

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM ORDER

**Under Sections 11, 11(4), 11B and 11D of the Securities and Exchange Board of India Act,
1992**

**In Re: Violation of provisions of Securities and Exchange Board of India (Prohibition of
Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
and Securities and Exchange Board of India (Investment Advisers) Regulations, 2013**

In respect of:

Sr. No.	Name of the Entities	PAN
1	Prowise Capital	AASFP2716Q
2	Arun Jatav, Partner of Prowise Capital	ARDPJ0131D
3	Vaibhav Patil, Partner of Prowise Capital	BGLPP6889C
4	Swati Purwar, Partner of Prowise Capital	BLYPG4284Q
5	Yogendra Gangrade, Partner of Prowise Capital and Sole Proprietor of Prowise Consultancy	AFYPY9410M
6	Prowise Consultancy	AFYPY9410M

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1. Securities and Exchange Board of India (“**SEBI**”) received a complaint vide email dated February 14, 2020 against Prowise Capital (hereinafter referred to as ‘**Prowise capital**’) wherein, the complainant, *inter-alia*, alleged that the complainant paid Rs.1.90 Lakhs with

18% GST for HNI advisory services. The company allegedly committed to increase the complainant's assets to Rs.10.00 Lakhs but immediately after starting the services the complainant's funds decreased from Rs.1.20 lakhs to Rs.0.86 lakh. Further, Prowise capital had claimed to be registered with SEBI for providing Investment advisory services.

SEBI's Examination:

2. In view of the complaints received, SEBI carried out a preliminary examination to ascertain whether unregistered investment advisory activities are being carried out by the firm. To that end the website of the firm, www.prowisecapital.com. and particulars of its bank accounts were perused to gather information. On visiting the website on google, the following message is displayed: "*Under maintenance*". However, it is noted that above website is active while clicking on the link viz., '*under maintenance*'. The print out of the web pages of the firm's website are taken and have been placed on record.
3. SEBI's preliminary examination found as follows:
 - 3.1 The entity is not registered with SEBI.
 - 3.2 The website provides information that Prowise Capital offers packages viz., Stock Tips, Stock Future Tips, Nifty Future Tips, Option Tips, Commodity Tips, MCX Tips, NCDEX Tips, Pro Pack Commodity, etc. to its clients as part of its advisory activity
 - 3.3 Bank accounts and payment mechanisms were displayed on the website for clients who wish to subscribe to its 'advisory services'. The payment to subscribe to the services could be made directly to the ICICI bank account number 024105501391 opened in the name of Prowise Capital, the details of the same are mentioned on their website and alternatively through the payment gateway Easebuzz.
 - 3.4 The payment receipts and screenshots provided by the Complainant shows that payments were made to Prowise Consultancy through payment gateway Easebuzz. In view of this information was sought Easebuzz wherein it was noted that Prowise Consultancy has account no. 918020093327341 with Axis Bank Ltd.

CONSIDERATION & PRIMA FACIE FINDINGS

4. I have perused the material available on record such as investor complaints, information available on the website of Prowise Capital and information obtained from various Banks and payment gateways. A preliminary examination of the material available on record was made in order to verify whether Prowise Capital and Prowise Consultancy have 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 Prowise Capital and Prowise Consultancy are, holding themselves out and/or acting as investment advisers?

2) If answer to Issue No. (1) is affirmative, whether Prowise Capital and Prowise Consultancy have, prima facie, violated any securities laws?

3) If answers to Issue Nos. (1) & (2) are affirmative, who are all responsible for the violations committed by Prowise Capital and Prowise Consultancy?

4) If answer to Issue No. (2) is affirmative, whether urgent directions, if any should be issued against those responsible for the violations?

Issue No. 1: Whether Prowise Capital and Prowise Consultancy are holding themselves out and/or acting as investment advisers?

5. As regards the first issue, I note the following from the material available on record:
- 5.1 As per the information gathered from the website of Prowise Capital which is active as on date, the following claims are noted:
- i. “Prowise Capital it’s a “Professional wise advisor who can help you to grow your capital”, whether it's a Bear Market or Bull Market We build your capital We started our

Operation on 15th January 2016 with a goal to serve our Expertise to Retail Clients who trades in Indian Stocks and Commodities Markets. By the way to enhanced Team, Expertise and Confidence the founders of Prowise Capital Financials Wealth Creators have over 10 years of Combined Experience in Indian Stocks and Commodities Markets.

Our Mission

- ii. Our research services in Stocks and Commodities markets is our Key to Success, by delivering highest quality research services and support to our Clients. Together we can create more Money from Market.*

Our Vision

- iii. Prowise Capital is driven by its Research Services and Client Satisfaction. We at Prowise Capital have a vision to Cover Global Markets. Where we can serve to International Clients to invest and trade in Indian as well as their domestic markets.*
- iv. We strive towards providing highest standard services to Retail and HNI Clients. We provide Researched Calls and recommendations to our clients through SMS/Instant Messengers/Mobile Application and Phone. We use high quality and Fastest Servers and CRM for sending SMS.*
- v. Various packages are being offered for subscription at specified rates and for specific products. On such illustration is given below.*

Stock Cash Tips

- vi. In stock cash intraday services can buy and sell equity or shares on same day. In this service we offer stock recommendation with most accurate tips that helps our clients to make profit. Our Stock Tips services are specially designed for stock traders WHO trade NSE. Stock Cash trading inherently carries less risk than trading on margin. In stock cash there is no specific lot size so investors have liberty to make investment according to their risk and return capability.”*

5.2 The following are noted from the information available on the website of Prowise Capital:

- i. Prowise Capital has started their operation on January 15, 2016.
- ii. The advisory business of Prowise Capital is based on 'subscription model'.
- iii. The advisory fee was charged from clients based on the product subscribed and the subscription period.
- iv. Advice given by the entity is through SMS and/or telephone support.
- v. Prowise Capital offers packages viz., Stock Tips, Stock Future Tips, Nifty Future Tips, Option Tips, Commodity Tips, MCX Tips, NCDEX Tips, Pro Pack Commodity, etc. to its clients as part of its advisory activity.
- vi. The charges for the aforesaid packages depend upon the period of subscription. For instance, the advisory fee for providing Commodity tips, MCX tips for a quarter is shown as Rs.27,000/-; Similarly, fee for Pro Pack Commodity service is shown as Rs.2,50,000/-.

5.3 Illustration of some of the subscription packages provided by Prowise Capital and the fees for the same are as under:

MCX Bullion

Duration	Fees
Monthly	None
Quarterly	Rs. 27,000
Half yearly	Rs.50,000
Yearly	None

HNI MCX

Duration	Fees
Monthly	None
Quarterly	Rs. 1,90,000
Half yearly	None
Yearly	None

Pro pack commodity

Duration	Fees
Monthly	None
Quarterly	Rs. 2,50,000
Half yearly	None
Yearly	None

5.4 As per the information available on the website, payment to subscribe to the services could be made directly to the ICICI bank account number 024105501391 opened in the name of Prowise Capital and alternatively through the payment gateway Easebuzz.

6. The following information is gathered from the bank account statements and payment gateways:

5.5 As per the Bank Statement of “Prowise Capital” bearing Account No- 024105501391 held with ICICI Bank Ltd., it was observed that there were multiple credit entries from payment gateways- Easebuzz and PayUmoney.

5.6 In view of the same, SEBI vide e-mails each dated February 26, 2020, sought details of the “Prowise Capital” from Easebuzz and PayUmoney. The details received from Easebuzz with respect to the merchant “Prowise Capital” are as under:

Merchant Name: Prowise Capital

Email: patilvaibhav029@gmail.com

Contact no: 9165968914

Bank Name: ICICI Bank

Account no: 024105501391

PAN ID: AASFP2716Q

5.7 The details received from PayUmoney with respect to the merchant named “Prowise Capital” are as under-

<i>Merchant Name</i>	Prowise Capital	Prowise Capital
<i>Type of firm</i>	Partnership firm	Arun Jatav, Partner)
<i>PAN no.</i>	AASFP2716Q	ARDPJ0131D
<i>Bank Name</i>	ICICI BANK	ICICI BANK
<i>Account no.</i>	024105501391	024105501391
<i>Mobile no.</i>	8770793571	9691186858

5.8 It is observed that there were two merchants registered with the same name Prowise Capital for receipt of money through PayUmoney, but with the use of different PAN numbers (one with the use of PAN number of the partnership firm Prowise Capital and the other with the use of the PAN of its partner Arun Jatav). Further, the bank account number of both the merchants were same.

7. Further, I note the following information gathered from the KYC documents and bank account statements collected from the banks viz., ICICI Bank and Axis Bank :

- i. Prowise Capital is a partnership firm with four partners namely, Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade. The total amount mobilized by the entity in ICICI Bank Account no-024105501391 during the period from January 30, 2016 to February 20, 2020 is Rs.1,20,44,355.11/-.
- ii. Prowise Consultancy is a proprietorship concern of Yogendra Gangrade. It is noted that the Prop. Yogendra Gangrade is also a partner in Prowise Capital. Further, it was also noted that the account no. 918020093327341 in the name of Prowise Consultancy held with Axis Bank Ltd was receiving credits from Easebuzz in lieu of payments made to Prowise Capital. The total amount mobilized by the entity Prowise Consultancy in Axis Bank Account no-918020093327341 during the period from October, 05, 2018 to February 13, 2020 is Rs.71,85,225.43/-.

- iii. The account statements for the period from January 30, 2016 to February 20, 2020 from the ICIC Bank Ltd and the account statement for the period from October 05, 2018 to February 13, 2020 from the Axis Bank, showed last credit entries in the accounts of Prowise Capital and Prowise Consultancy as follows-

<u>Sr no.</u>	<u>A/c Name</u>	<u>A/c number</u>	<u>Last Cr entry date</u>	<u>Last Cr entry amt (in Rs.)</u>	<u>Remarks in the bank statement</u>
<u>1.</u>	<u>Prowise Capital</u>	024105501391	<u>20/02/2020</u>	<u>58,536/-</u>	<u>Payout received from Easebuzz</u>
<u>2.</u>	<u>Prowise Consultancy</u>	918020093327341	<u>12/02/2020</u>	<u>4,882/-</u>	<u>Payout received from Easebuzz</u>

8. Considering the above analysis of the details on the website of Prowise Capital, payment receipts, and bank statement of Prowise Capital, I, prima facie, observe that Prowise Capital has represented as follows:
- Prowise Capital is an investment advisory firm that provides tips for the stock and commodity markets.
 - Prowise Capital offers services in investment planning and strategy for consideration.
9. Further, the examination of payment receipts and screenshots of messages exchanged between employee of Prowise capital and the Complainant, the following are noted:
- 9.1 The representatives of Prowise Capital are using the payment links in the name of merchant Prowise Consultancy on Easebuzz.
- 9.2 From the payment receipts dated November 30, 2019, December 03, 2019 and December 04, 2019 the Complainant has made the payments amounting to Rs. 47,500, 1,42,500 and 34,200 respectively.

9.3 It is also noted from the bank account with Axis bank that amounts are collected in the account of Prowise Consultancy and then cumulatively the funds are transferred to the account of Prowise Capital, the details of the same are as under:

S. No	Customer Name	Account Number	Date of transaction	Credit Amount
1	PROWISE CAPITAL	24105501391	25/02/2019	120000
2	PROWISE CAPITAL	24105501391	01/03/2019	50000
3	PROWISE CAPITAL	24105501391	12/03/2019	50000
4	PROWISE CAPITAL	24105501391	18/03/2019	50000
5	PROWISE CAPITAL	24105501391	27/03/2019	50000
6	PROWISE CAPITAL	24105501391	02/04/2019	80000
7	PROWISE CAPITAL	24105501391	01/05/2019	50000
8	PROWISE CAPITAL	24105501391	06/05/2019	100000
9	PROWISE CAPITAL	24105501391	03/06/2019	100000
10	PROWISE CAPITAL	24105501391	01/07/2019	50000
11	PROWISE CAPITAL	24105501391	11/09/2019	20000
12	PROWISE CAPITAL	24105501391	03/10/2019	50000
			TOTAL	770000

9.4 Considering the fact that payments were credited to Prowise consultancy accounts as intimated by the employees of Prowise Capital to the investors and then the funds from Prowise Consultancy was transferred to Prowise Capital in several instances shows that the Prowise Cosultancy's was acting together with Prowise Capital by providing its accounts for receiving the consideration for the services offered by Prowise Capital Therefore, I *prima facie*, find that Prowise Consultancy together with Prowise Capital is involved in the investment advisory services.

10. Considering the above facts and circumstances, especially the contents of the website of Prowise Capital coupled with the credit transactions in the Bank Accounts and PayUMoney and Easebuzz of Prowise Capital and Prowise Consultancy as detailed in preceding paragraphs, *prima facie*, it is inferred that the fees/ funds credited to the Bank Accounts, were for the purpose of providing the services indicated on the website of Prowise Capital. Hence, as reflected in the bank statements referred to above, I note that Prowise Capital and Prowise Consultancy have commenced with the collection of fees/ funds for the purpose of providing the services from January 2016 and October 2018 respectively and have continued the same at least till the period of examination.
11. It is, *prima facie*, observed that Prowise Capital is placing information in public domain/ advertising by using its website about various services offered by it in the securities market. Further, it is also, *prima facie*, observed that various packages are being offered by Prowise Capital through its website to avail its services. The website categorically mentions the advantages of availing its services in various fields of securities market and the “independent advice” they offer to their clients in the securities market through telephone calls and SMSes.
12. 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.*”
13. Therefore, the activity of the Prowise Capital together with Prowise Consultancy by virtue of its website contents is holding themselves 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 screen shots of contents of investment advice provided to the complainant 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 them. Therefore, Prowise Capital together with Prowise Consultancy have not only held themselves out as investment advisers but have also acted as investment advisers for consideration.

Issue No.2: If answer to Issue No. (1) is affirmative, whether Prowise Capital and Prowise Consultancy have, prima facie, violated any securities laws?

14. 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 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”.

15. 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 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 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”*.

16. The activities of Prowise Capital and Prowise Consultancy, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that Prowise Capital and Prowise Consultancy are together holding themselves out and acting as investment advisers. However, no material is available on record to indicate that Prowise Capital and Prowise Consultancy are having a certificate of registration as investment adviser. In this context, it is noted that Prowise Capital and Prowise Consultancy are not registered with SEBI in the capacity of Investment Advisor and the characteristics and features of the business activity carried out by them, as discussed in the preceding issue, *prima facie*, leads to the conclusion that Prowise Capital and Prowise Consultancy are holding themselves out and acting as an investment adviser without a certificate of registration.
17. In my view, these activities/ representations are in violation of various provisions of the IA Regulations. Thus, the activities of Prowise Capital and Prowise Consultancy are, *prima*

facie, in violation of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

18. In my view, unregistered investment advisors like Prowise Capital and Prowise Consultancy can put investors at great risk by misleading them. The analysis of details of PayUmoney and Easebuzz and bank accounts mentioned on the website shows that Prowise Capital has received money in various denominations from various individuals. As per the payment details provided by the Complainant and the PayUmoney, Easebuzz details and Axis bank accounts it is also noted that Prowise Consultancy has also received money from various individuals. These proceeds, as discussed in preceding paragraphs, *prima facie*, leads to the inference that it is consideration for the services that Prowise Capital and Prowise Consultancy acting together provide in the securities market. Thus, by virtue of an active website, Prowise Capital and Prowise Consultancy, made a representation to the public that it is providing investment advisory services. The firm has claimed the following: *“there is two basic packages in Equity Cash. First one is for INR1.9 lac in which expected return would be of INR 10 lac to 15 lac...and second package is of 3.8 lac in which there is expected return of 20 lac to 30 lac...”*
19. Thus, by making the aforesaid claims, Prowise Capital is inducing investors to deal in securities by availing its services. Such modus operandi are being continuously used by Prowise Capital and Prowise Consultancy which is evident from the fact that there are continuous credits in their bank accounts.
20. It is also *prima facie* observed that the conduct of the firm in claiming “expected returns” for client’s money, 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. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such a nature that it enables investors to take reasoned and unbiased decisions regarding their investment. This act of conveying expected returns is *prima facie*, indulged for the purpose of luring

more customers in its net and thereby increasing the income of the Investment Adviser. In light of the same, the act of the firm to claim “expected returns”, 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.

21. The above discussed non-genuine and deceptive activities of Prowise Capital and Prowise Consultancy are therefore, *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:

“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 behavior 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;

22. It is noted that *prima facie*, fraudulent activities/ the conduct/ act/ practice of Prowise Capital and Prowise Consultancy as discussed above are *prima facie* in violation of provisions of Section 12A (a), (b), (c) of SEBI Act and Regulations 3 (a), (b), (c), (d) and Regulations 4(1) and 4(2)(k) of PFUTP Regulations.

Issue No.3 If answers to Issue Nos. (1) & (2) are affirmative, who are all responsible for the violations committed by Prowise Capital and Prowise Consultancy?

23. I note that, as per section 4 of Indian Partnership Act, 1932, the '*partnership*' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them for all; persons who have entered into partnership with one another are called individually '*partners*' and collectively a '*firm*' and the name under which their business is carried on is called the '*firm name*'. As per Section 2(a) of Indian Partnership Act, 1932 an '*Act of Firm*' means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. As per Section 25 of Indian Partnership Act, 1932 every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
24. Thus, from the above, it is noted that an act done by all or any partner of the partnership firm is an act by the partnership firm and all partners are liable for the act of the firm. Hence, in the present case, the activities carried out by Prowise Capital are basically the activities of by its partners. In view of the same, I find that the all the partners of the firm viz., Arun Jatav, Vaibhav Patil, Swati Purwar and Yogendra Gangrade are jointly and severally liable for the acts of the firm Prowise Capital.
25. I also note that Yogendra Gangrade is also the sole proprietor of Prowise Consultancy. I note the legal status of the proprietary firm from the judgment of the Hon'ble Supreme court in *Ashok Transport Agency v. Awadhesh Kumar & another*, [(1998) 5 SCC 567] that "*.....A proprietary concern is only the business name in which the proprietor of the business carries on the business. . A suit by or against a proprietary concern is by or against the proprietor of the business...*". Therefore, I find that Yogendra Gangrade is liable for the acts of Prowise Consultancy in addition to his capacity as a partner in Prowise Capital.

Issue No. 4: If answer to Issue No. (2) is affirmative, whether urgent directions, if any should be issued against those responsible for the violations?

26. 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, Prowise Capital and Prowise Consultancy are together 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, the website is active as on date and money has been credited to the Bank accounts of Prowise Capital and Prowise Consultancy as recently as February 2020. Thus, the accounts are active and can continue to be used to collect fees from unsuspecting investors.
27. 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 Prowise Capital and its partners and Prowise Consultancy through its proprietor from collecting any more fees from the public and indulging in unauthorized investment advisory activities. I note that the website is active as on date and the investors can also reach Prowise Capital and Prowise Consultancy (9165968914 as

shown payment gateway Easebuzz) through telephone also as the said telephone number is also active as per <https://www.findandtrace.com>. Therefore, the threat of investors getting lured towards the unregistered activity of Prowise Capital and Prowise Consultancy in the securities market is still in existence and imminent. The amount of money, prima facie, observed to have been collected by Prowise Capital is Rs.1,20,44,355.11/- and money collected by Prowise Consultancy is Rs.64,15,225.43/- (deducted the amount transferred to Prowise Capital) and indicate the magnitude of the prospective threat to the investors.

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 the unqualified person without following the safeguards mentioned in the IA Regulations. An investor receiving a service from unregistered investment advisor vis-a-vis an investor who receives such service from a registered investment adviser in consonance with the IA Regulations stands at a disadvantageous 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 would 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 victim 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 by parting with significant fees and may cause 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 potential loss of investment by the investors by following the advice from an unqualified person 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 *exparte-interim order* at this stage. Therefore, I consider the balance of convenience is also not in favour of the entities.

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 Prowise Capital, its partners and Prowise Consultancy and its proprietor from collecting any more fees from the public and from indulging in unauthorized investment advisory activities. As noted in the preceding paragraphs, at least till the examination period, monies were being received in the bank account of the firm and bank accounts are still active. Moreover, the website of the firm is still active. The aforesaid *prima facie* demonstrates that Prowise Capital and Prowise Consultancy can still lure investors to deal in the securities market while acting on its advice and probability of investors reaching them is still high. Therefore, the threat of investors getting lured towards the unregistered activity of Prowise Capital and Prowise Consultancy in the securities market is still in existence and imminent.
31. The amount of money, prima facie, observed to have been collected by Prowise Capital is Rs.1,20,44,355.11/- and money collected by Prowise Consultancy is Rs.64,15,225.43/- and indicate the magnitude of the prospective threat to the investors. In light of the same, I find that there is no other alternative but to take recourse through an interim ex-parte order against Prowise Capital, its partners and Prowise Consultancy and its proprietor for preventing them 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 website and bank accounts of the Prowise Capital and Prowise Consultancy are active and the investors can reach them through telephone also, the balance of convenience demands the preventive measure of stopping the collection of money in the bank accounts of the Noticees from investors. The same can be effectively achieved by an appropriate direction of stopping the credit into the bank account of Prowise Capital and Prowise Consultancy. As Prowise Capital and Prowise Consultancy have already evaded the jurisdiction of SEBI by *prima facie*, acting as unregistered investment advisers, the balance of convenience also demands that Prowise Capital and Prowise Consultancy need 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 of Prowise Capital and Prowise Consultancy has been incorporated.

Order

32. In view of the above, pending detailed investigation, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11(4), 11B and 11D read with Section 19 of the SEBI Act, 1992, hereby issue by way of this *interim ex-parte order*, the following directions:

a) *Prowise Capital (Partners: Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade) and Prowise Consultancy (Prop: Yogendra Gangrade):*

- i. *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.*

- ii. *Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.*
- iii. *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.*
- iv. *Immediately withdraw and remove all 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.*
- v. *Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*
- vi. *If Prowise Capital and its partners and Prowise Consultancy and its proprietor have 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. Prowise Capital and its partners and Prowise Consultancy and 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.*
- vii. *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.*
- viii. *ICICI Bank and Axis Bank wherein Prowise Capital (ICICI Bank Account No. 024105501391) and Prowise Consultancy (Axis Bank Account No.918020093327341) are holding bank accounts, are directed not to allow any debits/ withdrawals from and credits to the said accounts, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.*
- ix. *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Prowise Capital and Prowise Consultancy, Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade, held jointly or severally.*

- x. *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 Prowise Capital and Prowise Consultancy and Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade, jointly or severally, are not transferred or redeemed.*
33. This order shall come into force with immediate effect and shall be in force until further orders. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entity in accordance with law.
34. This Order shall also be treated as a Show Cause Notice and Prowise Capital (Partners: Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade) and Prowise Consultancy (Prop: Yogendra Gangrade) are show caused as to why the various representations made/ services offered by Prowise Capital and Prowise Consultancy together in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, why the investment advisory plans floated by them should not be held as “Investment Advisory Services” in terms of the IA Regulations and thereby the activity of Prowise Capital and Prowise Consultancy be treated as unregistered activity under the SEBI Act and relevant Regulations.
35. Prowise Capital (Partners: Arun Jatav, Vaibhav Patil, Swati Purwar & Yogendra Gangrade) and Prowise Consultancy (Prop: Yogendra Gangrade) 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 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, directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and why any direction to refund the amount collected from the investors/clients for its various schemes under Sections 11 and 11B (1) of SEBI Act should not be issued against them.
36. The *prima facie* observations contained in this Order, pending enquiry, are made on the basis of the material available on record and based on a strong *prima facie* case and keeping in view

of the balance of convenience in the interest of investors. In this context, the entities may file their objections, if any, within 21 (twenty one) days from the date of this Order and, if they so desire, avail themselves of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made in that regard.

37. A copy of the order shall be served upon the entities, Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: July 27, 2020

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA