

WTM/AB/WRO/WRO/14742/2021-22

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In Respect of:

Noticee No.	Name of Noticees	PAN
1.	Capital Exchange India	AANFC7272K
2.	Ms. Mayuri Verma	AXQPV5977Q
3.	Mr. Ankit Mishra	BBPPM7624F
4.	Mr. Nimit Daheriya	BJWPD1916L

(Aforesaid entities are hereinafter individually referred to by their respective name or Noticee number and collectively as “the Noticees”.)

-
1. The present proceedings emanate from an *ad interim ex parte order* dated February 07, 2020 (hereinafter referred to as “**the interim order**”) passed by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) *inter alia* against Capital Exchange India and its partners, i.e. Ms. Mayuri Verma, Mr. Ankit Mishra and Mr. Nimit Daheriya (hereinafter also referred to as “**the Noticees**”) as the unregistered investment advisory activities of the Noticees were *prima facie* found to be in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Further, in the interim order, the activities of the Noticees were *prima facie* found to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of SEBI Act, 1992 and Regulations 3 (b), (c) & (d), 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, 2003**”).

By the interim order, following directions were *inter alia* issued to the Noticees:

“.....

i. The Noticees shall 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 manner whatsoever, until further orders.

ii. The Noticees shall not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

iii. The Noticees shall not divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.

iv. The Noticees shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.

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

vi. The Noticees shall provide a full inventory of all assets held in the name of the proprietorship or the proprietor and firm or the partner, 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.

vii. Any person while working under the above mentioned Noticees as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

viii. The Banks are directed not to allow any debits/ withdrawals from or credits to the accounts of the Noticees, held jointly or severally, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.

.....”

2. The interim order was also in the nature of a show cause notice wherein the Noticees were provided with the opportunity to file their objections/reply, if any, within 21 days from the date of the interim order and were also provided with an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made by the Noticees, in that regard.
3. The interim Order was served upon the Noticees vide letter dated February 10, 2020. Vide letter dated March 06, 2020, the Noticees submitted their response to the interim order. Vide their email and letters to SEBI, the Noticees No. 2, 3 and 4 provided the details of their assests and bank accounts in compliance with the Interim Order. As the bank accounts of the Noticees were frozen by respective banks in accordance with the interim order, the Noticees vide their letters dated August 17, 2020 requested SEBI to unfreeze their bank accounts. Noticee No. 2 vide its letter dated September 15, 2020 requested SEBI to unfreeze her PAN card, enclosing therewith an offer letter of employment received from Yes Bank. Vide their letters dated February 13, 2020, February 18, 2020, February 26, 2020, March 06, 2020, August 17, 2020 and September 15, 2020 the Noticees did not seek any personal hearing in the matter. However, in the interest of justice, the personal hearing in the matter was scheduled on three occasions before the then whole time member, SEBI but could not be concluded due to administrative exigencies. Finally, the matter was placed before me for obtaining a hearing date, on August 18, 2021 and an opportunity of hearing was granted to the Noticees on January 06, 2022. On the scheduled date and time, the Noticee no. 2, 3 and 4 appeared in person and made the oral submissions. The Noticees reiterated the contents of their submission already filed with SEBI vide their letter dated March 06, 2020. Accordingly, the hearing was concluded *qua* these Noticees.
4. I note that the following facts have been recorded in the Interim Order dated February 07, 2020 against the Noticees.

“

**3.6. CAPITAL EXCHANGE INDIA AND ITS PARTNERS NAMELY, MAYURI VERMA,
ANKIT MISHRA AND NIRMIT DAHERIYA**

3.6.1. SEBI received several complaints against the entity Capital Exchange India. The details of complaints are mentioned as under:

Date of Receipt	Complainant Name	Complaint details
07-08-19	Balwinder Singh	In the email from Mr. Balwinder Singh, it was, inter alia, alleged that the Capital Exchange India has cheated him by forcing to pay more money in name of recovering losses, for handling de-mat account and offered profit commitment of Rs. 1 lakh in a month and trapped him. The complainant has also attached Paytm receipt in connection to payment made to Capital Exchange India.
29-08-19	Santosh Kumar	Mr. Santosh Kumar sent an email, inter alia, alleging that he has paid Rs.5000 to the company and he has not got any payment receipt and calls for trading. The complainant has also attached payment reception connection to payment made to Capital Exchange India.

3.6.2. Based on the above, vide email dated August 7, 2019, Easebuzz was requested to furnish the copies of the AOF, KYC details and account statements of all the accounts available with them for Capital Exchange India.

3.6.3. Easebuzz, vide email dated August 7, 2019, provided the following details:

Name	Capital Exchange India
Email	cxi.mayuri@gmail.com
Bank Details	PNB BANK, Account details - 0699002100041460, Manormaganj, Indore.
PAN	AANFC7272K
Business Name	Capital Exchange India

3.6.4. Further, vide email dated August 07, 2019, Punjab National Bank was requested to furnish copies of the AOF, KYC details and bank statements available with the bank (from opening till the date of the email) for Capital Exchange India.

3.6.5. Punjab National Bank, vide email dated August 9, 2019, inter alia, forwarded the KYC, AOF and accounts statement for Capital Exchange India. From the information submitted by the Bank, the following observations are made:

- a- Capital Exchange is a partnership firm. The partners have furnished their copies of Aadhar Card and PAN Card.
- b- In the account opening form, the type of account has been mentioned as 'Current' and Nature of Business as 'Consultants'.
- c- The partners in Capital Exchange are

- **Mayuri Verma**, from 15/7, Nehru Nagar, Indore, M.P.- 452011.
- **Ankit Mishra** from 292, Ambedkar Nagar, L.I.G Opp. Pani ki Tanki, Indore, M.P.- 452011.
- **Nirmit Daheriya** from A-13, Mahesh Guard Line, VIP Road, Indore, M.P. – 452006.

3.6.6. From the Bank account statement of PNB it is observed that around Rs. 23,13,135/- have been credited during the period May 15, 2019 to August 9, 2019.

3.6.7. An internet search made in the name of 'Capital Exchange India' showed its website as <http://capitalexchangeindia.com/>. It is seen from the website that Capital Exchange India unauthorisedly uses the SEBI logo to show its expertise. It has mentioned on the website that, "*Capital Exchange India is a team of expert analyst with vast experience in capital market research. We provide recommendations for stocks, future and option (F&O) traded in NSE and BSE, commodities including bullion, agri and metals traded in MCX and NCDEX. We also provide daily and weekly reports having overview of the stock and commodity market which helps the investors to understand the trends of the market and helps in taking wise decisions.*" The website also provides information about various services Capital Exchange India offers such as Equity, Derivative, Forex, Commodity, Premium Packages, etc.

-"
5. Vide their reply dated March 06, 2020 the Noticees have *inter alia* submitted as follows.

".....

- i. *We all are belonging to a middle-class family background and our families have a social reputation. There is no pending legal action, case and proceeding against us. We all are educated.*
- ii. *Mr. Vivek Peswani introduced himself as Registered Investment Advisor and Entrepreneur. He also had few people with him who testified his claim and made us believe in him even more so that they are the branch heads*

for his other offices. Firstly, I and later we had so much trust in him. They won our trust from their behavior and at that time they seemed like professional and registered persons as were the documents and evidence presented by him. He was a Non Resident Indian and his talks and discussion were always related to the global market, commodities and strong relationship in politics and the organizations he owns.

- iii. After that I, Nirmit trusted Mr. Vivek Peswani and made Ms. Mayuri and Mr. Ankit to join me. We all had joined Mr. Vivek Peswani and started working under his direction. After that he told to us that he will provide all the setup of Human Resources, Website, Office Space and furniture, Technologies and others in his office- building and we run a branch office for him. He told us that his branch name is Capital Exchange India. The registered office of the firm and his office address is same which is name of his wife. Later the building sealed by the police.
- iv. The idea of Capital Exchange India is not ours and the firm is not ours. We have given the documents to him. We have admitted that documents (PAN and Address proof) are ours which have been used by Mr. Vivek Peswani in the incorporation of firm, and the office address is not ours. He himself applied and prepared a partnership deed with the name of Nirmit, Mayuri, and Ankit and the firm named was Capital Exchange India. We asked the reason for this deed then he said that this is just a letter of authorization for operation of the branch office because he is NRI, so he is very busy with his other global assignments. He had appointed Mr. Nirmit as Branch Manager. He told me that this Capital Exchange India is only a branch under his SEBI registration as Vivek Peswani is registered with SEBI. In big corporate, this type of culture is followed. He had applied Nagar Nigam, Goumasta, PAN and others from our name. Yes, in the influence, Employer pressure, and good faith, we have signed all documents including bank account. This is our only mistake. At present, we do not have any documents related to the firm.
- v. He is a very sharp-minded person, he had divided the responsibilities of his branch as below mentioned table and this was pre-planned:

He itself transferred money from the branch's account to Ankit Mishra or my account and ordered to give to him immediately. We all are unaware about his malice intention. Despite this without any own name and authorization in bank, he had full authority on bank accounts.

- vi. *He said that we should trust him. He has created an illusion for us. Which we could not understand. Until that time, we did not know that he was an unregistered person and was doing illegal work in our papers and names. For this branch we paid remuneration and royalty amount, along with it we also provided the salary of its employees.*

On the financial year-end, we had been requested to file the income tax return of the firm. Then he told us that there is no need for an income tax return, but still, we consciously filed the income tax rate of that branch office.

- vii. *That he had introduced Mr. Nishant Shukda, who was the principal officer of his other associate Mr. Chetan Yashwant Shukla, Who a registered Research Analyst (Registration Number: INH000001402) and his registered office at A-601, Bhounik, Kandivali (West) Mumbai — 400067. His Firm and company name is Way2star, Mr. Vivek Peswani told us that now the Capital Exchange India is under the company. You all the employees of this company. After too many requests in June 18th, 2019 he issued an offer letter to Mr. Nirmal Dehariya.*

- viii. *From this event, we had some doubts about both Mr. Vivek Peswani and Mr. Nishant Shukla. We inquired ourselves and found that the individual Research Analyst cannot be opening any branch office. We confirmed with Mr. Vivek Peswani, and then he told us that his registration had some regulatory restrictions. Therefore, he has transferred his branch named Capital Exchange India under the Way2star company and sent the information to SEBI office. He had been produced the SEBI registration certificate at that time and we had taken a copy that certificate. But our doubts had still not cleared. We reached the authorities to convey our problems and doubts. They directed as oral order to shut down this office.*

We immediately shut down the branch and resignation is submitted to Mr. Vivek Peswani.

- ix. In this meantime, Indore Police had been arrested Mr. Nishant Shukla for its previous unauthorized and unlawful work. We once again tried to communicate with Mr. Vivek for our documents and payment issue. Every time, he told me that he is in the police station for solving the Nishant's matters. Later, he issued the above-said offer letter with a cheque of Rs. 82,179.00/- on the name of Mr. Nirmal Dehariya, but this Cheque is dishonored while it submitted in Bank. Attached in Annexure III*
 - x. That after within a month of closure of our office, Indore STF raid on Mr. Vivek Peswani Office and charges him for running 25-30 branch offices with different names. Police seized his building and FIR is lodged against him and all the branches, but in FIR (First Information Report) our name and Capital Exchange India name is not mentioned. After that incident, Mr. Vivek Peswani is fugitive and he is not in our contact. The local electronic and print media covered the whole incident.*
 - xi. During this incident we all were in preparation for the civil services examination and attempted the examination as well.*
 - xii. We all are innocent. We were in good faith and our mistake is we had done a blind trust on Mr. Vivek Peswani but in reality, he was an illegal person and now he is escaping from police as well as the investor. In a personal trust we had also given our documents. We still don't know how and where he used our documents.*
6. I have considered the allegations made in the Interim Order dated February 07, 2020 along with the findings of the examination by SEBI stated therein and reply received in the matter and submissions made by the Noticees during the personal hearing.
7. In this regard I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 is as follows:

“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, Regulation 2(1)(I) of the IA Regulations, 2013 states as follows:

“investment advice means 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:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;”

8. I note that SEBI received complaints against the Noticees. One of the complainant, Mr. Balwinder Singh, complained to SEBI against the financial loss due to false commitment and irresponsible attitude of the company ‘Capital exchange india’ who were running their company by the website <http://capitalexchangeindia.com>. The complaint provided information about the *modus operandi* of Capital Exchange India. The complaint had described that how he was led into the trap by ‘Capital exchange India’. The complainant informed SEBI that some persons from ‘Capital exchange India’ kept on calling him and asking for money on one pretext or other and made him commitment for profit of Rs. 1 Lakh in one month. The complainant was even misled that after paying them the money, his registration will be done and file will be put up to SEBI and then the registration will be done from SEBI. The complainant even provided the proof of payment made to Paytm ID of Noticee No.2 i.e. Mayuri Verma. The other complainant also provided proof of payment to ‘Capital exchange India’ for stock advisory services.
9. On an examination by SEBI, it was found that Noticees were running a website <http://capitalexchangeindia.com>. Currently, the website is not active. On perusal of the webpages of the website i.e. <http://capitalexchangeindia.com>, of the Noticees as downloaded from www.web.archive.org, and available on record, I note that the Noticees on their website had claimed as follows.

“

- *Capital Exchange India (Investment Advisor) is a one of the leading pioneering financial research advisory company. We are providing different services in a different manner like Equity, Commodity, Comex and Forex market. The company is providing most accuracy for recommendation and Technical Research assistance investors in the form of NSE.*
- *Capital Exchange India a privately held financial advisory company. We are India's leading financial advisory firm and registered with SEBI-INA000002520 (Securities and Exchange Board of India).*
- *Capital Exchange India is a team of expert analyst with vast experience in capital market research. We provide recommendations for stocks, future and option (F&O;) traded in NSE and BSE, commodities including bullion, agri and metals traded in MCX and NCDEX. We also provide daily and weekly reports having overview of the stock and commodity market which helps the investors to understand the trends of the market and helps in taking wise decisions.*
- *We provide recommendations to our clients through SMS and Live Chat. We use state of art technology for sending SMS to ensure that our recommendation reaches the client instantly so that they have sufficient time to enter the trade and maximize gains. Our research team consists of highly qualified and experienced analysts who use state of art technologies and softwares to find the right opportunities in the market. Their analytical skill level is our biggest strength. Excellent services to our clients are our utmost priority. For ensuring this we have dedicated team of Business Analysts which take care of clients personally online and by telephonic assistance. We have wide range of services so that investor can use our services as per his trading style. Swing traders, STBT/BTST traders, Arbitraders, Risk hedgers and Long term investors can avail our services.....”*

10. I note from the webpages of the website that on the website, different category of services/package like equity/derivatives and commodities were being offered. Under the head equity/ derivatives various sub categories like Index options, stock options index futures etc. were being offered. Under the head commodities, various sub categories like base metal package, bullion pack etc. were being offered. In these packages, it was claimed that 1-2 calls in a day would be provided and each call would consist of 3 targets and 1 Stop loss. I note that the website was also offering premium packages also in commodities and stocks categories wherein they were claiming to provide

calls as per market momentum and timely follow ups on all the calls. I note that the website was even providing HNI services. Illustration of some of the subscription packages provided by capital exchange India under equity/derivatives, commodity and premium packages categories on its websites and the fees for the same, are as under:

Type of Service	Subscription amount (In Rupees)		Type of Service	Subscription amount (In Rupees)	
Stock Cash	Monthly	5000	Base Metal pack	Monthly	7000
	Quarterly	15000		Quarterly	17000
	Half yearly	25000		Half yearly	35000
Stock future	Monthly	7000	Bullions Pack	Monthly	9000
	Quarterly	15000		Quarterly	21000
	Half yearly	25000		Half yearly	38000
Index future	Monthly	5000	Base Metal Advance (Energy)	Monthly	11000
	Quarterly	15000		Quarterly	25000
	Half yearly	25000		Half yearly	38000
Stock cash advance	Monthly	11000	Bullion pack Advance(Energy)	Monthly	15000
	Quarterly	23000		Quarterly	35000
	Half yearly	37000		Half yearly	55000
Stock Option	Monthly	5000	Premium Commodity Tips	Monthly	30000
	Quarterly	15000		Quarterly	90000
	Half yearly	25000		Half yearly	150000
Stock Future Advance	Monthly	11000	Premium Stock Tips	Monthly	30000
	Quarterly	23000		Quarterly	90000
	Half yearly	37000		Half yearly	150000
Index option	Monthly	5000	HNI Equity/Commodity	Monthly	30000
	Quarterly	15000		Quarterly	81000
	Half yearly	25000		Half yearly	150000

11. I also note from the webpages of the website that the website of 'capital exchange India' had used logo of MCX, NCDEX, NSE and SEBI on their website. Moreover, as observed above, 'Capital Exchange India' had claimed to be registered with SEBI and also displayed a fake Registration number on their website. From the perusal of the contents displayed on the websites and also the observations thereon made in the interim order, I find that the Noticees had used SEBI's logo on their website and also displayed fake SEBI registration number, to claim or misrepresent that Capital Exchange India is an entity having been registered with SEBI as an IA thereby misrepresenting to the public at large that it has the requisite legal authority to provide investment advisory services to investors.
12. It is also noted that for availing the investment advisory services of the Noticees, the website had provided option to pay the consideration amount online through payment gateway which asked for the amount to pay and details like name, address and service name. I also note that on the payment page, the name of Noticee No. 2 was appearing. As noted in the Interim Order dated February 07, 2020, from one such payment gateway provider 'Easebuzz', SEBI sought details and copies of the Account opening forms, KYC details and account statements. 'Easebuzz' provided the requisite details including bank account number 0699002100041460 of Punjab National Bank (PNB), Manormaganj, Indore branch and the account statements. 'Easebuzz' also provided the email id of 'Capital exchange India' which was cxi.mayuri@gmail.com, which appears to be of the Noticee No. 2 i.e. Mayuri Verma. From the perusal of the account details and account statements from 'Easebuzz', it is noted that there had been a constant flow of funds from various persons along with details of their names, mobile numbers, and emails from January 31, 2019 to July 31, 2019.
13. SEBI also sought account opening forms, KYC details and account statements from PNB of bank account no. 0699002100041460, (Manormaganj, Indore branch), which was linked to the 'easebuzz' payment gateway provided on the website <http://capitalexchangeindia.com>. It is noted

that the said bank account was in the name of 'Capital Exchange India' i.e. Noticee No. 1 which was a partnership firm and Noticees No. 2, 3 and 4 were the partners of 'Capital Exchange India' as per the partnership deed provided by PNB. In the account opening form, the type of account had been mentioned as 'Current cum salary A/c' and Nature of Business as 'Consultants'. It is noted that account of 'Capital exchange India' was opened on September 18, 2018 and there had been constant flow of money from various sources in the said bank account. SEBI Interim Order dated February 07, 2020 has also observed that amount of Rs. 23,13,135/- had been credited during the period May 15, 2019 to August 9, 2019 in the bank account.

14. I have also perused the various documents provided by PNB and 'easebuzz' including copy of partnership deed executed by Noticees, copy of account opening form, KYC documents of the Noticees, business certificate and establishment certificate issued by District labour office, Indore to Noticees.
15. In this regard I note that the partnership deed was executed by the Noticees on May 20, 2018. The terms and conditions of the Partnership deed *inter alia* were as follows.

"....

- The partnership deed between the parties (*Nirmit Daheriya, Mayuri Verma, Ankit Mishra*) has been executed on May 20, 2018 to do business in partnership.
- The parties have agreed to do '*Share Market Research and Advisory*' work in partnership.
- The partnership firm work would be done under '*Capital Exchange India*'.
- The main work of the partnership firm would be '*Share Market Research and Advisory*'.
- The parties have agreed to share profit and losses in the ratio of 33.33 % each.

..."

Thus, I note that 'Capital exchange India' was partnership firm whose partners were Noticee No. 2, 3 and 4 and its business was 'Share Market Research and Advisory'. Further, It is noted that the business license issued by Nagar Paalik Nigam, Indore, clearly states the name of applicant as *Nirmit Daheriya, Mayuri Verma, Ankit Mishra* and the name of firm/company as Capital exchange India. It is also noted from Account Opening Form of capital

exchange India provided by PNB that the Nature/type of business activity shown in the AOF is consultants and name of the partners are the Noticees i.e. Nirmitt Daheriya, Mayuri Verma, Ankit Mishra in 33.33 % each. The establishment certificate issued by District labour office, Indore under M.P. Shops and Establishment Act, 1958 states the name of establishment as Capital Exchange India and the names of owner/Manager/agent as Mayuri Verma with Ankit Mishra and Nirmitt Daheriya.

16. Further, considering the fact that the website of the Noticees clearly showed that their services were in the nature of investment advisory services, the business of the partnership firm as per the partnership deed was share market research and advisory and the Bank account of the Noticees have received an aggregate credits of Rs. 23,13,135/- during the period May 15, 2019 to August 9, 2019, it leads to a reasonable inference that the said proceeds and credit entities as reflected in the PNB Bank Account (0699002100041460) of the Noticee no. 1 which was linked to the payment gateway mentioned on their website, were in fact received towards consideration for providing the advisory services offered by the Noticees. The Noticees have not even made any attempt or produced any document to suggest that the amount received by them in the above referred bank account, was not in respect of investment advice which was being rendered by them.

17. I note that the Noticee No. 2, 3 and 4 in their reply dated March 06, 2020 have not disputed the observations contained in the SEBI's interim Order dated February 07, 2020 regarding investment advisory activities being carried on by them through their website without seeking registration from SEBI in this regard. The Noticees have stated that the idea of Capital Exchange India and the firm is not theirs. They were introduced to one Mr. Vivek Peswani who made them open a branch under the name of capital exchange India. They provided their documents to One Mr. Vivek Peswani who used them for various purposes including for the incorporation of firm. Mr. Vivek Peswani only applied and prepared a partnership deed with the name of the Noticees

and the firm named was Capital Exchange India. The Noticees have further submitted that they are innocent and in good faith and by mistake they trusted Mr. Vivek Peswani who used their documents. The Noticees in their written as well as oral submissions have contended that they are educated people and were preparing for UPSC and other competitive exams when they came across this incident. The Noticees have also provided the details of their educational profile.

18. I note that the Noticees No. 2, 3 and 4 have claimed innocence in their replies and have contended that it is Mr. Vivek Peswani who misused their documents and opened the partnership firm. In this regard I note the following.

- i. The partnership deed dated May 20, 2018 signed by Noticee No. 2, 3 and 4, shows Noticee No. 2, 3 and 4 as partners and the main work of the partnership to be '*Share Market Research and Advisory*' under the name of 'Capital Exchange India'.
- ii. The bank account of PNB was opened in the name of 'Capital Exchange India' and the bank account opening form was signed by Noticee No. 2,3 and 4 which showed them as partners and authorized persons.
- iii. Establishment certificate issued by District Labour office, Indore also showed Noticee No. 2 ,3 and 4 as the partners of 'Capital Exchange India'
- iv. Rent agreement dated May 23, 2018 was executed between 'Capital Exchange India' and its partners i.e Noticee No. 2,3 and 4 and Mr. Vivek Peswani for the rent of the office premised of 'Capital Exchange India'. Rent agreement was also signed by Noticee No. 2, 3 and 4.
- v. Business Licence Registration number 51806241197 dated June 19,2018 issued by Nagar Palik Nigam, Indore showed the name of the firm as 'Capital Exchange India' and the applicant names as that of the Noticees No. 2,3 and 4 being partner.

- vi. The Noticees in their reply have also claimed that the Income Tax return was filed by them on behalf of the firm 'Capital Exchange India'.
- vii. Noticees in their reply dated March 06, 2020 have provided copy of the employee ID of Noticee. No. 2,3 and 4 to contend that they were employee of the firm 'Capital Exchange India' of which they were the partners themselves.
- viii. Payment proof provided by the complainant Mr. Balwinder Singh shows that the amounts were credited to the Pay Tm ID of Noticee No. 2.

19. I note that as observed above, the Noticees no. 2, 3 and 4 have signed all the documents on behalf of the firm 'Capital Exchange India'. It is also noted they have represented themselves as partners and authorized persons on behalf of the firm 'Capital Exchange India' before bank and other public authorities as well. Further the amount was credited to the Paytm ID of the Noticee No. 2. Having signed all the documents and being well educated as claimed by them, it is hard to believe that the Noticees no. 2, 3 and 4 did not know about the contents of the documents they were made to sign by Mr. Vivek Peswani as contended by them and the consequences which would follow from the same. Noticees no. 2, 3 and 4 can be presumed to be fully aware and have full knowledge of their actions and the legal consequences which would entail from their actions. If the Noticees No. 2, 3 and 4 were indeed employees, as claimed by them, the facts like signing of partnership deed, bank account opening form, business and establishment certificate and filling Income tax return etc. should have raised alarm in them as no employee would be required or asked by their employer to do all these acts in the name of employer. The Noticees have also not provided any documents like any police complaint, complaint to any other public authority which may prove their bonafides and establish that they raised the alarm timely about misuse of their documents by Mr. Vivek Peswani. The Noticees have not provided any documents which may prove that they raised the issue with Police and other public authorities even after knowing about the raids by Police authorities on the premises of Mr. Vivek Peswani and passing of SEBI interim Order.

Therefore, the contention of the Noticees that they trusted Mr. Vivek Peswani and handed over their documents to him who used their documents with public authorities including for opening the Partnership firm and bank accounts appears nothing but an afterthought. The contention has also been brought out by the Noticees for the first time after passing of Interim Order by SEBI and cannot be relied upon. I also note that the Noticees have also provided a copy of resolution cum satisfaction letter dated March 02, 2020 from the complainant Mr. Balwinder Singh to contend that they have resolved the grievances of the said complainant. In this regard I am of the view that the said resolution letter from the complainant might have resolve the complaint but it does not absolve the liability of the Noticees for providing investment advisory services without seeking registration from SEBI as required under law.

20. I note that in terms of Section 4 of the Indian Partnership Act, 1932 *"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all*". Further, *"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"*. Thus, the partnership firm is nothing but all the partners acting together.

21. Considering the above factual analysis about the activities of the Noticees as proclaimed on their websites, the complaint received against the Noticees, the bank statements of the Noticees disclosing the credits of fees towards rendering advisory services, I find that 'Capital Exchange India' which is partnership firm of Noticee No. 2, 3 and 4 was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products in lieu of consideration, through its website <http://capitalexchangeindia.com> and for consideration as discussed in para 16 above. Therefore, I find that the Noticees were providing "investment advice" in terms of Regulation 2(1)(I) of IA Regulations, 2013, through their website

and were also holding themselves out as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013

22. I also note that, 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 Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 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.”

It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, inter alia, provides that, 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 SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of

investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

23. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

- (i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;
- (ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;
 - b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

- c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
- (iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

24. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were holding themselves out and were acting as an IA, although the Noticees were not registered with SEBI in the capacity of IA. Hence, I find that these activities/ representations as were being made by the Noticees without holding the mandatory 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.

25. In the present case, Noticees on their website have claimed themselves to be registered with SEBI while displaying a fake registration number and used the logo of SEBI. It was *inter alia*, claimed on the website that 'Capital Exchange India is a team of expert analyst with vast experience in capital market research which provide recommendations for stocks, future and option (F&O) traded in NSE and BSE, commodities including bullion, agri and metals traded in MCX and NCDEX. It was also mentioned that 'Capital Exchange India' provide daily and weekly reports having overview of the stock and commodity market which helps the investors to understand the trends of the market and helps in taking wise decisions. As stated above, SEBI Act, 1992 and IA

Regulations, 2013 mandate that an investment advisor has to hold a certificate of registration to act as such. However, as already pointed out above, I find that the Noticees were not holding any certificate of registration from SEBI to act as an investment advisor. Thus, the claims/representations made by the Noticees on their websites were misleading and were made only to allure the investors to avail investment advisory services being offered by the Noticees. The Noticees have knowingly misrepresented on the websites floated by them and induced the investors to trade in securities by misrepresenting that they had team of expert analyst with vast experience in capital market research. Thus, the Noticees offered their investment advisory services to investors, through their websites in an unauthorized manner, with the sole objective of raising money from the investors by way of subscriptions packages to their various plans though while offering such investment plans or any investment related advisor services the Noticees were not holding any Investment Advisor registration certificate. In this regard "fraud" as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 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;”

26. It is noted that the above discussed fraudulent activities/ conduct/ act/ practice of the *Noticees*, amount to violation of provisions of Section 12A (c) of *SEBI Act, 1992* and Regulations 3(d) and 4(1) read with Regulation 2(1)(c) (1), (2) and (3) of PFUTP Regulations, 2003. Further, 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 even 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, the *Noticees* without holding a certificate of registration as investment adviser have knowingly held themselves out as an Investment Adviser on their website. Thus, I find that the *Noticees* have also violated Regulation 4(2)(k) of PFUTP Regulations, 2003.

27. The *Noticees* in their PNB bank account (0699002100041460) which is in the name of ‘Capital Exchange India’ had received Rs. 23,13,135 during the period from May 15, 2019 to August 9, 2019 through investment advisory services as observed above in para 16. Further, I note that the complainant Mr. Balwinder Singh had claimed that he had paid an amount of Rs. 21500/- to the *Noticees* and the complainant Santosh Kumar had paid Rs. 5000/-, for availing investment advisory services from the *Noticees*.

Directions:

28. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

- a. The Noticees shall within a period of three months from the date of coming into force of this order, jointly and severally, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- b. 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 order;
- c. The repayments to the complainants/ 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;
- d. 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. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the Noticees, as directed in this order, from the bank accounts of the Noticees;
- e. After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, 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 this order, duly certified by an independent Chartered Accountant and the direction at paragraph 28(d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

f. 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 6 (six) months from the date of this order or till the expiry of 6 (six) months from the date of completion of refunds to complainants/ investors as directed in paragraph 28(a) above, whichever is later;

h. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 28(f) 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.

29. The direction for refund, as given in paragraph 28(a) 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.

30. 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 restrictions imposed in different parts of the country, the direction given in paragraph 28 (a) and (b) above, shall come into force from February 28, 2022.

31. 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-

Date: January 24, 2022

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA