WTM/MB/WRO/WRO/13176/2021-22

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM EX PARTE ORDER

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

Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and

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

In respect of:

Noticee. No.	Name of the Entity	Designation	PAN	DIN
1	Capital Stroke Investment Services Pvt. Ltd.	-	AAFCC1815M	-
2	Mr. Upendra Singh Rajput	Director	CLGPS4925M	06556531
3	Mr. Prashant Singh Baghel	Director	BIKPP1812J	06556521
4	Mr. Kamlesh Dhole	Director	BGTPD3720Q	06513174

In the matter of Capital Stroke Investment Services Pvt. Ltd.

1. Capital Stroke Investment Services Pvt. Ltd, (hereinafter referred to as (**"Capital Stroke" / "IA"/ "Company"**) is a company registered as an Investment Adviser under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the **"IA Regulations"**) with effect from March 21, 2014 under Registration No. INA000001316. Capital Stroke is a corporate body and the Corporate Identification Number (CIN) of Capital Stroke is U74140MP2013PTC030281. The registered office of Capital Stroke is at *"404, 4th Floor, Gravity Tower 6/1 Race course Road Indore Indore MP 452001"*. Its website address is http://www.capitalstroke.com

2. SEBI conducted an inspection in relation to the affairs of Capital Stroke during November 03- 06, 2020, at the registered address, to monitor compliance of Capital Stroke with the provision of SEBI Act, 1992, (hereinafter referred as '***SEBI Act'***) regulations, circulars and guidelines frame there under, SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as the '**IA Regulations'**).

SEBI's Inspection:

3. During the inspection, documents/information of clients was sought on test check basis. Based on the inspection / examination of documents / information provided by Capital Stroke, SEBI *prima facie* found that Capital Stroke and its directors, namely, Mr. Upendra Singh Rajput, Mr. Kamlesh Dhole and Mr. Prashant Singh Baghel (hereinafter collectively referred to as **"*Noticees*"**);

   3.1. had made false and misleading representation by promising assured profits and returns to clients in violation of IA Regulations

   3.2. had not charged fair and reasonable fee from clients as per the provision of IA Regulation.

Capital Stroke and its directors had *prima facie* violated the provision of IA Regulations and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ***"PFUTP Regulations"***)

CONSIDERATION & PRIMA FACIE FINDINGS

4. I have perused the material available on record regarding promising assured profits and returns and fee charged/received from clients. In this context, *prima facie*, the following issues arise for determination:

Issue No. 1: ***Whether Capital Stroke has, prima facie, violated any provisions of IA Regulations?***
Issue No. 2: ***Whether Capital Stroke has, prima facie, violated any provisions of*** **SEBI Act** ***read with PFUTP Regulations?***
Issue No. 3: ***If answers to Issue No. 1 or 2 is affirmative, who are responsible for the violations?***
Issue No. 4: ***If answer to issue no. 1 or 2 is in affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?***

5. Before moving forward, it is appropriate to refer to the relevant provisions of SEBI Act, IA Regulations and PFUTP Regulations:

5.1. ***IA REGULATIONS:***

Regulation 15(1) *An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*
Regulation 15(9) *An investment adviser shall abide by Code of Conduct as specified in Third Schedule:*

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[**See **sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1 ***Honesty and fairness:*** *An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*

2 ***Diligence:*** *An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*

6. ***Fair and reasonable charges:*** *An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

9 ***Responsibility of senior management:*** *The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.*

SEBI Act, 1992

*"**Section 12A**. No person shall directly or indirectly—*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any

manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

PFUTP REGULATIONS

Regulation 2(1)(c):

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

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

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

And "fraudulent" shall be construed accordingly …"

***Regulation 3**. No person shall directly or indirectly—*

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

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

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

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

***Regulations 4.** Prohibition of manipulative, fraudulent and unfair trade practices*

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

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -

……

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

……

(s) mis-selling of securities or services relating to securities market by (i) knowingly making a false or misleading statement, or (ii) knowingly concealing or omitting material facts, or (iii) knowingly concealing the associated risk, or (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer

ISSUE No. 1: Whether Capital Stroke , prima facie, violated any provisions of IA Regulations?

7. ***Promising assured profits and returns:***

7.1. During the inspection based on the material on record, it is observed that Capital Stroke has been promising assured profit / returns on the investment made by the clients and luring them to avail its services. The service details mentioned at the service web pages (http://www.capitalstroke.com/stock-tips.php and http://www.capitalstroke.com/sf-delivery.php) in the website of Capital Stroke provide the following to lure clients into taking its services which is in the nature of promising assured returns.

*" **Stock Tips : ……..** When you stick to these share tips that are given by experienced analysts you can definitely register gains into your trading account.*

How it helps?

Investor can get huge profit if the stocks are bought with great care and research, investor purchases the stocks when the prices are low and sell when prices are high. Therefore investor can get huge profit by holding the stocks.

These tips help clients to invest money in the best scrip and earn good profit.

……..”

FAQ “*Since we provide quality calls to our clients after diligent research, they earn a handsome profit, so the chances of loss are negligible. Therefore, we don’t have any policy of refund”.*

7.2. Capital Stroke is knowingly misrepresenting the truth on promising profits and returns. Further, such statement presented by the Capital Stroke on their website on possibility of earning profit when seen together is misleading to the point of giving assurance of profits/returns to the investors visiting the website and availing the services and are designed to influence the decision of investors dealing in securities.

7.3. Further, from the complaint analysis of Capital Stroke it is observed that various complaints are in the nature of alleging profit guarantee by the company. In this regard, the complainants have submitted the call recording of telecommunication between the client and the employee of the Capital Stroke. The conversation in the call recordings are narrated as under:

I. Mr. Mohsin Md Hanif Dhale (complaint no. SEBIE/MP20/0000073/1):

“Mr. Mohsin Md Hanif Dhale (time stamp: 0.20): 25K se 70 days main profit to nikal kar aayega na…...

Employee of Capital Stroke: are bulkul nilkal ke aayega Mohsin j……..i ab main aap se kya bolu bilkul nikal kar aayega…… nikalne vali chinta ko aap chod do…… nikalne ki chinta hame hona chahiye aapse jayada kai guna hame hoti hai…… kyunki humne aapko mail diya hai.

Mr. Mohsin Md Hanif Dhale (time stamp: 0.50): Round about avrage kitna hoga 70 days main…...

Employee of Capital Stroke: aap dekhalo 10 percent ek call per niklega…… ab us hisab se avrage kar lo 5 hajar 10% hota hai apne investment ke anusaar to 5K ek call per niklega to 2 calls per 10K niklega daily ka."

II. Mr. Shivaji Yamgar (complaint no. SEBIE/MP20/0000963/1) :

Recording - 1 dated October 18, 2019

"Employee of Capital Stroke (time stamp 2:30): thoda cooperate kariye aap……aane wale 5 se 6 mahine main, main aapko 30 lakh se 40 lakh ka profit nikal kar duga."

Recording - 2 dated December 04, 2019

"Mr. Shivaji Yamgar (time stamp 1:05): Apne hi bola tha na to……mahine main aapko weekly 3 se 3.5lac ka profit denge ….

Employee of Capital Stroke: ha sir bilkul aayega…….aap thoda wait karo main dhire dhire profit nikal kar deta hu.

Employee of Capital Stroke (time stamp 2 :22): baki paisa kab doge……apka pura 9 lakh ka plan hai…..jab profit kaamke dunga tabhi doge na……to mujhe bhi to apse paisa lena hai…..to main profit kaamke dunga……jab main apko 3 lakh kamake dunga….uske baad 1 lakh mangunga……tab to doge na.

Mr. Shivaji Yamgar: mujhe to kuch profit do ….

Employee of Capital Stroke: ha to wahi bol raha hu sir ke sath main month main 3 se 4 level per hi kaam karne ko milega or ek level ki costing kam se kam 60 se 70 hajar ka profit milta hai aise main month main aapko chaar level per kaam karaya to jo aapko bataya vo mil jayega"

7.4. An investment adviser is required to comply with SEBI Act and other applicable Regulations. By promising assured profits and returns to the client, the IA knowing fully well that assured profits / guaranteed returns in securities market is impossible, was knowingly misrepresenting the truth. Further, such statements are misleading to an investor who visit the website and are designed to influence the decision of investors dealing in securities.

7.5. Based on the context of the communication referred above, it is observed that communications are exchanged between the employees of the IA and the clients of the IA, where assurance of profit and returns are being promised to the clients. The communication and action of the employees on making assurance of profit/return are misrepresentation to the clients and meant to deceive the clients to attract/lure the clients in towards the IA services.

7.6. I also note here that, being Registered Investment Adviser (RIA) it is the responsibility of the IA to ensure that the employees are acting within framework of the IA Regulations, code of conduct and if there is any non-compliance, necessary action be taken by the IA. I note that an IA cannot neglect or be

unconcerned of its responsibility and accountability towards the acts and conduct of its employees. In view of the above, the Noticee is responsible for the acts of all the employees

Violation

7.7. Every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment This act of the IA is nothing but prima facie appears to be an attempt to induce the client to subscribe to its advisory service by showing profits which prima facie is an act to mislead the client as full disclosure is not made by the IA that the proposed investment of the client may incur loss. This act *prima facie*, appears to have done with an intention to bring in more customers and thereby increasing the income of the IA.

7.8. It is observed that by promising its clients assured profits and returns and not making the clients adequately aware about the risk of loss associated with securities market, shows that the IA has not been honest and has not taken due care in its dealings with its clients. While knowing it very well that the investment by clients based on the advice given by IA is subject to market risk, promising assured return to its clients is an act of being dishonest on the part of IA and also not acting in the best interest of the clients. In view of the above, Capital Stroke has (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under regulation 15 (1) of IA Regulations and (b)

failed to abide by clauses 1 (honesty and fairness) and 2 (due diligence) of Code of Conduct for IA as specified in Third Schedule read with regulation 15(9) of IA Regulations.

7.9. Further, such misrepresentation is therefore, *prima facie*, fraudulent and is covered within the definition of "*fraud*" as defined under regulation 2(1)(c) of PFUTP Regulations. Hence, Capital Stroke has violated the provisions of regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k), (s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act.

8. ***Unreasonable / Unfair Fees Charged from Clients*:**

8.1. As per clause 6 of code of conduct specified in third Schedule of IA Regulations, an investment adviser advising a client may charge fair and reasonable fees, subject to any ceiling as may be specified by the Board, if any. I prima facie find that the following are the instances of collection of unreasonable / unfair fee. The said instances relates to:

8.1.1. Selling multiple services for overlapping service periods and in a very short span of the time

8.1.2. Locking in the clients by advance fee for sale of products without refund

8.2. **Selling multiple services for overlapping service periods and in a very short span of the time**

8.2.1. During the inspection instances of selling multiple products to same clients was observed. Two instances where Capital Stroke has sold multiple services/products of same nature to clients are as under:

I. Mr. Mohsin Md Hanif Dhale (Scores Complaint no: SEBIE/MP20/0000073/1)

Table no. 1

S.No	Invoice Date	Invoice no.*	Service offered	Amount paid (in Rs.)	Service start date	Service end date
1	18/04/2019	14187	Stock Cash	3,000	23/04/2019	22/05/2019
2	24/04/2019	14247	Stock Cash Premium	22,000	26/04/2019	25/05/2019
3	25/04/2019	14271	Stock Cash Premium	10,555	26/04/2019	25/05/2019
4	26/04/2019	14292	Stock Cash, Cash Premium	15,000	29/04/2019	28/05/2019
5	27/04/2019	14299	Equity Plus	25,000	02/05/2019	31/05/2019
6	27/04/2019	14300	Equity Plus	24,445	02/05/2019	31/05/2019
7	08/05/2019	14409	Equity Plus	14,409	02/05/2019	31/05/2019
8	08/05/2019	14410	Equity Plus	31,000	02/05/2019	31/05/2019
9	27/05/2019	14743	Stock Cash, Cash Premium	27,981	06/06/2019	01/07/2019
10	28/05/2019	14767	Stock Cash	14,333	06/06/2019	09/08/2019
11	28/05/2019	14768	Stock Cash	6,656	06/06/2019	09/08/2019
12	28/05/2019	14775	Stock Cash Premium	14,902	06/06/2019	25/06/2019
13	31/05/2019	14851	Stock Future Premium	26,333	06/06/2019	09/07/2019
14	31/05/2019	14857	Stock Cash	13,500	06/06/2019	20/09/2019
			Total	**2,49,114**		

Invoices submitted by the complainant

8.2.2. From the above table, it is apparent that the client has made 14 payments to Capital Stroke amounting to Rs. 2,49,114/- during the period from 18/04/2019 to 31/05/2019. Following are the observations on the basis of the above table;

i. The client was billed four times for the same service i.e. Equity Plus, for the same period i.e. 02/05/2019 to 31/05/2019 vide four separate bills no. 14299 & 14300 both dated 27/04/2019 & 14409 & 14410 both dated 08/05/2019.

ii. Similarly, client was billed twice for Stock Cash premium service for the same period i.e. 26/04/2019 to 25/05/2019 vide two separate bills no. 14247 & 14271 dated 24/04/2019 & 25/04/2019 respectively.

iii. Further, it can be seen from the above table that there are multiple instances of overlap of service periods.

iv. Further, prior to completion of the advisory services, new advisory services are assigned to the clients.

II. <u>Mr. Harish Kumar (Scores Complaint no: SEBIE/MP20/0000777/1)</u>

Table no. 2

S.No.	Invoice Date	Invoice no.*	Service offered	Amount paid (in Rs.)	Service start date	Service end date
1	04/01/2020	7522	Stock Cash	6400	15/01/2020	31/01/2020
2	06/01/2020	7523	Stock Cash	12200	01/02/2020	09/03/2020
3	07/01/2020	7524	Stock Cash	9000	10/03/2020	07/04/2020
4	09/01/2020	7525	Stock Cash	13000	08/04/2020	16/05/2020
5	14/01/2020	7654	Stock Cash	18100	18/05/2020	12/07/2020
			Total	58,700		

Invoices submitted by the complainant

8.2.3. From the above table it is noted that within a period of 10 days (during January 04, 2020 to January 14, 2020) Stock Cash was sold five times to the client and collected total of Rs. 58,700. It is observed that, even prior to completion of the 1st service period of Stock Cash which was allotted to the client on January 04, 2020, additional 4 services of stock cash for the extended period was sold to the client.

8.3. In order to determine the "reasonableness" of the fee charged by the Investment Adviser, I note that while no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness, it cannot also be stated that the reasonableness of the fee charged cannot be judged at all. The

IA Regulations provides for the principle based determination of fee by the Investment Adviser indicating that such fees have to be fair and reasonable and the same can be tested as a violation of the Code of Conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determination. While determining the reasonableness of the fee, the same has to be seen from the perspective of various factors such as fee for overlapping tenure, charging fee for various tenures of services prior to the completion of previous tenures, etc. It is noted that Capital Stroke has not been fair and reasonable in its dealing with the clients as outlined above as it is charging the clients for the same product for period which is overlapping, charging for services in advance even before completion of the earlier service, etc.

8.4. **Locking in the clients by advance fee for sale of products/packages without refund**

8.4.1. In view of the instances brought out above, it is observed that Capital Stroke has been selling the same advisory product/service to the client on same day of their first service sold or just after the sale of their first service sold or before the end of tenure of their earlier service i.e. before the end of the earlier service sold, same service has been sold to the same client again for future dates / extended period. It means that, two same services were sold with different service periods, while the fee for the second service was charged just after or on same date of the start of first service. Therefore, if the client is dissatisfied/ doesn't want to continue after the first service then he does not have any option to discontinue with the services, since the payment for both the services have been made by the client in advance and also as there is *"No Refund and Cancellation"* policy followed by the IA.

8.4.2. It is observed from the website of Capital Stroke that it has "*No Refund and no cancellation Policy"* for the fees collected. The refund policy also mentions that, "*All sales are final. Because Capital Stroke offers a free 2 days evaluation to ensure that our products and services will meet your needs without the need to purchase, there will be ABSOLUTELY NO REFUNDS and CANCELLATIONS".* Further Capital Stroke also clarified and stated in the section FAQ that, "*Since we provide quality calls to our clients after diligent research, they earn a handsome profit, so the chances of loss are negligible. Therefore we don't have any policy of refund".*

8.4.3. This in effect forces the investors to stay with the IA without any opportunity to sever their ties in case of dis-satisfaction with its first service/product. This also in effect locks in the clients to continue with the services of the IA as the payment for the services have already been given in advance and there is *"No Refund and Cancellation"* policy followed by the IA.

8.4.4. It is also observed that service period for few services are overlapping and operational for same period of time. The few services sold by Capital Stroke which were operational during overlapping period was not in the interest of client while duplication of payment and services, in effect, has been taken for the overlapping period.

Violations

8.5. From the above sample analysis of clients, it is observed that Capital Stroke has not been fair and transparent in its dealing with clients regarding the fees charged to the client. It is *prima facie*, observed that Capital Stroke has adopted unethical business practices to deceive clients into buying/subscribing multiple packages. Capital Stroke acted in the above manner with an objective to maximize its fees and keeping its own interest ahead of the clients' interest.

Capital Stroke has sold advance products to its clients even though the subscription period for products earlier sold was not yet over, sold same products/services for the same period repeatedly, so as to receive more fees from the clients. Following this practice, large amount of the advisory fee is charged to the clients in very short span of the time. These acts of Capital Stroke are in complete disregard to the responsibility entrusted on him under the provisions of IA Regulations to act in fiduciary capacity and in the best interest of its clients.

8.6. In view of the above, it is observed that Capital Stroke have (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under regulation 15 (1) of IA Regulations and (b) failed to abide by clauses 1 (honesty and fairness), 2 (diligence) and 6 (fair and reasonable charges) of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) and regulation 15(1) of IA Regulations

<u>ISSUE No. 2:</u> Whether Capital Stroke has, prima facie, violated any provisions of* SEBI Act *read with PFUTP Regulations?

9. In the instant matter, it is *prima facie* found that:

9.1. Capital Stroke has made misrepresentation by promising assured profit and returns to clients

9.2. Capital Stroke has not charged fair and reasonable fees to clients. Capital stroke is selling multiple services for the overlapping service period and in a very short span of the time and is also locking in the clients by advance fees for sale of products without refund/cancellation

10. As per Regulation 3 of PFUTP Regulation, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud in connection with

dealing in securities; or engage in any act, practice, course of business which operates as fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules and the regulations made there under.

11. The modus operandi adopted by IA discussed hereinabove, *prima facie*, shows that IA was actually not practicing investment advisory in the manner envisaged under the IA Regulations. It is *prima facie* found that IA is knowingly:
    11.1. Making misrepresentation of promising/assured profits and returns to clients
    11.2. Charging unreasonable fee, selling same services / packages to same clients on multiple occasion for future period/overlapping period within a short period of time, while an existing subscription is still active, which has the effect of locking in the client to the IA, as IA has *"No Refund and Cancellation"* policy.

12. The above activities, *prima facie*, are the devices adopted by the IA to defraud its clients in connection with their dealings in the securities. Hence, IA is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.

13. Thus, the findings of the preliminary examination and the overall modus operandi discussed in this order, *prima facie*, shows that a scheme is knowingly employed by Capital Stroke to defraud its clients in connection with their dealings in the securities and to maximize its revenue generation at client's expense. Thus, the above discussed deceptive activities of IA are, *prima-facie* fraudulent and are covered under the definition of "fraud" under regulation 2(1)(c) of the PFUTP Regulations. Thus, Capital Stroke through its fraudulent act / scheme as discussed above, has *prima facie* violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

14. In summary, following *prima facie* findings are observed:

14.1. Capital Stroke is knowingly misrepresenting to its the clients by giving assurance/promising of profits and returns in its services.

14.2. Capital Stroke had charged unreasonable and unfair fees from its clients. Capital Stroke has adopted dishonest business practices by making the client subscribe to multiple subscriptions to the same package for future period/ overlapping period before the start of first service period in a short span of time, without having refunds policy and locking up the clients even if dissatisfied with the services.

14.3. The above activities, *prima facie*, are the devices adopted by the Capital Stroke to defraud its clients in connection with their dealings in securities. Hence, Capital Stroke is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.

ISSUE No. 3: ***If answers to Issue No. 1 or 2 is affirmative, who are responsible for the violations?***

15. I note that Capital Stroke is responsible for the above mentioned, *prima facie*, violations of the provisions of the SEBI Act, IA Regulations and PFUTP Regulations.

16. I note that Capital Stroke is registered as an Investment Adviser with SEBI since March 21, 2014, till date. As per the information obtained from MCA website, the details of directors of Capital Stroke during the period April 11, 2014, till date, are as under:

Table No.3

Name of the Director	Designation	Date of appointment	PAN	DIN

Mr. Upendra Singh Rajput	Director	April 23, 2013	CLGPS4925M	06556531
Mr. Prashant Singh Baghel	Director	April 23, 2013	BIKPP1812J	06556521
Mr. Kamlesh Dhole	Director	March 14, 2013	BGTPD3720Q	06513174

17. I note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. Here I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan* vs. *Adjudicating Officer, SEBI* decided on April 26, 2013, wherein the Court observed as follows:

> *"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

18. The directors are statutorily expected to exercise due care and diligence as expected from a prudent person which among other things entails running the affairs of the company within the four walls of the relevant statutory provisions. Here, I would like to refer to the observations of the Hon'ble High Court of Delhi in the matter of Santanu Ray vs. Union of India decided on August 12, 1989, wherein the Hon'ble Court observed as follows:

"*12. In Pennington's Company Law, 5th edition, at page 58, the topic of evasion of obligation imposed by law is discussed. The courts have ignored separate legal personality of the company if it was formed or used to facilitate the evasion of legal obligations. The American courts have disregarded a company's separate legal personality when it was clearly formed or acquired to facilitate a breach of the general law. In CIT v, Meenakshi Mills Ltd., their Lordships expressed that it is well established that in a matter of this description, the income-tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transaction. It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But, in certain exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade."*

19. I also place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of LIC Vs. Escorts Limited (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed: "90. … the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned

conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."

20. I note as per Section 27 of SEBI Act, for the offence / contravention of law committed by the company, apart from the company, the Directors of company who at the time of offence / contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, are also liable for said offence / contravention of law committed by the company.

21. In the instant matter, as per material available on record, I find that that the core activities / main objective of Capital Stroke, is to carry on business in securities market as investment adviser. Further, as per material available on record, I also find that apart from investment advisory business, Capital Stroke is not involved in any other business. Further, from the material available on record, it is observed that none of the Directors of Capital Stroke are designated as Managing Director or Executive Director or Independent Director. Moreover, it is also observed from the material available on record that Capital Stroke do not have CEO, CFO or any other officer who is designated as key managerial personnel.

22. From the table no 3 mentioned above, I note that Mr. Upendra Singh Rajput, Mr. Prashant Singh Baghel and Mr. Kamlesh Dhole are directors since registration of Capital Stroke with SEBI and are continuing as on date. Further as per the organisational chart provided by the Capital Stroke, Mr. Upendra Singh Rajput and Mr. Kamlesh Dhole are responsible for the investment advisers and Mr. Upendra Singh Rajput, Mr. Prashant Singh Baghel for compliance, therefore, all the directors are in charge of operations and compliance of Capital Stroke.

23. Thus, on the basis of the material of records, all the Directors who have been appointed to the Board of Capital Stroke, are in charge and responsible for managing

the affairs / business of Capital Stroke during the respective tenure of their directorships. In light of the aforesaid discussion, it is *prima facie,* observed that all Directors of Capital Stroke are in charge and responsible for the conduct / business /operations of Capital Stroke during the respective tenure of their directorships.

24. I note for the contravention of law committed by the company, apart from the company, the Directors of company who at the time of contravention, were having knowledge of the said contravention or the directors whose neglect contributes to the contravention of law, are also liable for said contravention of law committed by the company. The said principle is embodied in Sections 27(1) and 27(2) of SEBI Act.

25. Hence, I note that Upendra Singh Rajput, Mr. Prashant Singh Baghel and Mr. Kamlesh Dhole are also, *prima facie*, responsible for the violation of provisions of SEBI Act, IA Regulations and PFUTP Regulations as mentioned above, as directors. These directors are also, *prima facie*, in violation of Clause 9 of the of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

ISSUE No. 4: ***If answer to issue no. 1 or 2 is in affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?***

26. An IA has to comply with all the provisions of IA Regulations which enables the IA to effectively discharge its functions in the interest of the investor. In all the aforesaid, Noticees have fallen short of requirements as envisaged under IA Regulations. Further, a SEBI registered intermediary should not abuse the certificate of registration granted to it, in any manner.

27. It is observed that the website of the IA is functioning and it is one of the medium via which new / prospective clients may subscribe to the services of the IA. As discussed in preceding paragraphs, the conduct of the IA has been *prima facie* found to be

fraudulent in nature and is also in violation of IA Regulations, thus, it is imperative that the new / prospective clients are to be safeguarded from the activities of IA, which are *prima facie,* not as per the provisions of applicable laws.

28. I note that an entity acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he/she/it operates and it ill behooves the intermediary to be non-compliant with the provisions of IA Regulations. The intermediary should not abuse the certificate of registration granted to it, in any manner. As discussed in preceding paragraphs, the conduct of the IA has been *prima facie* found to be fraudulent in nature and is also in violation of IA Regulations. Thus, I am of the *prima facie* view that by allowing Capital Stroke to continue to act as an IA, there will be a serious threat to the integrity of the market as well as it will be harmful to the interest of the investors.

29. As a regulator of the capital market, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of Noticees, mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and the fraudulent scheme, plan, as *prima facie* found in this case, I am convinced that this is a fit case where effective and expeditious preventive and remedial action is required to be taken by way of ad interim ex -parte order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to the existing investors but also to new / prospective investor.

30. It has already *prima facie* been found that many of the IA existing clients have been sold services/packages based on the promises of assured profit/returns. Also they

have sold packages/services repeatedly with overlapping service period and within a short period of time and there is no refund policy or cancellation of services in case the clients are dissatisfied with the services/packages. This act of the IA belies the intent of maximize its fees and keeping its own interest ahead of the clients' interest. Most importantly, by assuring profits and returns in the securities market, the IA is making misrepresentation only to attract more clients knowing the fact that any kind of assurance or promise of profit/returns is impossible to make. By making such representation and also selling multiple products/services repeatedly in advance, without having a refund policy, only shows the intent of the IA to maximise its fees by attracting more clients for its services rather servicing in the interest of the investors/clients. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by Noticees has been found to be *prima facie* fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing Noticees to continue its services to its clients, regardless of whether they have complained against the IA or not, would tantamount to allowing the *prima facie* fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations.

31. It is noted that permitting an investor to receive a service from the Noticees is *prima facie* not in consonance with the IA Regulations. Availing of the services from the IA is detrimental even to the existing investors, as they have been lured to make investment based on assured returns/profits. The acts of Noticees are not honest and fair towards its clients. Exposing investors to such service also has the effect of interfering with the development of securities market, as victim of such services tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market.

32. Further if an ex-parte order is not passed, many prospective investors may have to part with large fees and investment resulting into irreparable injury to themselves on a belief of assured profit/returns. However, if an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. It may be noted that one of the underlying differences between the ex-parte orders in the case of private suits and ex-parte public enforcement actions, is the identification of the injured party. In private damage suits, the injured individual, as "whole", is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. The potential loss of the investors by following the advice of Noticees and resultant loss of investor's confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, Noticees is permitted to carry out its irregular investment advisory service. Therefore, I consider the balance of convenience is also not in favour of the Noticees.

33. I, therefore find that pending conclusion of enquiry in the matter, in view of the *prima facie* evidence against the IA, it is also essential to take urgent steps to prevent Noticees from acting as an investment advisor and representing through any media as an investment advisor and securities market activities and alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous..

34. Considering the above, in my view, the balance of convenience lies against Capital Stroke and present directors and immediate steps needs to be taken against Capital Stroke and its directors, to protect the investors / clients from freshly subscribing to or continuing to get such *prima facie* fraudulent advisory service by Capital Stroke.

35. With respect to the directors of Capital Stroke, as mentioned above, I have already held that they were, *prima facie*, responsible for violations of provisions of SEBI Act, IA Regulations and PFUTP Regulations. I note here that, *prima facie*, these Directors have played their part in the fraudulent scheme that has been perpetrated on the clients of Capital Stroke and as such, their conduct has been fraudulent. Therefore, I consider the balance of convenience is also not in favour of directors of Capital Stroke.

ORDER:

36. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1) and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby direct by way of this *interim ex-parte order*, the following directions, *which shall be in force until further orders*: -

36.1. *Capital Stroke and its present directors, namely, Mr. Upendra Singh Rajput, Mr. Prashant Singh Baghel and Mr. Kamlesh Dhole, are directed:-*

36.1.1. *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever*

36.1.2. *to 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;*

36.1.3. *not to divert any funds raised from investors, kept in bank account(s) and/or in their custody;*

36.1.4. *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;*

36.1.5. *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;*

36.1.6. *to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;*

36.1.7. *to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order reproducing the directions mentioned in paragraph 36.1 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

36.2. *If Capital Stroke or its directors, have any open position 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. Capital Stroke or its directors, 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.*

36.3. *The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by (a) Capital Stroke (b) Mr. Upendra Singh Rajput, either individually or jointly; (c) Mr. Prashant Singh Baghel either individually or jointly; (d) Mr. Kamlesh Dhole either individually or jointly;*

36.4. *The Registrar and Transfer Agents are directed to ensure, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by (a) Capital Stroke (b) Mr. Upendra Singh Rajput, either individually or jointly; (c) Mr. Prashant Singh Baghel either individually or jointly; (d) Mr. Kamlesh Dhole either individually or jointly*

37. The *prima facie* observations contained in this Order, are made on the basis of the material available on record. In this context, Noticees may, within 21 days from the date of receipt of this Interim Order, file their reply/objections, if any, to this Interim 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.

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

39. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Noticees in accordance with law.

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

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Date: August 27th, 2021 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA