

WTM/AB/WRO/ILO/14/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 114A, 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Name of the entity	PAN No.
1.	M/s. Max India Research (Proprietor: Mr. Abhishek Gupta)	BKEPG0910Q

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1. The present proceedings have emanated from a show cause notice dated January 20, 2021 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to M/s. Max India Research, and its sole proprietor i.e. Mr. Abhishek Gupta, (hereinafter collectively referred to as “**the Noticees**”), alleging that the Noticees have carried out investment advisory activities without obtaining a certificate of registration from SEBI, in *prima facie* violation of provisions of Sections 12(1) and 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Regulations 3 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”), and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”).
 2. The allegations made in the SCN are as under:
 - a. SEBI had received a complaint dated April 04, 2018, against M/s. Max

India Research, wherein it was *inter alia* alleged that the complainant had paid Rs.50,000/- for investment advisory services but had incurred losses due to their services. Based on the same, an examination of the complaint was carried out by SEBI.

- b. From the KYC and confirmation obtained from ICICI Bank Ltd., it was observed that Mr. Abhishek Gupta was the sole Proprietor of Max India Research.
 - c. Max India Research has claimed on its website, "*MIR is now a leading stock analysis and commodity analysis advisory company which provides expert recommendations for cash and future traded in NSE. We provide market recommendations through SMS and committed support team*".
 - d. Max India Research has various services on offer like- Stock Cash, Stock Future, HNI Cash, Bullions, Options, etc.
 - e. From the analysis of the bank account statement of ICICI Bank Account- 420405500032 of Max India Research, it is noted that credits of Rs. 5,83,669/- have been received for the period January 1, 2018 - April 11, 2018.
3. The SCN also called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B(1) of the SEBI Act, 1992 should not be issued against them for alleged violations. The Noticees were further called upon to show cause as to why inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Rules**") and penalty be not imposed under Section 11 (4A), 11 B(2) for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013 and Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003.
 4. The SCN also provided to the Noticees an opportunity to file their objections/reply, if any, within 21 days from the receipt of the notice. I note that the SCN could not be

delivered at the last known address available with SEBI, which is 'Plot no. 4A, PU4 Scheme No.54, AB Road, Indore, Madhya Pradesh', as provided in the KYC of the Noticee, obtained from ICICI Bank Ltd, where the Noticees have Account no.- 420405500032. Accordingly, the SCN was served through newspaper publication on March 15, 2021 in the Times of India, Indore (English Edition) and Dainik Bhaskar, Indore (Hindi Edition), having circulation in the last known addresses of the Noticees. Vide the same newspaper publication on March 15, 2021, opportunity of personal hearing was also granted to the Noticees on April 27, 2021. However, on April 27, 2021, the Noticees did not appear for the hearing and neither did they file any letter seeking adjournment. I also note that the Noticees did not file any reply/objections to the SCN. Hence, I shall now proceed to examine the matter on the basis of the material available on record.

5. I note that the definition of investment adviser, as given in Regulation 2(1)(m) of IA Regulations, 2013, provides 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"*. Regulation 2(1) (l) of the IA Regulations 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."*
6. I note that the Noticees had a website www.maxindiaresearch.com, which is currently not active. Copy of the webpages that were downloaded during examination of the matter have been provided to the Noticees as Annexure B to the SCN. From the pages downloaded, I note that the Noticees had claimed on their website that they are providing investment advisory services and that they offer a diversified range of services. The Noticees claimed on their website that *"MIR is now a leading stock analysis and commodity analysis advisory company which provides expert recommendations for cash and future traded in NSE. We provide market recommendations through SMS and committed support team"*. They also claimed on their website that they are providing various services on offer like- Stock Cash,

Stock Future, HNI Cash, Bullions, Options, etc. and were providing premium stock cash calls, Nifty Future tips, intraday calls etc. with high level of accuracy. Further, I note that the pricing for the aforesaid services were provided on the website. Some instances of the service pricings are as given under:

S No.	Intraday Cash	Rs.
1	Monthly	5000
2	Quarterly	12,000
3	Half yearly	20,000
4	Yearly	30,000
	HNI Cash	
1	Monthly	20,000
2	Quarterly	45,000
3	Half yearly	80,000
4	Yearly	1,00,000
	Intraday Future	
1	Monthly	7,000
2	Quarterly	18,000
3	Half yearly	30,000
4	Yearly	50,000
	Jobber's Cash Pack	
1	Monthly	75,000
2	Quarterly	2,10,000
3	Half yearly	4,00,000
4	Yearly	7,80,000
	Commodity Bullion	
1	Monthly	10,000
2	Quarterly	27,000
3	Half yearly	50,000
4	Yearly	90,000
	Combo (Cash+Future)	
1	Monthly	75,000
2	Quarterly	2,10,000

3	Half yearly	4,00,000
4	Yearly	7,80,000

7. I find that these services were being offered by the Noticees in lieu of the consideration which could be paid by the investor concerned directly to the bank accounts opened in the name of Max India Research with ICICI Bank (A/c No. 420405500032) and Bank of Maharashtra (A/c No. 60289891942), the details of which were mentioned on their website and alternatively through PayU money. From the details of the ICICI Bank Account- 420405500032, it is noted that credits of Rs. 5,83,669/- have been received for the period January 01, 2018 - April 11, 2018. From the aforesaid facts, I find that Max India Research was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website www.maxindiaresearch.com. I note that the KYC for the ICICI Bank Account, copy of which was forwarded by the bank to SEBI, states that the sole proprietor is Mr. Abhishek Gupta, having PAN: BKEPG0910Q. Therefore, I find that Max India Research and Mr. Abhishek Gupta were giving investment advice, in lieu of consideration. In terms of Regulation 2(1) (l) of IA Regulations, 2013 such an advice is "investment advice". Therefore, I find that Noticees were engaged in the business of providing investment advice to public, for consideration and were thus, acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations, 2013.

8. Section 12(1) of the SEBI Act, 1992 provides 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."

9. In order to protect the interest of investors and to maintain integrity of the securities market, IA Regulations, 2013 provides safeguards to ensure that the investors who receive investment advice are protected. One such safeguard is that any person carrying out investment advisory activities has to obtain registration from SEBI as

required under Regulation 3(1) of the IA Regulations, 2013. Regulation 3(1) 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”* and conduct its activities in accordance with the provisions of IA Regulations. Further, safeguards provided under IA Regulations, 2013 includes continued minimum professional qualification and net-worth requirement for investment adviser, disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client’s objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc.

10. The activities of the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that the Noticees were holding themselves out and acting as an investment adviser. However, it is noted that Max India Research is not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities/ representations as being made by the Noticees without holding the certificate of registration as investment adviser are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
11. In my view, unregistered investment advisors like the Noticees in the present case can put investors at great risk by misleading them. In the present case, Noticees on their website mentioned that Max India is a leading stock analysis and commodity analysis advisory company which provides expert recommendations for cash and future traded in NSE and that it provides premium stock cash calls, Nifty Future tips, intraday calls etc. with high level of accuracy. As stated above, SEBI Act, 1992 and IA Regulations, 2013 requires any investment advisor to hold a certificate of registration to act as such. I find that Noticees were not holding any certificate of registration from SEBI to act as investment adviser. Thus, the claims/representations made by the Noticees on their website were misleading and were made to allure investors to avail investment advisory services being offered by the Noticees. The Noticees have knowingly misrepresented on the websites floated

by them that Max India Research is a leading investment advisory firm and it provides premium stock cash calls, Nifty Future tips, intraday calls etc. with high level of accuracy, without holding any registered Investment Advisor certificate, the Noticees have held themselves out as investment advisors and offered services through their website to investors with the objective of raising money. The above discussed misleading representations are deceptive activities of the Noticees and therefore, fraudulent and are covered within the definition of “fraud” defined under Regulation 2(1)(c) of the PFUTP Regulations, 2003. Regulation 4(2)(k) of PFUTP Regulations, 2003, provides that dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves 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. In the present case, Noticees without holding certificate of registration as investment adviser, knowingly hold themselves as investment adviser on their website. In the facts and circumstances of the present case, I find that the activities of Noticees are covered under Regulation 4(2)(k) of the PFUTP Regulations, 2003. However, I note that the SCN alleges the violation of Regulation 3 (a), (b), (c) and (d) and not Regulation 4(2)(k) of the PFUTP Regulations, 2003. In my view, as discussed above, the activities of the Noticees fall under Regulation 4(2)(k) of the PFUTP Regulations, 2003. Therefore, I find that Noticees have violated Regulations 4(2)(k) of PFUTP Regulations, 2003.

12. I note that the material available on record does not indicate the exact amount of fees collected by the Noticees, as a result of providing investment advice to investors, in violation of the provisions of the IA Regulations, 2013. However, I note that the complainant Ms. Vandana M Kotagi has claimed that she had paid an amount of Rs. 50,000/-to the Noticees, for availing investment advisory services from the Noticees.
13. I note that the SCN also calls upon the Noticees to show cause as to why inquiry should not be held against them in terms of Rule 4 of the Rules and penalty be not imposed under Section 11 (4A) and 11 B(2) for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013 and Section 12A(a),

(b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003. I find that Section 15HA and 15HB of the SEBI Act, 1992 which provides as under:

“Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”*

14. In view of the violation of provisions of SEBI Act, 1992, IA Regulations 2013 and PFUTP Regulations 2003 by the Noticees, as found in paras 10 and 11 above, I find that the Noticees are liable for penalty under Section 15HA and 15HB of the SEBI Act, 1992.

15. I note that while imposing penalty under Section 15HA and 15HB of the SEBI Act, 1992 the factors enumerated in Section 15J are to be taken into consideration. Section 15J of the SEBI Act, 1992 provides as under:

“Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

Explanation.— For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

16. I find that the material available on record does not indicate the amount of disproportionate gain or unfair advantage made by the Noticees as it cannot be confirmed whether the credits of Rs. 5,83,669/- in the ICICI Bank Account-420405500032 of the Noticees for the period January 01, 2018 - April 11, 2018 have been received only from investors for unregistered investment advisory services. Further, the material available on record does not indicate the total amount of loss caused to specific investors or group of investors, as a result of the default by the Noticees. However, I note that the complainant, Ms. Vandana M Kotagi has claimed that she had paid an amount of Rs. 50,000/- to the Noticees for availing investment advisory services. With regard to whether the default by the Noticees is repetitive in nature, I note that the Noticees were holding themselves as investment adviser without obtaining a certificate of registration as investment adviser. I note that in terms of Section 15HA of the SEBI Act, 1992, a minimum penalty of Rupees Five lakh has to be mandatorily imposed on the Noticees and in terms of Section 15HB of the SEBI Act, 1992, a minimum penalty of Rupees One lakh has to be mandatorily imposed on the Noticees.

17. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections, 11(1), 11(4), 11(4A), 11B(1), 11B(2) and 15-I of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and Rule 5 of the Rules, hereby direct that:

- (i) The Noticees shall within a period of three months from the date of coming into force of this direction, refund the money received from the clients/investors/complainant, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- (ii) The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such

as names, addresses and contact details, within 15 days of coming into force of this direction;

- (iii) The repayments to the clients/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (iv) The Noticees are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above.
- (v) ICICI Bank and Bank of Maharashtra wherein Max India Research is holding accounts, are directed not to allow any debits/ withdrawals from and credits to the aforesaid accounts, except for debits for the purposes of the refunds as directed in para 17(i) above. ICICI Bank and Bank of Maharashtra are directed to ensure that all the above directions are strictly enforced.
- (vi) The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Max India Research and its proprietor, Mr. Abhishek Gupta, held jointly or severally.
- (vii) After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, CIS Division, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of direction given in para 17(i) above, duly certified by an independent Chartered Accountant. The restraint contained in para 17(iv) and (v) shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;
- (viii) In case of failure of the Noticees to comply with the aforesaid directions in sub-para (i) and (vii) above, SEBI, on the expiry of the stipulated time period therein may recover the amounts mentioned in para 12 above or any other

amount, as may be found to have been raised by the Noticees, from the Noticees, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;

- (ix) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 17(i) above, whichever is later;
- (x) The Noticees are also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 17(i) above, whichever is later; and
- (xi) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 17(ix) and (x) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.
- (xii) The Noticees are hereby imposed with, under Section 15HA penalty of Rs. 5 lakh and under 15HB a penalty of Rs. 1 lakh, and are directed to pay the penalties within a period of forty-five (45) days, from the date of receipt of this order;
- (xiii) The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of

penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IMD-CIS, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

18. The direction for refund, as given in paragraph 17(i) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
19. This order comes into force with immediate effect. However, in view of the exceptional circumstances emerged due to the outbreak of a COVID-19 and consequential lockdowns imposed in different parts of the country, the direction given in paragraph 17 (i) and (ii) above, shall come into force on July 01, 2021.
20. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

Place: Mumbai

ANANTA BARUA

Date: June 11, 2021

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA