribers is set out in annexure. In addition to such emails and SMS, clients call on HBJ's helpline numbers to seek advice on purchases that they propose to make or in the case of more expensive packages, relationship managers call clients and suggest investments based on their profile. From the above, it will be evident that the investment advice provided by HBJ to its clients/ subscribers is:

- (a) based on the research done by the company
- (b) appropriate to their risk profile
- (c) based on their investment objective

6.7. HBJ has submitted an application dated May 25, 2015 for registration as an Investment Adviser and the same is pending with SEBI. It is pertinent to note that in the letter dated January 7, 2014 to SEBI, HBJ had in fact, admitted that it was engaged in the business of providing investment advice and was an "Investment Adviser" and that it had omitted to seek registration by oversight. The application for registration could not be submitted till May 2015 because HBJ could not raise the necessary capital to meet the net worth requirement. As of March 31, 2015, HBJ has a net worth of more than ₹ 25 lakh and after having complied with the said requirement, it has made an application for registration as an Investment Adviser.

6.8. In and around the year 2010, some of HBJ's clients/ subscribers to the research and advisory services in HBJ, who were satisfied with the services, requested HBJ to consider managing their portfolio /funds for them. Since HBJ did not have registration from SEBI as a Portfolio Manager, they expressed their inability to do so. However, the aforesaid clients/ subscribers then expressed their desire to form a partnership with HBJ so that they could make use of the research and expertise of HBJ to make gains in the stock market. Accordingly, HBJ along with 15 entities/ persons formed a Limited Liability Partnership by name HBJ Capital Ventures LLP with a total contribution of ₹ 4 crore. The objective of the said LLP was to invest the money contributed by the partners and make profits from the same. However, there was no defined investment policy set out in the LLP Agreement or agreed to between the partners. Accordingly, the said amount was invested in equity shares of several companies listed on the BSE and NSE over a period of 3 years based on the research conducted by HBJ. In 2012, some of the partners exited and new partners joined the LLP; the total number of partners including HBJ as on February 2012 was 14. The total contribution amount remained unchanged at ₹ 4 crore. Thereafter, in April 2013, 2 partners exited the LLP and therefore, the partner contribution reduced to ₹ 3.50 crore.

6.9. On account of adverse market conditions, the aforesaid investment by HBJ LLP could not earn any substantial profit and also the Partners had some personal monetary needs, therefore, in March 2014, it was decided by the partners that the investments would be liquidated and the proceeds would be distributed among the partners and the LLP would be wound up. Accordingly, the investments were liquidated before March 31, 2014 and the proceeds were distributed among all but the Designated Partners in the proportion- as agreed in the LLP Agreement dated April 1, 2013. A copy of the said LLP Agreement dated April 1, 2013 is annexed. Since April 1, 2014, there have been no further investments by HBJ LLP and the remaining partners i.e. the Designated Partners have taken steps to wind up the LLP. However, it is pertinent to note that most of the erstwhile Partners of the HBJ LLP continue to be clients/ subscribers of HBJ Capital.

6.10. From the above, it is clear that HBJ LLP did not invite or collect funds from public investors, rather it only invested the contribution of its partners and thereafter, distributed the proceeds of the liquidation of such investment in accordance with the provisions of the LLP, Agreement. Furthermore, HBJ LLP did not have any defined investment policy, rather, it only sought to make profits from investments. Therefore, the finding in the said order that HBJ LLP was carrying on an Alternative Investment Fund is erroneous, false and baseless and the same deserves to be set aside.

6.11. HBJ denies that it had offered assured returns on execution of stock tips under any scheme offered by it on its websites or otherwise. Further, the expected returns were misinterpreted as the assured or guaranteed returns by SEBI. In fact, on the websites, there is a clear disclaimer stating that it cannot guarantee returns.

6.12. HBJ has not been provided with copies of the purported complaints received by SEBI or the details received from NSDL, BSE or NSE.

6.13. It is a matter of record that HBJ has received money from its clients/

subscribers by way of fees for providing research and advisory services. It is repeated, reiterated and submitted that HBJ did not receive any funds from clients for the purpose of Asset Management as erroneously alleged or otherwise.

6.14. It is further pertinent to note that HBJ has paid Service Tax on all these subscription fees/advisory charges paid to it by clients/subscribers. The relevant Service Tax Returns filed by HBJ, which reflect the same are annexed.

6.15. HBJ LLP repeats, reiterates and submits that it has invested the contribution of its partners and distributed the proceeds of sale of such investment among its partners in accordance with the LLP Agreement from time to time. The portion of the website of HBJ Capital relating to HBJ LLP that mentions the contents referred to in clauses ii to iv of the paragraph 11.2 of the interim order has been removed and the LLP is in the process of being wound up. All partner contributions except those of HBJ and Mrs. Amrita Singh have been distributed among the partners.

6.16. HBJ LLP repeats, reiterates and denies that it accepted any funds from investors. It is pertinent to note that the LLP agreements of HBJ LLP did not permit it to carry on business as an Alternate Investment Fund. Admittedly, no information- memorandum or placement memorandum was ever issued by HBJ LLP to its partners and therefore, its partners cannot be equated with or considered as investors in an Alternate Investment Fund.

6.17. The LLP Agreement did not provide for any schemes or different rates of returns and in fact, all partners received returns on their partner contribution as per the LLP Agreement and not in accordance with any schemes, which would have been the case with an Alternate Investment Fund.

6.18. It is submitted that, HBJ has refunded subscription monies to clients whenever the clients demanded for the same for specific reasons. A sum of more than ₹ 8 lakh was refunded in the Financial Year 2013-14 and a sum of ₹ 48 lakh was refunded in

the Financial Year 2014-15.

7. Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh, Mr. Jitendra Kumar vide their letters dated June 29, 2015 adopted the reply submitted by HBJ and HBJ LLP vide their letter dated June 22, 2015.
8. Vide hearing notice dated July 16, 2015, Noticees were granted an opportunity of hearing on July 31, 2015 at SEBI Bhavan, Mumbai. On the day of the scheduled hearing, Advocates, Mr. P.N Modi, Mr. Neville P Lashkari, Mr. Joby Mathew, Ms. Harshada Nagare, appeared on behalf of the HBJ and HBJ LLP. Mr. Vadiraj Katti appeared on behalf of Mr. Abhishek Kumar Singh, Ms. Amrita Singh, Mr. Jitendra Kumar, HBJ and HBJ LLP. Mr. Kumar Harendra, appeared personally and on behalf of HBJ and HBJ LLP. Mr. P N Modi made oral submissions stating that there are no investors in HBJ LLP. Only partners have contributed funds to LLP for investment for profits. As of now, the payments due to the partners except the promoting partners have been paid back. The LLP is to be wound up soon. The activity of LLP is not AIF. He submitted two certificates issued by Chartered Accountants, Deepak Niraj & Associates and document showing the names of the institution which are reading the research report of HBJ and photos of awards received by HBJ. The hearing was concluded.
9. The complaints received by SEBI against HBJ were forwarded to the Noticee vide letters dated August 28, 2015 and September 24, 2015. HBJ was advised to submit a report for action taken for redressing the investors' complaints. Vide its letter dated October 6, 2015, HBJ *inter alia* submitted as follows:
 - 9.1. Total number of complaints = 115 (94 in 1st Letter + 21 in 2nd Letter), Repeat complaints = 19 (same client and same ticket number). Total number of unique complaints = 96.
 - 9.2. Out of the said 96 unique complaints, we have found that 13 complaints do not pertain to its service and is merely a grievance raised with regard to receiving a

promotional SMS sent by some entity under a mass SMS campaign using a sender ID similar to HBJ's on some third party database. So, Real number unique complaints with respect to HBJ = 83.

9.3. Of the remaining 83 complaints, 27 of the complaints has been resolved by its quality team. Client's email confirmations stating that client do not have any pending issue with HBJ is attached.

9.4. Total number of open and unique complaints that are pending = 56. For all these complaints, it has already initiated investigation for a positive resolution. It has got in touch with each of these complainants and hope to get the tickets resolved wherever there is enough proof to show that the concerns are genuine. It will continue to try solving those genuine grievances and keep the regulator informed on the same.

10. HBJ vide its email dated December 5, 2015 submitted that services are provided to the investors against subscription amount received. Therefore, SEBI should consider the complaint as closed in case of 10 complaints. Further, by similar emails dated December 7, 2015 and December 14, 2015, HBJ informed SEBI that SEBI should consider 30 complaints as closed as services were provided to the investors against subscription amount received. Once again on January 18, 2016, 48 fresh complaints were forwarded to HBJ. In this regard, HBJ by emails dated February 17, 2016 and February 21, 2016 replied that SEBI should consider 38 complaints as closed as services were provided to the investors against subscription amount received. Moreover, vide an email dated February 25, 2016, HBJ informed SEBI that it was able to close all the complaints barring 2 complaints.

11. Considering the facts and circumstances of the case, the Noticees were granted one more opportunity of hearing on June 27, 2017 vide hearing notice dated May 31, 2017. The said hearing notice was also sent by email dated May 31, 2017. However, Mr. Kumar Harendra

who was authorized to attend the hearing on behalf of all the Noticees, vide its email dated June 23, 2017 requested to adjourn the scheduled hearing by 4 weeks as his grandfather was in critical condition. Notocee's request was acceded to and Noticees were provided a last opportunity of hearing on July 20, 2017, vide hearing notice dated July 3, 2017. On the day of the scheduled hearing, Mr. Kumar Harendra made oral submissions on behalf of himself and Ms. Amrita Singh, HBJ and HBJ LLP. He has admitted during the course of personal hearing that HBJ was involved in investment advisory services without obtaining registration certificate as per law. With respect to HBJ LLP, Mr. Kumar Harendra has orally submitted that HBJ LLP agreed to get a share of 25 per cent of the profits for a return of above 8 per cent. Mr. Kumar Harendra was given one week's time, till July 27, 2017 to make his written submission as to the duration for which the private website of HBJ, was accessible to its clients and to submit copies of emails from Mr. Ponnuraj Gokulraj and other employees to Mr. Amit Ahire during the period of August 2015 to November 2015. Hearing was concluded qua HBJ, HBJ LLP, Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar.

12. It is noted from the records that Mr. Ponnuraj Gokulraj and Mr. Arunmozhi Gopalan who were Noticees in the interim order cum show cause notice had applied for settlement proceedings in the extant matter and settlement orders dated September 24, 2019 have been passed in respect to them in the extant matter.

Findings and Consideration

13. Before delving into the merits of the case, I would like to address the preliminary issue raised by the Noticees wherein the Noticees have contended that very drastic and severe directions have been passed against them and their Directors/Partners. However, before passing such drastic and severe directions that have effectively brought their activities to a standstill, no charges were framed against them and no opportunity of personal hearing was given to them. In this regard, I would like to refer to the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of

North End Foods Marketing Pvt. Ltd. et.al. vs. SEBI and Others decided on March 12, 2019, wherein the Hon'ble SAT observed as follows:

"...we find that it is no more res integra that SEBI has power to pass ex-parte interim orders, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed exparte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima-facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex-parte interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary when ex-parte ad-interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing."

14. I note that the interim order at paragraph 13 has recorded the reason for passing the Interim Order in the extant matter. The same is reproduced below:

"These Regulations seek to create a standardized operating structure within which these entities will operate and also make them duly accountable for their investment advices and investment activities by requiring them to comply with the criteria, set out in

the relevant provisions of the aforesaid Regulations. In view of this, subjecting such intermediaries to the statutory requirement of registration with SEBI is imperative for the protection of interests of investors and to safeguard the integrity of securities market. In the instant case, HBJ Capital and its directors and HBJ Capital LLP and its partners/directors have acted as investment advisers and alternative investment funds without obtaining registration from SEBI. It is also relevant to note that several complaints have been received against HBJ Capital alleging that HBJ Capital failed to provide the services promised by it and also failed to provide the returns promised. It was also alleged that HBJ Capital is not refunding the money invested by the investors/clients. In view of this, it is apprehended that investors at large could be misled and the moneys invested by the investors are at risk on account of such unauthorized activities of unregistered entities.

13.1 SEBI has been entrusted with the duty to protect the interests of investors and protect the integrity of the securities market. Considering the facts and circumstances of the present matter and on the basis of prima facie findings, it is necessary to intervene in this matter to take immediate steps to prevent such persons from engaging further clients. This is also a case where, effective and expeditious action is required to be taken to prevent any possible harm to investors caused by the unauthorized activities of the aforementioned entities and its Directors/Partners."

15. Thus, in light of the observations of Hon'ble SAT and reasons as recorded in the interim order, I note that the rationale for taking urgent preventive actions is based on the fact that the Noticees without being registered with SEBI, *prima facie* were carrying out the activity of investment adviser and running an alternate investment fund and several investor complaints were made against HBJ including non-refunding of money. Thus, the circumstances of the case, require regulatory intervention in order to protect the interest of the investor. Furthermore, it is noted from the material made available on record that HBJ LLP was informed about the requirement of registration as alternative investment

fund as required under the AIF regulations vide SEBI letter dated September 19, 2014, much before the passing of interim order on June 19, 2015. The submission of the Noticees that VPS Advisory Services were given several opportunities to register themselves as an Investment Adviser, however the Noticees were given no such opportunity is incorrect. It is noted that it is the legal obligation of the Noticee to seek registration as per the requirement of the law. Noticee is required to know the law and conduct his affairs in accordance with the law. If there is a legal requirement for obtaining a certificate of registration, it is the obligation of the Noticee to comply with the obligation. Noticee cannot take shelter that it was not given an opportunity to seek registration. Without prejudice to this I note that Noticees were informed by SEBI vide letter dated September 19, 2014, to obtain registration under respective regulations before continuing their activities. In view of the above, I find that the submission of the Noticees that the interim order was drastic and severe is without any merit.

16. I now, proceed to deal with the merits of the case. In this regard, I have perused the interim order-cum-show cause notice, written and oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration.

16.1. *Whether HBJ and HBJ LLP were carrying out activity of investment adviser and alternative investment fund, respectively without complying with the relevant provisions of IA Regulations and AIF Regulations?*

16.2. *If the answer to the aforesaid is in affirmative, who all are liable for the same?*

16.3. *What directions, if any, have to be issued in the extant matter?*

Issue No. 1- *Whether HBJ and HBJ LLP were carrying out activity of investment adviser and alternative investment fund, respectively without complying with the relevant provisions of IA Regulations and AIF Regulations?*

Investment Adviser

17. I note that HBJ vide its reply dated June 22, 2015 and at the time of hearing scheduled on July 20, 2017, has admitted that it was carrying out investment advisory activities. Though HBJ has admitted to carrying out investment advisory activities, before arriving at the final determination of its activities, I would like to assess the same in light of the relevant provisions of SEBI Act and IA Regulations. Before proceeding further, the said provisions are reproduced below:

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12.(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

IA Regulations

2 (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,–

...

(m) "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

Application for grant of certificate.

3.(1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation(2) within the said period of six months, till the disposal of such application.

18. It is noted from the extracts of website www.hbjcapital.com, as available on record that HBJ provides investments services and trading services. Under the heading investment services, HBJ provides the following plans / products:

18.1. Hedge fund portfolio - This is an Offline Hedge Fund advisory service in which users are required to replicate the Fund moves as imitated by the research team of HBJ. The investors just need to copy the transactions as done in the Fund on their scale of Investment (HBJ Hedge Fund model corpus is ₹ 25 lakh). Clients would receive immediate updates on the changes in the Portfolio through Mail/ SMS & Web-Login, so that they can replicate the same on their Portfolios. This advisory model provides clients with an efficient way of investing in Hedge funds compared with complicated asset management platforms.

18.2. Multibagger - Multibagger Stock Package will provide investor with a highly potential Multibagger Stock every month with the best-in-class research report. HBJ's intention is to help investor discover the Hidden-Gems in the market which have the potential to generate multi-fold returns in the future without taking extra

risks. The key objective is to pick stocks which can Compound Sustainability at a healthy rate over next 3-5 years and create enormous wealth (3-10 X Returns). The plan includes regular update on its stock picks with interpretation of the latest news flow and corporate earnings. The users are offered the said service for fees ranging from ₹ 15,000/- to ₹ 35,000/- for a span of one year to three years.

18.3. Bulls Eye - Bulls Eye Opportunistic Calls is a Package which is specifically created for Investors/ Traders who would like to earn strong Returns with no Leverage over a Medium-Term Investment horizon. With a wide Range of Calls across various Timeline and Investment styles, the Package would give the best 10 Positional Calls in a Year which will give returns of 30–40% on each call. The plan includes a dedicated analyst being assigned to each client for any clarification on calls. The users are offered the said service for various fees ranging from ₹ 15,000/- to ₹ 70,000/- for a span of six months to three years.

18.4. The Millionaire Portfolio – The product is suitable for investors who want to beat the Broader Markets consistently by 5-10% YoY with low risk bets. As per the illustration given for the said product, HBJ claimed that product has outperformed SENSEX by 3-5 times. The users are offered the said service for fees ranging from ₹ 25,000/- to ₹ 60,000/- for a span of one year to three years.

18.5. Fortuna - The product is suitable for investors who want Highly Personalized Service by directly discussing with the Fund Managers. With the backing of a strong research team which will monitor the portfolio, investors will be able to outperform Broader Markets by 5-10% YoY regularly without any extra Risk. HBJ will make sure that Client's money works hard for them to earn more. A strong compounding rate is the key to wealth creation in the long term. It intends to compound wealth at 25% CAGR. The said service is offered for various fees ranging from ₹ 50,000/- to ₹ 1,00,000/- for a span of one year to three years.

19. Thus, from the aforesaid products offered by HBJ, it is noted it is noted that HBJ is holding out to its potential clients that if they follow its investment advice i.e. which stocks to invest in (wide and diversified range of stock picks, package comprising of stocks across sectors and investment style), what positions to take, how to hedge risks in the securities market (allocation across various segments) etc. than the returns would be multi fold, for instance if the investor subscribes to Bull Eye package, then the return would be 30–40% on each call. In this regard, HBJ has submitted that it has not offered assured returns on execution of stock tips under any scheme offered by it on its websites or otherwise. Further, the expected returns were misinterpreted as the assured or guaranteed returns by SEBI. In fact, on the websites, there is a clear disclaimer stating that it cannot guarantee returns.
20. I note from the product description of Multibagger package that HBJ has stated that subscribing to it would “*create enormous wealth (3-10 X Returns)*”, for Bulls Eye package, HBJ has stated on its website that the product is suitable for “*investors who want 30-40% returns in a medium term investment horizon of 3-6-9 months*”, for Millionaire portfolio HBJ has stated on its website that the product is suitable for “*investors who want to beat the Broader Markets consistently by 5-10% YoY with low risk bets*” and for Fortuna portfolio HBJ has stated on its website that “*investors will be able to Outperform Broader Markets by 5-10% YoY regularly without any extra Risk.*”. From the aforesaid statements made by HBJ, it is observed that though HBJ has not used the word guarantee or assured, however, the tone and tenor of the said statements, suggests that if the investor acts on the advice of HBJ, he will achieve a certain quantifiable return. The Noticee should be aware of the fact that all investments in the stock market are subject to market risk and suggesting that a certain quantifiable return can be achieved or for that matter, any form of return on an investment can realise a particular targeted return, if held for a certain period, in my opinion, is tantamount to offering an assured / guaranteed return. There may be a scenario where the capital deployed by the investor gets eroded as the

investment advice provided by the Noticee turns out to be incorrect due to market risk. In the event of such adverse scenarios occurring, stating that returns from the market can be beaten consistently by 5-10% YoY or 30-40% return can be achieved over a period of 3 to 9 months, is not acceptable. Further, I find that a mere standard disclaimer stating that it cannot guarantee returns, cannot dilute the conduct of the Noticee in making statements wherein it has stated that a certain quantified return over and above the market returns can be achieved by following its investment advice. Thus, the submission of HBJ is devoid of merit.

21. Furthermore, it is noted from the extracts of website of HBJ that under the heading “Trading Services”, it provides intraday plans which includes services like intraday cash, intraday options, intraday stocks and intraday nifty. Under these categories of service HBJ is offering stock tips in both segments i.e. cash and derivatives. Further, the investors will receive 1-2 calls per day from HBJ and they will have 10-15 minutes time to execute the trade. The investors can expect returns, for example under intraday cash plans, 20-40% per call, under intraday options, 2-5% per call, if they act on the advice of HBJ. Thus, not only HBJ is giving investment advice, it is also quantifying the returns that a client is expected to get upon following its advice.
22. It is observed from the extracts of HBJ’s website that it has furnished its bank account details to enable its clients to subscribe to the services offered by it. It is noted from the bank account statements submitted by HBJ for the month of July, 2014 of HDFC Bank, Axis Bank, State Bank of India and ICICI Bank that it has consistent flow of funds of various denomination in the range of ₹ 1, 000 - ₹ 54,000 from various individuals. The locations of these individuals, as noted from the ICICI Bank statement is across the cities in India. Further, as per HBJ’s own submission, it has received money from clients / subscribers by way of fees for providing research and advisory services.

23. Thus, from the aforesaid discussions, it is concluded that HBJ is engaged in the business of providing investment advice to clients for consideration.
24. The next question that arises for consideration is whether HBJ had obtained registration from SEBI for carrying out its investment advisory activities?
25. In this regard, I note that it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. Further, as per regulation 3(1) of the IA Regulations, the registration of the investment advisers is mandatory. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. IA Regulations have been formulated with the main objective of regulating such activities to safeguard the interests of investors and hence registration of such activities with SEBI has been made mandatory. IA Regulations *inter alia* seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring investment advisers to comply with the criteria set out in the relevant provisions of the IA Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.
26. In the extant matter, as per HBJ's submission, it had started off its business, in 2009-2010. From the MCA website, it is noted that HBJ was incorporated on February 2, 2010. The IA Regulations were notified on January 21, 2013 and came into effect on April 21, 2013, as per proviso to regulation 3 (1) of IA Regulations, a person acting as an investment adviser immediately before the commencement of the IA Regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation(2) within the said period of six months, till the disposal of such application. In the instant matter, HBJ was acting as an investment

adviser before the commencement of IA Regulations and it had to file its application with SEBI before expiry of 6 months from April 21, 2013. Thus, HBJ had the statutory time up to October 21, 2013 to submit its application. It is noted from records that HBJ had made an application dated May 25, 2015 to SEBI. Thus, HBJ had carried out its investment advisory activity without obtaining certificate of registration from SEBI from October 22, 2013 till May 24, 2015.

27. HBJ has submitted that it had omitted to seek registration by oversight. The application for registration could not be submitted till May 2015 because HBJ could not raise the necessary capital to meet the net worth requirement. As of March 31, 2015, HBJ has a net worth of more than ₹ 25 lakh and after having complied with the said requirement, it has made an application for registration as an Investment Adviser. I note that the submissions of the Noticee are not in line with each other. If the Noticee has omitted to seek registration by oversight then the same is in contradiction to the Noticee's submission that it did not apply for registration due to lack of requisite capital. Further, even if the submission of the Noticee is taken on face value, the same is not acceptable as proviso to regulation 8 (2) of IA Regulations states that existing investment advisers have to comply with the capital adequacy requirement within one year from the date of commencement of IA Regulations. Thus, the Noticee could have applied for the registration and still had one year time for meeting the capital adequacy requirements. Thus, meeting the capital adequacy requirement at the time of submitting the application to SEBI is not sacrosanct so long the same is met within a year from the date of commencement of IA Regulations.

28. In view of the above, it is concluded that HBJ was carrying out investor advisory activity without obtaining certificate of registration from SEBI.

Alternative Investment Fund

29. The allegation against HBJ LLP is that it was carrying out activities of Alternative Investment Fund in violation of AIF Regulations. In this regard, HBJ LLP has submitted that in and around the year 2010, HBJ along with 15 entities/ persons formed a Limited Liability Partnership by name HBJ Capital Ventures LLP with a total contribution of ₹ 4 crore. The objective of the said LLP was to invest the money contributed by the partners and make profits from the same. However, there was no defined investment policy set out in the LLP Agreement or agreed to between the partners. Accordingly, the said amount was invested in equity shares of several companies listed on the BSE and NSE over a period of 3 years based on the research conducted by HBJ. In 2012, some of the partners exited and new partners joined the LLP; the total number of partners including HBJ as on February 2012 was 14. On account of adverse market conditions, the aforesaid investment by HBJ LLP could not earn any substantial profit and also the Partners had some personal monetary needs, therefore, in March 2014, it was decided by the partners that the investments would be liquidated and the proceeds would be distributed among the partners and the LLP would be wound up. Accordingly, the investments were liquidated before March 31, 2014 and the proceeds were distributed among all but the Designated Partners in the proportion as agreed in the LLP Agreement dated April 1, 2013. Since April 1, 2014, there have been no further investments by HBJ LLP and the remaining partners i.e. the Designated Partners have taken steps to wind up the LLP.

30. Alternative Investment Fund has been defined under regulation 2 (1)(b) of AIF Regulations as follows:

“Alternative Investment Fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and

- (ii) *is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities:*

Provided that the following shall not be considered as Alternative Investment Fund for the purpose of these regulations,-

- (i) *family trusts set up for the benefit of 'relatives' as defined under Companies Act, 1956;*
- (ii) *ESOP Trusts set up under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme), Guidelines, 1999 or as permitted under Companies Act, 1956;*
- (iii) *employee welfare trusts or gratuity trusts set up for the benefit of employees;*
- (iv) *'holding companies' within the meaning of Section 4 of the Companies Act, 1956;*
- (v) *other special purpose vehicles not established by fund managers, including securitization trusts, regulated under a specific regulatory framework;*
- (vi) *funds managed by securitisation company or reconstruction company which is registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; and*
- (vii) *any such pool of funds which is directly regulated by any other regulator in India;*

31. In light of the aforesaid definition, I note that following ingredients have to be satisfied, before a fund is termed as AIF:

- 31.1. The fund has to be in the form of a a trust or a company or a limited liability partnership or a body corporate incorporated / set up in India;
- 31.2. It is a privately pooled investment vehicle which collects funds from investors;
- 31.3. It has to have a defined investment policy for the benefit of its investors;
- 31.4. It should not be covered under any regulations of SEBI to regulate fund management activities;
- 31.5. The fund should not fall under the proviso to regulation 2 (1)(b) of AIF Regulations.

32. I note from the MCA website that HBJ LLP was incorporated in the year December 2010 and has LLP Identification Number AAA-2982. It is noted from the records that the LLP agreement was executed on December 20, 2010 between HBJ represented by Mr. Kumar Harendra and 15 other partners and the total contribution of all the 16 partners was ₹ 50 lakh. Further, Mr. Kumar Harendra and Ms. Amrita Singh were the Designated Partners on incorporation of HBJ LLP. The aforesaid facts have not been disputed by the Noticees. As per the definitional clause of AIF, one of the forms of AIF can be LLP and the same has been satisfied in the extant matter.

33. With respect to the second ingredient, I note that the very existence of a partnership agreement (LLP agreement executed on December 20, 2010) among 16 subscribers to the said agreement, each with a certain capital contribution, makes it a private investment vehicle as opposed to a public investment vehicle. On a perusal of the said LLP agreement, it is noted that the agreement is silent on soliciting capital from retail investors or the general public. Further, the following features as noted from the aforesaid LLP agreement and from the extracts of the website of HBJ, makes it a private investment vehicle as compared to a public fund:

- 33.1. It is a close ended investment vehicle.
 - 33.2. New partners cannot be added once it closes.
 - 33.3. It accepts funds from HNI partners.
 - 33.4. Minimum lock in period of 1 year for every partner, unless otherwise decided by the First and Second Party to the agreement.
 - 33.5. Fund raising as and when appropriate, with the first right to the existing partners.
 - 33.6. Existing partners can increase their funds only during the fund raising process.
 - 33.7. No partner can assign, mortgage or change his / her share in the LLP or any asset or property thereof or make any other person a partner therein without the consent of Designated Partners.
 - 33.8. No managerial remuneration for any partner.
34. With respect to the pooling of funds, I note from the aforesaid LLP agreement that it stipulates opening of a bank account in the name of the LLP by all the partners and the said bank account so opened shall be operated by the First and Second party to the LLP agreement. This shows that the contributions of all the partners are pooled together as opposed to being segregated from each other and is managed collectively by the Designated Partners. To put it differently, once the money is transferred into the bank account, the assets held by the private investment vehicle cannot be identified against any particular partner / subscriber and the returns of the privately pooled funds cannot be segregated for partner / subscriber. To have a better understanding of the term 'pooling of funds', the activity of HBJ LLP has to be juxtaposed with the activity of a Portfolio Manager. A Portfolio Manager, though collects money from its clients but is prohibited from pooling the funds of his clients and is required to segregate the client's

funds whereas HBJ LLP has made its partners to put all of their funds in one bank account which in turn is managed by the Designated Partners. Thus, doing away with segregation of its partners accounts. It may further be noted the essence of pooling of funds could be reflected whether the investments made against such funds are maintained separately with different accounts which is not the case here. Thus, the second test is met in the present proceedings.

35. As regards defined investment strategy, I find that the interim order cum show cause notice alleged that HBJ LLP had a investment strategy by way of:-

- locking in of the funds of the partners for period of one year
- preventing the addition of the partners after its closure
- restricting existing partners to raise investments only during period of fund raising
- investing in a very concentrated portfolio of 10-12 stocks where their conviction level is high and meets their internal standards of assessment

36. I note that “defined investment policy”, is a policy that generally provides the investment goals and objectives that the fund tries to achieve for the client and also lays down the strategies to be employed by the manager to meet the objectives. In light of the same, I note from the extracts of the website of HBJ Capital that HBJ LLP has laid down the following objectives which it will try to achieve for its partners / subscribers:

36.1. Their vision is to generate wealth for their partners through alpha investing, where the reward is much more than the risk taken.

36.2. To outperform the market by a significant margin of 5% compounded over the long term.

37. With respect to the investment strategy, I note as follows:

37.1. HBJ LLP says on its website that it is an equity investment vehicle promoted by HBJ and relies on the strength of HBJ’s equity research analysts across India and

its unique strength of picking small, mid and micro cap companies which are outside the investment radar of large institutions. Thus, delivering strong returns when they get recognized in markets.

37.2. The company in its website has clearly stated its LLP structure is formed on the lines of Buffet Partnership formed by Warren Buffet. It even simulated the Warren Buffet famous newsletters, by stating in its website under the heading of “High – Transparency” that it shall send monthly news-letters to its partners with adequate details of market conditions, portfolio performance, existing partners, NAV performance with Sensex etc. It is further stated in the website that Buffet almost re-invested all his profits into LLP thereby becoming the largest partner in his partnership. The website further describes the important features of Buffet Partnership and Pabrai funds formed along the same lines as Buffet Partnership by Mohinis Pabrai. In the website, it is clearly mentioned that the success of these two funds has been simple profit sharing mechanism. In order to show that the company is building its fund along the lines of these two funds, it has stated in the website that as in the case of two funds, HBJ LLP does not charge any asset management fee/entry/exit loads. It is stated therein” *We have simple model-25% of the profits over the hurdle rate of 6 %*”, on the same lines of these two funds.

37.3. As far as the feature of Hurdle rate and High Water Mark are concerned, the following table taken from the website of HBJ Capital explains how the hurdle rate of 6% is calculated

Table No: 1

Your Investment ₹ 100		Your Investment - ₹ 100		
Returns of the Portfolio in %	HBJ Share in % terms	Profit (₹)	Your Share (₹)	HBJ Capital's share (₹)

Your Investment ₹ 100		Your Investment - ₹ 100		
6%	0	6.00	6.00	0.00
7%	0.25%	7.00	6.75	0.25
10%	1%	10.00	9.00	1.00
16%	2.50%	30.00	24.00	6.00
30%	6.50%	100.00	76.50	23.30

37.4. The Fund model indicated in the website also uses “High Water Mark” for the calculation of fund manager’s share of performance fee as in the case of hedge funds/private equity. The High water mark procedure followed in hedge funds prevents the Managing Partner from receiving the Performance fee when the fund which has suffered losses in previous financial years simply restores its losses. This means the performance fee only applies to net profits (i.e., profits after losses in previous years have been recovered). It stated in the website, “in case of any losses, it will be carried forward with the profit shared only after the partners earn money over hurdle rate”. And the same was explained in the FAQ in answer to the question “What is High Water Mark”, that “the High water mark ensures that HBJ Capital cannot charge a performance fee until the partners earn more than 6% annualized return. Example: If HCV losses 50% the first year and gains 80% in the second year, investors *would* have an annualized return of -5%. Even though the second year’s performance is above 6%, HBJ Capital cannot charge a fee as return is less than 6% annualized”

37.5. The calculation of “high water mark” was illustrated on its website as shown in the following table.

Table No: 2

Your Investment ₹ 100			Your Investment ₹ 100			
Investment Duration - 2 years			Investment Duration 2 years			
CAGR	Your Share		Profit (₹)	CAGR	Your Share (₹)	HBJ Capital's Share (₹)
	HBJ Model	If 2.5% fee				
-10%	-10%	-12.25%	12.36	6%	12.36	0.00
6%	6%	3.35%	21.00	10%	18.84	2.16
10%	9.01%	7.25%	69.00	30%	54.84	14.16
30%	24.43%	26.5%	125.00	50%	96.84	28.16

37.6. As per clause 20(2) of the LLP Agreement, the HBJ Capital is entitled to the same hurdle rate declared in its website, though couched in the language of how HBJ Capital shares its profits. As per the said clause, “the first party (HBJ Capital) shall be eligible for 25% of the profit over and above 6% calculated annualized (before taxes and expenses) on the capital contribution at the beginning of the financial year”. In the same way, the “ High Water Mark” is reflected in the said clause of the LLP Agreement as follows:

- “any deficiencies in earnings below 6% would be carried forward against future earnings but would not be carried back
- In the event of losses, there will be no carry forward against amount previously credited to the First Party, although there will be a carry forward against future expected earnings”

37.7. HBJ LLP will run a concentrated portfolio of 10-12 stocks.

37.8. HBJ LLP has the flexibility to invest across sectors, market caps, themes which restrict mutual funds.

37.9. Most of the investments will be made from a long term perspective (greater than 1 year).

37.10. HBJ LLP does not charge any asset management fee or entry or exit loads.

37.11. HBJ does due diligence before each investment through both primary research (con-call with the management, speaking with suppliers, distributors & competitors) and secondary research (data from AR's, web, industry news etc.). HBJ's institutional arm helps us to get in touch with the management to understand their vision and get the queries cleared.

38. On perusal of the LLP Agreement, I find that clause 10 of LLP provides for minimum period of one year lock in. As per clause 9 (c) (ii) read with clause 8 (2), though every partner has the right to add any amount during the financial year, the further contribution if any shall be decided by HBJ Capital. Thus, from the above discussions, I find that through its website and its LLP agreement, HBJ LLP has formalised institutional goals and objectives. Further, it has also outlined its investment philosophy, methodology of investment and its investment parameters so as to create an investment environment for its partners / subscribers which will enable it to retain them and leverage their contributions for business-led growth / generating profits. Therefore, it is held that HBJ LLP has a defined investment policy as reflected in its website and the LLP agreement. In furtherance to the said defined investment policy, it is noted from the records that HBJ LLP had opened demat accounts with India Infoline Ltd., Sharekhan, Angel Broking and Edelweiss Broking and as per its own submission has transacted through the aforesaid stock brokers till March 31, 2014. Thus, the third ingredient is also met in the present proceedings.

39. With respect to the fourth ingredient of the fund not being covered under any regulations of SEBI to regulate fund management activities, I note that other fund management activities that SEBI regulates is Collective Investment Schemes, Portfolio Management,

Mutual Funds, Real Estate Investment Trusts and Infrastructure Investment Trusts. The last two, as the name suggests are in the sectors of real estate and infrastructure projects respectively which is not the business model of HBJ LLP. Collective Investment Schemes and Mutual Funds solicit money from public and hence are different from the activity of HBJ LLP. Distinction with the activity of Portfolio Management has already been made in the preceding paragraphs. Thus, it can be seen that the activity of HBJ LLP is not covered under any regulations of SEBI which regulates fund management activities. It is also not the case of the Noticees that the activity of HBJ LLP falls within the exempted categories.

40. It is further noted that the activity of HBJ LLP also does not fall under the proviso to regulation 2 (1) (b) of AIF Regulations.

41. HBJ LLP has submitted that there was no defined investment policy set out in the LLP Agreement or agreed to between the partners. Accordingly, the said amount was invested in equity shares of several companies listed on the BSE and NSE over a period of 3 years based on the research conducted by HBJ. It has already been held in the preceding paragraphs based on the extracts of the website of HBJ Capital and LLP Agreement that HBJ LLP had a defined investment policy. HBJ LLP had stated that they will run a concentrated portfolio of 10-12 stocks which will have a long term investment perspective and the same investment will be based on the primary and secondary research done by HBJ. As noted from the LLP agreement that the investments made pursuant to the said agreement would be managed by the Designated Partners. Thus, the aforesaid submission of the Noticee has no merit.

42. HBJ LLP's submission that since April 1, 2014, there have been no further investments by HBJ LLP and the remaining partners i.e. the Designated Partners have taken steps to wind up the LLP does not, in my opinion, preclude the determination of whether the constitution of HBJ LLP has been in the nature of alternative investment fund, which is the issue at hand.

43. HBJ LLP has further contended that it did not invite or collect funds from public investors, rather it only invested the contribution of its partners and thereafter, distributed the proceeds of the liquidation of such investment in accordance with the provisions of the LLP, Agreement. Furthermore, HBJ LLP did not have any defined investment policy, rather, it only sought to make profits from investments. In this regard, I note that one of the features of an AIF is that it does not solicit funds from the general public. Therefore, the contention of the Noticee that it did not collect funds from the public, does not further its case. Moreover, as submitted by the Noticee, LLP was formed to invest / manage the funds of the clients of HBJ and considering the structure of the investment vehicle was LLP, the natural consequence of the same is that the investment made in furtherance of the LLP agreement will be the contributions of its partners. What sets HBJ LLP apart from other LLPs is that it is a privately pooled investment vehicle with a defined investment policy. Lastly, the submission of the Noticee that it only sought to make profits from investments is nothing but it is a part of its investment policy where it had claimed to outperform the market by a significant margin of 5% compounded over the long term.
44. The fact that it has formed a LLP as stated in the website for the purpose mentioned therein, clearly belies the version of the Noticees that the services mentioned in the website relating to limited partnership model were never provided. Further, Noticees were clearly aware that it is running a “fund” by way of managing others money by investment in equities is further borne out in the website. For example, in the portion of “FAQ” –Why HBJ LLP”, it is stated by the company that *“Professional and smart management of money in equities with high transparency is the need for the day and HBJ LLP provides just that. Being a new division, we have the fire in the belly to grow the fund”.* Further in the FAQ in response to a question *“Is the entire fund required at one go?”* It answered that entire contribution has to be made before the fund closes.
45. To further support that the Noticees were aware that it is running a fund structure, I find that the fund structure of HBJ LLP compared itself in the website with other fund

structures such as Portfolio Management Services, Private Equity and Mutual Funds as shown in the following table.

Table No: 3

Your Share of Return under various schemes			
Annualized Return on Portfolio	HBJ Capital Ventures LLP Investor	PMS Wealth Management	Mutual Fund Investor
5%	5%	2.9%	3.43%
10%	9%	7.8%	8.35%

46. HBJ Capital and HBJ LLP were considering the partners as its investors to the fund and the partnership contributions as investments is further borne out from its website wherein it is stated that “other value additions included for our active LLP investors who also help us to increase our fund size” and “HBJ Capital Ventures LLP is an equity investment vehicle promoted by HBJ Capital”, “3 partners of HBL LLP are bestowed with various value added services from HBJ capital in addition to the wealth created from investments”. Given the definition of “unit” under regulation 2(1) (y) of AIF Regulations as “beneficial interest of the investors in the Alternative Investment Fund or a scheme of the Alternative Investment Fund and shall include shares or partnership interests, it is clear that partnership interests or partnership contribution are nothing but the beneficial interest of the investors in the AIF.

47. HBJ LLP has submitted that it has not been provided with the details received from NSDL, BSE or NSE. I note that the same does not violate the Principles of Natural Justice as the requirement under regulation 3 (1) of AIF Regulations is that no entity or person should act as an AIF unless it has obtained a certificate of registration from SEBI. Thus, the focus is on the act of the entity. The “act” as envisaged in the said regulation is private pooling of the funds with a defined investment policy. In the extant matter the very fact that HBJ LLP is privately pooling funds based on its defined investment policy shows that it is

acting as an AIF. The requirement of actual investing is not *sine qua non* for triggering regulation 3 (1) of AIF Regulations. Therefore, the details received from NSDL, BSE or NSE which pertains to actual investment made by the Noticee are not relevant to HBJ LLP's case and therefore, in the present proceedings have not been relied upon to determine whether HBJ LLP falls under the definition of AIF under regulation 2 (1) (b) of AIF Regulations.

48. HBJ LLP's submission that it cannot be equated with an AIF as no information memorandum or placement memorandum was ever issued by HBJ LLP to its partners and that the LLP Agreement did not provide for any schemes or different rates of returns, is not acceptable. As noted from the definition of AIF under AIF Regulations, to be classified as AIF, the requirement of having an information memorandum or having a scheme / different rate of returns is not a mandatory criteria under regulation 2 (b) of AIF Regulations. In fact that is the requirement to be followed by the AIF. The failure to comply with the requirement does not take away the nature of the LLP from being AIF. The purpose of having an information memorandum for an AIF is to provide all the material information to its investors which is necessary to take an informed decision. In the extant matter, it has already been noted that the Noticee has through its website and the LLP Agreement has provided the background of its key investment team (research work will be done by HBJ which as per HBJ LLP, has a great track record in investing in securities market.), expenses to be charged to the fund (entry and exit loads, remuneration of partners and designated partners), horizon of investment including the concentration of portfolio, limits on redemption, profit sharing mechanism, conditions of joining of new partners and manner of winding up. Thus, even though having a placement memorandum is not mandatory as a part of definition to be termed as AIF, still HBJ LLP has provided material information which is required to make an informed decision. Similarly having a scheme or different rates of return has no bearing on the classification of a fund as AIF, as what is essential among other things is that it should be a privately

pooled investment vehicle with a defined investment policy. One of the features of having a defined investment policy is that it sets out the objectives of the fund and the investment strategy / methodology to achieve it. In the extant matter, HBJ LLP has already stated through its website that it will strive to outperform the market by a significant margin of 5% compounded over the long term by employing expertise of HBJ's equity research analysts and its unique strength of picking small, mid and micro cap companies. Moreover, it can be said that there was a scheme in place, though not submitted to SEBI, wherein all the managerial personnel were identified, objectives and investment strategy / methodology was in place, profit sharing method was chalked out, redemption conditions were laid down, terms and conditions of entry and exit of investors / partners was laid down including additional investment by them and winding up mechanism was also in place.

49. In light of the aforesaid discussions, it can be held that HBJ LLP is an AIF.

50. The next question that arises for consideration is whether HBJ LLP had obtained registration from SEBI for carrying out its alternative investment fund activities?

51. As stated earlier, Section 12(1) the SEBI Act mandates that any intermediary who is associated with securities market should be registered with SEBI. Further as per regulation 3 (1) of the AIF Regulations, the registration of an entity is mandatory for acting as an "Alternative Investment Fund". Regulation 3(1) states *"On and from the commencement of these regulations, no entity or person shall act as an Alternative Investment Fund unless it has obtained a certificate of registration from the Board"*.

52. Therefore, I note that it is imperative that any person carrying out alternative investment fund activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such

measures as it thinks fit for fulfilling its legislative mandate. AIF Regulations have been formulated with the main objective to create a structure where regulatory framework is available for all shades of private pool of capital or investment vehicles so that such funds are channelized in the desired space in a regulated manner without posing systemic risk and hence registration of such activities with SEBI has been made mandatory. AIF Regulations *inter alia* seek to create a structure to provide rules for governance practices to minimise conflict, disclosures and reporting requirements. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.

53. In the extant matter, it is noted from records that the Noticee has not applied for certificate of registration before carrying out alternative investment fund activities. The same is also not disputed by HBJ LLP. In view of the same and the conclusion arrived at preceding paragraphs that HBJ LLP was carrying out alternative investment fund activities, it is further held that HBJ LLP is carrying out activity of alternative investment fund without complying with the relevant provisions of AIF Regulations.

Issue No. – 2: *If the answer to the aforesaid is in affirmative, who all are liable for the same?*

54. It has already been held in the preceding paragraphs that HBJ was carrying out investor advisory activity without obtaining a certificate of registration from SEBI. It is noted from HBJ's submission that it had started its business in the year 2009-2010. From the director details as available on the MCA website, it is observed that Mr. Kumar Harendra (from February 2, 2010), Ms. Amrita Singh (from February 2, 2010), Mr. Abhishek Kumar Singh (from November 2, 2010) and Mr. Jitendra Kumar (from November 2, 2010) were the Directors of HBJ after IA Regulations came into effect. Being the Directors of HBJ, they were in charge of and responsible for the affairs of the HBJ, as HBJ is a juristic person. Consequently, the said Directors are statutorily expected to exercise due care and diligence as expected from a prudent person which among other things entails running

the affairs of the company within the four walls of the relevant statutory provisions. Here I would like to refer to the observations of Hon'ble High Court of Delhi in the matter of *Santanu Ray vs. Union of India* decided on August 12, 1989, wherein the Hon'ble Court observed as follows:

"12. In Pennington's Company Law, 5th edition, at page 58, the topic of evasion of obligation imposed by law is discussed. The courts have ignored separate legal personality of the company if it was formed or used to facilitate the evasion of legal obligations. The American courts have disregarded a company's separate legal personality when it was clearly formed or acquired to facilitate a breach of the general law. In CIT v, Meenakshi Mills Ltd., their Lordships expressed that it is well established that in a matter of this description, the income-tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transaction. It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But, in certain exceptional cases, the court is entitle to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade."

55. In the extant matter, HBJ has admitted that it was carrying out investment advisory activity without obtaining a certificate of registration from SEBI. HBJ being a legal entity cannot act on its own. The Directors being in charge of the affairs of the company are required to discharge the obligations of the company on behalf of the company. Therefore, it is the obligation on the part of such Directors to get certificate of registration on behalf of the company. However, the same has not been done in the present case and HBJ had been used, illegally, as a medium to carry out unregistered investment advisory activities. Hence to carry out an activity which is not permissible under law, the Directors are also liable for the unlawful act of the company. In view of the same it is held that HBJ and its Directors namely Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar are liable for the unregistered investment advisory activity

carried out by HBJ. Thus, it is further concluded that HBJ and its Directors namely Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar have violated Section 12 (1) of the SEBI Act and regulation 3(1) of IA Regulations. Fees have been collected on behalf of the company in breach of legal provisions as it can be collected only after the legal requirement of certificate of registration is complied with by company. Consequently, the money collected after the six month period as envisaged under regulation 3 (1) of IA Regulations i.e. from October 22, 2013 is liable to be refunded by the HBJ and its Directors namely Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar. An appropriate direction in this regard has been incorporated in the operative portion of this order.

56. It is noted that the AIF consists of Investors and those who manage their fund. The investors do not have control over the management of the funds. The control lies with the managers of the fund. Though all the partners have joined together in the LLP Agreement, HBJ Capital as a partner represented by Mr. Kumar Harendra and Ms. Amrita Singh are given overriding rights showing that they are in control of the HBJ LLP. The deployment of the funds of the partnership cannot be done by any other partners without the designated partners consent. Such consent can be given only by Kumar Harendra and Ms. Amrita Singh. There is no case that they have given consent to other partners. The designated partners alone have the power to admit new members to the partnership. Any partner can be expelled from the LLP at the sole decision of HBJ Capital (first party in the LLP Agreement).

57. Though every partner has the right to add any amount during the financial year, the further contribution, if any, shall be decided by HBJ Capital. Shri Kumar Harendra and Ms. Amrita Singh as designated partners get the right to appoint any future designated partners. HBJ Capital and Ms. Amrita Singh in exclusion of other partners, have the right to engage and dismiss the employees and they are the working partners. No partner can transfer or assign his interest without written consent from them. Clause 10 of the LLP

Agreement list out restrictions on other partners. In those restricted areas, the other partners cannot act without the written consent of HBJ Capital and Ms. Amrita Singh and the designated partners are responsible for doing all the acts arising out of the LLP Agreement. The above clause clearly shows that HBJ Capital, Ms. Amrita Singh Kumar and Harendra are controlling the LLP for the purpose of managing the funds of the investors. These restrictions on the other partners coupled with the management fee in the form of share of profits to HBJ Capital clearly show that the fund structure of HBJ LLP is being managed by HBJ Capital and the designated partners of HBJ LLP. Therefore the requirement of seeking a registration when the AIF is run as an LLP rests with HBJ Capital and the designated partners of HBJ LLP.

58. In this context, the text of regulation 3(1) of AIF Regulations is reproduced below:

AIF Regulations

On and from the commencement of these regulations, no entity or person shall act as an Alternative Investment Fund unless it has obtained a certificate of registration from the Board:

Provided that an existing fund falling within the definition of Alternative Investment Fund which is not registered with the Board may continue to operate for a period of six months from commencement of these regulations or if it has made an application for registration under sub-regulation (5) within the said period of six months, till the disposal of such application:

Provided further that the Board may, in special cases, extend the said period up to a maximum of twelve months from the date of such commencement: *Provided further that existing schemes will be allowed to complete their agreed tenure, such funds shall not raise any fresh monies other than commitments already made till registration is granted under regulation 6:*

Provided further that if such existing funds are not able to comply with conditions specified under these regulations, they may apply for exemption to the Board from strict compliance with these regulations and the Board upon examination may provide such exemptions or issue such instructions as may be deemed appropriate.

59. As per the first proviso appended regulation 3(1) of AIF Regulations, *an existing fund falling within the definition of Alternative Investment Fund which is not registered with the Board may continue to operate for a period of six months from commencement of these regulations or if it has made an application for registration under sub-regulation (5) within the said period of six months, till the disposal of such application.* However, as per the second proviso appended regulation 3(1) of AIF Regulation, *the Board may, in special cases, extend the said period up to a maximum of twelve months from the date of such commencement*”
60. Further regulation 3(4) stipulates that *"Any entity referred to in sub-regulation (1) fails to make application for grant of a certificate within the period specified therein shall cease to carry on any activity as an Alternative Investment Fund"*.
61. The Alternate Investment Fund Regulations came into force with effect from May 21, 2012. From the reply dated June 22, 2015, I find that the first partnership deed was executed on December 20, 2010. Therefore, HBJ LLP which is not registered with SEBI could continue to operate for a period of six months from commencement of these regulations. Admittedly no application for registration as AIF was sent to SEBI within the said period. Therefore, subsequent to the grace period of six months, the activity of running AIF should have ceased as per regulation 3(4) of AIF Regulations. However, no proof was given by the Noticees that HBJ LLP ceased to carry on the activity as an AIF immediately after the grace period. HBJ Capital and HBJ LLP claimed in its submission that in view of the adverse market conditions, and the personal monetary need of the partners, it was decided in March 2014 by the partners that the investments would be liquidated and the proceeds would be distributed. Accordingly, the investments were liquidated before March 31, 2014 and the proceeds were distributed among all but the designated partners in proportion in the LLP Agreement dated April 1, 2013. Since April 1, 2014, no further investment was made by HBJ LLP. The designated partners have taken steps to wind up the LLP. However, no proof of the repayment to all its partners, was

given by HBJ Capital or HBJ LLP except the Chartered Accountant certificate dated July 30, 2015 in the case of HBJ LLP which for reasons discussed in the subsequent paragraph is not acceptable as credible proof. Even, if it is accepted that the partners have been repaid, the same should have been done by November 22, 2012. However, even as per Noticee's case, the decision to refund was taken on only on March 2014 showing that the refund was not done by November 22, 2012. HBJ LLP could not have carried out the activity of alternative investment fund without obtaining a certificate of registration from SEBI post November 22, 2012 as the fund is considered to be active as long as the refund is not made.

62. It was contended by HBJ Capital and HBJ LLP in its reply dated June 22, 2016, that SEBI has never advised that they should get certificate of registration in its various communications sent by SEBI. It is noted that it is their legal obligation to get the certificate of registration. It is not imperative on the part of SEBI to advice in this regard. Thus, it is further concluded that HBJ LLP and its Designated Partners namely, Mr. Kumar Harendra and Ms. Amrita Singh have violated Section 12 (1) of the SEBI Act and regulation 3(1) of AIF Regulations.

Issue No. – 3: *What directions, if any, have to be issued in the extant matter?*

63. It is noted from HBJ's submission that ₹ 8 lakh was refunded in the Financial Year 2013-14 and a sum of ₹ 48 lakh was refunded in the Financial Year 2014-15. HBJ has submitted refund details. Further, HBJ LLP has contended that it also made the payments due to its partners except the Promoting Partners. In this regard, I note that HBJ has submitted a list of its investors. From the said list it is noted that HBJ has collected money in various denominations from the investors. The same is also borne out of the bank statements of HBJ for the month of July, 2014 of HDFC Bank Ltd., Axis Bank Ltd., State Bank of India and ICICI Bank Ltd. However, no documentary evidence viz. bank statements for the financial periods 2013-2014 and 2014-2015, copy of applications received, proof of subscription etc. has been furnished by HBJ. Therefore, it is difficult to ascertain exactly how many

investors and how much amount was collected by HBJ. Further, the claim of HBJ that it has refunded a certain sum of money to its investors is also not supported by any documentary evidence viz., corresponding debits from bank accounts is not identified by HBJ, acknowledgement from its investors etc. With respect to HBJ LLP's submission that it has paid the dues to its partners except the promoting partners, I note that as per the LLP agreement, the contribution of all the partners was ₹ 5 crore. Though, HBJ LLP has submitted a Chartered Accountant Certificate dated July 30, 2015 in support of its claim, I note from the said Certificate that it mentions that the initial contribution by the partners of LLP was ₹ 4,00,01,000/- which is in contradiction to the LLP agreement amount and the capital account balances as on June 14, 2015 comprises of dues to HBJ Capital (₹ 61,72,844) and to Ms. Amrita Singh (₹ 1,235). Further, the said Chartered Accountant certificate is without any enclosures that reflect the proof of particulars of the payment. HBJ LLP also has not submitted any corresponding bank account debits to reflect the payment made to its partners / investors except in 2 instances. However, even the said payment is not reflected in the Chartered Accountant's certificate as the said certificate lacks proof of particulars of any payment made to any of the partners/investors. Moreover, if HBJ LLP can submit the documentary evidence to the Chartered Accountant for the payment made to its partners based on which the Chartered Accountant ought to have given the certificate, then HBJ LLP should have furnished the same to SEBI. Instead it chose to make a submission to SEBI without it being backed by any supporting evidence.

64. Based on the above, I hold that the submission of HBJ and HBJ LLP with respect to refund is not acceptable based on current submission. SEBI Act along with the IA Regulations and AIF Regulations, provide for various remedies in the interest of investor protection. Section 11B of the SEBI Act being one of the pivotal measure for the purpose of investor protection under which remedial tool of refund is envisaged. IA Regulations, on the other hand *inter alia*, seek to create a structure within which Investment Advisers will operate

and also make them duly accountable for their investment advice by requiring investment advisers to comply with the criteria set out in the relevant provisions of the IA Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market. In the instant case, HBJ was offering investment advice to various clients under multiple packages without obtaining registration from SEBI. It is on record that HBJ had collected money for the said investment advice and numerous complaints have been filed against it. The same indicates that various investors were aggrieved by the unregistered activity of HBJ. Similarly, HBJ LLP has carried out alternative investment fund activity without having the requisite registration/ certification as mandated under AIF Regulations which is also not in the interest of its investors / partners.

65. In view of the same, SEBI in exercise of its mandate under Section 11B of the SEBI Act can take various investors protection measures in case of unregistered investment advisory activities and alternative investment fund activities. The said measures can include direction to refund the money collected and suitable directions against the entities responsible for such unregistered activities. As stated already in preceding paragraphs, the directors are also liable to make refund in case of the fee collected by HBJ. Similarly, when it comes to which of the partners of the HBJ LLP are liable to make refund, I note that as per Section 28 of the Limited Liability Partnership Act, 2008, not every partner is liable for the wrongful acts/omissions of other partners. However, the partner who is doing the said wrongful act or omission is personally liable for his wrongful act. As already determined, the LLP was under the control of Mr. Kumar Harendra, and Ms. Amrita Singh, therefore, they as partners are liable for their acts and omissions. It is already determined that they as designed partners are instrumental in pooling other partners money for running the AIF and omitted to obtain the certificate of registration as AIF. Therefore, they are also personally liable for the repayment of the money collected/pooled by HBJ LLP. Thus, the Directors and Designated Partners who

collected / invested the money on behalf of the HBJ and HBJ LLP are also liable for repayment under Section 11B of the SEBI Act to refund the money collected by them, during their tenure of directorship / designated partnership tenure. Accordingly, the contributions collected are liable to be repaid both by HBJ and HBJ LLP and by the Directors and Designated Partners in their personal capacity. Therefore, Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar are personally liable to refund the money collected by HBJ. Similarly, Mr. Kumar Harendra, and Ms. Amrita Singh are personally liable to refund the money collected by HBJ LLP.

66. In view of the observations made in this order, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

66.1. HBJ shall refund the money collected by it from its clients in the form of fees within a period of three months from the date of service of this Order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels, with clear identification of beneficiaries and supporting bank documents.

66.2. Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar shall ensure that directions under sub paragraph 66.1 is complied with. For prior payments made to the investors, if any, the company shall produce a peer reviewed Chartered Accountant's certificate, for the repayments claimed to have been made by the company, certifying repayment on verification of the acknowledgment of receipt of payment from the investors with an original document of proof of identity, address and signature issued by the State/Central Government to the investor bearing his signature, corresponding debit from the bank account of the company and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.

66.3. In case of failure of HBJ to repay the investors as per directions at sub paragraph 66.1, Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar shall, jointly and severally, refund the money collected by HBJ as fee, during their respective period of directorship, to the investors within a further period of two months. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels, with clear identification of beneficiaries and supporting bank documents.

66.4. HBJ LLP shall refund the money collected by them from the investors/partners along with promised return if any, within a period of three months from the date of service of this Order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels, with clear identification of beneficiaries and supporting bank documents. For prior payments made to its partners/investors, if any, HBJ LLP shall produce a peer reviewed Chartered Accountant's certificate, for the repayments claimed to have been made by the company, certifying repayment on verification of the acknowledgment of receipt of payment from its partners with an original document of proof of identity, address and signature issued by the State/Central Government to the partner bearing his signature, corresponding debit from the bank account of HBJ LLP and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.

66.5. In case of failure of HBJ LLP to repay its partners / investors as per directions at sub paragraph 66.4, Mr. Kumar Harendra and Ms. Amrita Singh shall refund the money collected by HBJ LLP jointly and severally, during their tenure as Designated Partners. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate

banking channels, with clear identification of beneficiaries and supporting bank documents.

66.6. Till the said period when the liability to refund money to the investors is not discharged by the aforesaid Directors and Designated Partners, they shall not alienate or dispose of or sell any of their assets except for the purpose of making refunds to company's clients /LLP's investors as directed above.

66.7. In the event of failure by HBJ, HBJ LLP, Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar to comply with the directions as given at sub paragraphs 66.1, 66.3, 66.4 and 66.5 above, SEBI shall initiate recovery proceedings under the SEBI Act against them.

66.8. HBJ, HBJ LLP, Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar shall with immediate effect be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to the investors are complied with, as directed at preceding paragraphs. Further, the aforesaid Noticees are further restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, for a further period of 2 years, as applicable, from the date of completion of refund of the money to its investors.

66.9. Mr. Kumar Harendra, Ms. Amrita Singh, Mr. Abhishek Kumar Singh and Mr. Jitendra Kumar shall be restrained from holding positions as Directors or key managerial personnel of any listed company or any intermediary registered with SEBI and they shall be restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period equal to the period of their debarment from the date of this order.

67. This order shall come into force with immediate effect.

68. A copy of this order shall be served upon all the Noticees, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

69. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

DATE: JANUARY 7, 2020

MADHABI PURI BUCH

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA