BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2023-24/30172]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Aranox Commodities Private Limited

PAN: AAPCA2207H

SEBI Registration No.: INZ000158434

In the matter of Aranox Commodities Private Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as 'SEBI') had initiated Adjudication Proceedings in respect of Aranox Commodities Private Limited (hereinafter also referred to as 'Noticee'/ 'Company') in the matter of Aranox Commodities Private Limited for the alleged violations of the following provisions:

   1.1. Misuse of clients' funds and securities: Section 23D of Securities Contracts (Regulation) Act, 1956 {hereinafter also referred to as 'SC(R) Act, 1956'} read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter also referred to as 'SEBI Circular dated November 18, 1993') and Clause 3 of Annexure of SEBI Circular

SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter also referred to as 'SEBI Circular dated September 26, 2016').

1.2. Quarterly/ monthly settlement of funds/securities of clients: Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

1.3. Segregation of client's funds and securities: Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992 read with Section 15I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as "*SEBI Rules*") and under Section 23 I of the Securities Contracts (Regulation) Act, 1956 read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter also referred as "*SC(R) Rules*"), the Competent Authority appointed the undersigned as Adjudicating Officer ("*AO*") vide order dated June 27, 2023 to inquire into and adjudicate under 23D of the Securities Contracts (Regulation) Act, 1956 and Section 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated June 28, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice bearing No. SEBI/HO/EAD/EAD5/P/OW/2023/43208/1 dated October 20, 2023 (hereinafter also referred to as "SCN") was served upon the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15-I of the SEBI Act, 1992 and under Rule 4 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 read with Section 23I of the Securities Contracts (Regulation) Act, 1956 to show cause as to why inquiry should not be held and penalty be not imposed under Section 23D of Securities Contracts (Regulation) Act, 1956 and under Section 15HB of SEBI Act, 1992 for the aforesaid alleged violations.

4. Briefly stated, the following was inter alia observed and/ or alleged in the SCN in respect of the Noticee:

"…

4. Findings and Observations by SEBI and Alleged Violations thereto in respect of the Noticee:

4.1. Finding A: Misuse of clients' funds and securities
G negative – On 61 out of 64 sample instances, funds of credit balance clients misutilized for meeting the obligations of debit balance clients and/or for its own purpose. The average misutilised amount is Rs. 1.5 Crore. The amount of misutilization ranges from Rs. 1.36 Crore to Rs. 1.64 Crore.
In this regard, following was inter alia observed and/or alleged by SEBI:

Broker terminal had been stopped by MCX on April 20, 2020 since margin requirement reached to the level of Rs. 27,01,597 which exceeded net worth of the broker available with the exchange on that day i.e. Rs 25 lakh.
Further, G was observed to be negative during April'2020 (Annexure 2).

With regards to the mis-utilization of client's funds, it was observed that the G value was negative for 61 out of 64 sample dates indicating misutilization of clients' funds and securities and the average misutilised amount was Rs. 1.50 Crore.

Moreover, the trading terminal of the broker was closed on April 20, 2020 and G value is negative from April 24, 2020. Thus, trading terminal of the broker was closed on all days when negative G was reported.

The broker had submitted Detailed Margin Status statement from 20/04/2020 to 22/04/2020 which showed sufficient margin available. However, G value was negative from 24/04/2020 and broker had not given any evidence for relevant period.

In view thereof, it is alleged that Noticee had violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

4.2. *Finding B: Quarterly/ monthly settlement of funds/securities of clients*
Non-settlement of funds of active clients in 1 instances (out of sample of 148 instances) amounting to Rs. 66.6 Thousand.
Non-settlement of funds of inactive clients with amount of non-settlement ranging from Rs. 5.8 lakhs (4 clients) to Rs. 10.47 lakhs (7 clients) during the inspection period spanning 4 quarters.
In this regard, following was inter alia observed and/or alleged by SEBI:

As regards Active clients:
For the 2 quarters prior to FY 2020-21, SEBI analysed data of all the clients having balances with brokers, of which the instances of non-settlement belonged to the clients who were actively trading with the broker (Annexure 3A):

For the 2 quarters prior to FY 2020-21

Sr. no.	Quarter	Type of clients	Total number of Instances Analysed	No. of non-settled clients	Aggregate Value of non-settlement
1	3	Active	131	1	140026.81
2	4	Active	148	1	66689.19

** Remark – Till 31-3-2020, Retention amount allowed was Rs. 50000*

The broker has accepted the observation of non-settlement of funds of active clients in 1 instances (out of sample of 148 instances) amounting to Rs. 66.6 Thousand.
As regards Inactive clients:
Member's Trading terminal was closed after 20th April, 2020. So clients for the Inspection period FY 2020-21 had been treated as Inactive as regardless of their status they cannot trade (Annexure 3B).
FY 2020-21 (Inspection Period)

Sr. no.	Quarter	Type of clients	Total number of Instances Analysed	No. of non-settled clients	Aggregate Value of non-settlement
1	1	Inactive	164	7	1047874.79
2	2	Inactive	157	6	882669.79
3	3	Inactive	158	4	581353.79
4	4	Inactive	145	4	581353.79

** Remark - Clients Having Funds of more than 10000 is treated as non-settled vide exchange circular 634 dated 11-11-2019.*

With regards to the inactive clients, the broker had not settled the funds of inactive clients with amount of non-settlement ranging from Rs. 10.47 lakhs (7 clients) to Rs. 5.8 lakhs (4 clients) during the inspection period spanning 4 quarters.
The broker had submitted that 5 clients were settled out of 7 clients with settlement amount of Rs. 4.05 Lakhs. On perusal of supporting provided by the broker, SEBI observed that as per broker total outstanding amount was Rs. 6.52 lakhs and as per SEBI, total outstanding amount was Rs. 10.47 lakhs (difference of Rs. 3.95 lakhs in outstanding amount) and further broker had only submitted bank statement and had not submitted other required documents like retention statement and client ledger to substantiate its claim.

In view thereof, it is alleged that Noticee had violated provisions of Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

4.3. *Finding C: Segregation of client's funds and securities*
The broker has transferred Rs. 3.69 lac from client bank accounts to the bank accounts of the entities related to the broking firm/ proprietary.

In this regard, following was inter alia observed and/or alleged by SEBI:

Para 2.4.2 of SEBI Circular dated September 26, 2016 specifies that transfer of funds from client account to proprietary account is permitted only for legitimate purposes such as recovery of brokerages, statutory dues, funds shortfall of debit balance clients etc. and for such transfer of funds brokers shall maintain daily reconciliation statement.

Bank statements from January 1, 2020 to April 2020 has been examined. During the inspection, some instances have been observed wherein funds have been moved from client bank accounts to the bank accounts of the entities related to the broking firm/ proprietary. (Annexure 4 and 5)

Some of the Instances are placed below to corroborate the observations:

- *13/03/2020, 25/03/2020, 26/03/2020: Funds moved from Aronox Commodities Private Limited Client Account (201002978131) to entities related/ connected broking firm.*
- *13/04/2020 – Funds transferred from HDFC client Account- 73005 To Broker propriety account with INDUSIND Bank*

1. *The broker had submitted that the payout of Rs. 3.19 lac (total of 3 dates) was transferred from Stock Broker - Client Account to Client Account (of related party). However, the broker had not submitted proper document to substantiate it's claim.*

2. *The broker had submitted that the amount of Rs. 50,000 was transferred from Stock Broker - Client Account to Stock Broker - Proprietary Account for recovery of brokerage. However, the broker had not submitted daily reconciliation statement to substantiate it's claim.*

In view thereof, it is alleged that Noticee had violated provisions of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

…".

5. Vide letter dated October 27, 2023, Noticee submitted its reply to the SCN. Thereafter, vide Hearing Notice dated December 05, 2023, Noticee was provided with an opportunity of personal hearing on December 12, 2023. The Noticee availed the opportunity of personal hearing in online mode viz., video conferencing through its Authorised Representatives (ARs) (Authorisation vide email dated December 12, 2023) viz., Mr. Deepak Kumar Srivastava (Director of Noticee) and Mr. Alok Chandra Srivastava (Compliance Officer). During the hearing, the ARs inter alia relied upon and reiterated the submissions made vide letter dated October 27, 2023 and sought time till December 19, 2023 to make further additional submissions as their final and complete submissions in the matter, accordingly the same was allowed. Noticee through its ARs made additional submissions vide letter dated December 18, 2023.

6. The key submissions made by the Noticee vide letter dated October 27, 2023 and December 18, 2023 as replies to the SCN, are as under:

Reply dated October 27, 2023:

"…

Sr. No.	Paragraph No./Sub-para no. of observations	Observation w.r.t	Reply/comments
1	*Finding A- Misude of client's Funds and securities*	*Misuse of client's Funds and securities*	*We have not Misuse of client's Funds and securities because of We have sufficient margin & Funds, our fund were not in use for margin our funds were free only one day it was happen for debit position on the date of 20 April 2020 due to crude oil negative price settlement @ -2885. Every time G negative has because only one day transaction has gone debit & it has repeat again & again G negative. On 20th April 2020 our total Fund was Rs. 3717087 total Margin Rs. 943474 oue account The DDR for crude oil at Rs. -2885 negative price settlement was fixed by MCX then we were in debit position. All funs was available with MCX/Clearing member & debit the same hen our balance was Zero & gone it negative 1.36 Crore to Rs. 1.64 Crore our Negative debit was increase because of interest amount has been charged by clearing Member time to time. Whatever has done that day 20 April 2020 crude oil negative price settlement @ -2885 regarding this the case been pending in Honorale Court.*
2	*Finding B: Monthly/Quarterly settlement of funds/securities of Clients*	*Monthly/Quarterly settlement of funds/securities of Clients*	*With regards to inactive clients (FY2020-21), we had not setted the fund the funds of inactive clients with the amount of non-settlement ranging from Rs. 10.47 lakhs (7 clients) to Rs. 5.8 lakhs (4 clients) during the inspection period spanning 4 quarters because of there is no fund in our company books account but we have paid all credit clients balance at our personal leval on partial basis. We have paid all clients payment except two codes 11054 & 11904 which is our near to close codes. Client codes Details are below which payment has done by us with date & ladger:* *…* *TOTAL Non-setted amount was RS. 1047875 has paid Rs. 811040/- ditails as bove and attached annexure of clients wise ledger & current pending amount which is non paid Rs. 246735/- we will clear the same in Future on partial basis. Regarding settlement of Fund we have cleared Rs. 811040 on partial basis at our personal end. We have already submitted to you bank statement for client payment done as per you required find attached client ledger….*
3	*Finding C:Segregation of Client's Funds and securities*	*Segregation of Client's Funds and securities*	*We have been transfer of funds from client account to proprietary account for legitimate purposed only such as brokerage & statutory dues etc. Transferred Rs. 3.69 lacs from client bank account to the bank account of the entities related to the broking firm/proprietary bifurcation (1)13/03/2020 transfer @ Rs. 90000, 26/03/2020 @ Rs. 89000 fund transferred Aranox Commodities Private Limited Client Account (20100z9978131) to Client code 11001 Deepak Srivastava ledger was credited payout to the client account 11001 for clarification find client code 110001 leger as Annexure 3-A. Total amount Rs. 3.19 has been transferred from client account to client.* *(2) we have generated 65330 brokerage in (F.Y. 2020-21) & fund transfer Rs. 50000/- in terms of Brokerage on 13/04/2020 from HDFC client Account-73005 to Broker Propriety account with Indusind Bank against out brokerage payment. …*

…".

Reply dated December 18, 2023:

"…

We have not Misuse of client's Funds and securities because of We have sufficient margin & Funds, our fund were not in use for trading margin our funds were free only one day case was happen Due to negative pricing of cure oil Rs. -2885 for debit position on the date of 20 April 2020.

Every time G negative value has because of only one day transaction has gone debit & it has repeat again & again G negative After the date of 22 April our all trading & operational work has stopped due to negative RS.-2885 settlement.

On 20th April 2020 our total Fund was Rs. 3717087 total Margin Rs. 943474 our excess fund was Rs. 2772613. At the time of closing of trading hours on 20-04-2020 there was sufficient Margin in our Books of account Firstly MCX has Fixed DDR of crude oil Circular No. MCXCCL/C&S/081/2020 s Re. 1 per barrel on 20 April 2020. Secondly on 21 April 2020 MCX issued The circular no. MCX/MCXCCL/282/2020 dated 21.04.2020 fixing the DDR at Rs. (-) 2884 per barrel is illegal and cannot be made basis for any liability against us. The DDR for crude Oil at Rs. -2885 negative price settlements was fixed by MCX then we have in debit position. All funs was available with MCX/Clearing member & debit the same then our balance was Zero & gone it negative 1.36 Crore to Rs. 1.64 Crore our Negative debit was increase because of interest amount has been charged by clearing Member(Globe) time to time.

G value was negative again and again because of on 21/04/2020 The MCX had applied wrong parameters to fix the DDR i.e. on the basis of NYMEX rates prevailing after the close of trading at MCX. Further, even otherwise, DDR cannot go in negative as even the trading Software of MCX itself does not admit the place of trade in negative.

Further, the Bye-laws of the MCX itself provide that MCX is obliged to protect the interest of the investors from any fraud, material mistake, misrepresentation, market or price manipulation. However, MCX has failed to discharge its statutory obligation in protecting the interest of the investors and are being seems to have been driven by vested interests.

That action of the MCX has already been challenged fixing the DDR at(-) 2884/- per barrel in the Honourable High Court Delhi case no. WP (c)no 30/09/2020 date of case filing 2 April 2020 then case clubbing in Honourable Supreme Court & case has stiffed/transferred at Honourable Bombay High Court case no. WP/4796/ 2022,

The circular no. MCX/MCXCCL/282/2020 dated 21.04.2020 fixing the DDR at Rs. (-) 2884 per barrel is illegal and cannot be made basis for any liability against us.
After that on the date of 6 May 2020 Globe Commodities Ltd (clearing Member} issued notice through mail - NOTICE FOR RECOVERY OF OUTSTANDING AMOUNT WITHOUT PREJUDICE TO OTHER ADDITIONAL LEGAL REMEDIES-Reference: MCX TM ID : 55780, we Aranox commodities Pvt. Ltd. have replied the notice as on 05/11/2020 to Globe Commodities Pvt. Ltd. (clearing Member).

On the date of 10" December 2020 MCX passed Arbitration award against us (Aranox commodities Pvt. Ltd.) in Arbitration Matter (A.M.) No. MCX/ARB/5037A/20 against arbitration Award passed by MCX we, Aranox Commodities Pvt. LTD move to case filed case no.- Miscellaneous 50/2021 M/S Aranox Commodities Pvt. Ltd. VS M/S Globe commodities Pvt. Ltd. in Honorable Court Patna. Against Our Case Aranox Commodities Pvt. LTD. case filed by Globe Commodities Pvt. Ltd. case no. Execution 195/2021.

We Aranox Commodities were in huge financial trouble after 20 April 2020 but we have cleared dues of all credit clients balance & we are fighting for justice for huge loss which has incurred from MCX negative Rs. -2885 settlement. There is no credit balance liability of any client.

….

Finding C:Segregation of Clients,s fund and securities

AS per finding Broker Aran ox commodities Pvt. Ltd. has transferred Rs. 3.69 lac from client account to bank account of the entity related to the broking firm/proprietary because of Mr. Deepak Kumar Srivastava having self Trading account UCC code 11001 in Aranox Commodities Pvt. Ltd. & his trading account are in credit position so that time Fund payout has done total of Rs. 3.19. On the date of 13/03/2020, 25/3/2020/, 26/03/2020 Fund has transferred to client bank account to Client account Payout Bifurcation Rs. 3.19 lac details are below with client ledger & Client Bank account:

….

We Aranox Commodities Pvt. Ltd. have been transfer of funds from client account to proprietary account for legitimate purposed only such as brokerage & statutory dues etc we have generated 65330 brokerage in F.Y. 2020-21 & fund transfer of Rs. 50000/- in terms of Brokerage on 13/04/2020 from HDFC client Account-73005 to Broker Propriety account with Indusind Bank against our brokerage payment. Rs. 50000 Fund Transferred Details from Client account to proprietary account:

…

As per above Bank Book reconciliation statement human error in properly not mentioned in Narration for 50000 fund transferred clint account to Proprietary account transfer for Brokerage. We have generated 65330 brokerage in F.Y. 2020-21 & fund transfer Rs. 50000/- in terms of brokerage on 13/04/2020 from HDFC client Account- 73005 to Broker Proprietary account with INDUSIN Bank against out brokerage payment.

….".

D. CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee had violated the provisions of the SC(R) Act, 1956 and SEBI Circulars, as alleged in the SCN?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 23D of SC(R) Act, 1956 and 15HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

Issue No. I: Whether the Noticee had violated the provisions of the SC(R) Act, 1956 and SEBI Circulars, as alleged in the SCN?

ALLEGED VIOLATION REGARDING MISUSE OF CLIENTS' FUNDS AND SECURITIES:

8. In this regard, it was inter alia alleged in the SCN that G was negative on 61 out of 64 sample instances, funds of credit balance clients were misutilized for meeting the obligations of debit balance clients and/or for its own purpose. The average misutilised amount was Rs. 1.5 Crore. The amount of misutilization ranged from Rs. 1.36 Crore to Rs. 1.64 Crore. Therefore, it was alleged that Noticee had violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. In this regard, as noted from material available on record, the details with respect to value of G are as follows:

S. No	Member ID	Name of the Member	As on Date	Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges (A)	Aggregate value of collateral deposited with Exchange / Clearing Corporation (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered while submitting this amount (B1)	Aggregate value of collateral deposited with clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered while submitting this amount (B2)	Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations) (C)	G
1	55780	Aranox Commodities Private Limited	03/04/2020	493381	500000	3124390	1773892	2343879
2	55780	Aranox Commodities Private Limited	09/04/2020	659836	500000	3332205	2057564	2434477
3	55780	Aranox Commodities Private Limited	17/04/2020	757736	500000	3714380	2168339	2803777
4	55780	Aranox Commodities Private Limited	24/04/2020	726633	500000	-13457634	1401619	-13632620
5	55780	Aranox Commodities Private Limited	30/04/2020	727388	500000	-13520329	1401186	-13694127
6	55780	Aranox Commodities Private Limited	08/05/2020	327610	500000	-13535986	1401408	-14109784
7	55780	Aranox Commodities Private Limited	15/05/2020	327610	500000	-13747711	1401408	-14321509
8	55780	Aranox Commodities Private Limited	22/05/2020	327687	500000	-13747711	1350491	-14270515
9	55780	Aranox Commodities Private Limited	29/05/2020	327687	500000	-13747711	1350491	-14270515
10	55780	Aranox Commodities Private Limited	05/06/2020	326843	500000	-13746627	1345947	-14265731
11	55780	Aranox Commodities Private Limited	12/06/2020	326813	500000	-13955671	1345947	-14474805
12	55780	Aranox Commodities Private Limited	19/06/2020	326812	500000	-13955671	1145946	-14274805
13	55780	Aranox Commodities Private Limited	26/06/2020	326628	500000	-13955671	1128237	-14257280
14	55780	Aranox Commodities Private Limited	03/07/2020	327610	500000	-13955671	1114237	-14242298
15	55780	Aranox Commodities Private Limited	10/07/2020	328745	500000	-14161318	1110383	-14442956
16	55780	Aranox Commodities Private Limited	17/07/2020	328745	500000	-14161318	1110383	-14442956
17	55780	Aranox Commodities Private Limited	24/07/2020	328745	500000	-14161318	1110383	-14442956
18	55780	Aranox Commodities Private Limited	31/07/2020	328046	500000	-14161318	1109684	-14442956
19	55780	Aranox Commodities Private Limited	07/08/2020	328046	500000	-14377107	1109684	-14658745
20	55780	Aranox Commodities Private Limited	14/08/2020	326051	500000	-14377107	1109684	-14660740
21	55780	Aranox Commodities Private Limited	21/08/2020	326081	500000	-14377107	1109684	-14660710
22	55780	Aranox Commodities Private Limited	28/08/2020	326081	500000	-14377107	1109684	-14660710
23	55780	Aranox Commodities Private Limited	04/09/2020	327681	500000	-14377107	1105684	-14655110
24	55780	Aranox Commodities Private Limited	11/09/2020	327681	500000	-14377107	1105684	-14655110
25	55780	Aranox Commodities Private Limited	18/09/2020	327198	500000	-14596266	958480	-14727548
26	55780	Aranox Commodities Private Limited	25/09/2020	327198	500000	-14596266	958480	-14727548
27	55780	Aranox Commodities Private Limited	01/10/2020	327198	500000	-14596266	958480	-14727548
28	55780	Aranox Commodities Private Limited	09/10/2020	327440	500000	-14596266	690222	-14459048
29	55780	Aranox Commodities Private Limited	16/10/2020	327440	500000	-14810703	690222	-14673485
30	55780	Aranox Commodities Private Limited	23/10/2020	325303	500000	-14810703	687222	-14672622
31	55780	Aranox Commodities Private Limited	30/10/2020	325303	500000	-14810703	687222	-14672622
32	55780	Aranox Commodities Private Limited	06/11/2020	325303	500000	-14810703	687222	-14672622
33	55780	Aranox Commodities Private Limited	13/11/2020	325303	500000	-15035860	687222	-14897779
34	55780	Aranox Commodities Private Limited	20/11/2020	325303	500000	-15035860	687222	-14897779
35	55780	Aranox Commodities Private Limited	27/11/2020	325303	500000	-15035860	687222	-14897779
36	55780	Aranox Commodities Private Limited	04/12/2020	321608	500000	-15035860	666827	-14881079
37	55780	Aranox Commodities Private Limited	11/12/2020	321596	500000	-15035860	666827	-14881091
38	55780	Aranox Commodities Private Limited	18/12/2020	321596	500000	-15256981	666827	-15102212
39	55780	Aranox Commodities Private Limited	24/12/2020	321596	500000	-15256981	666827	-15102212
40	55780	Aranox Commodities Private Limited	01/01/2021	321596	500000	-15256981	666827	-15102212
41	55780	Aranox Commodities Private Limited	08/01/2021	321596	500000	-15256981	666827	-15102212
42	55780	Aranox Commodities Private Limited	15/01/2021	321596	500000	-15488840	666827	-15334071
43	55780	Aranox Commodities Private Limited	22/01/2021	321596	500000	-15488840	666827	-15334071
44	55780	Aranox Commodities Private Limited	29/01/2021	321596	500000	-15488840	666827	-15334071
45	55780	Aranox Commodities Private Limited	05/02/2021	321596	500000	-15488840	666827	-15334071
46	55780	Aranox Commodities Private Limited	12/02/2021	334063	500000	-15682857	666827	-15515621
47	55780	Aranox Commodities Private Limited	19/02/2021	331562	500000	-15682857	664827	-15516122
48	55780	Aranox Commodities Private Limited	26/02/2021	322311	500000	-15682857	655576	-15516122
49	55780	Aranox Commodities Private Limited	05/03/2021	322311	500000	-15682857	655576	-15516122
50	55780	Aranox Commodities Private Limited	12/03/2021	322145	500000	-15898762	646810	-15723427
51	55780	Aranox Commodities Private Limited	19/03/2021	322145	500000	-15898762	646810	-15723427
52	55780	Aranox Commodities Private Limited	26/03/2021	320599	500000	-15898762	637810	-15715973
53	55780	Aranox Commodities Private Limited	01/04/2021	320599	500000	-16133204	637810	-15950415
54	55780	Aranox Commodities Private Limited	09/04/2021	320599	500000	-16122659	637810	-15939870
55	55780	Aranox Commodities Private Limited	16/04/2021	320599	500000	-16122659	637810	-15939870
56	55780	Aranox Commodities Private Limited	23/04/2021	320599	500000	-16122659	637810	-15939870
57	55780	Aranox Commodities Private Limited	30/04/2021	320599	500000	-16122659	637810	-15939870

S. No	Member ID	Name of the Member	As on Date	Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges (A)	Aggregate value of collateral deposited with Exchange / Clearing Corporation (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered while submitting this amount (B1)	Aggregate value of collateral deposited with clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered while submitting this amount (B2)	Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations) (C)	G
58	55780	Aranox Commodities Private Limited	07/05/2021	320599	500000	-16122659	637810	-15939870
59	55780	Aranox Commodities Private Limited	14/05/2021	320599	500000	-16361186	637810	-16178397
60	55780	Aranox Commodities Private Limited	21/05/2021	320599	500000	-16361186	637810	-16178397
61	55780	Aranox Commodities Private Limited	28/05/2021	320599	500000	-16361186	637810	-16178397
62	55780	Aranox Commodities Private Limited	04/06/2021	320599	500000	-16361186	637810	-16178397
63	55780	Aranox Commodities Private Limited	11/06/2021	320599	500000	-16610251	637810	-16427462
64	55780	Aranox Commodities Private Limited	18/06/2021	321304	500000	-16610251	628328	-16417275

9. In this regard, vide letter dated October 27, 2023 and December 18, 2023, the Noticee had inter alia submitted that "…*it was happen for debit position on the date of 20 April 2020 due to crude oil negative price settlement @ -2885. Every time G negative has because only one day transaction has gone debit & it has repeat again & again G negative….The DDR for crude oil at Rs. -2885 negative price settlement was fixed by MCX then we were in debit position…"* and that *"…The DDR for crude Oil at Rs. -2885 negative price settlements was fixed by MCX then we have in debit position. All funs was available with MCX/Clearing member & debit the same then our balance was Zero & gone it negative 1.36 Crore to Rs. 1.64 Crore our Negative debit was increase because of interest amount has been charged by clearing Member(Globe) time to time….We Aranox Commodities were in huge financial trouble after 20 April 2020 but we have cleared dues of all credit clients balance…There is no credit balance liability of any client…"*

From the submissions of the Noticee in this regard, I note that the Noticee has neither disputed nor denied the calculation of value of G in all the 64 instances including the 61 instances where G was negative and instead the submissions of the Noticee are in the nature of admission in so far as Noticee has inter alia stated that "…*The DDR for crude Oil at Rs. -2885 negative price settlements was fixed by MCX then we have in debit position. All funs was available with MCX/Clearing member & debit the same then our balance was Zero & gone it negative 1.36 Crore to Rs. 1.64 Crore .."* and that *"…we have cleared dues of all credit clients balance…"*

Further in this regard, I also note that the Noticee has not demonstrated that any exemption was allowed to the Noticee as regards using funds of credit balance clients for settlement of obligation of debit balance clients or for own purpose. In the absence of any such exemption, the provisions of the SEBI circular dated November 18, 1993 and September 26, 2016 are applicable on the Noticee and it was obligatory on the Noticee to abide by the same.

10. The Noticee had inter alia also contended that *"…MCX issued The circular no. MCX/MCXCCL/282/2020 dated 21.04.2020 fixing the DDR at Rs. (-) 2884 per barrel is illegal and cannot be made basis for any liability against us….That action of the MCX has already been challenged fixing the DDR at (-) 2884/- per barrel in the Honourable High Court Delhi case no. WP (c)no 30/09/2020 date of case filing April 2020 then case clubbing in Honourable Supreme Court & case has stiffed/transferred at Honourable Bombay High Court case no. WP/4796/2022…On the date of 10th December 2020 MCX passed Arbitration award against us (Aranox commodities Pvt. Ltd.) in Arbitration Matter (A.M.) No. MCX/ARB/5037A/20 against arbitration Award passed by MCX we, Aranox Commodities Pvt. LTD move to case filed case no.- Miscellaneous 50/2021 M/S Aranox Commodities Pvt. Ltd. VS M/S Globe commodities Pvt. Ltd. in Honorable Court Patna. Against Our Case Aranox Commodities Pvt. LTD. case filed by Globe Commodities Pvt. Ltd. case no. Execution 195/2021…."*

In this regard, firstly I note that the Noticee has not submitted any documents whatsoever regarding cited appeals. I also note that no document has been submitted by the Noticee to demonstrate /towards imposition of any stay on the instant proceedings in lieu of cited proceedings /appeals by the Noticee. I note that the Noticee did not bring out as to how the context of the above cited proceedings /appeals filed by the Noticee have any bearing on the instant proceedings considering that the subject matter of instant proceedings are inter alia with respect to the allegation of misuse of client funds, as brought out in the foregoing paragraphs and not about the pricing of a security viz., crude oil in the instant matter. I also note that the Noticee has failed to demonstrate that any exemptions were provided to Noticee for negative crude oil prices with respect to compliance of extant applicable provisions alleged to have been violated in this regard. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11. Here it would be pertinent to refer to the relevant text of the provisions alleged to have been violated in this regard, which inter alia reads as under:

Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

> *"…*
> *1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.*
> *…*
> *D] <u>What moneys to be withdrawn from "clients account".</u> <u>No money shall be drawn from clients account other than –</u>*
> *i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
> *ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;*
> *iii. money which may by mistake or accident have been paid into such account in contravention of para C above.*
> *…"*
>
> *(Emphasis supplied)*

Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

> *"…*
> ***3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges***
> *…*
> *3.2.Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:*
> *A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges*
> *B-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.*
> *C-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)*
> *…*
> *3.3.Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:*

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:
Principle:
The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

Stock Exchanges shall calculate the difference i.e. G as follows -
G = (A+B)-C
If difference G is negative, then the total available fund is less than the ledger credit balance of clients. <u>The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes</u>. The negative value of G acts as an alert to the Stock Exchanges.

…"

(Emphasis supplied)

From the text above, I note that the SEBI circular dated November 18, 1993 inter alia provides for what moneys to be withdrawn from "clients account" wherein it mentions that no money shall be drawn from clients account other than money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client. Further, I note that the SEBI Circular dated September 26, 2016 inter alia provides for calculation of G wherein it mentions that if G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

12. I note from material available on record that G was negative on 61 out of 64 sample instances indicating that the funds of credit balance clients were misutilized for meeting the obligations of debit balance clients and/or for Noticee's own purpose. I note from material available on record that the average misutilized amount was Rs. 1.5 Crore and the amount of misutilisation ranged from Rs. 1.36 Crore to Rs. 1.64 Crore Noticee. In this regard as submitted by the Noticee, funds of credit balance clients were used for settling the debit position due to negative crude oil prices. I note that as per the SEBI Circular

dated November 18, 1993, inter alia the Noticee was required to not withdraw money from the client's account other than for money properly required for payment to or on behalf of client's own use, however, as brought out in the foregoing, the Noticee had used funds of credit balance clients for settling obligation of debit position of other clients/own purpose.

In this regard, reliance is placed on Hon'ble Securities Appellate Tribunal ('SAT') order dated March 24, 2022 in the matter of in the matter of Kantilal Chhaganlal Securities Private Limited (Appeal No. 391 of 2020) wherein Hon'ble SAT inter alia held that:

> *"…*
>
> *5.The learned counsel for the appellant contended that in the instant case, the respondent has imposed a penalty on the basis of a Circular dated September 26, 2016 which relates to enhanced supervision which has became effective from July 01, 2017. Thus, this Circular was not applicable nor can it be made applicable retrospectively for the alleged violation by the appellant for the period April 01, 2014 to December 2015. It was urged that the formula depicted in the Circular of 2016 was utilized for the purpose of calculating the quantum of penalty.*
>
> *6. Having heard the learned counsel for the parties, we find that the contention raised by the appellant is patently erroneous. <u>In this regard paragraph 1.D of the 1993 Circular states as under:-</u>*
>
> *"No money shall be drawn from clients account other than*
>
> *i. Money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
> *ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;*
> *iii. money which may be mistake or accident have been paid into such account in contravention of para C above."*
>
> *<u>The aforesaid indicates that the broker shall not use funds of clients for any purpose other than client's own use.</u>*
>
> *…"*
>
> *(Emphasis supplied)*

13. In view thereof, I find that the allegation that G was negative on 61 out of 64 sample instances, funds of credit balance clients were misutilized for meeting the obligations of debit balance clients and/or for its own purpose wherein the average misutilised amount was Rs. 1.5 Crore and the amount of misutilization ranged from Rs. 1.36 Crore to Rs. 1.64 Crore, stands established. Therefore, I hold that the Noticee violated provisions of Section 23D of SC(R) Act, 1956 read

with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

ALLEGED VIOLATION REGARDING QUARTERLY/ MONTHLY SETTLEMENT OF FUNDS/SECURITIES OF CLIENTS

14. In this regard, it was inter alia alleged in the SCN that Noticee did not settle funds of active clients in 1 instances (out of sample instances) amounting to Rs. 66689.19/-; and funds of inactive clients with amount of non-settlement ranging from Rs. 5.8 lakhs (4 clients) to Rs. 10.47 lakhs (7 clients) during the inspection period. Therefore, it was alleged that Noticee had violated provisions of Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. In this regard, as noted from material available on record, SEBI observed that:

14.1. As regards inactive clients, the Noticee had not settled the funds of inactive clients with amount of non-settlement ranging from Rs. 10.47 lakhs (7 clients) to Rs. 5.8 lakhs (4 clients) during the inspection period spanning 4 quarters. The details of which are in table below:

Sr. no.	Quarter	Type of clients	Total number of Instances Analysed	No. of non-settled clients	Aggregate Value of non-settlement
1	1	Inactive	164	7	1047874.79
2	2	Inactive	157	6	882669.79
3	3	Inactive	158	4	581353.79
4	4	Inactive	145	4	581353.79

15. Here it would be pertinent to refer to the relevant text of the provisions alleged to have been violated in this regard, which inter alia reads as under:

Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

> *"…*
> ***Running Account Authorization***
> *12.Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*
> *…*
> *e.The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.*
> *…"*

Clause 8.1.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

> *"…*
> ***8. Running Account Settlement***
> *8.1.1.There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.*
> *…"*

It is noted that SEBI Circular dated December 03, 2009 read with SEBI Circular dated September 26, 2016 inter alia states that a client may specifically authorize the stock broker to maintain a running account subject to the conditions inter alia that the actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. Further, that while settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities.

16. In this regard, as regards inactive clients, I note that the Noticee has neither denied nor disputed the alleged violation and instead the submissions of the Noticee vide letter dated October 27, 2023 and December 18, 2023 (broadly speaking save for differently worded, the submissions were similar in nature), as reply to the SCN are in the nature of admission in so far as the Noticee had inter alia itself submitted that "…*With regards to inactive clients (FY2020-21), we*

had not setted the fund the funds of inactive clients ..because of there is no fund in our company books account but we have paid all credit clients balance at our personal leval on partial basis.….we will clear the same in Future on partial basis…".

Further, as regards active clients, I note that the Noticee has not made any submissions during the instant proceedings, however, I note that the Noticee, in its reply vide letter dated May 27, 2020 to SEBI earlier as a response to findings of Inspection by SEBI, had accepted the observation of SEBI that there was non-settlement of funds of active clients in 1 instances (out of sample of 148 instances) amounting to Rs. 66689.19/-. I note that the said acceptance was also stated in the SCN, however, the Noticee in its replies in the instant proceedings has neither denied nor disputed the alleged violation as regards active client.

17. In view thereof, I find that the allegation that there was non-settlement of funds of active client amounting to Rs. 66689.19/- and that there was non-settlement of funds of inactive clients with amount of non-settlement ranging from Rs. 5.8 lakhs (4 clients) to Rs. 10.47 lakhs (7 clients) during the inspection period, stands established. Therefore, I hold that Noticee had violated provisions of Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

ALLEGED VIOLATION REGARDING SEGREGATION OF CLIENT'S FUNDS AND SECURITIES:

18. In this regard it was inter alia alleged in the SCN that the Noticee had transferred Rs. 3.69 lakhs from client bank accounts to the bank accounts of the entities related to the broking firm/ proprietary account. Therefore, it was alleged that Noticee had violated provisions of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of

Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. In this regard, as noted from material available on record, SEBI had inter alia observed that :

18.1. On 13/03/2020, 25/03/2020, 26/03/2020: Funds moved from Aronox Commodities Private Limited Client Account (20100297****) to entities related/ connected broking firm.

18.2. On 13/04/2020 – Funds transferred from HDFC client Account- 73005 to Broker propriety account with INDUSIND Bank.

19. In this regard, as regards funds moved from Aronox Commodities Private Limited Client Account (20100297****) to entities related/ connected broking firm, Noticee as part of its submissions as reply to the SCN, vide letter dated October 27, 2023, had inter alia submitted that '…*Transferred Rs. 3.69 lacs from client bank account to the bank account of the entities related to the broking firm/proprietary bifurcation (1)13/03/2020 transfer @ Rs. 90000, 26/03/2020 @ Rs. 89000 fund transferred Aranox Commodities Private Limited Client Account (20100z9978131) to Client code 11001 Deepak Srivastava ledger was <u>credited payout to the client account 11001</u> for clarification find client code 110001 leger as Annexure 3-A. Total amount Rs. 3.19 has been transferred from client account to client …'* and vide letter dated December 18, 2023, inter alia submitted that "…*Mr. Deepak Kumar Srivastava having self Trading account UCC code 11001 in Aranox Commodities Pvt. Ltd. & his trading account are in credit position so that time Fund payout has done total of Rs. 3.19. On the date of 13/03/2020, 25/3/2020/, 26/03/2020 Fund has transferred to client bank account to Client account ..transfer of funds from client account to proprietary account for …'*

(Emphasis supplied)

In this regard, I note that the Noticee had submitted that Deepak Kumar Srivastava was having self trading account UCC code 11001 in Aranox Commodities Pvt. Ltd. & his trading account were in credit position so fund payout was done (total of Rs. 3.19). In this regard, I note that fund was transferred from Aranox Commodities Private Limited Client Account to Deepak Kumar Srivastava as follows: On 13.03.2020= Rs. 139800/-; On 25.03.2020=

Rs. 90000/-; On 26.03.2020= Rs. 89000/- with total amount transferred = Rs. 3,18,800/-.

I note that the apart from stating that the funds were transferred as payout and providing a ledger for UCC 11001 inter alia indicating the transferred amount, as alleged in the SCN, the Noticee has neither provided the reason for such payout as to whether it was done in lieu of trades by Deepak Kumar Srivastava in his individual capacity as client nor Noticee has provided documents/material to substantiate that the money transferred from Aranox Commodities Private Limited Client Account (20100297****) to entities related viz., Deepak Kumar Srivastava was properly required for payment to or on behalf of Deepak Kumar Srivastava in terms of the SEBI Circular dated November 18, 1993. In view thereof, the submissions of the Noticee are devoid of merit and hence cannot be accepted.

20. As regards Funds transferred from HDFC client Account- 73005 to Broker propriety account with INDUSIND Bank, I note that Noticee as part of its submissions as reply to the SCN, vide letter dated October 27, 2023, had inter alia submitted that *'…….(2) we have generated 65330 brokerage in (F.Y. 2020-21) & fund transfer Rs. 50000/- in terms of Brokerage on 13/04/2020 from HDFC client Account-73005 to Broker Propriety account with Indusind Bank against out brokerage payment….'* and vide letter dated December 18, 2023 Noticee inter alia submitted that *'…We Aranox Commodities Pvt. Ltd. have been transfer of funds from client account to proprietary account for legitimate purposed only such as brokerage & statutory dues etc we have generated 65330 brokerage in F.Y. 2020-21 & fund transfer of Rs. 50000/- in terms of Brokerage on 13/04/2020 from HDFC client Account-73005 to Broker Propriety account with Indusind Bank against our brokerage payment. Rs. 50000 Fund Transferred Details from Client account to proprietary account…As per above Bank Book reconciliation statement human error in properly not mentioned in Narration for 50000 fund transferred clint account to Proprietary account transfer for Brokerage….'*

In this regard, I note that as regards Funds transferred from HDFC client Account- 73005 to Broker propriety account with INDUSIND Bank, the Noticee had submitted that the fund transfer of Rs. 50000/- was against brokerage payment. On perusal of the Profit & Loss A/c up to 31.03.2021 (P&L), as submitted by the Noticee, it is noted that the P&L mentions BROKERAGE INCOME of Rs. 65,330 in the F.Y 2020-2021. In this regard, I note that as per SEBI Circular dated September 26, 2016, the Noticee was permitted to transfer funds from its Client Account to its Proprietary Account only for legitimate purposes, such as, recovery of brokerage, statutory dues etc., and for such transfer of funds, stock broker(Noticee) shall maintain daily reconciliation statement clearly indicating the amount of funds transferred. In this regard, I note that the Noticee has not submitted any daily reconciliation statement indicating the amount of brokerage transferred. Further, I note that the Noticee has not demonstrated with relevant details/ documents the break-up of total brokerage earned by it viz., Rs. 65,330/- considering that Rs. 50000/- were transferred from only one client account to proprietary account that too at one go. Moreover, I note that the fund transfer does not include any narration indicating that the said transfer was in lieu of brokerage unlike as seen for other transactions wherein narration was made pertaining to brokerage. In view thereof, the submissions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

21. Here it would be pertinent to refer to the relevant text of the provisions alleged to have been violated in this regard, which reads as under:

Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

> *"…*
> *1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.*
>
> *…*
>
> *D] <u>What moneys to be withdrawn from "clients account".</u> <u>No money shall be drawn from clients account other than –</u>*
>
> *i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member,*

provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

…"

(Emphasis supplied)

Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

"…

2. Reporting of Bank and Demat accounts maintained by Stock Broker:

…

2.4.In line with the prevalent regulatory requirement, it is reiterated that;

…

2.4.2.Transfer of funds between "Name of Stock Broker -Client Account" and "Name of Stock Broker -Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, <u>stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.</u>

…"

(Emphasis supplied)

From the above text, it is noted that SEBI Circular dated November 18, 1993 inter alia requires that no money shall be drawn from clients account by the Broker other than money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member. Further, it is noted that SEBI Circular dated September 26, 2016 inter alia provides that transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

22. In view thereof, as brought out in the foregoing, I note that the Noticee had transferred Rs. 3.69 Lakhs (Rs. 3,68,800/- to be precise) from client bank accounts to the bank accounts of the entities related to the broking firm/

proprietary account. I note that the Noticee has failed to demonstrate that the alleged transfer of the funds from the client account was made in terms of the SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

23. In view thereof, I find that the allegation that the Noticee had transferred Rs. 3.69 Lakhs from client bank accounts to the bank accounts of the entities related to the broking firm/ proprietary, stands established. Therefore, I hold that Noticee had violated provisions of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 23D of SC(R) Act, 1956 and 15HB of the SEBI Act, 1992?

24. It has been established in the foregoing paragraphs that Noticee had violated provisions of SC(R) Act, 1956 and SEBI Circulars.

25. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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....."*

26. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section 23D of SC(R) Act, 1956 and under Section 15HB of the SEBI Act, 1992 which reads as under:

Section 23D of the Securities Contracts (Regulation) Act, 1956:

"…
Penalty for failure to segregate securities or moneys of client or clients.
23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be 121[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.
…"

Section 15HB of SEBI Act, 1992

"…
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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*
…"

Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

27. While determining the quantum of penalty under 23D of the Securities Contracts (Regulation) Act, 1956 and under Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 23J of Securities Contracts (Regulation) Act, 1956 and Section 15J of the SEBI Act, which reads as under: -

<u>SC(R) Act, 1956</u>

136[137[Factors to be taken into account while adjudging quantum of penalty.]
23J. *While adjudging the quantum of penalty under 138[section 12A or section 23-I], the 139[the Securities and Exchange Board of India or 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.]

140[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

SEBI Act, 1992

"…

Factors to be taken into account while adjudging quantum of penalty.

***15J**. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or 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 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.

…."

28. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee, being a SEBI registered intermediary, was required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce. The Noticee failed to comply with the provisions of law, as brought out in the foregoing, and such failure and/or non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

29. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under Section 23-I of the SC(R) Act, 1956 and under Section 15-I of the SEBI Act, 1992 r/w Rule 5 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the

aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
Aranox Commodities Private Limited	23D of SC(R) Act, 1956	Rs. 2,00,000/- (Rupees Two Lakhs Only)
	15HB of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh Only)

30. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

32. In terms of the provisions of Rule 6 of the SEBI Rules and Rule 6 of the SC(R) Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: March 26, 2024
Place: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER