
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In the Matter of RTS Power Corporation Limited

In respect of –

Sr. No.	Noticee	PAN
1.	Mukesh G Konde	AOHPK0210P
2.	Ashok Narayan Waje	AARPW8396C
3.	Nitesh Ashok Jadhav	AHIPJ8358D
4.	Hetal Patel	AQUPP6130E
5.	Rajesh Patel	AQUPP6874F
6.	Chetan Shah	AAFPS7527M
7.	Om Associates	*
8.	Bhavani Trading Company	*

Background –

1. Securities and Exchange Board of India (SEBI) had passed an order dated ad interim ex-parte order dated June 05, 2009 (interim order), *inter alia* restraining the Noticees from accessing the securities market. The interim order was passed based on the findings of the

preliminary investigation that was carried out by SEBI on the complaints received from certain brokers - Networth Stock Broking Limited (Networth), Geojit Financial Securities Limited (Geojit), Dawmay Day AV Securities Private Limited (Dawmay Day) and Tata Securities Limited (Tata)(collectively referred to as 'Buy-side Brokers'), all members of BSE Limited (BSE).

2. The Buy-side Brokers had stated in their complaints that Noticee No. 1, Noticee No. 2 and Noticee No. 3 (collectively referred to as 'Buy-side Noticees') had defaulted in meeting the pay-in obligations towards their purchase of the shares of RTS Power Corporation Ltd. on February 11, 2009. It was alleged that pay-in default was part of a scheme orchestrated by the Buy-side Noticees in collusion with the Sell-side Noticees to provide an exit to them, at the cost of the Buy-side Brokers.
3. The defaulted pay in obligations of the Buyside Noticees, as per the complaints, is given in the table below:

Name of the client Stock broker	Obligation of Mr. Konde	Obligation of Mr. Waje	Obligation of Mr. Jadhav
Networth	Bought 90000 shares @ Rs. 297.04 and sold 9424 shares @ Rs. 302.15, therefore net obligation of Rs.2,38,86,138/-	---	---
Dawmay Day	Bought 6000 shares @ Rs 299.96 i.e. Rs. 17,99,760/-	---	Bought 15000 shares @ Rs. 299.50 i.e. Rs. 44,92,500
Geojit	Bought 52000 shares @ Rs.299.50 i.e. Rs.1,55,74,000/-	Bought 52000 shares @ Rs.299.73 Rs.1,55,85,960/-	Bought 65000 shares @ Rs.299.50 Rs.1,94,67,500/-
Tata	Bought 35500 @ Rs.299.81 i.e. Rs.1,06,43,255/-	---	---
Total	Rs. 5,19,03,153	Rs.1,55,85,960/-	Rs. 2,39,60000/-
Grand Total	Rs.9,14,49,113/-		

4. It is noted from the records that, acting on the complaints that were received, BSE in consultation with SEBI, as a precautionary measure, directed the members having major net sales obligation in settlement No. 214/2008-2009 in the scrip of RTS to withhold the pay-out of the funds to their ultimate clients, pending completion of investigation in the matter. The details of the total pay-out withheld by BSE is given below,-

Stockbroker	Client Name	Net Quantity	Total Amount Withheld (Rs.)
Anand Rathi Securities Pvt. Ltd.	Chetan Shah	28,597	86,56,561
Indiabulls Securities Ltd.	Hetal Patel	1,15,067	3,44,62,569
Active Finstock Pvt. Ltd.	Sanjay Soni	20,979	62,74,717
India Capital Markets Pvt. Ltd.	Sophia Growth	1,64,474	4,91,60,731
Total	--	3,29,117	9,85,54,578

5. The decision of BSE to withhold payouts was challenged by Noticee No. 4 (Hetal Patel) before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble Securities Appellate Tribunal, vide an order dated April 06, 2009, declined to grant any interim relief in view of the undertaking made by the Counsel for BSE that a sum of Rs.3,44,62,569/- shall be deposited in a fixed deposit with a nationalized bank carrying the maximum rate of interest and this amount could be utilized for making payment to the Noticee in case, she is found entitled to the same.

6. Shortly thereafter, on June 05, 2009, SEBI passed the interim order in the matter wherein it was directed that *“Bombay Stock Exchange Limited should withhold the payout of February 11, 2009 of Ms. Hetal Patel (Permanent Account Number: AQUPP6130E) and Mr. Chetan Shah (Permanent Account Number AAFPS7527M) in a separate escrow account, till further orders.”*
7. The directions issued vide the interim order was confirmed against the Noticees vide order dated October 26, 2009, November 18, 2009, and November 27, 2009. The appeals preferred against the confirmatory order before the Hon’ble Securities Appellate Tribunal were dismissed.
8. Thereafter, pursuant to the completion of the investigation initiated by SEBI in the matter, Show Cause Notices (SCN) dated October 29, 2010, were issued. It was alleged in the SCN that the Buy-side Noticees, the Sell-side Noticees and Noticee No. 7 and Noticee No. 8, were connected to each other, and the Buy-side Noticees had placed the buy orders, knowing fully well that they would not be in a position to take delivery of the shares, only for providing an exit opportunity to the Sell-side Noticees, at the cost of the Buy-side stockbrokers. Noticee Nos. 7 and 8 were alleged to have provided finance to the Buy-side Noticees for carrying out the transactions. The aforementioned act of the Noticees 1 to 6, it was alleged in the SCN, attracted the provisions of Regulations 3(a), (c) and (d) and regulation 4(2)(a) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (PFUTP Regulations). It was also alleged that Noticee Nos. 7 and 8 violated the provisions of section 12A(b) and (c) of the SEBI Act read with Regulations 3 (c) and (d) of the PFUTP Regulations. The Noticees were called upon to show cause as to why suitable directions including a direction to impound and retain the money already withheld vide the interim order should not be issued.

9. The SCN has also relied on the connection between the Noticees and certain common third parties, on basis of fund transfers, Call Data Records and statements recorded, and it has been alleged that the Buy-side Noticees are connected to the Sell-side Noticees. These common thirds parties are:

Tushar Karmokar and Deven Patel

- a. Konde in his statement before SEBI had submitted that he used to operate the account of Tushar Karmokar, who was employed as a jeweler by Deven Patel. It was also alleged in the SCN that a mobile number that was subscribed in the name of Tushar Karmokar was actually used by Deven Patel. Rajesh Patel in his statement has also stated that he was acquainted with Deven Patel.

Aanod Eleagity

- b. Aanod was employed as Additional Vice President - IT by Edelweiss Capital Services Ltd. Aanod was acquainted with both Konde and Rajesh Patel.

Shankar Lad

- c. Shankar was acquainted with Konde and the primary mobile number he was using was subscribed in Shankar's name.

10. The Buy-side Stockbrokers, meanwhile, filed a civil suit (Suit No. 3022 of 2009) before the Hon'ble Bombay High Court inter alia seeking annulment of the trades by the Buy-side Noticees in the scrip on February 11, 2009, an investigation by SEBI into the matter and direction to BSE to withhold payment till the completion of investigation by SEBI. It was also prayed that in the event the Court annuls the transactions, then SEBI should be directed to refund the impounded payments to Buyside Stockbrokers.

11. The Noticee Nos. 1 to 6 applied for consent proceedings, under the 'Guidelines for Consent Orders' issued by SEBI vide circular dated April 20, 2007, in respect of the SCN issued against them. It is noted from the records that the consent application made by the Noticees were rejected by SEBI vide letter dated June 27, 2014.

12. Noticee No. 4 and Noticee No. 6 preferred separate Writ Petitions before the Hon'ble Bombay High Court challenging the rejection of the consent applications filed by them. It is noted from the records that the Writ Petition filed by Noticee No. 6 was rejected by the Prothonotary and Senior Master, Bombay High Court, for non-removal of office objections, vide direction dated April 07, 2015, under the Bombay High Court Original Side Rules. It is also noted that in the Writ Petition (L) No. 280 of 2015, preferred by Noticee No. 4, the Hon'ble High Court vide order dated April 16, 2015, granted ad-interim relief in terms of prayer clause (c) of the petition which read as under:

"c. that, pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to stay the effect, operation and implementation of the impugned Letter dated June 27, 2014 issued by the Responde[nt][SEBI] and restrain the Respondent[SEBI] from acting in pursuance thereof, including but not limited to reviving and continuing with the enforcement proceedings against the Petitioner."

13. In compliance with the said order of the Hon'ble Bombay High Court, the proceedings against the Noticees were kept in abeyance. Thereafter, SEBI filed an application in September 2020 praying for vacation of the stay and expeditious hearing of the Writ Petition. Pursuant to the same, the Hon'ble High Court vide order dated October 27, 2020, directed as under,-

"i) The ad-interim order dated 16 April 2015 staying the impugned letter dated 27 June 2014, shall continue to operate during the pendency of the Petition;

- ii) *We record the statement of the learned Counsel for the Petitioner, on instructions, that notwithstanding the stay of the impugned letter dated 27 June 2014 the Petitioner shall without prejudice to her rights and contentions participate and co-operate in the adjudication proceedings pursuant to the show-cause notices dated 29 October 2010 and 8 December 2010;*
- iii) *The final orders passed in the adjudication proceedings, if adverse to the Petitioner, shall not be enforced till the final disposal of the Petition;*
- iv) *The Respondent-SEBI would be at liberty to apply for expeditious hearing of the Petition after the final orders are passed in the adjudication proceedings.”*

14. Subsequently, the enforcement proceedings initiated against the Noticees by SEBI were revived. The Noticees were, thereafter, provided an opportunity of personal hearing on April 06, 2021, which was initially postponed to April 15, 2021, then to April 30, 2021, and finally to June 30, 2021, on account of the disruptions caused due to the second wave of the COVID -19 pandemic. However, on account of the adjournments which were again sought by certain Noticees, the hearing scheduled for June 30, 2021, was postponed to July 23, 2021. On the said date, the authorized representatives entered appearance on behalf of Noticee No. 4, Noticee No. 5 and Noticee No. 6, whereas Noticee No.1 appeared in person. The matter was however not argued on merits and the authorized representatives sought another adjournment on grounds including non-furnishing of certain documents. In view of the same, another opportunity of hearing was granted to the Noticee on July 23, 2021. On the said date, Noticee No. 1 and Noticee No. 3, appearing in person, made certain submissions, whereas authorized representatives appearing on behalf of Noticee No. 4, Noticee No. 5 and Noticee No. 6 sought another adjournment citing non-furnishing of certain documents.

15. Pursuant to the request for documents made by Noticee No. 4, Noticee No. 5 and Noticee No. 6 at the hearing dated July 23, 2021, an opportunity to inspect the relevant documents on July 28, 2021, was granted to the said Noticees. After the completion of inspection of documents on July 28, 2021, the Noticees were granted another opportunity of hearing on August 09, 2021, wherein Mr. Dharam Juman, Advocate, appeared on behalf of Noticee No. 4 and Noticee No. 5, and Mr. Anoshak Daver, Advocate, appeared on behalf of Noticee No. 6. Thereafter, written submissions dated September 13, 2021, was also filed by the said Noticees.
16. I note that Noticee No. 2, Noticee No. 7 and Noticee No. 8 have neither availed the opportunity of hearing nor filed any replies. Noticee No. 1 and Noticee No. 3, even after availing the hearing opportunity have failed to make any submission on merits either during the hearing or later through written submissions. In view of the same, another opportunity to make written submissions was granted to Noticee No. 1 and Noticee No. 3 vide email dated September 23, 2021. However, no replies were still received. In view of the above, I note that sufficient opportunities, in compliance with the principles of natural justice, have been granted to all the Noticees to reply to the SCN and I am now proceeding with the matter on the basis of the replies received and other materials on record.
17. The summary of the submissions made on behalf of Noticee No. 4, Noticee No. 5 and Noticee No. 6 are given below:
- Noticee No. 4 and Noticee No. 5**
- i. Noticees were not granted inspection of all the relevant documents and permitted cross-examination of witnesses whose statements have been relied upon.
 - ii. The SCN makes linkages between the Noticees only with Konde that too on the basis of a phone number.

- iii. As regards how the wrong phone number came to be entered in Noticee's KYC, it was submitted that when Noticee No. 4(Hetal Patel) had gone to the office of Way2wealth to open her account, she had taken the help of Yashodeep Bhosale to fill up the forms as she was not conversant in English. Yashodeep while filling up the form has inadvertently mentioned the number of Konde in the Noticee's KYC. This fact was presented before SEBI by Yashodeep in the form of an affidavit.
- iv. Without prejudice to the above submission, it was contended by the Noticees that establishing linkages on the basis of common mobile number appearing in KYC is insufficient, inadequate and patently erroneous and cannot be said to meet the threshold for concluding that the Noticees had violated the provisions of the PFUTP Regulations.
- v. It was also submitted that entering the number in the UCC database is in the exclusive domain of the stockbroker and is completely outside the control of the client.
- vi. There has not been any synchronization of trades with the other Noticees and the SCN does not bring out any evidence in this regard. The charge related to synchronization also needs to fail on the ground that there is no connection between the buyers and sellers.
- vii. Even from the analysis of the CDRs, it is clear that the Noticees were never in touch with any of the buyers. Just the fact that buyers and also the Noticee had phone conversations with a common third party is not sufficient to prove connections.

- viii. As regards the allegation regarding fund transfer observed with Bhawani Trading Company, it was submitted that the same was done in the course of diamond trading.
- ix. The Noticee also contended that disgorgement, if at all, can be only to the tune of the unlawful gains made and not the entire sale proceeds.

Noticee No. 6

- i. The transactions of Noticee in the scrip of RTS power on February 11, 2009, was in the ordinary course of business. The Noticee had sold 42,191 shares at the rate of Rs. 299.50 which was the prevailing market price. Thereafter, when the price of the scrip decreased to 292.75, he bought 13,594 shares. The total transaction value of the Notice was Rs. 85,64,801.
- ii. The transactions carried out by the Noticee were delivery based at the prevalent market price on the order matching mechanism of the stock exchange. The Noticee was not aware that Konde was the counterparty to most of his trades in the scrip of RTS Power on February 11, 2009.
- iii. There is no evidence presented in the SCN supporting the claim that he was connected to Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 4 and Noticee No. 5. The said Noticees have also in their statements before SEBI denied being acquainted with the Noticee.
- iv. A copy of the order log, which is critical for defending the charge of synchronized trading, has not been provided to the Noticee.

- v. The statements made by Anish Kumar, Branch Manager, Anand Rathi, cannot be relied upon because the Noticee was not granted an opportunity to cross-examine him.
- vi. The Noticee has already suffered debarment from the securities market for over ten years and the charges against him deserve to be dropped only on that ground.

Issues for consideration

18. I now proceed to consider the matter on merits. Based on the material on record, I note that the following issues arise for consideration

- 1. Are the Buyside Noticees and Sell-side Noticees connected to each other?
- 2. Have the Buy-side Noticees and Sell-Side Noticees orchestrated a fraudulent scheme to provide an exit to the Sell-side Noticees at the cost of the Buy-side Stockbrokers, thereby attracting the provisions of the PFUTP regulations?
- 3. If yes, should there be a direction to impound and retain the money already withheld vide SEBI order dated June 05, 2009?

Issue 1 : Connection between the entities

19. It is noted from the SCN, that it has been alleged that the Buy-side Noticees and Sell-side Noticees are connected to each other based on the information disclosed in the KYC documents and UCC database of BSE; statements recorded by SEBI; Call Data Records; and fund transfer observed from the analysis of their bank statements.

20. I note that it is an admitted fact that the Buy-side Noticees were known to each other. It is noted from the material available on record that all the three Buy-side Noticees – Konde, Waje and Jadhav- have accepted in their statement recorded before SEBI that they were friends and had known each other for quite some time, and this has not been disputed in

any manner by any of the other Noticees. It is also noted from the records that all three Buyside Noticees were earlier employees of IIFL and had worked together. In view of the same, I now move on to examine the connection between the Buy-side and Sell-side Noticees alleged in the SCN.

Konde

21. Konde was registered as a client, during the investigation period, with five stockbrokers namely Jash Securities, Network, Tata, Dawmay Day and Geojit. Konde was registered as a client with Jash Securities from April 2008; however, with the other four stockbrokers (Geojit, Network, Dawmay Day and Tata) he got registered as a client only in January 2009. The contact number - 97691-77028 – provided by Konde in KYC documents with all the five stockbrokers was found to be subscribed in the name of one Shankar Lad.
22. It was alleged in the SCN, based on the data uploaded on the Unique Client Code (UCC) database of BSE, that Hetal Patel and Chetan Shah had submitted the same telephone number- 99675-77028 - as their contact number. The said number was subscribed in the name of India Infoline (IIFL) and IIFL in turn confirmed that the number was issued to Konde who was earlier their employee. It is also noted from the statement given by Konde before SEBI that he has admitted that the said number was issued to him by IIFL. Konde in his statement, however, denied knowing Chetan Shah, Hetal Patel or Rajesh Patel. I note from the reply of Noticee No. 6 (Chetan Shah) that he has denied any relationship or connection between him and the other Noticees.
23. It is therefore noted that Konde and Chetan Shah, in their respective statements before SEBI, denied knowing each other. It is, however, noted that Anish Kumar, Branch Manager, Anand Rathi, which was the stockbroker with whom Chetan Shah had traded

during the investigation period, had deposed before SEBI, that Konde had introduced Chetan Shah.

24. It was also stated in the SCN, based on the statement given by Konde before SEBI, that the account of one Tushar Karmokar, maintained with the stockbrokers Anand Rathi Financial Services Ltd. (Anand Rathi) and Systematix Shares and Stocks India Ltd (Systematix) was operated by Konde. This was further corroborated by Mr. Rajeev Bajaj, Vice President, Systematix, in his statement recorded before SEBI wherein he stated that Tushar's account was introduced and operated by Konde.

Jadhav

25. Jadhav was registered as a client, during the investigation period with two stockbrokers: Dawmay Day, from January 22, 2009, and with Geojit from January 27, 2009. Jadhav was employed at Networth and during that period, he had introduced Konde as a client with Networth. It was further noted that Jadhav had previously worked with IIFL where Konde had also previously worked. Further, Jadhav in his statement before SEBI had stated that he was acquainted with Konde and Waje.

Waje

26. Waje was registered as a client, during the investigation period with two stockbrokers: Geojit, from January 21, 2009, and with Networth from February 11, 2009. Waje had provided the phone numbers - 98202-09180 and 97691-77028 – in his KYC form. The number 98202-09180, as per the service provider was subscribed in the name of Konde and the number- 97691-77028, which was incidentally also disclosed by Konde in his KYC, was subscribed in the name of Shankar Lad, as already stated in para 21.

Hetal Patel and Rajesh Patel

27. Hetal was registered as a client, during the investigation period, with 4 stockbrokers- Jash Securities, Way2wealth, Nirmal Bang Securities Limited and India Bulls Securities Limited. Rajesh Patel was Hetal Patel's husband. It was noted from the UCC database of BSE that the phone number 99675-77028 was listed as Hetal Patel's number. This number, it was alleged in the SCN, was also provided by Hetal Patel in her KYC documents with Way2wealth. The phone number, as already stated in para 22 was the number allotted to Konde by IIFL. It was further alleged in the SCN that the phone number 93237-90775, which was subscribed in the name of one Anand Eleagety, was given by Hetal Patel in her KYC documents with Jash Securities. It was alleged in the SCN that calls were exchanged between this number (93237-90775) and Hetal Patel's number and also Konde's number during the period under investigation.
28. Rajesh Patel appeared before SEBI on April 20, 2009, to record his statement wherein he was also accompanied by Ms. Manik Joshi, Advocate. Rajesh Patel deposed that he had executed transactions, on behalf of his wife, in the shares of RTS during the investigation period. He also accepted that Tushar Karmokar and Devan Patel were known to him. He, however, denied having any acquaintance with any of the Buyside Noticees. He also denied giving either of the numbers 93237-90775 and 99675-77028 in any of the KYC forms filed with stockbrokers. He stated that he was unaware as to how the number 99675-77028 was reflected in the UCC of Hetal Patel with BSE and in Hetal Patel's KYC Form with Way2wealth. He further stated that he would get in touch with the respective brokers and provide further information in this regard.
29. Subsequent to this, Hetal Patel vide letter dated May 05, 2009, submitted an affidavit signed by Yashodeep Bhosale, who was an employee of Way2wealth. It was stated in the affidavit

that Bhosale was posted at the Chembur Office of Way2wealth and he had helped Hetal Patel with filling her KYC form. Bhosale further admitted in the affidavit that he had inadvertently mentioned the number 99675-77028 in Hetal Patel's KYC.

30. I note from the records that, SEBI in order to verify the veracity of the contents of the affidavit summoned the Compliance Officer of Way2wealth, Archibald Serrao, and also Yashodeep Bhosale. Serrao in his statement before SEBI submitted that Way2wealth was not aware of the affidavit signed by Bhosale and also does not endorse its contents. Yashodeep Bhosale appeared before SEBI for recording his statement on May 12, 2009, and he was accompanied by Ms. Manik Joshi, who had earlier accompanied Rajesh Patel when he appeared before SEBI for recording his statement on April 20, 2009. I note from the records, that during his deposition he was initially maintaining that Ms. Joshi was his sister. However, upon further questioning, Bhosale admitted that he had met Ms. Joshi for the first time a week back in an office in the Fort Area, where Hetal Patel had called him to sign the affidavit. It is noted that Bhosale had further stated that he did not take any prior approval before signing the affidavit and he had done so on being confronted by Hetal Patel and Ms. Joshi, stating that he had made an error while recording the KYC form of Hetal Patel.

31. It was further alleged in the SCN that Mr. Janak Dave, Compliance Officer, Jash Securities, had deposed before SEBI that Hetal Patel's account was introduced by Deven Patel, even though the KYC Forms mention the name of one Mr. Hemant Jayantilal Shah.

Chetan Shah

32. Chetan Shah (Chetan) was registered as a client with Anand Rathi. As per the SCN, the phone number recorded in Chetan's UCC with BSE was 99675 77028 – which belonged to Konde and as already stated in para 22, was disclosed in the UCC of Hetal Patel also.

Also, as stated earlier in para 23, Anish Kumar, Branch Manager, Anand Rathi, had deposed before SEBI, that Konde had introduced Chetan Shah.

Om Associates and Bhawani Trading Company

33. It was alleged in the SCN, based on the analysis of the bank statements, that Konde, Waje, Jadhav and Hetal Patel had financial transactions with Om Associates (Om) and Bhawani Trading Company (Bhawani). On the basis of the same, it was alleged in the SCN that Om and Bhawani have aided and abetted Konde, Waje, Jadhav and Hetal Patel by providing finance for carrying out the transactions.

34. It was also alleged in the SCN that the Buy-side Clients and Sell-side clients were connected based on their connections to certain common third parties:

Tushar Karmokar

35. Tushar had also dealt in the shares of RTS Power during the investigation period while dealing through stockbrokers Anand Rathi and Nirmal Bang. Tushar in his statement before SEBI deposed that he was working for one Devan Patel as a jewelry maker. It was also stated by Tushar that Devan Patel had taken a mobile SIM card using Tushar's PAN/Ration card. Further, when Devan Patel moved to the United States of America, he instructed Tushar to hand over any papers which were received relating to his bank or demat account to Rajesh Patel. Tushar further deposed that complying with said instruction, he had been routinely handing over papers which were received relating to the bank and demat accounts of Devan Patel to Rajesh Patel, who he used to contact at the number 9323711671- which was subscribed in the name of Hetal Patel.

36. It was also alleged in the SCN that phone calls were exchanged between Buy-side Clients and the Sell-side Clients with the phone number (9323790075), recorded in the KYC of Tushar with Anand Rathi, which was actually subscribed in the name of Anand Eleagity.

Pandoo Naig

37. Pandoo Naig (Naig) in his statement before SEBI stated that he is an equity consultant and also advises companies on fundraising options. He stated that Konde was a user of his business premises and was paying him a rent of Rs.10000 per month. Naig further deposed that Devan Patel was also earlier a user of his business premises as he was renting space from him for running his office; Devan Patel had also taken an apartment from him for rent when his house was under renovation. Based on the statement made by Pandoo, it was alleged in the SCN that proximity/relationship between Devan Patel and Konde cannot be ruled out.

Aanond Eleagity

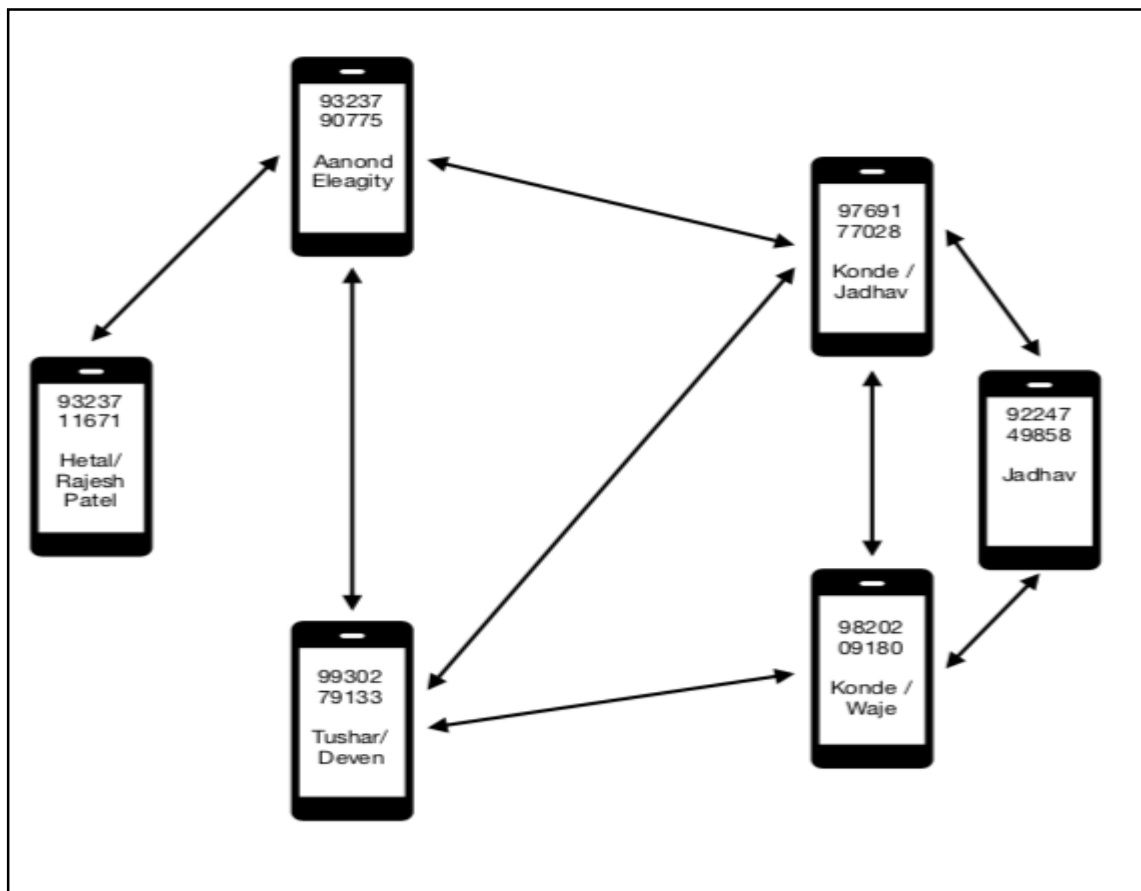
38. Aanond Eleagity (Aanond) was working with Edelweiss Capital Ltd. as AVP-IT. Based on his statement that was recorded before SEBI, it was alleged in the SCN that he was acquainted with Konde, as prior to joining Edelweiss he was working with Sunidhi Consultancy Services Ltd., which was also operating out of the business premises owned by Pandoo and used by Konde. Aanond also deposed that the phone number 9323790775 – which was disclosed in the KYC of Hetal Patel with Jash Securities – belonged to him.

Phone Call Analysis

Telephone No.	Belonged To	Given/Used By
97691-77028	Shankar Lad	Konde and Jadhav in their KYC with Networth Stock Broking Ltd., Geojit Financial Services Ltd. Dawnay Day AV Securities Ltd., Tata and Jash.
99675-77028	India Infoline and issued to Konde	Hetal Patel in her KYC with Way2wealth. Konde had also given this number to Jash Securities and it was uploaded in BSE UCC database, Chetan Shah gave the number to Anand Rathi

92247-49858, 92213-86108, 93222-33471, 65800633	Jadhav	Jadhav in KYC filed with Geojit & Dawmay Day and personal bio-data given to Networkh
93237-11671	Rajesh Patel	Rajesh Patel and Hetal Patel in KYC
93207-11672	Hetal Patel	
93237-90775	Aanond Eleagity	Hetal Patel gave this number to Jash Securities and was uploaded in UCC database of BSE. Tushar Karmokar has also given this number in KYC with Anand Rathi
98202-09180	Konde	Waje in KYC filed Networkh

39. It was observed from the Call Data Records (CDRs), for the period under investigation, that Konde, Jadhav, Waje and Hetal Patel were in contact with each other before and after February 11, 2009. The calling pattern observed from the analysis of CDRs is depicted below:



40. It was observed that Hetal Patel (9323711671) received 20 calls from 9323790775 (Aanond Eleagity) between January 12, 2009, to February 17, 2009, lasting about 894 seconds. While 6 calls were received before February 11, 2009, one call was received at 11:18 am on February 11, 2009, and the rest were received after February 11, 2009. Hetal Patel (9323711671) also placed 11 calls to 9323790775 (Aanond Eleagity) from January 19, 2009 to February 18, 2009 (total talk time of 385 seconds): one call on January 19, 2009, 2 calls on February 11, 2009, at 9:50 am and 11 am, and the remaining 8 calls after February 11, 2009.
41. The analysis of CDRs of 9769177028 (given by Konde and Waje) and 9323790775 (Aanond Eleagity) reveals that 99 calls were exchanged between these two numbers from January 1, 2009 to February 20, 2009. It was also observed that many calls were exchanged between 9769177028 (given by Konde and Waje) and 93237 90775 (Aanond Eleagity) during November 2008. Further, it was found that 4 calls were exchanged on February 11, 2009, the date on which the payment default occurred.
42. Phone call records also showed that calls were exchanged between 98202 09180 (owned by Konde and given by Waje) and 92247 49858 (Jadhav). Calls exchanged between 98202 09180 (owned by Konde and given by Waje) and the number 97691 77028 (Shankar Lad's No. given by Konde & Waje to the stockbrokers) was also noticed. There were also calls between 92247 49858 (Jadhav) and 97691 77028 (Konde & Waje).
43. It is, therefore, observed that Hetal Patel and Konde, Jadhav and. Waje, have all called the common number 93237-90775 (subscribed in the name of Aanond) which was given as Hetal Patel's number in the KYC form filed with Jash Securities and also in the UCC of BSE. The aforesaid Noticees had called 93237-90775 multiple times on February 11, 2009. Konde in his statement recorded on August 21, 2009, has stated that Aanond is his 'market

friend' and they regularly call each other on matters related to the stock market. Hetal Patel vide her letter dated May 18, 2009, has submitted that Aanond deals in the stock market and he used to have casual conversation with her or her husband Rajesh Patel. I note that Aanond Eleagity, in his statement recorded on July 02, 2009, submitted that he was acquainted with Rajesh Patel/ Hetal Patel and Mukesh Konde. He, however, denied being involved in stock markets.

44. It was also alleged in the SCN based on the statement of Tushar that two years back Deven Patel had taken copies of his Pan Card and Ration Card and purchased a prepaid SIM card. Tushar stated that he was not aware of the number of that SIM. The service provider confirmed that the number 9930279133 was registered in the name of Tushar Karmokar and the start date for his number is September 19, 2007 (almost 2 years back from October 15, 2009, i.e the date of statement recording of Tushar Karmokar). As the period of issuance of the SIM, as confirmed by the mobile service provider, matched with period, mentioned by Tushar Karmokar in his statement before SEBI, when Deven Patel had obtained a SIM card using his documents, it was concluded by the investigation that the number 99302 79133 was obtained by Deven Patel using Tushar Karmokar's documents.
45. It was further alleged in the SCN that Konde was regularly in touch with phone number 99302 79133- (subscribed in the name of Tushar and allegedly used by Deven Patel) on February 11/12/13, 2009. I note that CDRs of mobile number 97691 77028 (used by Konde) and 9820209180 (owned by Konde and given by Waje), show that from both these numbers calls were exchanged with the number 99302 79133 during the relevant times. On February 11, 2009 (the date of the default), 3 calls were exchanged between 9769177028 and 9930279133. One call was exchanged at 08:48 am lasting for 36 seconds. The Second and third calls were exchanged at 10:51 pm and 11:03 pm lasting for 264 and

60 seconds respectively. On the next day i.e February 12, 2009 also, 19 calls (between 12:28 pm to 09:46 pm) and 3 SMSs were observed to be exchanged between these two numbers, with the total duration of all calls exchanged coming out to be 1844 seconds. During November and December of 2008 also many calls were exchanged between 9769177028 and 9930279133.

46. From the CDRs of numbers 9820209180 (Konde/Waje) and 9930279133 (Tushar/Deven), it was observed that multiple calls were made between these numbers during the investigation period. 9 calls were exchanged between these two numbers on February 12, 2009. Out of which 5 calls were exchanged between 08:38 am to 09:58 am lasting for 195 seconds and 4 calls between 10:14 pm to 10:43 pm lasting for 174 seconds. Calls were exchanged throughout the night of February 13, 2009, also - 13 calls were exchanged between 9820209180 and 9930279133 from 00:59 am to 07:58 am. Out of which, 8 calls were exchanged between 00:59 am to 03:05 am lasting for 918 seconds and 5 calls were exchanged between 07:24 am to 07:58 am lasting for 267 seconds.

47. From the call records of 9323790775 (Aanond Eleagity), it was also observed that 138 calls were exchanged with the number 9930279133 (Tushar/Deven) during January and February 2009. On February 11, 2009, also, 6 calls were exchanged between these two numbers. The first and second call was exchanged at 07:29:13 AM and 09:15:56 AM respectively. Thereafter, 4 calls were exchanged between 11:18:11 AM to 11:39:01 AM. From the pattern of call exchange which continued to be observed on February 12/13/14/16, 2009 also, it was alleged in the SCN, that Aanond Eleagity was in constant touch with Deven Patel, prior to, on and after the date of the default.

48. In view of the aforesaid, I note that Hetal Patel/Rajesh Patel was in touch with Aanond Eleagity (9323790775) during the relevant time and Aanond Eleagity, in turn, was in

constant touch with Konde (9769177028) and with the number 9930279133, which was subscribed in the name of the Tushar and was allegedly used by Deven. I also note that multiple calls were observed during the investigation period, including on February 11, 2009, between the number 9930279133, subscribed in the name of the Tushar and allegedly used by Deven, and the Buyside Noticees.

Bank Account Analysis

49. I note from the SCN that it was alleged, also, based on fund transfers with common entities – Om Associates and Bhawani Trading Company – that the Buyside Noticees, Konde and Waje, were connected to Hetal Patel. An analysis of the Bank account statements of Konde (Bank A/c no.00602000041091 held with HDFC Bank), Waje (Bank A/c no.00601050264620 held with HDFC Bank), Jadhav (Bank A/c no. 05011140069857 held with HDFC Bank), Hetal Patel (Bank A/c no. 115010100385909 and Bank A/c no. 004010202187297 held with Axis Bank), Om Associates (Axis Bank, Borivali Branch), Bhawani Trading (Axis Bank) has shown transfer of funds between common entities the details of which are given below:

Account Holder	Funds Received from/Transferred to
Konde	Om Associates Bhawani Trading Company
Jadhav	Bhawani Trading Company
Waje	Bhawani Trading Company
Hetal Patel	Om Associates Bhawani Trading Company

50. It is noted from the SCN, that it has been alleged that cheques that were given to stockbrokers by Konde, Jadhav and Waje as initial margin money was dishonored due to insufficiency of funds in their respective accounts and they were able to fulfill the said obligations only after receiving funds from Om Associates or Bhawani Trading. In this

regard, I note from the copy of the statement of the bank account no. 00602000041091 of Konde held with HDFC bank that the cheque numbered 0303106 issued by him in favor of Jash Securities for Rupees One Crore was initially not cleared by the bank on October 06, 2008, due to insufficient funds in the account. Thereafter, it is noted that Om Associates, from their bank account with UTI Bank, transferred Rupees One Crore to the account of Konde on the same day (October 06, 2008), in two tranches of Rupees Fifty Lakhs each, pursuant to which the payment made in favor of Jash Securities got cleared. It is further noted from the bank statement of Om Associates that Hetal Patel transferred Rs.1.12 crore to Om Associates on September 25, 2008, which is around ten days prior to the date on which Om Associates transferred Rupees One Crore to Konde (October 06, 2008). It is also noted that Hetal Patel had received Rupees Eleven Lakhs from Bhavani Trading Company on January 15, 2009, and immediately thereafter she transferred the same amount in favor of Nirmal Bang Securities. I note the said transfer can also be categorized as money advanced for financing securities market transactions as the account balance of Hetal Patel prior to the transfer by Bhawani was only Rs. 10, 022.

51. Similarly, I note from the bank statement of account no. 006010 of Waje maintained with HDFC bank that cheque numbered 0869381 for Rupees Thirty Lakhs issued in favor of Geojit was not cleared by the bank on January 24, 2009, due to insufficient funds in his accounts. It is noted from the statement that subsequent to this, Rupees Thirty Lakhs was transferred to the said account of Waje by Bhawani Trading Company on February 06, 2009. Thereafter, Waje transferred Rupees Twenty Lakhs to Geojit in two tranches of Rupees Ten Lakhs each, the first one on the same day when the funds were received from Bhawani and the second being on February 10, 2009 – one day before the date on which the buy-side Noticees defaulted on their payin obligations. I also note from the bank statement that pursuant to the transfer of funds to Geojit, the balance amount lying to the

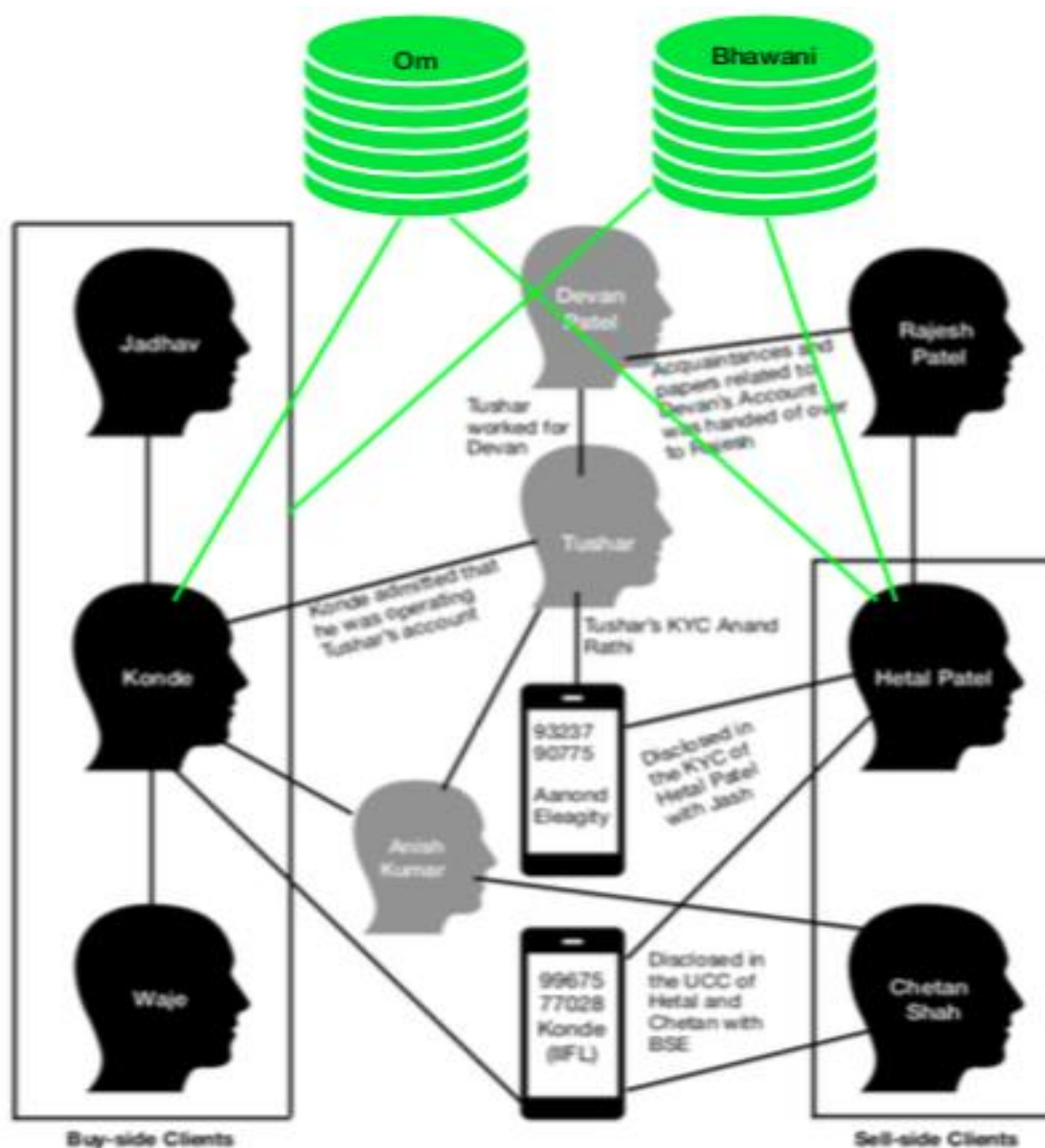
credit of the aforementioned account of Waje was Rs. 9,99,387, out of which Konde transferred Rupees 9,90,000 back to the account of Bhawani Trading Company on February 13, 2009, which is two days after defaulting on the payin obligations.

52. I note from the records that Om Associates vide its letter dated December 30, 2009, had stated that the payments to Konde were part of its regular business of dealing in diamonds. It was stated that they had purchased 317.75 carats for Rs. 20, 86, 028/- on 29/09/2008, 343.78 carats for Rs. 22,38,007 on 03/10/2008, 427.22 carats for Rs. 32,04,150 on 04/10/2008 and 340.94 carats for 24,71 ,815/- on 06/10/2008 from Konde. In support of this contention, Om Associates submitted copies of the sale memo/invoice issued by Konde. It was, however, noted that the signature of Konde on the invoice submitted by Om was materially different from his signature recorded during his statement made before SEBI. Further, Konde has also deposed that he was not involved in trading diamonds. In view of the same, the invoices/bills submitted by Om look suspicious and are not reliable. In view of the aforesaid, I note that the timing of the transfer of funds to the accounts of Konde and Waje by Om and Bhawani, respectively, as detailed above, overwhelmingly point towards the funds being used for financing their stock market transactions given the proximity of the said transfers to the subsequent transfer to the accounts of the brokers and also due to the dishonor of the cheques immediately prior to the said transfers.

53. In view of the above, I note that there is sufficient material on record to conclude that Om Associates, Bhawani Trading Company and Hetal Patel were financing the stock market transactions of the Buyside Noticees.

54. It can therefore be noted from the preceding paragraphs, Buy-side Noticees were connected to the Sell-side Noticees on the basis of common phone numbers appearing in KYC documents, submissions in statements recorded by SEBI, Call Data Records and

financial transactions between entities, to conclude that the Buyside Noticee were connected to the Sell-side Noticees. For ease of reference, the connections that have been listed out in the preceding paragraphs is depicted in the chart below:



55. I also note that in addition to the connections depicted in the chart above, certain additional connections were alleged in the SCN based on the statements of Anand Kumar, Rajeev Bajaj and Janak Dave, who were as already stated in the preceding paragraphs, respectively, the Branch Manager of Anand Rathi, Compliance Officers of Systematix and

Jash Securities. Anand had in his statement stated that Konde had introduced the account of Chetan Shah; Rajeev had stated that Tushar's account was operated by Konde (this was also admitted by Konde in his statement), and Janak had stated that Deven Patel had introduced the account of Hetal Patel.

56. Noticee Nos. 4, 5 and 6 in their replies had raised objections on placing reliance on the statements mentioned in para 55 as an opportunity to cross-examine the persons making said statements were not granted to them. In this regard, I find that the oral evidence in most of the instances have been adduced in the SCN to add further credence to the facts that were primarily being sought to be established through documentary evidence such as CDRs, bank statements and KYC records. The Noticees in their reply have not disputed that veracity of the bank statements and other documentary evidence relied upon by SEBI. Further, the Noticees, in their replies, have not pointed out the prejudice caused to them by virtue of the denial of the cross-examination. In view of the above and given the fact that SEBI is not relying upon the statements referred to para 55 to establish the connection between the Noticees, I do not find any merit in the arguments raised in relation to the denial of cross-examination.

57. At this juncture, it may be pertinent to note that the inter-se connections between Noticees and their connection with common third parties such as Tushar Karmokar and Pandoo Naig, was earlier brought before me in the enforcement proceedings related to the trades in the scrip of Usher Agro Limited. Even though the order dated September 18, 2019, passed in the matter of Usher Agro was set aside on appeal by the Hon'ble Securities Appellate Tribunal on other grounds, the connection between the parties brought out was not under the challenge as the same was not under consideration before me on merits. It is further noted that in the matter of Pyramid Saimira, which was connected to the

investigation in Usher Agro Ltd., connection between Hetal Patel, Om Associates and Bhavani Trading Company was observed. In the order in the matter of Usher Agro, I had noted in para 32 that *“The emergence of facts or connections between entities from a particular investigation can very well provide the background for another investigation as facts by their very nature do not change from one investigation to the other”*. In my opinion the same observation holds good in the current context also.

58. It is noted from the documentary evidence available on record that the inter se connection between Buy-side Noticees, is an admitted fact whereas the connection between Buy-side Noticees and Hetal Patel/Rajesh Patel, in my considered view, is established not just by the KYC records, but also fund transfers and Call Data Records as detailed in the preceding paragraphs. With respect to the connection of the Buy-side Noticees with Chetan Shah, it is noted that other than for the statement of Anish Kumar, wherein he has stated that Konde had introduced the account of Chetan Shah, the connections being sought to be made can be established from other documentary evidence available on record. In respect of providing cross-examination of Anish Kumar, it stated that attempts were made by SEBI to contact him at the address and contact number available with SEBI, and also through his employer, Anand Rathi. However, he could not be traced and, therefore, the cross examination could not be allowed.

59. In this regard, I note that even if one were not to place reliance on the statement made by Anish Kumar, the fact remains that the number which was issued to Konde by IIFL was reflected in the UCC of Chetan Shah with BSE. In this context, I would like to state that it is difficult to accept the submission made on behalf of Chetan Shah that he was not aware as to how the number of Konde appeared in his KYC, at face value. Moreover, I

note that the very number of the counterparty to Chetan Shah's trade on the day when there was a pay-in default, was reflected in his UCC with BSE.

60. It has been held by the Hon'ble Supreme Court in a catena of cases that the test for attracting the rigor of Regulation 3 and Regulation 4 of the PFUTP Regulations is one of the preponderance of probabilities. The Hon'ble Supreme Court in the matter of SEBI v. Kishore R. Ajmera (AIR2016SC1079) held as under

"The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act [SEBI Act] or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt."

61. I, therefore, note that given all the circumstantial evidence and other material facts detailed above, in the given the facts and circumstances of the case, the preponderance heavily weigh towards showing that Chetan Shah and Konde were connected to each other and the presence of Konde's contact number in the KYC form of Chetan Shah cannot be ruled out as a mere coincidence. Given the above, I note that the charge in the SCN that the Buy-side Clients were related to the Sell-Side Clients stands established.

Issue 2: Have the Buy-side Noticees and Sell-Side Noticees orchestrated a fraudulent scheme to provide an exit to the Sell-side Noticees at the cost of the Buy-side Stockbrokers, thereby attracting the provisions of the PFUTP regulations.

62. Having answered the question regarding the connection between the Noticees in the positive, I think it would be appropriate to consider their trading pattern in the scrip, especially on February 11, 2009, for arriving at conclusion regarding whether the default was made in collusion with the sell side Noticees.

63. The total traded volume in the scrip of RTS for the period September 01, 2008, to February 11, 2009 was 86,78,196 shares. The total shares purchased by Konde during this period was 618937 shares which accounted for 7.13% of the total volume. Konde had traded through five brokers during this period and the break up broker wise is given in the table below:

Broker	Total traded volume
Jash Securities	3,80,707
Networth	1,18,730
Tata	55500
Daway Day	6000
Geojit	58000
Total	6,18,937

64. Konde during the period sold 428251 shares which represented 4.93% of the total market volume. The breakdown of trades brokers wise is given in the table below:

Broker	Total traded volume
Jash Securities	3,65,995
Networth	29,511
Tata	20,000
Sharekhan	6,745
Geojit	6,000
Total	4,28,251

65. It was further noted in the SCN that Konde had traded in the scrip on 38 days during the investigation period; whereas Waje and Jadhav had never traded in the scrip prior to their trades on February 11, 2009 – Waje and Jadhav had opened their accounts with the stockbrokers only in January/February 2009. The trading of Konde, Waje and Jadhav in

the scrip on February 11, 2009, was analyzed in detail in the SCN and salient points are given below:

- a. The Trades were analyzed in three patches: First Patch – 09:55 am to 12:51 pm; second patch - 12:54 pm to 02:55 pm; and Third Patch – 02:59 till the close of trading.
- b. In the first patch, Konde had bought 65,437 shares and sold 18,138 shares. These trades were placed through Jash Securities (for both buying and selling), Geojit (only for buying) and Networth (only for selling). Out of the 65, 437 shares Konde bought during this patch, 52000 was from Hetal Patel and all the said trades were through Geojit. Konde trading through Geojit put 4 buy orders for 52,000 shares at Rs.299.50 per share from 12:44:21 pm to 12:45:39 pm, while Hetal Patel had put 6 sell orders for 1,15,067 shares at Rs 299.50 per share between 12:44:21 pm and 12:50:21 pm. While trading through Jash Securities, Konde had a net buy position of 13,437 shares of RTS by 12:42:27 pm. The final trade by Konde in this patch was a sale of 5,000 shares at 12:51 pm where Jadhav was the counterparty for 4,975 shares. It was alleged in the SCN that there was a distinction in the trading pattern of Konde with Jash Securities and Geojit: with the Jash Securities, there were attempts to reduce the net delivery position, which was absent in the trades placed through Geojit.
- c. In the first patch, Jadhav bought 59,985 shares and he was trading through only one stockbroker during this patch (Geojit). The counterparty to all the trades during this patch was Hetal Patel. Jadhav put 3 buy orders for 60,000 shares at Rs 299.50 per share between 12:48:14 pm and 12:50:06 pm and, as stated earlier, Hetal Patel had put 6 sell orders for 1, 15,067 shares at Rs 299.50 per share between

12:44:21 pm and 12:50:21 pm. The buy orders of Konde and Jadhav matched with the sell orders of Hetal Patel to the tune of 97.32% of shares sold by her in the first patch.

- d. In the second patch, Chetan Shah had placed a sell order for 42,191 shares at 12:25:01 pm at Rs.315.50. The order rate was later updated to Rs. 299.50 at 12:54:40 pm. Even after the said modification, the sell order remained unexecuted. Subsequently, Jadhav had placed a buy order for 15,000 shares at Rs 299.50 at 12:58:04 pm through Dawnay Day which matched with Chetan Shah's order. Waje, trading through Geojit, entered 12 buy orders for 52,000 shares at Rs. 299.50 and Rs.300 per share between 01:02:13 pm and 01:12:07 pm. Konde had placed 8 buy orders for 36,000 shares from 01:07:30 pm to 01:16:23 pm through Tata and Dawnay Day. During this patch Konde, Jadhav and Waje picked up 1,984 shares, 15,000 shares and 25,000 shares respectively from Chetan Shah.
- e. In the third and last patch, it was observed that Konde through Networth placed a buy order for 50,000 shares at Rs. 299.00 at 02:59:41 pm. Soon thereafter, Konde entered 3 buy orders for 40,000 shares (35,000 shares at Rs. 300.00 and 5,000 shares at Rs. 294.00) at 03:01 pm, 03:01 45 pm and 03:02:36 pm.
- f. The Buy-side Noticees had started the attempt to square off their open positions only by 3:19 pm. Jadhav placed 3 sell orders for the entire 80,000 shares that he had bought during the day at Rs. 285.50 between 03:19:53 pm to 03:22:23 pm. However, the said orders remained unexecuted. It was also observed that Waje entered 7 sell orders for 5,000 shares each (total of 35,000 shares) at Rs. 285.50 per share between 03:27:51 pm to 03:29:25 pm while his open position was 52,000 shares. The said orders were not executed. Konde, who had an open position of

1,78,924 shares did not take any steps to close the position even though he was not financially sound to take delivery of such a large quantity of shares. This is inferred from the information furnished in the Know Your Client (KYC) documents and bank account statements.

- g. Before post-close trading between 03:32:00 pm to 03:40:00 pm, when the closing price of the scrip is calculated, Konde placed a sell order of 6,333 shares while trading through Jash Securities. He went on entering the same order 117 times and all of them were rejected. Finally, the said order was accepted by the system at 03:40:09 pm at the start of the post-closing session. The sell order was placed apparently with the intention to reduce the exposure of Konde with Jash Securities.

- 66. It can, therefore, clearly be discerned from the trading pattern of the Buy-side Noticees, that they had not made any serious attempt to square off their sizable buy positions despite not being in a position to take delivery of such large volumes, as reflected from their KYC documents, bank statements and prior trading history. It can be seen from the preceding paragraph that Waje and Jadhav had started attempts to square off their substantial buy positions only by 3:19 pm whereas Konde had made no such attempts other than a sell order for 6,933 shares, which appears to be an attempt to square off his position with Jash Securities, despite having an open position close to 1,50,000 shares which would have resulted in a pay-in obligation of more than rupees Four Crores. It can therefore be noted that there is clear difference in trading pattern across stockbrokers and efforts were made to close his open position only with Jash Securities and not with the other stockbrokers. In this regard, it is noted that he had held an account and was trading through Jash Securities from April 2008, whereas with the other stockbrokers he had opened an account

in January 2009 (one month prior to the date of the default). This further lends credence to the allegation that Konde was placing buy orders with the other brokers fully aware that he would not be in a position to meet payment obligations and take delivery, and only with the intention of providing an exit to the sell-side Noticees at the expense of the Buyside Brokers.

67. This pattern of trading of the Buy-side Noticees and their default in making their payment obligations, along with their connections with the Sell Side Noticees, who were the counterparties to a majority of their trades, leads me to conclude that the buy trades were executed without any intention of taking delivery, and only with the view to provide an exit to the Sell-side Noticees.
68. Using the platform of the stock exchanges for executing non-genuine trades have been held by courts to be a fraudulent trade practice and in view of the same I hold that Noticees Nos. 1 to 6 have contravened the provisions of Regulations 3(a), (c) and (d) and regulation 4(2)(a) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. Noticees 7 and 8, who had substantially financed the trades, and thereby participated in the fraudulent scheme, have violated the provisions of section 12A(b) and (c) of the SEBI Act read with Regulations 3 (c) and (d) of the PFUTP Regulations.

Issue 3: Should there be a direction to impound and retain the money already withheld vide SEBI order dated June 05, 2009 be continued or revoked?

69. I note that SEBI had passed a direction in the interim order, which was subsequently confirmed, that “*Bombay Stock Exchange Limited should withhold the payout of February 11, 2009, of Ms. Hetal Patel (Permanent Account Number: AQUPP6130E) and Mr. Chetan Shah (Permanent Account Number AAFPS7527M) in a separate escrow account, till further orders.*”

70. As already stated in the preceding paragraphs, the Noticees had orchestrated a scheme to provide an exit to the Sell-Side Noticees and had entered into transactions that they had no intention of performing. Such trade practices create the potential for settlement risk and distort the smooth and orderly functioning of the markets. These trades have also caused financial loss for the Buy-side Stockbrokers, who had to step in and take delivery of shares after buy-side Noticees failed to meet their pay-in obligations. Such practices dent the confidence of the market participants in the settlement process. If such practices are left unchecked, then it could lead to the erosion of trust among market participants which would ultimately result in higher trading costs, impeding capital formation and investor returns. It is therefore imperative for SEBI, as the market regulator, to step in to ensure that wrongdoers are not permitted to enjoy the ill-gotten gains.
71. I note from the SCN that the Noticees have been asked to show cause as to why a direction to impound and retain money already withheld should not be passed. In this regard, I note that a direction to impound and retain proceeds is typically in the nature of an interim direction and is not in the nature of a direction contemplated in a final order. However, in the peculiar facts and circumstances of the present matter, I am proceeding to examine whether such a direction is warranted.
72. As already stated in the preceding paragraphs, the Buy-side stock brokers had filed a suit (Suit No. 3022 of 2009) before the Bombay High Court against the Buy-side Clients seeking to recover the amount they had to payout to the exchange due to the default by the Buy-side clients. In this regard, it is noted that the Hon'ble Bombay High Court vide order dated December 15, 2015, in Notice of Motion No. 963 of 2013, had acceded to the request made by BSE to deposit the payout funds, which had been invested in fixed deposits, with the Prothonotary and Senior Master of the High Court. In view of the same,

I would like to restrict the scope of the present proceedings to the facts involving the alleged violation by the securities laws by the Noticees. The end use of funds impounded and deposited with the Hon'ble Bombay High Court will depend on the outcome of the proceedings in the Suit No. 3022 of 2009.

Directions

73. As stated in para 68, I have already concluded that the Noticee Nos. 1 to 6 have contravened the provisions of Regulations 3(a), (c) and (d) and regulation 4(2)(a) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, and Noticees 7 and 8 have violated the provisions of section 12A(b) and (c) of the SEBI Act read with Regulations 3 (c) and (d) of the PFUTP Regulations. I also note that Noticees have already undergone a prohibition from accessing the securities market for a period of 12 years.
74. In view of the above, I, in exercise of the powers conferred upon me under 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, I hereby issue the following directions, -
- a. Noticee Nos. 1 to 6 shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a further period of two (2) years, from the date of this order;
 - b. Noticee Nos. 7 and 8 shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a further

period of one (1) year, from the date of this order.

75. In compliance with the order of the Hon'ble Bombay High Court dated October 27, 2020, in Writ Petition (L) No. 280 of 2015, the direction contained in this order qua Noticee Nos. 4 and 5 shall not be enforced until the final disposal of the said writ petition and also shall be subject to the decision therein.
76. Subject to the direction in para 75, this Order shall come into force with immediate effect.
77. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai

Date: October 27, 2021

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA