

WTM/AB/MIRSD/DoS-1/6521/2019-20

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER**

INTERIM ORDER

**UNDER SECTIONS 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.
IN RESPECT OF**

Noticee no.	Name of the Noticee	CIN/ DIN	PAN
1.	Ms. Seema Khandelwal	01902705	ACWPK8537E
2.	Mr. Bimal Prakash Agarwal	07098265	ADNPA3293R
3.	Mr. Sandesh Khandelwal	02661150	ANGPK7447L
4.	Mr. Siya Ram Khandelwal	03062876	ADCPK0610K
5.	Mr. Dhruvesh Patel	07712652	APMPP2298E

(The aforesaid entities are hereinafter referred individually by their respective names/Noticee numbers and collectively as “the Noticees”)

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an *ex-parte ad-interim* order dated June 28, 2019 (hereinafter referred to as “**interim order**”) in the matter of Raghukul Shares India Private Limited (hereinafter referred to as “**RSIPL**” or “**stock broker**”). Directions contained in the interim order read as under:

“14. Under the above circumstances, pending such inquiry, I, in exercise of powers conferred upon me by virtue of section 19 read with sections 11(1), 11(4), 11B and 11D of the SEBI Act, 1992, Regulation 35

of Securities And Exchange Board Of India (Intermediaries) Regulations, 2008, by way of this ex parte -ad-interim order, hereby issue the following directions:

- a) Noticee nos. 1 to 3 namely, Raghukul Shares India Private Limited, Mr. Gangaram Khandelwal and Mr. Amit Sharma, are 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) Noticee nos. 1 to 3 namely, RSIPL, Mr. Gangaram Khandelwal and Mr. Amit Sharma are 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) Noticee nos. 1 to 3 namely, RSIPL, Mr. Gangaram Khandelwal and Mr. Amit Sharma are 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 but not later than 5 working days from the date of receipt of these directions.*
- d) Till further directions in this regard, the assets of Noticee no. 1, 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 are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of Noticee no. 1, RSIPL except for the purpose mentioned in sub-para (d) after confirmation from the concerned stock exchange (s) and/ or Depositories as the case may be.*
 - f) The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by Noticee no. 1, RSIPL except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).*
 - g) Noticees nos. 4 to 8 viz., Noticee no. 4, Ms. Seema Khandelwal, Noticee no. 5, Mr. Bimal Prakash Agarwal, Noticee no. 6, Mr. Sandesh Khandelwal, Noticee no. 7, Mr. Siya Ram Khandelwal and Noticee no. 8, Mr. Dhruvesh Patel are directed to file their replies along with relevant documentary evidence to show cause as to why actions mentioned in para 14 (a) to (c) should not be initiated against them for violations committed by the broker, RSIPL.*
 - h) The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.”*
2. As noted above, the interim order directed Noticee no. 1 to 5 to file their replies along with relevant documentary evidence within twenty one (21) days from the date of receipt of the interim order to show cause as to why actions mentioned in para 14 (a) to (c) should not be initiated against them for the violations mentioned in the interim order. The interim order also provided an opportunity of hearing to the Noticees on August 09, 2019 at 02:30 PM.
3. The date of hearing on August 09, 2019 was rescheduled to August 20, 2019. On the said date of hearing, Noticee no. 5 and the Authorized Representative

(hereinafter referred to as “AR”) of Noticee no. 2 appeared before me and made submissions. Meanwhile, letters dated July 30, 2019 were received from Noticee Nos.1,3 and 4 namely Ms. Seema Khandelwal, Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal seeking inspection of documents, followed by a reminder email dated August 16, 2019. An opportunity for inspection of documents was provided to them on August 19, 2019. However, vide an email dated August 19, 2019, Noticee Nos.1,3 and 4 expressed their inability to attend the inspection of documents at such short notice. In view of the same, the inspection of documents was rescheduled to August 22, 2019 and consequently the date of hearing *qua* these Noticee Nos.1,3 and 4 was rescheduled to August 29, 2019.

4. During the inspection on August 22, 2019, the following documents were inspected by AR of the Noticee Nos.1,3 and 4:

Sr No.	Document
1.	Email dated May 28, 2019 received by SEBI from NSE regarding complaints against RSIPL received by NSE and violations observed during limited purpose inspection of RSIPL conducted by NSE.
2.	E-mail dated June 04, 2019 received by SEBI from NSE along with NSE inspection report and Annexures of said inspection report in the matter of RSIPL
3.	NSE letter dated May 31, 2019 (original) to SEBI
4.	List of 26 complaints received by SEBI-Jaipur Local office
5.	Complaint dated May 14, 2019 received by SEBI from Mr. Bimal Prakash Aggarwal and Ms. Kavita Devi Aggarwal

5. Thereafter, vide letter dated August 22, 2019 the AR of Noticee Nos.1,3 and 4 further sought the following documents:

- a. Copies of the complaints (26 complaints) as purported to have been received by SEBI, Jaipur Office
 - b. Annexures to the e-mail dated May 28, 2019 from NSE to SEBI
 - c. Annexure to the e-mail dated June 04, 2019 from NSE to SEBI
 - d. Any other document(s) referred to and relied upon by SEBI and of which inspection has not been provided.
6. In this regard, vide email dated September 03, 2019 the Noticee Nos.1,3 and 4 were provided with copies of all the 26 complaints and it was clarified that all the documents referred and relied upon by SEBI in the interim order had already been provided to these Noticees. Another opportunity of hearing was granted to these Noticees on September 20, 2019. On the said date the ARs of the Noticee Nos.1,3 and 4 appeared before me and made submissions.
7. Vide letters dated September 19, 2019 and October 01, 2019, the Noticee nos. 1, 3 and 4, i.e. Ms. Seema Khandelwal, Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal have also submitted their replies along similar lines which are as follows:
- a. Pursuant to two agreements, viz. 'Preliminary Agreement to Takeover Business' dated February 06, 2015 and 'Indemnity Arrangement and Disclaimer Bond' dated February 04, 2016, the management and control of RSIPL was given by one Mr. Gangaram Khandelwal (hereinafter referred to as "**Gangaram**") and Noticee No.1 (Ms. Seema Khandelwal) to Mr. Amit Sharma (hereinafter referred to as "**Amit**") with effect from March 31, 2016. Amit became the Director and Compliance Officer of RSIPL. After sometime Amit also became the Designated Director and Dominant Promoter Group shareholder. Noticee nos. 3 and 4 (Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal) did not ever own shares of RSIPL and therefore their names do not appear in the two agreements mentioned above.

- b. Consequent upon taking over of the control and management of RSIPL including regulatory compliances by Amit, the Noticee nos.1,3 and 4 were not involved in any manner with the day to day management and affairs of RSIPL. Amit was made a Director of RSIPL on April 08, 2016 and he was given full charge of RSIPL. Since, the Noticee nos.1,3 and 4 during the period covered under inspection was not in any manner concerned with the management, operations, regular business affairs of RSIPL and was not party to any decision making, strategizing or commercial transactions of RSIPL, hence, the said interim order passed against RSIPL and the other Noticees could not be extended to Noticee nos.1,3 and 4. Even after ceasing to be involved in the management of RSIPL, the Noticee nos.1,3 and 4 continued to be directors of the RSIPL. However, subsequently, on the advice of professionals, Noticee Noticee nos.1,3 and 4 tendered their resignation as directors with effect from September 27, 2018.
- c. Until the joining of Mr. Amit Sharma, the affairs of RSIPL were being managed properly by Noticee 1 and Gangaram and there were absolutely no complaints or grievances.
- d. The Noticee nos.1,3 and 4 have specifically mentioned certain critical clauses in the 'Indemnity Arrangement and Disclaimer Bond' dated February 04, 2016 as follows:
- *Gangaram Khandewal and Seema Khandewal (As per MoA and AoA of company) have given the entire rights of managing the company business, assets and liabilities to the party of second part- Amit Sharma*
 - *That after the date of takeover i.e. 31st March 2016, all the transactions including the receipts and payments of any amount related to the clients of both the companies is the sole responsibility of the party of second part and party of the first part have no relation with the same.*

- *That the party of the first part will not be responsible for any of the act related to the operation/ modifications and transactions in the bank account of both the companies after the date of take over.*
 - *That the Party of The first part is not liable and bound by any act of the second party in regard with the hypothecation, pledge, charge or other similar act of the shares, commodities and other assets of the clients and the company.*
 - *Any liabilities, dues, legal proceedings whatsoever generated after the aforesaid date are sole responsibility of the Party of second part- Amit Sharma.*
- e. As per the Preliminary Agreement, Amit was to make the payment towards consideration of the shares to Noticee nos. 1 and Gangaram in a phased manner and the last payment whereof was to be made on February 20, 2017 and till that time the Noticee nos. 1,3 and 4 were to continue as Directors of RSIPL without taking any participation in the day to day running of RSIPL's business. Consequent upon transfer of shares by the Noticee no.1 to the Amit, the Noticee no.1, vide her letter dated February 13, 2017 addressed to the Board of RSIPL gave her consent to be excluded as shareholder from Dominant Promoter Group of RSIPL. On the same date the Noticee no. 1 also gave an undertaking to the above effect to the NSE. Consequent upon transfer of shares by Gnagaram in favour of the Amit and his nominee, RSIPL through Amit and Noticee No.5 (Mr. Dhruvesh Patel) made an application dated August 03, 2017 to the NSE seeking its approval to the transfer of shares by the Noticee nos.1 and Gangaram as also change in the composition of the Board of Directors of RSIPL. After the change in control, the Board of RSIPL was supposed to comprise of two Directors namely, Amit and Dhruvesh Patel (Noticee No.5) and Noticee nos.1,3, and 4 as well as Gangaram would all cease to be directors of the RSIPL. Since the necessary applications for transfer of shares and change in management control were made by RSIPL through the Amit and Noticee no.5 (Dhruvesh Patel), both of whom were the

Designated Directors, the Noticee nos. 1,3 and 4 were under bona fide belief that the requisite approval of the stock exchange to the transfer of shares and change in control of RSIPL would have been received by RSIPL, particularly, when no further communication from the NSE was brought to the notice of the Noticee nos.1,3 and 4.

- f. As regards the complaints filed with SEBI, it is submitted that all the 26 complaints filed with SEBI were filed after the transfer of control (April 1, 2016) and pertinently after the resignation of the Noticee nos.1,3 and 4 (September 27, 2018) and none of the Complaints were filed against the Noticee except a complaint dated May 14, 2019 filed by Mr. Bimal Prakash Agarwal (Noticee No.5) and his wife Kavita Devi Agarwal which has been rejected by SEBI, being a frivolous complaint. Mr. Bimal Agarwal is closely associated and connected with Amit and his associates namely Noticee No.5 and one Mr. Ram Lakhan Disania and he is a partner of Amit and his associates in at least 4 firms.
 - g. All alleged trading accounts/ demat accounts mentioned in the interim order are associated with Amit and all transactions, including investment in properties, have taken place much after the control of RSIPL was taken over by the new promoters from the Noticee no. 1 and Gangaram. The Noticee no. 3 has also stated that he had never taken any remuneration as a director from RSIPL.
8. Noticee No.2, Mr. Bimal Prakash Agarwal, vide letters dated August 01, 2019 and August 20, 2019 have made the following submissions:
- a. RSIPL has siphoned off shares worth Rs. 6,83.22.305/- belonging to him and shares worth Rs.9,16,97,513/- belonging to his wife totaling R.s. 16.00 19,818/- (value as on 27.02.2019) which represented their entire life's savings. Investor Grievance Resolution Panel was appointed by NSE on the basis of complaint filed by him, and which has upheld his claim.

- b. The Noticee no. 2 has filed FIR against RSIPL, Mr. Amit Sharma and Dr. Ram Lakhan Disania and others and had even opposed the bail application of Noticee no. 3 successfully.
- c. The funds of RSIPL has also been siphoned off to entities such as Step Ahead Broking Pvt. Ltd. and Swastik Services.
- d. Although the MCA records state that Noticee No.2 was appointed as a Director of the Company on 01.10.2018, however, the form for appointment as a Director was uploaded by RSIPL only on 08.02.2019. Therefore, RSIPL fraudulently back dated the appointment of the Noticee No. 2 as director of RSIPL. Once the Noticee No. 2 became aware of the fraudulent acts of RSIPL, Mr. Amit Sharma and his accomplices he immediately resigned from RSIPL.
- e. If the Noticee no. 2 would have been aware of the frauds carried out by RSIPL he would not have transferred shares worth more than Rs. 3. crores to RSIPL as late as December 2018 apart from shares worth Rs. 13.00 crores transferred prior thereto.
- f. When the Noticee No. 2 resigned from RSIPL, he requested the Company Secretary of the RSIPL to draft the resignation letter and on professional advice signed the same and he is not aware of the appropriate disclosures in such letter. The Company Secretary who drafted this letter was engaged for Noticee No. 2 by Mr. Piyush Singhi who is Chartered Accountant of RSIPL and suspected accomplice to the fraud.
- g. The Noticee no. 2 has referred to Section 149(12) of the Companies Act, 2013 and submitted that since he was an independent director he can be held liable only in respect of such acts of omission or commission by a company

which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

9. Noticee No. 5, Mr. Dhruvesh Patel has, vide his letter dated August 20, 2019 submitted that he was an employee of RSIPL and Mr. Amit Sharma (Noticee No.3) had made him a director of the RSIPL to satisfy the requirement of minimum two directors of a company. He never had access to any stamps or important documents of RSIPL nor did his job profile undergo any change after he became director. Subsequently he was removed from the post of director and no explanation was provided to him. He has also submitted that currently he is not employed with RSIPL.
10. I have considered the aforesaid replies submitted by the respective Noticees and submissions made before me during the personal hearing. I note that the interim order gives details of the directors of RSIPL, as follows:

Sl. No.	Name	Designation	Date of appointment	Date of Cessation
1	Mr. Gangaram Khandelwal	Executive Director	June 16, 2009	-
2	Mr. Amit Sharma	Executive Director	April 08, 2016	-
3	Ms. Seema Khandelwal	Non – Executive Director	June 16, 2009	March 30, 2019*
4	Mr. Bimal Agarwal Prakash	Independent Director	October 01, 2018	March 07, 2019*
5	Mr. Sandesh Khandelwal	Executive Director	June 22, 2009	September 27, 2018
6	Mr. Siya Ram Khandelwal	Non – Executive Director	April 30, 2010	September 27, 2018

7	Mr. Dhruvesh Patel	Executive Director	May 12, 2017	September 27, 2018
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*As per MCA records, no confirmation is received from RSIPL

11. The interim order observes that during April 2019, NSE had received 14 investor complaints against RSIPL for a total claim amount of Rs. 24.65 Crores which included funds amounting to Rs.8.65 Crores and securities worth Rs. 16 Crores (approximately). Details of complainants and their claims are detailed in para 4 of the interim order. Pursuant to receipt of the aforesaid 14 complaints against RSIPL, NSE conducted an inspection of RSIPL and forwarded a report of the inspection of RSIPL to SEBI. The period of inspection by NSE was from April 01, 2018 to April 10, 2019, which was later extended to April 01, 2016 to April 10, 2019 (hereinafter referred to as “**period covered under inspection**”). The interim order noted that, despite repeated reminders and visits to RSIPL’s registered office by NSE, complete data sought by NSE was not provided by RSIPL. Based on the inspection conducted by NSE, the interim order *prima facie* observed defaults on the part of the RSIPL, of whom the Noticees were directors, a summary of which is given as follows:

a) Non availability of funds with RSIPL

Since value of creditors reflected in the books of accounts of RSIPL provided by RSIPL was not in accordance with the value of claims made by complainants, further analysis was done and it was observed that instances of payments of funds posted in bank book of RSIPL amounting to Rs. 5.84 Crores *prima facie* appeared to be bogus/fake. After considering the same, revised value of trade payables to be paid by RSIPL amounted to Rs. 6.08 Crores and it was observed that RSIPL has only Rs. 2.07 Crores as per its bank account statement and collaterals. Therefore, the interim order observed that there *prima facie* appeared to be a mismatch between the funds and the liabilities of the broker, RSIPL. Further, RSIPL had *prima facie* misused clients’ funds and securities and failed to segregate own and client’s funds and securities.

b) Non availability of clients' securities

It has been *inter alia* observed by NSE on analysis of trade data of two complainants, Mr. Bimal Prakash Agarwal and Ms. Kavita Devi Agarwal, (who have claimed securities worth Rs. 16 Crores), that the net securities amounting to Rs. 13.46 Crores should have been recorded in Register of Securities (hereinafter referred to as “RoS”) by RSIPL as on April 10, 2019 which were not found. The interim order noted that there were *prima facie* discrepancies in the RoS/ holding statement submitted by RSIPL with respect to the quantum of client securities and that there is a shortfall of client securities to the extent of Rs. 13.47 Crores. The *interim order* observed that the shortfall of client securities shows that the broker, RSIPL has *prima facie* misused clients' securities and that RSIPL has *prima facie* not only failed to segregate clients' securities, but also failed to maintain proper records of collateral deposited by clients and to prevent misuse of client collateral.

c) Misappropriation of clients' securities

On verification of pay-in and pay-out of client securities by NSE from the stock exchange data, it had been observed that RSIPL had used securities of clients amounting to Rs. 11.62 Crores against obligation of another client SAB169-Swastik Services, which is a firm where Mr. Amit Sharma, is a partner. Mr. Amit Sharma is also a Designated Director in RSIPL. NSE on further analysis, observed that payout received after selling these securities amounting to Rs. 10.74 Crores has been further transferred to its group associate-Swastik services during July 01, 2017 to March 31, 2019. The client code SAB169-Swastik Services was opened as on June 12, 2017 as per NSE's records. On verification of transaction statement of beneficiary account of RSIPL, it has been observed that these aforesaid securities were neither transferred by the client SAB169-Swastik Services to the RSIPL nor the same were purchased through the RSIPL during the period June 12, 2017 to April 10, 2019. From the above, the interim order *inter alia* noted that the pay-in obligation of one client Swastik Services (related entity) amounting to Rs. 11.62 Crores was met by

utilizing the securities of other clients. The Pay-out of funds received was also subsequently transferred to the said related client. NSE on verification of transaction statement of client beneficiary accounts for the period April 01, 2018 to March 31, 2019 observed that RSIPL has transferred securities of clients to some other clients to whom these securities did not belong. Securities amounting to Rs. 72 lakhs were transferred to 9 such unconnected clients. These securities were recorded in the books of RSIPL as opening balance, however these clients have neither purchased these securities nor transferred them to RSIPL from the time of their client registration till date. These clients have been registered with the broker between May 2016 and January 2018 but have not done any trade in cash market of NSE. The interim order *inter alia* observed that RSIPL has *prima facie* misused clients' securities.

d) Non-Settlement of client funds & securities

It was observed that RSIPL has not settled funds securities of clients and the total value of funds and securities not settled is Rs. 13, 38, 11, 566 /- belonging to 80 clients. Therefore, RSIPL had *prima facie* failed to settle clients' accounts on quarterly / monthly basis depending on the preference of the client.

e) Misrepresentation of Data submitted to Exchange

The interim order *inter alia* noted discrepancies between entries in bank statements submitted by RSIPL during inspection by NSE and bank statements obtained directly from RSIPL's banker. Entries in client financial ledgers and bank book relating to payment made to clients were not reflecting in bank statements and receipt and delivery of securities from/to two clients were observed to be recorded in the RoS of another client namely, Swastik Services which is a related entity, and not in the name of the respective beneficial owners. Therefore, the interim order observed that RSIPL had *prima facie* failed to maintain and preserve Books of account and other documents and failed to maintain high standards of integrity, promptitude and fairness in the conduct of its business.

f) Discrepancy in computation of Net worth

On verification of computation of the net worth as on September 30, 2018 of RSIPL it was observed that RSIPL had not deducted debit balance amount not recovered within 3 months from its net worth. RSIPL had *prima facie* failed to maintain net worth and deposit requirements as required for stock brokers / clearing members / self- clearing members.

g) Fixed return offered to registered clients

On verification of financial ledger and bank statement of RSIPL, it appeared that RSIPL has made fixed payment/ return to clients on regular interval and the interim order noted that the broker, RSIPL had *prima facie* acted in violation of Clause A (1) and (5) of the Code of Conduct prescribed for the Stock brokers under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

h) RSIPL failed to obtain prior approval for change in control (Dominant Promoter Group) and appointment of Director from exchange

During the inspection, Mr. Gangaram Khandelwal (Dominant Promoter and past director) had submitted an agreement purportedly with regard to transfer of his shareholding and management control to Mr. Amit Sharma and his associates. However, no prior approval had been obtained from exchange for the same. Further, on verification of records of Ministry of Corporate Affairs (MCA), NSE observed that RSIPL has appointed Mr. Bimal Prakash Aggarwal as director on October 01, 2018, however no prior approval / intimation was obtained from exchange in this regard.

i) Wrong monthly data submitted by RSIPL to NSE with respect to enhanced supervision

RSIPL has *prima facie* failed to report complete and correct data to exchange on time.

j) Failure to maintain of Register of Securities, Holding Statement, Bank Book and Client Ledger in prescribed standard format and to upload holding statements

NSE observed that RSIPL had not maintained RoS, holding statement, Bank Books and Client Ledgers in prescribed standard format. Further, NSE has observed that RSIPL had not uploaded data with respect to holding statement for most of the dates. NSE vide letter dated May 31, 2019 had submitted that RSIPL failed to submit weekly data towards the monitoring of clients funds (Enhanced Supervision) since April 05, 2019, and as a result of which NSE has restricted registration of new clients of RSIPL. RSIPL also failed to submit complete data sought by NSE for sample period / dates for conducting inspection of RSIPL.

12. In view of the above, the interim order concluded that RSIPL had prima facie acted in violation of the following provisions of law:

- (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 Securities Contract (Regulation) Rules, 1957,

- (j) Regulation 17 and Clause A (1) and (5) of the Code of Conduct prescribed for the Stock brokers under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
- (k) Schedule VI of SEBI (Stock Brokers and Sub-Brokers) Regulations.

13. The interim order also noted that any company, though a legal entity, cannot act by itself, it can act only through its Directors. Directors are expected to exercise their power on behalf of the company with utmost care, skill and diligence. The Board of Directors of a company is entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the directors being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. In view of the above-mentioned defaults, the interim order was issued with respect to the Noticees.

Consideration of submissions of Noticee nos.1,3 and 4:

14. Noticee nos. 1,3 and 4 in their replies have contended that the management and control of RSIPL was handed over by Gangaram and Noticee No.1 (Ms. Seema Khandelwal) to Amit with effect from March 31, 2016 and that, before such hand-over the affairs of RSIPL was being managed by Gangaram and Noticee nos.1,3 and 4 efficiently and there were no defaults on the part of RSIPL. In support of this contention, these Noticees have submitted copies of the two notarized agreements viz. 'Preliminary Agreement to Takeover Business' dated February 06, 2015 and 'Indemnity Arrangement and Disclaimer Bond' dated February 04, 2016. Firstly, it is observed that, with respect to the change in control of RSIPL, which was a SEBI registered broker, prior approval needed to be obtained from the exchange, as mandated by SEBI Circular No. CIR/MIRSD/2/2011 dated June 3, 2011 and CIR/MIRSD/14/2011 dated August 2, 2011. However, no such prior approval was obtained. In this regard, the Noticee nos.1,3 and 4 have submitted the copies of application dated August 03, 2017 stated to have been written to NSE seeking its

approval to the transfer of shares by the Noticee no.1 and Gangaram as also change in the composition of the Board of Directors of RSIPL. I note that these copies are not acknowledged by NSE and also the date of application is after the purported transfer of control and the statutory requirement was to obtain prior approval. Further, as observed in the interim order, the Noticee nos. 1,3 and 4 continued as directors of RSIPL much after the signing of the aforesaid documents. The contention of the Noticee nos. 1,3 and 4 that they are not liable as no prior approval of NSE was obtained for purported change in shareholding or control of RSIPL and further they continued to remain directors of the RSIPL even after signing of these purported agreements and hence are liable for the acts of RSIPL during their directorship. Therefore, the Noticee nos.1,3 and 4 cannot absolve themselves of responsibility regarding the functioning of RSIPL solely based on the said purported agreements.

15. The Noticee nos.1,3 and 4 have also made submissions regarding their resignation from the post of directors in RSIPL and have submitted copies of Board Resolutions of RSIPL dated September 27, 2018 accepting their resignation. I note that the records of MCA does not match with this submission of Noticee No.1. The record of MCA mentions the date of resignation of only Noticee nos. 3 and 4 (Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal) as September 27, 2018. The date of resignation of Noticee No. 1 (Ms. Seema Khandelwal) is mentioned as March 30, 2019. Even if September 27, 2018 is taken as the date resignation of these four directors, I note that the period covered under inspection was from April 01, 2016 to April 10, 2019 and these directors were on the Board of Directors of RSIPL for two and a half years during the period covered under inspection and during this period RSIPL has been prima facie found to have committed violations.
16. A director's duties are clearly laid out in the Companies Act, 2013 under Section 166. The directors have a fiduciary duty to act in a manner that will promote the objects of the company in the best interests of the company and exercise their duties with due and reasonable care, skill and diligence. The objects of a stock broking

company would be to carry out the business of stock broking in a lawful manner as per the SEBI Act and the regulations framed thereunder, particularly SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. It was the duty of the director of the stock broker (RSIPL) to act in furtherance of this objective, which they failed to do. The duty that arises from a statutory requirement cannot be negated by the said purported private agreement. The Noticee nos. 1,3 and 4 continued to be directors of RSIPL till at least September 27, 2018 and did not relinquish their directorship and consequently the duties that come with it. Moreover, I note that in order to give up their responsibilities as directors they would have had to vacate their posts as directors following the procedure as laid down in law which has not been done in the present case.

17. I note from the MCA records that Noticee no. 3, Mr. Sandesh Khandelwal, was appointed as an Executive Director of RSIPL on June 22, 2009 and resigned from the company with effect from September 27, 2018. Noticee no. 1 Ms. Seema Khandelwal was appointed as a Non - Executive Director of RSIPL on June 16, 2009 and resigned from the company with effect from March 30, 2019. Noticee no. 4, Mr. Siya Ram Khandelwal was appointed as a Non - Executive Director of RSIPL on April 30, 2010 and resigned from the company with effect from September 27, 2018. In this regard, I reiterate that a company being a juristic person, all its deeds and functions are the result of acts of its directors and management, etc. I note that the Noticee nos. 1 and 4 were Non-executive Directors and not involved in the day to day activities of RSIPL, I further note that Noticee No.3 was Executive Director of RSIPL during the period covered under inspection. Considering the *prima facie* findings of serious misconduct of RSIPL which includes misappropriation of clients' securities, diversion of clients' funds to connected entities and wrong disclosure to stock exchanges, Noticee no. 3 cannot absolve himself of responsibility since he was Executive Director of RSIPL during the period covered under inspection during which the violations were committed by RSIPL. However, based on the fact that Noticee nos. 1 and 4 were non- executive directors I find no material at this stage to

hold that they were involved in the day to day affairs of RSIPL and therefore liable for the defaults on the part of RSIPL.

Consideration of submissions of Noticee no. 2:

18. I Note that the MCA website reflects that Noticee no. 2 ,Mr. Bimal Prakash Agarwal was the Independent director of RSIPL from October 01, 2018 to March 07, 2019. I also note that the name of Noticee no. 2 has not been mentioned in any of the complaints filed against RSIPL. I also note that Noticee no. 2 was among the first 14 complaintants who informed and complained about the wrong doings of RSIPL. Therefore, being an Independent Director and without any averment with respect to the Noticee being actively involved in the day to day activity of RSIPL, I am of the opinion that no directions are warranted against Noticee No. 2.

Consideration of submissions of Noticee no.5:

19. I note that Noticee No. 5 was 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. 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 Swastik Services, transferring of clients' funds to 9 unconnected clients, fixed pay out to clients were found to have been committed by RSIPL during the time the Noticee no.5 was a director of RSIPL. As an Executive Director,he has to be treated at par with Noticee No.3 and to be held responsible for the violations committed by RSIPL during his tenure as an Executive Director of RSIPL.
20. The present order has been passed under disciplinary proceedings against the Noticees for the violation of the Securities Laws, as mentioned in the order above. The observations in this order does not *ipso facto* entitle any client of the Noticee no. 1 to claim their funds, stocks and securities, and such claims shall be filed by such clients with the concerned stock exchanges/depositories in accordance with

their respective bye-laws and the stock exchanges/depositories shall take steps to dispose their claims expeditiously.

Directions:

21. I find that Noticee no. 3 and 5, ie. Mr. Sandesh Khandelwal and Mr. Dhruvesh Patel were Executive Directors of RSIPL during the period under inspection and during the period when these violations were committed by RSIPL and in view of the discussions in the previous paras needs to be treated as such. Accordingly, I, in exercise of the power conferred upon me under Sections 11(4), 11B and 11D read with Section 19 of the Securities and Exchange Board of India Act,1992, in the facts and circumstance of case, hereby, issue the following directions:
- a) Noticee nos. 3 and 5, namely, Mr. Sandesh Khandelwal and Mr. Dhruvesh Patel, are 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) Noticee nos. 3 and 5, namely, Mr. Sandesh Khandelwal and Mr. Dhruvesh Patel, are 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) Noticee nos. 3 and 5, namely, Mr. Sandesh Khandelwal and Mr. Dhruvesh Patel are 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 to SEBI/NSE but not later than 7 working days from the date of receipt of these directions.

d) Show cause issued to Noticee nos. 1,2 and 4 in the interim order stands disposed of without any directions.

22. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.

23. This order shall come into force with immediate effect.

24. A copy of this order shall also be sent to all the Noticees, recognised Stock Exchanges, the recognized Clearing Corporations, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Place: Mumbai

ANANTA BARUA

Date: January 24 , 2020

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA