WTM/ SM/20/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under regulations 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of

KORP SECURITIES LIMITED

Member, BSE (Reg. no.- INB011298339)
Member, NSE (Reg. no.- INE231298333
PAN- AACCK1771D

In the matter of Beejay Investment & Financial Consultants Private Limited

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1. The present proceeding is emanating from the Enquiry Report dated December 28, 2018, submitted in terms of Regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "**the Intermediaries Regulations**"), wherein the Designated Authority (hereinafter referred to as "**DA**"), based on various factual findings so recorded in the said Enquiry Report, has recommended that the certificate of Korp Securities limited, (hereinafter referred to as **"the *Noticee*"**), a registered stock-broker be cancelled.

2. The aforesaid Enquiry Report was submitted pursuant to a proceeding initiated based on the findings of certain facts unearthed in the course of an investigation conducted by SEBI for the period of June 04, 2009 to November 14, 2012 (herein after referred to as **"the investigation period/ IP")**. It was *prima facie* observed in the aforesaid investigation that certain entities who were debarred from accessing the securities market by an order of SEBI dated June 04, 2009, were seen to be indirectly trading through certain other third-party entities, with whom directly or indirectly a connection was enjoyed by the *Noticee* indicating that it has, as a stock-broker facilitated execution of trades to such debarred entities. Accordingly, a Designated Authority (DA) was appointed to inquire into

and submit a report pertaining to the alleged violations if any, of the SEBI Orders (directions) and of the regulations 3(a),(b),(c),(d),4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'the **PFUTP Regulations'**) and Clause A(1), (2), & (5) of Code of Conduct for Stock Brokers under the Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "the **Stock Broker Regulations**"), committed by the *Noticee*.

3. The DA issued a Show Cause Notice dated September 27, 2018 to the *Noticee* under Regulation 25 of the Intermediaries asking the *Noticee* to show cause to why action be not taken under Regulation 28 of the Intermediaries Regulations. In response to the same a written response was filed by the *Noticee* to the DA vide letter dated November 22, 2018.

4. The background facts necessary for the present proceedings are narrated in brief, hereunder:

   i. The *Noticee,* Korp Securities Limited, is a stock-broker registered with SEBI and is/was a member of the National Stock Exchange of India Limited (NSEIL) and the BSE Ltd. (BSE).

   ii. An ex-parte *interim* order dated June 04, 2009 (hereinafter referred to as the "**said interim order**") was passed by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), and vide the said *interim* order, certain entities viz., Beejay Investment & Financial Consultants Private Limited (hereinafter referred to as "**Beejay**"), Mr. Sudhir Jain and Eversight Tradecomm Private Limited were restrained from accessing the securities market and were also prohibited from buying, selling or dealing in securities market directly or indirectly in any manner whatsoever. Vide a confirmatory order dated January 19, 2010, the directions passed vide the said *interim* order were confirmed with respect to Beejay and Mr. Sudhir Jain. Subsequently, vide another order dated November 15, 2012, while noting that Beejay and Mr. Sudhir have violated various provisions of the PFUTP Regulations, it was observed that the period of restraint of more than three years has already been undergone by the aforesaid

debarred entities and the same was seen as sufficient to meet the ends of justice, and accordingly, the proceedings that were initiated with imposition of restraint vide *interim* order dated June 04, 2009 and confirmed vide order dated January 19, 2010, were disposed of vide order dated November 15, 2012 *qua* the aforesaid two entities. Thus, effectively, Beejay remained under prohibition and restraint from accessing securities market, directly or indirectly, during the period of June 04, 2009 to November 14, 2012.

iii. It was however noticed in the investigation that the entities who were debarred vide the said *interim* order dated June 04, 2019, were in fact, indirectly trading in securities, through certain third-party entities viz., Divyadrishti Merchants Private Limited (hereinafter referred to as "**DDM**"), Divyadrishti Traders Private Limited (hereinafter referred to as "**DDT**") and Neelanchal Mercantile Private Limited (hereinafter referred to as **"Neelanchal"**). Some of the aforesaid entities were also noticed to be connected to the *Noticee* herein and also were also having fund transactions with the entities debarred vide the afore-noted *interim* order.

iv. It was also noticed that another set of entities connected to such debarred entities were acting as conduits to facilitate fund transfers from the debarred entities to the above-named third-party entities that facilitated trades for the debarred entities, through the *Noticee*.

v. The details of connections as revealed between the debarred entities and other entities including the *Noticees* and its Directors are enumerated hereunder:

Table no. 1

Name of the entity	**Connection Details**
Debarred Entities	
Beejay Investment & Financial Consultants Pvt. Ltd. <u>Directors</u> a. Mr. Sudhir Jain b. Mr. Rashmi Jain	Mr. Sudhir Jain, Director of Beejay, is a relative of Mr. Adish Jain & Mr. Peeyush Jain, Directors of Eversight. Mr. Sudhir Jain is the brother-in-law of Mr. Vicky Kothari, Director of Stupendors. Beejay purchased shares of Siddhi Commotrade Pvt. Ltd. & Corus Marketing Pvt. Ltd. which

	share common address (163B, M G Road, 3rd Floor Kolkata – 700 007) & common Director (Shri Debasis Mishra) with DDM & DDT
Entities facilitating trades of debarred entities	
Divya Drishti Merchants Pvt. Ltd. & Divya Drishti Traders Pvt. Ltd. 163B, M G Road, 3rd Floor Kolkata – 700 007 <u>Directors</u> a. Mr. Rajesh Kumar Agarwal b. Mr. Debasis Mishra c. Mr. Sukanta Chatterjee d. Mr. Kinkar Bhattacharya <u>Email id as per MCA website</u> korpsec@yahoo.co.in	DDM and DDT share common address & common Directors. Mr. Rajesh Kumar Agarwal is a brother of Mr. Sushil Kumar Agarwal, Director of Korp. **Common email id with the *Noticee.* (korpsec@yahoo.co.in)** Common address & Common Director (Mr. Debasis Mishra) with Siddhi Commotrade Pvt. Ltd. & Corus Marketing Pvt. Ltd. The shares of the said companies were purchased by Beejay from DDM. Directors of a shareholder of DDM (Anuj Realtors Pvt. Ltd.) were Mr. Anuj Agarwal (S/o Shri Sushil Kumar Agarwal) & Mrs. Meena Agarwal (w/o Shri Sushil Kumar Agarwal), Common Company Secretary (in whole-time practice) with Korp (Mr. Manoj Prasad Shaw).
Broker facilitating trades of the debarred entities	
Korp Securities Ltd <u>Directors</u> a. Mr. Sushil Kumar Agarwal b. Mr. Ashish Jain c. Mr. Rohit Mehta d. Mr. Anuj Agarwal <u>Email id as per MCA website</u> korpsec@yahoo.co.in	<u>Connection with DDM</u> • Common email id with DDM. • **Mr. Sushil Kumar Agarwal is the brother of Mr. Rajesh Kumar Agarwal, Director of DDM & DDT.** • Mr. Anuj Agarwal (s/o Mr. Sushil Kumar Agarwal) & Mrs. Meena Agarwal (w/o Mr. Sushil Kumar Agarwal) were Directors of Anuj Realtors Pvt. Ltd., a shareholder of DDM. • Mr. Bijay Kumar Poddar, currently compliance officer of Korp, was a Director of Greencorp Impex Ltd., a shareholder of DDM • Common Company Secretary (in whole-time practice) with DDM, viz. Shri Manoj Prasad Shaw

vi. It was also noticed that Beejay had purchased shares of certain unlisted companies from DDM, details of which are mentioned in the table below:

Table no. 2

Sr .No.	Date	Name of Security	Qty.	Amount (in INR)
1	30.11.2011	Siddhi Commotrade Pvt. Ltd.	5000	11,18,433
			1700	3,80,267
Total			**6700**	**14,98,700**
2	10.12.2011	Mukesh Trade & Finance Pvt. Ltd.	10000	1,20,000
			5000	60,000
			5000	60,000
			10000	1,20,000
Total			**30000**	**3,60,000**
3	02.03.2012	Corus Marketing Pvt Ltd.	4400	24,20,000
			1500	8,25,000
			3000	16,50,000
Total			**8900**	**48,95,000**
4	31.03.2012	Alpha Indecors Pvt. Ltd.	25000	2,23,75,000
Total			**25000**	**2,23,75,000**
Grand Total				**2,91,28,700**

vii. From the above, it is noted that Beejay was connected to entities viz., DDM and DDT, and further the said entities (DDM and DDT) were also connected to the *Noticee* through common email id, directorship and relationship amongst the Directors of the *Noticee* with the Directors of DDM & DDT.

viii. There were several fund transactions between DDM and Beejay aggregating to INR 24.29 Crore and out of that only INR 2.91 Crore was utilised towards acquisition of

shares of unlisted companies by Beejay from DDM during the period from September 01, 2011 to March 31, 2012.

ix. The bank account statement of Beejay reveals that during the period from September 02, 2011 to November 30, 2011 (which is the date of purchase of the shares of Siddhi Commotrade Pvt. Ltd. – Ref. table above), an amount of INR 5.90 Crore was transferred by Beejay to DDM and out of the said amount, DDM had returned an amount of INR 4.03 Crore to Beejay, whereas the cost of shares purchased from DDM by Beejay was only INR 14.98 Lakh with respect to the shares of Siddhi Commotrade Pvt. Ltd.

x. It was further noticed that out of the said amount of INR 5.90 Crore received from Beejay, a good portion thereof was immediately transferred by DDM to the *Noticee* broker, which was used for trading in securities. The details of such fund transfers are depicted in the following table:

Table no. 3 (Amount received and used by DDM)

Date	Particulars	Withdrawals (in INR)	Deposits (in INR)	Balance (in INR)	Dr. / Cr.
02-09-2011	Transfer from: Beejay Investment	0.00	85,00,000	85,13,727.15	Cr
02-09-2011	RTGS: Bhushan Powe Steel ltd. / punb	55,00,000	0.00	30,13,727.15	Dr
02-09-2011	Transfer from: Sangam Commodities	0.00	8,00,000	38,13,727.15	Cr
02-09-2011	Transfer to: Korp Secu	38,00,000	0.00	13,727.15	Dr
Total		93,00,000	93,00,000		

xi. The bank account statement of the *Noticee* (A/c No. 000605016720 with ICICI Bank), further reveals that the *Noticee,* upon receipt of an amount of INR 38 Lakh on September 02, 2011 had transferred the same to NSE on the same day itself to be used

for Cash Market Settlement. The *Noticee* had executed proprietary trades as well as trades on behalf of DDM on September 02, 2011. The investigation also noticed that the *Noticee* had also received INR 25 Lakh on September 02, 2011 and INR 24 Lakh on February 06, 2012 from Beejay, which were repaid subsequently by it.

xii. The relevant details of funds transaction observed, between Beejay and DDT and between DDT and the *Noticee* during the investigation are as under:

Table no. 4

Sr. No.	Transfer details	Amount (INR)	Amount (INR) in the bank account before such transfer	Date
1)	Beejay to DDT	17.50 Lakh	83,462.37	18.08.2011
2)	DDT to Korp	14.30 Lakh		18.08.2011
3)	Beejay to DDT	40 Lakh	8,330.44	11.10.2011
4)	DDT to Korp	15 Lakh		11.10.2011

xiii. Similarly the details of funds transferred between Beejay and DDM and between DDM and the *Noticee* as observed during the investigation are as under :-

Table no. 5

Sr. No.	Transfer details	Amount (INR)	Amount (INR) in the bank account before such transfer	Date
1)	Beejay to DDM	50 Lakh	13,727.15	26.08.2011
2)	DDM to Korp	45 Lakh		26.08.2011
3)	Beejay to DDM	30 Lakh	13,727.15	02.09.2011
4)	DDM to Korp	30 Lakh		02.09.2011
5)	Beejay to DDT	50 Lakh		22.10.2011
6)	DDT to DDM	50 Lakh 65 Lakh		22.10.2011
7)	DDM to Korp	75 Lakh 50 Lakh		22.10.2011

xiv. It was also noticed that that DDM had traded through the *Noticee* broker on September 02, 2011 on the BSE, whereas DDT had traded on October 12, 2011, through the *Noticee* broker on both the BSE and the NSEIL.

xv. During the investigation, DDM and DDT while explaining (vide letters dated May 26, 2015) the reasons for above noted fund transfers, have submitted that they had entered into certain transactions with Beejay during the period from September 01, 2011 to September 30, 2012 and the amounts so received by them (DDT and DDM) from Beejay were towards sale consideration of unlisted equity shares and the balance/ excess amount were repaid to Beejay by them. In this regard, based on the information

gathered, the details of all the trades executed by DDT through the *Noticee* broker are summarised in the table below:

Table no. 6

No. of Scrips	Buy Qty	Total Buy Value (in Lakh)	Sell Qty	Total Sell Value (in Lakh)
BSE				
10	75,721	33,83	14,81,557	159,17
NSE				
7	5,95,000	260.73	7,37,875	240.78

5. On the basis of the aforesaid factual details, the DA, after considering the reply filed by the *Noticee,* has *inter alia* observed in his report as: "*Thus, through the aforementioned activities, it can be inferred that Beejay had transferred the funds (indirectly) to Korp, which facilitated the trades of Beejay by trading in the account of DDM & DDT. Therefore, also acted in a manner highly detrimental to the interests of the securities market.*

….

64. As can be seen from above, it is an established fact that Beejay (a debarred entity) had transferred the funds (indirectly) to Korp, which facilitated the trades of Beejay by trading in the account of DDM & DDT. Therefore, acted in a manner highly detrimental to the interests of the securities market. Further, in light of above discussed interpretation of Regulation 3 and 4 of PFUTP Regulations and applying the ratio of Ketan Parekh vs. SEBI, it is well understood that the Noticee (Korp) by facilitating the trades of the debarred entities, has acted detrimental to the interests of the securities market within the meaning of Regulation 3 and 4 of PFUTP Regulations and has thus violated the same.

6. As stated above, on the basis of the report of the DA a show cause notice dated December 02, 2019 ("**SCN**") enclosing therewith the Enquiry Report of the DA, was issued to the *Noticee* calling upon to show cause as to why action as recommended by the DA or any

other direction/measure as may be deemed fit under Regulation 28(1) of the Intermediaries Regulations, should not be issued/imposed on it.

7. In compliance with the Regulation 28(2) of the Intermediaries Regulations, an opportunity of personal hearing was also granted to the *Noticee* on September 30, 2020. On the said date of hearing, the authorised representative of the *Noticee* appeared before me and made various submissions. Further, vide its email dated October 09, 2020, the *Noticee* has made various submissions in response to the SCN dated December 02, 2019 which are summarised hereunder:

   i. The *Noticee* was not aware about the trades or dealings of Beejay with other entities, as alleged in the SCN/Enquiry Report and based on the material, it cannot be alleged that the *Noticee* was aware that DDT and DDM were carrying trades for Beejay.
   ii. Vide application dated April 07, 2018, it has applied for surrender of membership of the NSEIL & and vide application dated April 23, 2018, to the BSE also. The said applications were filed even before issuance of SCN by the DA. The NSEIL has vide circular dated February 20, 2019, approved surrender of membership and the approval from the BSE for surrender of the membership is awaited. Copy of the said circular issued by the NSEIL has been filed in support.
   iii. No cognizance of the fact was taken by DA that the *Noticee* had applied for voluntary surrender of the membership even before the SCN was issued to it since April, 2018 and that the *Noticee* has shut down its stock-broking business
   iv. Based on the information available in public domain, it is noted that the allegations against the alleged debarred entities as well the entities who allegedly traded on behalf of such debarred entities are still pending and final determination of the charges is yet awaited. Under the circumstances, disposing the present proceedings by holding it guilty of the alleged violation would not be pre-mature, but also not lawfully proper. It is submitted that in case the debarred entities and/or the trading entities are not held guilty, there would not be any case of violation against the *Noticee*.

v. The Enquiry Report has been submitted without dealing with the issue of non-supply of documents like copy of investigation report, internal notings, documents in support of alleging relationship between the *Noticee* and DDM/DDT, details of traders executed by DDM, DDT through other stock brokers etc. The same is in gross violation of principles of natural justice.

vi. Further, the DA, in the Enquiry Report, has relied upon various documents like letter dated July 03, 2015 of DDM, copy of bank account statement of Beeajay (A/c No. 627705044687 of ICICI Bank), letters dated May 26, 2015 of DDM and DDT, all of which were not provided to the *Noticee*. Also, certain details/information like details of profit made by Beejay & Eversight, profit & loss of DDM, DDT & Neelanchal etc., were also not furnished to the *Noticee* nor the same were part of the SCN. No opportunity to rebut the adverse inference drawn on the aforesaid evidence was provided to the *Noticee* by the DA, which has also led to violation of principles of natural justice. The *Noticee* has referred to and relied upon the following judgements of the Hon'ble Supreme Court of India and also of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), to contend that all materials collected during investigation ought to have been provided to the *Noticee*:

   a) *Price Waterhouse Coopers vs SEBI in Civil Appeal no. 6003-6004 of 2012;*
   b) *Union of India v. E. Bashyan, (1998) 2 SCC 196, etc*

vii. It was submitted before the DA that only DDM and DDT are the clients of the *Noticee* and Neelanchal & other alleged debarred entities were not its clients. However, the DA has erroneously recorded even Neelanchal to be a client of the *Noticee*.

viii. The SCN has alleged that the amount of INR 38 Lakh as received on September 02, 2011 from DDM were transferred to NSE Cash Market Settlement account of the *Noticee* on the same day. However, the SCN, at a separate place has alleged that DDM had traded through the *Noticee* on BSE on September 02, 2011. There is no allegation in the SCN that DDM had traded on NSE through the *Noticee* on September 02, 2011. The DA, without bringing any material on record, has given a finding that: "*from the trade details of DDM provided by NSE, it was observed that DDM had traded on Sep 02.2011 through Korp."* Neither

such allegations of trades executed on NSE were made in the SCN nor any material to arrive at such a finding has been furnished to the *Noticee*. Further, on September 02, 2011, DDM had executed various trades on NSE but there was no pay-in obligation of DDM and infact the *Noticee* had an obligation of INR 9.36 Lakh towards DDM for its trades.

ix. The *Noticee* had executed trades on behalf of other clients on the said day and had an outstanding balance with the NSEIL for such trades. In order to clear that balance, the *Noticee* had taken a short-term loan from various entities including Beejay, DDM & DDT and there is no embargo on a stock broker for taking any such loans.

x. The DA has also recorded a finding that on October 11, 2011, Beejay had transferred INR 40 Lakh to DDT and DDT had transferred INR 15 Lakh to the *Noticee* and further DDT had traded through the *Noticee* on October 12, 2011 on the BSE. The said finding is perverse and erroneous as on October 12, 2011, DDT had sold 185 shares of Neha International and there was no pay-in obligations by DDT. The Enquiry Report draws erroneous inferences based on receipt of INR 15 Lakh by the *Noticee* on October 11, 2011, as loan from DDT and no consideration was paid to the explanation that the said amount was received in the general business account of the *Noticee.*

xi. The SCN has alleged that the *Noticee* is connected to DDT and DDM which had facilitated the trades of the debarred entities by trading through the *Noticee,* however, in deviation to the said allegations, the Enquiry Report has recorded that: "*it can be inferred that Beejay had transferred the funds (indirectly) to Korp, which facilitated the trades of Beejay by trading in the account of DDM & DDT.'*

xii. In view of the said deviation and contradiction from the original allegations, the *Noticee* is not able to defend its case efficiently and such a deviation is not permissible in law. Various courts have laid down that the SCN needs to be clear as vague allegations affect the rights of the delinquent to defend the case effectively. Reliance has been placed on the judgment passed in the matter of *Food Corporation of India vs. State of Punjab and others, (2001) 1 SCC 291; Canara Bank vs. Debasis Das, (2003) 4 SCC 557; New Samundri Transport Co. (P) Ltd vs. State of Punjab & Others 1976 AIR 57 etc.*

xiii. During the relevant period of 2009-2012, the *Noticee* was having more than 244 clients with total annual turnover in the range of INR 5826 Crore to 12000 Crore. The alleged trades of DDT and DDM were miniscule as compared to the total turnover of the *Noticee*.

xiv. The traded turnover of DDM and DDT with the *Noticee* for the period of 2009 to 2014 was running into hundreds of crores.

xv. As a stock-broker, the *Noticee* did not enquire from its clients about their respective source of funds used for trading. There is nothing on record to show that the *Noticee* was aware about the receipt of funds by DDT and DDM from Beejay.

xvi. A stock-broker cannot be held liable for the transactions of its clients, unless it is established that the stock-broker was aware of the intentions of the clients, as held by the Hon'ble SAT in the matter of *Kasat Securities Pvt. Ltd vs. SEBI*.

xvii. The *Noticee* has also executed certain trades in its proprietary account. All the transactions in securities market executed on behalf of the clients as well as in the proprietary account of the *Noticee* were genuine and *bonafide*.

xviii. During the relevant time, the *Noticee* used to raise short term loan from various entities in its normal course of business. Such loans were received in the bank accounts of the *Noticee* and utilised for trading in securities market in the ordinary course. No share purchased by the *Noticee* during the relevant time was transferred to any of the debarred entities in any manner.

xix. The only obligation on a stock broker is to ensure that the funds are received by it through proper banking channel and from the bank account of the client, which the *Noticee* had fully ensured.

xx. The DA has not appreciated that the *Noticee* had received funds from the respective bank accounts of DDT and DDM, which were mapped as per the KYC records. The said funds were received for the purposes of purchase of securities for the said two entities and such securities were transferred to the respective Demat accounts of DDT and DDM. After sale of securities, the pay-outs were transferred to the bank accounts of DDT and DDM.

xxi. There is no allegation of the *Noticee* having received any funds/securities from the bank accounts/Demat accounts of Beejay nor any allegation of transfer of securities to the account of Beejay.

xxii. Nothing has been brought on record so as to substantiate that the *Noticee* was involved in fund transfers by Beejay to DDM/DDT or the said fund transfers were done on the *Noticee's* instructions.

xxiii. The *Noticee* did not share email id with DDM and/or DDT. As per MCA database, the email id of the *Noticee* is korpsec@yahoo.co.in and the email id of DDM is ddm29021996@gmail.com while the email id of DDT is ddt01031996@gmail.com. The finding recorded in the Enquiry Report that the Form 23AC (Form for filing Balance sheet) dated August 31, 2011 filed by DDM, mentions e-mail id of DDM as *korpsec@yahoo.co.in* is erroneous and there was no evidence to support the allegation made in the SCN as the Form 23 AC was neither part of the SCN nor copy of the same was provided to the *Noticee*.

xxiv. The finding of the Enquiry Report that: "*the Noticee seems to now present revised records and not as they were existing during 2009 to 20012*" are erroneous as the *Noticee* cannot make any filing on behalf of third parties viz., DDT and DDM and there was no change in the email id of the *Noticee*. Only such third party could explain as to how the email id of the *Noticee* was mentioned in their records

xxv. Only because of the fact that Mr. Rajesh Kumar Agarwal (brother of Mr. Sushil Kumar Agarwal, Director of the *Noticee*) was a director of DDM and DDT, no adverse inference can be drawn against the *Noticee* or relationship with the said entities can be established. Both the brothers, their families and the companies are financially independent.

xxvi. Mr. Anuj Agarwal was not a Director of the *Noticee* during the investigation period nor was he associated with the *Noticee* in any manner whatsoever during the investigation period. There is no dispute to the fact that Anuj Realtor Pvt. Ltd. and the *Noticee* are having common address, however, both the companies are financially independent. No adverse inference can be drawn against the *Noticee* only based on the shareholding of Mr. Anuj Agarwal or some of those entities, where he is a Director.

xxvii. Further, with regard to the statement made by Mr. Anuj Agarwal before Income Tax Department, the Enquiry Report has not appreciated the submission that such statement was made under threat and coercion as stated in an affidavit dated March 31, 2015 of Mr. Anuj Agarwal. It is well settled that admission by any person cannot be said to be conclusive and the person making such admission can show that it was incorrect.

xxviii. The DA has misinterpreted the submission made with respect to resignation of Mr. Sushil Kumar Agarwal and Mr. Rohit Mehta from the Board of the *Noticee*. The finding that the both of the aforesaid Directors had resigned after SEBI initiated the investigation is baseless as the initiation of investigation was neither in the knowledge of the *Noticee* nor the date of initiation was mentioned in the SCN issued by the DA.

xxix. In order to prove the serious charges of the PFUTP Regulations, cogent evidence is required to be placed on record. Reliance in this connection has been placed on the orders of the Hon'ble SAT in the mater of *Smitaben N. Shah vs. SEBI (date of decision July 30, 2010)*; *Mr. Babubhai Desai vs SEBI (date of decision February 15, 2016)*; *H.B. Stockholdings Limited vs SEBI (date of decision: August 27, 2013)*

xxx. The *Noticee* was not aware of the transactions executed between Beejay & DDM and the DA has not provided the copy of party ledger of Beejay provided by DDM during the investigation, to the *Noticee*.

xxxi. As recorded in the Enquiry Report, DDM, after receiving the funds from Beejay had utilized the same for various purposes. The huge difference in the total amount received from Beejay and the amounts transferred to the *Noticee* demolishes the allegations made in the SCN.

xxxii. On August 12, 2011, DDT had purchased 1,50,000 Equity Shares of KGL @ Rs.9.52, and for pay-in obligation of the said purchase, an amount of INR 14.30 Lakh (approx.) were received by the *Noticee* on August 18, 2011 towards pay-in obligation for the said transaction. The said trades were executed on the instructions of DDT and the *Noticee* does not have any mechanism to track the source of such funds. Further, Beejay had transferred INR 17.50 Lakh to DDT, and DDT had paid only INR 14.30 Lakh to the *Noticee* towards the aforesaid pay-in obligation.

xxxiii. Similarly, an amount of INR 45 Lakh was received on August 26, 2011, as loan from DDM and the said amount was received in the general business account of the *Noticee*. The said amount was not towards any purchase of securities made by DDM.

xxxiv. Only due to the fact that the aforesaid loans were raised without execution of any document, no adverse inference should be drawn. There is no prohibition under the securities law for taking loans in such manner. Further, the 'confirmation of accounts' from DDM, DDT and other entities have not been considered by the DA.

xxxv. DDM had funds transfers with the debarred entities even before the investigation period for which no allegation has been made by SEBI.

xxxvi. The Enquiry Report has recorded an adverse inference that the *Noticee* has not furnished any exchange data for the aforesaid transactions. However, the said data was never sought by the DA and the same is being filed in the present proceedings.

xxxvii. There was only a bar to deal in securities that was imposed on the debarred entities and there was no restraint from carrying out the NBFC activities of borrowing and lending. However, the Enquiry Report has also recorded that any kind of financial transaction between the debarred entities and any other market participant, would attract penalty under SEBI laws.

xxxviii. The *Noticee* had received only INR 3.92 Crore from DDM & DDT as pay in obligations, however, the allegation has been made for trading of only INR 50 Lakh.

xxxix. The entities DDT and DDM were trading through other stock brokers also and the transactions with such other stock brokers were higher than those trades executed through the *Noticee*. The same shows that the allegation of connection of the *Noticee* with DDT and DDM is baseless.

xl. As per SEBI's own case, Beejay had, through DDT and DDM, executed trades in securities market through other brokers also, but action has been taken only against the *Noticee* based on the alleged connection.

xli. Out of the total 1259 days' period of investigation, transaction of INR 50 Lakh executed by DDM only on one day (October 22, 2011) has been made as the basis to level the allegations.

xlii. As per the Enquiry Report, Beejay had transferred INR 50 Lakh to DDT, DDT in turn transferred INR 1.15 Crore to DDM and DDM, had transferred INR 1.25 Crore to the *Noticee*. There is no consistency in the fund transfers and further there was no mechanism with the *Noticee* to identify the underlying transactions executed between the aforesaid parties.

xliii. The *Noticee* had received INR 75 Lakh and 50 Lakh from DDM in Clients' Bank Account of the *Noticee*, however, the said amounts were apportioned towards pay-in obligations of DDM for the following transactions executed on October 20, 2011:

Table no. 7

Exchange	Name of the script	Buy Qty.	Sell Qty.	Buy Value	Sell Value
BSE	M B Switchgear	50000	0	71,09,152.58	0.00
NSE	M B Switchgear	150,100	40,100	2,14,82,254.37	97,31,840. 83

xliv. During the investigation period, around INR 9.08 Crore were transferred to and from between DDT/DDM and the *Noticee*, in pursuance of the relationship of a stock-broker and client (s). Further, only one transaction of INR 50 Lakh has been picked up while recording that during the relevant period, Beejay had transferred INR 24.29 Crore to DDM.

xlv. There is nothing on record to show that DDM and DDT have paid any amount to the debarred entities from their respective pay-outs of INR 2.48 Crore and INR 2.68 Crore. In order to prove the allegation of indirect trading, there has to be some transactions of transfer of pay-out to the debarred entities.

xlvi. During the relevant time DDM and DDT were trading through the *Noticee* on a daily basis, however, based on 4/5 fund transactions of Beejay with DDM and DDT, allegations of facilitation of trades for Beejay would not sustain against the *Noticee*.

xlvii. Even assuming all the allegations to be true, there can be only an allegation of violation of SEBI's directions and allegation of violating PFUTP Regulations is legally untenable.

xlviii. Further, as the transactions imputed in the Enquiry Report are very old and the *Noticee* has faced the proceedings for many years, no action is warranted on ground of delay. Reliance has been placed on the orders of Hon'ble SAT passed in the matter of *Subhkam Securities Private Limited. vs. SEBI* (*Appeal no.73 of 2012*) and *Prashant Patel vs SEBI (Appeal no 108 of 2012).*

xlix. The recommendation of the DA for cancelling the certificate of registration of the *Noticee* is disproportionate to the violations alleged, as there is no finding with respect to the trades being manipulative or having any major impact on the market caused by such trades. Reliance has been placed on the order of the Hon'ble SAT passed in the matter of *JHP Securities vs SEBI (SAT Appeal no 121 of 2012)* wherein it was held that suspension of the registration of a stock broker even for a period of one month has far reaching consequences.

Consideration of issues:

8. I have perused the Enquiry Report, the SCN issued to the *Noticee,* the oral and written submissions made by the *Noticee* and other material available on record. Having considered the above, the issues which arise for my consideration are as under:-

I. *Whether the Noticee had facilitated the execution of trades to Beejay and materials available on record are sufficient to conclude that the acts of the Noticee is in violation of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations read with Clause A (1), (2), & (5) of Code of Conduct for Stock Brokers under the regulation 9 of Stock Broker Regulations?*

II. *If yes, what would be the appropriate measure required to be taken under Regulation 28 of SEBI (Intermediaries) Regulations on the Noticee?*

9. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the law, which are alleged to have been violated by the *Noticee* and the same are reproduced below:

<u>The PFUTP Regulations</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

The Stock Brokers Regulations

Code of Conduct for Stock Broker under Schedule –II of the Stock Broker Regulations 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.*

…

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.*

10. I note that the *Noticee* has contended that unless the proceedings pending against debarred entities are concluded, no action should be taken against it since as per the allegations in the SCN, it has only acted as an accessory to the main violators committed by the debarred entities. In this respect, I observe that though the present proceedings can be proceeded with and disposed of independently, based on the appreciation of the materials available

on record. However, considering the peculiar facts and circumstances surrounding this the matter, I find no prejudice will be caused to this proceeding by keeping the disposal of the same in abeyance since I am informed that the proceedings against the said debarred entities being adjudicated separately are now at their final stage. Now, I find that the said proceeding against those debarred entities have been disposed of vide an order dated April 09, 2021, and in the said order, DDT and DDM have been held to have abetted and facilitated the trading activity of Beejay Investments and Financial Consultants Private Limited, in contravention of the restraint imposed on said entity by SEBI.

11. I note that the submissions of the *Noticee* can be broadly divided into two categories, i.e., technical and on merit. Before proceeding to deal with the submissions on merit, it would be appropriate to consider first the technical objections raised by the *Noticee* with respect to non-supply of documents by the DA. The *Noticee* has contended that it had requested the DA to provide copies of the investigation report, internal notings, documents in support of alleged connection of the *Noticee* with DDT and DDM, etc., which have not been provided to it. I have gone through the submissions of the *Noticee* and observe that the same are not maintainable on law as well as on facts of the matter since, the extracts of the investigation report covering the findings relevant to the *Noticee*, have already been captured at length in the SCN issued by the DA. Further, as far as the copy of internal file noting is concerned, the *Noticee* should appreciate that the same are not the documents relied upon by the DA in support of the allegations levelled against it in the SCN. Similarly, demand for copies of reference to the other documents are in the nature of roving inquiry and not material or relevant for the purpose of the present proceedings. I find that the SCN contains all the relevant documents and the *Noticee* has been provided with the copies of all those documents which have been relied upon in the SCN. In its submission, the *Noticee* has not been successful in presenting before me any prejudice having been caused to it by not furnishing those internal noting and other documents, which have not been relied upon in the SCN for making the charges in the SCN. Therefore, the submissions of the *Noticee* are rejected as having no merit and in support of my above said observations, relevant observations of the Hon'ble Tribunal in the matter of *Anant R. Sathe vs. SEBI*

(Appeal no. 150/2020 – Date of decision July 17, 2020) are reproduced herein below, for the purposes of reference:

> *"7. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in Shruti Vora's (supra) wherein the Tribunal held that:*
>
> > *"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."*
>
> *8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence.*
>
> *9. In Natwar Singh vs. Director of Enforcement and Another (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.*
>
> *10. In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted."*

13. Insofar as the contention of the *Noticee* with respect to delay in the proceedings is concerned, I note from the records that in the present case an *interim* order dated June 16, 2016, was passed against Beejay and other entities and the said *interim* order was confirmed vide order dated March 27, 2017. Subsequently, investigation was undertaken by SEBI which involved examination of large chunks of financial information and other records. Therefore, the time that was taken to complete the investigation, to initiate the action and

to complete the proceedings in compliance of the statutory framework cannot be used as a defence by the delinquent itself. At this stage, I find it apt to refer to and rely on the view of Hon'ble SAT that delay itself may not be fatal in each and every case. [*Ravi Mohan & Ors. v. SEBI (Date of decision: December 16, 2015)]*

14. Moving forward, I shall now analyse the allegations with respect to the interconnectedness between various entities including the *Noticee*. I note that the allegation of connection has been made majorly on account of common email id between the *Noticee* and DDT as well as DDM, and common directorship of certain persons on the Board of DDT/DDM and *Noticee* Company.

15. Insofar as the allegations of connectedness based on common email id (korpsec@yahoo.co.in) is concerned, I note that the *Noticee* has contended that as per MCA database, the email ids of DDT and DDM are different and not the one that belongs to the *Noticee*. In this regard, I note that the said contention was also taken by the *Noticee* before DA and the DA has observed that the Form 23 AC dated August 23, 2011 filed by Mr. Rajesh Kumar Agarwal (Director of DDM) and verified by the Company Secretary of the said company (DDM) mentions the email id of DDT and DDM as korpsec@yahoo.co.in. I note that the Form 23 AC of Companies Act, 1956 pertains to filing of balance sheets which is to be filed with MCA. I further observe that an email id duly filled in while filing an important statutory document like balance sheet in a prescribed form is sufficient enough to establish that the said company was indeed using the said email id which was also the email id that was being used by the *Noticee*. In this respect, the *Noticee* has contended that it has not been furnished with a copy of the Form 23AC and thereby has been deprived of an opportunity to rebut the allegation. The contention of the *Noticee* appears impressive on the face of it, but the same is not found favouring the cause of *Noticee* for the following reasons:

(a) The said Form 23 AC is a public document, which the *Noticee* could have easily accessed to on its own, hence, to contend that non-furnishing of the same has seriously prejudiced the case of the *Noticee* is not correct. No explanation has been furnished to state as to how

the *Noticee* was incapable to have the access to the said public document and thereby was not able to defend itself properly, for want of the said document (i.e. Form 23AC).

(b) There is nothing to dispute that DDT and DDM are interconnected, as both of them operated from the same address and all the four Directors of both DDM and DDT during the relevant time were common. From the reply of the *Noticee* filed before the DA, it is observed from the copy of Form 32 pertaining to resignations of Mr. Rajesh Kumar Agarwal (brother of one of the directors of the *Noticee*) and Mr. Debasis Mishra as a director from the Board of DDM, that the email id of DDM and also of both the above noted outgoing Directors was same i.e. korpsec@yahoo.co.in.

(c) Further, the connection of DDM and DDT with the *Noticee* is also evident from the undeniable fact that Mr. Sushil Kumar Agarwal was one of the Directors of the *Noticee Company* during the investigation period and his brother viz., Mr. Rajesh Kumar Agarwal was a Director in both DDT and DDM. It has been contended that connection cannot be justified based on aforesaid common directorships as both the individuals despite being real brothers, are living independent lives and they have resigned from the Boards of respective companies. In this respect, I find that the plea taken by the *Noticee* that both the brothers have resigned from the Boards of their respective companies cannot be a tenable ground on merit, since subsequent resignations will not dilute their past directorship/association based on which, connections have been imputed. Further, the ground that though Mr. Sushil Kumar Agarwal and Mr. Rajesh Kumar Agarwal are real brothers but are living their independent financial lives is also sans any merit since despite leading independent professional lives, the *Noticee* cannot deny with certainty that the two brothers had convergence of professional interest and unity of intentions as far as their dealings with Beejay and the *Noticee* is concerned in the present matter. Moreover, the allegation of connection between the two brothers and the entities they are associated with, is based on multiple factors out of which, common directorship of the two brothers on the board of above noted companies is one of such factors, which cannot be ignored when examined in the totality of factual matrix of the present case.

(d) There is yet another aspect that connects the *Noticee* with DDT and DDM. Mr. Anuj Agarwal (s/o Mr. Sushil Kumar Agarwal, one of the Directors of the *Noticee*) and Mrs. Meena Agarwal (w/o Mr. Sushil Kumar Agarwal) were Directors on the board of another company viz., Anuj Realtors Limited. The said company, Anuj Realtors Limited, was a shareholder of DDM. The *Noticee* has contended that Mr. Anuj Agarwal was not its Director during the investigation period and was not involved with the *Noticee Company* in any manner. I find that the reference to the shareholding of Anuj Realtors Limited in DDM is not made for insinuating Mr. Anuj in his personal capacity but has been made only for the limited purpose of suggesting a glaring connection of the *Noticee* with DDM & DDT, which were alleged to have been used as front entities to facilitate trades for Beejay, a debarred entity in the securities market. Further, it is an admitted position that the *Noticee Company* and Anuj Realtors Pvt. Ltd. shared a common address. Accordingly, the claim that Mr. Anuj Agarwal was not a Director of the *Company* during investigation period, not only is a bald assertion in absence of any documentary evidence, but also is completely irrelevant for the reasons stated above. In view of the aforesaid discussion, I agree with the finding of the DA, and observe that there indeed was a connection between the *Noticee* and DDM and in turn with DDT. Based on the above, I find that there is sufficient material that establishes connection of the *Noticee* with DDM and DDT and merely for the reason that copy of Form 23 AC was not furnished to the *Noticee*, it would not render the *Noticee* helpless in defending the allegations. Therefore, the above noted finding not only answers the issue on its merits but also nullifies substantially the technical objection raised by the *Noticee* about non-furnishing of the copy of Form 23 AC, a document that was very much available in Public domain, hence non-supply thereof by the DA, could not have prejudiced the interest of the *Noticee.*

16. Further, the *Noticee* has vide its letter dated November 26, 2015, *inter alia,* stated that: *"DDM used to place orders during the Investigation Period through their authorized representative Shri Rajesh Jain, who used to be physically present in our office*." This statement is in complete contradiction and digression from the statement dated March 30, 2015 made by Mr. Anuj Agarwal (Director of the *Noticee*), recorded before Income Tax Department, in which he

has stated: "*Shri Rajesh Jain was our part time accountant and that DDM & DDT were controlled & managed by Korp for providing accommodation entry to various beneficiaries*.". To counter this aspect, the *Noticee* has now submitted that the said statement before Income Tax Department was made under threat and coercion as has been stated in the affidavit dated March 31, 2015 of Mr. Anuj Agarwal. I note that the *Noticee* has tried to hinge its case only on the affidavit of Mr. Anuj Agarwal so as to dilute and escape from the contents of the statement recorded before the Income Tax Department, as mentioned above. In my view, a mere reference to any such affidavit is not at all a sufficient ground to rebut the contents of the said statement, as the *Noticee* has not produced any supporting document in the form of an order or a directive from any competent authority recording a finding or any other finding by any other authority to suggest that the *Noticee* indeed has no connection with DDT and DDM. From the perusal of the affidavit so filed to support its retraction from the statement so made before the Tax Authority, I note that the said retraction pertains to a limited point and does not contain any whisper about the email id allegedly shared by DDT and DDM with the *Noticee*. Moreover, it is not known whether the Income Tax Authorities or any other superior authority has accepted the retraction made by Mr. Agarwal and his statement has not been used as an evidence against him by the said authorities. In view thereof, the judgment of Hon'ble Madras High Court in the matter of *CIT Vs. Kader Khan* on the issue of evidentiary value of such a statement will not be applicable. Thus, the DA has rightly held that this contention of the *Noticee* does not have any substance and has rightly concluded that the *Noticee* enjoys connection with DDT and DDM.

17. It is also an admitted position that Beejay had purchased shares of certain unlisted companies from DDM to the extent of INR 2.91 Crore. As noted earlier, DDT and DDM have in their letters dated May 26, 2015 stated that the money received from Beejay was towards sales consideration of such shares of unlisted companies and the balance excess money was credited to Beejay. The evidence on record reveals numerous financial transactions, which are claimed to be entered into towards consideration of shares of those unlisted companies, between Beejay and DDM. In my view, the undisputed fact of

having financial transactions in itself is sufficient to hold the close connection which the said two entities were enjoying during the relevant period of time. The close nexus between the two is further cemented from the fact that instead of transferring the exact amount of consideration for the purported sale of shares of unlisted companies, large amounts of funds were first transferred by the purchaser (Beejay) and subsequently part of such funds were returned to Beejay by the seller (DDM /DDT). For illustration, Beejay has purchased certain number of shares of a company viz. Siddhi Commotrade Pvt. Ltd. on November 30, 2011 from DDM. The total cost of such shares was INR 14.98 Lakh, however, during the period of September 02, 2011 to November 30, 2011 (date of purchase of said shares), a total amount of INR 5.90 Crore was transferred by the buyer (Beejay) to the seller (DDM), however, subsequently, INR 4.03 Crore was returned by DDM to the Beejay. It is beyond acceptance as to how the above noted to and fro movement of such a large sum of monies has been attributed to purchase of shares of an unlisted company, which constitutes only a fraction of the total value of such large amounts so transferred to DDM.

18. It is further noted that on September 02, 2011, an amount of INR 85 Lakh was transferred by Beejay to DDM, and on the very same day, DDM had transferred INR 38 Lakh to the *Noticee* broker. Before receipt of such amount of INR 85 Lakh, the bank account of DDM was showing a very insignificant amount of balance i.e. INR 13,000 (approx.). After receipt of the said amount of INR 38 Lakh from DDM the said amount was transferred immediately by the *Noticee* to NSE/BSE towards Settlement of its accounts. In this respect however, the *Noticee,* has claimed that there was no pay-in obligation of DDM for trades executed on September 02, 2011 and the said transfer of INR 38 Lakh was in the nature of short-term loan received by the *Noticee* from DDM.

19. In this context, it is noted from the copy of internal ledger furnished by the *Noticee* that on September 02, 2011, in two different transactions, the *Noticee* had received INR 38 Lakh and 30 Lakh from DDM. The *Noticee* had termed this transaction as a short-term loan from DDM which the *Noticee* has borrowed and utilised to clear its pay-in obligation

on behalf of its other clients' who had traded through it on the stock exchanges. I observe that such an explanation deserves to be discarded being *ex-facie* erroneous, as it is beyond acceptance that a stock-broker had to take loans in order to settle its clients' trades instead of collecting against the Pay-in obligations from the clients themselves, more so, when such claim has not been found to be supported by any credible evidences so as to justify its claim of having obtained a loan from DDM to meet the pay-in obligations to Stock Exchanges on behalf of its clients. I find that such an unsubstantiated submission further exposes the close connection which the *Noticee* enjoyed with DDM as well as with DDT.

20. I note that apart from the receipt of funds from DDM, the *Noticee* in its reply dated November 22, 2018, has acknowledged having received funds directly from Beejay also. It has been *inter alia* stated by the *Noticee* as: "*The maximum amount due & payable to Beejay during the period was Rs., 55,00,000/- on 02/09/2011…The borrowings from Beejay were in the ordinary course and were utilized by us for meeting our exchanges obligation. It is humbly submitted that, during the Investigation Period, apart from a sum of Rs. 25 lacs received from Beejay on 02/09/2011 and Rs. 24 lacs on 6/2/2012 as short term advances all other receipts were towards our dues. Further, in respect of receipt of 25 lacs on 2/9/2011 the same was repaid on 19/10/2011 and in respect of Rs. 24 lacs received on 6/2/2012, the same were repaid on 9/2/2012 Rs. 19 lacs and 10/02/2012 Rs. 5 lacs. Thus, the alleged receipts were just short term loan from Beejay which were repaid out of our business receipts.*

21. Thus, the *Noticee* had not only received funds from Beejay through DDM, but admittedly had also financial transactions with Beejay directly for which, no supporting documents justifying those transactions have been furnished. Furthermore, it is pertinent to observe here that the *Noticee* has merely termed the said transactions as short-term loans, however, the *Noticee* has not been able to file any independent third- party verifiable documentary evidence in the nature of loan agreement, balance sheets, TDS certificate, Income Tax Returns, etc., so as to support its claim of having received the amounts as a loan for short duration. I note that the absence of any document governing such large amount of funds transfers is further corroborative of the collusive inter-se nexus which *Noticee,* DDT,

DDM and Beejay were enjoying, more so keeping in view the admitted fact that Beejay is/was a NBFC which could not have entered into financial transactions without executing proper documentation, if the said transactions were entered into actually in the pursuance of its business activity and the corresponding borrower was also legitimately expected to have paid interest on the said sums borrowed from Beejay.

22. As discussed above, it is observed that there is an acknowledgment on the part of the *Noticee* that the funds received from Beejay and DDM were used to settle exchanges' obligations. Despite specific finding recorded by the DA that the funds received through DDM on September 02, 2011 were also utilised by the *Noticee* for settling its own proprietary trades, the *Noticee* has not been able to controvert the said fact by producing any details or documentary evidence to the contrary to demonstrate that the proprietary trades were settled by using the owned funds belonging to the *Noticee* and not the funds received from DDM. Under the circumstances, I have to hold that there were direct as well as indirect fund transactions between Beejay and the *Noticee* and in the absence of any credible evidence controverting the charge, its utilisation for trading in securities market can't be ruled out.

23. Besides the aforesaid transactions, there were also other fund transactions from the bank accounts of Beejay to DDT/DDM and out of such funds received by DDT/DDM, large amounts were transferred by them to the *Noticee*. The details of such fund flows have already been captured in the preceding part of this order.

24. In this regard, it is noted that on August 18, 2011 an amount of INR 17.50 Lakh was transferred by Beejay to DDT, which in turn transferred a sum of INR 14.30 Lakh to the *Noticee*. It has been submitted by the *Noticee* that the said amount was received from DDT towards settlement of pay-in obligation of purchase of 1.50 Lakh shares of KGL @ INR 9.52 per share.

25. Similarly, on September 02, 2011, Beejay had transferred an amount of INR 30 Lakh to DDM and DDM transferred the said funds to the *Noticee* towards its trades executed on

the day. It has been submitted further that after adjusting the pay-in obligation for the trades and payments so received from DDM, there was an outstanding amount of INR 9.36 Lakh payable to DDM.

26. The Enquiry Report also notes that on October 11, 2011, Beejay had transferred an amount of INR 40 Lakh to DDT and on the same day itself, an amount of INR 15 Lakh was transferred by DDT to the *Noticee*, for which, it has been submitted that the said fund was received against the trades executed on the same day on the exchange platform of the BSE.

27. The Enquiry Report also mentions that on October 22, 2011, the *Noticee* had received INR 1.25 Crore (75 Lakh and INR 50 Lakh) from DDM. DDM in turn, had received INR 1.15 Crore (INR 50 Lakh and INR 65 Lakh) from DDT. It is alleged that DDT has received INR 50 Lakh from Beejay on the same day itself which apparently indicates that, the *Noticee* has indirectly facilitated the debarred entity to access the securities market. The *Noticee* has argued that DDM, in its normal course of trading had executed certain trades in the scrip of M B Switchgear on October 20, 2011 payment for which was received on October 22, 2011 and the said amount was apportioned towards purchase of the said shares.

28. As noted above, for the funds transfers executed on August 18, 2011 by DDT as well as on October 22, 2011 by DDM, the *Noticee* has put forth an explanation stating that the said fund transfers were affected towards settlement of pay-in obligations of those concerned entities against their trades executed through the *Noticee*. However, such a submission by the *Noticee* will be of no help as the actual chain of events of such transfer of funds from Beejay to DDT and from DDT to the *Noticee* for effecting the trading transaction of August 18, 2011 and from Beejay to DDT; from DDT to DDM; and from DDM to the *Noticee* for executing the trading transaction of October 22, 2011 provide compelling reasons and a preponderance of probabilities which convincingly turn the table completely against the *Noticee* and in support of the findings of the DA to hold that the funds flowing from Beejay have been utilised towards transactions in securities, for

which Beejay was debarred. Thus, in view of the aforesaid explicit facts and circumstantial evidences as brought in by the funds transferred from Beejay to the *Noticee* via DDT and DDM, I observe that there are persuasive elements in the aforesaid chains of transactions to indicate that the *Noticee* had in fact facilitated trades on behalf of the debarred entity (Beejay) through DDT and DDM.

29. I note that as far as the facts pertaining to the transfer of funds amongst the entities are concerned, the *Noticee* has not advanced any submissions disputing the receipt of funds. The only explanation being furnished by the *Noticee* is that the funds so received by it was received in the ordinary course of its business of a stock broker and the said funds were utilised towards meeting the settlement obligations of trades executed by its clients. Having considered the said submissions, I note that the charge against the *Noticee* in this case is very specific suggesting that the *Noticee* has facilitated execution of trades for a debarred entity. As discussed above at length , the explanations offered by the *Noticee* to justify the funds flow and transactions it had with DDT and DDM ,are falling far below the overwhelming preponderance of probabilities that have emerged from the facts & circumstances of the case as narrated in the preceding paragraphs, hence are not credible enough to grant exoneration to the *Noticee* from the said allegations made in the SCN, more so for the reason that the said explanations and assertions are not supported by any verifiable tangible material to substantiate them. It is also found that the *Noticee* has received amounts from DDT and DDM which were disproportionate to the claim of trades having been executed on behalf of DDT and DDM. Also, no explanation has been furnished to justify as to under what circumstances, it was required to avail short term loan on a frequent basis and how can it justify those so-called short-term loans from DDT and DDM purportedly obtained for settlement of trades of other clients, while it was under regulatory mandate to secure margin money/settlement amounts from such clients at the time of executing trades on their behalf. The said submissions of the *Noticee* further do not inspire confidence for the reason that the same have not been supported with the details of those trades claimed to have been executed by it on behalf of other clients. No details have been furnished by the *Noticee* viz; details of scrip, rate and quantity of the scrip

traded for those respective clients and other relevant details of those clients' trades alongwith an explanation with regard to the circumstances which compelled the *Noticee* to avail short term loans to settle those trades. The circumstances and reasons for which the lending entities became ready to lend money to the *Noticee* without charging any interest has also not been explained. Moreover, the fact that remains undisputed is that the funds that were received by the *Noticee* through DDM and DDT, were in fact utilised towards the trades executed on the exchange platform and the source to the said funds have originated from Beejay, which is a debarred entity.

30. I further note that at the relevant point of time, bank accounts of DDT and DDM were not having funds sufficient to meet their settlement obligations and the two entities were seen to have received funds from Beejay, which they have in turn, transferred immediately to the *Noticee* to meet their pay-in or settlement obligations against the trades executed by or on behalf of the *Noticee* on the exchange platform. Thus, the *Noticee* has endeavoured to justify the fund transactions either as consideration received towards pay-in obligations for the trades executed on behalf of DDT and DDM or as short-term loan availed by the *Noticee* to meet the settlement obligation arising out of trades executed on behalf of various other clients of the *Noticee* or in respect of its own proprietary trades. I have already observed above that the claim of the *Noticee* having obtained short-term loans has not been found acceptable as no supporting details/documentation pertaining to various essential details such as tenure of such loans, rate of interest, securities pledged by the relevant entities in the balance sheet, TDS certificate etc. have been produced to corroborate the said claim of having obtained loan from DDT or DDM to settle its dues with the Stock Exchanges.

31. The *Noticee* has attempted to feign ignorance about the source of funds of DDT and DDM and has claimed that being a stock-broker, there is no obligation cast upon it nor any mechanism is available to ascertain the source of funds of its clients. In this context, I may recollect that the *Noticee* has already been found to have close connection with DDT and DDM, based on common email id and numerous fund transfers, for which no

documentation was executed. In the light of above, it cannot be doubted that the relationship of the *Noticee* with DDT & DDM was not limited to that of a 'stock-broker and client', but much beyond that and this very fact itself renders its plea of ignorance about Beejay or the source of funds for DDT and DDM a weak and unsuccessful defence.

32. The *Noticee,* while refuting the charge of facilitating a debarred entity to access to the securities market through DDM and DDT, has submitted that the charge of facilitating trading to a debarred entity would not sustain as the SCN does not contain any document which indicates the intention of the *Noticee* to act in defiance of the order passed by SEBI, restraining certain entities from accessing the securities market. It has been submitted that the present proceedings have been initiated for the simple reasons that the two entities, i.e., DDT and DDM have fund transactions with the debarred entity (Beejay) and the two entities mentioned above have some connection with the *Noticee.* It has been submitted that even assuming that the *Noticee* has connection with the two entities directly or indirectly, the documents annexed to the SCN, based on which the allegations have been made are not sufficient to establish the charge of facilitation of trading to Beejay. It has also been submitted that the allegation is based on surmises and conjectures and has not been supported by evidences, which could lead to arrive at a finding that the *Noticee* had deliberately and intentionally permitted the debarred entity to have an access to the securities market. Further, to support the said submission, the *Noticee* has pointed out that the debarred entities have also traded through other stock brokers and no action has been initiated against such stock-brokers by SEBI. It has also been submitted that during the relevant period, DDT and DDM have executed trades through other stock brokers as well and the trades executed through such other stock brokers were substantial, in comparison to the trades executed by DDM and DDT through the *Noticee.* The point that the *Noticee* intends to advance is that in case DDT and DDM are believed to be connected to the *Noticee* and the two being the regular investors of securities market had no reason to trade only a miniscule part of their volume of trades through the *Noticee* while executing a substantial part of their trading turnover through other stock brokers.

33. As far as the contention raised by the *Noticee* that no action against other stock brokers was taken, it is pertinent to observe that if after factually analysing the transactions of a particular case, it has been found fit to proceed against the *Noticee* alone, the same cannot be made a ground for condoning the violation of various provisions of laws by the *Noticee* which have been alleged in the SCN based on factual evidence and analysis. I note that when such a plea of discriminatory approach was taken before Hon'ble SAT in the matter of *Systematix Shares & Stocks India Limited v. SEBI (2012)*, the same was rejected by the Hon'ble Tribunal by observing *inter alia* as: "*We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful.*"

34. Thus, the above contention of the *Noticee* is fallacious for the reason that the factual position of the *Noticee* as a stock broker vis-à-vis the debarred entity through DDT and DDM is not exactly the same as the other stock brokers due to which other stock brokers were not charged in the SCN. None of the other brokers has a Director who is related to the Director of the *Noticee* and none of those stock brokers shared a common email id, as shared by the *Noticee* with DDT and DDM. Hence, the contention of the *Noticee* is factually not tenable.

35. As noted above, it has also been submitted by the *Noticee* that in case DDT and DDM are alleged to be connected to the *Noticee*, there appears to be no reason as to why the said two entities have executed substantial part of their trades through other stock brokers. It has been further submitted that DDM and DDT have long association with the securities market and have been investing in the market on a regular basis. In this regard, I find that the allegations in this case proceed on the premise that on the relevant dates, when trades have been executed by the DDT and DDM, it is seen that DDT and DDM received funds from Beejay, which have been in turn transferred by DDT and DDM to the *Noticee* and the same was used for the settlement of trading obligations. From the materials on record, it is also noted that at times, the fund transferred by DDT and DDM have not been in proportion to the trades executed by the *Noticee* on their behalf on those specific days

However, in terms of my discussions recorded above, the *Noticee* is not only closely connected to DDT and DDM, but also has failed to substantiate the claim of fund transactions executed with DDT and DDM as loan transactions, and has also not been able to demonstrate successfully as to how funds from such transactions were deployed for settling the trades of other clients. Under the circumstances, the fact that DDT and DDM have been regular investors of securities market and have executed substantial trades through other stock brokers during the relevant period does not appear to be a ground to exonerate the *Noticee* from the alleged acts committed by it in contraventions of securities law.

36. At the same time, I can't ignore the fact that DDT and DDM were closely connected with the *Noticee* and the claim of the *Noticee* of receiving money from them as short-term advances has not been supported by independently verifiable documents and that in itself is adequate to hold that the conduct of the *Noticee* was not fair nor the *Noticee* has acted in compliance with rules and guidelines provided under the Stock Broker Regulations.

37. At this juncture, I deem it relevant now to refer to the recent order dated April 09, 2021 passed by SEBI against Beejay and few other entities. The said order has been passed against the entities with the charge of circumventing the SEBI's restraint directions, and the *Noticee* herein is facing the charge of aiding and assisting one of the said entities (Beejay). It is noted from the said order that the charges of violation of PFUTP against the main delinquents (Beejay and others) have not been established and the said entities have been found to have been guilty of only non-compliance with the directions of SEBI. Under the circumstances, in my view the charges against the *Noticee* herein for violation of PFUTP Regulations cannot be said to be established. However, based on the explicit facts that have emerged with respect to the connection of the *Noticee* with DDT and DDM, as well as the fund transfers from Beejay to DDM/DDT and in turn to the *Noticee* for trading in securities market and the unsatisfactory and unsubstantiated explanation furnished in justification thereof by the *Noticee* herein, I am constrained to observe that the acts of the *Noticee* was not fair and transparent. Having considered the materials on

record and having appreciated the justifications advanced by the *Noticee*, I find that the records clearly suggest that by its own acts of misconduct in the entire transactions as discussed above, *Noticee* has violated provisions of Clause A (1), (2), & (5) of Code of Conduct for Stock Brokers under the Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

38. Having held as recorded above, but at the same time considering the fact the *Noticee* has already applied for surrender of its membership from both the Stock Exchanges i.e. the NSEIL and the BSE and it is no more active in Securities Market as a registered stock broker, it would be sufficient to meet the end of justice that the proceeding is disposed with Censuring the *Noticee* for displaying gross misconduct while acting as stock broker. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11B and section 19 of the Securities and Exchange Board of India Act, 1992, read with the Regulation 28(2) of Intermediaries Regulations, hereby strongly Censure the *Noticee* for displaying such gross professional misconduct and thereby jeopardising the interests of the securities market and further caution the *Noticee* and direct it to refrain from such unfair practices in future or in any other similar act whatsoever, so as to violate the sanctity of the SCRA, 1956, the SEBI Act, 1992, Depositories Act, 1996 and the Regulations made thereunder both in letter and in spirit by indulging in any acts, which are detrimental to the interest of securities market.

-Sd-

Date: APRIL 30th, 2021

S. K. Mohanty

Place: Mumbai

Whole Time Member