

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF –

	NOTICEES	PAN
1.	Beejay Investments and Financial Consultants Private Limited	AABCB0832B
2.	Eversight Tradecomm Private Limited	AAACE7667E
3.	Divyadrishti Traders Private Limited	AABCD8146J
4.	Divyadrishti Merchants Private Limited	AABCD8147K
5.	Neelanchal Mercantile Private Limited	AAACN8842N
6.	Stupendors Traders Private Limited	AADCS7524F
7.	Flex Trade Pvt. Ltd.	AAACF6723A
8.	Sudhir Jain	AEUPJ6167K
9.	Rashmi Jain	ABBPL1283E
10.	Peeyush Jain	AFNPJ8263L
11.	Adish Jain	AGZPJ0317Q
12.	Kinkar Bhattacharya	AMDPB1266E
13.	Sukanta Chatterjee	AIRPC7338Q
14.	Rajesh Kumar Agarwal	ADDPA1188K
15.	Debasis Mishra	AHBPM8657M
16.	Surendra Agarwala	ADHPA1860E
17.	Bhupendra Kumar Dhanuka	ACOPD8512C
18.	Manish Agarwal	APLPA3819B
19.	Prativa Kothari	AWCPK5030E
20.	Vicky Kothari	AKQPK4594D

BACKGROUND –

- SEBI received a Suspicious Transaction Report (“STR”) dated December 21, 2012, generated by ICICI Bank Limited (“ICICI Bank”), from the Financial Intelligence Unit (“FIU”) with respect to high value transactions noticed in the bank accounts of three of the Noticees - Beejay Investment and Financial Consultants Private Limited (Beejay) (A/c

No. 627705044687, ICICI Bank), Sudhir Jain (A/c No. 627705054140, ICICI Bank) and Eversight Tradecomm Private Limited (Eversight) (A/c No. 627705054145, ICICI Bank) - during the period September 10, 2011 to September 09, 2012. As the said entities were restrained from accessing the securities market by SEBI, for the said period, vide interim order dated June 04, 2009 and Confirmatory Orders dated January 19, 2010 and January 25, 2010, SEBI ordered an investigation into the dealings of the said entities for the period from September 01, 2011 to September 30, 2012 ("Investigation Period").

2. It was observed pursuant to the investigation that the Debarred Entities - Beejay, Eversight and Sunil Jain- transferred funds directly to Trading Entities - Neelanchal Mercantile Private Limited (Neelanchal), Divyadrishti Merchants Private Limited (DDM) and Divyadrishti Traders Private Limited (DDT), and in some cases indirectly to the said Trading Entities routing it through Conduit Entities – Stupendors Traders Private Limited (Stupendors) and Flex Trade Pvt. Limited (Flex). The Trading Entities in turn transferred such funds to various stock brokers. It was alleged that the Debarred Entities had adopted this circuitous approach to access the securities market in order to circumvent the restraint orders passed by SEBI.
3. The relevant findings made in the investigation report are summarized as under:
 - a. Debarred Entities, Beejay and Eversight, transferred a total amount of Rs. 17.78 crores to Neelanchal during the investigation period. Neelanchal, in turn transferred Rs. 38.59 crores to the brokers for trading. It was therefore noted that the funds received from the Debarred Entities constituted 46% of the total funds employed by Neelanchal for trading during the Investigation Period and therefore 46% of the profits made by Neelanchal by trading during the Investigation Period was attributed to Beejay and Eversight.
 - b. DDM and DDT received a total amount of Rs. 42.28 crores (Rs. 29.79 crores + Rs. 12.49 crores) from Beejay and Eversight, out of which an amount of Rs.

21.49 crores (Rs. 17.20crores+ Rs. 4.29 crores) was transferred to the brokers for trading during the investigation period. The entire funds deployed for trading by DDM and DDT during the Investigation Period was considered to have been received (directly/indirectly) from the Debarred Entities as the amounts transferred by these entities to DDM and DDT were higher than that transferred by DDM and DDT to the brokers. Accordingly, the entire profits (100%) made by DDM and DDT by trading during the Investigation Period was attributed to Beejay and Eversight.

- c. Investigation therefore concluded that the Connected Entities, Neelanchal, DDM, DDT and Stupendors, had facilitated the trades of the Debarred Entities, Beejay and Eversight, in contravention of SEBI's directions. It was therefore alleged that the Noticees made alleged unlawful gains to the tune of Rs. 27.36 crores (alleged gain of Rs. 18.99 crores + interest of Rs. 8.36 crores) by trading in the securities market in contravention of SEBI's debarment directions.
- d. The Noticees, viz. Sudhir Jain and Rashmi Jain were the Directors of Beejay, Adish Jain and Peeyush Jain were the Directors of Eversight, Vicky Kothari and Prativa Kothari were the Directors of Stupendors, Surendra Agarwala and Bhupendra Dhanuka were the Directors of Neelanchal, Debasis Mishra, Rajesh Agarwal, Kinkar Bhattacharya and Sukanta Chatterjee were the Directors of both DDM and DDT. The said Directors were in charge and responsible for the conduct of the business and day to day affairs of the respective companies during the period of investigation and hence considered liable for the activities of the said companies during the period.

- 4. In view of the aforesaid findings and also considering the possibility that the aforementioned Debarred Entities and Connected Entities may divert the alleged unlawful

gains prior to the adjudication of the allegations on merits, which could result in defeating the effective implementation of the possible direction of disgorgement that may be passed after adjudging the matter on merits, SEBI vide the ad-interim ex-parte Order dated June 16, 2016, inter alia, directed the Noticees, Beejay, Eversight, Stupendors, Neelanchal, DDM and DDT and their Directors, who were responsible for the conduct of the said companies - Sudhir Jain and Rashmi Jain (Beejay), Mr. Adish Jain and Mr. Peeyush Jain (Eversight), Mr. Vicky Kothari and Miss Prativa Kothari (Stupendors) Mr. Surendra Agarwala and Mr. Bhupendra Dhanuka (Neelanchal) and Mr. Debasis Mishra, Mr. Rajesh Agarwal, Mr. Kinkar Bhattacharya and Mr. Sukanta Chatterjee (DDM and DDT) to impound the alleged unlawful gains of a sum of Rs. 27,44,34,765/- (alleged gain of Rs. 18,99,43,661/- + interest of Rs. 8,44,91,104/- from 01/10/2012 to 15/06/2016).

5. It was also directed vide the interim order that as the investigation was focused on the fund flows observed from the Bank Accounts of Sudhir Jain, Beejay and Eversight, under reference from FIU, SEBI shall conduct a fresh investigation into the matter covering the other bank accounts that were used for trading by the Connected Entities, which may also have been used to aid the Debarred Entities to trade in the market.
6. Thereafter, SEBI vide order dated March 27, 2017, confirmed the findings in the interim order against the said Noticees. It was also noted in the said order that the quantum of illegal gains to be disgorged would be once again looked into by SEBI when passing the final order on merits post investigation.
7. Subsequently, SEBI issued a Show Cause Notice (“SCN”) dated October 10, 2018, directing Noticee nos. 1–20 to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the SEBI Act including disgorgement of ill–gotten gains should not be issued against them for violating/abetting in violating the prohibitions imposed by SEBI vide order dated January 19, 2010 and January 25, 2010 and thereby

violating the provisions of regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Sections 12(a), (b) and (c) of the SEBI Act. I note that SCN also covered Noticee 6 and its director during the Investigation Period, Manish Agarwal, apart from the entities covered in the interim orders, as the fresh investigation carried out by SEBI as mentioned in paragraph 5 of the order observed that the said entity was also acting as a conduit in transferring funds from the Debarred Entities to the Trading Entities.

Connection between entities

8. It was alleged in the SCN that the Debarred Entities -Sudhir, Beejay and Eversight- are connected to one another; and Debarred Entities are also connected to the entities who have received funds from them. The details of the connections are given in Table 1 below,-

Table 1	
Name of the entity	Connection Details
Debarred Entities	
Beejay Investment and Financial Consultants Pvt Ltd <u>Directors</u> a. Sudhir Jain b. Rashmi Jain	Sudhir Jain, director of Beejay, is a relative of Adish Jain and Peeyush Jain, directors of Eversight. Sudhir Jain is the brother-in-law of Vicky Kothari, director of Stupendors. Beejay purchased shares of Siddhi Commotrade Pvt Ltd and Corus Marketing Pvt Ltd both of which share common address (163B, M G Road, 3 rd Floor Kolkata – 700 007) and common director (Debasis Mishra) with DDM and DDT
Eversight Tradecomm Pvt Ltd <u>Directors</u> c. Peeyush Jain d. Adish Jain <u>Email id as per MCA website</u> peeyush_jain10@rediffmail.com	Directors of Eversight are relatives of Sudhir Jain. Common email id with Neelanchal
Trading Entities	
Neelanchal Mercantile Pvt Ltd. <u>Email id as per MCA website</u> peeyush_jain10@rediffmail.com	Common email id with Eversight DDM holds 17,500 shares of Milestone Shares and Stock Broking Pvt Ltd, which in turn holds 12,50,000 shares of Neelanchal.

Divya Drishti Merchants Pvt Ltd 163B, M G Road, 3rd Floor Kolkata – 700 007 <u>Directors</u> a. Rajesh Kumar Agarwal b. Debasis Mishra c. Sukanta Chatterjee d. Kinkar Bhattacharya <u>Email id as per MCA website</u> korpsec@yahoo.co.in	Common address and common directors with DDT. Common address and Common director (Debasis Mishra) with Siddhi Commotrade Pvt Ltd and Corus Marketing Pvt Ltd. The shares of the said companies were purchased by Beejay from DDM. DDM holds 17,500 shares of Milestone Shares and Stock Broking Pvt Ltd, a shareholder of Neelanchal holding 1,250,000 shares of Neelanchal. Rajesh Kumar Agarwal is a brother of Sushil Kumar Agarwal, director of Korp. Common email id with Korp (korpsec@yahoo.co.in) Directors of a shareholder of DDM (Anuj Realtors Pvt Ltd) were Anuj Agarwal (S/o Sushil Kumar Agarwal) and Meena Agarwal (W/o Sushil Kumar Agarwal) , One of the directors of a shareholder of DDM (Greencorp Impex Pvt Ltd) was Bijay Kumar Poddar (currently Compliance Officer of Korp) Common Company Secretary(in whole-time practice) with Korp (Manoj Prasad Shaw)
Divya Drishti Traders Pvt Ltd 163B, M G Road, 3rd Floor Kolkata – 700 007 <u>Directors</u> a. Rajesh Kumar Agarwal b. Debasis Mishra c. Sukanta Chatterjee d. Kinkar Bhattacharya	Common address and common directors with DDM. Common address (163B, M G Road, 3rd Floor Kolkata – 700 007) and Common director (Debasis Mishra) with Corus Marketing Pvt Ltd. The shares of the said companies were purchased by Beejay from DDT.
Conduit Entities	
Flex Trade Private Limited	Rashmi Jain, w/o Sudhir Jain was director of FTPL during IP Common Address with Beejay, viz. 13 B.B Ganguly Street, 2nd Floor, Room No.205, Kolkata – 700012
Stupendors Traders Pvt Ltd <u>Directors</u> a. Vicky Kothari b. Prathiva Kothari	Vicky Kothari, director of Stupendors, is the brother-in-law of Sudhir Jain, director of Beejay
Broker facilitating trades of the debarred entities	
Korp Securities Ltd <u>Directors</u> a. Sushil Kumar Agarwal b. Ashish Jain c. Rohit Mehta <u>Email id as per MCA website</u> korpsec@yahoo.co.in	<u>Connection with DDM</u> - Common email id with DDM. - Sushil Kumar Agarwal is the brother of Rajesh Kumar Agarwal, director of DDM and DDT. - Anuj Agarwal (s/o Sushil Kumar Agarwal) and Meena Agarwal (w/o Sushil Kumar Agarwal) were directors of Anuj Realtors Pvt Ltd, a shareholder of DDM. - 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. Manoj Prasad Shaw

Fund Flow Analysis

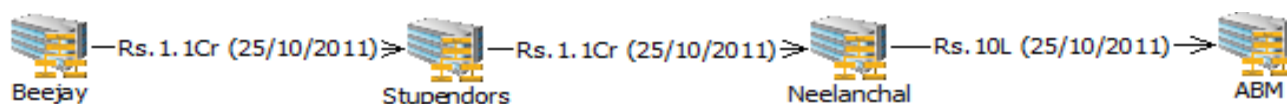
9. From the SCN, it was noted that there were fund flows to/from the bank accounts of Debarred Entities directly to the bank accounts of the Trading Entities; funds were also indirectly transferred to the Trading Entities through Conduit Entities - Stupendors and Flex. In this regard, since multiple transactions were observed between the Debarred Entities, Conduit Entities and Trading Entities, a few sample transactions per broker were listed out in the SCN and are shown below, -

Aditya Birla Money Limited (“ABM”)

10. The details of the aggregate pay-in and pay-out concerning Neelanchal, while trading through the stock broker ABM, during the IP is as follows:

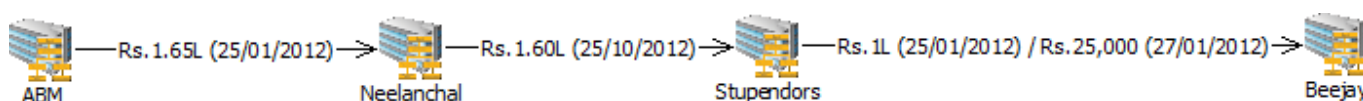
Table 2			
Pay-in details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
Neelanchal	ICICI Bank	627705500278	20,00,750.00
Pay-out details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
Neelanchal	ICICI Bank	627705500278	1,65,000.00

Pay-in



11. It was alleged in the SCN that on 25/10/2011, Beejay routed Rs. 1.1Cr to Neelanchal through Stupendors and a part of the said funds (Rs. 10 lakh) was transferred by Neelanchal to ABM. The total amount routed by the Debarred Entities to the connected entity Neelanchal for trading through the stock broker ABM during the IP was Rs.10 lakh approximately.

Pay-out



(the date of the transaction between Neelanchal and Stupendors as erroneously shown as 25/10/2012 in the SCN instead of 25/01/2012)

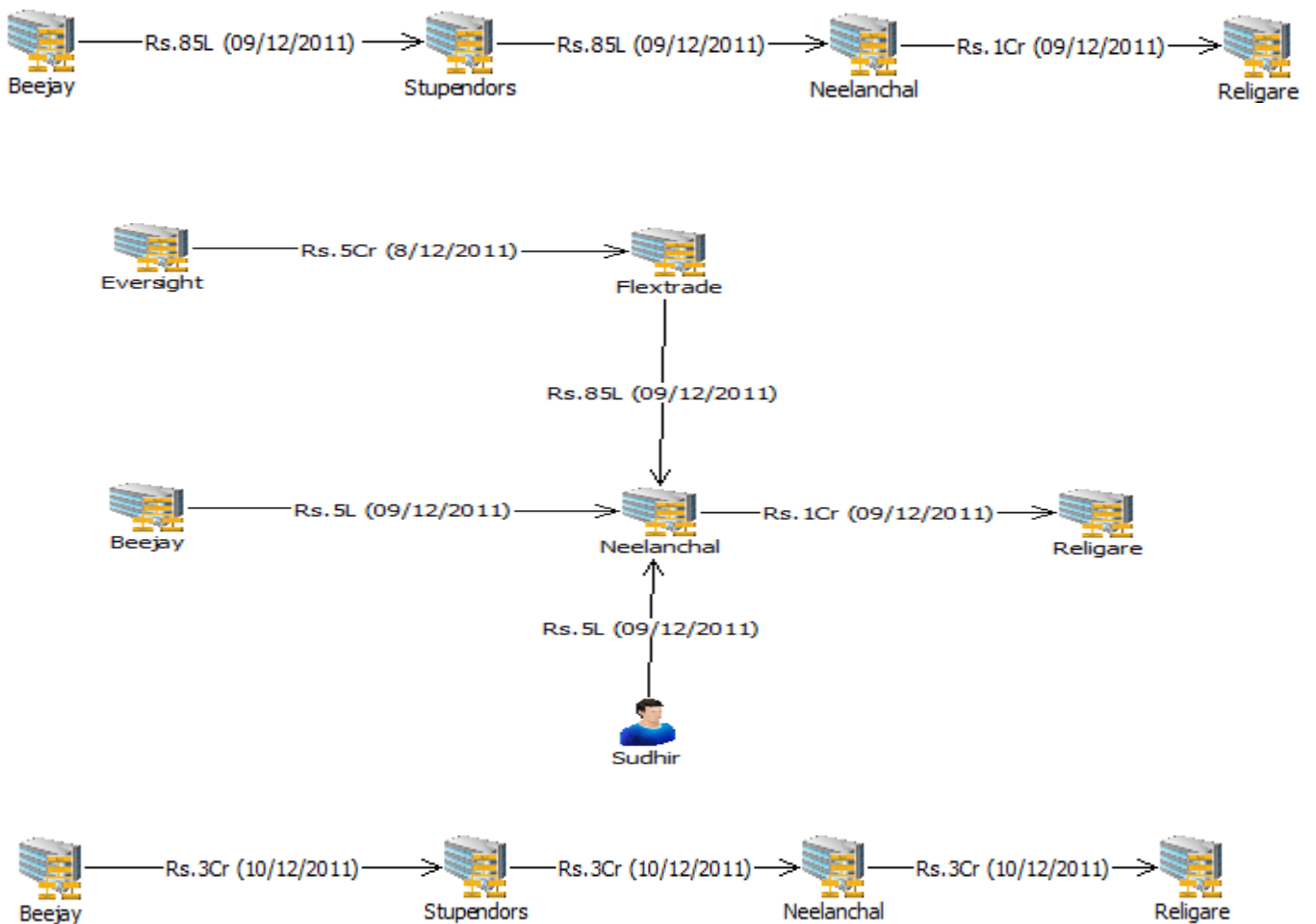
12. As can be seen from the above, on 25/01/2012, Rs.1.25 lakh out of the total payout of Rs.1.65 lakh made by ABM to Neelanchal was routed indirectly to Beejay through Stupendors.

Religare Securities Limited (“Religare”)

13. The details of the aggregate pay-in concerning Neelanchal, while trading through the stock broker Religare, during the IP are as follows:

Table 3			
Pay-in details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
Neelanchal	ICICI Bank	627705500278	19,00,00,000.00
	Axis Bank	912020009815980	1,56,30,43,133.27
Total			1,75,30,43,133.27

Pay-in

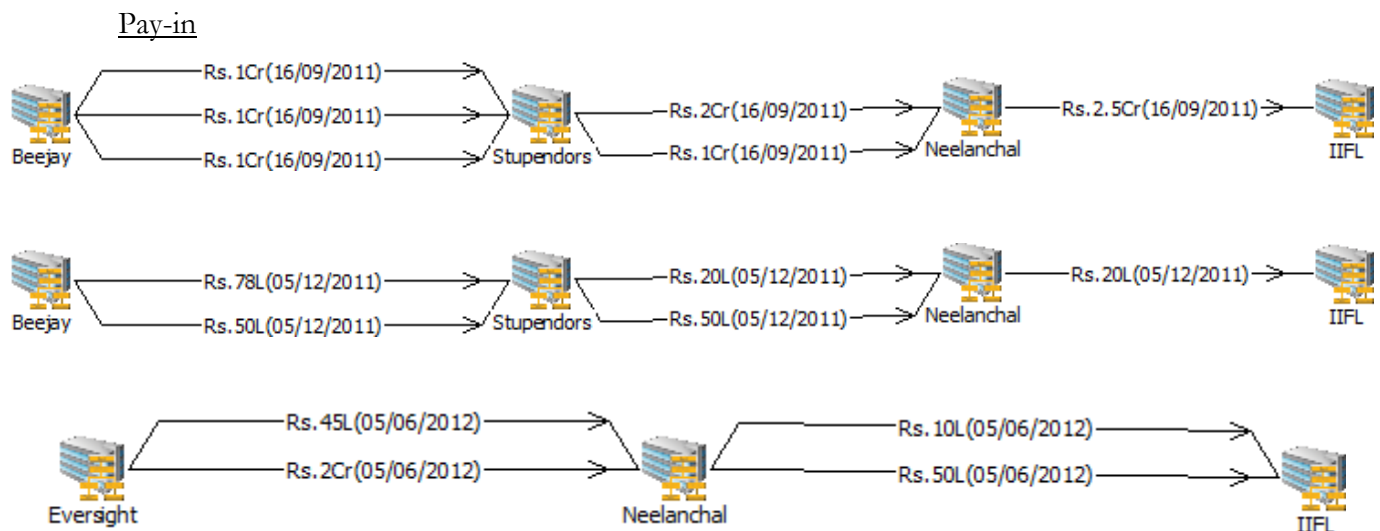


14. As can be seen from the above, funds were routed by the Debarred Entities to the trading entity Neelanchal, who in turn was trading in the market through the stock broker Religare. The total amount routed by the Debarred Entities to the trading entity Neelanchal for trading through the stock broker Religare during the IP was Rs. 14.08 Cr approximately.

India Infoline Finance Limited (“IIFL”)

15. The details of aggregate pay-in and pay-out concerning Neelanchal and DDM respectively while trading through the stock broker IIFL, during the IP is as follows:

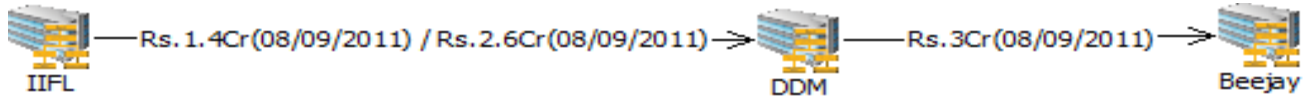
Table 4			
Pay-in details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
Neelanchal	Citi Bank	590304123	1,18,96,91,249.98
	Indusind Bank	200012399266	82,02,45,758.25
	ICICI Bank	627705500278	27,86,00,000.00
	HDFC Bank	00080340028320	50,00,000.00
Total			2,29,35,37,008.23
Pay-out details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
DDM	ICICI Bank	000605010065	4,87,37,068.82
	HDFC Bank	15778420035021	16,06,96,607.31
Total			20,94,33,676.13



16. It was alleged in the SCN that funds were routed by the Debarred Entities to the trading entity Neelanchal, who in turn was trading in the market through the stock broker IIFL.

The total amount routed by the debarred entities to the connected entity Neelanchal for trading through the stock broker IIFL during the IP was Rs. 14.54 Cr approximately.

Pay-out



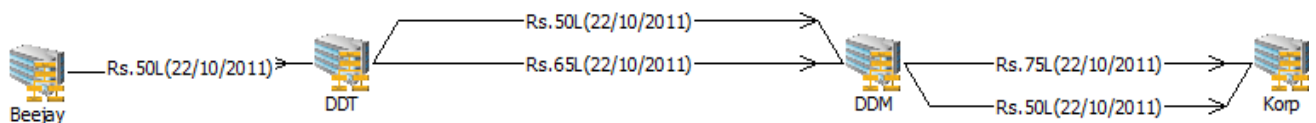
17. With respect to the pay-outs by IIFL in relation to its client DDM, as can be seen from the above, pay-outs made by IIFL to DDM were routed to the Debarred Entities. Rs.3 Crores out of total pay-out of Rs. 20.94 Crores approx. by IIFL to its client DDM were routed to the Debarred Entities.

Korp Securities Limited (“Korp”)

18. The details of the aggregate pay-in concerning DDM and DDT while trading through the stock broker Korp is as follows:

Table 5			
Pay-in details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
DDM	ICICI Bank	000605010065	2,99,22,978.52
Total			2,99,22,978.52
DDT	ICICI Bank	000605010082	90,00,000.00
	HDFC Bank	0082340012265	3,17,022.34
Total			93,17,022.34

Pay-in



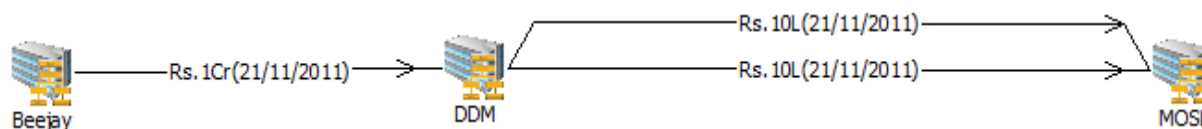
19. As can be seen from the above transaction, funds were routed by the Debarred Entities to the trading entity DDM (through another connected entity DDT) who in turn was trading in the market through the stock broker Korp. The total amount routed by the debarred entities to the connected entity DDM for trading through the stock broker Korp during the IP was Rs. 50 lakhs approximately.

Motilal Oswal Securities Limited (“MOSL”)

20. The details of the aggregate pay-in concerning DDM while trading through the stock broker MOSL is as follows:

Table 6			
Pay-in details			
Name of Entity	Bank Name	Bank A/c No.	Total Amount (in Rs.)
DDM	ICICI Bank	000605010065	33,00,000.00
	HDFC Bank	00110926059639	40,00,000.00
		00082340012275	2,00,000.00
		15778410030044	1,88,42,619.60
Total			2,63,42,619.60

Pay-in



21. As can be seen from the above transaction, funds were routed by the Debarred Entities to the connected entity DDM, who in turn was trading in the market through the stock broker MOSL. The total amount routed by the Debarred Entities to the trading entity DDM for trading through the stock broker MOSL during the IP was Rs. 20 lakh approximately.
22. In view of the above, it was alleged that the debarred entities viz. Beejay and Eversight, had transferred funds to the Trading Entities - DDM, DDT and Neelanchal - who facilitated the trades of the said entities through the stock brokers ABM, Religare, IIFL, Korp and MOSL. It was further alleged that in certain instances, the Conduit Entities - Stupendors and Flex- acted as conduits in transferring funds from the Debarred Entities to entities facilitating trades of the Debarred Entities during the IP.

Computation of Profits

23. It is observed during the investigation that DDM, DDT and Neelanchal by executing trades in the market during the IP have made certain profits. It is alleged that the profits made by DDM, DDT and Neelanchal during the IP are as under:

Table 7			
Name of Entity	No. of scrips traded		Gross Profit (in Rs.)
	BSE	NSE	
DDM	9	27	8,97,928
DDT	14	73	1,00,69,388
Neelanchal	21	18	30,81,58,258
Total			31,91,25,574

24. The total number of instances of fund flow from Beejay and Eversight to the entities DDM, DDT and Neelanchal were 120 out of which in 35 instances the said funds were observed to have been transferred to stock brokers as pay-in. The total amount of funds routed by the Debarred Entities to the stock brokers through the entities DDM, DDT, Neelanchal, Stupendors and FTPL are as follows:

Table 8			
Name of Stock Broker	Amount received from entities trading in the stock exchange (in Rs.)	Funds transferred by debarred entities to the entities trading in the stock exchange that were traced to stock brokers (in Rs.)	Amount transferred by the debarred entities to the entities trading in the stock exchange (in Rs.)
A	B	C	D
ABM	20,00,750	10,00,000	59,67,00,000
Religare	1,75,30,43,133	14,08,00,000	
IIFL	20,99,67,148	14,54,00,000	
Korp	3,92,40,000	50,00,000	
MOSL	4,31,27,880	20,00,000	
Total	5,33,07,74,274	29,42,00,000	

25. On the basis of Table 9, it was alleged that since 49.30% of the total funds transferred by the Debarred Entities to DDM, DDT and Neelanchal, for facilitating trades of the Debarred Entities, could be traced to form part of pay-in to stock brokers, the total profits

that can be attributed to Debarred Entities along with the entities facilitating their trades is 49.3% of Rs.31.91 Cr, i.e. approx. Rs. 15.73 Cr.

26. In view of the above, it was further alleged that the entities namely Beejay, Eversight, Stupendors, FTPL, Neelanchal, DDM and DDT including their respective directors have colluded with an objective of facilitating trading in the securities market by the entities who were prohibited from accessing the securities market viz., Sudhir, Beejay and Eversight in violation to the prohibition imposed on them vide SEBI Orders dated January 19, 2010 and January 25, 2010 and thereby it was alleged that it has created misleading appearance of trading in the securities market in violation of the provisions of the PFUTP Regulations.

Written Submissions and Hearing

27. Subsequent to the issuance of the SCNs, an opportunity of personal hearing/opportunity to file written submissions was granted to Noticee nos. 1–20 on various occasions. Such dates along with details of appearances/responses are listed out hereunder:
- a. The hearing was originally scheduled for March 19, 2020. However, considering the requests made by some of the Noticees seeking adjournment of the hearing in light of the corona virus outbreak, the date of hearing was initially postponed to April 22, 2020 and then to July 29, 2020.
 - b. On July 29, 2020, Noticees 1, 8 and 9 appeared through Mr. Vinay Chauhan, Advocate. Noticees 3 and 4 entered appearance through Mr. Deepak Dhane, Advocate. Noticees No. 2, 5, 6 and 20 sought an adjournment.
 - c. Thereafter, another opportunity of hearing was provided on September 15, 2020, wherein none of the Noticees entered appearance. Noticees 2, 10 and 11 submitted that the reply of Noticee No. 2 dated September 12, 2020 be taken on record as their submission; Noticees 6, 19 and 20 stated that their reply dated

July 27, 2020 be considered as their submission; Noticee No. 5 sought an adjournment.

- d. Another opportunity of hearing was provided on October 20, 2020 to the Noticees who had not availed the opportunity of hearing till now. On October 20, 2020, Noticees 5, 16 and 17 entered appearance through Mr. Ankit Lohia, Advocate. Noticees no. 7 and 18 did not avail of the opportunity of hearing but filed replies dated August 2, 2019 and August 29, 2020, respectively.

REPLIES/SUBMISSIONS OF THE NOTICEES:

Noticee No. 1 – Beejay

Alleged Connections

28. Normal business connections with the other entities, including the alleged trading entities, have been unduly stretched in order to attribute their actions to the Noticee, which is legally untenable and unsustainable.

Fund Transfers

29. Noticee had regular financial dealings with various entities including the Trading Entities - DDM, DDT and Neelanchal - since long, wherein there were both borrowing and lending funds from/to the said entities and the Noticee had credit/debit balance in their account with the said entities.
30. By resorting to 'reverse engineering', SEBI has fastened the trades executed by the Trading Entities on to the Noticee. SEBI has picked up the dates when the Trading Entities have made pay-ins to their stock brokers, and gone backwards to trace the amount to Noticee.
31. Simultaneously, SEBI has picked up the dates when the Trading Entities have received pay-outs from their stock brokers, and have gone backwards to trace the amount to Noticee.

32. While resorting to 'reverse engineering' and fastening the trades of Trading entities on to Noticee, following has been completely ignored and overlooked :

- a. There is no correlation between the amounts paid as pay-ins by the Trading Entities to their brokers / amounts received as pay-outs by Trading entities from their brokers and the amounts (both directly or indirectly) transferred by / transferred to, the Noticee.
- b. There are various dates when the funds have been transferred by the Noticee to the Trading Entities, but no trades were carried out by the Trading Entities on the said dates.
- c. That transfer of funds between the Noticee and the Trading Entities were going on in the ordinary course wherein the balances were fluctuating and wherein predominantly for most of the Investigation Period balance was tilted against the Noticee i.e. they were to repay the Trading Entities. Therefore, when the Noticee was repaying the amounts by transferring the funds, the said amounts cannot by any stretch be branded as amounts transferred by the Noticee for the purpose of trading through Trading Entities.
- d. Noticee had placed the Ledger Statements bearing out the said position before SEBI during the course of investigation proceedings and also in response to ex parte order dated 16.06.2016 passed by SEBI, but the same has not been considered at all. It is inexplicable that despite the Ledger Statements showing that during the impugned period when the trades have allegedly been undertaken by the Trading Entities, the Noticee actually owed amounts to Trading entities, it has been concluded that the trades belonged to the Noticee.
- e. It is not SEBI's case that Trading Entities did not have any financial bandwidth for the purposes of trading. Admittedly, as per the SCN, the Trading entities have deployed their own funds to the extent of Rs 533,07,74,274/- (actually Rs.

733,01,11,282/-). Or alternatively, going by SEBI's theory Rs 503,65,74,274/- (being Rs 533,07,74,274/- less Rs 29,42,00,000/- received from the debarred entities). No fault has been found with the amount of Rs 503,65,74,274/- deployed by the Trading Entities for the purpose of trading in the securities market.

33. It is not SEBI's the case that the entire amount as allegedly transferred by the Debarred Entities was utilized by the Trading Entities for the purposes of trading. Admittedly, as per the SCN, out of the various fund transfers made by the Debarred Entities (which is quantified at Rs 59,67,00,000/-) to the Trading Entities, only Rs 29,42,00,000/- was 'traced to the stock brokers'. In so far as balance amount of Rs 30,25,00,000/- is concerned there is no allegation qua the same and SEBI has no grievance with the same.
34. SEBI has through a convoluted and stretched process (ignoring the dichotomy between the quantum of amounts involved etc) purportedly traced the amount of Rs 29,42,00,000/- to the brokers, and tainted the said amount and segregated it from total amount of Rs 59,67,00,000/-.
35. The premise of lack of documentation (viz. loan agreements etc) for transfer /receipt of funds also cannot be a ground to infer that the Noticee had traded through the Trading Entities.

Computation of Profits:

36. The Trading Entities had been trading before the Investigation Period and also after the Investigation period. In many cases shares sold during the Investigation Period > Shares purchased during the Investigation Period; in many cases Shares acquired during the Investigation Period > shares sold during the Investigation Period.
37. In respect of cases where shares sold during the Investigation Period > Shares purchased during the Investigation Period, it is apparent that the Trading Entities had acquired such

shares from NSE and BSE before the Investigation Period. Even assuming SEBI's allegation in the SCN to be true, such trading cannot be foisted on to the Noticee.

38. In respect of cases where shares acquired during the Investigation Period > shares sold during the Investigation Period, how can SEBI work out profit and loss on shares which has not been sold by the Trading Entities and its profit foisted on to Noticee.
39. The assumptions used in the SCN shows that the profit and loss worked out are notional and not actual.
40. SEBI has computed the profit and loss based on Wt. Avg Buy Price and Wt. Avg sell price ignoring the fact that brokerage and statutory levies are applicable on such transaction.
41. The alleged profit figure of Rs 15.73 crores is a combined figure qua all the entities. The alleged profit made by each of the entity has not been individually particularized or quantified.
42. The multiplier of 0.49 taken by SEBI (Table-9 of SCN) for the purposes of calculation of alleged profits is totally absurd. There is no scientific basis for comparing the amounts transferred by the Debarred Entities with the amounts transferred by Debarred Entities which SEBI has purportedly traced to the brokers. The same has no nexus with the objective of calculating the profits attributable to the funds provided by the Debarred Entities.
43. Computation of profits is being done, since SEBI wants to disgorge the same, as it is arising out of funds which were deployed by Debarred Entities for the purposes of trading during the restraint period. Therefore, since the profits are arising from deployment of combination of funds which are tainted funds and untainted funds, therefore the profits arising out of deployment of tainted funds needs to be segregated for arriving at correct amount liable to be disgorged.
44. While computing the alleged profits made by the Trading Entities during the Investigation Period, SEBI has taken the Gross Profit even though losses have been made, and are also

reflected in the statement relied on by SEBI and which works out to Rs 36,61,30,806/- (Gross Loss) in total (being DDM- Rs 3,58,48,330/-, DDT- Rs 5,27,24,026/- and Neelanchal- Rs 27,75,58,450/-), the same have not been reduced from the Gross profit.

45. Based on proportionate apportionment of Gross Profit, if at all any amount can be attributed to Beejay and its director Sudhir Jain, then the said amount cannot exceed a sum of **Rs.2,14,584/-** (being Rs. 24,961/- + Rs. 0/- + Rs. 1,89,623/-).

Noticee No. 2

46. Noticee did not have any transactions with DDT during the Investigation Period.
47. Noticee paid DDM a sum of Rs. 85,00,000/- towards purchase consideration of unlisted securities and that the sum so paid was for a valuable consideration. Moreover, presumably there are no allegations that such funds have been utilised by DDM for their payin obligations with the Brokers. Further, there is nothing on records to show that the Noticee received any part of the alleged unlawful gains made by DDM. When the Noticee has not received any proceeds from DDM, how are they liable to pay for the alleged unlawful gains.
48. In respect of allegations regarding fund flows with Neelanchal, it was submitted that,-
- a. A sum of Rs. 5 crores were advanced by the Noticee to Flex on 08/12/2011, in ordinary course of the business as an NBFC. It is alleged in the SCN that Flex has remitted a sum of Rs. 0.85 crores to Neelanchal on 08/12/2011 and Neelanchal has utilized the said sum for their payin obligation of Rs. 1 crore with Religare. Noticee submitted that they did not have any management or ownership control over Flex and the transfer of funds by Flex to Neelanchal was not on their advice or behest.
 - b. Further, the difference in amount of fund movement between the Noticee and Flex, between Flex and Neelanchal and between Neelanchal and Religare proves

that such movement of funds between the Noticee and Flex were in the ordinary course and has no bearing on payin amount of Neelanchal.

- c. Further, as observed in the SCN, since there were instances of direct transactions between the Noticee and Neelanchal, where was the need for a conduit, as alleged in respect of Flex.
- d. It has been alleged in the SCN that the Noticee has transferred a sum of Rs. 0.45 crores and Rs. 2 crores to Neelanchal on 05/06/2012 and that out of the said transfer Neelanchal has utilised a sum of Rs. 0.10 crores and Rs. 0.50 crores for meeting its payin obligation with broker IIFL. It was submitted in this regard that the Noticee had given loan to Neelanchal in ordinary course of NBFC business. At no point of time was the Noticee aware of the end use of such funds by Neelanchal.
- e. Further, we would like to state that we are not aware of the trading done by Neelanchal, DDM, and DDT at BSE, NSE and on NSE F & O segment.
- f. Further, with regards to “Gross Profit” of Trading Entities, it was submitted that the alleged gains worked out in Table 7 of the SCN do not relate to the Noticee and they were not a beneficiary of the gains made by Neelanchal, DDM and DDT.

49. It was submitted that if the payin made by the Trading Entities were made on behalf of the Noticee, then why was it that, no amount received as payout by the Trading Entities flowed back to the Noticee. SEBI has not brought on records any single instance to show that the payout received by the Trading Entities have been routed back to Noticee.

50. SEBI has completely ignored the fact that there were no restraining directions against Noticee’s directors and one of whom has also traded during the Investigation Period. Had the intention been to indirectly trade in the securities market, then the Noticee could have traded through their directors.

51. It is was also submitted that the supply of the documents referred too and relied upon

in the SCN is quite essential as without the same it is impossible for the Noticee to put up an appropriate / complete defence in the matter.

52. It was also contented by the Noticee that even though the SCN alleges fraudulent conducted on the part of the Noticee, yet it does not describe the acts or omissions committed by the Noticee which amounts to fraud within the definition provided under Section 2 of the PFUTP Regulations.

Computation of profits

53. “Gross Profit” are erroneous and illogical due to the following:
- a. A perusal of the trades of the Trading Entities shows that they have incurred substantial losses which has not been taken into account by SEBI.
 - b. There is vast difference in quantities of shares bought and sold during the year by the Trading Entities, for which the SCN offers no explanation.
 - c. In respect of the trades of the Trading Entities against which SEBI has not found any fault, viz, through broker J. M Financial Services Ltd. and Gateway Financial Services Pvt. Ltd., should never have been considered in the computation of profit, as their payin or payout has not been sourced from / to the Noticee.
 - d. In respect of shares acquired by the Trading Entities before the Investigation Period, there are no allegations thereto; such trades were executed by the Trading Entities out of clean funds. As such it is improper to consider sale of such shares during the Investigation Period as a violation of SEBI PFUTP Regulations and considering them in working of Gains / Losses.
 - e. The assumption of Opening Price and Closing Price shows that the profit and loss worked out are not actual but are assumed and notional.
 - f. In the SCN, SEBI has worked out the proportion of amount transferred by the Debarred Entities to the Trading Entities that were in turn traced to the payments made by Trading Entities to the stock brokers. Such a proportion is called

multiplier and the same is computed at 0.49. The computation of Multiplier is highly erroneous. It is SEBI's own case that the Debarred Entities have transferred Rs. 29.42 crores to the Trading Entities which has partly been used by the Trading Entities to make payin of a sum of Rs. 533.07. Thus, the Multiplier should have been worked out by SEBI based on these two figures.

- g. Even otherwise, it is SEBI's own case that in 35 instances the funds from the Debarred Entities have been transferred to stock brokers as pay-in. Since, SEBI alleges such trading to have been done on behalf of the Noticee, the specific trades for which such payin has been used must also be within the knowledge of SEBI. SEBI should therefore work out the actual profit and loss from such trades.

Noticee No. 3 – DDT

54. Noticee submitted that they have been trading in the securities market for the past several years, even before the "investigation period" and that all their trades were in the ordinary course, devoid of any manipulative intent, based on their commercial wisdom and analysis and out of their own and borrowed funds
55. All the trades during the Investigation period were on their own account. Noticee had placed orders for all such trades, contract notes were generated in their name, pay ins pay out obligation were made by them and they were the beneficial owner of all the securities purchased during the period. All the transactions and the resultants profit and losses were duly disclosed in their audited books and the resultant profit and loss were duly assessed to taxes.
56. Noticee has traded in securities market before the Investigation period, during the Investigation period and subsequently but it is only their trades during the investigation period i.e 01/09/2011 to 30/09/2012, that has been impugned in the "SCN". Thereby, it implies that all other trades before and after the Investigation period were bonafide,

genuine and in the ordinary course.

Movement of funds:

57. All the transaction with Beejay were in the normal course. The funds received from the Debarred Entities i.e. Beejay were in the normal course of business mostly against receivables and not towards the impugned trades / transactions. In fact the said fund transactions with the Debarred Entities have no correlation/connection with their trades impugned in the SCN. Therefore, the said transactions in any event cannot be said to be in contravention of any directions/orders of SEBI.
58. It is further submitted that they had financial transaction with Beejay and Eversight even prior to June 04, 2009 i.e. prior to their debarments and all such transactions were in the ordinary course. Thus, nothing adverse is to be read into flow of funds to / from these entities during the Investigation Period or at any point of time. The same were in the ordinary course of business.

Relationship with the Debarred Entities

59. With reference to SEBI's observation that the Noticee and DDM shared common address and common directors, it was submitted that DDM was a company under the same management and that cannot be a ground for drawing any kind of an adverse inference.
60. There are no allegations in the SCN that any part of the Noticee's payin was sourced from the Debarred Entities neither is there any allegation that any part of the payout was remitted to the Debarred Entities. Thus, the alleged movements of funds to / from the Debarred Entities were in the ordinary course.
61. Out of alleged sum of Rs. 13.62 crores received by the Noticee from the alleged Debarred Entities and Rs. 10.47 crores paid back to the alleged Debarred Entities during the Investigation Period, there is not a single instance that the same has been utilized for trading in securities market.

Computation of profits

62. Noticee incurred a loss of Rs. 43,09,749/- in respect of trades in Sezal Glass Ltd.. whereas SEBI has erroneously worked out profit of Rs.10.08.899/ - on BSE.
63. We had opening stock of the following scripts as on 31st August, 2011, which were sold during the period 01/09/2011 to 30/09/2012. Such shares were also acquired from NSE and BSE in the past. Noticee's trading prior to 01/09/2011 has not been alleged to be on behalf of the Debarred Entities, therefore their sale of such shares during the period cannot be alleged to be on behalf of the Debarred Entities, and profit and loss from the said transaction cannot be alleged to be belonging to the Debarred Entities.

Working out of the Multiplier

64. Arguments similar to the arguments made by Noticee 1 and Noticee 2 was made in this regard.

Noticee No. 4 –DDM

65. Noticee made submissions on the same lines as Noticee No. 3 – DDT.

Noticee No. 5 – Neelanchal

66. Noticee is an entity which has been trading in the securities market as a part of its business.
67. Noticee had large funding arrangements with various persons / institutions with yearly borrowings going upto 300-500 crores. During the financial year 2010 -2011, the Noticee borrowed a sum of Rs. 237,68,27,398/-. During the financial year 2011 -2012 the Noticee borrowed a sum of Rs.564,66,04,236/- Even in the financial year 2012-2013, the total borrowing during the year was Rs. 552,10,42,993/-
68. The amount of funds borrowed by the Noticee from the Debarred Entities which are

alleged to be traced to the securities market are less than 1% of the yearly borrowings of the Noticee.

69. There is no material to show that the Noticee was buying and selling for or on behalf of the Debarred Entities. On the contrary, the profits / losses in respect of the trades have been booked and offered for Tax in the I.T. Returns of the Noticee and the same have been assessed. The assessment was reopened due to the allegation made against the Noticee by SEBI that they had facilitated trades of the Debarred Entities. However, the reassessment was dropped after the Noticee was able to satisfy the Assessing Officer that no such case was made out.
70. The entire amount borrowed from Debarred Entities stood repaid.
71. The allegation of SEBI inter alia in paragraph 12 of the SCN that any part of the profits earned by the Noticee is attributable to the Debarred Entities is totally misconceived.
72. The holding details of the Noticee show that the Noticee in fact continued to hold substantial shares even after the entire borrowings were repaid.
73. The Show Cause Notice proceeds on an erroneous ratio arrived at in Table 9 and alleges that 49% of the alleged profits of the Noticee were attributable to the Debarred Entities.
74. It was submitted that while the Noticee denies that there is any correlation between the funds received and the investment in the market, even if one was to consider the figures in table 9 of the SCN, such figures would have to be corrected as follows:

Table 9				
Name of Stock Broker	Amount received from trading	Fund transferred by debarred entities to trading entities that were	Amount transferred by debarred entities to	Multipiler

	entities (in Rs.)	traced to stock brokers	trading entities	
A	B	C	D	
ABM	20,00,750	10,00,000	59,67,00,000	3.86*
Religare	1,75,30,43,133	14,08,00,000		
IIFL	2,50,35,04,156	14,54,00,000		
Korp	3,92,40,000	50,00,000		
MOSL	4,31,27,880	20,00,000		
JMFL	3,26,43,14,405	-		
GFSL	1,90,80,958	-		
Total	7,62,43,11,282	29,42,00,000		

$$*29,42,00,000 / 7,62,43,11,282/- * 100 = 3.86\%$$

Noticee No. 6 - Stupendors

75. Noticee is a Non-Banking Finance Company ('NBFC') duly registered with Reserve

Bank of India.

76. Regarding the alleged connection with various related/connected entities, the Noticee denied any such connection except as follows,-

- i. Insofar as Sudhir Jain is concerned, it was submitted that he is a distant relative of their director Vicky Kothari.
- ii. During the Investigation Period they gave loan and advances to Beejay wherein Sudhir Jain was a Director and have received repayment of the same from time to time.
- iii. Noticee had regular financial dealings with various entities including Beejay and Neelanchal before the Investigation Period and also subsequent to the Investigation Period. They had given loan and advances to these entities, which were duly repaid. All such transactions were in the ordinary course.

77. Noticee has been carrying out such activities since their inception and till date they have provided financial assistance to about 220 entities (approx). The quantum of loan and advances and clients to whom such financial assistance was submitted and the same is reproduced below:

Financial Year	2010-11	2011-12	2012-13	2013-14	2014-15
Outstanding balances as at year end	16,47,92,675/-	69,60,99,441/-	32,91,08,783/-	18,67,13,325/-	24,26,47,414/-
No of entities	13	14	22	25	24

Movements of Funds:

78. It was submitted that in the SCN adverse inference has been drawn against the Noticee

based purely on movement of funds between the Noticee and Beejay, and the Noticee and Neelanchal.

79. With regards to movements of funds during the Investigation Period, it was submitted as under,-

Sl No.	Particulars	Beejay		Neelanchal	
		Debit Summation	Credit Summation	Debit Summation	Credit Summation
1.	Amount (Rs. in lacs)	19,069.00	15,311.85	12,890.70	11,451.85
2.	No. of Entries	279	224	166	146
3.	Value of impugned Transaction	1.25	923.00	865.00	1.60
4.	No. of entries for impugned Transaction	2	5	5	1

Note : Credit Summation represents repayment of Loans

Debit Summation represents disbursement of Loan

80. Based on the Table above, the following submissions were made on behalf of the Noticee,-

- A substantial sum of money was received from Beejay and Neelanchal and also advanced to Beejay and Neelanchal which has not been impugned in the Notice.
- The transaction Noticee had with Beejay and Neelanchal were in the ordinary course and not for the purpose as alleged.

81. The allegations that the Noticee acted as a conduit for the trades of the Debarred Entities are erroneous and totally misplaced.
82. It is not a case of SEBI that all payments received from Beejay were transferred to Neelanchal. At times, some part of the repayment of loan received from Beejay was utilized by Noticee to disburse loan to Neelanchal. Such transactions have been viewed adversely in the Notice. Such repayments from Beejay were in the ordinary course and disbursements of loan to Neelanchal were also in the ordinary course of NBFC business.
83. The trading done by Neelanchal, DDM and DDT was not on the Noticee's advice or behest.

Noticee No. 7 – Flex Trade

84. With regard to the observations in the SCN relating to the alleged connection with various related/connected entities, the Noticee denied they were connected to any related or connected entities except as under,-
- a. Rashmi Jain was a director of the Noticee from 15.01.2008 to 10.03.2015
 - b. With regard to common address with Beejay, it was stated that though the address was common, both the entities have always acted independently. Noticee had no role to play in the management and affairs of Beejay and vice versa.
85. With regard to the observations in the SCN regarding transfer of funds to Eversight and Neelanchal, it is submitted that same was in the ordinary course of their business.
86. It is further submitted that nothing has been brought on record to demonstrate as to how the Noticee was aware of the trading done by the Trading Entities during the Investigation Period.
87. It is further submitted that Noticee has never indulged in any fraudulent practices relating to the securities nor made any gains or derived unfair advantage as a result of

the alleged violations.

Noticee No. 8 – Sudhir Jain

88. Noticee submitted that he was a director of Beejay and was looking after the management and administration of the Company. It was further submitted that the Noticee was adopting the submissions made on behalf of Noticee No. 1
89. As regards the observations regarding connections alleged in the SCN, it was submitted that Adish Jain and Peeyush Jain were his distant relatives and Vicky Kothari was his brother in law. It was also submitted that the said persons were financially independent and traded independently.
90. The amount of Rs. 5 lakh that was transferred to Neelanchal by the Noticee was by way of a short term loan and was done in the ordinary course of business. It was also submitted that there was no connection between funds transferred by the Noticee and the trades done by Neelanchal.

Noticee No. 9 – Rashmi Jain

91. Noticee submitted that she was as a director of Beejay Investment and Financial Consultants Pvt. Ltd. and Flex Trade Pvt. Ltd. in the past. It was submitted that she was a director in Beejay during the period 20/11/2004 to 17/12/2012 and a director of Flex during the period 15/01/2008 to 10/03/2015.
92. Noticee further submitted that she was adopting the arguments made on behalf of Beejay and Flex.

Noticee No. 10 – Peeyush Jain

93. Noticee submitted that he was adopting the submissions made on behalf of Noticee No. 2.

Noticee No. 11 – Adish Jain

94. Noticee submitted that he was adopting the submissions made on behalf of Noticee. No. 2.

Noticee No. 12 Kinkar Bhattacharya

95. Noticee is submitted that he was a director of DDT and DDM from March 30, 2012. Noticee submitted that he was adopting the submissions made on behalf of DDT and DDM.

Noticee No. 13 Sukanta Chatterjee

96. Noticee is submitted that he was a director of DDT and DDM only from March 30, 2012 onwards and therefore he was not a Director of the entities for a substantial part of the IP. Noticee submitted that he was adopting the submissions made on behalf of DDT and DDM.

Noticee No. 14 Rajesh Kumar Agarwal

97. Noticee is submitted that he was a Director of DDT and DDM from April 01, 2011 to June 29, 2012. It is submitted that he is the brother of Mr. Sushil Kumar Agarwal, who was a Director of Korp in the past. Noticee also submitted that he and his brother, Mr. Sushil Kumar Agarwal, are independent and have independent livelihood. Noticee submitted that he was adopting the submissions made on behalf of DDT and DDM.

Noticee No. 15 – Debasis Mishra

98. Noticee is submitted that he was a director of DDT and DDM from April 01, 2009 to June 29, 2012. Noticee submitted that he was adopting the submissions made on behalf

of DDT and DDM.

Noticee No. 16 and 17– Surendra Agarwala and Bhupendra Kumar Dhanuka

99. Adopted the reply submitted by Noticee No. 5

Noticee No. 18– Manish Agarwal

100. Noticee submitted that he was the director of Flex Trade Private Limited (**Flex**) for the period 14/10/2009 to 31/03/2016. During the Investigation period i.e from 1st September, 2011 to 30th September, 2012, there were no restraining directions against Flex and it had traded in the securities market during the period on its own account, so there was no need to act as a conduit as alleged in the SCN.

101. The trades carried out by Flex are genuine, bonafide and in the ordinary course of business.

102. Noticee further submitted that he was adopting the submissions made on behalf of Noticee No. 7

Noticee 19 and 20 - Prativa Kothari and Vicky Kothari

103. Adopted the reply submitted by Noticee No. 6.

CONSIDERATION –

104. I have considered the Interim Order dated June 16, 2016, the Confirmatory Order dated March 27, 2017, the oral and written submissions made on behalf of the parties along with all the material available on record.

Alleged connection between the entities.

105. I will first proceed to deal with the allegations in the SCN and submissions of the Noticees in respect of the alleged connection between the entities. In the SCN, it was

charged on the basis of KYC documents, fund transfers, common address, common email id and bank statements, that the Noticees were connected to each other. The details of the same are given in Table 1 of this order.

106. I also note that the interim and confirmatory order in the matter has extensively dealt with this issue and has clearly brought out the connections between the Noticees. I also note from the Investigation Report that there was significant fund transaction between the Debarred Entities and the Trading Entities. For example it was noted during the investigation that Beejay and Eversight had transferred a total amount of,-

- a. Rs. 17.78 crores to Neelanchal during the investigation period.
- b. Rs. 29.79 crores to DDM during the investigation period
- c. Rs. 12.49 crores to DDT during the investigation period.

107. In reply, the Noticees had contended that these transactions were in the nature of short term loans and advances done in the ordinary course of business and they cannot form the basis of any connection between the entities. I, however, note that despite repeated requests by SEBI to provide documentary evidence to support the claim made that the fund transfers were in the nature of loans or short term advances, the Noticees have till date failed to submit any proof to substantiate these claims. It is noted that several high value transactions were observed between the Noticees during the investigation period and in many cases multiple transactions were observed over the course of a single day. I find it inconceivable that unconnected entities would enter into such loan transactions with each other without any written agreement. Failure of the Noticees to provide any documentary evidence in support of their claim gives further credence to the inference drawn from the connections listed out in Table 1 that these entities were acting as a group and were connected to each other. I, therefore, find no merit in the contentions made on behalf of the Noticees in this regard.

Fund Flows between the entities

108. I note from the investigation report and the SCN that there were fund flows between the Debarred Entities – Beejay and Eversight, and the Trading entities- DDM, DDT and Neelanchal. It is noted that the fund flows between these entities were not significant prior to the Investigation Period; however, during the investigation period, after the SEBI passed the restraint order against the Debarred Entities, significant fund flows were observed between these entities. It was further observed during the investigation that a portion of the funds that were directly or indirectly transferred to the Trading Entities was transferred by the said entities to stockbrokers thereby enabling the Debarred Entities to indirectly access the securities market circumventing the orders passed by SEBI. A few instances of such fund flows were listed out in the SCN and the same is reproduced in paragraph 9 – 22 of this order.
109. It is further noted that DDM vide letter dated December 08, 2017, DDT vide letter dated December 08, 2017 and Neelanchal vide letter dated February 27, 2017, have submitted details regarding the quantum of fund transfer with the Debarred Entities and the details of the same are given in the table below, -

Table 10			
Name of Trading Entity	Name of Debarred Entity	Amount received from Debarred Entity	Amount transferred to Debarred Entity
DDM	Eversight	85,00,000	-
	Beejay	2,48,200,000	12,56,50,000
DDT	Beejay	13,62,00,000	10,47,00,000
Neelanchal	Eversight	19,93,00,000	7,90,00,000
	Beejay	30,00,000	30,00,000
	Sudhir	15,00,000	15,00,000
Total		59,67,00,000	31,38,50,000

110. I note that during the Investigation Period there were 120 instances of fund flows from the Debarred Entities to the Trading Entities for a total amount of Rs. 59,67,00,000; out of the said 120 instances, 35 instances for a total amount of Rs. 29,42,00,000, the funds received by the Trading Entities were traced to the amounts transferred to stock

brokers as pay-in. The details of such transfers by the Debarred Entities to the stock brokers are given in the table below,

Table 11			
Name of Stock Broker	Amount received by the Stock Brokers from the Trading Entities (in Rs.)	Funds transferred by Debarred Entities to Trading Entities that were traced to stock brokers (in Rs.)	Total Amount transferred by the Debarred Entities to Trading Entities(in Rs.)
A	B	C	D
ABM	20,00,750	10,00,000	59,67,00,000
MSBPL	0	0	
Religare	175,30,43,133	14,08,00,000	
JMFL	326,43,14,405	0	
IIFL	20,99,67,148	14,54,00,000	
Korp	3,92,40,000	50,00,000	
GFSL	1,90,80,958	0	
MOSL	4,31,27,880	20,00,000	
Total	533,07,74,274	29,42,00,000	

111. I further note that The Noticees, viz. Rajesh Agarwal, Kinkar Bhattacharya and Sukanta Chatterjee submitted that they were not directors of the DDT and DDM for a substantial part of the investigation period. In this regard, I note from the Confirmatory Order dated March 27, 2017 that similar contentions were raised by them at that stage also and the same was not accepted. In this regard, I agree with the findings recorded in the Confirmatory Order dated March 27, 2017, that it is settled position of law that the directors, during their tenure, are responsible and liable for the conduct of the business of the company and therefore cannot exclude themselves from the liabilities arising out of the activities of the Company merely by claiming that they were not directors for the entire period during which the violations were observed by SEBI.

Violation of the provisions of the PFUTP Regulations

112. I note from the SCN that it has also been alleged that the Noticees have violated the provisions of Regulation 3(a), (b), (c) and (d) and Regulation 4(1) of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, by enabling the trading of the Debarred Entities in violation of the SEBI order restraining the said entities from the accessing the securities market.

113. In this regard, I note that the SCN does not allege any manipulative or fraudulent trades done by the Trading Entities or employing any other unfair trade practice during the course of such trading. The only charge that has been levelled in the SCN is that the Trading Entities and the Conduit Entities enabled the Debarred Entities to access the securities market in contravention of the SEBI directions. In this regard, I find that in the absence any allegations regarding manipulative, fraudulent or unfair practices during the course of such trading, mere trading in non-compliance with SEBI restraint directions does not ipso facto make such trades fraudulent or unfair trade practice as defined under the PFUTP Regulations. I am therefore of the view that such trades can only be viewed as a non-compliance with the directions issued by SEBI.
114. In view of the same, I accept the contentions made on behalf of the Noticees and hold that the charge of violation of the provisions of the (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 by the Noticees does not stand.

Computation of profits

115. I note from the Interim Order dated June 16, 2016, that the Noticees in the matter were directed to impound an amount of Rs. 27,44,34,765 which was the alleged unlawful gains made by trading in contravention of the restraint directions issues by SEBI. In this regard, I note that it was directed vide that Confirmatory Order dated March 27, 2017 that *“As regards the quantum of illegal gains to be disgorged, the figure already arrived at (in the interim Order) shall once again be looked into considering the contentions raised by Neelanchal (in the reply dated February 01, 2017)”*.
116. It is noted that the Noticee - Neelanchal vide its submission dated February 01, 2017, had raised the following objections to the calculation of profits done vide the Interim

Order:

- a. In respect of trades of Neelanchal in the scrips of Pipavav Def. & Offshore Engg. and Pipavav Shipyard Ltd, both the companies are one and the same.
- b. In respect of shares bought on one exchange and sold on the other exchange during the IP, profit calculation is erroneous.
- c. It was also contended that the SEBI has only looked at profits while computing the unlawful gains and has not included the losses made by the Noticees during the course of such trading.

117. I note from the records that the first two contentions made on behalf of the Noticees and which are recorded in the preceding paragraph have been accepted and the unlawful gains recalculated on the basis of the same. The third contention regarding setting off the losses against the profits made is not being accepted as the same is not in line with the Order of the Hon'ble Securities Appellate Tribunal in the matter of Hemant Sheth v. SEBI (Appeal No. 205 of 2019) dated March 03, 2020, wherein it was held that,-

“contention of the appellant that the losses dealing in the scrip of Gemstone / KGN should have been set off with the profits made while dealing in the scrip of Polytex does not have any merit as unlike tax rules where such set off is allowed for normal business profits and losses this is a case of manipulative trade and dealings and manipulations and that too in the nature of fraudulent and unfair trade practices does not deserve such treatment which normal business transactions are entitled to.”

118. The trades of DDM, DDT and Neelanchal along with the corresponding recalculated profits made during the IP after taking into account the contentions made by the Noticee vide reply dated February 01, 2017 are as under:

Table 12			
Name of Entity	No. of scrips traded		Gross Profit (in Rs.)
	BSE	NSE	
DDM	9	27	8,97,928
DDT	14	73	1,00,69,388

Neelanchal	21	18	30,81,58,258
Total			31,91,25,574

119. The summary of the F&O trades of the entities DDM, DDT and Neelanchal during the IP on NSE is given below:

Table 13						
Name of Entity	No. of trades	Buy Qty	Sell Qty	Buy Value (in Rs.)	Sell Value (in Rs.)	Profit (in Rs.)
Neelanchal	2	2500	2500	2,03,955	2,10,175	6,220.00
DDM	22	39,925	39,925	1,24,53,520	1,24,56,926	3,406.00
DDT	1	50	50	2,227.50	2,250	22.50
Total						9,649.00

*BSE, vide email dated January 22, 2016 stated that the above 3 entities have not traded in the F&O segment during the IP.

120. As can be seen from Tables 12 and 13 above, the entities DDM, DDT and Neelanchal have made a combined gross profit of Rs. 31.91 Cr by trading in the securities market during the IP.

121. The formula used for the computation of unlawful gains is given below:

- When Buy Qty = Sell Qty, Gains Made = (Wt Avg Buy Price – Wt Avg Sell Price) * Buy Qty
- When Buy Qty > Sell Qty, Gains Made = Qty of shares sold during investigation period * Wt Avg Sell Price + (Qty of remaining shares * Closing Price of shares on last day of investigation period) – (Buy Qty of shares purchased during investigation period * Wt Avg Buy Price)
- When Buy Qty < Sell Qty, Gains Made = Qty of shares sold during investigation period * Wt Avg Sell Price – [(Qty of shares bought during investigation period * Wt Avg Buy Price) + (Qty of excess shares * Opening Price of shares on first day of investigation period)]

122. In this regard, I note from the SCN that a multiplier of 0.49 has been used for calculating the share of the profits that could be attributed to the Debarred Entities out of the total profits made by the Trading Entities. It is further noted that the multiplier of 0.49 has

been arrived at by considering the proportion of the total funds transferred to the Trading Entities by the Debarred Entities which could be identified as being used for trading in the securities market by the Trading Entities.(Column C/Column D in Table 11)

123. In this regard, I agree with the contentions made on behalf of the Noticees that calculation of profits using 0.49 as the multiplier has no sanctity as the funds which were transferred by the Trading Entities to the Debarred Entities which could not be identified as being used for trading may not be a relevant factor for calculating the profits which can be attributed to the Trading Entities.
124. I note from Table 11 that Rs. 29.42 Crores out of the Rs. 533.07 Crores (5.52% of the total payins) that was transferred by the Trading Entities to the Stock Brokers could be traced to the Debarred Entities. Further, the total gross profits made by the entities DDM, DDT and Neelanchal by trading in the securities market during the IP was Rs. 31.91 Crores.
125. I am of the view, that a more appropriate method of calculating the profits that can be attributed to the Debarred Entities would be to consider the amounts transferred by the such entities to the Debarred Entities taken as a proportion of the total funds deployed by the Trading Entities during the Investigation Period. As 5.52% of the total funds transferred by Trading Entities to the stock brokers could be traced to the Debarred Entities, the total profits that can be attributed to Debarred Entities along with the entities facilitating their trades should be 5.52% of the profits made by the Trading Entities during the Investigation Period.
126. In view of the above, the unlawful gains made by the Debarred Entities during the Investigation Period by accessing the securities market in contravention of SEBI's

direction is as follows,-

- a. Unlawful gain made = 5.52% of Rs. 31,91,25,574 = Rs. 1,76,15,732
- b. Interest = 78,35,863 + 76,01,309 = Rs. 1,54,37,172.

Calculated at 12% p.a. –for the period 01/10/2012 to 15/06/2016 (calculated from the next day from the end of the Investigation Period to the date of the SEBI Interim Order) and at 9% for the period 16/06/2016 to 01/04/2021 (calculated from the next day from the date of the SEBI Interim Order to the date of this Order). An interest rate of 9%(being adopted as the average deposit rate) is applied from the date of the SEBI Interim Order, as I note from the records that the amount impounded pursuant to the Interim Order is sufficient to cover the reworked unlawful gains.

- c. Unlawful gain including interest = Rs. 3,30,52,904.

ORDER

127. I, therefore, conclude that the Noticee Nos. 3 to 7 have enabled the trading of debarred Noticee Nos.1, 2 and 8 in contravention of the SEBI restraint orders and therefore I hold the said Noticee Nos. 1 to 7 and their directors during the relevant time to have violated restrictions imposed by the SEBI restraint orders. I note that Noticee Nos. 1-6, 8 to 17 and 19 and 20 have already undergone a prohibition from accessing the securities market for a period of 5 years.

128. Accordingly, in exercise of the powers conferred upon me under Section 19, read with Sections 11B of the Securities and Exchange Board of India Act, 1992, I hereby issue the following directions, -

- a. Noticees Nos. 1, 2 and 8 having been restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, vide SEBI orders dated June 16, 2016 and March 27, 2017, shall

continue to be so restrained for a further period of two (2) years, from the date of this order;

- b. Restrain directions imposed on Noticee Nos. 3 to 6, Noticee Nos. 9 to 17 and Noticee Nos. 19 and 20 from accessing the securities market and further prohibiting from them buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner vide SEBI orders dated June 16, 2016 and March 27, 2017, hereby stand revoked;
- c. Noticee Nos. 7 and 18, not being part of the SEBI orders dated June 16, 2016 and March 27, 2017, are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of four (4) years, from the date of this order;
- d. Noticees 1 to 20 shall jointly and severally directed to disgorge the unlawful gain of Rs. 3,30,26,842. Noticees shall pay the said amounts within 45 days from the date of this Order either by way of demand draft drawn in favour of 'Securities and Exchange Board of India', payable at Mumbai or by e-payment to SEBI account as detailed below,-

Name of Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

- e. The Demand Draft of disgorgement amount, as directed above, shall be sent to "The Division Chief, Enforcement Department, DRA-4, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block,

Bandra Kurla Complex, Bandra (E), Mumbai -400 051”;

- f. Banks shall permit transfer of the amounts frozen in the bank accounts of Noticee Nos. 1-6, Noticee Nos. 8 to 17 and Noticee Nos. 19 and 20 to the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992, for the purpose of complying with this Order;
- g. The Division Chief, Enforcement Department, DRA-4, shall within a period of two days from the date of payment of amount disgorged as per this order, issue a certificate of compliance upon production of which the banks shall defreeze the accounts frozen pursuant to the interim order dated June 16, 2016.

129. This Order shall come into force with immediate effect.

130. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai
Date: April 09, 2021

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA