BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/GD/2022-23/21468)

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 UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECTION 19H OF DEPOSITORIES ACT 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In the matter of **Moneylicious Securities Private Limited**

PAN: AAICM0935B

SEBI registration no. INZ000006031

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted inspection of books of accounts and other records of Moneylicious Securities Private Limited (hereinafter referred to as "Noticee"), stock broker and commodity derivatives broker bearing registration no. INZ000006031.Noticee is registered as a member with the BSE Limited *(*hereinafter referred to as ***"BSE"),*** the National Stock Exchange of India Ltd. *(*hereinafter referred to as ***"NSE***"), the Multi Commodity Exchange of India Ltd. and the Indian Commodity Exchange Ltd. The Noticee is also registered as a depository participant *(*hereinafter referred to as ***"DP")*** with SEBI bearing registration no. INDP2892016. Further, it is also registered with Central Depository Services Ltd.

2. SEBI along with officials of stock exchanges and depositories conducted an inspection of books of accounts, records and other documents pertaining to the activities of the Noticee as a stock broker, a commodity derivatives broker and a DP to examine the compliance of the Noticee with the provisions of securities law, rules, regulations, bye laws and circulars.

3. The inspection was carried out at the correspondence address of the Noticee *i.e.,* office no. 102 B, 1st Floor VTM-2, Mehra Industrial Estate, Andheri Kurla Road, Sakinaka, Andheri East, Mumbai-400072 between the period of October 14, 2019 to October 18, 2019. The inspection was conducted for the period from April 2018 to October 18, 2019 (hereinafter referred to as the ***"Inspection Period/IP")***.

4. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee under the provisions of section 15HB of the SEBI Act, section 23D of the SCRA and section 19G of the Depositories Act for the alleged violation of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:

   a. **Misuse of client funds**: Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ***"SCRA"***) read with Clause 1 of the SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as the "***1993 Circular***") and clause 3 of annexure of the SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter referred to as the "***2016 Circular***").

   b. **Non-segregation of client funds**: Section 23D of SCRA read with clause 1 of the 1993 Circular.

   c. **Incorrect reporting of weekly enhanced supervision data:** Clause 3.2 of the 2016 Circular.

   d. **Noncompliance of net worth requirement and incorrect reporting of net worth:** Regulation 9(g) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the "***Stock Broker Regulations***") and clause 6.1.1(j) of the 2016 Circular read with rule 33 of Chapter III of the National Stock Exchange of India Limited Rules (hereinafter referred to as the "***NSEIL Rules***") and NSE circular NSE/MEMB/2739 dated July 30, 2001 (hereinafter referred to as the "***2001 NSE Circular***").

e. **Incorrect levy of interest for default in payment of dues by beneficial owner:** Clause 19 of annexure to SEBI circular CIR/MIRSD/12/2013 dated December 04, 2013 (hereinafter referred to as the ***2013 Circular***") read with CDSL communique no CDSL/OPS/DP/POLCY/2017/318 dated June 28, 2017 (hereinafter referred to as the "***2017 CDSL Communique***").

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI in exercise of the powers under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **"SEBI Act"**) has appointed Shri Prasanta Mahapatra as the adjudicating officer under section 15-I of the SEBI Act read with rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Adjudication Rules"**), section 23-I of the Securities Contracts (Regulation) Act 1956 (hereinafter referred to as "SCRA" read with rule 3 of the Securities Contracts (Regulation) (Procedure of Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **"SCRA Adjudication Rules"**) and section 19-H of the Depositories Act, 1996 (hereinafter referred to as the "**Depositories Act**") read with rule 3 of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **"Depository Adjudication Rules"**) to inquire into and adjudge against the Noticee under section 15HB of the SEBI Act, section 23D of the SCRA and section 19G of the Depositories Act, for the alleged violations as committed by the Noticee. Subsequently, upon transfer of Shri Prasanta Mahapatra, vide order dated June 06, 2022, the matter was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A Show Cause Notice ref. SEBI/EAD-8/PMPA/24045/1/2021 dated September 15, 2021 (hereafter referred to as "SCN") was served on the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 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 on it under the provision of section 15HB of the SEBI Act, 1992 and 23D of SCRA,1956 and section 19G of the Depositories Act. I note that SCN served was duly delivered to the said Noticee vide speed post Acknowledgement due and vide email dated September 15, 2021.

7. The allegations levelled against the Noticee in the SCN are as follows:
   - ***A. Misuse of client funds in Equity Market and Commodity Market***
   - ***B. Non-segregation of client funds***
   - ***C. Incorrect reporting of weekly enhanced supervision data***
   - ***D. Non-compliance of net worth requirement and incorrect reporting of net worth***
   - ***E. Incorrect levy of interest for default in payment of dues by beneficial owner***

8. Vide email dated October 11, 2021, Noticee has requested for additional time for submitting reply to the SCN which was acceded to. Noticee vide email dated October 29, 2021 forwarded reply letter dated October 27, 2021 to the SCN. Upon transfer of case to undersigned, hearing opportunity was granted to the Noticee on August 30, 2022 vide email dated August 11,2022. However Noticee did not avail of the said hearing opportunity. In the interest of natural justice, vide email dated September 05, 2022 Noticee was provided with another hearing opportunity on September 09, 2022. However, Noticee again failed to avail of the said hearing opportunity. Vide email dated October 03, 2022, Noticee was granted a final hearing opportunity on October 07, 2022. On the scheduled date of hearing, Authorized representatives of the Noticees appeared on behalf of Noticees. The Authorized representatives reiterated the contents of reply submitted vide email dated October 27, 2022.

9. The Key submissions made vide email dated October 27, 2022 are as under:

Misuse of client funds in Equity Market and Commodity Market

a. *We would like to reiterate once again that we had obtained trading membership recently at that point of time and so were relatively new to fully comprehend circulars related to reporting of Enhanced Risk Based Supervision mechanism. With limited understanding we considered Securities valuation along with Bank Balances and reported the amounts to the Exchange. The submissions done were not flagged or observations raised thus we presumed that our submissions were correct. Moreover, our existing back-office system generated a wrong calculation considering securities valuation. We hereby humbly state that the submissions were inadvertently reported incorrectly to the exchanges.*

b. *We would also like to state that the non-compliances were majorly observed in the non-reporting dates of the Exchanges, and we had complied for 50% of the instances despite lack of clarity for reasons mentioned above. We would like to further offer explanations / clarifications / workings along with supporting documents if any for all such 19 instances wherein non-compliances were observed in Exhibit 1*

c. *The table depicting the revised value of G is hereby produced below for a quick reference:*

Sr. No.	***Date***	***Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges***	***Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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***	***Early Pay In of Funds (Not considered by regulator)***	***Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)***	***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.***
		A	***B***	***B1***	***C***	***G***
1	15-Oct-18	22,28,449.79	5,22,62,061.00		5,42,10,608.79	*2,79,902.00*

Sr. No.	Date	*Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges*	*Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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*	*Early Pay In of Funds (Not considered by regulator)*	*Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)*	*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.*
		A	*B*	*B1*	*C*	*G*
2	16-Oct-18	4,70,572.50	5,22,62,061.00		5,63,57,903.00	*-36,25,269.50*
3	19-Oct-18	3,75,411.07	5,32,62,061.00	79,00,000.00	5,88,98,825.00	*26,38,647.07*
4	01-Mar-19	37,116.55	5,86,48,387.40		6,77,07,908.82	*-90,22,404.87*
5	05-Mar-19	1,49,283.05	5,86,46,437.42		6,94,06,985.12	*-1,06,11,264.65*
6	07-Mar-19	6,21,824.43	5,38,49,633.02		6,89,83,697.00	*-1,45,12,239.55*
7	08-Mar-19	1,29,728.20	5,40,49,633.02		7,23,32,062.04	*-1,81,52,700.82*
8	11-Mar-19	2,25,360.35	5,94,49,632.97		7,72,94,365.09	*-1,76,19,371.77*
9	12-Mar-19	3,50,673.91	5,40,93,152.97		7,28,09,185.90	*-1,83,65,359.02*
10	13-Mar-19	9,71,735.26	5,48,87,870.97		7,22,23,505.41	*-1,63,63,899.18*
11	14-Mar-19	7,16,871.59	6,08,44,350.97		7,31,87,117.11	*-1,16,25,894.55*
12	15-Mar-19	2,17,201.81	5,40,44,350.97		7,14,55,257.32	*-1,71,93,704.54*
13	18-Mar-19	8,49,286.90	5,46,49,632.97		7,19,18,351.15	*-1,64,19,431.28*
14	19-Mar-19	3,25,182.33	5,40,48,309.22		6,80,80,796.24	*-1,37,07,304.69*
15	20-Mar-19	5,66,519.07	5,67,49,043.22		6,97,10,083.39	*-1,23,94,521.10*
16	22-Mar-19	2,99,368.77	5,37,51,016.51		6,71,46,016.43	*-1,30,95,631.15*
17	25-Mar-19	11,65,965.04	5,92,58,566.72		6,77,16,945.31	*-72,92,413.55*
18	26-Mar-19	2,15,922.32	5,54,58,414.98		6,76,07,147.43	*-1,19,32,810.13*
19	27-Mar-19	6,90,057.99	5,35,84,826.45		6,52,99,345.83	*-1,10,24,461.39*

d. *From the aforesaid table and Exhibit 1, it is demonstrated that the learned official has not considered Early Pay-in of funds made to the Exchanges for 1 day namely October 19, 2018 amounting to Rs 79,00,000 into its working and thus resulting into positive vale of revised value of G to the tune of Rs. 26,38,647/- respectively. The document substantiating the said Early Pay-in of funds is outlined in Exhibit 1. There also seems to be an error in computing amounts lying with BSE Exchanges to the tune of Rs*

10,00,000, as the regulator has considered cash and cash equivalent to the tune of Rs 10,00,000 instead of Rs. 20,00,000 available with BSE.

e. *There is also certain revision of Creditors balances owing to non-consideration of correct figures of un-reconciled bank receipts and payments. This has also resulted into the decrease in the amount of creditors balances amounts for various days. The supporting for the same are also attached for your reference in Exhibit 1. There have been also instances where in difference in bank figures/collateral deposited with CC and CM was also noted and the proof for the same is produced under Exhibit 1.*

f. *After taking into account the aforesaid explanations, the revised working of shortfall in Value of G resulted into decrease in no. of days from 19 days to 17 days. Further the maximum negative Value of G has been revised from 1.94 crore as per the working of the learned officials to Rs. 1.83 crore as per Exhibit 1.*

g. *Further as a measure we have changed the reporting mechanism for Enhanced Risk Based supervision mechanism as per the guidance of the learned inspecting official and are submitting correct figures henceforth to the regulators. This showcases the true intent to comply with the said compliance framework and have placed adequate precautions that value of G always remains positive and in manner as per the exchange prescribed method.*

h. *We humbly request your good self to be mindful of the fact that the observation noted was in the initial years of broking operations and the initial team were not well equipped with the understanding of various calculations and reporting. Upon realising it, we took various steps including a. hiring right talent across various departments namely Operations, Compliance, Risk and Finance, b. Changing our back-office software, c. putting in place various checks and internal controls. We have ensured that such issues are not repeated. We request the regulator to place a pragmatic view and plea for lenient act for the said observation and we hereby confirm that such non-violation shall not be repeated henceforth.*

i. *The observation noted by the learned inspecting official does not belong to M/s Moneylicious Securities Pvt. Ltd. The said observation belongs to M/s Moneylicious Capital and Advisory Services Pvt. Ltd. The said company Moneylicious Capital and*

Advisory Services Pvt. Ltd had already initiated the process to surrender its trading membership with MCX on 16th August 2019. Further it has already ensured that all its creditors have been paid in full in March 2019 except for 5 clients who did not update their latest bank details with us. Subsequently we contacted those clients and settled their dues on 28th June 2019. We would humbly like to state that there are no creditors outstanding in our books of accounts and have met the intent to pay all our creditors in true spirit and factual.We hereby plea to the regulator to kindly close the matter judiciously at its end.

Non-segregation of client funds

j. *First and foremost we would humbly like to state that we have maintained separate bank accounts tagged as Client Bank, Own Bank and Settlement Accounts. We have always maintained segregated bank accounts at our end. However, there are transfers made from Client Bank to Own Bank Account and vice-versa, Own Bank to Settlement Bank Account and vice-versa, FD's created out of Own Bank Account and placed with Clearing Corporation / Clearing Member etc. We would like to highlight that the aforesaid explanations were not considered in its entirety.*

k. *The snapshot from transfers made from Client Bank Account to Own Bank Account and vice-versa are outlined below:*

Sr. No.	***Client Bank & Account No.***	***Particulars***	***Amount (In Crores)***
1	*MCX Client Account (7391)*	*Transfers (Outflow) made from MCX Client Bank Account to All Own Bank Accounts*	*+34.30*
2	*MCX Client Account (7391)*	*Transfers (Inflow) received from All Own Bank Accounts to MCX Client Bank Account*	*-36*
3	*NSE F&O Client Account (5966)*	*Transfers (Outflow) made from NSE F&O Client Bank Account to All Own Bank Accounts*	*+27.37*
4	*NSE F&O Client Account (5966)*	*Transfers (Inflow) received from All Own Bank Accounts to NSE F&O Client Bank Account*	*-19.04*
5	*NSE Cash Client Account (5965)*	*Transfers (Inflow) made from NSE Cash Client Bank Account to All Own Bank Accounts*	*+50.32*
6	*NSE Cash Client Account (5965)*	*Transfers (Outflow) received from All Own Bank Accounts to NSE Cash Client Bank Account*	*-19.82*

		Total Net Amount transferred (Outflow) from Client Bank to Own Bank Accounts (A)	*37.13*

From the aforesaid table it can be summarized that there were net transfers (Outflow) from Client Bank to Own Bank Accounts to the tune of Rs. 37.13 Crores as per the calculation of the learned inspecting officials. The detailed explanation for the aforesaid transfers is outlined in Exhibit 2.

l. We also would like to submit further that there were transfers made from Settlement Bank Accounts / NSE CD Client Bank account to Own Bank Accounts and vice-versa which are legitimate in nature were not considered. Also, there were FD's created out of Own Bank Account for the funds transferred and placed with Clearing Member / Clearing Corporations which are legitimate in nature were also not considered. The detailed explanation is outlined in Exhibit 2. The table depicting such aforesaid transfers (Outflow) are outlined below:

Sr. No.	***Own Bank & Account No.***	***Particulars***	***Amount (In Crores)***
1	*Own Bank Account (5549)*	*Net Outflow made from Own Bank Account to All Settlement Bank Accounts / NSE CD Client Bank Accounts (6109)*	*-2.33*
2	*Own Bank Account (5549)*	*FD Created out of Own Bank account and placed with CC/CM (Outflow)*	*-8.20*
3	*Own Bank Account (5967)*	*Net Outfllow made from Own Bank Account to All Settlement Bank Accounts / NSE CD Client Bank Accounts (6109)*	*-14.43*
4	*Own Bank Account (5549)*	*FD Created out of Own Bank account and placed with CC/CM (Outflow)*	*-0.38*
5	*Own Bank Account (67842)*	*FD Created out of Own Bank account and placed with CC/CM (Outflow)*	*-7.45*
		Total amounts utilized for legitimate purpose out of Own Bank Accounts (B) (Outflow)	*-32.79*

From the aforesaid tables it can be derived that net excess transfers (Outflow) were made from Client Bank account to Own Bank Account (Outflow) to the tune of Rs. 4.34 crores (C=A+B) during the inspection period.

As allowed, the broker can legitimately transfer in addition to the above the following amounts in addition from Client Bank Amount to Own Bank Account.

Sr. No.	Particulars	Amount (In Crores) (April 2018 to March 19	Amount (In Crores) (April 2019 to March 15, 2019)	Total Amount in Crores
1	Brokerage	2.04	0.99	3.03
2	GST	0.49	0.26	0.75
3	Stamp Duty	0.24	0.19	0.43
4	Transaction Charges	0.35	0.27	0.62
5	SEBI TO Charges	0.02	0.01	0.03
6	Other Charges	0.30	0.19	0.49
7	STT/CTT	0.82	0.58	1.40
8	Delay Payment Charges	0.15	0.04	0.19
	Total Charges levied to clients during the period April 2018 to September 15 2019 (D)			6.95

Hence from the above it can be concluded that the Total value of charges levied to the clients during the inspection period (D) is greater than the Net Excess transfers made from Client Bank Account to Own Bank Account (C) by Rs. 2.61 crore. (Rs.6.95 crore - Rs. 4.34 crore). The fund transfers are legitimate in nature and are made from the Client Bank Accounts to Own Bank Accounts. The proof substantiating to the charges levied to the clients are outlined in Exhibit 2.

From the above it is well substantiated that proper segregation of bank accounts has been maintained and the transfers are made as per legitimate purpose only.

Also, there was observation made that there were receipts / payments made to Non-clients from Client Bank Account. All the said instances are of clients registered in the MCX segment and which were not considered by the learned team. We are affixing snapshot of MCX Portal demonstrating the said clients as registered in commodity segment as Exhibit 2.

From all the aforesaid explanations it can be concluded that there is proper segregation made between client bank and own bank accounts and the transfers are for legitimate purpose. Also, the transfers made from Client Bank Account are to REGSTERED CLIENTS only and there are no such instances of transfers made to any NON CLIENTS. We hereby plead to the regulator to relieve us from the said observation as the necessary compliance has already been ensured.

Incorrect reporting of weekly enhanced supervision data

m. *There have been certain differences in reporting of data under Enhanced Risk Based Supervision as observed by the learned inspecting official. Further on the aforesaid reporting date namely September 27, 2019 wherein the details was verified, the company has not violated any of the principles of Enhanced Risk Based Supervision Mechanism. The revised value of G is positive on the said date as per the working of the learned inspecting official to the tune of Rs 2.82 crores.*
n. *This depicts that the rectification measure was in place and the true intent of the company in complying with the provisions of Enhanced Risk Based Supervision has been ensured.*
o. *We request the regulator to have a pragmatic view and relieve us from the penal provision if any since we have complied with all the principles of Enhanced Risk Based Supervision Mechanism.*

Non-compliance of net worth requirement and incorrect reporting of net worth

p. *We had already initiated the application of undertaking Change in Control along-with increase in share capital from Rs. 1.35 crore to 5 crore in our company in the year 2018, to which the requisite prior approval was received from SEBI office on February 21, 2019. A 6-month window was provided to honour the said increase in share capital which was duly executed by June 2019. Further there were certain deductions made as Doubtful Debts to the tune of Rs 70 lakhs which as per our understanding did not qualify as doubtful debts. Had we been aware of the said deductions we would have taken steps to meet the Minimum Net-worth Requirement of 1 crore by March 31, 2019 itself. However, the said requirement got fulfilled by June 30, 2019. The relevant supporting such as Prior approval of SEBI received on February 21, 2019 and the bank statement highlighting the resultant fund infusion of Rs. 3.65 crore in the month of June 2019 is attached in Exhibit 3. We hereby humbly plead to the regulator to have a lenient view on this matter.*

Incorrect levy of interest for default in payment of dues by beneficial owner

q. *We have not levied any interest to any of our BO's on the outstanding amounts payable on DP charges during the said inspection period. Further these were the old forms wherein the said clause of levying interest @ 21% p.a. remained unaltered, instead of charging not exceeding @ 13% p.a. Further in the new forms it was mentioned to charge* *interest not exceeding 13% p.a. on DP charges. We hereby humbly plead the regulator to close the matter.*

r. *Being a responsible member, we are hopeful that the regulator will have a considerate view to the fact that we were a relatively new member at the time of onsite inspection. We have defined and implemented processes, policies, to adhere to the changing compliances over these years. We have learned that to grow and meet the regulatory requirements we need to have best practices in place. We can claim that our current internal processes and policies are fully compliant, and we ensure that all regulatory changes are implemented and adhered to.*

s. *We would also like to humbly state that the said inspection was the first inspection for us. It provided us clarity and helped us in improving our processes, compliance standards and internal controls. We would again humbly plead to have a considerate view on the matter based on the facts presented above*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the facts and material available on record. I will now proceed with my findings on the allegations levelled against the Noticee in the SCN on the basis of documents/evidence available on record. The issues that arise for consideration in the present case are as follows:
    I. Whether the Noticee has violated aforesaid provisions of Acts, SEBI Regulations and SEBI circulars.
    II. Does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 23D of SCRA and 19G of the Depositories Act?
    III. If the answer to Issue No. II is in affirmative, then what should be the quantum of monetary penalty?

11. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are provided hereunder:

SCRA

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 [1][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees].*

1993 Circular

*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.*

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member –

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than –

[1] Substituted for the words "liable to a penalty not exceeding one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

i. money held or received on account of clients;
ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;
iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;
iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

<u>D] What moneys to be withdrawn from "clients account".</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 above.

<u>E] Right to lien, set-off etc., not affected</u>. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

<u>2016 Circular</u>
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|
6. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies
6.1.1. Monitoring criteria for Stock Brokers
j. In case stock broker shares incomplete/wrong data or fails to submit data on time

<u>Stock Brokers Regulations</u>

Conditions of registration

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*
(g) he shall at all times maintain the minimum networth as specified in Schedule VI

<u>NSE Rules</u>

Chapter III Trading Membership

Continued Admittance

(33) *The relevant authority shall from time to time prescribe conditions and requirements for continued admittance to trading membership which may, inter alia, include maintenance of minimum networth and capital adequacy, renewal of certification, if any, etc. The trading membership of any person who fails to meet these requirements shall be liable to be terminated.*

<u>2001 NSE Circular</u>

All trading members are required to submit the following returns every year :
2. Net worth Certificates (as per annexure C-1) duly certified based on audited accounts. (Please refer to our Circulars Ref.NSE/MEM/00184 dated January 22, 1997 and Ref. NSE/MEM/475 dated March 4, 1998 with regard to computation of net worth.)

In case of trading members who trading cum clearing members (TM-CM) on Futures & Options segment, they are required to submit the networth certificate as per the method of computation prescribed by Dr L.C. Gupta Committee Report (enclosed herewith).

2013 Circular

Default in payment of charges

19. In event of Beneficial Owner committing a default in the payment of any amount provided in Clause 5 & 6 within a period of thirty days from the date of demand, without prejudice to the right of the DP to close the demat account of the Beneficial Owner, the DP may charge interest at a rate as specified by the Depository from time to time for the period of such default.

2018 CDSL Communique

Interest charge to be levied by DPs for nonpayment of dues

DPs are advised to note that as per clause no. 19 of Rights and Obligation of Beneficial Owner and Depository Participant as prescribed by SEBI and Depositories, DPs have the right to levy interest on the Beneficial Owner [BO] for non-payment of dues at a rate as specified by the Depository from time to time for the period of such default.

Some DPs have sought guidance from us regarding the rate of interest which can be charged by them on non-payments of dues by the BO. It is hereby clarified that DPs may levy an interest of not more than 13% p.a. for default in the payment of dues by BO. DPs are advised to take note of the same.

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

Issue I: Whether the Noticee has violated aforesaid provisions of Acts, SEBI Regulations and SEBI circulars.

13. At the outset, I find that there are five major violations to be established for attracting the provisions stated in Issue I in the instant matter: (i) Misuse of client funds; (ii) Non-segregation of client funds; (iii) Incorrect reporting of weekly

enhanced supervision data; (iv) Non-compliance of net worth requirement and incorrect reporting of net worth; and (v) Incorrect levy of interest for default in payment of dues by beneficial owner.

Misuse of client funds in Equity Segment

Allegation in SCN:

(ii) *As per the provisions of the 2016 Circular, the total available funds of the shareholder (i.e., cash and cash equivalents) with the stock broker (represented by "A") and with the clearing corporation/clearing member (represented by "B") (i.e., A + B) should always be equal to or greater than clients' funds as per ledger balance (represented by "C") maintained by the stock exchange (i.e. clients funds should always be A+B > C). The difference between A+B and C is referred to as G (i.e., G= (A+B)-C).*

(iii) *If the difference "G" is negative (i.e., C > A+B) then the total available funds with the stock broker is less than the ledger credit balance of clients maintained by the stock exchange which indicates utilization of client's funds for other purposes (i.e, either for settlement obligations of debit balance clients or for the stock brokers' own purposes).*

(iv) *During the inspection, analysis was undertaken by way of sampling to determine the total available client funds (i.e. cash and cash equivalents) with the Noticee and with the clearing corporation/clearing member.*

Equity market

(i) *In the equity market, a total of 38 trading days during the months of October 2018 and March 2019 were selected for calculating the values of A, B, C and G as defined in the 2016 Circular.*

(ii) *Taking into account the findings of the inspection and the 2020 June Reply, it was observed that the value of G was negative for 19 out of the 38 sample dates.*

(iii) *The details of calculation of aforesaid "A" "B", "C" and "G" values with respect to the equity market is enclosed as Annexure 2.*

(iv) *It was also observed that the amount of misutilisation in the abovementioned 19 instances ranges from Rs. 7.46 lakhs to Rs. 1.94 crore (refer to column G of Annexure 2).*

Findings:

14. In accordance with provisions of the 2016 circular, the total available funds of the shareholder (i.e. Cash and Cash Equivalents) with the stock broker (represented by A) and with the clearing corporation/clearing member (represented by B) (i.e. A+B) should always be equal to or greater than clients' funds as per ledger balance (represented by C) maintained by the stock exchange (i.e. client's funds should always be A+B>C). The G value is calculated as the difference between A+B and C.

15. During inspection, it was observed that the value of G was negative for 19 out of the 38 sample dates in Equity segment and the amount of misutilisation in the 19 instances ranges from Rs. 7.46 lakhs to Rs. 1.94 crore. Noticee has *interalia* stated that it was unable to fully comprehend circulars relating to the reporting of the 2016 circular's Enhanced Risk Based Supervision mechanism. Noticee further claims that an erroneous computation was produced when calculating the valuation of securities as a result of a back-office system.

16. Noticee in its reply had submitted its calculation for G value, creditors and cash and cash equivalents and also submitted evidences i.e. bank statement reflecting early pay in, exchange statements for 1 day namely October 19, 2018 amounting to Rs 79,00,000 which was not considered at the time of inspection. Noticee has also submitted that incorrect balances of creditors and cash and cash equivalents were taken during Inspection for October 15, 2018.

17. I note from the material available on record, on October 19, 2018, early pay in of fund was made by the broker and the same is verified from the bank statements submitted by the Noticee. For date October 15, 2018, Noticee has submitted cash

and cash equivalents of Rs 20,00,000 instead of Rs. 10,00,000 to be considered. The same is verified from the BSE statement annexed by the Noticee on the said date. The contentions of the Noticee can be accepted for the said two days. For the remaining days where violations continue has also been admitted by the Noticee. Therefore, the total no. of days where the value of G was negative is 17 out of 38 sample days. Thus, it is concluded that the Noticee has misutilized client funds which has resulted in violation of Section 23D of SCRA read with clause 1 of the 1993 Circular and clause 3 of Annexure of the 2016 Circular.

Misuse of client funds in Commodity Segment

Allegation in SCN:

(i) In the commodity market, a total of 42 dates were selected for calculating the values of "A", "B", "C" and "G" as defined in the 2016 Circular.

(ii) During the inspection, it was observed that the value of G was negative for all 42 instances out of 42 sample dates.

(iii) The details of the calculation of aforesaid "A" "B", "C" and "G" values with respect to the commodity market is enclosed as Annexure 3. From the above 42 instances, it was also observed that the amount of misutilisation ranges from Rs. 25.86 lakhs to Rs. 1.53 crore.

Findings:

18. As regards commodity segment, Noticee submitted that the violation belongs to M/s Moneylicious Capital and Advisory Services Pvt. Ltd. which has already initiated the process to surrender its trading membership with MCX on August 16, 2019. Noticee also submitted that all its creditors have been paid in full in March 2019.

19. I note from material available on record that the violation pertaining to misutilisation of client funds in Commodity Segment for 42 instances out of 42 sample is by another entity i.e. M/s Moneylicious Capital and Advisory Services Pvt. Ltd and not with the Noticee. I also note that the said entity is the associate of Noticee and was in the process of surrendering its trading membership with MCX. As regards instant

proceedings, no charge can be established against the Noticee. Therefore, I am not able to proceed with the said allegations.

20. In light of the above facts, violation of provisions of Section 23D of SCRA read with clause 1 of the 1993 Circular and clause 3 of Annexure of the 2016 Circular does not sustain.

Non-segregation of client funds

Allegation in the SCN:

(i) During the inspection, analysis with respect to segregation of client funds was carried out by examining the top three client bank accounts of the Noticee. In this regard, it was observed that there were 1611 instances of transfers from client bank accounts to non-client bank accounts and vice versa. During the IP, the total amount withdrawn was Rs. 68,47,11,065.21 and total amount deposited was Rs. 71,70,72,006.88 amounting to Rs. 140.18 crore.

(ii) Details of the aforesaid transfers is hereby enclosed as Annexure 4 (refer to the entries made under the name of "NSE Cash Client 000405115965" and "NSE F&O Clients 000405115966" in the sheet titled "non-clients").

(iii) In view of the above paragraph, it is alleged that the Noticee has failed to segregate client funds which has resulted in violation of Section 23D of SCRA read with clause 1 of the 1993 Circular.

Findings:

21. In accordance with clause 1 of the 1993 Circular 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. The said circular also indicates what money can be paid into client account and what money can be withdrawn from client account.

22. I note that in the instant case, charge was primarily that 1611 instances of transfers from client bank accounts to non-client bank accounts and vice versa was observed. It is noted from material available on record that Noticee has not been able to submit any evidence regarding the 1611 instances of transfers.

23. Noticee in its reply has submitted its calculation and explanations of funds transferred from Client Bank Account to Own Bank Account and vice-versa, amounts utilized for legitimate purpose out of Own Bank Accounts and total Charges levied to clients during the period April 2018 to September 15 2019 which is irrelevant in the instant allegation made against Noticee and this explanation was has already been accepted in the inspection stage. Thus contention of the Noticee is immaterial.

24. In view of the above, I hold that Noticee has violated provisions of Section 23D of SCRA read with clause 1 of the 1993 Circular.

Incorrect reporting of weekly enhanced supervision data

Allegation in SCN:

(i) *As per the provisions of the 2016 Circular, stock brokers are required to submit certain data as on last trading day of every week to the stock exchanges on or before the next trading day.*

(ii) *During the inspection, the data as on September 27, 2019 was taken as sample for examining compliance with the aforesaid provision. It was observed from the inspection that the Noticee has reported incorrect data to the stock exchange for the aforesaid date. The details regarding the same are reflected in the table below:*

S.No	Particulars	Calculation arrived at during inspection (In Rs)	Balance reported by Noticee (In Rs)	Difference between the inspection findings and the data submitted by Noticee (in Rs)
1.	Total of day end balance in all client bank accounts	9,831,898.96	2,928,073.00	69,03,825.96
2.	Collateral deposited with exchanges & clearing member in form of cash and cash equivalents	311,127,563.32	385,254,661.00	-7,41,27,097.68

S.No	Particulars	Calculation arrived at during inspection (In Rs)	Balance reported by Noticee (In Rs)	Difference between the inspection findings and the data submitted by Noticee (in Rs)
3.	Total credit balance of all clients	292,694,784.96	297,442,489.00	-47,47,704.04
4.	Total debit balance of all clients	3,710,161.96	3,477,621.00	2,32,540.96
5.	Value of non funded portion of the bank guarantee	6,875,000.00	-	68,75,000.00
6.	Proprietary margin obligation	282,506.70	-	2,82,506.70
7.	Margin utilized for positions of credit balance clients	281,383,377.10	273,169,983.00	82,13,394.10
8.	Free/unblocked collateral deposited with clearing corporation & clearing member	97,313,153.04	115,834,679.00	-1,85,21,525.96

(ii) *In light of the difference in the amounts arrived at during inspection and the amounts submitted by the Noticee to the stock exchange for complying with the provision mentioned in (i) above, it is alleged that the conduct of the Noticee has resulted in violation of clause 3.2 of the 2016 Circular.*

Findings:

25. In accordance with 2016 Circular, stock brokers are required to submit certain data as on last trading day of every week to the stock exchanges on or before the next trading day.

26. During the inspection, the data as on September 27, 2019 was taken as sample for examining compliance with respect to reporting of weekly enhanced supervision

data. It was observed from the inspection that the Noticee has reported incorrect data to the stock exchange for the aforesaid date.

27. Noticee has submitted that the revised value of G is positive on the said date to the tune of Rs 2.82 crores.

28. I note that the charge committed by Noticee was incorrect reporting of weekly enhanced supervision data the data on September 27, 2019. In the instant case, the G value on the said date is immaterial. Therefore, I am not inclined to accept this contention of Noticee.

29. In view of the above, I hold that Noticee had violated the provisions of clause 3.2 of the 2016 Circular.

Non-compliance of net worth requirement and incorrect reporting of net worth

Allegation in SCN:

(i) As per regulation 9(g) read with Schedule VI of the Stock Broker Regulations, one of the conditions of granting registration to the stock broker is that the stock broker is required to maintain minimum net worth. It is observed that the minimum net worth required to be maintained by the Noticee is Rs 1 crore.

(ii) For the purpose of inspection, net worth of the Noticee as on March 31, 2019 was verified. During the inspection, it was observed that there is a difference between the net worth reported by the Noticee to the stock exchange and the calculation done by NSE with respect to the net worth of the Noticee. The details of the same are given below:

** Note: The figures mentioned in the table are unaudited figures of March 31, 2019.*

(iii) From the table above, it is observed that the net worth reported by the Noticee is Rs. 1.14 crore, whereas as per the NSE calculation, the net worth of the Noticee is Rs 0.49 crore which is less than the minimum regulatory requirement applicable to the Noticee.

In view of the difference in amounts reflected in the table above, it is alleged that by not complying with the requirement to maintain the minimum net worth and by reporting incorrect net worth to the stock exchange, the Noticee has violated regulation 9(g) of the Stock Brokers Regulations and clause 6.1.1(j) of the 2016 Circular read with rule 33 of Chapter III of the NSEIL Rules and 2001 NSE Circular.

Findings:

30. Stock Broker Regulations provides that the stock broker is required to maintain minimum net worth of Rs 1 crore. During inspection it was observed that the net worth reported by the Noticee is Rs. 1.14 crore, whereas as per the NSE calculation, the net worth of the Noticee is Rs 0.49 crore which is less than the minimum regulatory requirement applicable to the Noticee.

31. Noticee in its reply submitted that it has applied for increase in share capital to SEBI from Rs. 1.35 crore to 5 crores in the year 2018. Noticee further submitted that it was not aware of certain deductions made as Doubtful Debts to the tune of Rs 70 lakhs to be taken into account for calculation of Net worth.

32. I note from reply of the Noticee that it has admitted its mistake for not taking into account Doubtful Debts and advances of around Rs. 70 lakhs resulting in low net worth below the minimum threshold. Noticee further submitted evidence i.e. bank statements in support of its claim of infusing capital subsequently which shows that Noticee has taken steps to rectify the situation.

33. In view of the facts and admissions of the Noticee, I hold that the Noticee has violated provisions of regulation 9(g) of the Stock Brokers Regulations and clause 6.1.1(j) of the 2016 Circular read with rule 33 of Chapter III of the NSEIL Rules and 2001 NSE Circular

Incorrect levy of interest for default in payment of dues by beneficial owner

Allegation in SCN:

(i) As per the 2013 Circular and the 2017 CDSL Communique, DPs have the right to levy interest on the beneficial owner for non-payment of dues at a rate as specified

by the depository for the period of such default, which cannot exceed 13% per annum.

(ii) During inspection, it was observed that the terms and conditions mentioned in the tariff sheet of the Noticee provides that the DP can charge interest at the rate of 21% p.a. on outstanding or unpaid amount of the beneficial owner which is not in compliance with the provision mentioned in (i) above.

(iii) Thus, by prescribing incorrect interest rates with respect to default in payment of dues by beneficial owners, it is alleged that the Noticee has violated clause 19 of Annexure to the 2013 Circular read with 2017 CDSL Communique

Findings:

34. In reply to the above allegation, Noticee submitted that it has not levied any interest to any beneficial owner on the outstanding amounts payable on DP charges. Noticee further submitted that the old forms contained the said clause of levying interest @ 21% p.a. Noticee also stated that it has corrected new forms wherein it was mentioned to charge interest not exceeding 13% p.a. on DP charges.

35. I note that in the instant case, Noticee has indicated incorrect interest rates with respect to outstanding or unpaid sum owed by the beneficial owner in the tariff sheet. I also note that the inspection did not indicate any instances where interest of 21% was charged on the clients. Thus I am inclined to accept the submissions of the Noticee.

36. In view of the above, the charge regarding incorrect levy of interest for default in payment of dues by beneficial owner is not established.

Issue II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 23D of SCRA and 19G of the Depositories Act

37. In light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee as a stock broker had committed irregularities during the inspection period. The above violations, are serious in nature and make the Noticee liable for monetary penalty under the provisions of Section 23D of SCRA and Section 15HB of the SEBI Act. 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) which inter-alia has held that - "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".* The relevant provisions of the aforementioned Section 23D of SCRA, Section 15HB of the SEBI Act and 19G of the Depositories Act are as under:

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 [104][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

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

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.]

[121]Substituted for the words "liable to a penalty not exceeding one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014

Penalty for contravention where no separate penalty has been provided.

19G. *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [2][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees].*

Issue III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

38. While determining the quantum of penalty under the provisions of Section 23D of SCRA and Section 15HB of the SEBI Act and 19G of the Depositories Act, it is important to consider the relevant factors as stipulated in Section 23J of the SCRA, Section 15J of the SEBI Act and 19I of the Depositories Act which reads as under:

SCRA 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."

[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.]

[140] Inserted by Part V of Chapter VI of the Finance Act, 2017, w.e.f. 01.04.2017 vide Gazette Notification No. 7, Extraordinary, Pt II Section I dated March 31, 2017

[2] Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws Amendment) Act, 2014, w.r.e.f. 28-03-2014.

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.

[111][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.]

[111] Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

Depositories Act,1996

Factors to be taken into account while adjudging quantum of penalty

19-I. While adjudging the quantum of penalty under 22[section 19 or section 19H, 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.

[23][Explanation .—For the removal of doubts, it is clarified that the power [24][***] to adjudge the quantum of penalty under sections 19A to 19F shall be and shall always be deemed to have been exercised under the provisions of this section.".]

[23]Inserted by Part IX of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7 , Extraordinary Prt II Section 1 dated March 31, 2017

[24] Omitted the words "of an adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019

39. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. Further, I have also considered the submissions of the Noticee that they have taken corrective steps in this regard. However, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, rules and regulations and circulars / directions issued thereunder, which it failed to do during the inspection period.

40. In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under section 23D of SCRA and section 15HB of the SEBI Act.

ORDER

41. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of the SCRA, Section 15J of the SEBI Act and 19I of the Depositories Act and in exercise of the powers conferred upon me under Section 23-I of the SCRA, Section 15-I of the SEBI Act and section 19-H of the Depositories Act, 1996 read with SEBI Adjudication Rules, SCRA Adjudication Rules and Depository Adjudication Rules. I hereby impose a penalty of only Rs.2,00,000/-(Rupees Two lakhs rupees only) under Section 23D of SCRA and a penalty of Rs. 1,00,000/-(Rupees One lakhs rupees only) Section 15HB of the SEBI Act, totalling to Rs. 3,00,000/- (Rupees Three lakhs rupees only) on the Noticee i.e. Moneylicious Securities Private Limited. I am of the view that the said penalty is commensurate with the violation/allegations levelled against the Noticee.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through 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

43. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

Place: Mumbai **ASHA SHETTY**

Date: November 25, 2022 **ADJUDICATING OFFICER**