

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, read with the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 in respect of

Serial no.	Name	PAN
1.	GoCapital and the proprietor, Mr. Ankitkumar Shashikant Singhania	CTKPS0145K

CASE FACTS

1. Securities and Exchange Board of India ("SEBI") received a complaint on January 22, 2015 alleging that the complainant incurred losses on the trades executed on the basis of tips received from GoCapital. GoCapital is a proprietorship business of Mr. Ankitkumar Shashikant Singhania (PAN: CTKPS0145K). The office address of the entity (as provided by the complainant) is GoCapital Division, Tulsi Chambers, Office No. A/203, Nariman Point, Mumbai- 400021. The address of the entity mentioned in their letterhead is Office No. 10, Ground Floor, Hari Om, Puja Apts, M.P. road, Wada, Dombivali (W)- 421202.
2. On perusal of the website of GoCapital (www.gocapital.co.in) it was noted that GoCapital was offering investment advisory services such as tips for *Stocks- Cash and F&O traded in NSE & BSE, commodities including bullions, metals commodities traded in MCX, etc.* It was also

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observed that the entity was providing subscription services under various heads such as *Equity, Derivative, Futures and Options and Nifty*. It was further observed that in order to receive such subscription amounts, GoCapital has mentioned details of their bank account (Axis Bank, LBS Marg Branch, Mulund, Mumbai) in their website.

3. Pursuant to the same, SEBI conducted a preliminary examination of the activities of GoCapital, with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“**IA Regulations**”).
4. Based on the details of GoCapital’s bank account with Axis Bank, LBS Marg Mulund Branch, Mumbai (Account No. 913020010971317) available on its website, SEBI vide letters dated March 9, 2015, April 1, 2015 and July 8, 2015 sought certain information from Axis Bank with regard to GoCapital. Vide letters dated March 17, 2015, April 13, 2015 and July 11, 2015, Axis Bank provided, *inter alia*, the details of bank account maintained by GoCapital, bank account statements for the period December 1, 2012 to February 22, 2013 of the proprietor, Mr. Ankitkumar Shashikant Singhania and Bank account statements for the period January 1, 2015 to July 10, 2015 of GoCapital.
5. After several attempts to contact GoCapital seeking information, the entity vide letter dated July 14, 2015 and via email dated July 15, 2015, replied stating that their address had changed and therefore it did not get any of the physical letters sent by SEBI. GoCapital further sought extension of time for submission of reply for 15 days. SEBI, accordingly advised GoCapital to submit their reply latest before July 31, 2015. Subsequently, GoCapital vide email dated July 31, 2015 sought for further extension of time. GoCapital was then advised to provide their reply latest by August 14, 2015 and was also informed that no further request for extension shall be entertained. GoCapital, vide their email dated August 20, 2015 requested SEBI to grant an opportunity for personal hearing to put across their stand on the issue and provide the requisite information to SEBI. In response, SEBI vide email dated August 25, 2015 clarified that personal hearing was not possible at this stage and that the requisite information needs to be provided without any further delay. GoCapital was further advised to provide their reply to

the issues raised in the letters sent by SEBI latest by August 31, 2015. However, no reply was received from GoCapital within the prescribed time in spite of being afforded several opportunities for submission of information.

6. *Prima facie findings/allegations in brief:* Pursuant to the examination, SEBI passed an interim order dated December 30, 2015, against GoCapital and its proprietor, Mr. Ankitkumar Shashikant Singhania (hereinafter referred to as Noticees), wherein the following *prima facie findings/allegations* were recorded.

- a) The website of the Noticee states as below:

“GoCapital Services is an Investment Advisory Company which provides safe recommendations for your valued Investments in the Stock Market. We provide the Best Share Tips. We recommend for Stocks- Cash and F&O traded in NSE & BSE, commodities including bullions, metals commodities traded in MCX.

Our Mission: *..to provide practical and educational resources which will encourage everyone to be proactive regarding their financial needs and situations...we assure our customer more than 85% accuracy in our recommendations on stock market.*

Our Motto: *to provide people with opportunities to make fast money with minimum risk in a short period of time.*

Our services:

i. Intraday equity

ii. Futures & Options

iii. BTST-STBT

iv. NIFTY”

- b) The fees for the aforesaid services ranging from Rs.20,000/- to Rs. 35,000/- are levied on monthly basis. One such package, as given in the website is reproduced as under:

“Intraday Equity

I. Get 1 – 2 ideas daily.

2. *Minimum 1,000 to 3,000 Quantity.*

3. *Get 6,000 to 10,000 profits in each call.*

4. *Cost of Package Rs 20,000 for 1 month. Sales tax of 12.36% extra.”*

c) Noticee has given the details of its bank account in its website which are as follows:

“Payment:

Make payment directly to our bank Account Name: GoCapital

Bank : Axis bank,

Branch Address: LBS Marg Branch, Mulund, Mumbai-400080”

d) The Noticee had opened the Bank Account on February 26, 2013 with Axis Bank bearing no. 913020010971317. Several credit entries as mentioned in the bank account statement for the period of January 1, 2015 to July 10, 2015, are stated as “investment tips”, “investment advice”, “profit sharing”, etc.

e) The Noticee is providing investment advisory services to its clients for consideration. Tips are being provided to the investors through calls. The clients could register for free trials with the option of registering with the Noticee as a regular client, choosing any of the services as mentioned on its website.

f) The activities of the Noticee fall within the definition of activities of “*investment adviser*” as defined under Regulation 2(m) of the IA Regulations. The Noticee is not registered with SEBI in any capacity, neither as an investment advisor or research analyst or portfolio manager nor as a broker or a sub-broker affiliated to any brokers. The Noticee has violated Section 12 (1) of the SEBI Act and Regulation 3(1) of the IA Regulations.

7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated October 6, 2016 with immediate effect:

- i. “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, directly or indirectly, in any matter whatsoever;

- ii. to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to their investment advisory or any unregistered activity in the securities market;
 - iii. to furnish all the information sought by SEBI, vide letters dated February 6, 2015, April 28, 2015, June 24, 2015 and June 25, 2015.”
8. In the interim order it was stated that the Noticee and its proprietor, Mr. Ankitkumar Shashikant Singhania, would be afforded 21 days, from the date of receipt of the interim order, to show cause as to why appropriate directions, under the SEBI Act, 1992 and relevant SEBI Rules/Regulations including directions prohibiting them from buying, selling or otherwise dealing in securities market, and requiring the investment adviser to refund any money collected as fees, charges or commissions or otherwise to the concerned clients along with the requisite interest, should not be taken against them, and to file its replies, if any and to seek an opportunity of personal hearing, if they so desired.
9. *Service of interim order and hearing notice:* The interim order dated December 30, 2015 was served on the Noticees, vide letter dated December 30, 2015. Vide email dated January 7, 2016, the Noticees sought for opportunity of personal hearing in the matter. Vide public notification dated October 15, 2017 and vide email dated October 23, 2017, the Noticees were granted an opportunity of personal hearing in the matter on December 5, 2017 at the venue and time mentioned therein.
10. *Hearing and submissions:* Mr. Ankitkumar Shashikant Singhania, proprietor of GoCapital, along with Mr. Vikas Kumar, Chartered Accountant, appeared for the personal hearing granted on December 5, 2017 and made the following oral submissions, stating *inter alia*, that:
- a. GoCapital was started in November 2013 with a website from around March 2014, and the business was stopped in December 2014. Customers would be paying the fees out of the profits made.

- b. GoCapital fulfilled all services to clients and did not get new customers after receiving the SEBI letter. The Noticee had also tried taking steps to resolve the existing complaints and was ready to return the loss. However, the complainant asked for more than the loss.
 - c. There were about 85 to 90 customers of the Noticee and fees of around Rs. 16 lakh was collected. However, he does not have the details of customers.
 - d. The Noticee attempted to obtain registration of SEBI, but was unable to due to lack of format of application. The Noticee has also submitted that he was not aware that registration was mandatory in 2013.
11. The Noticee also submitted bank statements of the account of GoCapital with Axis Bank, bearing no. 913020010971317 for the period of April 1, 2013 and March 31, 2015.
12. I have considered the allegations, and materials 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 GoCapital, under its proprietor, Mr. Ankitkumar Shashikant Singhania, was involved in unregistered investment advisory activities.
 - ii. If so, whether GoCapital, along with its proprietor, Mr. Ankitkumar Shashikant Singhania has violated section 12(1) of the SEBI Act and regulation 3(1) 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 GoCapital, under its proprietor, Mr. Ankitkumar Shashikant Singhania, was involved in investment advisory activities.

13. I have perused the interim order dated December 30, 2015 for the allegation of unregistered investment advisory activities. I note that neither the company nor the directors filed any reply denying the same.
14. On perusal of the records of the website, I note the following:

“GoCapital Services is an Investment Advisory Company which provides safe recommendations for your valued Investments in the Stock Market. We provide the Best Share

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Tips. We recommend for Stocks- Cash and F&O traded in NSE & BSE, commodities including bullions, metals commodities traded in MCX.”

In view of the above, I find that GoCapital has on its website declared itself as an investment adviser, with advisory services being offered in, *inter alia*, Intra-day equity and Futures and Options.

15. The website also states the pricing details for the services provided in various packages, with fees ranging from Rs. 20,000/- to Rs. 35,000/-, as alleged in the paragraph 4.1.iii of the interim order. Noticee has also provided the bank details wherein fees were to be paid.
16. On perusal of the bank statements obtained from Axis Bank, during the period of January 1, 2015 to July 10, 2015, it is also noted that there were few credit entries mentioning terms such as ‘investment tips’, ‘investment advice’, ‘services charges’, ‘for trading’, etc.
17. Further, during the personal hearing in the matter, Mr. Ankitkumar Shashikant Singhania admitted that GoCapital was providing investment adviser services to customers in exchange of fees, and the business was stopped around December 2014. It was further submitted that the Noticee had about 85 to 90 customers from whom, about Rs. 16 lakh was collected as fees. However, there is no supporting documentary evidence to show that the Noticee had in fact collected only Rs. 16 lakh as fees from his clients. On perusal of the bank account statement of GoCapital for the period of February 26, 2013 to March 19, 2016, I note that a total credit of Rs. 37,89,795/-. Therefore, I find that the Noticee was providing investment advisory services in exchange of consideration from February 26, 2013 till March 19, 2016. Separate directions have been made in this Order while dealing with Issue no. 3, for refund of money to the Noticee’s clients, from the said total credit amount.
18. I have perused the definition of investment adviser as given in regulation 2(m) of the IA Regulations, which states that investment adviser means “*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.*”

19. The activities of the Noticees as brought out from the bank accounts statements, declaration on its website, as well as admission during the personal hearing, seen in the backdrop of the aforesaid provisions clearly show that the Noticees have acted as investment advisers.

Issue no. 2: If so, whether GoCapital, along with its proprietor, Mr. Ankitkumar Shashikant Singhania has violated section 12(1) of the SEBI Act and regulation 3(1) of the IA Regulations.

20. 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.*”

21. GoCapital and its proprietor, Mr. Ankitkumar Shashikant Singhania, admittedly do not possess a certificate of registration to carry on the activities as an investment adviser. 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.
22. GoCapital during the personal hearing, has submitted that the website was started in March, 2014, and that the entity came into existence in November 2013. However the Noticee has not submitted any documentary evidence in support of its claim and therefore do not find any merit in the said submissions. I further find that as per the account opening documents received by SEBI vide letter dated April 13, 2015, from Axis Bank, the account of GoCapital, bearing no. 913020010971317, was opened on February 26, 2013. As per the Certificate of Registration under the Bombay Shops and Establishment Act, 1948, GoCapital was formed on November 10, 2012. Therefore, it appears that the Noticees have made inconsistent submissions during the personal hearing. In view of the above, I note that the Noticee falls within the scope of the proviso to regulation 3 of the IA Regulations, as discussed above. Thereby, the Noticees had time till October 21, 2013 to file its application for registration. Even assuming that the submissions of the Noticees during the personal hearing, that the website was started in March 2014, were true, the Noticee could not have engaged in providing investment advisory services without obtaining certificate of registration from SEBI as the IA Regulations had already come into effect on April 21, 2013. Therefore, admittedly, the Noticees were providing unregistered investment advisory services, which is in violation of regulation 3(1) read with its proviso of the IA Regulations.

23. I also find that there is nothing on record, to show that GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania fall 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.
24. I note that GoCapital has submitted that it had fulfilled all services to its clients and did not get new customers after receiving the first letter from SEBI seeking information. I find no merit in this submission as it is already established that the Noticee was providing unregistered investment advisory services. Ceasing to provide services to new clients does not in any manner mitigate the violation of the securities laws.
25. I also note that the Noticees have claimed that it tried to file an application for registration but could not, on account of not finding the requisite form of application. The Noticees have also contended that it was not aware that the requirement of registration was mandatory as per the relevant provisions of law. I find no merit in such submissions, as ignorance of the law is not a valid defence against the allegation of a violation.
26. In view of the above, I find that GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania has violated section 12(1) of the SEBI Act along 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?

27. In view of the foregoing, GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania are liable for the aforesaid violations of section 12(1) of the SEBI Act along 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 GoCapital and its proprietor, Mr. Ankitkumar Shashikant Singhania.

28. Since the Noticee has admittedly collected funds as fees from about 85 to 90 investors under different categories of schemes, acting as unregistered investment adviser, it would be reasonable that such funds collected in any name are liable to be returned to the investors. The Noticee has stated that the customers would pay fees to the Noticee out of the profits made by them. Regulation 2(g) of the IA Regulations defines “consideration” to mean “any form of economic benefit ... received or receivable for providing investment advice.” Therefore, any profit sharing arrangement as claimed by the Noticee during the personal hearing, would also be within the ambit of the IA Regulations. The Noticee has admitted to collecting Rs. 16 lakh as fees. However, the said amount is not supported by documentary evidence. On perusal of the details of the Bank account of GoCapital, bearing no. 913020010971317 for the period of February 26, 2013 to March 19, 2016, I find that after October 21, 2013, there was a total credit of Rs. 27,65,339/-. Since the Noticee has failed to provide any evidence to show that the fees collected was in fact limited to only Rs. 16 lakh, I am of the view that the entire credit amount from October 22, 2013 till March 19, 2016, i.e. Rs. 27,65,339/- should be directed to be refunded. Therefore, I find that the Noticee has collected at least an amount of Rs. 27,65,339/- which has to be refunded to investors. The said amount of refund can be more subject to the availability of material on the fees collected by the Noticee.
29. In view of the discussion above, appropriate action in accordance with law needs to be initiated against GoCapital and its proprietor, Mr. Ankitkumar Shashikant Singhania. The interim order has contemplated issuance of directions against the Noticees including prohibiting them from buying, selling or otherwise dealing in securities market, and requiring the investment adviser to refund any money collected as fees, charges or commissions or otherwise to the concerned clients.
30. 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 authorised 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.

31. 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.

ORDER

32. 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. GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhanian, shall forthwith refund the money received from its clients as fees/profit sharing/compensation in any other form, in respect of its unregistered investment advisory activities.
- b. GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhanian shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- 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. After completing the aforesaid repayments, GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhanian shall 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") holding such certificate.
- e. In case of failure of GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhanian 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 GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania as specified in paragraph 32(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

f. GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania 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. The above said proprietor is 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.

g. GoCapital and its proprietor Mr. Ankitkumar Shashikant Singhania 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 32(f).

h. The above directions shall come into force with immediate effect.

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

DATE: April 18, 2018

PLACE: Mumbai

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