

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
INTERIM EX PARTE ORDER**

**Under Sections 11(1), 11(4), 11B 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 (Portfolio Managers) Regulations, 1993**

In respect of:

S. No.	Name of the Entities	PAN
1	Way2Gains and its Proprietor Mr. Rajeev Kumar Tiwari	ATUPR0113L
2	Capital Mirror and its Proprietor Mr.Saurabh Samir	GAUPS3690J
3	Astro Capital Solutions and its Proprietor Mr. Ankit Kumar Upadhayay	AHNPU3089M

In the matter of Way2Gains, Capital Mirror and Astro Capital Solutions

1. Securities and Exchange Board of India (“**SEBI**”) received a complaint dated February 08, 2018 against M/s. Capital Mirror (hereinafter referred to as “Capital Mirror”), *inter alia* alleging engagement in unregistered investment advisory activities. Similarly, SEBI has also received a complaint against M/s. Astro Capital Solutions (hereinafter referred to as “ACS”) dated May 25, 2018 *inter alia* alleging that ACS failed to provide products/services after payment of money. SEBI has also observed that M/s.Way2gains (hereinafter referred to as “W2G”), a connected entity of Capital Mirror and ACS was also allegedly involved in similar activities.

SEBI’s EXAMINATION

2. In view of the same, SEBI conducted a preliminary inquiry and the following websites of the W2G, ACS and Capital Mirror were perused to gather information.

Entity	Website	Status of websites as on 30.10.2018
M/s.Way2gains	http://www.way2gains.com/	Active
M/s. Capital Mirror	http://www.capitalmirror.com/	Not functional
M/s. Astro Capital Solutions	http://astrocapitalsolutions.com/	Not functional

3. The website of Capital Mirror and ACS were not functional, hence, archives of pages of the website were downloaded to gather information.
4. Meanwhile, vide letter dated September 14, 2018 to ACS and its proprietor Mr. Ankit Kumar Upadhayay and vide letters each dated September 19, 2018 to W2G and its proprietor Mr. Rajeev Kumar Tiwari and Capital Mirror and its proprietor Mr. Saurabh Samir, SEBI sought the following information along with supporting documents:
 - (a) Registered corporate address of the entities along with phone numbers, legal structure and PAN;
 - (b) Name, address, PAN and phone numbers of proprietors/all of the promoters/directors of the entities;
 - (c) The list of all the securities/investment activities undertaken;
 - (d) Since when the entity is in the business of Investment Advisory or Research Analyst;
 - (e) Details of packages offered such as name, number of clients serviced, total amount of fees charged from the clients during the year in the format;
 - (f) List of clients and fee charged for various products/services offered;
 - (g) Details of registration with any regulators if any;
 - (h) Copy of audited annual accounts for the last three financial year;
 - (i) Details of websites, persons responsible for hosting and maintaining such websites; or any other relevant information.
5. Letter dated September 14, 2018 addressed to ACS and its proprietor viz., Mr. Ankit Kumar Upadhayay was delivered at ACS's registered address on September 19, 2018. Letter dated September 19, 2018 addressed to W2G and its proprietor Mr. Rajeev Kumar Tiwari was delivered at the residential address of its proprietor on September 19, 2018. Letter dated

September 19, 2018 addressed to Capital Mirror and its proprietor Mr. Saurabh Samir could not be delivered at the address available as the entity was not functioning at the said address. However, the letter was delivered to Mr. Saurabh Samir on September 24, 2018 when he visited SEBI's Bangalore Local Office on behalf of ACS in response to SEBI's letter dated September 14, 2018 to ACS.

6. SEBI has also conducted a site visit at the addresses of W2G, Capital Mirror and ACS and their proprietors to gather information about their activities.
7. Meanwhile, SEBI vide emails dated September 27, 2018 sought trade data for the PAN of these three entities for the period from April 21, 2013 to September 27, 2018 from NSE and BSE and as per the replies of the Stock Exchanges, none of these entities have traded on the Exchange during the period.
8. ACS vide letter dated September 20, 2018, submitted that they have appeared for examinations as required under the rules and regulations and after the examination result, they would apply for the SEBI registration. Further, they sought two months' time for submitting the documents. Subsequently on September 26, 2018 and September 27, 2018, ACS submitted documents such as (i) the copy of bank statement of ICICI Bank Account No. 004705500933 (ii) copy of bank account statement of its HDFC Bank Account No. 50200030147931 (iii) copy of Easebuzz's transaction statement, (iv) copy of Aadhar card and PAN card of its proprietor and (v) copy of registration certificate of establishment issued by Department of Labour, Government of Karnataka.

8.1 Vide letter dated September 28, 2018, Mr. Saurabh Samir submitted that Capital Mirror wound up six months ago and there is no document for the same and hence they are unable to furnish any documents. The letter further states that when the company is not in running condition, this letter itself is infructuous in the eyes of law.

8.2 W2G vide letter dated September 26, 2018 sought 20-25 days' time to file reply, however, till date, no response has been received from the entity.

9. SEBI also gathered information from the Bank Account details and payment Gateways submitted by the complainants, documents received from the entities, transaction

documents and KYC documents collected from the banks viz., ICICI Bank, Axis Bank and HDFC Bank.

10. I have perused the materials available on record such as investor complaints, information available on the website of W2G, Capital Mirror and ACS, information obtained from various Banks and payment gateways, submissions of the entities along with documents contained therein, etc. The preliminary examination of these material available on record as to the alleged money collection from various investors coupled with their services offered through the websites of these entities raises *prima facie* question of engaging in unregistered Investment Advisory/Portfolio Management activities by the entities. In this context, the following *prima facie* issues arise for determination in the instant matter:

- 1) Whether the activities of W2G, Capital Mirror and ACS , *prima facie*, are in the nature of Investor Advisory activities or Portfolio Management Services?**
- 2) If answer to issue No. (i) is in affirmative, whether W2G, Capital Mirror and ACS have, *prima facie*, violated the provisions of section 12(1) of the SEBI Act and regulation 3(1) of the IA Regulations and regulation 3 of the PMS Regulations?**
- 3) If answer to issue No. (ii) is in affirmative, whether urgent directions, if any should be issued against them?**

11. **Issue No. 1:** As regards the first issue, I note from the material available on record that Capital Mirror, W2G and ACS are sole proprietorship firms and the proprietor of Capital Mirror is Mr. Saurabh Samir, the proprietor of ACS is Mr. Ankit Kumar Upadhayay and the proprietor of W2G is Mr. Rajeev Kumar Tiwari.

11.1 W2G, Capital Mirror and ACS are connected through common address, fund transfers and family relationship. The following connection is noted from the documents such as KYC details and bank statements of the entities:

- a) As per the Bank account statements of HDFC Bank and ICICI Bank accounts, Mr. Rajeev Kumar Tiwari, proprietor of W2G and Mr. Ankit Kumar Upadhayay, proprietor ACS share a common address i.e. No. 305, Sri Sai Enclave Apartment, 7th Main, 19th A Cross, NS Palya, BTM Layout, 2nd Stage, Bangalore 560 076.

- b) A fund transfer of Rs.15,000/- was noticed between Capital Mirror's HDFC Account No. 50200020891941 and W2G's HDFC Account No. 50200010203128 on September 15, 2016.
- c) W2G transferred Rs.50,000 to the HDFC Bank Account No. 50100073606513 of Mr. Saurabh Samir on July 26, 2016. This amount appears to be used by Mr. Saurabh Samir to open HDFC bank account no.50200020891941 of Capital Mirror by issuing a cheque towards initial deposit since the balance in Saurabh Samir's Bank account before receipt of funds from W2G was Rs.9,515/-.
- d) During the site visit of ACS, employees of ACS informed that Mr. Ankit Upadhayay and Mr. Saurabh Samir are cousins and that Mr. Saurabh Samir is in charge of the day to day operations of the firm.
- e) In response to SEBI's letter dated September 14, 2018 issued to ACS, Mr. Saurabh Samir, proprietor of Capital Mirror, appeared before SEBI on September 24, 2018 and submitted a letter stating that he would submit the information with respect to ACS and Capital Mirror.
- f) As per ICICI Bank account statements of Capital Mirror (Account no. 000205501133) and W2G (Account no.000205501218), they share a common registered address viz., "No.8, 16th Main, Post Office, BTM 2nd Stage, Bangalore-560 076".

11.2 As per the KYC documents furnished by the Banks, the nature of business of W2G, Capital Mirror and ACS is stated to be portfolio management and fund management/Stock Advisory Tips Provider/Stock Exchange Advisory/Stock Consultant / Investment advisory services/Investment advisory services.

11.3 These connected Noticees have websites with the website addresses, <http://www.way2gains.com>, <http://www.capitalmirror.com> and <http://astrocapitalsolutions.com/>.

11.4 SEBI received a complaint dated February 8, 2018 against Capital Mirror stating that one Mr. Sandeep from Capital Mirror approached him on phone during the end of May, 2017. The complainant further stated that he has paid Rs. 7,500 on May 31, 2017

towards one month subscription for advice cash segment thereafter the firm provided three stock recommendations during first two days thereafter, it stopped the services.

11.5 Similarly, another complainant vide the complaint dated July 23, 2017 in SCORES, SEBI stated that he had received phone call from W2G. The company executive named Mr. Harish (his phone no is 8046211417) spoke with him about their services. The Complainant stated that he agreed with Mr. Harish and paid Rs.65,000/- (Rupees Sixty Five Thousand Only). Mr. Harish also gave an assurance that he would give him one call per day in commodity market, and would make a decent profit otherwise he would return the money.

11.6 Similar such complaint dated February 23, 2017 was received by SCORES, SEBI wherein the complainant stated that he used to receive consistent telephonic calls from W2G.

11.1 As per the information gathered from the websites of W2G, Capital Mirror and ACS the following are noted:

11.1.1 The contents of "About us" section of websites <http://www.way2gains.com/> and <http://www.capitalmirror.com/> were identical and the same are as under:

- (a) *W2G/Capital Mirror is an authentic address for advisory and research about investments in Indian stocks and commodities markets.*
- (b) *W2G/Capital Mirror provides live Indian stock market recommendations on mobile phone and on yahoo messenger.*
- (c) *W2G/ Capital Mirror is one of the leading tips providers in India. They have a specialized team of stock market analyst who study market daily, in-fact minute after minute. They don't mind whether market is bullish or bearish as they know how to deal with both of these in best way.*
- (d) *As W2G/ Capital Mirror has a team of best analysts, so they want people to invest money in Indian market that too with minimum risk. They are here to help to earn more money in short time by investing or trading in market with their best gathered information from their expert's. Their flexi packages have so much choice to choose from, as per one's requirement.*

- (e) W2G/ Capital Mirror is a consultancy firm related to stock market for buying and selling of financial instruments. They are providing stock market tips regarding cash, F&O, Nifty, options segments in NSE and BSE. Commodities trading tips are provided under MCX and NCDEX.
- (f) Their purpose is to give high returns even in volatile market conditions. They have a wide range of services and plans so as to meet one's exact requirements as per the need of investors, day traders and stock brokers. So far as the success ratio of their tips is concerned, it is always maintained above 85% in regular packages and in Premium services they are able to maintain accuracy of 95% on regular basis.
- (g) Their in-house team of technical analysts are experienced and highly qualified to handle all the challenges of Stock market.
- (h) W2G/ Capital Mirror provides:
- i. Daily trading view in pre-market sessions
 - ii. Live stock market tips and commodity tips.
 - iii. Highly accurate share tips and commodity tips.
 - iv. Minimum accuracy of 85% is maintained.
 - v. Complete online chat support, telephonic support and SMS support.
 - vi. A quality experience to cherish.

11.1.2 Similarly, the contents of the website of ACS under the head "About us" mentioned that ACS is a consultancy firm related to stock market for buying and selling of financial instruments. They are providing stock market tips regarding cash, F&O, Nifty, options segments in NSE and BSE. Commodities trading tips are also provided under MCX and NCDEX.

11.1.3 The different packages provided by W2G and the fees for the said services are as under:

(in Rs.)

Services	Monthly	Quarterly	Half yearly	Yearly
HNI Equity	30,000	68,000	120,000	180,000
HNI Commodity	55,000	125,000	190,000	280,000
Stock cash (Intraday)	-	13,700	21,200	34,800

Services	Monthly	Quarterly	Half yearly	Yearly
Stock cash (delivery)	-	12,800	19,600	32,500
Stock Future	-	15,600	28,200	42,700
Equity Combo	-	25,000	40,000	55,000
Nifty	-	11,300	19,800	27,500
Nifty Option	-	14,500	23,800	38,300
Bullion	-	16,800	28,300	43,200
Base Metal	-	15,500	26,300	40,000
Energy	-	15,500	26,300	40,000
Bullion & base metal	-	21,200	34,800	51,300
Base metal & Energy	-	19,800	32,500	48,700
Bullion & Energy	-	21,200	34,800	51,300
Commodity Combo	-	28,000	43,000	60,000
Agri Tips	-	16,200	35,600	55,100
Premium Equity (Intraday)	15,200	41,800	75,300	108,700
Bullion Premium	27,000	55,000	85,000	125,000

11.1.4 The different packages provided by Capital Mirror and the fees for the services are as under:- (In Rs.)

Type of Service	Monthly				Quarterly				Half yearly				Yearly			
	HNI	Normal	Premium	Super Premium	HNI	Normal	Premium	Super Premium	HNI	Normal	Premium	Super Premium	HNI	Normal	Premium	Super Premium
Base Metals	22,800	6,700	10,100	13,800	45,800	13,300	20,800	35,800	68,800	20,300	32,800	53,800	91,800	28,100	45,000	71,800
Bullions	24,800	7,100	10,800	17,800	49,800	14,300	21,800	49,800	74,800	21,500	32,800	53,800	99,800	32,100	48,800	71,800
Delivery	-	5,100	7,800	-	-	10,300	17,800	-	-	16,100	23,800	-	-	21,500	31,800	-
Energy	24,800	7,100	10,800	24,800	49,800	14,200	21,800	49,800	74,800	21,500	32,800	74,800	99,800	32,100	48,900	99,800
Equity Combo	59,800	13,500	20,800	39,800	119,800	27,100	41,800	79,800	179,800	40,700	62,800	119,800	239,800	54,700	83,800	159,800
MCX Combo	69,800	14,300	27,800	69,800	139,800	28,700	51,900	139,800	209,800	43,100	77,800	209,800	279,800	57,500	103,000	279,800
NCDEX	-	16,100	22,800	39,800	-	32,300	45,800	79,800	-	48,500	68,900	119,800	-	64,700	91,800	159,800
Nifty Future	20,800	6,100	8,800	14,800	41,800	12,300	17,800	29,800	628,000	18,500	28,100	44,800	838,000	25,300	38,800	59,800
Nifty Options	21,800	6,700	10,100	15,800	43,800	13,500	20,300	31,800	658,000	20,300	30,500	47,800	87,800	28,100	40,700	63,800
Stock Cash	24,900	7,100	10,800	17,800	49,900	14,300	21,800	35,800	76,900	21,500	32,800	53,800	100,000	32,100	44,800	71,800
Stock Future	24,800	7,100	10,800	17,800	24,800	14,300	21,800	35,800	748,000	21,500	32,800	53,800	99,800	32,100	44,800	71,800
Stock Options	22,800	7,400	11,100	16,800	45,800	14,900	22,300	33,800	68,800	22,400	33,500	50,800	91,800	29,900	44,700	67,800

11.1.5 The different packages provided by ACS and the fees for the services are as under: (in Rs.)

Type of Service	Normal Services				Premium Services			
	Monthly	Quarterly	Half yearly	Yearly	Monthly	Quarterly	Half yearly	Yearly
Base Metals	6,700	13,300	20,300	28,100	10,100	20,800	32,800	45,000
Bullions	7,100	14,300	21,500	32,100	10,800	21,800	32,800	48,800
Delivery	5,100	10,300	16,100	21,500	7,800	17,800	23,800	31,800

Type of Service	Normal Services				Premium Services			
	Monthly	Quarterly	Half yearly	Yearly	Monthly	Quarterly	Half yearly	Yearly
Energy	7,100	14,200	21,500	32,100	10,800	21,800	32,800	48,900
Equity Combo	13,500	27,100	40,700	54,700	20,800	41,800	62,800	83,800
MCX Combo	14,300	28,700	43,100	57,500	27,800	51,900	77,800	103,000
NCDEX	16,100	32,300	48,500	64,700	22,800	45,800	68,900	91,800
Nifty Future	6,100	12,300	18,500	25,300	8,800	17,800	28,100	38,800
Nifty Options	6,700	13,500	20,300	28,100	10,100	20,300	30,500	40,700
Stock Cash	7,100	14,300	21,500	32,100	10,800	21,800	32,800	44,800
Stock Future	7,100	14,300	21,500	32,100	10,800	21,800	32,800	44,800
Stock Options	7,400	14,900	22,400	29,900	11,100	22,300	33,500	44,700

11.1.6 Considering the above analysis of the details of websites of these entities, I *prima facie* observe the following:

- W2G/Capital Mirror/ACS is an investment advisory firm related to stock market for buying and selling of financial instruments.
- Stock market tips and commodity tips/recommendations are provided to the clients through calls or yahoo messenger.
- High returns are offered to clients even in volatile market conditions
- Different packages are offered to the clients for different fees going upto a maximum amount of Rs.8,38,000/- for an yearly subscription to their services.

12. Further, I note the following information gathered from the Bank Account details and payment Gateways submitted by the complainants, documents received from the entities, transaction documents and KYC documents collected from the banks viz., ICICI Bank, Axis Bank and HDFC Bank :

12.1 W2G has accounts in HDFC Bank (account number: 50200010203128), Axis Bank (account Number: 915020014235448) and ICICI Bank (account number: 000205501218).

12.2 Capital Mirror has accounts in HDFC Bank (account number: 50200020891941) and ICICI Bank (account number: 000205501133).

12.3 ACS has accounts in HDFC Bank (account number: 50200030147931) and ICICI Bank (account number: 004705500933).

12.4 As per the KYC documents of these bank accounts, the nature of business of W2G was stated to be Management or Business Consultant Service and Asset management including portfolio management and fund management. The nature of business of Capital Mirror was stated to be Stock Advisory Tips Provider. Similarly, the nature of business of ACS was stated to be Stock Consultant / Investment advisory services.

12.5 The transactions observed in the above mentioned bank accounts of W2G, Capital Mirror and ACS are summarized as under:

Account Name	PAN	Account Number/ Bank/ IFSC	Transaction Period	Total Credits**
Capital Mirror	GAUPS3690J	50200020891941/ HDFC Bank/ HDFC0000885	12-08-2016 to 28-10-2018	20,73,325
Capital Mirror	GAUPS3690J	000205501133/ ICICI Bank/ ICIC0000002	20-07-2016 to 25-09-2018	83,88,412
			Total	1,04,61,737
ACS	AHNPU3089M	50200030147931/ HDFC Bank/ HDFC0000885	22-03-2018 to 20-09-2018	1,61,500
ACS	AHNPU3089M	004705500933/ ICICI Bank/ ICIC0000047	01-10-2017 to 25-09-2018	65,33,418
			Total	66,94,918
W2G	ATUPR0113L	50200010203128/ HDFC Bank/ HDFC0000885	01-01-2016 to 05-07-2018	15,40,030
W2G	ATUPR0113L	915020014235448/ Axis Bank/UTIB000151 3	01-01-2016 to 09-07-2018	32,64,555
W2G	ATUPR0113L	000205501218/ ICICI Bank/ ICIC0000002	13-04-2017 to 08-07-2018	87,00,476
			Total	1,35,05,061
			Grand Total	3,06,61,716

12.6 Similarly, I note from the websites of the above entities and the complaints received against Capital Mirror and ACS that these entities were also found to be collecting moneys through payment gateways, viz., Payumoney (PayU Payments Private Limited) and Easebuzz (Easebuzz Private Limited). The transactions observed in these payment gateways are summarised as under:

Entity Name	Payment Gateway	Linked Bank Account Account Number Bank IFSC Code	Transaction Period	No of Transactions	Aggregate Transaction Amount	Aggregate Settlement/ Payout Amount**
Capital Mirror	Payumoney	50200020891941 HDFC Bank HDFC0000885	17-01-2017 to 29.03.2018	1,372	1,29,50,747	1,26,46,653
Capital Mirror	Easebuzz	000205501133 ICICI Bank ICIC0000002	26-09-2018 to 11-01- 2018	195	35,50,754	34,73,876
ACS	Easebuzz	004705500933 ICICI Bank ICIC0000047	13-02-2018 to 24-09-2018	782	1,03,89,443	1,01,66,337
W2G	Payumoney	50200010203128 HDFC Bank HDFC0000885	08-03-2016 to 17-10-2018	1,558	1,64,71,343	1,60,81,084
			Total	3,907	4,33,62,287	4,23,67,950
** Settlement/Payout amount is the amount received in the linked bank account after deducting applicable charges by payment gateway.						

12.7 In addition to the above, it was observed that the proprietors of these entities have Bank accounts in their individual names where there were regular credits of funds. Details are as under:-

Account Name/ Entity	Account No./Bank/ IFSC	Transaction Period	Total Credits
Saurabh Samir/ Capital Mirror	50100073606513/ HDFC Bank/ HDFC0000885	30-07-2015 to 08-08-2018	39,45,176
Saurabh Samir/ Capital Mirror	231701502302/ ICICI Bank/ ICIC0002317	11-04-2014 to 29-09-2018	1,00,34,485
Rajeev Kumar Tiware/ W2G	50100048827221/ HDFC Bank/ HDFC0000885	01-01-2016 to 05-07-2018	30,61,632
		Total	1,70,41,293

12.8 HDFC Bank account No. 50100073606513 of Mr. Saurabh Samir had regular credits, and the narration for many of these transactions had terms like Calls, Share market fees, share market deal, Share market investment, subscription, options, fees, investment fee, equity, stock, trade, trading etc. Similarly, ICICI Bank account No. 231701502302 of Mr. Saurabh Samir also had regular credits, and the narration for

many of these transactions had terms like “consultancy charges, trade, TRIAL, Equity Tips, tips reg, trading tips fee, Premium trade amount, Tips premium, Share, Registration, Investment, Investment Fee, Subscription, Trade purpose, Trade Advisory, tip, Advise, Stock Advisor, Trading tips, Trading advice, Trade advice, Stock advisory, Trade Chrgs, Share trading, trading”, etc.

12.9 HDFC Bank account No. 50100048827221 of Mr. Rajeev Kumar Tiwari had regular credits and the narration for many of these transactions had terms like “Stock, Shares, way2trades, trading amount, stock tips, trade, investment, portfolio management, stocks, advisory charges, profit sharing” etc.

12.10 As per the bank account statements, total credits in the Bank accounts of W2G with HDFC Bank and ICICI Bank is noted as Rs. 1,35,05,061/-; total credits in the Bank accounts of Capital Mirror with HDFC Bank and ICICI Bank is noted as Rs. 1,04,61,737/-; and total credits in the Bank accounts of ACS with HDFC Bank and ICICI Bank is noted as Rs. 66,94,918/-. The Bank account details of the proprietors of Capital Mirror and W2G viz., Mr. Saurabh Samir and Mr. Rajeev Kumar Tiwari also had regular credits to the tune of Rs. 1,70,41,293/- and the narration of many such credits had terms like “Calls, Share market fees, share market deal, Share market investment, subscription, options, fees, investment fee, equity, stock, trade, trading” etc.

12.11 As per the transaction statement details of Bank Accounts and the *PayUMoney/Ease Buzz*, it is noted that around 3,907 transactions amounting to Rs. 9,00,70,959/- were credited by the clients for the purpose of services offered by the entities. The details of such credits are as under:

Entity	Entity's Bank Account	Payment Gateway	Proprietor's Bank Account	Total (Amount (Rs.))
Capital Mirror	1,04,61,737	1,61,20,529	1,39,79,661	4,05,61,927
ACS	66,94,918	1,01,66,337	0	1,68,61,255
W2G	1,35,05,061	1,60,81,084	30,61,632	3,26,47,777
			Total	9,00,70,959

- 13 Considering the above facts and circumstances especially, the contents of the websites coupled with the credit transactions in the Bank Accounts and *PayUMoney/Ease Buzz* as detailed in preceding paragraphs, it is *prima facie* inferred that fees/funds were collected through *PayUMoney/Ease Buzz* and amounts credited directly to the Banks Accounts, and were for the purpose of availing the services indicated on the websites of the entities.
- 14 Further, I also note from the submissions of Mr. Rajeev Kumar Tiwari, proprietor of W2G, that admittedly they are soliciting clients through phone calls for investment advisory services. Vide reply dated September 28, 2018, Mr. Saurabh Samir, proprietor of Capital Mirror submitted that they wound up the firm six months ago. However, I note from the bank accounts of Capital Mirror that there were credit transactions as recent as September 25, 2018. In any case, Capital Mirror or its proprietors were not allowed to engage in investment advisory services without registration. Considering the fact that the nature of services offered by them were *prima facie* in violation of applicable provisions of law, I am not inclined to accept the contention of Mr. Saurabh Samir that the present proceedings are infructuous qua Capital Mirror. Further, I note that during the site visit of ACS, the employees of ACS informed that the firm is engaged in investment advisory/stock tips business and solicit clients through phone calls and provide tips on trial basis and thereafter services are provided upon payment of monthly fees. I also note that ACS vide reply dated September 20, 2018, submitted that they have appeared for examinations as required under the rules and regulations and after the examination result they would apply for the SEBI registration. Similarly, Mr. Rajeev Kumar Tiwari also stated that they are planning to get SEBI registration. However, no such application has been received by SEBI till date from any of the entities or its proprietors. In any case, for the period of operation of their services without registration as an intermediary in any capacity, the Noticees have *prima facie* violated the provisions of applicable laws.
- 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.*”

- 16 The activities of Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions clearly show that the Noticees have acted as investment advisers. However, no material was available on record to indicate that the Noticees have a certificate of registration as investment adviser.
- 17 Therefore, I find that the activities of Noticees such as giving trading tips, stock specific recommendations, etc. to the investors and general public on payment of fees clearly indicate that they were engaged in providing unregistered investment advisory services.
- 18 I have also perused the definition of Portfolio Manager as given in regulation 2(cb) of the PMS Regulations, which states that Portfolio Manager means “*any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients, as the case may be.*”
- 19 It is also noted from the KYC documents of Axis Bank Account of W2G that the nature of its business is stated to be Management or Business Consultant Service and Asset management including portfolio management and fund management. I also note that HDFC Bank Account of Mr. Rajeev Kumar Tiwari, proprietor of W2G had several credit transactions with narration as “*portfolio management*” and “*profit sharing*” which *prima-facie* indicates that the W2G is engaged in offering Portfolio Management Services.
- 20 Thus I find that the Noticees viz., M/s.Way2gains and its proprietor viz., Mr. Rajeev Kumar Tiwari, M/s. Capital Mirror and its proprietor viz., Mr. Saurabh Samir and M/s. Astro Capital Solutions and its proprietor viz., Mr. Ankit Kumar Upadhayay are *prima facie* engaged in providing unregistered investment advisory services. I also find that M/s.Way2gains and its

proprietor viz., Mr. Rajeev Kumar Tiwari was also engaged in offering unregistered Portfolio Management Services.

Issue No.2: If answer to issue No. (i) is in affirmative, whether W2G, Capital Mirror and ACS have, *prima facie* violated the provisions of Section 12(1) of the SEBI Act and regulation 3(1) of the IA Regulations regulation 3 of the PMS Regulations.

- 21 In order to ensure that no investor is defrauded, it is imperative that any person carrying out investment advisory activities or portfolio management services has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. Section 12(1) of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) reads as under:

*“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, as per Regulation 3(1) of the IA Regulations, the registration of the investment advisers is mandatory. It provides that, *“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”*.

Similarly, Regulation 3 of PMS Regulations also provides *“No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations”*.

- 22 In this context, it is noted that none of the Noticees are registered with SEBI in the capacity as an Investment Advisor or Portfolio Manager and the characteristics and features of the business activity carried out by the Noticees as discussed in the preceding issue, *prima facie*, leads to the conclusion that the W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital

Mirror and its proprietor Mr. Saurabh Samir; and ACS and its proprietor Mr. Ankit Kumar Upadhayay are providing services of an investment adviser without a certificate of registration. Similarly, I *prima facie*, note that W2G and its proprietor Mr. Rajeev Kumar Tiwari is also offering the services of Portfolio Manager without a certificate of registration.

- 23 In my view, these activities are in violation of various provisions of IA and PMS Regulations and such unregistered investment advisors/ portfolio managers like the Noticees can put investors at great risk by misleading them. Thus, the activities of W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital Mirror and its proprietor Mr. Saurabh Samir; and ACS and its proprietor Mr. Ankit Kumar Upadhayay are *prima facie*, in violation of Section 12(1) of SEBI Act read with Regulation 3 (1) of the IA Regulations. Similarly, the activities of W2G and its proprietor Mr. Rajeev Kumar Tiwari are also in violation of Section 12(1) of SEBI Act read with Regulation 3 of PMS 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. 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. In the instant case, the Noticees are soliciting and inducing the investors to deal in securities market on the basis of his investments advice, stock tips etc. *prima facie* without having the requisite registration / certification as mandated under IA Regulations. Similarly, I also note that W2G and its proprietor Mr. Rajeev Kumar Tiwari is *prima facie*, also engaged in portfolio management activity without having the requisite registration as mandated under PMS Regulations. Further, it is noted from material available on record as of mid-October, 2018, money was credited to the Bank accounts of the Noticees. This *prima facie* indicates that the Noticees are

carrying on their unregistered investment advisory activity/portfolio management services and thus violated the provisions of Section 12(1) of the SEBI Act and regulation 3(1) of the IA Regulations regulation 3 of the PMS Regulations.

Issue No.3: If answer to issue No. (ii) is in affirmative, whether urgent directions, if any should be issued against them?

- 24 Considering the facts and circumstances of the present matter and on the basis of *prima facie* findings, it is necessary to take urgent preventive action in this matter and to take immediate steps to prevent the Noticees from collecting any more funds from the public and indulging in unauthorized investment advisory/portfolio management activity. Noticees are also connected entities as shown in the previous paragraphs. I note that W2G website was operative till very recently, although the same is now closed. Therefore, the probability of investors reaching the connected Noticees through a website appear low at the moment. However, as noted from paragraph 11.4 to 11.6 of this order, the connected noticees are making telephone calls people as alleged by to the complainants, for the purpose of enticing them to become their clients. This shows that the Noticees are reaching investors by telephone calls as well, other than through the website. Further, it is noted that the bank accounts mentioned in paragraph 12.7 of this order, though not mentioned in any of the websites above referred to, have received credit for services *prima facie* observed to be investment advisory services and portfolio management services. This further shows that the connected Noticees are sharing their bank details with the investors approached by them through telephonic contacts. Therefore, the threat of investors getting lured to the unregistered advisory services/PMS services is still looming large and is imminent. The amount of money, *prima facie* observed to have been collected by the connected Noticees, indicates the magnitude of the prospective threat to the investors. Therefore, even today, investors can become prey to the different packages offered by the connected Noticees. In light of the same, I find that there is no other alternative but to take recourse through an interim ex-parte order against the Noticees viz., W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital Mirror and its proprietor Mr. Saurabh Samir; and ACS and its proprietor Mr. Ankit Kumar Upadhayay, for preventing them from collecting funds and indulging in unauthorized investment advisory services as well as

portfolio management services without obtaining registration from SEBI in accordance with the law. In order to protect prospective investors from making payment to the bank accounts of the Noticees, credit into bank accounts also needs to be stopped. I further note that though bank accounts mentioned in paragraph 12.7, are owned in the personal capacity, as discussed in paragraph 12.8 and 12.9 of this order, the said accounts have also received credits from investors, prima facie, for the investment advisory and portfolio management services. Therefore, in order to protect prospective investors from making payment, credit into those accounts also needs to be stopped.

- 25 Further, one of the directions that can be passed against the Noticees, subject to the adjudication of the allegation on the merits in the final order, under Sections 11(1), 11(4) and 11B of SEBI Act is that of direction to refund the money collected by them from their clients. With the initiation of quasi-judicial proceedings, it is possible that the Noticees may divert the money collected from their clients. The same may result in defeating the effective implementation of the direction of refund, if any to be passed after deciding the matter on merits. Non-interference by the Regulator at this stage would therefore result in irreparable injury to interests of the securities market and the investors. It therefore becomes necessary for SEBI to take urgent steps of stopping the debits from the bank accounts of the Noticees.
- 26 In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4)(b), 11B and 11D read with Section 19 of the SEBI Act hereby issue by way of this *interim ex-parte order*, the following directions –
- i. M/s.Way2gains and its proprietor viz., Mr. Rajeev Kumar Tiwari (ATUPR0113L);M/s. Capital Mirror and its proprietor viz., Mr. Saurabh Samir (GAUPS3690J); and M/s. Astro Capital Solutions and its proprietor viz., Mr. Ankit Kumar Upadhayay (AHNPU3089M) are directed to:-
 - a. *cease and desist from acting as an investment advisor or portfolio manager and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever until further orders;*

- b. *not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders;*
 - c. *not divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders;*
 - d. *immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc. in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
- ii. *Banks including Axis Bank, ICICI Bank Ltd. and HDFC Bank Ltd. wherein M/s.Way2gains and its proprietor viz., Mr. Rajeev Kumar Tiwari (ATUPR0113L); M/s. Capital Mirror and its proprietor viz., Mr. Saurabh Samir (GAUPS3690J); and M/s. Astro Capital Solutions and its proprietor viz., Mr. Ankit Kumar Upadhayay (AHNPU3089M) are holding bank accounts, are directed not to allow any debits / withdrawals and credits from the said accounts, without the permission of SEBI. The Banks are also directed to ensure that all the above directions are strictly enforced.*

- 27 This Order is without prejudice to the right of SEBI to take any other action that may be initiated against W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital Mirror and its proprietor Mr. Saurabh Samir and ACS and its proprietor Mr. Ankit Kumar Upadhayay in accordance with law.
- 28 This Order shall be treated as a show cause notice and W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital Mirror and its proprietor Mr. Saurabh Samir; and ACS and its proprietor Mr. Ankit Kumar Upadhayay may show cause as to why the investment plans and various schemes floated by them should not be held as "*Investment Advisory Services*" or "*Portfolio Management Services*" in terms of respective Regulations and thereby their activity be treated as unregistered activity under relevant SEBI Regulations, why appropriate directions, under Sections 11(1), 11B and 11D of the SEBI Act and relevant SEBI Rules/Regulations including directions to continue the prohibition on them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and why any direction to refund the amount collected from

the investors/clients for its various schemes under Sections 11(1) and 11B of SEBI Act should not be issued against them.

- 29 The *prima facie* observations contained in this Order are made on the basis of the material available on record. In this context, W2G and its proprietor Mr. Rajeev Kumar Tiwari; Capital Mirror and its proprietor Mr. Saurabh Samir; and ACS and its proprietor Mr. Ankit Kumar Upadhyay may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.
- 30 The above directions shall take effect immediately and shall be in force until further orders.
- 31 A copy of this order shall be served upon all the Noticees, Banks, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

Date: March 29, 2019

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA