

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4)(b) and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Capquest Research Pvt. Limited

Capquest Research Pvt. Limited (PAN: AAGCC0137R)

Shri Gitesh Malik (PAN: BJVPM8516J; DIN: 07159286);

Shri Shanshanka Sharma (PAN: EFHPS5052E; DIN: 07159273) and

Shri Prashant Kumar (PAN: BTDPK3372G; DIN: 07159278)

Background

1. Securities and Exchange Board of India ("SEBI") received complaints in 2015 wherein it was alleged that Capquest Research Private Limited and its promoters / directors namely Gitesh Malik, Shashanka Sharma and Prashant Kumar (hereinafter collectively referred to as "**CRPL/the Company**") were offering trading tips / investment advice and were soliciting clients through their website (www.capquestresearch.com) under various plans.
2. Pursuant to the same, SEBI conducted a preliminary examination of the activities of CRPL, with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") and the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**").
3. *Prima facie findings/allegations in brief:* Pursuant to the examination, SEBI passed an interim order dated July 4, 2017, against CRPL and its promoter/directors Shri Gitesh Malik, Shri

Shashanka Sharma and Shri Prashant Kumar (hereinafter referred to as “**Noticees**”), wherein, *inter alia*, the following *prima facie* findings/allegations were recorded:

- a. CRPL (CIN:U74140DL2015PTC279589) was incorporated on April 28, 2015. Its registered address is A-30, FIFE Complex, Okhla Industrial Area, Phase -11, New Delhi – 20. Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar are the promoter/directors of CRPL.
- b. From the website of CRPL and from submissions of CRPL vide letter dated September 21, 2015, it is noted that CRPL offered the following types of services at the indicated prices:

Sr. no	Type of Service & related details	Nature	Pricing			
1	Cash Intraday (Day trading, taking advantage of rising and falling market, short selling taking advantage of falling stock prices.)	On daily basis one call	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	9,000	12,000	15,000
			3 month	20,000	25,000	30,000
			6 month	30,000	40,000	50,000
			12 month	45,000	55,000	65,000
2	Cash Positional (Maximum holding period will be 2-3 days, designed for traders who avoid taking risk in futures, trade in stocks which are technically strong)	7-8 calls in a month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	15,000	20,000	25,000
			3 month	30,000	35,000	40,000
			6 month	45,000	50,000	60,000
			12 month	60,000	75,000	90,000
3	Intraday Futures (For traders taking advantage of intraday trading in huge volume and market conditions, approx. 5-7% profit per lot, all open position squared off automatically)	On daily basis one call	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	9,000	15,000	20,000
			3 month	20,000	30,000	45,000
			6 month	30,000	45,000	60,000
			12 month	45,000	60,000	80,000
4	BTST/STBT PRO (For traders who don't have time to track the stocks in	10-15 calls in month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	15,000	20,000	25,000

	the live market, approx. 8-10 % profit per lot)		3 month	30,000	45,000	60,000
			6 month	45,000	60,000	80,000
			12 month	60,000	85,000	1,00,000
5	Futures jackpot (Entry and exit on right time and with daily market outlook update, approx. 6-8% profit per lot, Monthly 1 Jackpot call)	7-8 calls in a month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	20,000	25,000	30,000
			3 month	30,000	45,000	60,000
			6 month	40,000	60,000	90,000
			12 month	50,000	85,000	1,20,000
6	Intraday options (Earning on daily basis, guidance and better opportunities to make money on daily basis with trading discipline.)	On daily basis one call	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	7,000	10,000	15,000
			3 month	15,000	20,000	25,000
			6 month	20,000	25,000	30,000
			12 month	25,000	30,000	40,000
7	Option BTST (For making huge amount of money overnight with minimum risk, approx. 150-200% profit per lot, entry in the last hour and exit in the first hour)	10-15 calls in month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	10,000	15,000	20,000
			3 month	20,000	25,000	30,000
			6 month	30,000	40,000	50,000
			12 month	40,000	50,000	60,000
8	Option Payoff (For traders with less capital and risk avoiders, buy option, limited risk and unlimited profit, safe strategy with required knowledge)	7-8 calls in month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	15,000	20,000	25,000
			3 month	30,000	45,000	60,000
			6 month	45,000	60,000	80,000
			12 month	60,000	85,000	1,00,000
9	Index Intraday (Help overcome fluctuations in NIFTY because of the news that come at night. Efficient profit management)	On daily basis one call	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	9,000	12,000	15,000
			3 month	20,000	25,000	30,000
			6 month	30,000	40,000	50,000
			12 month	45,000	55,000	65,000
10	Index Champion (Index trading based on technical analysis tools, for traders looking for low risk and high returns in a very short period, holding period 1-2 days, 1 contract active at one time.)	7-8 calls in month	Plan	Basic	Standard	Premium
			Duration	INR	INR	INR
			1 month	15,000	20,000	25,000
			3 month	30,000	45,000	60,000
			6 month	45,000	60,000	80,000
			12 month	60,000	85,000	1,00,000

- c. Under these plans of service, CRPL is offering stock tips in both segments i.e. cash and derivatives. Further, the frequency of calls/recommendation vary from segment to segment. For instance, an investor opting for intraday cash, the recommendation frequency is 1 call per day. Similarly, an investor opting for "Cash Positional", the recommendation frequency is 7 to 8 calls per month.
- d. From the aforesaid details displayed in their website, the users/investors are advised by CRPL to undertake the transactions based on the updates/stock tips provided through Mail, SMS, web-login etc. Depending on the plan opted for by the investors, recommendation calls are made by CRPL for giving tips to them. Similarly on an analysis of information on the website www.capquestresearch.com, it is noted that the company is also assuring guaranteed return on execution of its stock tips and is providing assurance of 90% accuracy of its tips.
- e. CRPL has stated that there is no executed copy of agreement with the client, but CRPL does send invoice to the customer along with copies of disclaimer, terms and conditions, cancellation and refund policy and privacy policy as per information provided to SEBI. The same are also appearing on its website indicating that CRPL is having a contractual arrangement with its clients with respect to the plans subscribed and services provided.
- f. As per letter dated 21/09/2015 submitted by CRPL to SEBI, it has received Rs.24,19,716 from 233 investors. Further, as per letter dated 21/01/2016, CRPL has received Rs. 24,82,239 from 228 investors.
- g. CRPL in all its letters to SEBI admitted that they are engaged in the business of providing stock tips to its clients and is in the process of applying to SEBI for seeking registration as an investment adviser. In its letter dated January 21, 2016 it stated that "The company is not at all involved in the trading on behalf of the customer or any

other medium, the company is only involved in advising the clients to BUY/SELL the stocks based on the research and analysis.”

4. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 4, 2017 against CRPL and its promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar with immediate effect:
 - i. “to cease and desist from acting as an investment advisor and cease to solicit or undertake such activity or any other activities in the securities market, including buy, sell or otherwise deal in securities market, either directly or indirectly with immediate effect;
 - ii. not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders, except for the purpose of refunds to the clients; and
 - iii. withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to their investment advisory activity or any other unregistered activity in the securities market with immediate effect.”
5. In the interim order it was stated that CRPL and its promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar, would be afforded 21 days, from the date of receipt of the interim order, to file his replies, if any and to seek an opportunity of personal hearing, if they so desired.
6. *Service of interim order and hearing notice:* The interim order dated July 4, 2017 was sought to be served on CRPL and its promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar, vide letters dated July 7, 2017 and August 3, 2017 which got delivered to the Company but returned undelivered from the promoters/directors. Vide

affixture dated August 30, 2017, the Order was served on Shri Shashanka Sharma and Shri Gitesh Malik. Subsequently, vide notifications dated October 15, 2017, published in the newspapers *The Times of India* and *Navbharat Times*, the said interim order was served on Shri Prashant Sharma and the Noticees were granted an opportunity of personal hearing by SEBI on November 30, 2017 at the time and venue mentioned therein.

7. *Hearing and submissions:* The Noticees failed to appear for the personal hearing on November 30, 2011 and also failed to file any written submission pursuant to the aforesaid interim order.
8. I have considered the allegations. I have perused the information received by SEBI, correspondence exchanged between SEBI and the Noticees, along with the documents contained therein and other information/materials available from the website and those on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:
 - i. Whether CRPL and the promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar were providing unregistered Investment Advisory services.
 - ii. If so, whether CRPL and the promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar, have violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations.
 - iii. If the findings on Issue No. 2 are found in the affirmative, who are liable for the violation committed?

Issue No. 1: Whether CRPL and the promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar were providing unregistered Investment Advisory services.

9. I have perused the interim order dated July 4, 2017 for the allegation of unregistered Investment Advisory services.

10. I note that vide letter dated August 21, 2015, it has been submitted that CRPL provided trading tips in equity and equity derivatives. I also note that vide letter dated September 21, 2015, it has been submitted by Shri Gitesh Malik that CRPL was involved in “*advising the clients to BUY/SELL the stocks*” based on research and analysis done by him.
11. I have perused the Memorandum of Association of the Company and observe that the main object of CRPL is
- “To carry on the work of research activities in the area of equity, investment, stock, securities and real estate and to act as portfolio managers, fund managers, investment consultant & advisors to corporate bodies, individuals and others, to give advice and suggest ways to maximize their capital, to support the clients for timely and well informed investment decisions, to provide both fundamental and technical analysis, to provide a cost effective way of doing research and analysis, to help investors in investment decisions, to make them understand whether to enter or exit a market position (emphasis supplied).”*
12. I further note that as per the submissions made by the Noticees, there is no executed copy of agreement with the client. However, I find that CRPL sends invoice to the customer along with copies of disclaimer, terms and conditions, cancellation and refund policy and privacy policy as per information provided to SEBI. Further I note that the same also appeared on its website. Therefore, I find that CRPL had a contractual arrangement with its clients with respect to the plans subscribed and services, provided as observed in the interim order.
13. Further on an analysis of information on the website www.capquestresearch.com and from the submissions of the Noticees, I observe that the company has assured guaranteed return on execution of its stock tips and is providing assurance of 90% accuracy of its tips. This has also been observed in the interim order, as indicated in paragraph 3(d) of this Order.

14. On perusal of the bank account statements I observe that there were regular flow of funds in the bank accounts through cash or online transfers. I note that as per letter dated September 21, 2015 submitted by CRPL to SEBI, it has received Rs.24,19,716 from 233 investors. Further, as per letter dated January 21, 2016, CRPL has received Rs. 24,82,239 from 228 investors as fees.
15. I have perused the definition of Investment Adviser as given in regulation 2(m) of the IA Regulations, which states that *“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.*” Further, I have perused regulation 2(l) of the IA Regulations which defines investment advice as *“advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.”* The activities of CRPL, as brought out from the material available on record, seen in the backdrop of the provisions clearly show that the Noticees acted as investment advisers. The Noticees vide its submissions dated August 21, 2015, September 21, 2015 and January 21, 2016 has stated that CRPL was in the process of registration as an investment advisor. However, no material was available on record to indicate that the Noticees have applied for certificate of registration as investment adviser. Further, I find no merit in the said submission as the relevant legal provisions mandate the requirement of certificate of registration for even starting the investment advisory services, in cases where the investment advisory services were begun to be provided after the IA Regulations came into effect on April 21, 2013.
16. Therefore, I find that the activities of CRPL such as giving trading tips, stock specific recommendations, etc. to the investors on payment of fees clearly indicate that they were engaged in providing unregistered investment advisory services. Further, the Noticees have declared themselves as investment advisers. I also find that CRPL has received Rs. 24,82,239 from 228 investors as consideration for investment advisory services.

Issue No. 2: If so, whether CRPL and the promoters/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar, have violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations.

17. I note that as a measure of investor protection, it is imperative on any person carrying out investment advisory activities, to obtain registration and conduct its activities in accordance with the provisions of the SEBI Act and the IA Regulations. I have perused of Section 12(1) of the SEBI Act which states that

*“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.”*

Further, I note that as per regulation 3(1) of the IA Regulations, 2013, *“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.”*

18. The Noticees admittedly do not have the registration as an investment adviser with SEBI. The proviso to regulation 3 of the IA Regulations states 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 ... within the said period of six months, till the disposal of such application.”* The IA Regulations were notified on January 21, 2013. The IA Regulations came into effect on April 21, 2013. Therefore, any person who had been providing investment advisory service

before the IA Regulations came into effect can, by virtue of the proviso under regulation 3, continue to do so without a certificate of registration till October 20, 2013, beyond which the said person would have to obtain a certificate of registration or may continue to do so till the time his application for registration is disposed of. As per the material available on record, CRPL was incorporated on April 28, 2015, and is therefore, outside the scope of the above proviso. Therefore, CRPL ought to have provided Investment Advisory services only after obtaining the certificate of registration from SEBI. I also find that there is nothing on record, to show that CRPL falls in any of the categories of exemption as provided under regulation 4 of the IA Regulations. The Noticees have not submitted any representation contending the same, as well. Further, I find that there is no merit in the submission of the Noticees that it was in the process of registration as per the relevant legal provisions, as they had clearly violated the law by acting as investment advisory services without mandatory certificate of registration which is not mitigated by any intention of getting registered as claimed by the Noticees.

19. In view of the above, I find that CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar have violated section 12(1) of the SEBI Act read with regulation 3(1) of the IA Regulations.

Issue No. 3: If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?

20. In view of the foregoing, CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar are liable for the aforesaid violations of section 12(1) of the SEBI Act read with regulation 3(1) of the IA Regulations. In order to safeguard the interest of the investors and their investments, and to further ensure orderly development of securities market it becomes necessary for SEBI to issue appropriate directions against CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar.

21. Since the Noticees have admittedly collected Rs. 24,82,239 from at least 228 clients for acting as unregistered investment adviser, it would be reasonable that such funds collected in any name are liable to be returned to the clients.
22. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorized to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude.
23. Section 11B and Section 11(4) of SEBI Act are functional tools in the hands of the Board. In effect, Section 11B and Section 11(4) SEBI Act are some of the executive measures available to SEBI to enforce its prime duty of investor protection. SEBI is empowered to issue directions in the interests of investors of any person or class of persons referred to in Section 12 of the SEBI Act or associated with the securities market.
24. In view of the discussion above, appropriate action in accordance with law needs to be initiated against CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar. In my view, CRPL has not been given an opportunity to controvert its liability to refund the money collected from the investors as fee. In view of this, the order will take effect against CRPL as stated below.
25. Therefore, I, in exercise of the powers conferred under section 19 of the SEBI Act read with sections 11(1), 11(4), and 11B of the SEBI Act, hereby issue the following directions:
 - a. CRPL shall forthwith refund the money received from the clients in respect of the unregistered investment advisory activities, and submit a certificate from a peer reviewed Chartered Accountant who is in the panel of any public authority or public institution, within a period of 3 months. For the purpose of this Order, a peer reviewed Chartered Accountant

shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").

b. CRPL is directed not to divert any funds raised from investors, kept in bank account(s) and/or in their custody, except for the purpose of refunds to the clients.

c. The repayments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels with clearly identified beneficiaries.

d. CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar are directed not to, directly or indirectly, access the securities market, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 4 years from the date of refund of the money as directed in paragraph 25(a) above and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar are also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 years from the date of refund of the money as directed in paragraph 25(a) above.

e. CRPL and its promoter/directors Shri Gitesh Malik, Shri Shashanka Sharma and Shri Prashant Kumar, shall not undertake, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 25(d).

f. This order will take effect as final order against CRPL, on the expiry of 30 days from the date of service of this order against CRPL, unless CRPL, within such period of 30 days from the date of service of this order files its objections on its liability to refund, receivable by SEBI within the said 30 days period. If no objections are filed, the directions vide interim order dated July 4, 2017 shall continue against CRPL till the time of said 30 days

period, after which this order will come into effect. If objections are filed by CRPL, receivable by SEBI within the said 30 days period, the interim directions vide interim order dated July 4, 2017 shall continue qua CRPL till disposal of the said objections qua CRPL and the directions passed herein against CRPL shall be made applicable subject to the determination on the objections.

g. The above directions shall come into force with immediate effect in respect of other noticees.

26. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents, for information and necessary action.

DATE: December 11, 2017

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**