

WTM/AB/MIRSD/DoS-1/6520/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
CONFIRMATORY 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.	Raghukul Shares India Private Limited	U67120RJ2009PTC029155	AAECR3716R
2.	Mr. Gangaram Khandelwal	01731730	ADRPK5114D
3.	Mr. Amit Sharma	02505457	AFGPS8573K

(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**”) against the Noticees issuing therein several directions against the Noticees.
 2. The interim order gave liberty to the Noticees herein to file their objections/reply to the interim order within 21 days of the receipt of the interim order. The interim order also stated that, in the event the said Noticees intended to avail an opportunity of personal hearing, they may appear before SEBI on August 09, 2019 at 02:30 PM. Interim order further directed that in the event of the Noticee nos. 1 to 3 fail to file

their replies within 21 days of receipt of the order or failing to appear before SEBI on the aforesaid date and time, the preliminary findings at paras 5 to 11 and directions at para 14 (a) to (f), of the interim order shall be deemed to be confirmed against the Noticee nos. 1 to 3 automatically, without any further orders.

3. The hearing fixed for August 09, 2019 was rescheduled to August 20, 2019. On the said date of hearing, one Mr. Vikash Tiwari appeared before me stating that Noticee no. 3, Mr. Amit Sharma had asked him to appear on his behalf. It was further informed that Noticee no. 3 is in jail as he has been arrested by the Rajasthan Police. However, Mr. Vikash Tiwari did not produce any letter of authority of Noticee no. 3 in favour of him. Noticee no. 1 has neither submitted any reply to the interim order nor appeared before me on the date of hearing. Also, no request for adjournment was received from Noticee no. 1.
4. Meanwhile, letter dated July 30, 2019 was received from Noticee Nos. 2 namely, Mr. Gangaram Khandelwal seeking inspection of documents, followed by a reminder email dated August 16, 2019. An opportunity for inspection of documents was provided to him on August 19, 2019. However, vide an email dated August 19, 2019, Noticee no. 2 expressed his 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* the Noticee no.2 was rescheduled to August 29, 2019.
5. During the inspection on August 22, 2019, the following documents were inspected by the Authorized Representative (hereinafter referred to as “AR”) of the Noticee no. 2:

Sr No.	Document
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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

6. Thereafter, vide letter dated August 22, 2019 the AR of Noticee no. 2 further sought the following documents:
- Copies of the complaints (26 complaints) purported to have been received by SEBI, Jaipur Office
 - Annexures to the e-mail dated May 28, 2019 from NSE to SEBI
 - Annexure to the e-mail dated June 04, 2019 from NSE to SEBI
 - Any other document(s) referred to and relied upon by SEBI and of which inspection has not been provided.
7. In this regard, vide email dated September 03, 2019 the Noticee no. 2 was 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 Noticee. Another opportunity of hearing was granted to Noticee no. 2 on September 20, 2019. On the said date the ARs of the Noticee no. 2 appeared before me and made submissions. Noticee no. 2 submitted his reply dated September 19, 2019. Noticee no. 2 also filed written submissions dated October 01, 2019.

8. Noticee no. 2, in his reply and written submissions, has made the following submissions:
- 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 Mr. Gangaram Khandelwal (Noticee no. 2) and one Ms. Seema Khandelwal to Mr. Amit Sharma (Noticee no. 3) with effect from March 31, 2016. Noticee no. 3 became the director and Compliance Officer of RSIPL. After sometime Noticee no. 3 also became the designated director and dominant promoter group shareholder.
 - b. Consequent upon taking over of the control and management of RSIPL including regulatory compliances by Noticee no. 3, the Noticee no. 2 and Ms. Seema Khandelwal were not involved in any manner with the day to day management and affairs of RSIPL. Noticee no. 3 was made a director of RSIPL on April 08, 2016 and he was given full charge of RSIPL. Since, the Noticee no. 2 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 no. 2. Even after ceasing to be involved in the management of RSIPL, the Noticee no. 2 continued to be a director of the RSIPL. However, subsequently, on the advice of professionals, Noticee no. 2 tendered his resignation as director with effect from September 27, 2018.
 - c. Until the joining of Mr. Amit Sharma, the affairs of RSIPL were being managed properly by Noticee no. 2 and Ms. Seema Khandelwal and there were absolutely no complaints or grievances.
 - d. The Noticee no. 2 has 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, Noticee no. 3 was to make the payment towards consideration of the shares to Noticee nos. 2 and Ms. Seema Khandelwal in a phased manner and the last payment whereof was to be made on February 20, 2017 and till that time the Noticee nos. 2 and Ms. Seema Khandelwal and Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal 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 Noticee no. 2 in favour of the Noticee no. 3 and his nominee, RSIPL through Noticee no. 3 and 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. 2 and Ms. Seema Khandelwal 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, Noticee no. 3 and Mr. Dhruvesh Patel and Noticee nos. 2 and his family would 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 Noticee no.3 and Mr. Dhruvesh Patel, both of whom were the Designated Directors, therefore, Noticee no. 2 was 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 no. 2.

- f. Noticee No. 2 incurred disqualification from being a director of a company under Section 164(2) of the Companies Act, 2013 for a period of five years with effect from November 01, 2016 to October 31, 2021. Though consequent upon the said disqualification, the Noticee ceased to be a director of RSIPL but by way of abundant precaution and at the advice of a professional, the Noticee no. 2 submitted his resignation from RSIPL on September 27, 2018, which was duly accepted by the Board of RSIPL.
- g. That the contents of the Interim Order in respect of Noticee no. 2 being the director of RSIPL as on June 28, 2019 i.e. the date of the interim order does not appear to be correct as the Noticee no. 2 had already resigned on September 27, 2018 and transferred his entire shareholding in RSIPL to Noticee No. 3 pursuant to the Preliminary Agreement much prior to the commencement of investigation period.
- h. 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. 2 and Ms. Seema Khandelwal, Mr. Sandesh Khandelwal and Mr. Siya Ram Khandelwal (September 27, 2018) as directors of the company and none of the complaints were filed against the Noticee no. 2 except a complaint dated May 14, 2019 filed by Mr. Bimal Prakash Agarwal 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 Noticee no. 3 and his associates namely, Mr. Dhruvesh Patel and one Mr. Ram Lakhan Disania and he is a partner of Amit and his associates in at least 4 firms.

- i. All alleged trading accounts/ demat accounts mentioned in the interim order are associated with the Noticee no. 3 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. 2 and Ms. Seema Khandelwal.
9. I have considered the submissions made by Noticee no. 2 in his reply, written submissions and during the hearing. Noticee no. 2 in his reply has contended that the management and control of RSIPL was handed over by him and Ms. Seema Khandelwal to Noticee no. 3 with effect from March 31, 2016 and that before such hand-over, the affairs of RSIPL was being managed by him and Ms. Seema Khandelwal efficiently and there were no defaults on the part of RSIPL. In support of his contention, Noticee no. 2 has 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 is a SEBI registered stock broker, prior approval was required 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 has been produced before me. In this regard, the Noticee no. 2 has submitted the copies of application dated August 03, 2017 stated to have been made to the NSE by RSIPL seeking its approval to the transfer of shares by the Noticee no. 2 and Ms. Seema Khandelwal and 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. The statutory requirement was to obtain approval prior to effecting the change in control. Secondly, as observed in the interim order, the Noticee no. 2 continued as a director of RSIPL much after the signing of the aforesaid agreements. The contention of Noticee no.2 that he is not liable as he had signed these agreements is not tenable as no prior approval was taken from NSE before purported change in control and he continued to remain a director of RSIPL and hence liable for the acts of RSIPL during his directorship.

Therefore, the Noticee no. 2 cannot absolve himself of responsibility regarding the functioning of RSIPL solely based on the said purported agreements.

10. The Noticee nos.2 has submitted that he resigned from the company on September 27, 2018 and has submitted a copy of the Board Resolution of RSIPL dated September 27, 2018 accepting his resignation. I note that the record of MCA does not reflect any date of resignation of Noticee no. 2. Even if September 27, 2018 is taken as the date of resignation, I note that the period covered under inspection was from April 01, 2016 to April 10, 2019 and Noticee no. 2 was on the Board of Directors of RSIPL for two and a half years during the period covered under inspection during which RSIPL has been *prima facie* found to have committed violations. Thus, Noticee no. 2 is responsible for the violations committed by RSIPL, during the term of his directorship in RSIPL.
11. A director's duties are clearly laid out in the Companies Act, 2013 under Section 166. The directors have a 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 and it was the duty of the directors 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 no. 2 continued to be an executive director of RSIPL till at least September 27, 2018 and did not relinquish his directorship and consequently, Noticee no. 2 is responsible for the violations committed by RSIPL, during the term of his directorship in RSIPL.
12. I note from the MCA records that Noticee no. 2, was an executive director of RSIPL during the period covered under inspection. In this regard, I note that a company being a juristic person, all its deeds and functions are the result of acts of its directors

and management, etc. 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. 2 cannot absolve himself of responsibility since he was executive directors of RSIPL during the period covered under inspection when the *prima facie* violations of securities laws by RSIPL has been found in the interim order.

13. Noticee no. 2 has submitted that he was disqualified from being a director for a period of five years with effect from November 01, 2016 to October 31, 2021 under Section 164(2) of the Companies Act, 2013. Based on this, the Noticee no. 2 contends that he ceased to be a director of RSIPL due to this disqualification. This contention of Noticee no. 2 cannot be accepted since the disqualification under Section 164(2) of the Companies Act, 2013 is with respect to eligibility for re appointment as director or new appointment in any other company and it does not apply to existing directorships and he shall be liable for the violations committed by RSIPL during his directorship.
14. I note that in the interim order the Noticee no. 2 was *inter alia* directed to submit a full inventory of all his assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all his bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of the interim order. However, he has failed to do so.
15. I particularly note that it had been observed in the interim order 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, (Noticee no. 3) is a partner. The interim order further observed that payout received after selling these securities amounting to Rs. 10.74 Crores has been further transferred to the bank account of Swastik Services during July 01, 2017 to March 31, 2019. I observe that, in the inspection report of NSE, a further analysis of the transfer of

funds from the account of Swastik Services was carried out and it is observed that in one instance a transfer of Rs. 5,00,000/- has been made to Noticee No. 2. In view of the aforesaid observations, the directions issued in the interim order against the Noticee no. 2 does not call for any interference.

16. Noticee no. 1 has neither filed any reply nor has attended hearing, therefore, in terms of para 15 of the interim order, the interim directions against Noticee no. 1 as mentioned in para 14(a) to (f) of the interim order are already deemed to be confirmed.
17. Similarly, Noticee no. 3 has neither filed any reply nor has attended the hearing either himself or through his authorized representative. Therefore, in terms of para 15 of the interim order, the interim directions against Noticee no. 1 as mentioned in para 14(a) to (f) of the interim order are already deemed to be confirmed.
18. In view of the observations contained in paras 9-15 above, I, in exercise of the powers 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 the case, hereby confirm the directions issued in the interim order dated June 28, 2019 against Noticee no. 2.
19. 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.
20. This order shall come into force with immediate effect.

21. 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

Date: January 24, 2020

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA