

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, read with Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 in the matter of:

Sr. No.	Company	DIN/CIN	PAN
1.	Stapes Capital Research Private Limited	U74140DL2015PTC286737	AAWCS5718A
Promoters / Directors			
2.	Ram Singh	07320638	AVXPS7119L
3.	Prashant Gangwar	07271002	AZLPG1169N

CASE FACTS

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a complaint wherein it was alleged that Stapes Capital Research Private Limited (hereinafter referred to as "SCRPL"/"the Company") had collected subscription fee from the complainant on assurances that by trading on the calls given by SCRPL, he would make certain assured minimum profit per month. However, the complainant incurred losses due to these trading calls. SCRPL had also informed the complainant that it was in the process of getting registered with SEBI as an Investment Adviser.
2. As per the MCA21 website, SCRPL was incorporated on October 26, 2015. The registered office of the entity is located at "H. No C 410A, Maharishi Dayanand Marg, Chhajjupur, East Delhi, Delhi -100032." Mr. Ram Singh and Mr. Prashant Gangwar are its promoter/directors.
3. Pursuant to the complaint, SEBI conducted a preliminary examination of the activities of SCRPL, 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**”).

4. A letter dated December 06, 2016 was sent to SCRPL on the address available on its website www.stapescapital.com, i.e. “T-306, Arjun Plaza, Sector 05, Dwarka, New Delhi-110005”, seeking various information and documents. SCRPL vide an undated letter received by SEBI on December 14, 2016 submitted *inter alia* that it was providing Intraday and Delivery basis trading advice in stock market and was in the business of investment advisory / research analyst since October 2015. It further submitted that it had a total of 46 clients and had collected Rs. 5,34,850/- as subscription for its stock and commodity advisory services. SCRPL further submitted that it was in the process of making registration with SEBI.
5. *Prima facie findings/allegations in brief*: Pursuant to the examination, SEBI passed an interim order dated September 4, 2017, against SCRPL and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar (hereinafter referred to as “**Noticees**”), wherein, *inter alia*, the following *prima facie* findings/allegations were recorded:

- a. SCRPL has mentioned *inter alia* the following under the Object Clause in its Memorandum of Association:

“1. To carry on the business of consulting and management services in the field of equity and capital market, share broking, financial risk management for banks, mutual funds, merchant bankers, asset management companies and other financial institutions and to provide services in the field of wealth management, investment banking, private and institutional equity, portfolio management, investment, financial planning, asset allocation, risk profiling and research and publications in the respective fields. 2. ...

... ..

3. To carry on the business or vocation of acting as advisers, trainer and consultant on all matters and problems relating to the business fundamentals & Strategies, technical Industries, Civil Administration, and Organization Structure, Management, Commencement or Expansion of Industry, Purchasing & Sales of Real Estate, Production’s of material and cost control, Marketing, Advertisement and Publicity,

Trade & Investment of Shares and Securities, Training people for developing Intellectual Knowledge.”

- b. SCRPL has described itself in the following words, on its website i.e. www.stapescapital.com:

“Stapes Capital Research Pvt. Ltd. is registered one of the leading Stock Advisory Company in Indian Stock and Commodity Market.

Stapes Capital is a research firm specializing in providing recommendations to its customers in Indian Stock markets and Commodity market based on Technical research Analysis. Our strong hold in providing the most accurate Tips makes us stand apart from our competitors.

We strongly believe in the ideas we suggest and encourage people to make intelligent decisions in the market.

We promote smart investment not a just investment. Our analysis is solely based on the economic news and deep technical analysis done by our experts.

We are a team of highly qualified and experienced technical and fundamental market analysts, who deliver their expertise in providing intraday market calls for traders which include Stock Cash Tips, Commodity Tips, MCX Tips, Equity derivatives, etc.

All services are provided through Phone Call & SMS and E-MAILS. Our Tips is based around these services:

- Stock Tips*
- Equity Tips*
- Option Tips*
- Intraday Tips*
- Commodity Tips*
- Nifty Future Tips*
- Stock Future Tips*
- Bullion Premium Tips*
- BTST & STBT Calls*

We are headquartered at New Delhi and planning to have associates operating across India. Our core support and service are Accuracy on calls, Market timing , Flexible support plans, constant & volatile Market track, 24×7 customer support system and a

dedicated team of Analysts and support technicians without whom providing valued services to our customers would have proven to be a nightmarish task.

Stapes Capital provide customized services to our clients as per their requirements irrespective of the size and type of their portfolio at very reasonable rates. We ensure confidentiality of client data and information. We understand each of our client's unique needs, values and goals and leave no stone unturned in our endeavor to make them come true."

Mission:

We pride and differentiate ourselves from other firms in terms of the quality of our support and service. Our soul aim is minimize losses and maximize returns for our customers and we do so by educating them of the trading discipline and robust money & risk management.

To be a leading financial institution, we are offering efficient, fair and transparent advice for stock & commodity and enjoying full confidence of the investors."

- c. Under the Stock Trading Services, SCRPL has various plans / packages, namely Stock Cash Intraday, Stock Future Intraday, Stock Option Intraday, Nifty Option Intraday, Nifty Intraday, Cash Jackpot, Future Jackpot, Option Strategy, BTST/STBT and Platinum++ Plan. The plans / packages under Commodity Trading are named as All Commodity Intraday, Bullion Intraday, Base Metal Intraday, Energy Intraday and Commodity Platinum++ Plan. Similarly, there are various plans / packages under Investment Services, which are named as Multibagger Package, Bulls Eye and Hedge Fund. The said plans / packages have been variedly priced according to the validity period of the package opted for by the client, such as Monthly, Quarterly, Half Yearly, Yearly or 1.5 Years.
- d. SCRPL is offering stock tips in cash, derivatives and commodities through phone calls, SMS and emails. Depending on the plan / package opted for by the clients, certain number of recommendation calls are made by SCRPL to the client for giving tips. Further, under the said plans / packages as appearing on its website, SCRPL has also mentioned the returns on every recommendation call, the accuracy of its tips, the

- minimum capital required and the risk factor. For example, in respect of the Package named 'Future Jackpot', SCRPL mentions 4%-8% Return on every recommendation call, accuracy of more than 90%, minimum capital requirement of Rs. 1 Lakh and low risk factor. Similar figures and factors are mentioned under other plans / packages.
- e. SCRPL has mentioned terms and conditions, refund policy and privacy policy on its website indicating a contractual agreement with its clients with respect to the plans subscribed and services provided.
 - f. As per undated letter submitted by SCRPL to SEBI, it has received Rs. 5,34,850/- from 46 investors during October 2015 to November 30, 2016.
 - g. CRPL in its letter to SEBI admitted that it is engaged in the business of providing trading advice in stock market to its clients since October 2015 and that it is in the process of seeking registration with SEBI.
6. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated September 4, 2017 against SCRPL and its promoters/directors Mr. Ram Singh and Mr. Prashant Gangwar, 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."

7. In the interim order it was stated that SCRPL and its promoters/directors Mr. Ram Singh and Mr. Prashant Gangwar, would be afforded 21 days, from the date of the interim order, to file replies, if any and to seek an opportunity of personal hearing, if they so desired.
8. *Service of interim order and hearing notice:* The interim order dated September 4, 2017 was sought to be served on SCRPL and its promoters/directors Mr. Ram Singh and Mr. Prashant Gangwar, vide letters dated September 4, 2017 which were delivered to the said Noticees. Subsequently, vide notifications dated November 29, 2017, published in the newspapers *The Times of India*, *Navbharat Times* and *Dainik Jagran* the Noticees were granted an opportunity of personal hearing by SEBI on January 3, 2018 at the time and venue mentioned therein.
9. *Hearing and submissions:* The Noticees failed to appear for the personal hearing on January 3, 2018 and also failed to file any written submission pursuant to the aforesaid interim order.
10. 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:
 - 1) Whether SCRPL was providing Investment Advisory Services.
 - 2) If so, whether SCRPL has violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations
 - 3) If Issue no. (2) is answered in the affirmative then who are liable for the violations.

Issue No. 1: Whether SCRPL was providing Investment Advisory Services.

11. I have perused the interim order dated September 4, 2017 for the allegation of unregistered Investment Advisory services.
12. I note that vide undated letter received by SEBI on December 14, 2016, it has been submitted by SCRPL that it was providing intraday and delivery based trading advice in the stock market

since October 2015 till November 31, 2016. It was also submitted that the Company owned a website, www.stapescapital.com.

13. I have perused the Memorandum of Association of the Company and observe from its Objects clause as given in paragraph 5(a) of this Order, that the Company has declared its objective to be, *inter alia*, to carry on the business of consulting and management services in the field of equity and capital markets and to carry on the business or vocation of acting as advisers, trainer and consultant on all matters and problems relating to Trade and Investment of Shares and Securities.
14. Further on an analysis of information on the website www.stapescapital.com, I note that the Company is declaring itself to be stock advisory company in Indian stock and commodity market, as alleged in the interim order and shown in paragraph 5(b) of this Order. I also note from the website that the Company was offering various stock trading services, such as Stock Cash Intraday, Stock Future Intraday, Stock Option Intraday, Nifty Option Intraday, Nifty Intraday, etc. and various investment services such as Multibagger Package, Bulls Eye, Hedge Fund, as has been alleged in the interim order. It is also declared on the website that the services are provided through phone calls, SMS and emails, and that the Company provides “*Stock Tips, Equity Tips, option Tips, Intraday Tips, Commodity Tips, Nifty Future, Tips Stock Future Tips, Bullion Premium Tips and BTST & STBT Calls*” as has been shown in paragraph 5(b) of this Order. I also note from the website details that the packages have been variedly priced according to the different validity periods of each package. For instance, the Multibagger package has been priced within a range of Rs. 20,500 for 1 year to Rs. 50,500 for 4 years.
15. Further, I note from the website that under the said plans / packages as appearing on its website, SCRPL has also mentioned the returns on every recommendation call, the accuracy of its tips, the minimum capital required and the risk factor. The same has been alleged in the interim order and is shown in paragraph 5(d) of this Order. I have also noted other instances such as under the package of Bulls Eye, at least 12 recommendation calls per year was offered, where the returns on each recommendation calls is 30-40%, and a “Low” risk factor. I also note that the Company has mentioned terms and conditions, refund policy and privacy policy on its website. The aforesaid indicates that there is a contractual agreement between the Company and its clients which has been alleged in the interim order. SCRPL has not denied the same.

16. I further note from the undated reply of SCRPL that it claimed that it has received Rs. 5,34,850/- from 46 investors during October 2015 to November 30, 2016. However, on perusal of the bank account statements for the accounts belonging to SCRPL with Axis Bank (A/c. no. 863858970) and ICICI Bank (A/c. no. 025005004557) I note that in the period between January 25, 2016 and September 30, 2016, itself there was a total credit of Rs. 6,07,435/-. It is also not clear whether SCRPL had ceased to provide investment advice after November 30, 2016. Thus the period of providing investment advice could have been longer, the number of clients also could have been higher and the amount collected by SCRPL as fees for its Investment Advisory Services could be higher than Rs. 5,34,850/- as claimed in its undated letter.
17. 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(1)(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 SCRPL, as brought out from the material available on record, seen in the backdrop of the provisions clearly show that the SCRPL acted as an investment adviser. SCRPL vide its undated letter received by SEBI on December 14, 2016, has stated that the Company was in the process of registration as an investment advisor. However, neither any material was submitted in support of this claim, nor any material was available on record to indicate that SCRPL had applied for certificate of registration as investment adviser. In any case, 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. Admittedly the Investment Advisory services were given since October 2015 in this case.

18. Therefore, I find that the activities of SCRPL such as giving trading tips, stock specific recommendations, etc. to the investors on payment of fees clearly indicate that they were engaged in providing investment advisory services. Further, SCRPL has declared itself as investment adviser. I also find that SCRPL has received at least Rs. 6,07,435/- from at least 46 investors as consideration for providing investment advisory services.

Issue No. 2: If so, whether SCRPL has violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations.

19. 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.”*

20. SCRPL admittedly does 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 MCA21 portal, SCRPL was incorporated on October 26, 2015 and as per the admission of the Company vide its undated reply, it was providing investment advice since October 2015, and is therefore, outside the scope of the above proviso. Therefore, SCRPL 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 SCRPL falls in any of the categories of exemption as provided under regulation 4 of the IA Regulations. SCRPL has not submitted any representation contending the same, as well. Further, I find that there is no merit in the submission of the Company that it was in the process of registration as per the relevant legal provisions, as they had clearly violated the law by offering investment advisory services without mandatory certificate of registration which is not mitigated by any intention of getting registered as claimed by SCRPL.

21. In view of the above, I find that SCRPL has violated section 12(1) of the SEBI Act read with regulation 3(1) of the IA Regulations.

Issue no. 3: If Issue no. (2) is answered in the affirmative then who are liable for the violations.

22. I note from the MCA21 website that Mr. Ram Singh and Mr. Prashant Gangwar were directors of the Company from October 26, 2016 and are continuing as the directors till date. To determine whether the said directors were liable for the breach of the securities laws by the Company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in Madhavan Nambiar vs. Registrar of Companies (2002 108 Cas 1 Mad):

“13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.”

A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Mr. Ram Singh and Mr. Prashant Gangwar therefore cannot wriggle out from the liability that may ensue by allowing SCRPL to provide unregistered investment advisory services. Accordingly, Mr. Ram Singh and Mr. Prashant Gangwar were responsible for all the deeds/acts of the Company and are obligated to ensure refund of the fees collected by the Company in consideration for its investment advisory services.

23. In view of the foregoing, SCRPL is 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 SCRPL and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar.
24. Since SCRPL has collected at least Rs. 6,07,435/- from at least 46 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.
25. 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.
26. 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.

27. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SCRPL and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar. However, in my view, SCRPL has not been given an opportunity to controvert its liability to refund the money collected from the investors as fee or to show cause as to why it should not be debarred from the securities market for an appropriate period of time. Further, Mr. Ram Singh and Mr. Prashant Gangwar have not been given an opportunity to controvert why they should not be debarred from the securities market for an appropriate period of time. In view of this, the order will take effect against SCRPL as stated below.

ORDER

28. 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. SCRPL 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. SCRPL, Mr. Ram Singh and Mr. Prashant Gangwar, are directed not to divert any fees paid by investors, kept in bank account(s) of the Company 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. In case of failure of SCRPL to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from SCRPL as specified in paragraph 28(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

e. SCRPL and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar 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 28(a) above and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar 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 date of refund of the money as directed in paragraph 28(a).

f. SCRPL and its promoter/directors Mr. Ram Singh and Mr. Prashant Gangwar, 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 28(e).

g. This Order, excluding the directions at paragraph 28(b), will take effect as a final order against SCRPL and Mr. Ram Singh and Mr. Prashant Gangwar, on the expiry of 30 days from the date of service of this order to the Noticees, unless the Noticees, within such period of 30 days from the date of service of this order file objections, receivable by SEBI within the said 30 days period. If no objections are filed, the directions vide interim order dated September 4, 2017 shall continue against SCRPL till the time of said 30 days period, after which this Order will come into effect. If objections are filed by SCRPL, receivable by SEBI within the said 30 days period, the interim directions vide interim order dated September 4, 2017 shall continue *qua* SCRPL and its directors, Mr. Ram Singh and Mr. Prashant Gangwar, till disposal of the said objections and the directions passed herein shall be made applicable subject to the determination on the objections.

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

DATE: March 22, 2018

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA