National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/57867	Date: August 04, 2023
Circular Ref. No: 183/2023	

To All NSE Members,

Sub: **SAT Order in the matter of RTS Power Corporation Limited.**

This is with reference to NSE circular no. NSE/INVG/2009/298 dated June 08,2009 in reference to SEBI Order no. WTM/KMA/81/ISD/06/2009 dated June 05, 2009 and NSE circular no. NSE/INVG/50125 dated October 27, 2021 in reference to SEBI Order no. WTM/GM/EFD/DRA1/13919/2021-22 dated October 27, 2021.

Hon'ble SAT now vide its Order dated August 4, 2023, has inter alia directed that the impugned order in so far as it relates to Chetan Shan (PAN - AAFPS7527M) cannot be sustained and is Quashed.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (https://sat.gov.in/scripts/search.asp).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sanesh Sawant
Senior Manager

ANNEXURE: SAT Order in the matter of RTS Power Corporation Limited.

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 31.07.2023
Date of Decision : 04.08.2023

Misc. Application No. 11 of 2023
And
Appeal No. 57 of 2022

Chetan Shah
615, Shripal Nagar, Satya Nagar,
Behind Saibaba Nagar, Borivali (W),
Mumbai – 400 092. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Kunal Kataria, Advocate i/b Ms. Chandrika Prajapati, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

With
Misc. Application No. 12 of 2023
And
Appeal No. 58 of 2022

Chetan Shah
615, Shripal Nagar, Satya Nagar,
Behind Saibaba Nagar, Borivali (W),
Mumbai – 400 092. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Kunal Kataria, Advocate i/b Ms. Chandrika Prajapati, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Prateek Pai, Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 220 of 2022

Mukesh Konde ….. Appellant
Ganesh Maidan, Golibar,
Sainath Nagar, Ghatkopar (W),
Mumbai – 400 092.

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Amit Karle, Advocate with Mr. Sameer Tiwari, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

With
Appeal No. 221 of 2022

Mukesh Konde
Ganesh Maidan, Golibar,
Sainath Nagar, Ghatkopar (W),
Mumbai – 400 092. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Amit Karle, Advocate with Mr. Sameer Tiwari, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

With
Appeal No. 222 of 2022

Ashok Narayan Waje
Samdhan CHS, Sidhat Chawl, Anand Garh,
Vikhroli Park Site, Mumbai – 400 079. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Amit Karle, Advocate with Mr. Sameer Tiwari, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

With
Appeal No. 223 of 2022

Ashok Narayan Waje
Samdhan CHS, Sidhat Chawl, Anand Garh,
Vikhroli Park Site, Mumbai – 400 079. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Amit Karle, Advocate with Mr. Sameer Tiwari, Advocate for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, Advocates i/b. K Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Six appeals have been filed by three noticees questioning the order of the Whole Time Member (hereinafter referred to as ‘WTM’)

of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated October 27, 2021 wherein the noticees have been debarred for a specific period and are also challenging the order dated June 18, 2021 passed by the Adjudicating Officer (hereinafter referred to as 'AO') wherein different amounts of penalty have been awarded. Appeal Nos. 57 and 58 of 2022 have been filed by Chetan Shah who is noticee nos. 6 and Appeal Nos. 220 and 221 of 2022 have been filed by Mukesh Konde noticee nos. 1 and Appeal Nos. 222 and 223 of 2022 have been filed by Ashok Narayan Waje noticee nos. 2.

2. The facts leading to the filing of the present appeals is, that certain complaints were made to SEBI by certain stockbrokers alleging that noticee nos. 1, 2 and 3 had defaulted in meeting pay-in-obligations towards purchase of shares by them on February 11, 2009. It was also alleged that pay-in-default was part of the scheme orchestrated by the buy-side noticees with the sell-side noticees. Based on the complaints, an investigation was made by SEBI which resulted in passing an ex-parte ad-interim order dated June 5, 2009 restraining the noticees / appellants from accessing the securities market. By the said order, SEBI directed stock exchange to withhold the pay-out obligations during the pendency of the investigation.

3. The interim order was subsequently confirmed by an order dated October 26, 2009. The confirmatory order was challenged by the noticees before this Tribunal which appeal was dismissed. Subsequently, on October 29, 2010, a show cause notice was issued alleging that the buy-side noticees, namely, noticee nos. 1, 2 and 3 were connected with the sell-side noticees, namely, noticee nos. 4, 5 and 6 and with noticee nos. 7 and 8 who were the financers of the transaction of noticee nos. 1, 2 and 3. The show cause notice also alleged that buy-side noticees were placing purchase orders knowing fully well that they were not in a position to take delivery of the shares and that the said transactions were done in order to provide an exit opportunity to the sellers at the cost of buy-side brokers. The show cause notice alleged that the scheme orchestrated by the noticees was fraudulent and violative of Regulation 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘PFUTP Regulations’).

4. The appellant Chetan Shah is noticee nos. 6 and is the seller. Appellant Mukesh Konde and appellant Ashok Waje are noticee nos. 1 and 2 who are the buyers. After the issuance of the show cause

notice, a settlement application was filed by all the noticees which was rejected by SEBI by an order dated June 27, 2014. The buy-side noticees filed a Civil Suit No. 3022 of 2009 before the Hon'ble Bombay High Court for annulment of the trades and for a direction to SEBI to refund the impounded payment to the buy-side brokers. This suit is still pending consideration before the Hon'ble Bombay High Court.

5. In addition to the aforesaid, noticee nos. 4 also filed the Writ Petition before the Hon'ble Bombay High Court in which an ad-interim order dated April 16, 2015 was issued directing that proceedings against noticee nos. 4 will remain in abeyance. A similar Writ Petition was filed by the appellant Chetan Shah noticee nos. 6. But the said Writ Petition was rejected for non-clearance of the deficiencies pointed out by the registry. By an order dated October 27, 2020, the Hon'ble Bombay High Court modified its earlier order of April 16, 2015 permitting SEBI to dispose of the adjudicating proceedings but the same would not be enforced against noticee nos. 4.

6. Based on the aforesaid direction of the Hon'ble Bombay High Court, the proceedings before the WTM which remained in abeyance for all these years even though there was no compulsion to keep it in

abeyance with regard to other noticees, nonetheless, the proceedings remained in abeyance and were only revived after the Hon'ble Bombay High Court passed order on October 27, 2020.

7. The WTM after giving an opportunity of hearing passed the impugned order on October 27, 2021 noticing that even though the appellants were restrained from accessing the securities market for a period of twelve years further directed that they will be restrained from accessing the securities market for another period of two years. On the same violation, the AO passed a separate order on June 18, 2021 imposing penalties of different amounts upon the noticees including the appellants.

8. It may be stated here that noticee nos. 1 and 2 who are the appellants before us did not file any reply to the show cause notice nor appeared before the WTM at the stage of hearing. Noticee nos. 6 however appeared and filed his objections.

9. The stand of the appellant Chetan Shah and the stand of Mukesh Konde and Ashok Waje noticee nos. 1 and 2 respectively are different and, therefore, the case would be dealt separately in the subsequently paragraphs.

10. The appellant Chetan Shah noticee nos. 6 contended that he sold 42,191 shares at the rate of Rs. 299.50 per share in the ordinary course of his business and purchased 13,594 shares at the rate of Rs. 292.75 per share. The Appellant Chetan Shah vehemently contended that he was not aware of the counter party. Noticee nos. 1, Mukesh Konde submitted that he was not connected to the buy-side noticees or to the sell-side noticees or to the financers. During the course of investigation before the issuance of the show cause notice, the statement of Mukesh Konde was recorded in which he also categorically stated that he did not know who Chetan Shah was and that he had no connection with this person.

11. The show cause notice alleged the connection of the appellant Chetan Shah noticee nos. 6 with Mukesh Konde noticee nos. 1 on two counts, namely, :-

i) that in the KYC form submitted by noticee nos. 6, he had indicated a telephone no., namely, 99675-77028 which was the same number as given by noticee nos. 2 Hetal Patel and that the same number was subscribed in the name of India Infoline (hereinafter referred to as 'IIFL') and that IIFL had confirmed that the said number was issued to its employee Mukesh Konde, noticee nos. 1.

This telephone no. was reflected in the Unique Client Code (hereinafter referred to as 'UCC') database of BSE.

ii) that Anish Kumar stockbroker of the appellant gave a statement that Mukesh Konde noticee nos. 1 had introduced the noticee nos. 6.

On the aforesaid basis, the show cause notice alleged that there was a connection between buy-side noticees with the sell-side noticees and that they were working in tandem wherein the buy-side noticees were placing order for purchase of shares and the sell- side noticees were selling the shares.

12. The WTM found that on the basis of the UCC database of BSE, the appellant was connected to noticee nos. 1 on the ground that the telephone indicated by noticee nos. 6 in his KYC form was the same number as given to Mukesh Konde. The WTM, however, did not rely upon the statement of Anish Kumar stockbroker of noticee nos. 6 on the ground that he was not traceable and he could not be cross-examined by noticee nos. 6.

13. Thus, based on the telephone connection as depicted in the KYC form, the WTM came to the conclusion that noticee nos. 6 was

connected to noticee nos. 1 and other buy-side noticees and were part of the scheme to defraud the stockbrokers of the buy-side noticees.

14. With regard to the noticee nos. 1 and 2 Mukesh Konde and Ashok Waje respectively, the charge levelled against them is, that they were placing purchase orders knowing fully well that they were not in a position to take delivery of the shares as they did not have the requisite finance. The noticee nos. 1 and 2 were also found to be connected directly and indirectly with noticee nos. 4, 5, 7 and 8 on the basis of call records and bank account statements.

15. The WTM on the basis of the evidence that was brought on record found that the call records of noticee nos. 3, 4 and 5 clearly indicated that they were in touch with each other before and during the transaction and the bank statements clearly showed the transfer of funds between them. The WTM further found that cheque given to the stockbrokers by the buy-side noticees towards margin money was dishonored. The WTM further found that noticee nos. 7 and 8 were the financers and were financing the buy-side noticees. The WTM, thus, came to the conclusion that the buy-side noticees were connected among themselves and were also connected to the sell-side noticees on the basis of the KYC documents having common telephone number and, therefore, they were connected to each other

and were part of the scheme to defraud the stockbrokers of the buy-side noticees. The WTM came to the conclusion that the buy-side noticees did not take steps to close their position as they were not in a position to take delivery of the shares and such transaction made by them was not genuine and, consequently, were fraudulent and violative of Regulation 3 and 4 of the PFUTP Regulations.

16. We have heard Mr. Kunal Kataria, the learned counsel with Ms. Chandrika Prajapati, the learned counsel for the appellant Chetan Shah. Mr. Amit Karle, the learned counsel with Mr. Sameer Tiwari, the learned counsel for the appellants Mukesh Konde and Ashok Waje and Mr. Shiraz Rustomjee, the learned senior counsel with Mr. Prateek Pai, Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shilpa Joshi, Mr. Harshvardhan Melanta, the learned counsel for the respondent.

17. On a specific query raised by us, the learned senior counsel fairly conceded that there is no call record to indicate that noticee nos. 6 was in touch with noticee nos. 1, 2 or 3 or that noticee nos. 6 was in touch with other noticees on the sell-side. There is no evidence to show that noticee nos. 7 and 8 financed the transaction of noticee nos. 6. There is no evidence of any sort from the bank statements of noticee no. 6 indicating transfer of funds or business transactions with other noticees.

18. Thus, the only charge of connection and, consequently, being part of the alleged scheme against noticee nos. 6 is the alleged telephone number shown in the KYC form. In this regard, the respondent in their reply have produced the KYC form submitted by the appellant. A perusal of the KYC form shows that no telephone no. is given under the column telephone. Thus, the finding given in paragraph no. 54 of the impugned order that the connection of noticee nos. 6 with noticee nos. 1 is based on the common telephone number, on the basis of KYC documents is perverse and against the material evidence on record. A totally wrong finding has been given. A regulator is required to act fairly and is not required to give a false finding on which basis the noticee nos. 6 has been indicted in these proceedings and kept out of the market for more than 13 years.

19. We also find a column relating to introducer. This column indicates that the introducer is one Mittal Shah and not Anish Kumar the alleged stockbroker of noticee nos. 6. Thus, on both counts, the allegation made against the noticee no. 6 in the show cause notice was false and was not based on any material evidence. The statement of Anish kumar though not relied upon by the WTM was patently false since he was not the introducer of noticee nos. 6. The telephone number of Mukesh Konde was not indicated in the KYC

form filed by the noticee nos. 6. Thus, if the database of BSE shows some numbers in the UCC of the appellant, it is for the stock exchange to explain as to how they got hold of that number, since the KYC documents of noticee nos. 6 does not indicate this number.

20. In view of the aforesaid, we are of the opinion that there is no connection whatsoever of noticee nos. 6 with noticee nos. 1 or with the other buy-side noticees as well as sell-side noticees. The mere fact that noticee nos. 6 had carried out some trades during that period does not justify the respondent in taking such drastic measures of debarring the appellant for 14 years and imposing a penalty of Rs. 10 lakhs.

21. We are further of the opinion that there is no evidence of any sort against the noticee nos. 6 linking with buy-side noticees. There is no evidence of any sort to show that noticee nos. 6 was part of a scheme orchestrated by noticee nos. 1, 2 and 3 with the other sell-side noticees. We are further of the opinion that the WTM having come to the conclusion that the noticee nos. 6 had already been restrained from accessing the securities market for a period of 12 years, there was no occasion to extend the restraint order by another two years without considering the proportionality of the alleged violation. The allegation against noticee nos. 6 was not that grievous

to invoke a debarment order for 14 years. In view of the aforesaid, the impugned order passed by the AO imposing the penalty on the same ground also cannot be sustained.

22. The learned senior counsel for the respondent contended that even though the finding against the noticee nos. 6 cannot be sustained, nonetheless, there was a loss of Rs. 9.14 crore caused to the stockbrokers and, therefore, the WTM was justified in extending the period of debarment from 12 years to 14 years. It was also contended that the fact that noticee nos. 6 also traded around the same time as the buy-side noticees was too much of a coincidence and, therefore, on preponderance of probability, it can safely be assumed that noticee nos. 6 was in the knowledge of the scheme that was orchestrated by the buy-side noticees. This submission of the learned senior counsel cannot be accepted. Such contention was not considered by the authorities in the impugned order and the learned senior counsel cannot justify the impugned order by raising such untenable grounds.

23. In so far as noticee nos. 1 and 2 are concerned, admittedly, they did not file any reply nor chose to appear at the time of hearing before the authorities and, therefore, the charges levelled against these noticees stood unrebutted.

24. A specific finding has been given based on the admission of noticee nos. 1 and 2 that they were connected to each other. Evidence has come on record to show that noticee nos. 1 and 2 were employees of IIFL and had worked together. A specific finding has been given by the authorities that the call record indicates that the buy-side noticees were in touch with the sell-side noticees other than noticee nos. 6 before and during the transactions in question. The evidence has also come to show on the basis of the bank account statement that there was transfer of funds between them. There is also evidence to show that the noticee nos. 1 and 2 did not take steps to close their position and the finding that they were not in a position to take delivery of the shares does not suffer from any manifest error. Considering the aforesaid, we are of the opinion that the trades executed by noticee nos. 1 and 2 for purchase on the shares beyond their financial position were not genuine trades and were totally fraudulent and violative of the Regulations 3 and 4 of the PFUTP Regulations.

25. The contention raised before us is that they had no connection with the sellers and that there is no evidence to that effect. Further, they had not hatched any scheme and, in fact, the noticee nos. 1 and 2 were only intra-day buyers but could not close its orders. They

started to square off their open position which somehow remained unexecuted on the stock exchange platform. It was, thus, urged that the trades were genuine and they had the financial position but could not square off the trades for the reasons stated aforesaid.

26. The submission raised by the learned counsel for the noticee nos. 1 and 2 are patently erroneous. The evidence which has been given by the authorities clearly indicates through the call records and the bank statements that noticee nos. 1 and 2 were connected to the other buy-side noticees and sell-side noticees except noticee nos. 6. We also find that noticee nos. 1 and 2 did not take any adequate steps to close their position which clearly indicates that the noticees were not in a position to take delivery of the shares and which also indicates that the trades executed by them were not genuine trades and were fraudulent to cause loss to the stockbrokers of the buy-side noticees.

27. In view of the aforesaid, we are of the opinion that there is no infirmity in the findings given by the WTM and by the AO. The impugned order in so far as it relates to noticee nos. 1 and 2 does not suffer from any error of law.

28. In view of the aforesaid, the impugned order in so far as it relates to noticee nos. 6 Chetan Shah cannot be sustained and is quashed. The appeal Nos. 57 and 58 of 2022 are allowed with costs. The appeal of noticee nos. 1 and 2 Mukesh Konde and Ashok Waje being appeal Nos. 220, 221, 222 and 223 of 2022 are dismissed with no order as to costs.

29. In so far as computation of costs is concerned for noticee nos. 6, we find that the noticee has been restrained from accessing the securities market since 2009. More than 13 years have elapsed and he has been restrained from accessing the securities market. In addition to the aforesaid, he has been penalized for a sum of Rs. 10 lakh. There is no evidence against the appellant. The basis of issuance of the show cause notice is patently false and is not based on any material evidence. We are consequently constrained to observe that a regulator while proceeding against any noticee must proceed on the basis of some material evidence which in the instant case was lacking. It was not a case of insufficiency of evidence but is a case of lack of evidence. In view of this, we compute the costs of Rs. 10 lakh to be paid by SEBI to noticee nos. 6 within four weeks from today.

30. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

04.08.2023
PTM