

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

**Under Sections 11, 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
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair
Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of:

Name of the Entity	PAN
M/s. Max Capital (Proprietor Mr. Mahesh Tillore)	AUWPT4085E

BACKGROUND

1. Securities and Exchange Board of India (“**SEBI**”) received a complaint against M/s. Max Capital, wherein the complainant, Mr. Rakesh, has, *inter-alia*, alleged that he paid Rs. 1,08,200/- to Max Capital, an advisory firm based in Indore and that has caused financial loss to him. From the details submitted by the complainant, it is gathered that the firm had a website www.maxcapital.info and its proprietor is Mr. Mahesh Tillore. Hereinafter, Max Capital/ Mahesh Tillore are referred to as the “**Noticee**”.

2. With a view to determine if unregistered investment advisory activities are being carried out through www.maxcapital.info, a preliminary examination was carried out in this matter and the, *prima facie*, findings of the same are given in the succeeding paragraphs.

SEBI's EXAMINATION AND PRIMA FACIE FINDINGS

3. The details of the complaint against the Noticee are as below:

- 3.1. Representative of the Noticee made calls to the complainant several times and enticed him to initially to pay Rs. 7,100/- for investing in share market and to open a demat account. No documents were provided to the complainant although he repeatedly asked for the same.
- 3.2. Complainant submitted copies of PAN card, Aadhaar, email ID, cheque, etc., through Whatsapp.
- 3.3. Thereafter, he got a call that he has been selected for a special plan called SPM plan for which he has to pay Rs. 1.2 lacs in three equal installments. Once profit of Rs. 1.7 lacs was made, the next installment is to be paid. After repeated calls, he was told that if he did not pay, then the Rs. 7,100/- would be wasted; hence, he paid Rs. 39,200/-
- 3.4. Complainant was later told that his seat has gone to someone else and he has to pay extra Rs. 47,100/-, which he paid. Later they demanded GST and he paid. Rs. 21,100/-. Overall, the complainant has paid Rs.108,200/- to the Noticee through Easebuzz.
- 3.5. Thereafter, the representatives of the Noticee demanded Rs. 5 lacs and told him that he would lose the money already paid as they had no return policy. Thereafter, they sent him an invoice copy of Rs.101,600/- on his email.
- 3.6. Complainant was told that his file has been closed and there will be no refund.

4. The complainant also attached the payment receipt which showed the contact details of the entity as info@maxcapital.info and mobile number as 9826200935. These details were the same as seen on the website www.maxcapital.info. The website and particulars of its bank accounts were perused to gather information. As on July 15, 2020, the aforesaid website is no longer active. On visiting the website, the following message is displayed: “403 Forbidden”. However, during the course of preliminary examination, the archived pages of the website were viewed from web.archive.org and have been examined.

5. Preliminary examination of SEBI revealed the following:

5.1. The entity, Max Capital, is not registered with SEBI.

5.2. The website provides information that the firm offers products and services relating to equity market, future market, option market and commodity market.

6. The particulars of the bank accounts as mentioned on the website shows an HDFC Bank account no. 50200011154778, which is in the name of Max Capital. Further, based on the information submitted by the complainant, details were sought from Easebuzz vide email dated January 16, 2020, wherein it submitted the beneficiary details as mentioned below:

Name: Max Capital

Email: mahesh.tillore23@gmail.com

Contact Number: 9039374355

Bank Name: Andhra Bank Ltd.

Account Number: 275011100000353

PAN ID: AUWPT4085E

7. From the above, it is observed that the Noticee was running a website on which it claimed to be providing investment advisory services. Further, from available SEBI records, it is observed that this entity is not registered with SEBI as an investment

advisor for rendering such services. Thereafter, in order to gather additional information of its activity and for examining the same, KYC (Account Opening Forms - AOF) and transaction/ account statement of bank accounts of the Noticee were sought from Andhra Bank Ltd., HDFC Bank Ltd. and Easebuzz.

8. The following bank details of the Noticee were observed from the website and from the details given by Easebuzz:

Bank	Account No	Opening Date	Status
HDFC Bank	50200011154778	June 25, 2015	Closed
Andhra Bank	275011100000353	June 01, 2016	Active

CONSIDERATION OF ISSUES

9. I have perused the materials available on record such as details of the complaint, information available on the archived webpages of the Noticee and information obtained from various banks, payment gateway etc. A preliminary examination of the material available on record has been made in order to verify whether the Noticee has offered investment advisory services and collected money from various investors without registration from SEBI. In this context, prima facie, the following issues arise for determination in the instant matter:

- 1) Whether the Noticee is, prima facie, holding itself out and acting as an investment adviser?***
- 2) If answer to Issue No. (1) is affirmative, whether the Noticee has, prima facie, violated any securities laws?***
- 3) If answers to Issue No. (2) is affirmative, whether urgent directions, if any should be issued against the Noticee?***

Issue No. 1: Whether the Noticee is, prima facie, holding itself out and acting as an investment adviser?

10. As regards the first issue, I note the following from the material available on record:

10.1. This website was browsed for information, but as the same is not currently active, the archived pages of the website were downloaded from web.archive.org to gather information and the following was observed wherein the entity has claimed as follows:

10.1.1. Max Capital is one of the leading Stock Advisory Firm in Stock and Commodity Market. Our strong hold in providing the most accurate tips makes us stand apart from our competitors.

10.1.2. Our analysis is solely based on the economic news and deep technical analysis done by our experts. We provide all services through SMS and Insta Messenger.

10.1.3. Max Capital is a Register firm has been gained a foot strongly among Stock Advisory Companies & investment advisory Companies in India by giving the best research call and heavy one to one follow ups. Now it has become most desirable Investment Advisory firm who covers each and every segment.

10.1.4. Various packages are being offered for subscription at specified rates and for specific products viz. *Stock Cash, Cash HNI, Stock Future, Option HNI, BTST/STBT, Base Metals, Points Commitment Plan, Equity Exclusive, etc.*

10.1.5. The fees range from Rs. 7,000/- per month to Rs. 11 lakh per annum.

10.1.6. The contact address is 26/1 Anoop Nagar, AB Road, Indore, +91-9826200935 and info@maxcapital.info.

10.2. Illustration of some of the subscription packages provided by the Noticee and the fees for the same is as under:

Stock Cash

Fees (in Rs.)

Monthly	8,000/-
Quarterly	21,000/-
Half yearly	35,000/-
Yearly	50,000/-

Stock Future

Fees (in Rs.)

Monthly	8,000/-
Quarterly	21,000/-
Half yearly	35,000/-
Yearly	55,000/-

Bullions

Fees (in Rs.)

Monthly	15,000/-
Quarterly	35,000/-
Half yearly	55,000/-
Yearly	95,000/-

10.3. From archived webpages of the website, it is noted that the Noticee also had placed links to reports and track sheets for segments of Equity Cash, Stock Future and Stock Options, MCX, etc., on its website. These track sheets and reports appear to be, *prima facie*, an indicator of the claimed performance of the investment advice given by the Noticee.

11. From the complaint of Mr. Rakesh, the following details are observed:

11.1. Payment receipt are issued by the Noticee to the complainant wherein it is mentioned that the Service Name is 'Equity'.

11.2. Payment receipts contain disclaimers/ directions, such as, investment in securities market are subject to market risk, investors should do their own independent research before acting on any stock tip from the Noticee, etc.

The above terminology and disclaimers/ directions mentioned on the payment receipts are generally associated with entities engaging in providing investment advisory services.

12. Further, I note the following information gathered from the KYC documents and bank account statements collected from the banks viz., Andhra Bank and HDFC Bank and from documents obtained from Easebuzz:

12.1. From the Account Opening Form (AOF) provided by Easebuzz, it is observed that the Andhra Bank account is linked to the payment gateway and the purpose of payment is mentioned as "Stock Advisory".

12.2. As per the KYC documents of these bank accounts, the nature of business/ type of profession of the Noticee has been stated to be as follows:

Bank	Account Number	Nature of business/ Type of profession
Andhra Bank	275011100000353	Business
HDFC Bank	50200011154778	Service Providers (Tele Product Selling)

12.3. The certificate issued by District Labour Office, Indore, mentions the kind of business as Teleshopping.

12.4. The transactions observed in the above-mentioned bank accounts are summarized as under:

Bank	Account Opening Date	Credits received from date of account opening till April 15, 2020	Balance (as on April 15, 2020)	Last Credit Transaction Date
Andhra Bank	June 01, 2016	Rs. 32,28,158/-	Rs. 331/-	March 27, 2020
HDFC Bank	June 25, 2015	Rs. 1,23,37,557.85/-	Nil	December 12, 2018
Total		Rs. 1,55,65,715.85/-		

12.5. It is observed that there are a large number of payments received through various payment gateways/ IMPS or NEFT. From the narrative of the transactions, it appears that the payments have, *prima facie*, come from various individuals.

12.6. From the website and bank statements, it is observed that the Noticee has the following different addresses:

Bank statement/ Website	Address
HDFC Bank	32, Vakratund Nagar, Ring Road, Near Mobile School, Indore-452010
Andhra Bank	HNo. A6, Chandra Nagar, MR9 Road, Near Vidya Nursing Home, Behind Swagat Garden, Indore-452001
Website	26/1, Annop Nagar, AB Road, Indore
Labour Office certificate	Office No. 160, 1 st Floor, Orbit Mall, Indore.

13. Hence, as reflected in the bank statements referred to above, I note that the Noticee has commenced with the collection of fees for the purpose of availing the services, as indicated on its website, from June 2015 and has continued the same till March 27, 2020.

14. It is, *prima facie*, observed that the Noticee is placing information in public domain by using its website about the various services offered by it in the securities market. Further, it is also, *prima facie*, observed that various packages are being offered by the Noticee to avail its services. The website of the Noticee had categorically mentioned the advantages of availing the services of the firm in various fields of securities market and highlighted that it has a team of experienced professionals. The reason for availing its services, as mentioned on its website, was that its stronghold is in providing the most accurate tips. The Noticee has also mentioned on its website that it's a registered firm. The use of the word "registered" along with the information regarding investment advisory services placed on its website, *prima facie*, gives a misleading appearance to investors that the Noticee is registered with SEBI, especially in the context of information which is mentioned in the website that the Noticee is offering advisory services. I observe in the contextual placement of word "registered", would mislead the investor to misunderstand that the Noticee is registered with the regulator for its advisory services. . Moreover, in the above facts and circumstances, especially the content of the website of the firm coupled with the credit transactions in the bank accounts, *prima facie*, it is inferred that the fees / funds credited to the bank accounts, were for the purpose of availing the services indicated on the website of Max Capital. Thus, I, *prima facie*, find that Max Capital has induced the public in general to deal in securities by availing its unregistered services.

15. In this factual context, I have perused the definition of Investment Adviser as given in Regulation 2(m) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**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. In light of the aforesaid definitions, it is observed that Max Capital through its website, *prima facie*, offers investment advice as defined under Regulation 2(l) of the IA Regulations by giving advice related to investing in, purchasing and selling of securities and is also offering various service packages for subscription. Considering the above analysis of the details of website of the Noticee, payment receipt given to the complainant and the bank statements of the Noticee, I, *prima facie*, observe that Max Capital is an investment adviser as defined under Regulation 2 (m) of the IA Regulations and that the Noticee has held itself to be an investment advisory firm that provides tips for the stock and commodity markets. The credit transactions in the bank accounts, *prima facie*, appear to be proceeds from the business operations of the Noticee and considering that the website of the Noticee shows its services to be in the nature of investment advisory services, it leads to the, *prima facie*, conclusion that the said proceeds are consideration for the advisory services offered by the Noticee. Therefore, it is, *prima facie*, inferred that the fees/ funds credited to the bank accounts, were for the purpose of availing the services indicated on the website of the Noticee.
17. Therefore, the activity of the Noticee of by virtue of its website contents is holding itself to be giving trading tips, stock specific recommendations, etc., to the investors and general public. The fact that payment receipt to the complainant has been given indicating the payment was made for receiving investment advice and the receipt of money in the bank statements, *prima facie*, shows, on preponderance of probability, that the credit for payment of fees is in fact meant for the advisory services actually rendered by the Noticee. Therefore, the Noticee has not only held itself out as an investment adviser but has also acted as an investment adviser for consideration.

Issue No. 2: If answer to Issue No. (1) is affirmative, whether the Noticee has, *prima facie*, violated any securities laws?

18. Before proceeding further, I would like to refer to the relevant provisions of securities laws which are Sections 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Regulations 3 (a), (b), (c), (d) and Regulations 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”). The text of the aforesaid provisions is reproduced below:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: *No person shall directly or indirectly:*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

...

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities”.

19. Further, in order to ensure that the investors who receive investment advice are protected, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Regulations. Section 12(1) of the 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:”*

20. Further, as per Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as 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”*.
21. The activities of the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions, show that the Noticee was holding itself out as an investment adviser and has also been acting, on preponderance of probability, as an investment adviser. From the records of SEBI, it is observed that no entity with the name of the Noticee is registered with SEBI as an investment adviser/ research analyst/sub-broker/broker. Therefore, the characteristics and features of the business activity carried out by the Noticee, as discussed in the preceding issue, *prima facie*, leads to the conclusion that the Noticee is holding itself out and acting as an investment adviser without a certificate of registration.
22. In my view, these activities/ representations of the Noticee are, *prima facie*, in violation of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.
23. As discussed in the preceding paragraphs, the analysis of bank accounts mentioned on the website shows that the Noticee has received money in various denominations from various individuals all across the country. These proceeds, as discussed in preceding

paragraphs, *prima facie*, appear to be the consideration for the services that the Noticee offers/ provides in the securities market, as advertised on its website. Further, the Noticee does not have a registration with SEBI to provide investment advisory services and has knowingly misrepresented on its website that it is an expert in stock market analysis and experienced in providing investment advisory services. It appears that, *prima facie*, the Noticee has mislead the investors, as discussed above, giving an contextual impression that it is registered with Regulator, as an investment advisor thereby luring and inducing investors to deal in securities by availing its services. These acts of the Noticee are misleading in the sense that the public are effectively made to believe that the Noticee is registered with the Regulator and therefore, authorized to deal in securities market while, in fact, he does not have the certificate of registration and is defrauding the public by luring/ inducing them to avail its services to deal in securities. Furthermore, the firm has claimed the following:

- 23.1. Our Executive gives their intense support & proper guidance to our clients for making huge profit by their trade.
- 23.2. Under the subscription package, Commodity Segment – Basic Energy, Max Capital has claimed “An accuracy of 75-80% maintained on all our intraday calls”. Similarly, in the Equity Segment – HNI Cash package, Max Capital has claimed that it will provide “maximum 2 trading advice on intraday basis with average return of 2%-4% per call” and “We provide our Clients very good accuracy in this service”.

Thus, by making the aforesaid claims, Max Capital is inducing investors to deal in securities by availing its services. Such modus operandi is being continuously used by Max Capital, which is evident from the fact that there are continuous credits in its bank accounts.

- 24. It is also, *prima facie*, observed that the conduct of Max Capital in claiming that it can provide “average return of 2%-4% per call”, “very good accuracy”, etc., is an active concealment of the material fact that every investment in the market is subject to market

risk and any investment made by the client can also run into losses and even become zero. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. In light of the same, the act of the firm to assure returns to the clients is a non-genuine and deceptive act and has been, *prima facie*, made with an intent to influence the client to avail its advisory services. I further find that the payment receipt shows standard disclaimer that investment in securities market is subject to market risk. However, the Noticee cannot take shelter under this clause, as the conduct of the Noticee by placing “average return of 2%-4% per call”, “very good accuracy”, belies the actual intent of the Noticee. If the Noticee’s objective is not to mislead the investors, it need not have placed such claims in its website. Therefore, such claims are misleading in nature.

25. The above discussed non-genuine and deceptive activities of Max Capital are, *prima facie*, fraudulent and are covered within the definition of “fraud” defined under Regulation 2(1)(c) of the PFUTP Regulations, which reads as under:

(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full*

participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

26. I also note that, *prima facie*, the fraudulent and manipulative conduct/ act/ practice of the Noticee, as discussed above, are in violation of provisions of Section 12A (c) of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and Regulations 3 (a), (b), (c), (d) and Regulations 4(1) and 4(2)(k) of the PFUTP Regulations.

Issue No. 3: If answer to Issue No. (2) is affirmative, whether urgent directions, if any, should be issued against the Noticee?

27. 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. The PFUTP Regulations and the 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. The 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 Noticee is soliciting and inducing the investors to deal in securities market on the basis of investment advice, stock tips etc., *prima facie*, without having the requisite registration/ certification as mandated under the IA Regulations. Similarly, the PFUTP Regulations seeks to curb fraudulent and manipulative activities in the securities market in order to

boost investor confidence in the securities market and to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. Further, it is noted from material available on record, money has been credited to the bank account of the Noticee as recently as March 27, 2020. The bank account is active and can continue to be used to collect fees from unsuspecting investors. This, *prima facie*, indicates that Max Capital, as a proprietorship firm, is not only continuing to carry on its activity of holding itself to be an unregistered investment adviser, but is also continuing to act as an unregistered investment advisor.

28. It is noted that permitting the investors to receive an investment advisory service from an unregistered entity, in effect means, the same is received from a person who may be unqualified and without following the safeguards mentioned in the IA Regulations. An investor receiving a service from a registered investment advisor in consonance with the IA Regulations vis-a-vis an investor who receives such service from unregistered investment adviser stands at an advantageous position in respect of his protection as an investor as envisaged under the IA regulations. An unregistered investment adviser has not satisfied the Regulator that he is a fit and proper person to hold the certificate of registration as investment adviser. Availing of service from such persons is detrimental to investors and such unqualified service could result in irreparable damage as the investors' money is invested based on unqualified and un-regulated service. Exposing investors to such service also has the effect of interfering with the development of securities market, as victims of such services tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.

29. Further if an ex-parte order is not passed, many prospective investors may subscribe to these unregistered services, pay the fees and make investment based on questionable advice resulting into irreparable injury to themselves as discussed earlier. However, if

an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. It may be noted that one of the underlying differences between the ex-parte orders in the case of private suits and ex-parte public enforcement actions, is the identification of the injured party. In private damage suits, the injured individual, as “whole”, is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. Though, it can be argued that a final remedy by way of refund is available, as against the step of passing an ex-parte interim order, the loss of fees for unregistered services and questionable investment by the investors and resultant loss of investor’s confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, unregistered investment advice is permitted to be extended to the investors by not passing an ex-parte-interim order at this stage. Therefore, I consider the balance of convenience is also not in favour of the Noticee.

30. Considering the facts and circumstances of the present matter and on the basis of the, *prima facie*, findings, it is necessary to take urgent preventive action in this matter and to take immediate steps to prevent the Noticee from collecting any more funds from the public and from indulging in unauthorized investment advisory activities. While the website of the Noticee is no longer active, it is imminent threat that the Noticee may start or have started a new website. I note that the Noticee has collected funds in its bank account even in March 2020. I also note that the Noticee has been operating from four different addresses, as can be seen from its website, bank statements, KYC documents, etc. Further, the two mobile numbers available on record, +91-9826200935 and +91-9039374355, appear to be active as seen by carrying out a search on the internet in the website <https://www.findandtrace.com/>. Therefore, the Noticee is still capable of luring investors to avail of its services for dealing in the securities market and the threat of more innocent investors reaching the Noticee is still very high. Therefore, the threat of investors getting lured towards the unregistered activity of the Noticee in the securities market is still in existence and imminent. The amount of money, *prima facie*, observed to have been collected by the Noticee is approximately Rs. 1.55 crores and indicates

the magnitude of the prospective threat to the investors. Therefore, even today, investors can become prey to the unregistered services offered by the Noticee. 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 Noticee for preventing it from collecting funds by defrauding investors and by indulging in unauthorized investment advisory services without obtaining the mandatory registrations from SEBI in accordance with the law. As the Noticee is still reachable, the balance of convenience demands the preventive measure of stopping the collection of money in the bank accounts of the Noticee from investors. The same can be effectively achieved by an appropriate direction of stopping the credit into the bank account of Max Capital. As Mr. Mahesh Tillore, as proprietor of Max Capital, has already evaded the jurisdiction of SEBI by, *prima facie*, acting as unregistered investment adviser, the balance of convenience also demands that Max Capital is to be prevented from diverting the funds collected from the investors through the fraudulent and unauthorized investment advisory activity. Accordingly, an appropriate direction stopping the debit from the bank account(s) of Max Capital has been incorporated.

31. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of investors and integrity of the securities market, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11B and 11D read with Section 19 of the SEBI Act hereby issue by way of this *interim ex-parte order*, the following directions:

31.1. Max Capital and its Proprietor Mr. Mahesh Tillore are directed to:

31.1.1. Cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, 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.

31.1.2. Not to divert any funds collected from investors, kept in bank account(s) and/or

in their custody until further orders.

31.13. Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.

31.14. Immediately withdraw and remove all websites, apps, advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.

31.15. Not to access the securities market, buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

31.16. To provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.

31.2. Andhra Bank, wherein Max Capital is holding bank account with number 275011100000353, is directed not to allow any debits/ withdrawals from and credits to the said account, without the permission of SEBI. Andhra Bank is directed to ensure that all the above directions are strictly enforced.

31.3. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Max Capital and its proprietor, Mr. Mahesh Tillore, held jointly or severally.

31.4. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of Max Capital and its proprietor, Mr. Mahesh Tillore, jointly or severally, are not transferred or redeemed.

31.5. It is made clear that if Max Capital/ its proprietor has any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that Max Capital/ its proprietor are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

32. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Max Capital and its Proprietor Mr. Mahesh Tillore in accordance with law.

33. This Order shall be treated as a Show Cause Notice and Max Capital and its Proprietor Mr. Mahesh Tillore are show caused as to why the various representations made/ services offered by Max Capital in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, why the various plans floated by them should not be held as "Investment Advisory Services" in terms of the IA Regulations and thereby the activity of Max Capital be treated as unregistered activity under the SEBI Act and relevant Regulations.

34. Max Capital and its Proprietor Mr. Mahesh Tillore are also show caused as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including directions for an appropriate period, for a prohibition on them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for an appropriate period, directions to not be associated with any registered intermediary/ listed entity in the securities market,

in any manner whatsoever, and why a direction to refund the amount collected from the investors/clients for its various plans should not be issued against them under Sections 11 and 11B (1) of SEBI Act.

35. The, *prima facie*, observations contained in this Order are made on the basis of the material available on record. In this context, Max Capital (Proprietor Mr. Mahesh Tillore) 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.
36. The above directions shall take effect immediately and shall be in force until further orders.
37. A copy of this order shall be served upon Max Capital and its Proprietor Mr. Mahesh Tillore, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: July 24, 2020

Place: Mumbai

Sd/

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA