BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SV/VC/2024-25/30653)

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

In respect of
Fast Capital Markets Limited
(PAN: AAACF3907A)
(SEBI Registration No.: INZ000212231)

In the matter of Fast Capital Markets Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted inspection in respect of Fast Capital Markets Limited (hereinafter referred to as the **'Noticee'**). Noticee is registered with SEBI as a Stock Broker (Registration No.**:** INZ000212231) having its registered address at '4th Floor, Calcutta Mansion, 4, Bishop Lefroy Road, Kolkata, West Bengal - 700020'. A joint inspection of the Noticee was conducted by SEBI along with the Exchanges from July 24, 2023 to July 26, 2023, for the period of April 2022 to May 2023 (hereinafter referred to as **'Inspection Period'**).

2. The findings / observations made during the course of inspection were recorded as Inspection Report and the inspection findings / observations were communicated to the Noticee vide SEBI letter dated August 29, 2023. Noticee had

submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its letter dated September 18, 2023.

3. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee for alleged violations of the provisions of the following SEBI Regulations, Notification and Circulars:

Table No. 1

Sr. No.	**Alleged violations**	**Regulatory provisions violated**
A	Mis-utilisation of clients fund	Clause 15.5.2, 15.5.3.1 and 15.5.3.3 of the SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 read with Clause 3.2, 3.3.1 and 3.3.3 of the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2015.
B	Quarterly/Monthly settlement of clients funds & securities	Clause 47.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/CIR/2023/71 dated May 17, 2023 read with Clause 5.1 of the SEBI Circular no. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021.
C	Clients order placement and call recordings	Clause 34.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/CIR/2023/71 dated May 17, 2023 read with Clause III of SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.
D	Terminal verification and certification	Clause 2 of SEBI notification no. LAD-NRO/GN/2010-11/21/29390 dated December 10, 2010 read with Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Clause 2(ii) of SEBI Circular No. SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010.

Sr. No.	Alleged violations	Regulatory provisions violated
E	Control System Over Branch/AP	Clause 32.7.5 of the of the SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD1/CIR/2023/71 dated May 17, 2023 read with Clause 7 (e) of Annexure -1 of SEBI Circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated March 14, 2024, under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) and under Section 23-I of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **'SC(R) Act, 1956'**) read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules'**), to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/14521/2024 dated April 16, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, 1992; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SC(R) Act, 1956, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1996 for the alleged violations. I note that the SCN

issued to Noticee was duly served upon the Noticee and it was acknowledged by the Noticee.

6. Since no reply to the SCN was received, Hearing Notice cum reminder dated May 03, 2024 was issued to the Noticee. Thereafter, vide e-mail dated May 08, 2024, Noticee submitted reply (letter dated April 26, 2024) to the SCN. In the interest of natural justice, an opportunity of hearing on May 13, 2024 was granted to the Noticee vide said Hearing Notice dated May 03, 2024. Authorized Representatives viz. Mr. Binay Kumar Agarwal, Director and Shiv Kumar Jodhani, Compliance Officer of the Noticee (hereinafter referred to as **"ARs"**) attended the hearing in person at SEBI on May 13, 2024 and reiterated the submissions made by the Noticee vide letter dated April 26, 2024. Further, ARs stated to make the additional submissions in the matter, which were made by the Noticee vide e-mail dated May 14, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated the provisions of the SEBI Regulations, Notification and Circulars as indicated in table no. 1?

   II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

8. Before proceeding further, it is pertinent to refer to the relevant provisions of SEBI Regulations, Notification and Circulars which are alleged to have been violated. The said provisions are reproduced hereunder:

SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

Annexure

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)*

D- *Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)*

E- *Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)*

F- *Aggregate value of Non-funded part of the BG across Stock Exchanges*

P- *Aggregate value of Proprietary Margin Obligation across Stock Exchanges*

MC- *Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges*

MF- *Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges*

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. 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. The negative value of G acts as an alert to the Stock Exchanges.

Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H= |G| -|D|$$

3.3.3. *Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:*

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, Bis compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023:

Clause 15.5.2, 15.5.3.1 and 15.5.3.3 of the SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 are similar to the aforementioned Clause 3.2, 3.3.1 and 3.3.3 of the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2015, therefore for avoiding repetition, provisions are not reproduced.

32.7 Obligations of Stock Broker

32.7.5 Stock Broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them.

34. Prevention of Unauthorised Trading by Stock Brokers

34.2 To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of 84the client placing such order, it could be, inter alia, in the form of:

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of SMS messages,

f. Any other legally verifiable record.

47. Settlement of Running Account of Client's Funds lying with Trading Member (TM)

47.1 Regarding Settlement of running account, following shall be complied with:

47.1.1 The settlement of running account of funds of the client shall be done by the TM after considering the End of the day (EOD) obligation of funds as on the date of settlement across all the Exchanges on first Friday of the Quarter (i.e., Apr-Jun, Jul-Sep, Oct-Dec, Jan–Mar) for all the clients i.e., the running account of funds shall be settled on first Friday of October 2022, January 2023, April 2023, July 2023 and so on for all the clients. If first Friday is a trading holiday, then such settlement shall happen on the previous trading day.

47.1.2 For clients, who have opted for Monthly settlement, running account shall be settled on first Friday of every month. If first Friday is a trading holiday, then such settlement shall happen on the previous trading day.

SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021:

5. *In partial modification of the aforementioned circulars dated December 03, 2009 and September 26, 2016 on settlement of running account, following has been decided:*

*5.1. The settlement of running account of funds of the client shall be done by the TM after considering the End of the day (EOD) obligation of funds as on the date of settlement across all the Exchanges, at least once within a gap of **30 / 90 days between two settlements of running account** as per the preference of the client.*

SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018:

Prevention of Unauthorised Trading by Stock Brokers

***III.** To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:*

a. Physical record written & signed by client,
b. Telephone recording,
c. Email from authorized email id,
d. Log for internet transactions,
e. Record of messages through mobile phones,
f. Any other legally verifiable record.

SEBI notification no. LAD-NRO/GN/2010-11/21/29390 dated December 10, 2010:

***2.** Accordingly, it is notified that with effect from the date of this notification, the following category of associated persons, i.e., persons associated with a registered stock-broker/trading member/clearing member in recognised stock exchanges, who are involved in, or deal with, any of the following, namely:-*

(a) assets or funds of investors or clients,
(b) redressal of investor grievances,
(c) internal control or risk management, and
(d) activities having a bearing on operational risk,

shall be required to have a valid certification from the National Institute of Securities Markets (NISM) by passing the NISM-Series-VII: Securities Operations and Risk Management Certification Examination as mentioned in the NISM communiqué/Press Release NISM/Certification/Series-VII: SORM/2010/01 dated November 11, 2010, read with Annexures-I and II thereto.

Provided that the stock-broker/trading member/clearing member shall ensure that all persons associated with it and carrying on any activity specified in this paragraph as on the date of this notification obtain valid certification within two years from the said date of notification.

Provided further that a stock-broker/trading member/clearing member who employs any associated persons specified in this paragraph after the date of this notification shall ensure that the said associated persons obtain valid certification within one year from the date of their employment.

SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007:

Obligation to obtain certificate

3 (2) *An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.*

SEBI Circular No. SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010:

2. In view of the above, the aforesaid circular dated November 06, 2009 has been modified as follows:

(ii) New clause 4.4, which reads as under, is inserted: The approved users and/or sales personnel of Authorised Persons shall have the necessary certification of the respective segments at all points of time.

SEBI Circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009:

Annexure-1

Regulatory Framework for Market Access through Authorised Persons

7. Obligations of Stock Broker

e) Stock broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them.

9. Based on perusal of the material available on record, submissions of the Noticee and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the provisions of the SEBI Regulations, Notification and Circulars as indicated in table no. 1?

10. I find that there are 5 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

    A. Mis-utilisation of clients' fund,
    B. Quarterly/Monthly settlement of clients funds & securities,
    C. Clients order placement and call recordings,
    D. Terminal verification and certification, and
    E. Control system over Branch/AP.

A. Mis-utilisation of clients' fund:

11. It was alleged in the SCN that during November 2022, the value of "G" was negative for all the 22 working dates (out of 22 sample dates) in the range of Rs. 90.09 Lakhs to Rs. 1.70 Crore. It was also alleged that the absolute value of "G" was greater than "D" (Debit balance of all client as per Ledger) for all these days.

12. Further, it was alleged that value of "H" was Positive in the range of Rs. 5,504 to Rs. 50.89 Lakh on all the 22 working days of November 2022 indicating possible mis-utilisation of funds of credit balance clients towards Noticee's own purpose.

13. Further, SCN alleged that even though value of "I" was negative on these days, the value of "J" was positive to the extent of Rs. 2.67 Crore to Rs. 7.14 Crore on said 22 working dates (out of 22 sample dates) indicating that the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations.

14. It was further alleged that during April 2023, the value of "I" was negative for all the sample 20 days, however, the value of "J" was positive in the range of Rs. 1.36 Crore to Rs. 3.92 Crore on these 20 days during April 2023 indicating that the clients' funds were utilised towards margin obligations of debit balance clients and proprietary margin obligations to that extent. The detailed computation of the

values of "G", "H", "I" and "J" for November 2022 and April 2023 is enclosed as Annexure-E.

15. Furthermore, it was alleged that during November 2022, the weekly data reported to the exchanges pertaining to enhanced supervision was not matching with the actual data calculated during inspection. A summary of the differences is given below:

Table No.- 2

Date	G reported (Rs)	G actual (Rs)	Difference (Rs)
04/11/2022	13,07,297	-94,61,394	**-1,07,68,692**
11/11/2022	-7,57,420	-1,15,21,382	**-1,07,63,962**
18/11/2022	-4,64,973	-1,12,29,577	**-1,07,64,605**
25/11/2022	43,70,527	-1,03,93,750	**-1,47,64,277**

16. Similarly, it was alleged that during April 2023, the weekly data reported to the exchanges pertaining to enhanced supervision was not matching with the actual data calculated during inspection. A summary of the differences is given below:

Table No.- 3

Date	G reported (Rs)	G actual (Rs)	Difference (Rs)
06/04/2023	2,64,11,536	2,99,11,536	**35,00,000**
13/04/2023	1,55,33,603	1,90,33,603	**35,00,000**
21/04/2023	1,51,27,192	1,86,27,036	**34,99,844**
28/04/2023	1,27,75,504	1,62,75,504	**35,00,000**

Reply of Noticee

17. With respect to allegations of violation related to “G” negative, Noticee *inter alia* submitted that it has been maintaining the clients’ funds in client bank/settlement bank account and have also placed funds with CM/CC. Noticee takes all cogent efforts to ensure that the client fund is not at shortage on any day and has been maintained at all times. Further from time to time Noticee calculate and transfer its legitimate dues from clients bank account to self-bank account for meeting the necessary working capital requirement of the firm. If any excess funds are transferred and when it comes to its knowledge, then the difference amount is transferred to clients bank account through settlement bank account route without violating the regulation of non-segregation of client funds. Moreover, at times one

or any client take position and provide the funds on same day but the NEFT/RTGS gets rejected then there are chances of 'G' negative but as a strict compliance Noticee ensures to collect the cheque for transfer of funds on immediate basis on the next day morning as the banks are closed for transfer on the same day. Therefore, during the month of November 2022, it has sometime happened that the funds were short but backed by sufficient bank guarantee and balances available in the self-bank account and moreover its management is financially very sound and are in the stock broking business since many years and have never faced any complaints relating to any kind of misappropriation of client funds and securities in any manner. Noticee has taken all necessary steps in this direction.

18. Noticee further submitted that as per the current guidelines all the client funds are up streamed to CC at EOD whereby it is ensured that there is no violation of "G". In order to comply with the relevant guidelines on running account settlement of client account, Noticee has now placed a dedicated team to ensure proper control over the Client funds calculation and also abide by the circular on upstream of client funds.

19. Of the two sample periods selected by the inspection team i.e. November 2022 and April 2023, only November 2022 period had instances of 'G' negative. In this regard, Noticee worked on it and regularized the things, as there was no 'G' violation in the April 2023. In November 2022 also the shortage was backed by the Bank Guarantee and thus the client's funds were not at risk and firm was in the money. No client has suffered due to the 'G' negative situation and their dues were promptly serviced. There is not a single investor compliant against it. Noticee continuously keep introducing fresh funds to keep 'G' healthy. Further, Noticee provided the calculation of 'G' for the entire days of March 2024 and April 2024 where 'G' is positive and healthy.

20. With respect to allegations of violation related to "H" and "J" positive, Noticee submitted that as stated above for calculation of "G" negative, by ensuring that there are sufficient funds available and no clients fund is used for debit balance

clients and/or for own obligation, the observation of “H” and “J” stands complied and further all necessary corrective actions have been taken and there is no such violation on these instances anymore. However, vide reply dated May 14, 2024, Noticee submitted that there is no “J” violation after taking into consideration the unblocked collaterals and furnished the “J” Calculation sheet. Noticee also furnished the working of unblocked collaterals for the month of November 2022 along with the CC02 files, MG01 files and Globe Capital’s detailed margin reports. Globe Capital is its Clearing member for F&O segment.

21. With respect to allegations of mismatch between the weekly data reported to Exchanges vis à vis actual data calculated during inspection, Noticee submitted that the figures of “Free/Unblocked Collateral deposited with CC/CM” was not captured in its submission to the exchanges and in support of the same it has furnished the working file computed during the SEBI inspection and the relevant file from CC/CM wherein there is free balance available.

Findings

22. As per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that 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. The value of G may indicate utilisation 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.

Thereafter, the absolute value of G is compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H= |G| - |D$$

23. Further, as per aforesaid SEBI Circular dated September 26, 2016 the principle is that the clients' funds lying with the clearing corporation/ clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF).

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/ clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

24. I find that in response to allegation of violation related to "G" negative during November 2022, Noticee admittedly submitted that if any excess funds are transferred and when it comes to its knowledge, then the difference amount is transferred to clients bank account through settlement bank account route without violating the regulation of non-segregation of client funds. Moreover, at times one or any client take position and provide the funds on same day but the NEFT/RTGS gets rejected then there are chances of 'G' negative but as a strict compliance Noticee ensures to collect the cheque for transfer of funds on immediate basis on the next day morning as the banks are closed for transfer on the same day. Therefore, during the month of November 2022, it has sometime happened that the funds were short but backed by sufficient bank guarantee and balances available in the self-bank account and moreover its management is financially sound and are in the stock broking business since many years and have never faced any complaints relating to any kind of misappropriation of client funds and securities in any manner. Thus, I note that the Noticee has accepted the allegation that the value of "G" was negative during November 2022. Therefore, I hold that the value of "G" was negative for all the 22 working dates (out of 22 sample dates) during November 2022 in the range of Rs 90.09 Lakhs to Rs 1.70 Crore indicating the utilisation 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.

25. Further, Noticee's submission that shortage was backed by the Bank Guarantee and thus the client's funds were not at risk and firm was in the money, it has taken all necessary steps in this direction, as per the current guidelines all the clients funds are up streamed to CC at EOD whereby it is ensured that there is no violation of "G", it has now placed a dedicated team to ensure proper control over the Client funds calculation and the value of 'G' for the entire days of March 2024 and April

2024 is positive etc. can only be considered as mitigating factors while deciding the amount of penalty.

26. I find that in response to allegation of violation related to "J" positive during November 2022, Noticee submitted that there is no “J” violation during November 2022 after taking into consideration the unblocked collaterals and furnished the “J” calculation sheet. Noticee also furnished the working of unblocked collaterals along with the CC02 files, MG01 files and Globe Capital’s detailed margin reports. Considering the submission of the Noticee along with supporting evidences, I hold that the allegation that the value of "J" was positive to the extent of Rs. 2.67 Crore to Rs. 7.14 Crore on 22 working days of November 2022, does not stand established.

27. Further, in response to allegations of violation related to "H" positive during November 2022 and "J" was positive during April 2023, Noticee admittedly submitted that as stated above for calculation of “G” negative, by ensuring that there are sufficient funds available and no clients fund is used for debit balance clients and/or for own obligation, the observation of “H” and “J” stands complied and further all necessary corrective actions have been taken and there is no such violation on these instances anymore. Thus, I note that the Noticee has accepted the allegation that the value of "H" positive during November 2022 and "J" was positive during April 2023. Therefore, I hold that the value of "H" was positive in the range of Rs 5,504 to Rs 50.89 lakh on all the 22 working days of November 2022 indicating mis-utilisation of funds of credit balance clients towards Noticee’s own purpose and the value of "J" was positive in the range of Rs. 1.36 Crore to Rs. 3.92 Crore on 20 days during April 2023 indicating that the clients' funds were utilised towards margin obligations of debit balance clients and proprietary margin obligations to that extent.

28. Further, in response to allegations of mismatch between the weekly data reported to the Exchanges under Enhanced supervision vis à vis actual data calculated during inspection, Noticee submitted that the figures of “Free/Unblocked Collateral

deposited with CC/CM" was not captured in its submission to the exchanges and in support of the same Noticee has furnished the working file computed during the inspection and the relevant file from CC/CM wherein there is free balance available. In view of the submissions of the Noticee and documentary evidences submitted by it in support of its claim, I hold that the allegation that Noticee made incorrect reporting of weekly data to the exchanges in the month of November 2022 and April 2023, does not stand established.

29. In view of the findings made above at 24, 25 and 27, I hold that the allegation that Noticee violated the provisions of Clause 15.5.2, 15.5.3.1 and 15.5.3.3 of the SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 read with Clause 3.2, 3.3.1 and 3.3.3 of the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2015, stand established.

B. ***Quarterly/Monthly settlement of clients funds & securities:***

30. It was alleged in the SCN that Noticee had not done settlement of client funds and securities for 2 clients at 2 instances for amounting to Rs. 3,82,750.

Reply of Noticee

31. With regard to above allegations, Noticee *inter alia* submitted that in its earlier reply to SEBI Inspection officials, it had informed the cause due to which the running account settlement of the clients' accounts has not been settled. NSE has again reviewed the working for calculation of settlement of funds and based on the revised working, the cases have been reduced from 11 instances to only 2 instances amounting to a very small amount of Rs. 3,82,750/- only and this balance was available with Noticee in its bank account. Had its software figured this case out then these accounts would also have been settled leaving no cases unsettled. Moreover, due concern should also be given to the fact that out of 500 instances taken as sample by the inspection official only 2 instances remained unsettled, which is only 0.40% of the total sample considered for settlement. Such thin percentage of error can always be there as software's which are operated

throughout the securities market and as well as in the general as whole are man-made features which may have certain chance of error. However other necessary steps have also been ensured to confirm that there are no such cases in future and shall settle all the accounts as per the SEBI Circular.

32. Noticee further submitted that as a part of its regular compliance, the necessary settlement has been done for all clients as on April 5 & 6, 2024 and correct data has been submitted to both the Exchanges as well.

33. In order to comply with the relevant guidelines on running account settlement of client account and also to comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the settlement of client account on the dates specified by SEBI and also to monitor the cases on manual basis including software generated data so that there are no accounts left which have not been settled and ensure that there is no operational risk.

Findings

34. As per SEBI Circular no. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, the settlement of running account of funds of the client shall be done by the TM after considering the End of the day (EOD) obligation of funds as on the date of settlement across all the Exchanges, at least once within a gap of 30 / 90 days between two settlements of running account as per the preference of the client.

35. I note that Noticee has accepted the allegation of non-settlement of clients' funds and stated that had its software figured the cases out then these accounts would have also been settled leaving no cases unsettled. Out of 500 instances taken as sample by the inspection official only 2 instances remained unsettled, which is only 0.40% of the total sample considered for settlement. Such thin percentage of error can always be there as software's which are operated throughout the securities market and as well as in the general as whole are man-made features which may have certain chance of error.

36. Noticee submissions that necessary steps have been ensured to confirm that there are no such cases in future and it shall settle all the accounts as per the SEBI Circular, necessary settlement has been done for all clients as on April 5 and 6, 2024, only 2 instances remained unsettled out of 500 sample instances etc. can only be considered as mitigating factors while deciding the amount of penalty.

37. With respect to the submission of the Noticee that in order to comply with the relevant guidelines on running account settlement of client account and also to comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the settlement of client account, I note that the Administrative Warning letter dated February 28, 2024 issued by SEBI was only w.r.t. the inspection findings related to client registration process & UCC verification and reporting and short collection of margin. The allegation in the instant case differs from the above findings of inspection for which said Administrative Warning was issued by SEBI.

38. In view of the above, I hold that the allegation that Noticee violated the provisions of Clause 47.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/CIR/2023/71 dated May 17, 2023 read with Clause 5.1 of the SEBI Circular no. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, stand established.

C. <u>Clients order placement and call recordings</u>:

39. It was observed that the call recordings provided by the Noticee were much lesser than the orders placed on respective days. On seeking clarification on the same, the Noticee had informed that they were not maintaining call record evidence in cases where clients call on direct mobile number of the traders instead of calling on Noticee's official numbers which gets recorded. Detailed write up was provided by the Noticee on Order Placement including call recording. It was deduced from the said write up that the Noticee doesn't have any system to record or preserve all calls made by clients and only preserved partial order placement evidences.

40. Further, during onsite inspection of 1 Associated Persons (AP), it was observed that order instruction received by clients through telephone were not recorded as part of its records.

Reply of Noticee

41. With regard to above observations, Noticee *inter alia* submitted that in its earlier reply to SEBI Inspection officials, it had informed of the cause due to which the call recordings for certain dealers could not be maintained, however other necessary steps have always been ensured to confirm that there are no unauthorised trades carried out in the clients trading account and have also maintained certain documentary evidences as defined in SEBI Circular dated March 2018 to ensure the compliance of the said circular and was also taken on record by SEBI Officials.

42. As a part of its regular compliance, the necessary call records have always been maintained except few cases wherein the trading calls of the clients were taken on mobile number of dealers. Moreover, it was not specifically mentioned in the circular that the trading calls of the clients received on mobile numbers can be kept on record and hence due to misunderstanding the same were not recorded. Had this been a clear guideline then all the call records received on the dealer's mobile number would have been saved. However, it has now understood the circular and have taken the corrective steps to at least maintain the trading calls for order placement in any of the form which can suffice the requirement.

43. Noticee further submitted that in order to comply with the relevant guidelines on maintenance of call recordings of client's order placement and also to comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the call recordings maintenance and preservation of the said records for all future references to ensure that there is no operational risk.

Findings

44. I note that SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 provides that to strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of physical record written & signed by client, telephone recording, email from authorized email id, log for internet transactions, record of messages through mobile phones and any other legally verifiable record.

45. I find that Noticee has accepted the violation and admittedly submitted that in its earlier reply to SEBI, it had informed of the cause due to which the call recordings for certain dealers could not be maintained, however other necessary steps have always been ensured to confirm that there are no unauthorised trades carried out in the clients trading account. Noticee further submitted that as a part of its regular compliance, the necessary call records have always been maintained except few cases wherein the trading calls of the clients were taken on mobile number of dealers. Noticee has now placed a dedicated team to ensure proper control over the call recordings maintenance and preservation of the said records for all future references to ensure that there is no operational risk.

46. Further, I note that the Noticee's submission that it was not specifically mentioned in the circular that the trading calls of the clients received on mobile numbers can be kept on record and hence due to misunderstanding the same were not recorded and had there been a clear guideline then all the call records received on the dealer's mobile number would have been saved cannot be accepted as the SEBI circular dated March 22, 2018 clearly stipulates that brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of telephone recording.

47. With respect to the submission of the Noticee that in order to comply with the relevant guidelines on maintenance of call recordings of client's order placement

and also to comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the call recordings maintenance and preservation of the said records for all future references, I note that the Administrative Warning letter dated February 28, 2024 issued by SEBI was only w.r.t. the inspection findings related to client registration process & UCC verification and reporting and short collection of margin. The allegation in the instant case differs from the above findings of inspection for which said Administrative Warning was issued by SEBI.

48. In view of the above, I hold that the allegation that Noticee has violated the provisions of Clause 34.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/CIR/2023/71 dated May 17, 2023 read with Clause III of SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, stand established.

D. <u>Terminal verification and certification</u>:

49. Associated Persons (APs) i.e. persons associated with the registered stock broker, who are involved in or deal with "Assets" or “funds of investors or clients", "Redressal of investor grievances", "Internal controls or risk management", “Activities having a bearing on operational risk", are required to have a valid certification from the National institute of Securities Market (NISM). i.e. NISM-Series - VII Securities Operations and Risk Management Certification. It was alleged in the SCN that 10 Associate Persons with Noticee did not have valid NISM Series VII Certification i.e. Securities Operations and Risk Management (SORM) Certification and it had expired before the inspection period i.e. April 2022.

50. Further, it was alleged that the trading terminal operators named Aloke Saraogi, Santosh Kumar Agarwal and Rajat Rai Saraogi did not have required valid Certification of NISM.

Reply of Noticee

51. With respect to above allegations, Noticee *inter alia* submitted that it was under the impression that for operating terminals in the capital market segment there is no

requirement on the NISM certification and hence were not obtained as part of the necessary compliance requirement and was well discussed during the onsite inspection conducted by the SEBI officials.

52. As a part of its regular compliance, the necessary Certifications have always been obtained for other segments and also the required NISM VII in the head office who were dealing with client's assets as per the circulars issued in this regard.

53. Noticee further submitted that in order to comply with the relevant guidelines on obtaining the Certification requirements for 10 APs and other 3 cases, the necessary certification has been obtained post inspection to ensure compliance and comply with the Administrative Warning letter issued by SEBI. It has now placed a dedicated team to ensure proper control over the operations of all terminals operated at branches/AP and Head office to ensure compliance with the certification requirement as well so as to ensure that there are no such activities carried out having bearing on the Operational Risk.

54. Noticee further submitted that the required certification of all the deficient cases have been obtained and Noticee furnished the copies of certifications.

Findings

55. As per SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 an Associated Person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary. Further, SEBI Circular No. SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010 provides that the approved users and/or sales personnel of Authorised Persons shall have the necessary certification of the respective segments at all points of time.

56. I note that Noticee has accepted the violation that 10 APs with Noticee and 3 trading terminal operators were not having valid NISM Certification during

inspection period and submitted that it was under the impression that for operating terminals in the capital market segment there is no requirement on the NISM certification and hence were not obtained as part of the necessary compliance requirement.

57. Noticee further submission that in order to comply with the relevant guidelines on obtaining the Certification requirements for 10 APs and other 3 cases, the necessary certification has been obtained post inspection to ensure compliance is not acceptable as the rectification of error post inspection does not absolve Noticee from violation that persisted during the inspection period.

58. With respect to the submission of the Noticee that in order to comply with the relevant guidelines on obtaining the Certification requirements for 10 APs and other 3 cases, the necessary certification has been obtained post inspection to ensure compliance and comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the operations of all terminals operated at branches/AP and Head office to ensure compliance with the certification requirement, I note that the Administrative Warning letter dated February 28, 2024 issued by SEBI was only w.r.t. the inspection findings related to client registration process & UCC verification and reporting and short collection of margin. The allegation in the instant case differs from the above findings of inspection for which said Administrative Warning was issued by SEBI.

59. In view of the above, I hold that the allegation that Noticee has violated the provisions of Clause 2 of SEBI notification no. LAD-NRO/GN/2010-11/21/29390 dated December 10, 2010 read with Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Clause 2(ii) of SEBI Circular No. SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010, stand established.

E. ***Control system over Branch/AP:***

60. It was alleged in the SCN Noticee had not inspected at least 30% of its active APs during the inspection period.

Reply of Noticee

61. With respect to above allegations, Noticee *inter alia* submitted that in its earlier reply to SEBI Inspection officials, it had informed of the cause due to which the Inspection of certain branches/AP were not conducted during the period April 2022 to June 2023 which is duly recorded by the SEBI Inspection officials.

62. As a part of its regular compliance, the necessary inspections have always been carried out to ensure that there is no operational risk and only during this period there were no inspections carried out and the necessary cause to the effect has already been clarified

63. Noticee further submitted that in order to comply with the relevant guidelines on conducting inspections of at least 30% of its Branches/AP, the necessary required Inspection were immediately conducted to also comply with the Administrative Warning letter issued by SEBI. It has now placed a dedicated team to ensure proper control over the operations of all branches/AP and necessary visits including a telecall to clients associated with branches/AP and inspection is conducted to ensure that there are no such activities carried out having bearing on the operational risk.

64. Noticee further stated that the inspection of branches/APs which were carried out during the Financial Year 2023-24 and Noticee furnished the inspection reports of branches/APs.

Findings

65. As per SEBI Circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 stock broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them.

66. I note that Noticee has accepted the violation that it had not inspected at least 30% of its active APs and submitted that in its earlier reply to SEBI Inspection officials, it had informed of the cause due to which the Inspection of certain branches/AP were not conducted during the period April 2022 to June 2023. Noticee further stated that the inspection of branches/APs which were carried out during the Financial Year 2023-24 and furnished the inspection reports of branches/APs. In this regard, I note that it does not absolve the Noticee from the violation that persisted during inspection period.

67. Noticee's further submissions that it has now placed a dedicated team to ensure proper control over the operations of all branches/AP and necessary visits including a telecall to clients associated with branches/AP and inspection is conducted to ensure that there are no such activities carried out having bearing on the operational risk and in order to comply with the relevant guidelines on conducting inspections of at least 30% of its Branches/AP, the necessary required inspection was immediately conducted can only be considered as mitigating factors while deciding the amount of penalty.

68. With respect to the submission of the Noticee that in order to comply with the relevant guidelines on conducting inspections of at least 30% of its Branches/AP, the necessary required inspection was immediately conducted to also comply with the Administrative Warning letter issued by SEBI, it has now placed a dedicated team to ensure proper control over the operations of all branches/AP and necessary visits including a telecall to clients associated with branches/AP and inspection is conducted, I note that the Administrative Warning letter dated February 28, 2024 issued by SEBI was only w.r.t. the inspection findings related to client registration process & UCC verification and reporting and short collection of margin. The allegation in the instant case differs from the above findings of inspection for which said Administrative Warning was issued by SEBI.

69. In view of the above, I hold that the allegation that the Noticee violated the provisions of Clause 32.7.5 of the of the SEBI Master Circular

SEBI/HO/MIRSD/MIRSD-PoD1/CIR/2023/71 dated May 17, 2023 read with Clause 7 (e) of Annexure -1 of SEBI Circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009, stand established.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956?

70. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions of SEBI Regulations, Notification and Circulars on account of mis-utilisation of clients' fund, non-settlement of clients funds on quarterly/monthly basis, not maintaining the clients order placement and call recordings, failure in terminal verification & certification and failure in control system over Branch/AP.

71. I note that the object of inspection of the books of accounts and records of stock broker is to monitor the compliances and identify non-compliances, if any, with respect to process, procedure and systems prescribed through various provisions of the SC(R) Act, 1956, SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions of SEBI Regulations, Notification and Circulars as mentioned in table no. 1 at page no. 2 to 3 of this order.

72. I find from the observations made in the inspection report and other material available on record that the Noticee has failed to adhere to high standards of service to its clients. The aforesaid violations make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act, 1992 and section 23D of the SC(R) Act, 1956.

73. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC)

wherein it was *inter-alia* observed 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...".*

74. Therefore, the aforesaid violations make the Noticee liable for penalty under Section 15 HB of the SEBI Act, 1992 and section 23D of the SC(R) Act, 1956. The contents of the said provisions of law is reproduced herein below:

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.*

SC(R) 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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

75. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992 and Section 23-J of the SC(R) Act, 1956, which reads as under: -

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty

***15J** While adjudging quantum of penalty under 15-I 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.]

SC(R) Act, 1956

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

23J. While adjudging the quantum of penalty under section 12A or section 23-I, 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.

[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.]

76. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SEBI Regulations, Notification and Circulars is not available. With respect to the repetitive nature of the default, I

do not find anything on record. The inspection findings bring out a number of instances where the Noticee has not been complying with the requirements of the SEBI Regulations, Notification and Circulars as mentioned hereinabove. Noticee was under a statutory obligation to abide by the provisions of the SEBI Regulations, Notification and Circulars, which it failed to do during the inspection period. The conduct of the Noticee in not complying with the provisions of SEBI Regulations, Notification and Circulars cannot be taken lightly. The violations by the Noticee are serious, therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence. Since, the number of instances of violation is less in some of the violations established and further corrective action has also been taken by the Noticee post inspection, the same is being taken as a mitigating factor while deciding the amount of penalty.

ORDER

77. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15-J of the SEBI Act, 1992 and Section 23-J of the SC(R) Act, 1956 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules and under Section 23-I of the SC(R) Act, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the following monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956, on the Noticee:

Sr. No.	Penalty Provisions	Amount of penalty (in ₹)
1	Section 15HB of SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakhs only)
2	Section 23D of SC(R) Act, 1956	₹ 4,00,000/- (Rupees Four Lakhs only)
Total amount of penalty		**₹ 7,00,000/-** **(Rupees Seven Lakhs only)**

In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

78. 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

79. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

80. In terms of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai **SHASHI KUMAR VALSAKUMAR**

Date: August 07, 2024 **ADJUDICATING OFFICER**