

WTM/AB/WRO/WRO/11661/2021-22

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

UNDER SECTIONS 11, 11(4), 11B(1) and 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Name of the entity	PAN No.
1.	Max Capital (Proprietor: Mr. Mahesh Tillore)	AUWPT4085E

1. The present proceedings have emanated from an ex-parte ad-interim order cum show cause notice dated July 24, 2020 (hereinafter referred to as “**the interim order**”) passed by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Max Capital and its sole proprietor Shri Mahesh Tillore (hereinafter collectively referred to as “**the Noticees**”), as the unregistered investment advisory activities of the Noticees were 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 (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d) and Regulations 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”). By the interim order, following directions were issued against the Noticees:

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

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

31.1.1. Cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders.

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

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

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

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

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

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

- 31.3. *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Max Capital and its proprietor, Mr. Mahesh Tillore, held jointly or severally.*
- 31.4. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of Max Capital and its proprietor, Mr. Mahesh Tillore, jointly or severally, are not transferred or redeemed.*
- 31.5. *It is made clear that if Max Capital/ its proprietor has any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that Max Capital/ its proprietor are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*
32. *This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Max Capital and its Proprietor Mr. Mahesh Tillore in accordance with law.*
33. *This Order shall be treated as a Show Cause Notice and Max Capital and its Proprietor Mr. Mahesh Tillore are show caused as to why the various representations made/services offered by Max Capital in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, why the various plans floated by them should not be held as "Investment Advisory Services" in terms of the IA Regulations and thereby the activity of Max Capital be treated as unregistered activity under the SEBI Act and relevant Regulations.*
34. *Max Capital and its Proprietor Mr. Mahesh Tillore are also show caused as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including directions for an appropriate period, for a prohibition on them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for an appropriate period, directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and why a direction to refund the amount collected from the investors/clients for its various plans should not be issued against them under Sections 11 and 11B (1) of SEBI Act.*
35. *The, prima facie, observations contained in this Order are made on the basis of the material available on record. In this context, Max Capital (Proprietor Mr. Mahesh Tillore) may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate*

whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.

36. *The above directions shall take effect immediately and shall be in force until further orders.*

.....”

2. As can be noted from the above quoted directions, 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. In this regard, an opportunity for personal hearing was granted to the Noticees on December 15, 2020, wherein, the Noticees appeared via video conferencing and made oral submissions. The Noticee was granted 10 days' time to file his reply/objections to the interim order and written submissions, if any. However, it is noted that the Noticees have not filed any reply/objections to the interim order or written submissions till the date of passing of this order. Hence, I shall now proceed to determine the matter on the basis of material available on record.
3. I find that the interim order passed in the matter contained following observations:
 - (i) The website <http://www.maxcapital.info/> was browsed for information, but as the same is not currently active, the archived pages of the website were downloaded from web.archive.org to gather information and the following was observed wherein the Noticees claimed as follows:
 - (a) Max Capital is one of the leading Stock Advisory Firm in Stock and Commodity Market. Our strong hold in providing the most accurate tips makes us stand apart from our competitors.
 - (b) Our analysis is solely based on the economic news and deep technical analysis done by our experts. We provide all services through SMS and Insta Messenger.
 - (c) Max Capital is a Register firm has been gained a foot strongly among Stock Advisory Companies & investment advisory Companies in

India by giving the best research call and heavy one to one follow ups. Now it has become most desirable Investment Advisory firm who covers each and every segment.

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

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

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

(ii) Illustration of some of the subscription packages provided by the Noticees and the fees for the same is as under:

<i>Stock Cash</i>	<i>Fee (in Rs.)</i>
Monthly	8,000/-
Quarterly	21,000/-
Half Yearly	35,000/-
Yearly	50,000/-

<i>Stock Future</i>	<i>Fee (in Rs.)</i>
Monthly	8,000/-
Quarterly	21,000/-
Half Yearly	35,000/-
Yearly	55,000/-

<i>Bullions</i>	<i>Fee (in Rs.)</i>
Monthly	15,000/-
Quarterly	35,000/-
Half Yearly	55,000/-
Yearly	95,000/-

(iii) From archived webpages of the website, it is noted that the Noticee also had placed links to reports and track sheets for segments of Equity

Cash, Stock Future and Stock Options, MCX, etc., on its website. These track sheets and reports appear to be, prima facie, an indicator of the claimed performance of the investment advice given by the Noticee.

- (iv) HDFC Bank Account No. 50200011154778 was mentioned on the website, which was in the name of Max Capital. Further, as per the information provided by the Easebuzz, Account No. 275011100000353 held with Andhra Bank Limited, in the name of Max Capital, was also linked with the account held with HDFC Bank as disclosed on the website.
- (v) From the complaint of one Mr. Rakesh, the following details are observed:
- a. Payment receipt are issued by the Noticees to the complainant wherein it is mentioned that the Service Name is 'Equity'.
 - b. Payment receipts contain disclaimers/ directions, such as, investment in securities market are subject to market risk, investors should do their own independent research before acting on any stock tip from the Noticee, etc.
- (vi) KYC documents and bank account statements collected from the banks viz., Andhra Bank and HDFC Bank and from documents obtained from Easebuzz, the following was revealed:
- (a) From the Account Opening Form (AOF) provided by Easebuzz, it is observed that the Andhra Bank account is linked to the payment gateway and the purpose of payment is mentioned as "Stock Advisory".
 - (b) As per the KYC documents of these bank accounts, the nature of business/ type of profession of the Noticee has been stated to be as follows:

Bank	Account Number	Nature of Business/Type of Profession

Andhra Bank	275011100000353	Business
HDFC Bank	50200011154778	Service Providers (Tele Product Selling)

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

(d) The transactions observed in the above-mentioned bank accounts are summarized as under:

Bank	Account Opening Date	Credits Received from date of account opening till April 15, 2020	Balance (as on April 15, 2020)	Last Credit Transaction Date
Andhra Bank	June 01, 2016	Rs. 32,28,158/-	Rs. 331/-	08.03.2020
HDFC Bank	June 25, 2015	Rs. 1,23,37,557.85/-	Nil	12.08.2018
Total		Rs. 1,55,65,715.85/-		

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

(f) From the website and bank statements, it is observed that the Noticee has the following different addresses:

Bank statement/ Website	Address
HDFC Bank	32, Vakratund Nagar, Ring Road, Near Mobile School, Indore-452010
Andhra Bank	H. No. A6, Chandra Nagar, MR9 Road, Near Vidya Nursing Home, Behind Swagat Garden, Indore-452001

Website	26/1, Annop Nagar, AB Road, Indore
Labour Office certificate	Office No. 160, 1stFloor, Orbit Mall, Indore.

- (vii) The Noticees had commenced with the collection of fees for the purpose of providing the services, as indicated on its website, from June 2015 and has continued the same till March 27, 2020.
4. I note that the definition of investment adviser, as given in Regulation 2(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(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.”
5. From the aforesaid facts, I find that Max Capital which is proprietorship concern of Shri Mahesh Tillore was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website www.maxcapital.info. I find that these services were being offered by the Noticees in lieu of the consideration which could be paid by the investor concerned in the HDFC Bank Account No. 50200011154778 of Max Capital, details of which were provided on the website. The said account was opened on June 25, 2015. The said account was linked with another bank account no. 275011100000353 of Max Capital held with Andhra Bank. The said account was opened on June 01, 2016. From the details of these bank accounts, I note that total of Rs. 1,55,65,715.85/- (approx.) were credited in these accounts till April 15, 2020 from the date of their respective opening. I also note that a complaint was received by SEBI from one Mr. Rakesh, who has, *inter alia*, alleged that he has paid Rs. 1,08,200/- to the Noticees, an investment advisory firm based in Indore that has caused him financial losses. In view of this, I find that Noticees were providing the

investment advice, in lieu of consideration. In terms of Regulation 2(l) of IA Regulations, 2013 such an advice is “investment advice”. Therefore, I find that Max Capital and its proprietor Shri Mahesh Tillore 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(m) of the IA Regulations, 2013.

6. 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.”

7. 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.

8. 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 the Noticees 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.

9. 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 stronghold of Max Capital is in providing the most accurate tips. While representing on their website that Noticees provide accurate tips on the securities market, they have also stated that Max Capital is a registered firm. These misleading representations gives investors an impression Max Capital is registered with SEBI, for offering investment advisory services. The Noticees have knowingly misrepresented on the websites floated by them that they are experts in stock market analysis and are experienced in investment advisory. 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 through subscriptions to their various plans as mentioned in paras 3 (i) to (iii) above. The above discussed misleading representations are deceptive activities of the Noticee and therefore, fraudulent and are covered within the definition of “fraud” defined under Regulation 2(1)(c) of the PFUTP Regulations, 2003. It is noted that fraudulent activities/ conduct/ act/ practice of the Noticees, as discussed above, are also in violation of provisions of Section 12A (c) of SEBI Act, 1992 and Regulations 3(d) and Regulations 4(1) of 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 held themselves as investment adviser on their website. Thus, I find that Noticees have also violated Regulations 4(2)(k) of PFUTP Regulations, 2003.

10. 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, interim order records that the bank accounts of the Noticees with HDFC Bank and Andhra Bank, linked to the website of the Noticees, show that as on April 15, 2020, a total amount of Rs. 1,55,65,716.85 was received by the Noticees through various payment gateways/IMPS or NEFT. Further, one complaint was received against the Noticees wherein the complainant had claimed that he had paid an amount of Rs. 1,08,200/- to the Noticees, for availing investment advisory services from them.
11. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B(1) and 11D, read with of Section 19 of the SEBI Act, 1992 and Regulation 11 of the PFUTP Regulations, 2003, and in supersession of the directions in the interim order, hereby direct that:
 - (i) The Noticees shall within a period of three months from the date of this order, refund the money received from the clients/investors, 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 Order;
 - (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. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors who were availing the investment advisory services from the Noticees, as directed in this order, from the bank account of the Noticees, wherein debit has been frozen by virtue of interim order dated July 24, 2020;
- (v) 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 this order, duly certified by an independent Chartered Accountant and the directions under para 11(iv) above shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;
- (vi) In case of failure of the Noticees to comply with the aforesaid directions in sub-para (i) and (v), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover the amounts mentioned in para 10 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;
- (vii) 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

11(i) above, whichever is later;

(viii) 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 11 (i) above, whichever is later; and

(ix) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 11(vii) and (viii) 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.

12. The direction for refund, as given in paragraph 11(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.

13. This order comes into force with immediate effect.

14. 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.

Place: Mumbai

Date: May 11, 2021

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA