

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Raghukul Shares India Private Limited

In respect of –

Noticee no.	Name of the Noticee	PAN
1.	Raghukul Shares India Private Limited	AAECR3716R
2.	Gangaram Khandelwal	ADRPK5114D
3.	Amit Sharma	AFGPS8573K
4.	Sandesh Khandelwal	ANGPK7447L
5.	Dhruvesh Patel	APMPP2298E

*(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as “Noticees”, unless the context specifies otherwise)*

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**Background**

1. The present proceedings before me emanate from an Inspection Report of National Stock Exchange (for convenience “NSE”) dated May 31, 2019 conducted for the period April, 2016 to August, 2019 (hereinafter referred to as “**Inspection Period**”) with respect to the business activities of Raghukul Shares India Private Limited (hereinafter referred to as “**RSIPL/ Company**”) observing therein various irregularities. I note that RSIPL is registered with Securities and Exchange Board of India (for convenience “SEBI”) as a stock broker having Registration no. IN000184236.

2. Consequent to the findings made in the above-mentioned Inspection Report, actions were initiated against *RSIPL*. A chronology of the actions / events initiated by NSE and SEBI against *RSIPL*, are tabulated below:

**Table - 1**

<i>Sl. no.</i>	<i>Event</i>	<i>Date</i>
1.	NSE forwarded an interim report of its preliminary observation to SEBI.	May 31, 2019
2.	Disablement of membership of <i>RSIPL</i> by NSE	June 06, 2019
3.	<i>Ad interim ex parte order</i> (for convenience " <b><i>Interim Order</i></b> ") was passed by SEBI against the <i>Notices</i> and 3 other entities upon the finding that the entities were <i>prima facie</i> in violation of the Securities Contract (Regulation) Rules, 1957 (for convenience " <b><i>SCRR, 1957</i></b> "), SEBI (Collective Investment Schemes) Regulations, 1999 (for convenience " <b><i>CIS Regulations, 1999</i></b> "), SEBI (Brokers and Sub Brokers) Regulations, 1992 (for convenience " <b><i>Stock Brokers Regulations, 1992</i></b> ") and circulars made thereunder.	June 28, 2019
4.	NSE expelled <i>RSIPL</i> from the membership of the exchange and declared it as defaulter.	November 04, 2019
5.	A Confirmatory Order (for convenience " <b><i>1<sup>st</sup> Confirmatory Order</i></b> ") was passed by SEBI confirming the directions qua <i>Notices no. 1 to 3</i> issued vide the <i>Interim Order</i> .	January 24, 2020
6.	Another Order (for convenience " <b><i>2<sup>nd</sup> Confirmatory Order</i></b> ") was passed by SEBI issuing the directions qua <i>Notices no. 4 and 5</i> . The directions in the <i>Interim Order</i> , however, were revoked in respect of remaining 3 entities.	January 24, 2020

3. From the table above, it is noticed that an *Interim Order* was passed in the matter by SEBI in respect of 8 entities, and subsequently vide *1<sup>st</sup> Confirmatory Order*, the directions issued in the *Interim Order* in respect of 3 entities i.e. *Notices no. 1 to 3* were confirmed. Vide *2<sup>nd</sup> Confirmatory Order*, directions were issued qua *Notices no. 4 and 5*. Thus, the directions contained in the *Interim Order* and *2<sup>nd</sup> Confirmatory Order* continue to remain in force with respect to the above 5 entities (*Notices no. 1 to 5*).

4. Before I proceed further, it would be relevant to provide a brief summary of the facts and circumstances that insinuated the passing of the *Interim Order* in the matter.

The *Interim Order* has recorded the *prima-facie* findings that *RSIPL* had failed to segregate clients' securities; failed to maintain proper records of collateral deposited by clients; failed to settle clients' accounts on quarterly / monthly basis; failed to maintain Register of Securities Holding Statement, Bank Book and Client Ledger in prescribed standard format; misappropriated the securities of its clients by setting off obligation of related entities with the securities of other clients and consequent to such misappropriation, *RSIPL* has in certain cases mis-reported data under the enhanced supervision mechanism to the stock exchange. Further, the *Interim Order* has also recorded that *RSIPL* had failed to obtain prior approval for change in control (Dominant Promoter Group) and appointment of its Director from stock exchange and has further engaged in activities offering fixed return to its registered clients. Furthermore, the *Interim Order* also has recorded that discrepancy was observed in the computation of net worth of *RSIPL* and it has failed to maintain Networth and deposit requirements as required for stock brokers / clearing members / self-clearing members. Based on the afore-stated facts, *RSIPL* was *prima facie* found to be in violation of following statutory / regulatory provisions and circulars of SEBI:

- a) *SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993;*
- b) *SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008;*
- c) *SEBI Circular MIRSD/ SE /Cir-19/2009 dated December 3, 2009;*
- d) *SEBI Circular CIR/MIRSD/14/2011 dated August 2, 2011 and CIR/MIRSD/2/2011 dated June 3, 2011;*
- e) *SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;*
- f) *SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/138 dated December 20, 2016;*
- g) *SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017;*
- h) *SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/PB/2017/107 dated September 25, 2017;*

- i) *Rule 15 of the SCRR, 1957;*
- j) *Regulation 17 and Clause A (1) and (5) of the Code of Conduct prescribed for the Stock brokers under the Stock Brokers Regulations, 1992;*
- k) *Schedule VI of Stock Brokers Regulations, 1992; and*
- l) *Section 12(1)(B) of Securities and Exchange Board of India Act, 1992 (for short "SEBI Act, 1992") read with Regulation 3 of SEBI (Collective Investment Schemes) Regulations, 1999.*

5. Considering the facts as brought out above and to protect the interest of investors and further to protect the integrity of the securities market, it was decided to pass following directions against the *Noticees* vide the *Interim Order* and 2<sup>nd</sup> *Confirmatory Order*:

- a) *Noticees no. 1 to 5* have been restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;
- b) *Noticees no. 1 to 5* were directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets including money lying in bank accounts except with the prior permission of SEBI;
- c) *Noticees no. 1 to 5* were directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately;
- d) Till further directions in this regard, the assets of *RSIPL* shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned stock exchange(s);

- e) The depositories were directed to ensure that no debits are made in the demat accounts, held jointly or severally, of *RSIPL* except for the purpose mentioned in sub-paragraph (d) after confirmation from the concerned stock exchange (s) and/ or Depositories as the case may be;
- f) The banks were directed to ensure that no debits are made in the bank accounts held jointly or severally by *RSIPL* except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s);

6. Based on details collected from Banks and Depositories, the trade obligations and profit and loss details of *RSIPL*, NSE has carried out a further analysis so as to ascertain the actual liabilities of funds and securities and other non-compliances by *RSIPL*. In this respect, NSE submitted its final report vide letter dated February 12, 2020, (for convenience "**NSE Report**") in the matter to SEBI. Pursuant to the findings of NSE Report, SEBI examined the irregularities noticed in the affairs of *RSIPL* as a Stock broker and following major findings were observed from such examination: -

a) **Misuse of clients' funds and securities**

- i. **Misappropriation / diversion of clients' funds and securities:** It was observed that *RSIPL* has transferred funds to the tune of ₹21.18 crores to related parties of Director Amit Sharma (*Noticee no. 3*) in excess of their respective obligations. It was also observed that *RSIPL* has used clients funds worth of ₹1.93 crores to clear its proprietary obligations with the clearing member and funds worth of ₹1.6 crores were utilised for meeting losses of other client, namely, Step Ahead Broking Private Limited (for short "**Step Broking**"). It was further revealed that securities worth of ₹10.43 crores have been sold by 2 clients namely Swastik Services (for short "**Swastik Services**") and Step Broking, even though the said clients were not possessing such

securities. By the aforesaid acts, it was alleged that *RSIPL* has misappropriated/diverted clients' securities and funds.

- ii. **Non availability of clients' funds and Securities:** It was observed that there was a shortfall of securities worth of ₹12.13 crores available in client beneficiary accounts of *RSIPL* that were payable to clients of *RSIPL*. On reconciliation of funds payable to clients with the funds available in clients' bank accounts of *RSIPL*, it was revealed that there was a shortfall of client funds worth of ₹22.78 crores. Thus, it has been alleged that there was a total shortfall of funds and securities payable to clients of *RSIPL* worth of ₹34.91 crores.
- iii. **Client beneficiary account used for purposes other than specified:** It was observed that *RSIPL* has received securities from entity other than client worth of ₹1.25 crores in its client beneficiary account and has further sold the same in the account of *Noticee no. 3*.

The aforesaid acts of *RSIPL* resulting in to misuse of clients' funds and securities and diversion of the proceeds from such misappropriation of clients' funds and securities to related its parties as well as for meeting proprietary and other clients' obligations, were observed to be in violation of provisions of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

- b) **Periodic payments made to clients with no corresponding trades:** It was observed that *RSIPL* has made periodic payments worth of ₹7.35 crores to 341 clients during the Inspection Period and there were no corresponding trades or trading activities by such clients on the stock exchange vis-à-vis the said periodic payments. It was observed that *RSIPL* has failed to maintain high standards of integrity, promptitude and fairness in the conduct of his business, failed to comply with statutory requirements and

engaged in business other than of securities and thus has violated clauses A (1) & A (5) of Code of Conduct as provided under Schedule II read with regulation 9 of the *Stock Brokers Regulations, 1992* and Rule 8 (3)(f) of the *SCRR, 1957*.

c) **Misrepresentation of data submitted to Exchange:**

- i. The enhanced supervision of Stock Brokers requires the uploading of clients' fund balance and securities balance by the Stock Broker for each client on the stock exchange system on a monthly basis for every client. It was observed that *RSIPL* has posted regular entries in its bank book during the period April 01, 2018 to April 10, 2019, however, as per bank statements of *RSIPL*, it was observed that there were no corresponding bank entries of *RSIPL* during the above mentioned period. As per bank book a, total of 583 entries have been mentioned showing receipts of funds amounting to ₹14.99 crores and payment of funds amounting to ₹21.55 crores during the Inspection Period. Thus *RSIPL* has posted bogus entries in its internal system (Bank Book) and submitted misleading and false data to the stock exchange;
- ii. *RSIPL* has provided a copy of bank statement (0012050380) maintained with ICICI Bank which shows entries on a regular basis, however, data shared by ICICI Bank shows that there are no corresponding entries in the said bank account of *RSIPL*;
- iii. Client securities worth ₹12.20 crores payable to 24 clients were not recorded in Register of Securities (for short "**ROS**");
- iv. *RSIPL* has not declared details of all its Bank accounts to the stock exchange.

It was noticed that the aforesaid acts of *RSIPL* of not maintaining its books of accounts have resulted into violation of Rule 15 of *SCRR Rules 1957*, regulation 17 of the *Stock Brokers Regulations, 1992* and by not submitted true data to stock exchange, *RSIPL* has violated provisions of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

- d) **Prior approval for change in control (Dominant Promoter Group) not obtained from the stock exchange:** It was observed that *Noticee no. 2* (one of the Dominant Promoter and Director of *RSIPL*) and his wife had transferred their shareholding and management control in *Noticee no. 1* to *Noticee no. 3* and his associates, by way of written agreements. However, no prior approval was taken by *RSIPL* from the stock exchange for the same in this regard. It was noticed that *RSIPL* has not taken prior approval for change in control and hence violated SEBI Circular no. CIR/MIRSD/14/2011 dated August 02, 2011.
- e) **Prior approval for appointment of Directors not obtained from the stock exchange:** *RSIPL* had appointed Mr. Bimal Prakash Aggarwal as one of its Director on October 1, 2018 however, it was unearthed that no prior approval/ intimation was obtained from exchange in this regard. Such acts of *RSIPL* were found to be in violation of SEBI Circular no. CIR/MIRSD/2/2011 dated June 03, 2011.
- f) It was noted that the *Notices no. 2 to 5* (for convenience "***Noticee Directors***") were acting as Executive Directors in *RSIPL* during the Inspection Period. Further, in addition to holding the post of Executive Directors, *Notices no. 2 and 3* were also shareholders in *RSIPL* during the Inspection Period.

### **Show Cause Notice, Reply and Hearing**

7. Based on the above narrated findings, a common Show Cause Notice (hereinafter referred to as "**SCN**") dated February 09, 2021 was issued by SEBI to the *Notices* in which they were called upon to show cause as to why suitable directions



under sections 11(1), 11 (4), 11B (1) and 11D of *SEBI Act, 1992* should not be issued against *Noticee no. 1* and its Directors (*Noticees no. 2 to 5*) for the aforementioned violations. From the available records, I note that the SCN was duly served upon the *Noticees no. 2, 4 and 5* through Speed Post. However, SCN issued to *Noticees no. 1 and 3* returned undelivered. Accordingly, the SCN was served upon *Noticee no. 1* by way of affixture on the addresses available on record i.e. '*237, Rui walo ka Mohalla, Sumer Karan Ji Ka Rasta, Ramganj, Jaipur Rajasthan-302002*'. The SCN was served upon *Noticee no. 3* through hand delivery on the address available with SEBI i.e. '*B-88, Kirti Nagar, Tonk Road, Jaipur, Rajasthan-302017*'. It was noted that *Noticees no. 2, 4 and 5* have submitted their respective replies to SCN, however no reply has been submitted by *Noticees no. 1 and 3*. Subsequently, in compliance with the principles of natural justice, all the *Noticees* were provided with an opportunity of personal hearing on February 08, 2022, and on the said date, the advocate representing the *Noticees no. 2 and 4* appeared and requested for an adjournment on the ground that their arguing counsel was unwell. No one appeared on behalf of *Noticees no. 1 and 3* on the aforesaid date of personal hearing. Further, *Noticee no. 5* appeared in person through video conferencing, however due to technical issues at end of *Noticee no. 5*, hearing could not be concluded qua *Noticee no. 5*.

8. Considering the above stated challenges, another opportunity of personal hearing was granted to all the *Noticees* on September 27, 2022. I note that the hearing notices for the personal hearing were duly served upon all the *Noticees*. During the personal hearing, an Authorised Representative (AR) appeared on behalf of *Noticee no. 2 and 4* and argued on the lines of the written reply already filed on their behalf with SEBI. *Noticee no. 5* appeared personally and argued on his own behalf on the lines of written reply filed by him with SEBI. Similarly, *Noticee no. 3* also appeared and made submissions. As *Noticee no. 3* had not filed any reply to the SCN till the time of personal hearing, a period of 4 weeks was granted to him for filing a detailed reply on the basis of submissions made by him during the personal hearing. In this regard, I find that the *Noticee no. 3* vide email dated October 25, 2022, has filed a written reply to the SCN, however, he further sought copies of annexures of SCN and

sought additional time to file a detailed reply to the SCN. Accordingly, vide email dated October 31, 2022, additional time of 15 days was granted to the *Noticee no. 3* to file a detailed reply in the matter and thereafter another reminder vide email dated November 29, 2022 was also issued to him for filing the reply. However, no such reply has been filed by him till date. I also note that no one appeared on behalf of *Noticee no.1*. Further, *Noticee no. 1* has neither furnished any reasons for not availing the opportunities of personal hearing granted to it nor has sought any adjournment in the matter, which shows that it is not interested in availing the opportunity of a personal appearance before me. Under the circumstances, I consider that adequate opportunities have been provided to the *Noticees* for personal hearing and the matter can now be adjudicated qua all the *Noticees* on merit, based on facts & evidences available on record.

9. After completion of their personal hearing, certain *Noticees* have also submitted their respective post hearing written submissions. Details of such replies filed by the *Noticees* are tabulated below:

**Table - 2**

<i>Noticee</i>	Date of replies
<i>Noticee no. 1</i>	-
<i>Noticee no. 2</i>	27.03.2021
<i>Noticee no. 3</i>	25.10.2022
<i>Noticee no. 4</i>	31.03.2021
<i>Noticee no. 5</i>	27.02.2021

10. After perusing the written replies filed by the *Noticees* in response to the allegations made in the SCN and the oral arguments made by various *Noticees* / Authorised Representatives before me during personal hearing, I summarize their submissions and arguments as follows:

**Noticee no. 2**

- a) In and around 2015, *Noticee no. 2* and his wife were approached by *Noticee no. 3* for taking over the management and affairs of the *Company*. Accordingly, subsequent to a Preliminary Agreement dated February 06,

2015 (for short “**Preliminary Agreement**”) followed by Indemnity Arrangement and Disclaimer Bond dated February 04, 2016 (for short “**Indemnity Arrangement**”, the management and control of the *Company* was handed over by *Noticee no. 2* and his wife, to *Noticee no. 3* with effect from April 01, 2016.

- b) Till the consideration was paid by the *Noticee no. 3* for the transfer of shareholdings of the *Company*, *Noticee no. 2* continued to be the Director of the *Company* without participating in the day-to-day affairs of the *Company*. At that point of time, *Noticee no. 3* had already become the Designated, Dominant Promoter Group Shareholder and Compliance Officer of the *Company*.
- c) *Noticee no. 2* has further submitted that he did not:
  - i. attend any Board meeting of the *Company* after April 01, 2016,
  - ii. visit the office of the *Company* after April 01, 2016,
  - iii. sign any document or record or cheque pertaining to the business of the *Company*;
  - iv. Draw any salary / remuneration as a Director from the *Company* April 01, 2016.
- d) *Noticee no. 2* was disqualified for being a Director of any company for a period of 5 years with effect from November 01, 2016 to October 31, 2021 under section 164 (2) of the Companies Act, 2013 on account of non-filing annual return by a company in which he was a Director. Though consequent upon the said disqualification, *Noticee no. 2* ceased to be a Director of the *Company*, but he submitted his resignation from *Company* only on December 27, 2018. The SCN has not taken cognizance of the fact that during the relevant period the *Noticee no. 2* was disqualified to continue

as the Director of the *Company* and hence, viewing and holding him liable as a Director of the *Company* is patently wrong.

- e) Until the joining of *Noticee no. 3*, the affairs of the *Company* were managed by *Noticee no. 2* and his wife and there were no complaints / grievances. The Inspection Period and the allegations in the SCN pertain to the time when *Noticee no. 3* had taken complete charge of the *Company* and was involved in day-to-day management of the *Company*.
- f) The application dated August 03, 2017 made by the *Company* to NSE seeking NOC for change in control of the *Company* was made by *Noticee no. 3* and 5, which further strengthens the fact that the *Company* was managed and controlled by *Noticee no. 3*. Further, non-procurement of SEBI's prior approval for change in control of the *Company*, does not *ipso facto* invalidate the transaction of transfer of shares or change in control done by the *Noticees*.
- g) *Noticee* has referred to the observations of SEBI order dated May 17, 2019 in the matter of *Allied Financial Services Private Limited* and has submitted that SEBI has given relief to the erstwhile promoters and directors of the company who had given management control to the new promoters.
- h) *Noticee* has referred to following judicial judgements to argue that a director of a company shall not be held liable for the contraventions of the company unless the contravention is committed by the company with the knowledge, connivance or gross negligence of the director concerned:
  - i. Hon'ble Securities Appellate Tribunal (for short "**SAT**") in the matter of *Rahul Shah vs. SEBI* (2004 55 SCL 416 SAT);
  - ii. Hon'ble SAT in the matter of *Radhavallabh Dhoot vs. SEBI* (2005 58 SCL 423 SAT);

- iii. Hon'ble SAT in the matter of *Sayanti Sen vs. SEBI (Appeal No. 163 of 2018)*;
- iv. Hon'ble Bombay High Court in the matter of *Satish Kumar Gupta vs. Union of India & Anr (WP no. 1224 of 2018 dated February 7, 2020)*
- i) There is no allegation to the effect that the *Noticee* is liable for the alleged violations of *RSIPL* and the *Noticee no. 2* is called upon to show cause without making any specific allegation against him and without showing his involvement in the management of affairs of the *Company*.

**Noticee no. 3**

- j) The *Company* was promoted by *Noticee no. 2* with his family members. The promoter group continued to be director of the *Company* till a complaint against the *Company* was filed in NSE. Till date, *Noticee no. 2* is holding 51% shares of the *Company* and the *Noticee no. 2* is also a director in the *Company*.
- k) An agreement was entered between the *Noticee no. 2* and 3 for transferring of shareholding and management control of the *Company* held by *Noticee no. 2* and his family to *Noticee no. 3*. However, despite payment of the requisite amount by *Noticee no. 3* to *Noticee no. 2*, it was *Noticee no. 2* who continued to manage the affairs of the business of the *Company* and complete control of the business was never transferred to *Noticee no. 3* despite the aforementioned agreement.
- l) *Noticee no. 2* and his family members are authorized to transfer unlimited funds from the bank accounts of *RSIPL* held with HDFC bank whereas *Noticee no. 3* is authorized to sign on instruments of value upto INR 5 lakhs only. Further, for online fund transfer from the bank account of *RSIPL* there were two login IDs issued in the name of *Noticee no. 2* and all the online transactions were executed through these IDs. This strengthens the argument that it was *Noticee no. 2* who was controlling and managing the affairs of *RSIPL*.

- m) As per SEBI Circular No. CIR / MIRSD / 14 / 2011 dated 02/08/2011, prior approval of SEBI is required for transferring of controlling interest in a stock broker firm and no such approval was obtained from SEBI by *RSIPL* for transferring controlling stake of the *Company* from *Noticee no. 2* and his family members to *Noticee no. 3*. Further, the application for change of control in *RSIPL*, that was received by NSE in October 2017, was rejected by NSE and therefore, *Noticee no. 3* cannot be held responsible for irregularities happened in the *Company* as he was not in control managing the affairs of *RSIPL*.
- n) *Noticee no. 3* has been cheated by *Noticee no. 2*, as he did not pass on the control of the *Company* to him as per the agreements signed between them and he has further lodged an First Information Report (FIR) in Ashok Nagar police station (Jaipur) under FIR NO 172/2019 against *Noticee no. 2*.
- o) As per SEBI's guidelines, a stock broker can continue its business with a minimum networth of 1 crores. The *Noticee no. 2* while entering into agreement to transfer the business of *RSIPL*, has given a networth certificate of INR 1.11 crores as on 31.03.2016, which he claims to have prepared from the balance sheet of 2015-2016 and the said networth certificate was signed by *Noticee no. 2* and his wife. Later on, it was gathered by *Noticee no. 3* that the actual networth was for INR 52.59 lakhs which shows the *malafide* intention of *Noticee no. 2*.
- p) Records of Registrar of Companies reflects that neither any AGM has been conducted nor any balance sheet has been prepared after 31/03/2016 and *Noticee no. 3* has not attended any single AGM of the *Company* before or after 2016.

**Noticee no. 4**

- q) I note that *Noticee no. 4* had made some submissions identical to what have been submitted by *Noticee no. 2*. Therefore, for the sake of brevity, such

submissions are not repeated herein. In addition to such identical submissions, following is also submitted *Noticee no. 4*:

- r) *Noticee no. 4* was made a Director of the *Company* only at the insistence of *Noticee no. 2* (his Paternal uncle). Subsequent to the sale of shareholding by promoters of the *Company*, *Noticee no. 4* was requested to continue as a Director for some more time for name sake purposes i.e. without participating in the decisions or the functioning of the Board of the *Company*.
- s) *Noticee no. 4* cannot be viewed as an Executive Director solely on the basis of some filing in the records of ROC when factually he has never acted so or has never drawn any remuneration from the *Company*. Further, as one of the Director of the *Company* namely Mr. Siya Ram Khandelwal was exonerated by SEBI vide 2<sup>nd</sup> *Confirmatory Order* he has also sought exoneration on similar grounds.
- t) Since *Noticee no. 4* had no influence on the transaction between *Noticee no. 2* and 3, he simply relied on instructions of *Noticee no. 2* and accordingly submitted his resignation from *Company* on September 27, 2018.
- u) He has referred to the provisions of Section 167 (1) (b) of the Companies Act, 2013 which states that a director is deemed to have vacated his office, if he does not attend any board meeting of the company in the last 12 months. As *Noticee no. 4* had not attended any Board meeting of the *Company* after the execution of the Indemnity Arrangement dated February 04, 2016, he ceased to exist as a Director of the *Company* and therefore he couldn't be held liable for the wrongdoings of the *Company*.

#### **Noticee no. 5**

- v) Though the designation of this *Noticee* in the *Company* was a Designated Director, however, he was a merely an employee of the *Company*. He had no control over managing affairs of the *Company*.

- w) In this regard, he has submitted an affidavit dated April 20, 2017 signed by *Noticee no. 3* confirming that *Noticee no. 5* has been appointed as a Designated Director of the *Company* at monthly salary of INR 25,000/- and *Noticee no. 5* shall not be responsible for regulating affairs of the *Company*.
- x) He is an insurance adviser from 2009, who stays in a rented house and his family is dependent on his monthly salary.

### **Consideration of issue and Findings**

11. Considering the findings of various facts and evidences collected by SEBI from NSE Report, the allegations levelled against the *Noticees* in the SCN based on such findings and the explanations offered by the *Noticees* through their written and oral replies to the SCN as well as during personal hearing and their post hearing written submissions, I find that in this case, the following issues require consideration:

#### **Issue 1: Whether RSIPL, a registered stock broker with SEBI, has –**

- a) **misused clients' securities / funds and diverted the same to other clients;**
- b) **misrepresented the data submitted to the stock exchange;**
- c) **made periodic payments to the clients with no corresponding trades;**
- d) **not taken prior approval for change in control (Dominant Promoter Group) from the stock exchange;**
- e) **not taken prior approval for appointment of Directors not obtained from the Exchange**

#### **Issue 2: If the answer to Issue no. 1 is in the affirmative, then whether the Directors of RSIPL, viz. *Noticees no. 2 to 5* can be held liable for the violations committed by the RSIPL?**

12. Before dealing with the issues framed above, it would be appropriate to refer to the relevant provisions of law alleged to have been violated in the matter, extract of which are reproduced below:



**THE SECURITIES CONTRACTS (REGULATION) RULES, 1957**

***Qualifications for membership of a recognised stock exchange.***

8. The rules relating to admission of members of a stock exchange seeking recognition shall *inter alia* provide that:

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that –

- i. the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,
- ii. in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,
- iii. nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n)] of sub-rule (8)]<sup>16</sup>

***Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.***

15.(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years:

- (a) Register of transactions (Sauda book).
- (b) Clients' ledger.
- (c) General ledger.
- (d) Journals.
- (e) Cash book.
- (f) Bank pass-book.

- (g) Documents register showing full particulars of shares and securities received and delivered.
- (2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:
- (a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.
  - (b) Counterfoils or duplicates of contract notes issued to clients.
  - (c) Written consent of clients in respect of contracts entered into as principals

**THE SEBI (STOCK BROKERS) REGULATIONS, 1992**

***Conditions of registration.***

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

- (f) he shall at all times abide by the Code of Conduct as specified in Schedule II;

**SCHEDULE II**

*Securities and Exchange Board of India (Stock Brokers) Regulations, 1992*

**CODE OF CONDUCT FOR STOCK BROKERS**

**[Regulation 9]**

**A. General.**

- (1) *Integrity:* A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.
- (2) *Exercise of due skill and care:* A stock-broker shall act with due skill, care and diligence in the conduct of all his business.
- (3) *Manipulation:* A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.
- (4) *Malpractices:* A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

*(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him*

***To maintain proper books of account, records, etc.***

*17. (1) Every Stock Broker shall keep and maintain the following books of account, records and documents, namely: –*

- (a) Register of transactions (Sauda Book);*
- (b) Clients ledger;*
- (c) General ledger;*
- (d) Journals;*
- (e) Cash book;*
- (f) Bank pass book;*
- (g) Documents register containing, inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities;*
- (h) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members;*
- (i) Counterfoils or duplicates of contract notes issued to clients;*
- (j) Written consent of clients in respect of contracts entered into as principals;*
- (k) Margin deposit book;*
- (n) Client account opening form in the format as may be specified by the Board.*

*(2) Every stock broker shall intimate to the Board the place where the books of account, records and documents are maintained.*

*(3) Without prejudice to sub-regulation (1), every stock broker shall, after the close of each accounting period furnish to the Board if so required as soon as possible but not later than six months from the close of the said period a copy of the audited balance sheet and profit and loss account as at the end of the said accounting period:*

*Provided that, if it is not possible to furnish the above documents within the time specified, the Stock Broker shall keep the Board informed of the same together with the reasons for the delay and the period of time by which such documents would be furnished.*

**CIRCULARS ISSUED BY SEBI**

- SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993;
- SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;
- SEBI Circular no. CIR/MIRSD/14/2011 dated August 02, 2011;
- SEBI Circular no. CIR/MIRSD/2/2011 dated June 03, 2011.

13. I note that the SCN contains multiple allegations against *RSIPL* and it is observed from the records that in response to the above-stated allegations, though the *Company* has not submitted any specific and separate response or explanation in its own defence, however, the other *Noticees* being the natural persons who have been operating behind such legal entity and as Directors of the *Company* have managed its affairs on a regular basis, have already furnished their own explanations refuting the allegations which have significant bearing on the allegations levelled against the *Company*. Considering the same, I am relying upon the materials available on records to deliberate upon the issues that are pending for adjudication before me.

**Allegation 1**

***RSIPL has misused clients' funds and securities and diverted the proceeds to related entities***

14. It has been alleged in the SCN that the *RSIPL* has engaged in activities of misappropriating securities and funds belonging to its clients, which it was holding in fiduciary capacity and was not having any lawful authorisation to transfer the clients' securities to any other entities. The SCN further narrates that *RSIPL* has misappropriated / diverted such securities / funds owned by its clients by transferring them unlawfully to its related entities; by unlawfully selling such securities without the knowledge of its clients; by transferring excess funds to related entities; by using client's funds for meeting losses incurred in its proprietary account

and other clients' accounts, etc. It is observed from the SCN that the *RSIPL* was alleged to have misappropriated/diverted clients' funds to the tune of ₹41.13 crores, details of which as narrated in the SCN are tabulated below:

**Table - 3**

<b>SL No.</b>	<b>Particulars</b>	<b>Total Amount in ₹ Cr.</b>
1	Misuse by selling client securities	10.43
2	Misuse by transfer of excess securities to clients	0.52
3	Misuse by selling client securities in 2 clients	0.22
4	Misuse by transfer of excess securities to 2 clients	0.4
5	Diversion of client funds to related parties of director	21.18
6	Funds utilised for meeting Prop losses	1.93
7	Funds utilised for meeting other client losses	1.6
8	Misuse by transfer of excess funds to other clients*	15.28
9	Amount of misuse of client securities already accounted for in misuse of client funds (1)**	10.43
10	<b>Total misuse of client funds &amp; securities (1+2+3+4+5+6+7+8-9)</b>	<b>41.13</b>

\*while calculating the payable/ receivable of funds and securities and improper use of funds the impact of deposit of 10.27 cr. and withdrawal of 1.11 cr. has not been taken into account as counter-party details were not provided by banks.

\*\*The misuse of client securities is on account of selling of client securities which have been received as funds pay-out in the client bank account.

**A. Misappropriation by selling clients' securities and transfer of excess securities to other clients**

15. It has been alleged in the SCN that 2 clients, namely, Swastik Services and Step Broking have sold securities worth of ₹10.43 crores without actually possessing such securities. In this regard, on analysis of client-wise buy/sell trades and details of receipt and transfer of securities in transaction statements of client beneficiary accounts of *RSIPL* for clients who have sold high value of securities, it has been observed that the aforesaid 2 clients have sold following securities without possessing such securities during the Inspection Period:

**Table - 4**

<b>Particulars</b>	<b>Amount (In ₹ crores)</b>
Securities sold by Swastik Services (SAB169)	9.60
Securities sold by Step Ahead Broking Private Limited (SAB1)	0.83
<b>Total Securities sold</b>	<b>10.43</b>

16. I note from the above table that the two clients of *Noticee no. 1* viz: Swastik Services and Step Broking have sold securities worth ₹9.60 crores and 0.83 crores respectively without actually possessing such securities. It is further observed that the aforesaid 2 clients viz. Swastik Services and Step Broking, were related to *RSIPL* through *Noticee no. 3*, who is a Designated Director and shareholder of *RSIPL*. Details of such connection is tabulated below:

**Table - 5**

<b>Client name</b>	<b>Connection</b>
Swastik Services	<i>Noticee no. 3</i> is a partner
Step Broking	<i>Noticee no. 3</i> is a Director

17. It has been noted above that the *Company* has not filed any reply in response to the SCN refuting the allegations *inter alia* about the connection of the *Noticee no. 3* with the above two entities. It is further observed that the aforesaid facts pertaining to *Noticee no. 3*, who was a dominant promoter shareholder and Director of *RSIPL* during the relevant time and was also connected with Swastik Services and Step Broking, have also been not disputed by any of the *Noticees* including *Noticee no. 3*. In this regard, I have already recorded earlier that neither *RSIPL* nor any other *Noticee* has contended the aforesaid connection of *Noticee no. 3* with Swastik Services and Step Broking which were clients of *RSIPL* during the relevant period. Infact, there is nothing on record to show otherwise that the aforesaid 2 clients of *RSIPL* were not connected / related to *RSIPL* through *Noticee no. 3*.

18. It is also pertinent to note that there is no contention on record to dispute the aforesaid allegations of transferring of securities of clients to other clients, in excess of their obligation, which further strengthens the *malafide* intention of the *RSIPL*. In view of the above and on the basis of the documents available before me, it is evident that *RSIPL* has sold securities to the tune of ₹10.43 (9.60 + 0.83) crores through two of its related entities, who were not the real / beneficial owner of such securities.

19. In addition to the above, on verification of transaction statements of client beneficiary accounts and trade data for the period April 2016 to August, 2019, it has been observed that *RSIPL* has transferred securities of clients to some other clients

who were not the beneficial owner of such securities and by such acts, *RSIPL* has transferred securities worth of ₹0.52 crores to its 10 clients in excess of their respective obligations. In this regard, I further note that out of the above ₹0.52 crores, securities worth ₹0.26 crores have been wrongfully transferred to one of the client viz. Step Broking and remaining securities worth of ₹0.26 crores have been wrongfully transferred to 9 other clients. I note that these 10 clients have neither purchased these securities nor have transferred them to trading member from the time of their client registration. I have already mentioned earlier that Step Broking is an entity connected to *RSIPL*, which is not disputed by any of the *Noticee* including *RSIPL*. Similarly, it is also a non disputed fact that *RSIPL* has transferred securities to the tune of ₹0.52 crores to its clients in excess of obligation of such clients. Therefore, the aforesaid acts of *RSIPL* of selling securities through connected clients who were not beneficial owner of such securities and to transfer excess securities to clients including connected clients raise bonafide suspicion about the unethical conduct of *RSIPL*.

**B. Excess transfer/sell of securities to 2 clients**

20. The SCN has alleged that in the two client codes, *RSIPL* has either sold securities or transferred securities in excess to the tune of ₹63 lacs as tabulated here under even though these two clients were not possessing the said securities: -

**Table - 6**

Client Code	Client name	Value of securities Excess Sold (₹)	Value of securities excess transferred (₹)	Total (₹)
SAB15	BIMAL PRAKASH AGARWAL	22,17,662	36,95,889	59,13,551
SAB91	KAVITA DEVI AGARWAL	-	3,87,695	3,87,685
		22,17,662	40,83,574	63,01,236

21. I note from the material available on record that the act of the aforesaid selling / transferring of securities from the 2 clients of *RSIPL* was not a solitary one. Infact, I note that the securities in around 45 different scrips cumulatively to the tune of ₹63 lacs were sold / transferred by *RSIPL* from the 2 afore-stated clients' accounts. I note that no reasoning / rationale has been put forward by *RSIPL* or its directors to justify

the aforesaid acts. In view of the above and the materials available on record, it can be safely concluded that *RSIPL* has sold / transferred funds to the tune of ₹63 lacs to the afore-stated 2 clients, which were actually not owned by such clients.

### **C. Diversion of client funds to related entities**

22. On verification of bank account statements of client bank accounts, trade obligations in the cash segment of all clients along with net profit / loss in Future & Options (F&O) segment and Currency Derivatives (CD) segment for the Inspection Period (April, 2016 to August, 2019), it has been observed that *RSIPL* has transferred funds to 3 clients in excess of their obligation, details of which are tabulated below:

**Table - 7: Client name- Swastik Services (SAB169)**

<b>Particulars</b>	<b>Amount (In ₹ crores)</b>
Total amount received in client Bank accounts from SAB169 (A)	0.80
Total amount transferred from client Bank Accounts to SAB169 (B)	20.25
<b>Net excess funds transferred [C=B-A]</b>	<b>19.45</b>

**Table - 8: Client name- Step Ahead Broking Private Limited (SAB1)**

<b>Particulars</b>	<b>Amount (In ₹ crores)</b>
Total amount received in client Bank accounts from SAB1 (A)	0.02
Total amount transferred from client Bank Accounts to SAB1 (B)	0.26
<b>Net excess funds transferred [C=B-A]</b>	<b>0.24</b>

**Table - 9: Client name- Mr Amit Sharma (SAB5)**

<b>Particulars</b>	<b>Amount (In ₹crores)</b>
Total amount received in client Bank accounts from SAB5 (A)	0.77
Net amount of profit in F&O and CD segments (B)	0.26
Total amount transferred from client Bank Accounts to SAB5 (C)	2.52
<b>Net excess funds transferred [D=C-(A+B)]</b>	<b>1.49</b>

23. It can be observed from the aforesaid tables that *RSIPL* has transferred excess funds to the aforesaid clients in excess of their respective obligation / dues. For



instance, for one of the client named Swastik Services, amount of ₹0.80 crore was received out of the settlement of the trades executed by the aforesaid client, however, it has been observed that *RSIPL* has cumulatively transferred ₹20.25 crores to the said client, i.e. an excess of ₹19.45 crores from the net dues payable to the client. Similar pattern has been observed with respect to other two clients viz. Step Broking and Amit Sharma (*Noticee no. 3*). It is further observed that the aforesaid 3 clients were related to *RSIPL* through *Noticee no. 3*, who is a Designated Director and shareholder of *RSIPL*. Details of such connection have already been discussed earlier which are borne out of records which have not been disputed by the *Noticees*.

24. In view of the above and the materials available on record, it can be safely concluded that *RSIPL* has transferred funds to the tune of ₹21.18 (19.45 + 0.24 + 1.49) crores to its related parties (entities connected with its Designated Director and shareholder namely Amit Sharma i.e. *Noticee no. 3*).

**D. Use of Client funds for meeting Proprietary losses, Client Losses and for meeting obligation of other clients**

25. It has also been alleged in the SCN that *RSIPL* has used clients' funds worth of ₹1.93 crores to clear its proprietary obligations and funds worth of ₹1.60 crores to clear other clients' obligations with the clearing member. On verification of profit-loss details in proprietary account of *RSIPL* from April 1, 2016 to July 27, 2017 in F&O segment, it has been observed that *RSIPL* has incurred net losses of ₹1.93 crores in F&O segment. Quarter-wise details of such obligations incurred from proprietary trades of *RSIPL* in F&O segment are tabulated below:

**Table - 10**

Period	Amount (In ₹crores) (+ profit and - loss)
Apr- Jun, 2016	0.14
Jul- Sep, 2016	0.11
Oct- Dec, 2016	0.39
Jan- Mar, 2017	0.14

Apr- Jun, 2017	-0.98
Jul, 2017	-1.71
<b>Net Loss</b>	<b>-1.93</b>

26. On further verification of statement of bank account of *RSIPL*, it has been observed that no payments were made from *RSIPL*'s own bank account to clearing member during this aforementioned period towards the afore-stated obligations. Therefore, in the absence of any submissions contrary to the allegation and further from the consideration of material available, it can be easily construed that *RSIPL* has not transferred any amount towards the losses incurred by it in F&O segment and in fact, it has utilized its clients' funds worth of ₹1.93 crores to clear the obligations with the clearing member that arose out of trades carried out in its proprietary account.

27. It is further noticed that the SCN has also alleged that clients' funds worth of ₹1.60 crores were utilised by *RSIPL* for meeting losses of other client, namely, Step Broking which is also its related entity. In this regard, on further verification of profit-loss details of the client, Step Broking, it has been found that the Step Broking has incurred losses amounting to ₹1.60 crores in F&O segment during the period from April 1, 2016 to July 27, 2017. Quarter-wise details of such obligation incurred from the trades of Step Broking in F&O segment are tabulated below:

**Table - 11**

<b>Period</b>	<b>Amount (In ₹ crores) (+ profit and - loss)</b>
Apr- Jun, 2016	-0.03
Jul- Sep, 2016	.0016
Oct- Dec, 2016	-0.04
Jan- Mar, 2017	1.31
Apr- Jun, 2017	-1.00
Jul- Sep, 2017	-1.83
Oct, 2017	-0.01
<b>Net Loss</b>	<b>-1.60</b>

28. During the inspection, the materials collected and the verification of statement of bank accounts of Step Broking have shown that it has not made any payment towards its aforementioned obligations to the stock broker and *RSIPL* has utilized other clients' funds worth of ₹1.60 crores to clear the obligations arising from the trades of Step Broking.

29. In addition to the above, on verification of bank account statements of client bank accounts, trade obligations in Cash Market segment of all clients along with net profit / loss in F&O and CD segments for the period from April, 2016 to August, 2019, it has been observed that the trading member i.e. *RSIPL* has either transferred excess funds to various clients or utilised the same against obligation of various clients which was found to the tune of ₹15.28 crores.

30. Since, the *RSIPL* has not offered any response and none of the other *Noticee* directors has made any submission denying the above allegations, considering the materials available on record, it can be safely concluded that *RSIPL* has used Clients' funds for meeting losses incurred from its proprietary trades, losses of its related entities and for meeting obligation of other clients transferred funds to the tune of ₹18.81 (1.93 + 1.60 + 15.28) crores.

#### **E. Non availability of clients' funds and Securities**

31. I note that SCN has alleged that there was shortfall of securities and funds of clients of *RSIPL*. In this regard, on verification of buy/sell trades and transaction statements of client beneficiary accounts of *RSIPL* from April 2016 to August 2019, it was observed that *RSIPL* has not recorded securities purchased and sold by various clients in their back-office Register of Securities (ROS). Similarly, it has also been observed that *RSIPL* has not recorded details of securities transferred or delivered by/ to the various clients in their back-office register of securities. Before moving further, it is important to give a brief about ROS. NSE has prescribed that Every Trading Member / Stock Broker shall maintain a Register or ledger account of Securities, client wise and security wise, giving inter alia, the details such as date of

receipt of the security, quantity received, party from whom received, purpose of receipt, date of delivery of the security, quantity delivered, party to whom delivered and purpose of delivery etc. Therefore, in simple terms, the ROS is a register maintained by a stock broker recording various details of securities received from client by the stock broker.

32. In order to arrive at the net liability of securities due to the clients of *RSIPL*, an analysis of client-wise net buy, buy/sell trades and details of receipt and transfer of securities in transaction statements of beneficiary accounts of *RSIPL* from April 2016 to August, 2019 was undertaken and it has been observed that the net securities payable to 24 clients of *RSIPL* amounting to ₹12.20 crores, were not available with *RSIPL*. In this respect, on further reconciling the above mentioned payable securities (of ₹12.20 crores) with the securities actually available in clients' beneficiary accounts of *RSIPL*, it has been observed that there is a shortfall of client securities worth of ₹12.13 crores with *RSIPL*. The details of the same are presented as under:

**Table - 12**

<b>Particulars (As on 27-Aug-2019)</b>	<b>Amount (In ₹crores)</b>
Value of securities belonging to clients which should have been recorded in ROS of <i>RSIPL</i> (A)	12.20
Value of securities available in beneficiary accounts/CM (B)	0.07
Non availability of securities in DP / CM (C=A-B)	12.13

33. It has been further observed on reconciling the payable funds with funds actually available in clients' bank accounts of *RSIPL* (₹23.40 crores) plus the deposits available with Exchange and clearing member (₹0.62 crores), that there is a shortfall of clients' funds worth of ₹22.78 crores. Details of the aforesaid shortfall is tabulated below:

**Table - 13**

<b>Particulars (As on 27-Aug-2019)</b>	<b>Amount (In (crores)</b>
Clients payable	23.40
Deposit available with clearing member	0.22

Amount available with Exchange	0.40
Total funds available	0.62
<b>Non availability of client funds</b>	<b>22.78</b>

34. From the material available on record, I note that during the Inspection Period, there was a shortfall of clients' securities worth of ₹12.13 crores with *RSIPL* i.e. net securities payable to clients were amounting to ₹12.20 crores, however, the net securities that were actually available in the client beneficiary accounts of *RSIPL* were amounting to ₹7 lakhs only. Similarly, on reconciling the funds payable to the clients with the funds actually available in clients' bank accounts of *RSIPL* alongwith the deposits available with Exchange and clearing member, a shortfall of clients' funds worth of ₹22.78 crores was observed.

**F. Client beneficiary account used for purposes other than specified**

35. SCN has further alleged that during the Inspection Period, beneficiary accounts of clients maintained by *RSIPL* were used for purposes other than for the specified purpose for which clients open their demat accounts. In this regard, on verification of transaction statement of clients' beneficiary accounts for period April, 2016 to August, 2019, it has been observed that *RSIPL* has received securities from entities other than its clients, worth of ₹1.25 crores (value as on 10-Apr-2019) and had them credited in its clients' beneficiary accounts and later on, such securities were sold under another client code SAB5 (*Noticee no. 3* i.e. Amit Sharma). I have already stated above that no contention has been put forth by the *RSIPL* or any of its Directors to rebut the aforesaid allegation of using clients' beneficiary account for other purposes.

36. It is pertinent to note that SEBI vide Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, has laid down detailed guidelines for stock brokers to deal with clients' securities and funds so as to prevent misuse of clients' securities and funds. With regard to the aforesaid allegations pertaining to misappropriating clients' securities and funds, misuse of clients' securities and funds for off-setting the losses of other clients and proprietary

trades of *RSIPL*, selling of clients' securities through other clients, etc., I note that the *Notices* in their written and oral submissions which have been already highlighted in the preceding paragraphs of this Order, have not denied the fact that securities of the clients of *RSIPL* have been misappropriated and sold through various related entities of *RSIPL*. It is important to note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he operates. Such a person is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not to be motivated purely by prospects of personal financial gain by misappropriating clients' funds and securities. However, in the instant matter, by indulging into acts of misusing its clients' securities and funds the *Company* (*RSIPL*) has definitely not acted in a manner that is expected from a registered intermediary. Therefore, acts of *RSIPL* in misappropriating and unlawfully selling the shares of the innocent non-defaulting clients are nothing short of flagrant violation of law and code of conduct prescribed for a registered stock broker.

37. One must note that the securities lying with the stock broker are held by the stock broker on behalf of its clients in a fiduciary capacity. The stock broker has to credit the securities to the demat accounts of its clients if the securities are fully paid. Even for some reason, if the securities of the clients are lying with the stock broker, the stock broker has been prohibited under law from using those securities for its own purpose. However, in the instant case as revealed from the aforestated factual findings, the illegal and unauthorised use of clients' securities by *RSIPL* was not confined to one or two stray instances but had continued unabatedly for a long time. Under the circumstances and considering the materials on record, I am constrained to observe that *RSIPL* has knowingly misrepresented the truth to its clients by falsely assuring them that it is holding their shares on their behalf in its fiduciary capacity. Such a deceitful act seriously questions not only its integrity but also the fairness in the conduct of its stock broking business. The act of *RSIPL* in dealing with the shares of its clients without their authorisation, is an act which has caused severe detriment to the interests of its clients. Such actions of *RSIPL*, which led to disappearance of

clients' securities from their demat accounts due to its act of misappropriation of clients' securities, not only audaciously defy the transparency that SEBI is trying to achieve through its circulars pertaining to handling of client's securities by the stock broker's, but also have caused a severe blow to the confidence of the investors in the securities market and at the same time, have also compromised the integrity of the market. Such actions of diversion and misappropriation of clients' securities as have been committed by *RSIPL*, have to be viewed seriously.

38. I find that the submissions made by *Notices* do not contain anything worthwhile in rebutting the aforesaid allegations. The *Notices* have rather maintained a stoic silence about their conduct of selling the shares of other clients through the accounts of related entities of *RSIPL*, and the facts and evidences on record strongly adduced to the facts that *RSIPL* has rampantly indulged in diversion/transfer of shares of other clients to the account of the related entities of *RSIPL*, which strongly prove the allegation of sale of shares and misappropriation of the proceeds of sale of shares, only to serve the interests of *RSIPL* and its related entities.

39. Here, it would be appropriate to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *ISS Enterprise Ltd. vs. NSE* decided on February 23, 2023 wherein the Hon'ble tribunal held as follows:

*"Having heard the learned counsel for the parties, we find that misuse of client's funds is a serious violation. Twice on January 22, 2021 and again on May 07, 2021 the appellant has utilized the funds of clients having credit balance towards margin obligation of the clients having debit balance to the tune of Rs. 8.64 crores and Rs. 6.95 crores respectively..."*

*In view of the gross irregularities found by the Committee which is admitted by the appellant, we find that the penalty imposed to the tune of 3% of the misuse of Rs. 8.64 crores was just and proper. The impugned order does not suffer from any error of law..."*

40. I note that the measures taken by SEBI by issuing various circulars, code of conduct etc., as cited earlier on the issue of Stock Broker – Client transactions, settlement of funds and securities etc., are primarily intended to increase transparency in management of funds of clients and securities of clients by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI rules and regulations. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse either for trades of other clients or of the stock broker itself or for any other purposes so that they are beyond the reach of the stock broker and / or its employees. The aforesaid actions of *RSIPL* wherein, the stock broker has misused its clients' funds and has routed/diverted the funds to certain entities that were not associated with *RSIPL* as its trading clients, as per its own convenience without paying any heed to its statutory obligations, cannot be viewed leniently. Under the circumstances and keeping in view the aforesaid factual matrix which practically does not offer any defence by the *Notices* to justify the actions of the *Company* which was being managed the *Noticee* Directors, I am constrained to hold that the allegations made in the SCN against *RSIPL* pertaining to misuse / misappropriation of shares and funds of other clients remain undisputed and established. Therefore, I have no constraint to hold that *RSIPL* has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

## **Allegation 2**

### **RSIPL has misrepresented / misreported data submitted to the stock exchange**

41. It has been alleged in the SCN that *RSIPL* has mis-reported data under the enhanced supervision framework (prescribed for the stock brokers) to NSE and such acts / omissions on part of *RSIPL* have resulted in violation of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. It is relevant to state here that SEBI, with the intent of ensuring enhanced supervision of Stock Brokers/Depository Participants has issued a circular no.



SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. To serve the above intent, the said circular, *inter alia*, requires Stock Brokers to upload information regarding clients' funds and securities balances to the stock exchange system for onward transmission \ of the same to the clients for better transparency. Thus, in view of the above circular there existed a clear obligation on the part of Stock Brokers to upload information regarding clients' funds and securities balances to the stock exchange system on a regular basis.

42. It has further been alleged that *RSIPL* falsified its bank account statements by posting bogus entries and thus has violated Rule 15 of *SCRR, 1957* and Regulation 17 of *Stock Brokers Regulations, 1992*. It is pertinent to mention here that Rule 15 (1) of *SCRR, 1957* mandates that a member of a stock exchange is required to maintain and preserve for a minimum period of five years, the following books of account and documents: (a) Register of transactions (*Sauda* book); (b) Clients' ledger; (c) General ledger; (d) Journals; (e) Cash book; (f) Bank pass-book and (g) Documents register showing full particulars of shares and securities received and delivered. Similarly, Rule 15 (2) of *SCRR* mandates that a Member of a stock exchange is required to maintain and preserve, for a period of two years, the following documents: (a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members; (b) Counterfoils or duplicates of contract notes issued to clients; (c) Written consent of clients in respect of contracts entered into as principals. It is to be noted here that as a precondition for operating as a Stock Broker, an entity is required to be a Member of a recognised stock exchange. Further, *Regulation 17 of the Stock Brokers Regulations, 1992* concomitantly requires a Stock Broker to adhere to obligations similar to ones mentioned above. Thus, there is a clear and evident obligation on the part of a Stock Broker to maintain and preserve its Books of Account.

43. The SCN records the asymmetry / discrepancy in submission of information by *RSIPL* furnished under the framework of the enhanced supervision by the stock

exchanges. Various observations regarding misreporting and falsification of bank account statements, Register of Securities (**ROS**) by *RSIPL* as observed during the Inspection Period are highlighted in detail in the subsequent paragraphs of the Order

44. During the inspection conducted by the stock exchange, *RSIPL* vide email dated April 10, 2019 submitted the bank books maintained by it for the period from April 01, 2018 to April 10, 2019. A comparison of the aforesaid bank books was done with the data received directly from ICICI Bank for the same period (vide email dated 07-May-2019). It is observed that *RSIPL* has misrepresented the data pertaining to the entries in its bank books to the stock exchange. It is noted that *RSIPL* holds a bank account no. 001XXXX380 with ICICI bank and in the corresponding bank book of the said bank account maintained as part of the Books of Accounts, *RSIPL* has posted regular entries during the period of April 01, 2018 to April 10, 2019. However, as per the data pertaining to the actual entries in the said account received from ICICI Bank directly, it was observed that there is not even a single entry in the aforementioned bank account pertaining to the aforementioned mentioned period which matches with the Bank Book entries that have been submitted by *RSIPL* to the stock exchanges under the enhanced supervision framework prescribed by the Regulator. To elaborate further, as per the bank book, a total number of 583 entries have been posted by *RSIPL* showing receipts of funds amounting to ₹14.99 crores and payment of funds amounting to ₹21.55 crores during the inspection period, however, the bank account statement does not have any of these entries for the aforesaid amounts of receipts and payments of funds. In fact, not even a single transaction entry out of the afore-stated 583 transaction entries posted in the Bank Book is observed in the data submitted by ICICI Bank for the aforesaid account. Therefore, in the absence of any submission to the contrary, I am left with no option but to hold that *RSIPL* has posted bogus banking entries in the system and misrepresented data pertaining to the receipts and payment of funds from/to the clients as submitted to the Exchange.

45. Similarly, variations have been observed in the bank statement of client bank account no. 001XXXX380 maintained with ICICI bank provided by *RSIPL* vide email

dated September 11, 2018 for the period April 01, 2018 to June 30, 2018 vis-à-vis the bank statement received directly from ICICI Bank vide email dated May 07, 2019 for the said period. It has been observed that a copy of bank statement as furnished to the stock exchange by *RSIPL* shows transaction entries on a regular basis, however, bank statement shared by ICICI bank directly shows that there is not even a single entry at all in the above mentioned bank statement furnished by *RSIPL*, which appears in the Bank Statement received directly from the ICICI Bank which further corroborates the finding that *RSIPL* has falsified/misrepresented the data furnished to the Exchange by submitting fake / fudged bank account statements to the stock exchange.

46. It is also alleged in the SCN that *RSIPL* has submitted wrong data for the ROS to the stock exchange. For instance, on verification of ROS provided by *RSIPL*, it was observed that as on April 10, 2019, securities worth of ₹0.21 crores were available as against claims of ₹16 crores made by the clients. On further verification of buy/sell trades of clients and transaction statements of client beneficiary accounts of *RSIPL* for the period from April 2016 to August, 2019, received from depositories, it was observed that *RSIPL* has not recorded securities purchased and sold by various clients in their ROS. Similarly, it has also been observed that *RSIPL* has not recorded details of securities transferred or delivered by/ to various clients in their ROS. The examination further reveals that the on net basis, client securities worth of ₹12.20 crores payable to 24 clients were not at all recorded in ROS and the said issue has already been elaborated earlier in this Order.

47. It is further alleged in the SCN that *RSIPL* has not declared details of all its Bank accounts to the stock exchange. In this regard, it has been observed that *RSIPL* has not disclosed details of its bank account number 259509045363 held with Indusind Bank Limited to the stock exchange.

48. In view of the above examination and observations, it is found that value of securities reflected in the books of *RSIPL* were not in accordance with the values as per the claims made by complainants in respect of whom securities were not settled.

Further, it is also found that *RSIPL* has posted bogus transactions entries in the bank books and bank account statements and has submitted fudged / misrepresented data to the stock exchange. It is important to note that the SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 pertaining to enhanced supervision specifically mandated the stock brokers to report funds and securities lying in the clients' accounts on a regular basis, to stock exchanges in order to monitor and prevent misuse of the clients' funds and securities. Keeping the above regulatory requirement in consideration, I do not find any evidence to suggest that *RSIPL* has taken any due care and steps for submitting the correct data to the stock exchange. On the contrary, it is now evident that *RSIPL* has submitted wrong data and had even tried to conceal its bank account with the stock exchange. It is to be understood that submitting complete details of bank accounts would form a foundation for efficient supervision of the activities of a stock broker by the stock exchanges, however, *RSIPL* has tried to conceal the information pertaining to one bank account held by it from the stock exchange.

49. The findings from the NSE Report clearly bring out the fact of gross discrepancies in reporting as well as non-reporting of data with respect to various clients in glaring violation of guidelines prescribed by SEBI under enhanced supervision framework with an objective to have a robust monitoring of movement of funds and securities in the accounts of the clients. Further, since *RSIPL* has already been found to have indulged in unauthorised transfer of securities and funds of its clients, I find no difficulty in arriving at a conclusion that the authenticity of the data reported by *RSIPL* under enhanced supervision framework cannot be held to be reliable given the disturbing findings about rampant irregularities committed by *RSIPL* in all its business dealings as brought out in the NSE Report.

It is also emphasised here that the obligation to maintain and preserve the books of account entails an inherent duty for the maintenance and preservation of such book in a true and correct manner in terms of *SCRR, 1957* and *Stock Brokers Regulations, 1992*. In view of the observations recorded above, considering the fact that *RSIPL* has

already been proved to have mishandled and misappropriated the securities lying in the demat accounts of its clients and funds of its various clients without their permission in an unlawful manner and the fact that the aforesaid allegations are neither disputed by the *Company* nor by the Noticee Directors (*Noticees no. 2 to 5*) of the *Company*, it can be fairly concluded that *RSIPL* has misrepresented / misreported data submitted to the stock exchange and has thus violated Rule 15 of SCRR, 1957, regulation 17 of the *Stock Brokers Regulations, 1992* and provisions of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

### **Allegation 3**

#### **RSIPL has made periodic payments to clients with no corresponding trades**

50. Moving on to the next allegation, I note that the SCN has alleged that *RSIPL* has made periodic payment to some of its clients on a regular interval when no corresponding trades have been observed to have been actually executed by such clients. I note from the material available on record before me that *RSIPL* has made periodic payments worth of ₹7.35 crores to 341 clients during the Inspection Period i.e. from April, 2016 to August, 2019. In this regard, it is pertinent to note that, the Code of Conduct for Stock Brokers as provided under Schedule II read with regulation 9 of the *Stock Brokers Regulations, 1992* provides:

#### ***“A. General.***

*(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

*.... (5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.”*

51. In addition to the above, Rule 8 (3)(f) of the SCRR, 1957 provides that “No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if – ... (f) he engages either as principal or employee in any

*business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability”.*

52. It is pertinent to mention here that the purpose of the aforesaid requirement in law is to have checks and balances to ensure that the conduct of the market intermediary is in conformity with the accepted behaviour in the securities market. I note from the evidence available before me that from the client bank account of *RSIPL*, certain payments were made to clients periodically on a regular interval which are not in relation to their trading activities on the stock exchange. I also note that no contention has been put forth by the *Company* or its Directors rebutting the aforesaid allegation or to explain as to why those periodic payments were made to those clients who did not have any trading or settlement in their accounts during the said period. Therefore, it is clear that the said payments were made to those clients for the purpose other than anything connected with the securities market which may be for financing purpose, etc. It is also important here to note that the said funds were paid from the client bank account which means such funds that were paid to those non – trading clients actually belonged to some other clients of *RSIPL*. The entire conduct as evident from the aforesaid transfer of funds goes on to show that *RSIPL* has no explanation to offer and has scant regard for any regulatory framework. The mere fact that the said unwarranted conduct was exhibited by a registered market intermediary and such unlawful act is otherwise prohibited, is good enough to hold *RSIPL* responsible for the said fraudulent and unethical act. *RSIPL* has not only apparently indulged in an activity other than relating to securities market but has also utilised funds of its own clients for such unrelated and unexplained activities.

53. I must emphasise that a stock broker acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which it operates. Such a stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings. The said Code of Conduct as referred to above also casts an obligation on a stock broker to act with due skill, care and diligence in the conduct of all its business and not to indulge in

manipulative, fraudulent or deceptive transactions or schemes. However, the aforesaid discussed misconduct of the *Company* shows otherwise. Therefore, I have no hesitation to conclude that *RSIPL* has violated Rule 8 (3)(f) of the *SCRR, 1957* and clauses A (1) & A (5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the *Stock Brokers Regulations, 1992*.

#### **Allegation 4**

#### **RSIPL has not taken prior approval for change in control (Dominant Promoter Group) from the stock exchange**

54. Before proceeding further on this allegation, it is important to refer to SEBI Circular no. CIR/MIRSD/14/2011 dated August 02, 2011 which, inter alia, provides that:

*“SEBI has recently amended the regulations for certain intermediaries, viz., Stock Brokers and Sub-brokers, Merchant Bankers, Debenture Trustees, Registrar to an Issue and Share Transfer Agents, Underwriters, Depository Participants, Bankers to an Issue and Credit Rating Agencies, vide Notification No. LAD-NRO/GN/2011-12/03/12650 dated April 19, 2011. This has already been communicated to you and a copy of the notification is also available on SEBI website [www.sebi.gov.in](http://www.sebi.gov.in). As per the amendments, the requirement of obtaining prior approval for change in status or constitution has been dispensed with. However, in case of change in control of the above intermediaries except for Sub-brokers, prior approval of SEBI is required”*

It is pertinent to note that the aforesaid circular clearly lays down a requirement for a registered stock broker for taking a prior approval from the concerned stock exchange in case there is a change in control of the registered stock broker

55. In the present case, the SCN has alleged that *RSIPL* has not obtained prior approval from the stock exchange for change in control (Dominant Promoter Group). I note that during inspection, *Noticee no. 2*, who was one of the Dominant Promoter and a Director of the *Company*, has submitted an agreement whereby, he and his wife

have claimed to have transferred their shareholding and management control in *RSIPL* to *Noticee no. 3* and his associates.

56. I note that NSE has submitted that application for seeking NOC for change in control from *Noticee no. 2* and his wife to *Noticee no. 3* as filed by *RSIPL* was received by NSE in October 2017, however, the said application was rejected by NSE, as *Noticee no. 1* had not obtained a Single SEBI registration certificate as mandated vide SEBI Circular no. CIR / MIRSD / 4 / 2014 dated October 13, 2014. In this regard, I note from the records that a Preliminary Agreement dated February 06, 2015 was signed between *Noticee no. 2*, his wife and *Noticee no. 3* for sale of shareholding of *RSIPL*, which was followed up by an Indemnity Arrangement dated February 04, 2016. After going through the clauses of the aforesaid Preliminary Agreement and Indemnity Arrangement, I note that as per clauses of the said agreement, it was agreed that the shareholding of *Noticee no. 2* and his wife in *RSIPL* would be sold to *Noticee no. 3* with effect from April 01, 2016. As per the aforesaid agreement, control of *RSIPL* was supposed to be shifted from *Noticee no. 2* and his wife (who were Dominant Promoter Shareholder) to *Noticee no. 3* and his associates as well as to one Ram Lakhan Disania, subsequent to the completion of the payment consideration. I note that *RSIPL* or any of its Directors have not disputed the signing of aforesaid agreements. Further, it is also a matter of fact that the application for seeking NOC for change in control was filed by *RSIPL* which is also not disputed by any of the *Noticees*. I note from the said application that the same was signed by *Noticee no. 3* and 5 on behalf of *RSIPL*.

57. The records before me indicate that the application of seeking NOC / prior approval from NBSE was filed by *RSIPL* after the execution of sale agreements. I also note that the said approval application was rejected by NSE as *Noticee no. 1* had not obtained Single SEBI registration certificate. As observed above, during the present proceedings no reply has been filed before me on behalf of the *Company* i.e. the stock broker. It is only the *Noticee no. 2* and 3 that have filed their respective replies and have advanced their counter agreement in their defense. From a close scrutiny of their written replies, it is observed that neither of these two *Noticees* has bothered to give



any straight forward answer to the above allegation. Rather, under the garb of shifting the liability and accountability on to each other, *Noticee no. 2* has claimed that the actual control had already been transferred to the other *Noticee* (*Noticee no. 3*) as per the agreement, whereas the other one (*Noticee no. 3*) has claimed that the effective control was never transferred to him and was rather retained with the *Noticee no. 2* and his family. Irrespective of the above submissions, it is pertinent to record here that this is a quasi-judicial proceeding before me, which is confined to examine and adjudicate upon the question as to whether the acts of the *Noticees* are in violation of provisions of the securities law. By no stretch, the scope of the instant proceedings could be extended to decide the controversy and dispute arising between the two individuals about who actually was in control of *RSIPL* and that too arising out of an agreement entered into by them. Coming back to the present issue, it is observed that the above noted SEBI circular dated August 02, 2011, in specific terms provides for obtaining prior approval of the stock exchange before the control of the Registered Stock Broker is changed. Therefore, the liability of taking prior approval from the stock exchange before effecting any change in control of *RSIPL* was on *Noticee no. 2* who was the existing dominant Promoter and Shareholder. Similarly, *Noticee no. 3* should have ensured in his own interest to have in place the prior approval from the stock exchange regarding change in control before acquiring the control in *RSIPL* so as to ensure compliance with the law by *RSIPL* prior to his taking over its control. However, both the aforesaid *Noticees* have failed to ensure such compliances. Considering the above and the fact that there is no denial or contention to contest the aforesaid allegation, it can be reasonably held that by not taking prior approval from the stock exchange for effecting a change in control, *RSIPL* has violated the provisions of SEBI Circular no. CIR/MIRSD/14/2011 dated August 02, 2011.

### **Allegation 5**

#### **RSIPL has not taken prior approval for appointment of Directors from the Exchange**

58. SCN has also alleged that *RSIPL* has not obtained prior approval from the stock exchange for change in appointment of its Director. On verification of records of

Ministry of Corporate Affairs (MCA), it was observed that *RSIPL* has appointed Mr. Bimal Prakash Aggarwal as one of its Director on October 1, 2018, however no prior approval/ intimation was obtained from exchange in this regard. In this regard, it is pertinent to refer to SEBI Circular no. CIR/MIRSD/2/2011 dated June 03, 2011, which inter alia, provides that:

*“The stock exchanges will continue to grant prior approval to their members and sub-brokers for change in status or constitution, which would include the following;*

*(a) in case of a body corporate – (i) amalgamation, demerger, consolidation or any other kind of corporate restructuring falling within the scope of section 391 of the Companies Act, 1956 (1 of 1956) or the corresponding provision of any other law for the time being in force; (ii) change in its managing director, whole-time director or director appointed in compliance with clause (v) of sub-rule (4A) of rule 8 of the Securities Contracts (Regulation) Rules, 1957; and (iii) any change in control over the body corporate;*

*.....”*

59. From the aforesaid, I note that aforementioned SEBI Circular no. CIR/MIRSD/2/2011 dated June 03, 2011 lays down a regulatory requirement upon a registered stock broker to seek a prior approval from stock exchange, if there is any change in the directorship of the stock broker. However, the records before me suggest that no prior approval from NSE was taken by *RSIPL*. I also note that no submission has been put forth by the *Noticees* to counter the aforesaid allegation. In view of the above, I find no hesitation in reiterating my above finding that aforesaid inaction on the part of *RSIPL* to take prior approval from stock exchange for appointment of a director, has violated the provisions of SEBI Circular no. CIR/MIRSD/2/2011 dated June 03, 2011.

**Issue 2: Whether the Directors of RSIPL, viz. Noticees no. 2 to 5 can be held liable for the violations committed by the RSIPL?**

60. As stated earlier, the SCN proceeds on alleging that the *Company* i.e. RSIPL has acted in violation of the various provisions of laws and circulars as stated in the SCN. Having examined the same in the light of the materials available on records, I have recorded my observations with respect to those allegations and found that evidence is sufficient to bring home the allegations against the *Noticee no. 1*. Having observed the same, now I proceed to examine as to whether or not, the afore noted *Noticees* i.e. (*Noticees no. 2 to 5*), who were Directors of RSIPL during the relevant period can be held liable for the contravention committed by RSIPL. Before proceeding further, it is pertinent to have a look at the details of period of directorship enjoyed by the above *Noticees no. 2 to 5* and the same is tabulated below:

**Table - 14**

Name	Designation	Date of appointment	Date of Cessation*
Mr. Gangaram Khandelwal	Executive Director	June 16, 2009	-
Mr. Amit Sharma	Executive Director	April 08, 2016	-
Mr. Sandesh Khandelwal	Executive Director	June 22, 2009	September 27, 2018
Mr. Dhruvesh Patel	Executive Director	May 12, 2017	September 27, 2018

\*as per MCA records dated September 27, 2022

61. It can be noted from above that the inspection period broadly pertains to the period commencing from April 2016 and ending in August 2019. A preliminary look at the period of the directorship as mentioned in the above table shows that all the four *Noticees* i.e. *Noticees no. 2 to 5* were part of the *Company* during the relevant period during which, the alleged activities were undertaken. However, the respective *Noticees* have advanced their own justification in response to the alleged acts attributed to them, hence, it becomes imperative to have consideration to those

justifications before adjudicating the matter and accordingly, I proceed to deal with the contentions of these *Notices* in the subsequent paragraphs of this Order.

*Noticee no. 2*

62. The *Noticee no. 2* has submitted that he \and his wife were approached by *Noticee no. 3* with a proposal for taking over the management and affairs of the *Company*. Accordingly, subsequent to signing of a Preliminary Agreement and Indemnity Arrangement, the management and control of the *Company* was handed over by *Noticee no. 2* and his wife to *Noticee no. 3* with effect from April 01, 2016. He has further submitted that the allegations in the SCN pertain to the time when *Noticee no. 3* had taken complete charge of the *Company* and was involved in day-to-day management of the *Company*. He has further submitted that till the payment consideration was made by the *Noticee no. 3* for the acquisition of shareholdings of the *Company*, *Noticee no. 2* continued to be the Director of the *Company* without participating in the day-today affairs of the *Company*. At that point of time, *Noticee no. 3* had already become the Designated, Dominant Promoter Group Shareholder and Compliance Officer of the *Company*.

63. Before I deal with the aforesaid contentions of *Noticee no. 2*, it is important to highlight the detail of payments agreed to be paid by *Noticee no. 3* for acquisition of stake in *RSIPL*. As per the two Agreements (Preliminary Agreement and Indemnity Arrangement) and schedule of transfer of shareholding from *Noticee no. 2* and his wife to *Noticee no. 3*, the details of the payment schedule stipulated therein are tabulated below:

**Table - 15**

Sr. No.	Date	Cheque No	Amount (in ₹)	Name of the Bank which cheque drawn	Drawers Name	Beneficiary Name
1	08.02.2016	84370	31,00,000/-	ICICI Bank Ltd	Steps Ahead Broking Pvt Ltd	Raghukul Shares India Private Limited ICD (refundable after receiving the payment as given at Sr. No 2 & 3
2	10.03.2016	84371	50,00,000/-	ICICI Bank Ltd	Steps Ahead Broking Pvt Ltd	Seema Khandelwal towards advance for acquisition of shares.
3	10.03.2016	84371	31,00,000/-	ICICI Bank Ltd	Steps Ahead Broking Pvt Ltd	Seema Khandelwal towards advance for acquisition of shares.
4	30.04.2016		30,00,000/-			Through cheque in favour of Shri Gangaram Khandelwal / Smt. Seema Khandelwal towards advance for acquisition of shares.
5	30.05.2016		30,00,000/-			
6	30.06.2016		25,00,000/-			
7	31.07.2026		20,00,000/-			
8	31.08.2016		20,00,000/-			
9	30.09.2016		20,00,000/-			
10	28.02.2017		Balance amount of Deposit as on 31.03.2016			

64. I note that the first payment for acquisition of shareholding of *RSIPL* by *Noticee no. 3* was initiated on 08.02.2016 and the last payment was supposed to be paid on February 28, 2017. Further, the Preliminary Agreement dated February 06, 2015 executed between *Noticees no. 2* and *3*, also states, *inter alia*, the manner in which shareholding of *RSIPL* would be transferred from *Noticee no. 2* and his wife to the buyers, details of which are tabulated below:

**Table - 16**

<b>Sr. No.</b>	<b>Date</b>	<b>Total number of shares available for Transfer</b>	<b>Name of the Shareholder to whom shares will be available for transfer</b>
1	30.09.2016	70%	Amit Sharma & Their Relative / associates etc.
2	30.09.2016	20%	Dr. Ram Lakhan Disania & their relative / associates etc.
3	28.02.2017	5%	Amit Sharma & Their Relative / associates etc.
4	28.02.2017	5%	Dr Ram Lakhan Disania & their relative / associates etc.
<i>The transfer of shares may take effect earlier as decided if payment due till 30.09.2016 paid earlier.</i>			

65. I note from the aforesaid tables that as per the Preliminary Agreement, the buyers (*Noticee no. 3* and his associates) had to make the payment of the purchase consideration to the sellers (*Noticee no. 2* and his wife) till September 30, 2016 in various tranches and post completion of payment by September 30, 2016, shares were to be transferred to the *Noticee no. 3* and his associates starting from September 30, 2016 onwards. It is important to reiterate that the allegations in the SCN pertain to the Inspection Period i.e. from April, 2016 to August, 2019. From the aforesaid records, it is clearly evident that the *Noticee no. 2* alongwith his wife was holding 100% shareholding / control of *RSIPL* till September 30, 2016 which falls within the Inspection period and hence, the argument of *Noticee no. 2* that he already handed over the complete control of *RSIPL* to the *Noticee no. 3* before April 01, 2016 is factually not correct in terms of the very agreement signed by him with *Noticee no. 3* and the

above *Noticee no. 2* has also failed to bring in sufficient evidence in support of his submission that the entire holding in the *Noticee no. 1* and control thereof, was transferred to incoming shareholders well before April 01, 2016 and he had ceased to have association with it in any manner . In fact, on a perusal of application dated August 03, 2017 submitted by *RSIPL* to NSE seeking NOC for change in control, I note that *Noticee no. 2* was still shown as a shareholder holding 51% (224043 shares) of shares of *RSIPL* as on August 03, 2017, while *Noticee no. 3* was holding 49% (215257 shares) of shares of *RSIPL* on the said date of application. Furthermore, even as per the Preliminary Agreement, the complete shareholding was to be transferred on February 28, 2017.

66. Interestingly, the *Noticee no. 2* has further contended that in terms of Section 164 (2) of the Companies Act, 2013 he was disqualified for being a Director of any company for a period of 5 years with effect from November 01, 2016 which remained in force to October 31, 2021. The SCN has not taken cognizance of the fact that the *Noticee no. 2* was already disqualified to continue as a Director of the *Company*, hence, considering him as a bonafide Director in *RSIPL* during such period is patently wrong. Having gone through the record, I am of the view that the above contention of *Noticee no. 2* cannot be accepted for the reason that the disqualification under Section 164(2) of the Companies Act, 2013 *prima facie* appears to be related with his eligibility for re appointment as a director or new appointment in any other company and may not apply to existing directorships. In addition to the above, it is also observed that the argument advanced by the *Noticee no. 2* can't be accepted in equity as well as in law. It is one of the cardinal principle that one who seeks equity and parity must approach with clean hands. The *Noticee no. 2* contends that he was disqualified to be a director of *Company* in effect from November 01, 2016, however, despite being aware of the same for reasons best known to him, he has preferred to continue as a director of the *Noticee no. 1* till September 27, 2018 (even assuming that he resigned on September 27, 2018). Before proceeding further, it is essential to reiterate that the allegations against the *Noticee no. 1* are quite varied having serious ramifications viz; segregation of clients' securities; failure to maintain proper records

of collateral deposited by clients; failure to settle clients' accounts on quarterly / monthly basis; failure to maintain of ROS Holding Statement; misappropriation of securities of its clients and mis-reporting of the data under the enhanced supervision mechanism to the stock exchange. The *Noticee no. 2*, who is a founder Director of the *Noticee no. 1* has not thought it fit to make submission on merit, refuting with independently verifiable evidence, to prove that no such contraventions were made during his period or he has taken all possible steps to prevent the occurrence of the alleged contraventions. He has also failed to bring any evidence to show that the alleged contraventions were done without his knowledge or that he had exercised minimum due diligence to prevent the commission of such contravention. I further observe that there are allegations of not taking prior approval from the stock exchange for effecting change in control while the *Noticee no. 2* was very much occupying the post of Director and was also a majority shareholder, holding 51% of *RSIPL* and it was he who was transferring the control to the *Noticee no. 3* and therefore, it was incumbent upon him to take prior approval from the stock exchange. However, as observed above, no steps were taken to obtain prior approval from the concerned stock exchange, rather, the agreement was claimed to have been entered into without seeking the NOC.

67. It is further noted that the *Noticee no. 2* has submitted that he has resigned from the company on September 27, 2018. In this regard, I note that the record of MCA does not reflect any date of resignation of *Noticee no. 2*. In the absence of the same, even assuming September 27, 2018 as the date of his resignation, I note that the period covered under inspection was from April 01, 2016 to April 10, 2019 and *Noticee no. 2* was on the Board of Directors of *RSIPL* for two and a half years during the period covered under inspection during which, *RSIPL* has been found to have committed the above discussed violations which need no further reiteration. Under the circumstances, in my considered view, the *Noticee no. 2* has failed to make out a case for his exoneration from the outcome of the instant proceedings.



68. I further note that the *Noticee no. 2* has referred to the various judicial observations of Hon'ble SAT in the matters such as *Rahul Shah vs. SEBI*, *Radhavallabh Dhoot vs. SEBI*, *Sayanti Sen vs. SEBI*, etc. After perusal of the said decisions, I note that the facts of the matters referred to above are completely distinguishable from the facts in the present proceedings. For instance, in the matter of *Sayanti Sen (supra)*, the allegations against the company wherein the appellant was a director, were pertaining to public issue of securities without complying with the provisions of Companies Act, 1956 and relevant securities law and the Hon'ble Tribunal held that a Director can be held liable for the acts of the company when he / she is involved in the day-to-day affairs of the company. However, the instant matter includes the case of misconduct on the part of a stock broker which, *inter alia*, includes misappropriation and misuse of clients' securities and funds when the *Noticee no. 2* was the Executive Director and promoter shareholder of the said stock broker during the relevant time period. Therefore, the reliance of the *Noticee no. 2* on the afore-cited cases is of no use and hence the same does not require any further consideration.

69. I note that the *Noticee no. 2* has referred to the order passed by SEBI on May 17, 2019 in the matter of *Allied Financial Services Private Limited* and has submitted that SEBI has given relief to the erstwhile promoters and directors of the company who had given management control to the new promoters. After perusing the aforesaid order, I note that the facts of the above referred case and the instant proceedings are completely different. In the above referred matter, it was noted by SEBI that the violations happened during the period from 01/05/2017 to 31/01/2019 and the effective date of resignation of some of the directors of Allied Financial Services Private Limited was prior to the period of allegations. It was further recorded by SEBI that there was a delay in filing the FORM DIR- 12 with MCA for cessation of directorship of such directors. Accordingly, SEBI took a view to favourably dispose of proceedings against such directors. However, in the instant matter, it has already been established that even after assuming September 27, 2018 as the date when the *Noticee no. 2* had resigned from the Directorship of *RSIPL*, there are still sufficient materials to hold him accountable for the alleged contraventions committed by *RSIPL*.

as narrated in the SCN. Therefore, reliance placed by the *Noticee no. 2* on the findings of SEBI in the matter of *Allied Financial Services Private Limited* is patently irrelevant and does not require any consideration.

*Noticee no. 3*

70. With regard to the role of *Noticee no. 3*, I note that apart from being the Executive Director of *RSIPL* during the Inspection period, he also claimed to be the Dominant Promoter Shareholder of *RSIPL* during certain period of the inspection period. I note that *Noticee no. 3* has submitted that despite the payment of the requisite amount to *Noticee no. 2* and his wife as purchase consideration of shareholding of *RSIPL*, it was *Noticee no. 2* who was managing the affairs of the business of the *Company* during the Inspection period and the full control of the business was never transferred to *Noticee no. 3*. The *Noticee no. 3* has further contended that since prior approval for change in control was not taken by *RSIPL*, he cannot be held responsible for the acts of *RSIPL*. In this regard, I note from the application submitted to NSE for seeking NOC for change in control that the same was signed by *Noticee no. 3* and *Noticee no. 5*. It is observed that on the one hand, the *Noticee no. 3* is claiming that since prior approval of NSE was not sought for effecting change in control in *RSIPL* he cannot be held liable for the wrongdoings in *RSIPL* while on the other hand, he himself is seen to have filed the said application for approval to NSE. Therefore, the aforesaid argument of the *Noticee no. 3* is nothing but a frivolous attempt to shift all the blame on to the *Noticee no.2*.

71. He has further submitted that *Noticee no. 2* and his family members continued to be authorized to transfer unlimited funds from the bank accounts of *RSIPL* held with HDFC bank whereas, he was eligible to sign on instruments of value upto INR 5 lakhs only. Further, for online fund transfer from the bank account of *RSIPL* there were two login IDs issued in the name of *Noticee no. 2* and all the online transactions were executed through these IDs. I note that during the personal hearing before me, the aforesaid contentions were raised by the *Noticee no. 3* and since he had not filed any reply till that time, he was asked to submit his detailed reply alongwith the

evidences in this regard, however, despite having granting sufficient time for filing a detailed reply on the basis of the aforesaid contentions raised by him during the personal hearing, it is observed that no such detailed written submission has been filed till date, though *Noticee no. 3* vide email dated October 25, 202 had sought extension of time to file a reply. On the contrary, from the records I note that with respect to various acts of *RSIPL* which have been held to be committed in violation of securities law, *Noticee no. 3* or his related entity were found to be parties to such acts. For instance, I have already held that through *RSIPL*, securities worth ₹10.43 crores were cumulatively sold by Swastik Services (wherein *Noticee no. 3* is a partner) and Step Broking (wherein *Noticee no. 3* is a Director) without actually possessing such securities. Similarly, during the tenure of *Noticee no. 3* as Executive Director of *RSIPL*, excess funds to the tune of ₹19.45 crores were transferred by *RSIPL* to Swastik Services. In fact, during the Inspection Period, excess funds to the tune of ₹1.49 crores were transferred by *RSIPL* to *Noticee no. 3*, who was also a client of *RSIPL*. Therefore, considering the above facts, which are not disputed by the *Noticee no. 3*, it leads to an unassailable conclusion that he was very much involved in misconducts and wrongdoings in *RSIPL* during the Inspection Period.

72. Another contention of the *Noticee no. 3* is that he has lodged an FIR against *Noticee no. 2* as he did not pass on the control of the *Company* to him as per the agreement signed between them. It is important to note here that the Agreements (Preliminary and Indemnity) that were signed between *Noticee no. 2* and *Noticee no. 3* were commercial in nature and under any such transactions, any of the party can approach appropriate judicial bodies and the scope and power of the instant proceedings cannot be utilized to adjudicate upon such commercial dispute arising out of an agreement entered into between two individual. It has been noted above that *Noticee no. 3* has become a Director of the *Noticee no. 1* w.e.f April 08, 2016 and continued to be a Director till date. All the alleged contraventions took place during the period when he was a Director for which, no denial has been put forward by him with any cogent evidence to refute those alleged contraventions committed at *RSIPL*. Under the circumstances, frivolous excuses viz. alleged cheating and fraud by the

*Noticee no. 2* shall be of no help to him in getting exoneration from the outcome of the instant proceedings. At this juncture, I would like to refer to the observations of Hon'ble SAT in the matter of *M/s. Transgene Biotech Ltd vs. SEBI (Appeal No. 599 of 2019, Date of Decision: 11.02.2020)*, wherein the Hon'ble Tribunal while dealing with almost similar contention made the following observations:

*"5 ..... "The contention that the first information report has been lodged against Mr. Nirmal Kotecha cannot be a ground to mitigate the direct involvement of the appellant in the fraudulent scheme and diversion of the proceeds through two other entities."*

Therefore, the aforesaid contention of *Noticee no. 3* regarding filing an FIR against *Noticee no. 2* is of no merit and hence does not require any consideration.

73. In my considered view, *Noticee no. 3* has acted in a very irresponsible, callous and a pre-meditated manner on its own clients. Under no circumstances, any unauthorised transfer of shares from the demat account of the clients to the accounts of the *related entities* and selling those securities and mis-appropriating the proceeds can be undertaken without the knowledge of *Noticee no. 3*. Further, transactions which were illegal in nature were carried out through entities where the *Noticee no. 3* had control and was also a beneficiary. Since, *Noticee no. 3*, apart from being Designated, Dominant Promoter Group Shareholder, was also Executive Director and Compliance Officer of the *Company* I am constrained to hold that he has committed gross breaches of regulations and instructions issued by SEBI in the matter of mis-reporting and non-reporting of information under the enhanced supervision framework, in manipulating the bank books and bank statements, misappropriating the proceeds of the shares of the clients without their consent. All the acts of irregularities and misconduct have been demonstrated with the support of factual information as brought out in detail in the NSE Report and have been found to be established, as alleged in the SCN in the preceding paragraphs of this Order.

Noticee no. 4

74. It is noted that *Noticee no. 4* has made some submissions identical to what have been submitted by *Noticee no. 2*. Therefore, for the sake of brevity, such submissions are not dealt herewith again. In addition to those identical submissions, I note that he has submitted that he was made a Director of the *Company* only at the insistence of *Noticee no. 2* (his Paternal uncle) and subsequent to the sale of shareholding by promoters of the *Company*, he was requested to continue as a Director for some more time for name sake purposes only i.e. without participating in the decision making or the functioning of the Board of the *Company*. He has further referred to the provisions of Section 167 (1) (b) of the Companies Act, 2013 which states that a director is deemed to have vacated his office, if he does not attend any board meeting of the company in the last 12 months and since, he did not attend any Board meeting of the *Company* since the execution of the Indemnity Agreement dated February 04, 2016, he had ceased to exist as Director of the *Company* and therefore cannot be held liable for the wrongdoings of the *Company*.

75. I note that *Noticee no. 4* has not disputed his being an Executive Director of *RSIPL* during the Inspection Period. He has admitted that he was made Director in the *Company* by his uncle i.e. *Noticee no. 2*. Regarding the contention that as he has not attended any Board meeting of *RSIPL* after February 04, 2016 and accordingly *ipso facto* had ceased to be a Director after one year, I note that this contention is misplaced as no allegation is made on the *Noticee* for not attending Board meeting of the *Company* and from the records available before me it shows that no AGM in *RSIPL* was conducted after March 31, 2016. Further, it is also an admitted fact that he resigned from the Directorship of the *Company* on September 27, 2018. Nevertheless, even if the argument of the *Noticee* that he ceased to be Director of the *Company* from September 27, 2018 in light of Section 167 (1) (b) of the Companies Act, 2013, is considered for the time being, I cannot lose the sight of the fact that the aforesaid tenure of *Noticee no. 4* falls well within the Inspection Period in which the violations were committed by *RSIPL* and therefore *Noticee no. 4* being the Executive Director of

the *Company* during the Inspection Period is statutorily also liable for the violations committed by the *Company* as he has knowingly failed to take action or act diligently to prevent the commission of such contravention.

76. Regarding the contention about exonerating one Director of the *Company* namely Mr. Siya Ram Khandelwal in the SCN it is pertinent to mention here that the aforesaid Director Mr. Siya Ram Khandelwal was acting as a Non-Executive Director and was not involved in day-to-day activities of *RSIPL*, hence, benefit of exoneration was given to him in the 2<sup>nd</sup> Confirmatory Order, which is not the case with *Noticee no. 4*, who was admittedly an Executive Director of *RSIPL* during the Inspection Period and undisputedly was acting in coordination with the *Noticee no. 2*.

77. In view of the above and considering the fact that the *Noticee no. 4* was a Director of the *Company* since June 22, 2009 and was an Executive Director of the *Company* during the Inspection Period, he cannot absolve himself from the responsibility regarding the functioning of *RSIPL* and violations committed by *RSIPL*.

#### *Noticee no. 5*

78. I note that *Noticee no. 5* was also an Executive Director of *RSIPL* from May 12, 2017 to September 27, 2018.i. for a period of one year and four months during the period covered under inspection. He has submitted that his designation in the *Company* was a Designated Director, however, he was merely an employee of the *Company*. He had no control over managing affairs of the *Company*. In this regard, he has submitted an affidavit dated April 20, 2017 signed by *Noticee no. 3* confirming that *Noticee no. 5* has been appointed as a Designated Director of the *Company* at monthly salary of INR 25,000/- and *Noticee no. 5* shall not be responsible for the regular affairs of the *Company*.

79. I have perused the submissions of the *Noticee no. 5*. I note that grave instances of misconduct, such as transfer of clients' funds to connected entities, sale of securities belonging to other clients from the account of connected entities, transferring of

clients' funds to other clients, etc. are found to have been committed by *RSIPL* during the time when the *Noticee no. 5* was an Executive Director of *RSIPL*. Further, he has not disputed that he was not a Director of Company during the relevant time. Therefore, as an Executive Director, he has to be treated at par with other *Noticee* Directors and has to be held responsible for the violations committed by *RSIPL* during his tenure as an Executive Director of *RSIPL*. At the same time, I also cannot ignore the affirmation made by *Noticee no. 3* regarding the non-active role of *Noticee no. 5* in the affairs of the *Company* and have to consider the same along with the materials on record pertaining his involvement in the managing the affairs and conduct of the *Noticee no. 1* as available before me, while considering issuance of possible directions against the *Noticee no. 5*.

80. I further note that some of the *Noticee* Directors have relied upon various judicial decisions to argue that a director of a company shall not be held liable for the contraventions of the company unless the said contravention is committed by the company with the knowledge, connivance or gross negligence of the director concerned. Further, it has also been contended by some of the *Noticees* that they are called upon to show cause without making any specific allegation against them and without showing their involvement in the management of affairs of the *Company*. In this regard, I note that the *Noticees no. 2 to 5* have been impleaded being a Director of *RSIPL* and have been allegedly held responsible as they were apparently in charge of and responsible for the conduct of the business of the *Company (RSIPL)*. It is a settled principle of law that, though a company is a separate and distinct legal entity and it has no mind of its own, it acts and performs its duties through the Board of Directors which is the repository of wisdom and knowledge and has decision taking abilities to govern the affairs of the company in the manner it likes, unless another person is alternatively specifically entrusted or delegated by the Board to perform all such work/duties on behalf of the Board. In common parlance, 'corporate liability' or the liability of the corporations is governed by the principles either flowing specifically from statutes and/or from judicial pronouncements. Dealing with liability of a Director or a person in charge of managing the affaire of a company, the Hon'ble

Supreme Court of India in the matter of *Sunil Bharti Mittal v. Central Bureau of Investigation* (2014) 4 SCC 609 has held as follows:

“42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction.”

81. From the above, it is clear that where a statute provides for the doctrine of vicarious liability, by specifically incorporating such a provision, the liability of a Director, manager or person in charge would have to be determined by such deeming fiction. In this respect, it is noted that similar to Section 141 of the Negotiable



Instruments Act, Section 27 of the *SEBI Act, 1992* also, *inter alia*, fastens persons who are in charge of or responsible for the conduct of business of a company with vicarious liability for the contraventions of the provisions of the *SEBI Act, 1992* and regulations made thereunder. On a plain reading of the said provision under Section 27 of the *SEBI Act, 1992*, it can be understood that if a person which commits any violation happens to be a company, the company as well as every person in charge of and responsible for the affairs of such company at the time of the alleged commission of violation, shall be deemed to be guilty of the said violation of provisions of law, rules and regulations as alleged against them. Having gone through the relevant provisions of law which fasten vicarious liability on a Director of a company who was at the helms of affairs at the time of commission of the said alleged wrongdoing, I have observed above that the *Notices no. 2* and *3* have played a pivotal role and were instrumentally involved in managing the day to day affairs of the *Notices no. 1*. Further, the *Notices no. 4* knowingly became a director of the *Notices no. 1* and continued to be a Director for a good long period of more than 9 years. He has further submitted that he was made a director by his uncle i.e. the *Notices no. 2* under whose instruction, he agreed to remain associated with the *Notices no. 1* till his resignation on September 27, 2018. He has also not brought before me any evidence to substantiate his claim that he was not very active and acted under the shadow of the *Notices no. 2* so as to demonstrate his plea that the alleged contraventions occurred without his knowledge or that he has taken all steps possible to prevent the occurrence of such contraventions. The *Notices no. 5* though has not denied his being a Director of *RSIPL* during a part of the relevant period of time, however, has submitted that he was merely an employee of the *Notices no. 1* and was never associated with the *Notices no. 1* in managing its affairs and the above fact has also been confirmed by the *Notices no. 3*. It is also observed that neither of these two *Notices directors (Notices no. 4 and 5)* has made any submission contrary to the above or to prove their ignorance or innocence in the matter. Notwithstanding the same, the fact remains that he was a director of *RSIPL* for a brief period of time during which, the afore discussed contraventions took place which can't be ignored apart from the

fact that he is also under restraint order imposed on him vide the *Interim Order* passed in the matter. Therefore, in my view all these *Noticee* Directors (*Noticees no. 2 to 5*) being the Executive Directors of *RSIPL* cannot escape from their liability.

82. It is an established principle of law that Directors of a company have a fiduciary relationship with the company. It is on this principle that the duties and responsibilities of a Director have evolved over the years which are crystallised in Section 166 of the Companies Act, 2013. One of the foremost duties of a Director is exercising due diligence and care in managing the affairs of the company. It is important to note that the consideration of the liability of Directors, especially Executive Directors/ Whole time Directors has to be tested on the touchstone of the aforesaid statutory responsibilities. In this regard, reliance is placed on the case of *Re. City Equitable Fire Equitable Fire Insurance Co. (1925)*, which states,

*“If directors act within their powers, if they act with such care as is reasonable expected of them having regard to their knowledge and experience and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as legal duty to the company.”*

83. Thus, for a Director to discharge his duty towards the company he must (a) act with such care as is reasonably expected of him/her considering his/her knowledge and experience and (b) act honestly for the benefit of the company. In the present case, *Noticees no. 2 to 5* were Executive Directors in *RSIPL* during the Inspection Period, however in my view, they have clearly not acted with the due-diligence and care that is required from a Director. In this regard, it would be relevant to place reliance on the decision of the Hon’ble Supreme Court in the matter of *Official Liquidator v. P.A.Tendolkar*, [(1973)1SCC602], referred to in the case of *N.Narayanan Vs. Adjudicating Officer, SEBI*, [AIR2013SC3191], wherein the Hon’ble Supreme Court held that *“It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so 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 the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so, he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.” (emphasis supplied)

84. In view of the above, there cannot be two opinions that these *Noticees* i.e. *Noticees no. 2 to 5*, being the Executive Directors of *RSIPL* are undeniably liable for the violations as alleged in the SCN.

85. Before parting with the proceedings, I must note here that an entity which is granted registration as an intermediary plays a crucial role in bridging the gap between the investment platforms such as stock exchanges and the investors. Its role is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of *SEBI Act, 1992* is the protection of interest of investors apart from promotion and development of the securities market, the legislature through enactment, empowers SEBI to grant registration to several classes of entities including stock brokers, depository participants, etc. which are not only required to act as an intermediary simpliciter i.e., a bridge or a connector between regulator and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors, as any deviation from the above noted objective could have a cascading adverse impact on the development of the securities market. In the present case, the *Noticee no. 1 (RSIPL)* who, being a registered intermediary, was very much expected to stay compliant with all the directives of SEBI, both in letter and spirit, however, it has violated SEBI’s regulations and

instructions by misappropriating and misusing its clients' securities and diverting their funds. I have also held in detail in this Order that *Notices no. 2 to 5*, being the Executive Directors are liable for such violations committed by the *Company*. Thus, undisputedly *Noticee no. 1* and its Directors viz. *Notices no. 2 to 5* were obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the securities market, however, they have clearly failed to do so.

### **Directions**

86. Based on the above, I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B (1) and 11D, hereby pass the following directions:

- a) The *Notices*, as listed in the table below, are hereby restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner:

**Table - 17**

<i>Noticee no.</i>	<i>Name of the Noticee</i>	<i>Whether debarred by the Interim Order / 2<sup>nd</sup> Confirmatory Order or not ?</i>	<i>Period of Debarment</i>
1	Raghukul Shares India Private Limited	Yes	7 years
2	Gangaram Khandelwal	Yes	7 years
3	Amit Sharma	Yes	7 years
4	Sandesh Khandelwal	Yes	5 years

- b) It is clarified that while calculating the period of debarment as directed above, the period already undergone by the respective *Notices*, in pursuance of the *Interim Order / Confirmatory Order 2* shall be taken into

consideration and the same shall be set-off to give effect to the directions of restraint and prohibition, as directed above

- c) It is further clarified that during the period of restraint the existing holding of securities of the *Notices*, including the units of mutual funds, shall remain under freeze.
- d) *Noticee no. 5* (Dhruvesh Patel) has already undergone restraint and debarment from securities market for more than 3 years. Hence, in the given facts and circumstances peculiar to his matter as discussed in the Order the same is considered to be appropriate and no further directions needs to be passed against him. Therefore, the directions issued under paragraph 21 of the *2<sup>nd</sup> Confirmatory Order* so far as it relates to *Noticee no. 5*, shall stand vacated. Further, *Noticee no. 5* is cautioned and directed to be careful before associating himself as a Director in any intermediary of the securities market.
- e) Further, *Noticee no. 2* and *3* shall also be restrained from holding any position of Director or Key Managerial Personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for the respective periods as provided in the table no. 17 above.
- f) *Notices No. 1* and *3* shall, jointly and severally, be liable to repay / refund the investors / clients' money with an interest of 15 % per annum from the date when the repayment became due, till the date of actual repayment, under the supervision of NSE.
- g) *Notices No. 1* and *3* shall, jointly and severally, be liable to return the securities due to the clients / investors of *RSIPL* or their monetary value as on the date of actual payment of money in lieu of shares, under the supervision of NSE.

- h) *Notices No. 1 and 3* shall not dispose of or alienate any of their assets, whether movable or immovable (including funds in their bank accounts), or create any interest or charge in any such assets, till such time the refunds / repayments as directed at sub-paragraph (f) and (g) above are completed.
- i) The Banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by *Notices No. 1 and 3*, except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).
- j) Since *RSIPL* was active on NSE, NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat accounts of *RSIPL* shall be transferred.
- k) The NSE Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of *RSIPL (Notice no. 1)* and Mr. Amit Sharma (*Notice no. 3*) shall be transferred.
- l) The modalities of selling the assets, depositing the proceeds thereof in the Escrow Account(s) opened in accordance with the directions contained in sub-paragraph (j) and (k) above and disbursing the amounts to the clients / investors after verifying the claims shall be worked out by NSE. NSE shall have a lien on the remaining amount, if any, lying in the Escrow Account(s), after satisfying the claims of the investors/clients. The lien shall be up to the extent of total money disbursed by the Exchanges out of their IPF accounts to the clients/investors of *RSIPL*.
- m) NSE shall deal with the claims of its clients / investors in accordance with their respective bye-laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism.

n) NSE for *Notices No. 1* and 3 shall proceed with the recovery of funds and securities from the assets of respective *Notices* to cover any shortfall in funds and securities in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.

87. The above directions shall come into force with immediate effect.

88. A copy of this order shall be served upon the *Notices* immediately. A copy shall be served on the recognised Stock Exchanges, Banks, Registrar and Transfer Agents and Depositories for necessary action.

DATE: MAY 31, 2023

PLACE: MUMBAI

Sd/-

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA