UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of
Korp Securities Limited (PAN No. AACCK1771D)
Registered Stock broker bearing registration no. INE231298333 (NSE) and INB011298339 (BSE)

In the matter of
Beejay Investment & Financial Consultants Private Ltd (PAN No:AABCB0832B)

BACKGROUND OF THE CASE

1. SEBI vide ad-interim ex-parte order dated June 04, 2009 issued directions inter-alia in respect of entities viz., Beejay Investment & Financial Consultants Private Ltd. bearing PAN no. AABCB0832B (hereinafter, also referred to as "**Beejay**") and Eversight Tradecomm Private Limited bearing PAN no. AAACE7667E (hereinafter, also referred to as "**Eversight**") restraining them from accessing the securities market and prohibited them from buying, selling or dealing in securities market directly or indirectly. The said order dated June 04, 2009, was confirmed inter-alia in respect of Beejay vide Order dated January 19, 2010, and same was confirmed in respect of Eversignt vide order dated January 25, 2010. Subsequently, considering the fact that period of restraint undergone inter-alia by Beejay was sufficient for the violations committed by it, the directions issued vide orders dated June 04, 2009 & January 19, 2010 were discontinued vide order dated November 15, 2012, and in similar lines, directions against Eversight were discontinued vide the order dated September 7, 2012. Hence, Beejay was debarred from dealing in securities market during period June 4, 2009 to November 15, 2012, and Eversignt was debarred from dealing in securities market during June 4, 2009 to September 7, 2012.

2. Thereafter, SEBI received Suspicious Transaction Report (hereinafter, also referred to as "**STR**") dated December 21, 2012 inter-alia in relation to Beejay and Eversight due to large value transactions in their bank accounts. During the investigation into the matter by SEBI for period June 4, 2009 to November 14, 2012 (hereinafter, referred to as "**Investigation period**" or "**IP**") it was inter-alia noted that Beejay and and Eversight transferred large funds to two inter-connected entities viz, Divyadrishti Merchants Private Limited (hereinafter, also referred to as "**DDM**") and / or Divyadrishti Traders Private Limited (hereinafter, also referred to as "**DDT**"), which further used these funds to deal in shares at BSE and NSE through Stock Broker viz, Korp Securities Pvt Ltd (hereinafter, also referred to as "**Korp**" or "**Noticee**"). It was also noted that debarred entity Beejay had also directly transferred large funds to Korp during the investigation period.

3. It was further observed that the Noticee (Korp Securities Ltd.) was connected to inter-connected entities DDM and DDT through common e-mail id viz. korpsec@yahoo.co.in shared by Noticee and DDM. Also, one of the Directors of the Noticee viz, Shri Sushil Kumar Agarwal was connected to a

common Director of DDM and DDT viz, Shri Rajesh Kumar Agarwal in a capacity as Brother. Also, Shri Anuj Agarwal (s/o Shri Sushil Kumar Agarwal) & Smt Meena Agarwal (w/o Shri Sushil Kumar Agarwal) was one of the directors of Anuj Realtors Pvt Ltd, who was a shareholder of DDM.

4. Therefore, it was inter-alia alleged that Korp allegedly facilitated the debarred entities viz, Beejay and Eversight to deal in the securities market through DDM and DDT during the period of debarment and thereby, Noticee allegedly violated provisions of Regulations 3(a), (b), (c) & (d) and 4(1) & 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations, 2003**") and Clauses A(1), (2) and (5) of Code of Conduct for Stock B5rokers under Regulations 9 of SEBI (Stock Brokers and Sub-Brokers) Regulation, 1992 (hereinafter, referred to as "**Stock Broker and Sub-broker Regulations, 1992**"). In light of above, SEBI initiated current proceedings in respect of the Noticee.

APPOINTMENT OF ADJUDICATING AUTHORITY

5. Adjudicating Officer was appointed vide communication order dated June 14, 2018 under section 15I of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, also referred to as "**Adjudication Rules**") to inquire into and adjudge under section 15HA and 15HB of SEBI Act, 1992 for the alleged violations of Clauses A(1), (2) & (5) of Code Of Conduct for Stock Brokers under Regulation 9 of Stock Broker and Sub-broker Regulations, 1992 and Regulation 3(a), (b), (c) & (d) and 4(1) & 4(2)(a) of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE / HEARING/ REPLY

6. A Show Cause Notice dated July 06, 2018 (hereinafter, referred to as "SCN"), was issued inter-alia to the Noticee under Rule 4(1) of the Adjudication Rules, 1995, requiring to show cause that why an inquiry should not be held against the Noticee under Rule 4 of the Adjudication Rules, 1995 and penalty be not imposed in terms of Section 15HA and 15 HB of SEBI Act for the alleged violations as mentioned above. As per records, SCN was delivered to the Noticee on July 13, 2018.

7. Subsequently, vide Hearing Notice dated September 07, 2018, the Noticee, was granted opportunity of personal hearing on September 24, 2018. The Noticee acknowledged receipt of the HN vide its e-mail dated September 25, 2018. However, the Noticee neither submitted any reply to the SCN nor attended the hearing. Thereafter, vide HN dated September 24, 2018, the Noticee was granted second opportunity of hearing in the matter on October 19, 2018.

8. In the meanwhile, vide letter dated September 24, 2018, the Noticee sought for inspection of documents relied upon in the matter. Subsequently, the Noticee, vide e-mail dated October 15, 2018, was informed that the SCN served in the matter was self-explanatory and contained all the necessary documents relied upon in the matter. It may also be mentioned that there is no other document relied upon in the matter, except the ones already provided to the Noticee.

9. Thereafter, vide e-mail dated November 13, 2018, the Noticee further requested for adjournment of hearing time. Accordingly, vide mail dated November 13, 2018, the hearing was fixed for November 15, 2018 at 11:00 AM.

10. The Authorized Representatives (ARs) of the Noticee, attended the hearing on the scheduled date and time and made oral submissions. Further, the ARs at the time of hearing were advised to file written submissions to the SCN on or before November 26, 2018 and were also advised to submit following documents;
   - Copy of client broker agreements
   - KYC form of the clients
   - Due diligence report in light of antecedents of the clients

11. Subsequently, vide letter dated November 12, 2018, the Noticee filed its reply to the SCN along with documents advised to be submitted at the time of hearing. The material submissions of the Noticee are mentioned below:

"

a. *We are a public limited company, and our shareholding pattern during the Investigation period was:*

Name of the Group	*Entities Belonging to the group*	*No. of shares held by the entity as on date*	*% of share held by the entity*	*% of shareholding by the group*
Sushil Agarwal Group				
	Sushil Kr. Agarwal	*11,75,000*	*23.50%*	
	Meena Devi Agarwal	*13,87,500*	*27.75%*	*51.25%*
Jethmal Mehta Group				
	Rohit Mehta	*8,87,500*	*17.75%*	
	Jethmal Mehta	*7,50,000*	*15.00%*	
	Pooja Fortune Pvt. Ltd.	*3,00,000*	*6.00%*	
	Pooja Finlease Ltd	*3,00,000*	*6.00%*	
	Jitendra Kumar Mehta	*1,00,000*	*2.00%*	
	Basanti Mehata	*20,000*	*0.40%*	
	Sunita Mehta	*20,000*	*0.40%*	
	Pankaj Mehta	*20,000*	*0.40%*	
	Lunkaran Mehta	*20,000*	*0.40%*	
	Kanchan Devi Mehta	*20,000*	*0.40%*	*48.75%*
	TOTAL	*50,00,000*	*100%*	*100%*

b. *Further to the above, please take note that Shri Sushil Kumar Agarwal has resigned from the Board of our company from 02/04/2013 and Shri Rohit Mehata has resigned from our Board from 11/02/2016.*

c. *We would like to place on records the fact that DDM and DDT are also our registered clients having unique code no D102 & D101 respectively. These entities are also registered with several other brokers. Our relationships with these entities are those of client & broker. We do not have any management control or ownership control over these entities. DDM & DDT have traded through us during the Investigation period and so also with several others brokers.*

d. *None of the debarred entities or Neelanchal or other alleged facilitators in the SCN, are registered with us as our clients, neither do we have any ownership control or exercise management control over any of these entities.*

e. *At no point of time were we privy to the movement of funds in our clients bank accounts & neither is there any mechanism through which we can know of the same.*

f. *It is an admitted fact that Shri Sushil Kr. Agarwal, our erstwhile Director is the elder brother of Mr. Rajesh Kumar Agarwal, erstwhile Director of DDM & DDT. It is quite possible that they may have common interest in a venture. We submit that the same cannot be the basis of relating us to DDM & DDT as they are two separate individuals living their independent lives and shareholders and directors in different companies.*

g. *Mr. Rajesh Kumar Agarwal has resigned from the Board of DDM and DDT on June 29, 2012.*

h. *We submit that our E-Mail id is korpsec@yahoo.co.in . As per MCA database the E-Mail I'd of DDM is ddm29021996@gmail.com.*

i. *Mr. Manoj Kumar Shaw is a practicing Company Secretary. With reference to SEBI's observation that Mr. Manoj Shaw was a common Company Secretary with DDM, we state that we were never aware of the same and it is our understanding that Mr. Manoj Shaw is an independent professional offering his professional services to several entities all across the nation and merely because he happened to be a common Company Secretary cannot by any imagination be a ground to suggest that we and DDM have facilitated the trades by said debarred entities or our trades were on behalf of said debarred entities.*

j. *Mr. Anuj Kumar Agarwal, a Director of our company, was a nominee Director of Mr. Sushil Agarwal group. During the Investigation period he was not associated with our company in any capacity. Even subsequent to his appointment he was not the sole decision maker of our company and neither was he empowered to take independent decision.*

k. *Further, with regards to the statement of Shri Anuj Agarwal, it is humbly submitted that, he was not a Director of our company, nor was he involved in the day to day working of our company or associated with our company in any manner whatsoever during the Investigation period.*

l. *With regards to the alleged statement of Shri Anuj Agarwal before the Income Tax authorities, it is humbly submitted that the statement before the Income Tax Authorities were made under threat and coercion as has been stated in an affidavit dated 31/03/2015 by Shri Anuj Agarwal.*

m. *Further to the above, Anuj Agarwal has resigned from the Board of Anuj Realtors Pvt. Ltd. on 27/3/2014.*

n. *Shri Rajesh Jain, authorized representative of DDM & DDT used to place orders in respect of these entities and that the beneficial interest of such trades belonged to DDM & DDT. The pay in and payout of such trades were duly met / received by these entities. The contract notes were generated in the name of DDM & DDT and we have earned brokerage on such trades.*

o. *Common submissions by DDM and DDT made before WTM in the matter of Beejay Investment & Financial Consultants Private Limited (order dated June 16, 2016):*
    - *"The transactions in shares & securities alleged in the Exparte Ad-Interim Order were entered by us in the normal course of our business, out of our own funds and wisdom. The same were executed by us through our brokers, and the risk rewards in respect of these trades were ours. Contracts notes were generated in our name, pay in & pay out obligation were made by us, we were the beneficial owner of all the shares & securities during the period and all the transactions and the resultants profit & loss were duly disclosed in our books and the residtant profit & loss were duly assessed to taxes.*
    - *We had entered into several financial & commercial transactions with several entities including Beejay Investment and Financial Consultant Pvt Ltd, (Beejay) and Eversight Tradecom Pvt Ltd. (Eversight) during the period under investigation.*
    - *It is matter of record that Beejay & Eversight are NBFC's and the relationship tint we had with these entities are strictly commercial in nature and it is erroneous to even infer that these entities have traded through us in the securities markets.*

p. *With regards to the ICICI Bank Statements of DDT & DDM, we reiterate and resubmit that we were not privy to the relationship, dealing or financial transaction between DDM & DDT with others and none of the transaction were on our instruction or behest. In so far as their financial dealing with us is concerned, the same were in the ordinary course.*

q. *The borrowings from Beejay were in the ordinary course and were utilized by us for meeting our exchanges obligation. It is humbly submitted that, during the Investigation Period, apart from a sum of Rs. 25 lacs received from Beejay on 02/09/2011 and Rs. 24 lacs on 6/2/2012 as short term advances all other receipts were towards our dues. Further, in respect of receipt of 25 lacs on 2/9/2011 the same was repaid on 19/10/2011 and in respect of Rs. 24 lacs received on 6/2/2012, the same were repaid on 9/2/2011 Rs. 19 lacs and 10/02/2011 Rs. 5 lacs. Thus, the alleged receipts were just short term loan from Beejay which were repaid out of our business receipts.*

r. *On 12/08/2011 DDT had purchased 1,50,000 Equity Shares of KGL @ Rs.9.52. On 18/8/2011 DDT, had paid the sum of Rs. 14,30,104.31 towards their payin obligation for the same. Thus, the funds received by us were towards the payin obligation of DDT.*

s. *We have received the sum of Rs.15 lacs as loan from DDT on 11/10/2011, into our general business a/c 000605016720 with ICICI Bank Ltd. The said sum does not reflect sum received towards purchases made by DDT. In any case we were not aware of the source of funds by DDT and neither is there a mechanism though which we can know the source of funds of payers.*

t. *We have received the sum of Rs.50 lacs as loan from DDM on 26/08/2011, into our general business a/c 000605016720 with ICICI Bank Ltd. The said sum does not reflect sum received towards purchases made by DDM. In any case we were not aware of the source of funds by DDM and neither is there a mechanism though which we can know the source of funds of payers. Such receipts were in the ordinary course.*

u. *We have received the sum of Rs.30 lacs as loan from DDM into our general business a/c no 000605016720 with ICICI Bank Ltd on 02/09/2011. The said sum do not reflect sum received towards purchases made by DDM. In any case we were not aware of the source of funds by DDM and neither is there a mechanism though which we can know the source of funds of payers.*

v. *We have received the sum of Rs.38 lacs as loan from DDM into our general business a/c no 000605016720 with ICICI Bank Ltd. As already submitted before you vide our E-Mail dated December 03, 2015, the said sum was loan received by us from DDM. The loan so received was utilized by us to pay our exchange dues of about Rs.77.80 lacs. The said sum do not reflect sum received towards purchases made by DDM. In any case we were not aware of the source of funds by DDM and neither is there a mechanism though which we can know the source of funds of payers. (Submitted by Noticee in its reply to Enquiry proceedings in the same matter)*

w. *We acknowledge receipt of Rs.75 Lacs and RS. 50 lacs from DDM into our ICICI Bank a/c 000605016936, the same was towards their pay-in obligations of DDM. However, it is humbly submitted that we were not aware of their source of funds, or any transaction between Beejay / DDT & DDM. The payment received was apportioned towards purchase of the following shares by DDM on 20/10/2011. Such trades by DDM were in the ordinary course and were executed on their instruction*

x. *SEBI has impugned transaction of DDM & DDT with us for the period 01/09/2011 to 30/09/2012 in the SCN. The bank statements clearly show that DDM & DDT had banking relationship with the debarred entities in the past also, even prior to their impugned trades with us. The movements of funds were not just confined during the period 01/09/2011 to 30/09/2012.*

y. *It is humbly submitted that we have borrowed certain sum of money from various entities, including Beejay during the period for the purpose of our business and the same were repaid at the earliest possible opportunity. The maximum amount due & payable to Beejay during the period was Rs 55,00,000/- on 02/09/2011. During the period our purchases were Rs. 6,80,16,51,085/-.*

z. *DDM had funds transfer with the debarred entities even before the Investigation Period and SEBI has not questioned such movements of fund. Such movement of funds has not been questioned in the SCN which goes on to prove that they were in the normal course.*

aa. *With respect to suspension, it is humbly submitted that Korp Securities Ltd. IMB230905936 was suspended due to violation of certain provisions of Securities Contract Regulation Rules in the past. The alleged violation was committed by the previous management of Korp Securities Ltd., pursuant to change of management, we have obtained fresh registration for NSE Cash segment bearing registration no. IMB231298333. There are no SEBI Orders for suspension for the same.*

bb. *The Noticee has referred to following vase laws in support of its contention:*

- *H.B. Stockholding Ltd. vs SEBI, Appeal No. 114 of 2002, Date of decision: 27.08.2013*
- *Hon'ble Madras High Court in the matter of CIT vs. S. Kader Khan [2008] 300 ITR 157 (Madras)*
- *Vintel Securities Pvt. Ltd V. SEBI, Appeal No. 219/2009 order dated November 23, 2009*
- *Sterlite Industries Limited vs SEBI(2001)34 SCL 485(SAT-Mumbai)*
- *Varanasaya Sanskrit Vishwa Vidyalaya & Anr. vs. Dr. Rajkishore Tripathi and Anr, (AIR 1977 SC 615)*

12. Before dealing with issues under consideration in seriatim, the texts of the said provisions alleged to have been violated, are reproduced as under :-

CHAPTER II
PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

3. ***Prohibition of certain dealings in securities***

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. ***Prohibition of manipulative, fraudulent and unfair trade practices***

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

SCHEDULE II
Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A.General

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

ISSUES FOR CONSIDERATION

13. After perusal of the material available on record, the following issues arise for consideration:

I. Whether the Noticee has violated provisions of Regulation 3(a), (b), (c) & (d) and 4(1) & 4(2)(a) of FUTP Regulations, 2003 and Clauses A(1), (2) and (5) of Code of Conduct for Stock Brokers under Regulations 9 of Stock Brokers and Sub-brokers Regulations, 1992?

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HA and 15 HB of the SEBI Act, 1992?

III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

Issue No. I: Whether the Noticee has violated provisions of Regulation 3(a), (b), (c) & (d) and 4(1) & 4(2)(a) of FUTP Regulations, 2003 and Clauses A(1), (2) and (5) of Code of Conduct for Stock Brokers under Regulations 9 of Stock Brokers and Sub-brokers Regulations, 1992?

14. Upon perusal of the allegation, submissions of Noticee and other material on record, findings of the present matter are recorded in succeeding paragraphs.

15. SEBI vide ad-interim ex-parte order dated June 04, 2009 issued directions inter-alia in respect of entities viz., Beejay and Eversight, restraining them from accessing the securities market and prohibiting them from buying, selling or dealing in securities market directly or indirectly. The said order dated June 04, 2009, was confirmed inter-alia in respect of Beejay vide Order dated January 19, 2010, and same was confirmed in respect of Eversignt vide order dated January 25, 2010. Subsequently, considering the fact that period of restraint undergone inter-alia by Beejay was sufficient for the violations committed by it, the directions issued vide orders dated June 04, 2009 & January 19, 2010 were discontinued vide order dated November 15, 2012, and in similar lines, directions against Eversight were discontinued vide the order dated September 7, 2012. Hence, Beejay was debarred from dealing in securities market during period June 4, 2009 to November 15, 2012, and Eversignt was debarred from dealing in securities market during June 4, 2009 to September 7, 2012.

16. Thereafter, SEBI received Suspicious Transaction Report (STR) dated December 21, 2012 inter-alia in relation to Beejay and Eversight due to large value transactions in their bank accounts. In the following investigation into the matter by SEBI, it was inter-alia noted that Beejay and Eversight transferred large funds to certain entities DDM and DDT, which further used the funds to deal in securities at BSE and NSE through the Noticee, being the Stock Broker. It was also noted that debarred entity Beejay had also directly transferred large funds to Korp during the investigation period. It is also noted that DDT / DDM were purchasing shares through Korp and that Korp was also doing proprietary trading in its account.

17. It has been alleged that Noticee was connected to the DDM and DDT, which were in turn connected to the debarred entities viz, Beejay and Eversignt. Details of the alleged connection is as follows:

Name of the entity	Connection Details
Debarred Entities	
Beejay Investment & Financial Consultants Pvt Ltd Directors a. Shri Sudhir Jain b. Smt Rashmi Jain	Shri Sudhir Jain, director of Beejay, is a relative of Shri Adish Jain & Shri Peeyush Jain, directors of Eversight. Beejay purchased shares of Siddhi Commotrade Pvt Ltd & Corus Marketing Pvt. Ltd which share common address (163B, M G Road, 3rd Floor Kolkata – 700 007) & common director (Shri Debasis Mishra) with DDM & DDT

Eversight Tradecomm Pvt Ltd <u>Directors</u> c. Shri Peeyush Jain d. Shri Adish Jain <u>Email id as per MCA website</u> peeyush_jain10@rediffmail.com	Directors of Eversight are relatives of Shri Sudhir Jain.
Entities facilitating trades of debarred entities by dealing through Korp	
Divya Drishti Merchants Pvt Ltd (DDM) 163B, M G Road, 3rd Floor Kolkata – 700 007 <u>Directors</u> a. Shri Rajesh Kumar Agarwal b. Shri Debasis Mishra c. Shri Sukanta Chatterjee d. Shri Kinkar Bhattacharya <u>Email id as per MCA website</u> korpsec@yahoo.co.in	Common address & common directors with DDT. Common address & Common director (Shri Debasis Mishra) with Siddhi Commotrade Pvt Ltd & Corus Marketing Pvt. Ltd. The shares of the said companies were purchased by Beejay from DDM. Shri Rajesh Kumar Agarwal is a brother of Shri 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 Shri Anuj Agarwal (S/o Shri Sushil Kumar Agarwal) & Smt Meena Agarwal (W/o Shri Sushil Kumar Agarwal) , Common Company Secretary(in whole-time practice) with Korp (Shri Manoj Prasad Shaw)
Divya Drishti Traders Pvt Ltd (DDT) 163B, M G Road, 3rd Floor Kolkata – 700 007 <u>Directors</u> a. Shri Rajesh Kumar Agarwal b. Shri Debasis Mishra c. Shri Sukanta Chatterjee d. Shri Kinkar Bhattacharya	Common address & common directors with DDM. Common address (163B, M G Road, 3rd Floor Kolkata – 700 007) and Common director (Shri Debasis Mishra) with Corus Marketing Pvt Ltd. The shares of the said companies were purchased by Beejay from DDT.
Broker facilitating trades of the debarred entities	
Korp Securities Ltd (Korp / Noticee) <u>Directors</u> a. Shri Sushil Kumar Agarwal b. Shri Ashish Jain c. Shri Rohit Mehta d. Anuj Agarwal <u>Email id as per MCA website</u> korpsec@yahoo.co.in	<u>Connection with DDM</u> • Common email id with DDM. • Shri Sushil Kumar Agarwal is the brother of Shri Rajesh Kumar Agarwal, director of DDM & DDT. • Shri Anuj Agarwal (s/o Shri Sushil Kumar Agarwal) & Smt Meena Agarwal (w/o Shri Sushil Kumar Agarwal) was director of Anuj Realtors Pvt Ltd, a shareholder of DDM. • Shri Bijay Kumar Poddar, currently compliance officer of Korp, was a director of Greencorp Impex Ltd, a shareholder of DDM • Common Company Secretary(in whole-time practice)with DDM, viz. Shri Manoj Prasad Shaw

18. Following is noted from the above table:

a) Directors of the debarred entities Beejay and Eversight are relatives, hence, these entities are connected.

b) Beejay bought shares of unlisted companies viz, Siddhi Commotrade Pvt Ltd & Corus Marketing Pvt. Ltd from DDM. Further, DDM has common address and director (Shri Debasis Mishra) with the aforesaid two companies.

c) DDM and DDT are connected through their common Directors and address.

d) Interconnected entities DDM and DDT are connected to the Noticee on account of following facts noted during the investigation period:

(i) Common e-mail ID viz, korpsec@yahoo.co.in registered by DDM and Noticee with the Ministry of Corporate Affairs (MCA).

(ii) Shri Sushil Kumar Agarwal, Director of the Noticee is also the brother of Shri Rajesh Kumar Agarwal, who is the director of DDM and DDT.

(iii) Shri Anuj Agarwal (s/o Shri Sushil Kumar Agarwal) was director of Anuj Realtors Pvt Ltd, who is a shareholder of DDM.

(iv) Shri Manoj Prasad Shaw was a Common Company Secretary (in whole-time practice) with DDM and the Noticee.

19. Noticee has submitted that *"our E-Mail id is korpsec@yahoo.co.in and as per MCA database the E-Mail I'd of DDM is ddm29021996@gmail.com and E-Mail I'd of DDT is ddt01031996@gmail.com. Therefore, we are unable to understand as to how it has been alleged that we and our present & erstwhile Directors are related to DDM & DDT through our email ID".* However, it is noted that there has been revision in the filings made with the MCA. As per the records available from the Investigating Authority, Form 20B dated August 01, 2012, filed by Divyadrishti Merchants Pvt. Ltd. (DDM) and Form 23AC dated August 31, 2011 verified by Company secretary Shri Manoj Prasad Shaw on behalf of DDM, mentions e-mail id of korpsec@yahoo.co.in. Therefore, the Noticee seems to have now presented revised records and not as they were existing during 2009 to 2012. Thus, this act of Noticee is viewed as misrepresentation of fact on part of the Noticee, as it has not commented on the documents of August 2011 filed with MCA.

20. In this regard, it has been submitted by the Noticee that *"Shri Sushil Kumar Agarwal has resigned from the Board of our company from 02/04/2013 and Shri Rohit Mehata has resigned from our Board from 11/02/2016."* However, it is noted that both the directors of the Noticee viz. Sushil Kumar Agarwal and Rohit Mehata were directors of the Noticee Company during the investigation period and also when SEBI order of debarring the entities was operational. Mr. Sushil Kumar Agarwal and Mr. Rohit Mehata, resigned from the Board of the Noticee only after SEBI initiated investigation proceedings. Furthermore, it is noted from Form 66 dated August 31, 2011, has been filed by Sushil Kumar Agarwal and verified by Company secretary Shri Manoj Prasad Shaw on behalf of the Noticee. Therefore, it is clear that Sushil Kumar Agarwal was the director of the Noticee during the investigation period and thus, contention of the Noticee is not valid.

21. The Noticee has further submitted that "*with regards to the statement of Shri Anuj Agarwal, it is humbly submitted that, he was not a Director of our company, nor was he involved in the day to day working of our company or associated with our company in any manner whatsoever during the Investigation period…..Further to the above, Anuj Agarwal has resigned from the Board of Anuj Realtors Pvt. Ltd. on 27/3/2014.".* In this regard, it is observed that firstly, Anuj Agarwal had resigned as a director after the investigation period. Secondly, Noticee in its own submissions has admitted the fact that "*Mr. Anuj Kumar Agarwal, a Director of our company, was a nominee Director of Mr. Sushil Agarwal group, and further, as per* MCA website Anuj Realtors Pvt. Ltd

(shareholder of DDM) and Noticee share a common address. Therefore, it is clear that the two submissions of the Noticee is contradictory in itself. Thus, contention of the Noticee does not hold any merit.

22. Shri Anuj Agarwal, a director of the Noticee, in his statement to the Income Tax Department dated March 31, 2015 stated that *"Shri Rajesh Jain was our part time accountant and that DDM & DDT were controlled & managed by Korp for providing accommodation entry to various beneficiaries*." Therefore, it appears that the trades appearing in the name of DDM & DDT were actually belonging to the Noticee. In response to above finding, Noticee has submitted that *"with regards to the alleged statement of Shri Anuj Agarwal before the Income Tax authorities, it is humbly submitted that the statement before the Income Tax Authorities were made under threat and coercion as has been stated in an affidavit dated 31/03/2015 by Shri Anuj Agarwal."* The Noticee in support of its contention has also relied on Judgement of Hon'ble Madras High Court in the matter of CIT vs. S. Kader Khan [2008] 300 ITR 157 (Madras). To deal with the contention of the Noticee, reference is drawn to following:

a) Judgment of Hon'ble Delhi High Court in Shri M.P. Goenka vs. Commissioner of Customs[1], wherein it was held that: *"Whereas mere retraction of a confession may not be sufficient to make the confessional statement irrelevant for the purpose of a proceeding in a criminal case or a quasi-criminal case but there cannot be any doubt whatsoever that the court is obligated to take into consideration the pros and cons of both the confession and retraction made by the accused. It is one thing to say that a retracted confession is used as a corroborative piece of evidence to record a finding of guilt but it is another thing to say that such a finding is arrived at only on the basis of such confession although retracted at a later stage."*

b) Also, in Parvez Hasan vs The Commissioner of Income Tax[2], it was held by Hon'ble High Court of Madhya Pradesh that *"I am of the view that evidentiary value of the statement has to be judged with respect to the facts of this case. Section 133A(5) gives power to Income tax authorities to record statement of any person and such statement can be used as in any proceedings under the Act. It is held by various Courts that admission is the best evidence that opposite party can rely upon……."*

"……Considering all these, I am of the view that the statements were recorded voluntarily and were not obtained under threat or coercion."

23. Moreover, the General clauses Act defines 'Affidavit' as a document that include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. Therefore, it is mere a voluntary statement that includes a person's declaration in writing that is signed by the deponent i.e. the person making affidavit, accompanied by an oath. Therefore, an affidavit cannot be considered as an admissible evidence on record and by merely filing the affidavit to the contrary does not act as conclusive proof to establish contention of the Noticee that "*the statement before the Income Tax Authorities were made under threat and coercion*." Thus, contention of the Noticee is devoid of merits and statement of Shri Anuj Agarwal that "*DDM & DDT were controlled & managed by Korp for providing accommodation entry to various beneficiaries"* shall act as conclusive proof to establish the connection between

[1] *Decided on 14 January, 2015*
[2] *Decided on 4 April, 2017*

Noticee, DDM and DDT. Thus, in light of above admission of the Shri Anuj Agarwal, it is clear that there was a close and clear connection between the Noticee, DDM and DDT.

24. Though the Noticee, among other points, has argued that by virtue of two individuals which are brothers being directors in two separate companies (Shri Sushil Kr. Agarwal, Director of Noticee and Mr. Rajesh Kumar Agarwal, Director of DDM & DDT), it cannot be alleged that both companies are connected or related, however, it is to be noted that the connection between the Noticee and DDT/DDM is not limited to related directors, and connections goes beyond as noted above, viz, having common registered e-mail id with MCA, one of the Director of Noticee, viz, Mr. Anuj Agarwal being Director in a shareholder (i.e. Anuj Realtors which also shares common address with Noticee) in DDM, statements of Anuj Agarwal, Director of Noticee, made to Income Tax admitting the close connection of Korp with the DDM and DDT, etc. Hence, it is clear that the Noticee was closely connected to the DDM and DDT.

25. Therefore, in view of the above, it is clear that the debarred entities, viz. Beejay and Eversight were closely connected with DDM and DDT, which themselves were closely connected with the Noticee. It is also pertinent to note that the connection of DDM and DDT with the Noticee goes beyond their broker-client relation, and by virtue of the connections as noted above, they were closely associated with each other.

26. It has further been alleged that DDT and DDM received funds from Beejay and Eversight, and utilized the same to deal in shares at the Stock Exchange by executing trades through the Noticee. Further, Noticee also received direct fund transfers from Beejay, and utilized the same for dealing in shares at the Stock Exchange by trading through its prop account. Given the above, Noticee is alleged to be associated/related to the debarred entities Beejay and Eversight through DDT and DDM.

27. During the investigation period, details of trading undertaken by DDM and DDT at the Stock Exchanges through the Noticee, along with the proprietary trading undertaken by Noticee, are as follows:

Entity Name	Total Buy Qty.	Total Sell Qty.
DDM	10,01,450	21,09,047
DDT	6,70,721	22,19,432
Korp (Prop A/c)	6,64,69,399	6,75,38,792

<u>Fund Flow Analysis from Beejay to Noticee</u>

28. It is noted that a large portion of the amount transferred by Beejay to DDM was immediately transferred to Korp which traded using the said amount. Fund transfers as observed in the account statement of DDM is as follows (A/c No 000605010065, ICICI Bank):

Date	Particulars	Withdrawals (in Rs.)	Deposits (in Rs.)	Balance (in Rs.)	Dr./Cr.
02-09-2011	Transfer from: Beejay Investment	0.00	85,00,000	85,13,727.15	Cr

Date	Particulars	Withdrawals (in Rs.)	Deposits (in Rs.)	Balance (in Rs.)	Dr./Cr.
02-09-2011	RTGS: Bhushan Power and Steel ltd. / punb	55,00,000	0.00	30,13,727.15	Dr
02-09-2011	Transfer from: Sangam Commodities	0.00	8,00,000	38,13,727.15	Cr
02-09-2011	Transfer to: Korp Securities	38,00,000	0.00	13,727.15	Dr
	Total	**93,00,000**	**93,00,000**		

29. Therefore, it can be seen from above that the amount transferred by Beejay was transferred to Korp on the same day itself. Korp, vide email dated December 03, 2015, stated that it had received Rs.38 lakhs from DDM as a short-term loan. However, it is observed from the A/c statement of Korp Securities (A/c No. 000605016720 with ICICI Bank, that it had transferred this amount to NSE Cash Market Settlement account of Korp on the same day, i.e. September 02, 2011. Also, from the trade details of DDM provided by NSE, it was observed that DDM had traded on September 02, 2011 through Korp. From above, it is clear that there were indirect fund transfer between debarred entity viz. Beejay through DDM to the Noticee, which were used for settlement of trades by the Noticee.

30. It is observed from the A/c Statement of the Noticee (A/c No. 000605016720, ICICI Bank) that it transferred the funds received from Beejay to NSE/BSE Settlement accounts. It is also observed that the Noticee had done proprietary trades in its trading account using the aforesaid funds.

31. The Noticee in its submissions dated November 22, 2018, has submitted that *"with respect to our proprietary trades it is humbly submitted that, during the Investigation Period, apart from a sum of Rs. 25 lacs received from Beejay on 02/09/2011 and Rs. 24 lacs on 6/2/2012 as short term advances all other receipts were towards our dues."*. It is noted that Noticee admittedly had direct financial dealings with the debarred entity i.e, Beejay, and as regards to the argument that the aforesaid borrowings were in the nature of loan, it is noted that no records or documents have been provided by Noticee to substantiate this claim. It is peculiar to note that Noticee, being a registered Stock Broker entered into loan transactions involving large amounts with the debarred entity in its normal course of business, without execution of appropriate documents.

32. It is observed that, on August 18, 2011, Beejay transferred Rs. 17.5 lakhs to DDT (A/c No.000605010082, ICICI Bank). The account balance of DDT prior to receiving the said funds was only Rs. 83,462.37. DDT, subsequently, transferred Rs.14.3 lakhs to the Noticee. The account balance of DDT after the transfer of the said funds to the Noticee was Rs. 4,03,358.06. Therefore, DDT had transferred the funds received by it from Beejay to the Noticee.

33. Similarly, on October 11, 2011, Beejay transferred Rs. 40 lakhs to DDT (A/c No.00082340012265, HDFC Bank). The account balance of DDT prior to this transaction was Rs. 8,330.44. Subsequently, DDT transferred Rs. 15 lakhs to Korp. The account balance of DDT after the said transaction was Rs. 25,08,330.44. Therefore, DDT had transferred the funds received by it from Beejay to the Noticee. It is observed from the trade details of DDT that it had traded through the Noticee on October 12, 201, on BSE.

34. It is observed that, on August 26, 2011, Beejay transferred Rs. 50 lakhs to DDM (A/c No.000605010065, ICICI Bank). The account balance of DDM prior to receiving the said funds was only Rs. 13,727.15. DDM, subsequently, transferred Rs. 45 lakhs to the Noticee. The account balance of DDM after the transfer of the said funds to Noticee was Rs. 5,13,727.15. Therefore, DDM had transferred the funds received by it from Beejay to the Noticee.

35. In another similar instance, on September 02, 2011, Beejay transferred Rs. 30 lakhs to DDM. The account balance of DDM prior to this transaction was Rs. 13,727.15. DDM, subsequently, transferred Rs. 30 lakhs to the Noticee. The account balance of DDM after the said transaction was Rs. 13,727.15. Therefore, it is clear that DDM had transferred the funds received by it from Beejay to the Noticee. It was observed from the trade details of DDM that it had traded through the Noticees on September 02, 2011 on BSE.

36. On December 22, 2011, Beejay transferred Rs. 50 lakh to DDT, and DDT in two transactions, transferred Rs. 50 lakh and Rs. 65 lakh to DDM, and subsequently, on the same day i.e. December 22, 2011, DDM transferred Rs. 1.25 Crore to Korp. Hence, in above chain of funds transfers, Rs. 50 Lakh were transferred to Korp through DDT and DDM.

37. From above, it is clear that apart from direct fund flow, there were indirect fund transfers between the debarred entity i.e. Beejay through DDM and DDT to the Noticee. Further, as noted above, during the period of the aforesaid fund transfers, Noticee has undertaken trades for DDM and DDT, which shows that Noticee has facilitated dealing in shares at the Stock Exchange for the debarred entity Beejay.

38. It is further noted that vide letter dated June 11, 2015, Korp stated that *"we have taken short term loan from M/s. Beejay Investments and Financial Consultants Pvt Ltd (PAN AABCD0832B), M/s. Eversight Tradecom Pvt Ltd. (PAN AAACE7667E) & M/s. Divya Drishti Merchants Pvt Ltd. (PAN AABCD8147K) in the ordinary course of our business. All the loans were vide verbal agreement and there are no formal loan agreement to the effect."* Therefore, in all the submissions, the main contention of the Noticee is that the alleged financial transactions were in the ordinary course of their business and that it had received sum of money from DDM and DDT in the form of loan. It is however noted that the Noticee has not provided any documents in order to substantiate its contention such as evidence showing interest paid/received / collateral security etc. It is further noted that being registered NBFC (as submitted by Beejay), it is peculiar that the entities entered into loan transactions involving huge amounts with the debarred entities in its normal course of business without execution of appropriate documents. Similarly, the entities, DDM and DDT have stated (as quoted by the Noticee in its submissions referring to SEBI order dated June 16, 2016 in the matter of Beejay investments) that their relationship with the debarred entities, viz. Beejay and Eversight are strictly commercial in nature. However, no documents have been furnished by them to substantiate high value transactions in their accounts during the investigation period.

39. Also, it has been submitted by the Noticee that *"…We acknowledge receipt of Rs.75 Lacs and Rs. 50 lacs from DDM into our ICICI Bank a/c 000605016936, the same was towards their pay-in obligations of DDM…."* In another instance, submission of the Noticee is "*We have received the sum of Rs.38 lacs as loan from DDM into our general business a/c no 000605016720 with ICICI Bank Ltd. The said sum was loan received by us from DDM. The loan so received was utilized by us to pay our exchange dues of about Rs.77.80 lacs."*

40. In this regard, it has been observed that the Noticee has neither submitted any exchange data against the trades executed for meeting pay-in and pay-out obligations for its clients nor any other documentary proof with respect to alleged loan transactions in support of its contention. Hence, terming such high value transactions as mere short-term loans and advances and pay-in obligations without any documentary proof, could only be seen as an afterthought. The contentions in this regard are therefore devoid of merit. Further it appears too much of a coincidence that the funds transfer are so close to the settlement obligations that there is almost a one to one correlation with funds transfers and meeting the settlement obligations out of these transfers.

41. Also, the Noticee in its submissions dated November 22, 2018, has submitted *that "DDM had funds transfer with the debarred entities even before the Investigation Period and SEBI has not questioned such movements of fund. Such movement of funds has not been questioned in the SCN which goes on to prove that they were in the normal course. It is only some part of the fund movements between 01/09/2011 to 30/09/2012, that SEBI alleges to be for indirectly trading by the debarred entities.".* In this regard, it is pertinent to mention that the funds transfers by above mentioned debarred entities to entities dealing at Stock Exchange namely; DDM and DDT, being in sync with the their trading activity, put the above mentioned dealings under question and also established evidence that DDM/DDT traded on behalf of the aforesaid debarred entities. However, since financial transactions prior to the investigation / debarment period are not under question, the above argument of Noticee that SEBI has not questioned such prior movements of funds has no relevance.

42. It is pertinent to note that Noticee was connected with the debarred entity Beejay as it admittedly had direct transfers / receipt of funds with Beejay during the investigation period, which was also the period of debarment for Beejay. Regarding such transactions with beejay, though the Noticee has argued that the same were in normal course in nature of loan / advances, however, Noticee has failed to substantiate this point with any credible evidence or record. Further, it is also important to note that Noticee itself is found to be closely associated with other connected entities of Beejay viz, DDT and DDM, and Noticee also undertaken trades for these entities at the Stock Exchange during the period of debarment of Beejay. Given the close relation of Noticee with debarred entity (beejay) and DDM & DDT to which Beejay was making frequent fund transfers in sync with their trading during the investigation period, it could not have been possible that Notice was unaware of the indirect dealings of Beejay through the DDT and DDM in the securities.

43. Thus, it is established that despite the directions of SEBI for debarment in respect of the Beejay vide orders dated June 04, 2009, January 19, 2010 and November 15, 2012, Noticee being a SEBI registered

broker and being a connected entity with Beejay and DDT & DDM, facilitated the dealings of Beejay in securities market and thereby violated the directions given under aforementioned SEBI orders.

44. As regards to the allegation of facilitating trades for debarred entity i.e, Eversight, it is noted though the Eversight is found to be connected with the Noticee through DDM and DDT, and also there are records where DDM/DDT are alleged to have been shown dealing in shares through other brokers while using the funds received from Eversight. However, based on information available on record, no instances have been noted wherein funds transferred by Eversight, directly or indirectly to Noticee were utilized for dealing in securities. Hence, allegations in respect of Noticee for facilitating dealings of Eversight, could not be established.

45. The violations under PFUTP Regulations would depend on the extent of the persistence on the part of the broker in indulging with transactions of the kind that has occurred in the present case. Upto an extent such conduct on the part of the brokers/sub-brokers can be attributed to negligence occasioned by lack of due care and caution. Beyond the same, persistent trading would show a deliberate intention. The dividing line has to be drawn on the basis of the volume of the transactions and the period of time that the same were indulged in. In the present case it is clear from all these surrounding facts and circumstances that there has been transgressions by the Stock Broker (Noticee) beyond the permissible dividing line between mere negligence and is to be held as deliberate intention.

46. In this context, the rulings of the Hon'ble Supreme Court in its judgment dated April 26, 2013, in N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013) are therefore, of relevance to the instant proceedings. The development of a strong, transparent and credible securities market is an important pre-requisite for the economic development of our country. The fraudulent activities such as what have been observed in the instant proceedings pose a real threat to the integrity of Indian securities market. The relevant extract of the judgment is reproduced below:

"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto."

47. Further, it is matter of fact that Regulation 3(a) prohibits transacting in securities in a fraudulent manner. The genesis of fraudulent conduct can be found in the definition of the term *'fraud'* under regulation 2(c). When seen in context of prohibitions under regulations 3 and 4 read with definition of the term 'fraud', it is deducible that regulation 3(a) also demands the satisfaction of test of market manipulation such as creation of artificial volumes and/or price and /or misleading appearance of trading Regulations 3(b), (c) and (d) presuppose employment of a *'manipulative or deceptive device or contrivance', 'any device, scheme or artifice to defraud'* and engaging in an act '*which operates or would operate as*

fraud or deceit upon any person'. The words 'device', 'scheme' or 'artifice' have not been defined either in the SEBI Act or in the PFUTP Regulations.

48. Further, in order to derive the meaning of device, scheme and artifice, reference is placed on Black's Law Dictionary, wherein the terms are defined as follows;

(a) "device" means;
(i) an invention or contrivance; any result of design;
(ii) a scheme to trick or deceive; a stratagem or artifice, relating to fraud.

(b) "scheme" means
(i) a systemic plan; a connected or orderly arrangement, especially of related concepts;
(ii) an artful plot or plan, usually to deceive others ; a scheme to defraud creditors

(c) "artifice" means a clever plan or idea, especially one intended to deceive.

49. Thus, the aforesaid prohibitions under Regulation 3 and 4, can be interpreted to have a prohibition on deployment of a fraudulent or manipulative 'device', 'scheme', 'artifice' or 'contrivance' with a design or purpose or plan or, motive to 'defraud', to 'deceive', to 'manipulate', to 'induce', etc. in connection with dealing in securities.

50. Therefore, in light of above discussed interpretation of Regulation 3 and 4 of PFUTP Regulations and applying the rationale of various judicial pronouncements in this regard, it is well understood that the Noticee (Korp) by facilitating the trades of the debarred entity, has acted detrimental to the interests of the securities market within the meaning of Regulation 3 and 4 of PFUTP Regulations, 2003 and has thus violated Regulations 3(a),(b),(c),(d),4(1) and 4(2)(a) of PFUTP Regulations, 2003. Further, Noticee, being a registered Stock Broker failed to maintain fairness in its conduct, follow proper due diligence required in its dealings as a Stock Broker, and hence, Noticee violated provisions of Clause A(1), (2), & (5) of Code of Conduct for Stock Brokers under the Regulation 9 of Stock Broker and Sub-broker Regulations, 1992.

51. It is also noted that the Noticees have cited various case laws in support of their contentions. However, it may be noted that the ratio cited in the above cases are not applicable to the case in hand as the facts and circumstances and the role of the Noticee is different and distinct. Further, the proceedings in the present case are separate, distinct and independent.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HA and 15HB of the SEBI Act, 1992?

52. The aforesaid violations as mentioned above, make the Noticee liable for penalty under Section15 HA and 15HB of SEBI Act 1992, which reads as follows:

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.
15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [3][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

53. As regards the Noticee, it is clear that it is liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India Order in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein Hon'ble SC held that:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

54. While determining the quantum of penalty under Section 15HA and 15HB of SEBI Act, it is important to consider the factors stipulated in Section 15J of SEBI Act, which reads as under:-

> **"15J - Factors to be taken into account by the adjudicating officer**
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default; (c) the repetitive nature of the default.*
> *Explanation: For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

55. Though records shows trades made by the debarred entities through their dealings through inter-alia DDT and DDM through various Stock Brokers inter-alia including the Noticee, however, records do not reveal details of gains, if any, made by the Noticee on account of its dealings.

56. As regards to repetitive nature of default, it is on record that the Noticee, during the period of debarment, has executed multiple trades in the securities market in multiple scrips. Thus, it is clear that default of the Noticee was repetitive in nature.

ORDER

57. Having considered all the facts and circumstances of the case, violation established, the factors mentioned in Section 15J of the SEBI Act, following penalty is imposed upon the Noticee viz, Korp Securities Limited:

    a) Penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) under the provisions of Section 15 HA of the SEBI Act for violation of provisions of Regulations 3(a),(b),(c),(d),4(1) and 4(2)(a) of PFUTP Regulations, 2003;

[3] *Substituted for the words —liable to a penalty which may extend to one crore rupees‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

b) Penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under the provisions of Section 15 HB of the SEBI Act for violation of provisions of Clause A(1), (2), & (5) of Code of Conduct for Stock Brokers under the Regulation 9 of Stock Broker and Sub-brokers Regulations, 1992.

c) Penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under the provisions of Section 15 HB of the SEBI Act for violation of directions issued by SEBI vide orders dated January 19, 2010 and January 25, 2010.

58. Noticee shall remit / pay the said amount of penalties (total Rs. 45,00,000/- (Rupees Fourty Five Lakh only) within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

59. The above Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

60. Payment can also be made online by following the below path at SEBI website **sebi.gov.in**

ENFORCEMENT → Orders → Orders of AO → PAY NOW

61. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: July 10, 2019 — **Jeevan Sonparote**
Place: Mumbai — **Adjudicating Officer**