

WTM/AS/MIRSD/MIRSD-SEC-1/31658/2025-26
SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

S. No.	Name of the Intermediary	PAN
1.	NNM Securities Private Limited	AAACN8070G

In the matter of NNM Securities Private Limited

A. BACKGROUND:

1. NNM Securities Private Limited (hereinafter referred to as “**Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a Stock Broker having registration no. INZ000234235 and as a Depository Participant having registration no. IN-DP-242-2016.
2. SEBI along with BSE Limited (hereinafter referred to as “**BSE**”), National Stock Exchange of India Limited (“**NSE**”) and Central Depository Services (India) Limited (hereinafter referred to as “**CDSL**”) conducted a comprehensive inspection of the Noticee for the period from April 01, 2021 to June 30, 2022 (hereinafter referred to as “**Inspection period**”). The findings of the inspection were communicated to the Noticee vide letter dated September 08, 2022 and the Noticee submitted its reply to the same vide email dated September 26, 2022. Pursuant to the analysis of the findings/ observations made during the inspection and the response of the Noticee thereto, the inspection report was prepared wherein violations of relevant provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”), circulars framed thereunder, Securities

Contracts (Regulation) Rules, 1957 (hereinafter referred to as “**SCRR**”), SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) were alleged against the Noticee.

3. Based on the inspection report, enquiry proceedings under SEBI (Intermediaries) Regulations, 2008 (“hereinafter referred to as “**Intermediaries Regulations**”) were initiated against the Noticee and a Designated Authority (hereinafter referred to as “**DA**”) was appointed on June 16, 2023 to enquire into the alleged violations by the Noticee and make a recommendation in terms of the Intermediaries Regulations. The DA issued a show cause notice dated September 08, 2023 to the Noticee under regulation 25 of Intermediaries Regulations to show cause as to why appropriate recommendation should not be made against it in terms of Regulation 26 of the Intermediaries Regulations for the alleged violations mentioned below.

- a. Clause 3.2 of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (“**SEBI 2016 Circular**”);

- b. Section 23D of SCRA read with Clause 1 of SEBI circular SMD/SEC/CIR/93/23321 dated November 18, 1993 (“**SEBI 1993 Circular**”) and clause 3 of Annexure to **SEBI 2016 Circular**”;

- c. Rule 8(1)(f) and 8(3)(f) of SCRR and Clause A(5) of Schedule II read with Regulation 9(f) of Stock Brokers Regulations;

- d. Regulation 4(2)(p) of PFUTP Regulations.

4. Pursuant to the transfer of DA, another DA was appointed on December 19, 2023. In response to the show cause notice issued by the DA, the Noticee filed its reply vide email dated December 18, 2023. Further, an opportunity of personal hearing

was provided by the DA on January 17, 2024, which was availed by the Noticee. Subsequently, the Noticee filed additional submissions on February 7, 2024.

5. After considering the allegations levelled in the show-cause notice, reply filed by the Noticee and the material available on record, the DA, submitted an Enquiry Report dated February 23, 2024 (hereinafter referred to as “**Enquiry Report**”) and made the following recommendation:

‘In view of the above observations and the violations committed by the Noticee, in terms of Regulation 26 of the Intermediaries Regulations, I hereby recommend that the Noticee (SEBI Registration No. INZ000234235) may be prohibited from onboarding new clients for a period of 1 month.’

B. SHOW CAUSE NOTICE, REPLY AND HEARING

6. Based on the Enquiry Report, a post-Enquiry Show Cause Notice dated March 01, 2024 (hereinafter referred to as “**SCN**”) was issued to the Noticee, enclosing the copy of the Enquiry Report, calling upon it to show cause in terms of regulation 27(1) of the Intermediaries Regulations as to why action as recommended by the DA or any other action in terms of the Intermediaries Regulations should not be taken against it.
7. In response to the SCN, the Noticee submitted its reply vide letter dated April 26, 2024. Thereafter, the Noticee was provided an opportunity of personal hearing on July 31, 2024. On the said date, the AR of the Noticee appeared before the Competent Authority/Quasi-Judicial Authority of SEBI and reiterated the submissions made vide the Noticee’s letter dated April 26, 2024. During the said hearing, the AR was advised to make detailed submissions in respect of violations within the specified time. The Noticee filed its additional written submissions vide letter dated August 16, 2024. Based on the additional submissions made, certain clarifications were sought from the Noticee which were filed by it vide letter dated November 05, 2024.
8. Pursuant thereto, due to administrative reasons, Quasi-Judicial Authority in the matter was changed and the case was assigned to me. In the interest of natural

justice, the Noticee was given another opportunity of personal hearing in the matter on January 14, 2025. The AR of the Noticee vide email dated January 03, 2025, requested for adjournment citing his professional difficulties and inability to appear on the scheduled date. The request made by the Noticee was acceded to and the hearing in the matter was adjourned to February 18, 2025. Pursuant thereto, due to administrative reasons, hearing in the matter was rescheduled to March 04, 2025. On the said date, the ARs of the Noticee appeared and reiterated the submissions made earlier vide their reply(ies) filed in the matter. Accordingly, hearing in the matter was concluded.

C. CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the Enquiry Report issued to the Noticee along with the replies filed by the Noticee and other material available on record. In the instant proceedings, the DA has recommended that the Noticee may be prohibited from on boarding new clients for a period of 1 month.

10. I note that the SCN issued by the DA had made allegations on five counts. Pursuant to the careful consideration of the reply filed by the Noticee, the DA has observed non-compliance by the Noticee on three counts. The DA has found lapses on part of the Noticee with respect to the following.

- Misuse of clients funds;
- Incorrect reporting of enhanced supervision data;
- Non-verification of pro MTM loss.

The lapses were found to be in violation of Clause 1 of SEBI 1993 Circular and Clause 3 of Annexure of SEBI 2016 Circular.

11. The charges relating to (a) engagement as a principal in a business other than that of securities involving personal financial liability, and (b) Investor related issues, were not established against the Noticee.

12. The written submissions made by the Noticee vide its letter dated April 26, 2024 and August 16, 2024 are summarised below:

- 12.1. The DA has rightly observed that the serious violations alleged against it lack merit.
- 12.2. The DA has overlooked the word "*Possibly utilized*" used in the Inspection Report as well as the show cause notices issued by the office of the same person viz., Designated Authority / Adjudicating Officer. While the charging provision cannot be attracted based on mere assumption, the Noticee has submitted that even the assumption is incorrect.
- 12.3. For the same set of violations, parallel show cause notices (adjudication & enquiry) were issued by the same officer of SEBI. The DA while acting as Adjudicating officer has ruled that Doctrine of Res-judicata is applicable as the Noticee has already been penalized vide Order dated August 17, 2023 by Member and Core Settlement Guarantee Fund Committee(MCSGFC) of NSE for observation of misuse of client funds observed during the same period. The same authority while acting as DA has ignored the doctrine of res judicata and made recommendation for restriction from on boarding new clients for a period of 1 month.
- 12.4. The Noticee is carrying the stock broking business for more than 74 years and there have been less than 10 complaints. Its unblemished record should be taken into consideration.

Misuse of clients' funds:

- 12.5. There is a conflicting observation alleged in the Show cause Notice dated September 08, 2023 issued by DA and Show cause Notice dated September 14, 2023 issued by the AO. In the Notice dated September 08, 2023, the DA has alleged that value of G was found negative on 17 instances but in the Notice dated September 14, 2023, the AO has alleged that the value of G was found negative on 19 instances.
- 12.6. Fixed Deposit Receipts (FDRs) were created from client bank accounts and the same were kept with Noticee as pledging the FDRs with CC/CM was not required till March 31, 2022 as per NSE circular NSE/INSP/50901 dated January 04, 2022. The Noticee maintained sufficient collaterals with CC/CM during the inspection period and considered the value of FDRs made from client funds in the enhanced supervision data but the Inspection Team

(IT) has excluded the value of FDRs causing the value of G in negative. Its Banker has also confirmed that the source of funds for creation of FDRs was client bank accounts. Copy of confirmation given by the banker has been submitted.

12.7. The balances of promoter, director and related entities have been removed from total client's payable in enhanced supervision data but the IT has not removed it causing the value of G in negative.

12.8. The Noticee has submitted that the below named entities are related parties (substantiated with documentary evidence) and that credit of following related entities shall be removed from total clients payable to check the status of G. SEBI itself considered the below mentioned entities as group entities of the Noticee in another proceeding initiated in the matter of dealing in a scrip listed at BSE:

- a. NNM Securities Private Limited
- b. Miker Financial Consultants Pvt. Ltd.
- c. Vibhuti Commodities Pvt. Ltd.
- d. Vibhuti Enterprises

12.9. Anil Kumar Mittal along with his wife Kiran Mittal, two sons – Nikunj Anil Mittal and Apurva Mittal and his daughter-in-law, Manish Mittal jointly or severally are promoters of the aforementioned 4 entities and also holding office of directors/ partners. Hence, credit balance of these related entities to be excluded from total client payable.

12.10. The regulatory provisions permit the stock broker to make arrangements amongst group entities for carrying out stock broking business activity. Copies of letters given by group entities and relevant regulatory provisions have been submitted.

12.11. NSE conducted various periodic inspections whereby NSE has accepted the aforesaid ground and excluded the running balance of trading accounts of related entities from total client payable while ascertaining status of value of G.

12.12. After considering the value of FDRs created from clients' funds and excluding the balance of related entities from total client payable, value of

G comes in positive ranging from ₹1.35 Crores to ₹4 Crores which shows that Noticee has not misused clients' funds.

12.13. With regard to value of I being positive for 2 out of 42 samples dates (₹ 30,825 on July 07, 2021 and ₹ 49,96,066 on July 08, 2021), it is submitted that the positive value of G is more than proprietary margin and therefore, value of I was in negative. Hence, the question of use of client funds used for proprietary margin obligations does not arise.

12.14. It is also submitted that the Noticee also functions as a market maker and its various clients have given consent to treat them as nominated investors under provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) to assist in market making activities in various SME's scrips. Under the provisions of ICDR Regulations, the Noticee is authorized to move funds and securities amongst trading accounts of nominated investors. Therefore, balances of running accounts of nominated investors should not be taken as balance of regular creditor clients while ascertaining the value of G. If the value of credit of nominated investor is removed from total client's payable, the positive value of G gets increased.

12.15. The Noticee relied upon the value of only 9 FDRs which were created from clients' funds as other FDRs were created from own funds. The large value of FDRs created from own funds clearly shows that the financial position of the Noticee was strong enough and thus, question of misuse of clients funds does not arise.

12.16. All the 9 FDRs were created for small value and later, the Noticee instructed its banker for pre-mature closure of FDRs and created new FDRs for value of 1 crore each and same were duly pledged with CC in compliance with NSE circular dated April 01, 2022. NSE has accepted the contention of the Noticee that value of FDRs was duly considered while calculating the value of misuse of funds. However, the DA has excluded the value of FDRs on the ground that FDRs were not kept with CC/CM.

12.17. NSE has duly accepted the contention of the Noticee that the credit balances of directors, promoters and related entities should not be taken under credit of client and same are excluded from total clients' payable.

NSE has reduced the amount of funds payable to Directors, promoters and related entities of the Noticee from total client payable but these material facts were completely ignored by the DA. In this regard, the Noticee has relied upon the Orders dated April 18, 2023 and October 25, 2023 of MCSFGFC of NSE.

Incorrect reporting of Enhanced Supervision data:

- 12.18. The observation of incorrect reporting of enhanced supervision data is interlinked with observation of misuse of client funds as the Noticee has considered the value of FDRs created from client funds as available funds with banks in enhanced supervision data but the IT as well as the DA has not considered the value of FDRs. If the value of FDRs in bank balance is added, the question of incorrect reporting of supervision data does not arise.
- 12.19. Before April 01, 2022, FDRs was not mandatorily required to be kept/pledged with CC/CM.
- 12.20. The Noticee has placed reliance on the decision of the Hon'ble SAT in the case of *Religare Securities Limited v. SEBI* (Appeal No. 23 of 2011 decided on June 16, 2011) and submitted that the purpose of an inspection is not to penalise an intermediary but to enable them to rectify any technical inadequacy.

Client funds used for proprietary MTM pay-in obligation:

- 12.21. The SCN issued by DA alleged that client funds were used for proprietary MTM pay-in obligation for 3 trading days but details were given only for 2 instances in SCN as well as the inspection report.
- 12.22. It is submitted that the IT had mistakenly taken a lesser amount of collateral deposited with exchanges in the form of cash and cash equivalents causing alleged observation. The value of collateral deposited with the exchanges in the form of cash and cash equivalents was ₹ 9,84,48,528.03 on January 21, 2022 and ₹13,84,15,329.53 on February

24,2022 but the IT had taken ₹2,08,28,828 and ₹ 10,08,28,828, respectively. The alleged value of misuse of clients' funds for meeting proprietary MTM pay-in obligation in F&O segment are much lesser than the amount of value of collateral deposited with exchanges in the form of cash and cash equivalents which were left by the IT.

Additional Submissions

- 12.23. NSE also carried out various periodic offsite and onsite inspection of books of accounts of the Noticee and alleged misuse of client funds on certain common instances as observed by IT. It is submitted that IT has selected 42 sample dates to verify misuse of client funds out of which misuse of clients' funds were observed on 17 instances/ dates. Thus, misuse of clients funds were not observed on 25 instances/ dates even when value of FDRs was not taken into consideration and credit balance of promoters, directors and related entities of the Noticee were not removed from total clients' payable.
- 12.24. The revised computation of value of 'G' and 'I' after including value of unencumbered FDRs created out of clients' funds has been provided.
- 12.25. It is submitted that multiple proceedings have been initiated against it for the same set of observations by NSE, DA and the Adjudicating Officer within a span of 9 months which caused immense suffering to the Noticee who had to deploy tens of thousands of working hours in preparing documents thus bringing a considerable financial debt in its business apart from mental anxiety and undue pressure on its limited staff members.
- 12.26. SEBI applied different yardsticks on the Noticee if compared with other Order passed by SEBI in identical matters wherein similar violations were alleged against the respective Noticees but lesser amount of monetary penalty and/ or disciplinary action imposed/ taken. In this context, the Noticee relied upon the Order dated March 25, 2024 in the matter of Eureka Stock & Share Broking Services Limited.
- 12.27. Penalty or harsh disciplinary action should not also be imposed merely because it is lawful to do so. Whether penalty or disciplinary action should

be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised juridically and on a consideration of all the relevant circumstances.

12.28. It has neither received any benefit from the alleged violations nor has it cause any harm or loss to investors. In this regard, the Noticee has relied on the judgements in the matter of *Neha Nilesh Patil vs. SEBI*¹, *P.G. Electroplast Ltd. & Ors. Vs. SEBI*², *Ashok Dal & Oil Mills vs. SEBI*³, *State Bank of India vs. SEBI*⁴, *Hindustan Steel vs. State of Orissa*⁵ and *Ranjit Thakur vs. Union of India*⁶.

12.29. It relied on the principles elucidated by Hon'ble Supreme Court in cases such as *Tolaram Relumal and anr. vs State of Bombay* wherein it was observed that an interpretation that is reasonable and exempts a subject from penalty must be adopted and competing interpretations that result in penalty must be shunned.

12.30. The onus of proving a violation rests on the person levelling the charge. It is not the onus of the person defending a charge to prove his defence without the person levelling the charge having to discharge the burden. The law does not envisage expression of suspicion being adequate to lead to the person accused to have to defend against all suspicion being adequate to lead to the person accused to have to defend against all suspicion. In such circumstances, the allegations would fall under the ambit of "not proved" since it would not fall under the ambit of "proved" or "disproved".

12.31. Furthermore, the principle of doubtful penalization, as highlighted in the discussions and rulings of cases like *Sunil Krishna Khaitan and Bipinchandra*, would show a balanced consideration of various interpretative criteria and factors, maintaining a harmonious application of law while upholding the legislature's true intent.

¹ Appeal no. 688 of 2021

² Appeal no. 281 of 2017

³ Appeal no. 254 of 2022

⁴ Appeal no. 304 of 2020

⁵ AIR 1970 SC 253

⁶ AIR 1987 SC 2386

13. Before dealing with the contentions of the Noticee, it would be relevant to reproduce the provisions of SEBI Circulars which the Noticee has allegedly violated.

SEBI 1993 Circular

Regulation of transactions between clients and brokers

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.

...

Clause 3 of Annexure to SEBI 2016 Circular

3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

3.1 Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.

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 the absolute value of (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 the absolute value of (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: $-|G| - |D|$

3.3.2. Funds of clients used for Margin obligation of proprietary trading: Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. $A+B > C$), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).

If $P > (G+E+F)$, then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

$I = P - (G+E+F)$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

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, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member.

...

14.I shall now deal with the contentions raised by the Noticee under the various heads of violations alleged in the show cause notice.

I. Misuse of clients' funds

14.1. During the course of inspection, it was observed that the value of 'G' was negative for 17 sample dates, in the range of ₹ 38.53 Lakhs to ₹ 5.39 Crores. Based on comparison of absolute value of 'G' with the debit balance of clients, it was alleged that the Noticee had possibly utilized the funds of credit balance clients towards settlement obligations of debit balance clients

and for its own purpose. The details of 'G' negative on 17 sample dates are provided in the Table below:

Table No. 1.

S. 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	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)	Total 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)	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
		A (INR)	B (₹)	C (₹)	D (₹)	G = (A+B)-C
1.	01.07.2021	29,21,961	7,14,96,311	9,62,05,009	6,03,98,850	(2,17,86,737)
2.	05.07.2021	10,17,047	6,62,76,069	9,99,23,368	6,03,80,596	(3,26,30,253)
3.	06.07.2021	34,32,557	6,75,88,874	9,63,91,851	5,89,27,240	(2,53,70,419)
4.	07.07.2021	25,12,845	6,57,10,071	10,51,51,006	5,84,18,775	(3,69,28,090)
5.	08.07.2021	27,79,902	6,69,22,183	10,67,40,780	5,98,57,986	(3,70,38,696)
6.	12.07.2021	1,40,26,697	6,55,56,956	10,64,30,485	5,79,52,573	(2,68,46,831)
7.	13.07.2021	38,14,073	6,57,32,343	10,83,59,061	5,76,53,206	(3,88,12,645)
8.	14.07.2021	21,36,253	6,66,99,073	11,74,76,251	6,00,00,954	(4,86,40,924)
9.	15.07.2021	22,48,336	6,64,82,646	11,64,98,840	5,71,64,667	(4,77,67,858)
10.	16.07.2021	6,11,976	6,64,82,071	7,09,47,360	5,66,63,950	(38,53,313)
11.	19.07.2021	14,72,703	6,68,92,663	9,85,74,512	5,22,69,759	(3,02,09,146)
12.	20.07.2021	25,52,954	6,47,94,643	10,16,93,892	5,35,47,807	(3,43,46,295)
13.	22.07.2021	26,17,890	6,74,00,382	11,42,34,248	5,21,88,316	(4,42,15,976)
14.	26.07.2021	17,21,055	6,90,46,985	10,59,96,753	5,26,07,921	(3,52,28,713)
15.	27.07.2021	11,85,785	6,89,38,923	12,12,48,192	5,19,34,517	(5,11,23,484)
16.	28.07.2021	21,96,179	6,68,90,351	12,30,35,162	5,06,34,322	(5,39,48,632)
17.	29.07.2021	31,17,301	8,13,62,266	11,91,61,954	5,28,15,885	(3,46,82,387)

14.2. Further, it has been alleged that the value of 'I' was positive for 2 sample dates i.e., ₹ 30,825 on July 7, 2021 and ₹ 49,96,066 on July 8, 2021, which indicates that the Noticee had possibly utilized the funds and securities of clients towards proprietary margin obligations. The details regarding the same are provided in the Table below:

Table No. 2.

S. No.	Particulars	Amount (₹)	
		07.07.2021	08.07.2021
1.	Total fund balance available in all client bank accounts (A)	25,12,845	27,79,902
2.	Collateral deposited with clearing corporation / Clearing Member (B)	6,57,10,071	6,69,22,183
3.	Total credit balances of all clients as obtained from trial balance across stock exchanges (C)	10,51,51,006	10,67,40,780
4.	Total debit balances of all clients as obtained from trial balance across stock exchanges (D)	5,84,18,775	5,98,57,986
5.	Difference (G)	(3,69,28,090)	(3,70,38,696)
6.	Value of proprietary non-cash collaterals (E)	1,74,60,392	1,75,42,607
7.	Value of Non-funded portion of Bank Guarantee across all the stock exchanges (F)	1,30,00,000	1,30,00,000
8.	Proprietary Margin obligation across exchanges (P)	3,04,91,217	3,55,38,673
9.	Funds of clients used for Margin obligation of proprietary trading (I) (If G is negative, then value of G is considered as 0) I = P- (G+E+F)	30,825	49,96,066

14.3. Clause 1 of SEBI 1993 Circular *inter alia* stipulates that every member broker shall keep the money of its clients and its own money in a separate accounts for the purpose of segregating and identifying them to prevent its misuse. Clause 3 of Annexure to SEBI 2016 Circular, *inter alia*, provides the mechanism for monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges. Clause 3.2 of the said SEBI Circular provides that every stock broker shall submit the data/information on last trading day of every week to the Stock Exchanges on or before the next trading day. Further, in terms of Clause 3.3 of the said Circular, based on the 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 mentioned therein.

14.4. Thus, in terms of clause 3.3, the principle used for identifying whether the funds lying with the Stock Brokers have been misused 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).

14.5. Resultantly, if the value of 'G' [calculated as $G=(A+B)-C$] is negative, it would imply that the clients' funds have been utilized 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. Further, the value of I [calculated as $I = P - (G+E+F)$], if positive, indicates the extent of clients' funds and securities utilised towards proprietary margin obligations, where E is the value of proprietary securities, F is the non-funded portion of bank guarantee and P is the proprietary margin obligation.

14.6. The Noticee while referring to the words "possibly utilised" in the show cause notice sent by the DA has contended that the charging provision cannot be attracted based on mere assumption. I note that as a matter of principle, the clients' funds available with a stock broker should either be in the clients' bank account maintained with the stock broker or deposited by the stock broker with the CC/CM. The computation of value of 'G' provides a reconciliation mechanism to determine whether the stock broker has misused clients' funds. It's an indicative and quantitative measure to check whether the broker has misused the funds of clients for other purposes. The principle is uniformly applied for all the stock brokers across all the Stock exchanges. The negative value of 'G' indicates utilization of credit clients' funds for other purposes i.e. to fund the trades of debit balance clients or to fund its own proprietary trades or for any other possible uses which are prohibited.

14.7. Similarly, the sum of Proprietary funds and securities i.e. (G + E + F) lying with the CC/CM should be greater than or equal to Proprietary margin obligations (P). The positive value of 'I' [$P - (G+E+F)$] indicates the extent of funds and securities of clients which are possibly utilised towards proprietary margin obligations. This value of 'I' acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations. Pursuant to inspection by SEBI, it was observed that out of 42 sample dates, value of 'G' was found negative for 17 dates and value of 'I' was found positive for two dates. Based on the findings of the inspection, proceedings were initiated against the Noticee. Thus, the argument by the Noticee that proceedings have been initiated on the basis of mere assumptions is untenable.

Balance of promoters, directors, related entities and nominated investors to be excluded:

14.8. The Noticee had submitted before the DA that the balance of promoters, directors and related entities of the Noticee should not be added under credit balance of clients to ascertain the value of G. The DA did not accept this submission and observed that there is no such distinction given under the legal provisions.

14.9. In this regard, the Noticee has submitted that the MCSGFC of NSE in its order dated October 25, 2023 has accepted this contention. Further, the Noticee has stated that the SEBI Circulars do not require the balance(s) of directors, promoters and related parties to be included in total clients' payable.

14.10. The Noticee has also submitted that it is a market maker and some of its clients have given consent to treat them as nominated investors under the provisions of ICDR Regulations to assist in market making activities in various SME scrips. The Noticee has stated that it is authorized to move funds and securities amongst trading accounts of nominated investors under provisions of ICDR Regulations. Therefore, balances of running accounts of nominated investors should not be taken as balance of regular creditor clients while ascertaining the value of 'G'. The Noticee has provided copies of consent

letter and ledger accounts of nominated investors in support of this contention.

14.11. I note that the SEBI 2016 Circular on “*Enhanced Supervision of Stock Brokers/ Depository Participants*” was issued *inter alia* to monitor clients’ funds with the stock broker to detect any misutilisation. The objective behind computation of value of ‘G’ is to ensure that the clients’ funds are not used for any purpose other than meeting the respective client’s margin requirements/ pay-in obligations. The said SEBI circular does not make any distinction between the types of clients for monitoring funds utilisation. If the usage of certain clients’ funds towards other purposes is permitted, it would be completely contrary to the letter and spirit of the said circular. Thus, the contention of the Noticee in this regard is not tenable.

‘G’ value negative and ‘I’ value positive; FDRs not considered:

14.12. The Noticee had submitted before the DA that it had made FDRs out of clients’ funds but the same were not kept with CC/CM as it had sufficient collateral with CC/CM. In support of its contention, the Noticee submitted an email from its banker stating the source of funds for certain FDRs. I note that the DA did not accept this submission of the Noticee as the FDRs were not kept/pledged with CC/CM for it to be considered under ‘Collateral deposited with CC/CM’. Further, the DA observed that the value of FDRs did not substantiate the total value of ‘B’ stated by the Noticee.

14.13. In this context, the Noticee has submitted that there was no requirement to pledge FDRs created from client bank accounts with CC/CM till March 31, 2022 as per NSE circular no. 03/2022 dated January 04, 2022. Further, the Noticee has submitted that MCSGFC of NSE had accepted this contention of the Noticee in its order dated October 25, 2023 while calculating the value of misuse of clients’ funds.

14.14. With regard to the above, I note that NSE, vide its Circular No. NSE/INSP/50012 dated October 19, 2021, on the subject of *Submission of data towards monitoring of client funds under Enhanced Supervision*

guidelines had directed all its trading members that any FDRs created out of the client funds received by them should be only for the purpose of placing with CC/CM. The implementation of the said requirement was extended till April 01, 2022 vide its Circular dated January 04, 2022. In the instant case, I note that all the 17 alleged instances of misuse of clients' funds were prior to April 01, 2022. Thus, I agree with the submission of the Noticee that there was no requirement to pledge the FDRs made from client accounts with CC/CM before April 01, 2022.

14.15. Further, the Noticee has submitted an email from its banker providing the following details.

- The details of the FDRs and the source of funds of those FDRs;
- Account-wise balance certificates for dates of violations and
- FDR utilisation details from its banker mentioning the total value of unencumbered FDRs on the dates of alleged violations.

The Noticee has also recalculated the value of 'G' and 'I' based on these documents and submitted that it is not in violation of the legal provisions. On perusal of the aforesaid documents, I note that none of the documents clearly show what was the quantum of unencumbered FDRs created out of clients' funds on the dates of alleged violations. Accordingly, the Noticee was advised to submit the details of unencumbered FDRs created out of clients' funds. The documentary evidences submitted by the Noticee as a part of its additional submissions were also found to be inadequate and accordingly, vide email dated October 25, 2024, the Noticee was once again advised to submit sufficient supporting documents. In response, vide letter dated November 7, 2024, the Noticee provided breakup of FDRs created out of clients' funds. However, its submissions were not supported by any documentary evidence such as FDR utilisation certificate, bank account statement, etc. Thus, even after providing with ample opportunities, the Noticee failed to provide the details of unencumbered FDRs created out of client funds. The documents provided by the Noticee also do not show whether the FDRs utilised to avail OD/BG were created out of clients' funds or its own funds. It is a possibility that a part of utilised FDRs involved FDRs created/funded from accounts other

than clients' funds. In view of the same and based on the material available on record, the exact value of G cannot be conclusively ascertained on the date of the alleged violations. Since the value of 'I' is dependent on value of 'G', the value of 'I' also cannot be ascertained for the dates mentioned in Table 2.

14.16. Without prejudice to the same, even if it is assumed that the utilised FDRs were entirely created out of clients funds, I find that the value of 'G' is still negative for 15 out of the 17 alleged instances. For the other two instances i.e. on July 12, 2021 and July 16, 2021, the value of G would be revised from negative to positive as mentioned in the Table below. The calculation of unencumbered FDRs created out of clients' funds and the revised value of 'G' is given in the Table below.

Table No. 3.

S. No.	Date	Total FDRs as per bank confirmation letter	FDRs created/ funded from accounts other than client's funds	FDRs created out of clients' funds	FDRs utilised	Free & unencumbered FDRs created out of clients' funds	G Value from Table No. 1	Revised 'G'
1.	01.07.2021	57477351	15513229	4,19,64,122	3,13,44,864	1,06,19,258	-2,17,86,737	-1,11,67,479
2.	05.07.2021	57477351	15513229	4,19,64,122	2,11,73,364	2,07,90,758	-3,26,30,253	-1,18,39,495
3.	06.07.2021	57477351	15513229	4,19,64,122	2,37,78,364	1,81,85,758	-2,53,70,419	-71,84,661
4.	07.07.2021	57477351	15513229	4,19,64,122	1,95,78,364	2,23,85,758	-3,69,28,090	-1,45,42,332
5.	08.07.2021	57477351	15513229	4,19,64,122	1,97,78,364	2,21,85,758	-3,70,38,696	-1,48,52,938
6.	12.07.2021	57477351	15513229	4,19,64,122	1,42,00,000	2,77,64,122	-2,68,46,831	9,17,291
7.	13.07.2021	57477351	15513229	4,19,64,122	1,42,00,000	2,77,64,122	-3,88,12,645	-1,10,48,523
8.	14.07.2021	57477351	15513229	4,19,64,122	1,42,00,000	2,77,64,122	-4,86,40,924	-2,08,76,802
9.	15.07.2021	57477351	15513229	4,19,64,122	1,80,60,364	2,39,03,758	-4,77,67,858	-2,38,64,100
10.	16.07.2021	57477351	15513229	4,19,64,122	2,24,42,364	1,95,21,758	-38,53,313	1,56,68,445
11.	19.07.2021	57477351	15513229	4,19,64,122	2,13,92,364	2,05,71,758	-3,02,09,146	-96,37,388
12.	20.07.2021	57477351	15513229	4,19,64,122	2,20,42,364	1,99,21,758	-3,43,46,295	-1,44,24,537
13.	22.07.2021	57477351	15513229	4,19,64,122	1,49,55,938	2,70,08,184	-4,42,15,976	-1,72,07,792
14.	26.07.2021	57477351	15513229	4,19,64,122	1,73,99,364	2,45,64,758	-3,52,28,713	-1,06,63,955
15.	27.07.2021	57477351	15513229	4,19,64,122	1,42,00,000	2,77,64,122	-5,11,23,484	-2,33,59,362
16.	28.07.2021	57477351	15513229	4,19,64,122	1,42,00,000	2,77,64,122	-5,39,48,632	-2,61,84,510
17.	29.07.2021	57477351	15513229	4,19,64,122	2,43,00,000	1,76,64,122	-3,46,82,387	-1,70,18,265

14.17. Further, regarding the allegation related to value of 'I' being positive on two instances i.e. July 07, 2021 and July 08, 2021, since the value of 'I' is dependent on value of 'G' and which is still negative for these two dates, the value of 'I' remains positive for these dates.

14.18. Thus, even after even after considering the submission of the Noticee regarding taking into consideration the unencumbered FDs created out of clients' funds but not deposited with CC/CM, I find that the value of 'G' is still negative for 15 out of the 17 alleged instances. For the other two instances i.e. on July 12, 2021 and July 16, 2021, the value of G is revised from negative to positive as mentioned in the above table.

14.19. Thus, to conclude, in light of the aforesaid discussion, I am constrained to agree with the observations of the DA and find that the violation of Clause 1 of the SEBI 1993 Circular and Clause of the SEBI 2016 Circular is established against the Noticee.

II. Incorrect reporting of Enhanced Supervision data

15. It has been alleged that the Noticee had incorrectly reported 'Collateral deposited with CC/CM' for 42 sample dates by considering FDRs which were not kept with CC/CM. It has also been alleged that the Noticee incorrectly reported 'Unutilized collateral available with CC/CM' for 37 sample dates.

16. In response, the Noticee has submitted that the alleged violation is interlinked with the misuse of client funds as the value of FDRs created from clients' funds which were kept with the Noticee were not considered by the DA. If the value of FDRs is added then the question of incorrect reporting does not arise. Further, the Noticee has stated that it had deposited FDRs with CC/CM after April 01, 2022 and in support of its submission provided the 'Total Liquid Assets Breakup Report' from CC for the alleged violation dates.

Collateral deposited with CC/CM

17. As discussed in earlier paragraphs, I agree with the submission of the Noticee that there was no legal requirement to pledge the FDRs made from client accounts with CC/CM before April 1, 2022 for it to be considered under 'Collateral deposited with CC/CM'. However, the Noticee has failed to provide sufficient documentary evidence evidencing the amount of unencumbered FDRs created out of clients funds to support its submission. With respect to the alleged violations after April 1, 2022, it is noted that the quantum of FDRs claimed by the Noticee does not match with the 'Total Liquid Assets Breakup Report' submitted by it. Be that as it may, I note that even after the complete value of FDRs is included under 'Collateral deposited with CC/CM', the revised value of 'B' still does not match with the data submitted by the Noticee during inspection.

Unutilized collateral available with CC/CM

18. The values of unutilized collateral available with CC/CM as per SEBI's computation, and as per Noticee's reporting during inspection for the alleged 37 instances, are given in the Table below.

Table No. 4.

S. No.	Date	As per SEBI calculation	As reported by the Noticee	Difference
1.	01.07.2021	7,35,16,147	4,45,46,179	2,89,69,968
2.	05.07.2021	6,82,10,271	3,40,10,298	3,41,99,973
3.	06.07.2021	6,92,84,689	3,36,99,658	3,55,85,031
4.	07.07.2021	5,08,52,040	3,32,78,458	1,75,73,582
5.	08.07.2021	6,19,35,725	3,39,04,073	2,80,31,652
6.	12.07.2021	4,15,35,976	1,85,22,905	2,30,13,071
7.	13.07.2021	5,43,38,229	2,92,49,880	2,50,88,349
8.	14.07.2021	4,60,92,551	2,93,24,361	1,67,68,190
9.	15.07.2021	5,06,24,157	2,94,48,943	2,11,75,214
10.	19.07.2021	5,73,06,348	2,76,91,032	2,96,15,316
11.	20.07.2021	4,86,20,754	2,09,27,590	2,76,93,164

S. No.	Date	As per SEBI calculation	As reported by the Noticee	Difference
12.	22.07.2021	4,75,57,675	1,63,07,439	3,12,50,236
13.	26.07.2021	4,77,85,246	1,63,86,489	3,13,98,757
14.	27.07.2021	4,13,35,124	1,65,17,300	2,48,17,824
15.	28.07.2021	3,90,60,053	1,64,59,143	2,26,00,910
16.	29.07.2021	7,35,75,065	3,91,26,614	3,44,48,451
17.	02.05.2022	9,19,13,997	89,04,54,438	(79,85,40,441)
18.	04.05.2022	10,61,90,214	76,91,45,161	(66,29,54,947)
19.	05.05.2022	11,13,06,448	70,01,03,612	(58,87,97,164)
20.	06.05.2022	10,67,81,875	83,14,82,346	(72,47,00,471)
21.	09.05.2022	10,65,73,990	4,67,18,637	5,98,55,353
22.	10.05.2022	10,96,15,376	4,42,43,672	6,53,71,704
23.	11.05.2022	11,27,64,815	4,98,66,439	6,28,98,376
24.	12.05.2022	10,36,75,475	4,36,44,525	6,00,30,950
25.	13.05.2022	11,66,44,141	5,60,26,079	6,06,18,062
26.	16.05.2022	11,61,92,156	5,74,09,501	5,87,82,655
27.	17.05.2022	11,62,31,213	5,88,48,023	5,73,83,190
28.	18.05.2022	9,41,42,556	5,77,78,530	3,63,64,026
29.	19.05.2022	9,19,54,173	5,26,38,703	3,93,15,470
30.	20.05.2022	12,36,79,063	5,98,58,011	6,38,21,052
31.	23.05.2022	12,61,49,821	6,05,42,815	6,56,07,006
32.	24.05.2022	11,19,27,148	4,59,69,803	6,59,57,345
33.	25.05.2022	10,49,21,744	4,14,05,175	6,35,16,569
34.	26.05.2022	11,42,71,102	5,33,77,130	6,08,93,972
35.	27.05.2022	11,78,34,803	5,44,56,351	6,33,78,452
36.	30.05.2022	11,79,41,802	5,61,13,994	6,18,27,808
37.	31.05.2022	11,54,24,072	5,43,69,240	6,10,54,832

19. From the table above, it is noted that the Noticee had underreported the value of 'unutilized collateral available with CC/CM' on 33 out of the 37 instances. Therefore, even if the value of FDRs is added as claimed by the Noticee, the value

of unutilized collateral available with CC/CM' would not match with the data reported to SEBI.

20. In view of the observations made above, it is established that the Noticee had reported incorrect data under enhanced supervision i.e., 'Collateral deposited with CC/CM' on 42 instances and 'unutilized collateral available with CC/CM' on 37 instances. Accordingly, the violation of provisions of Clause 1 of SEBI 1993 Circular and Clause 3 of Annexure to SEBI Circular 2016 stands established against the Noticee.

III. Verification of proprietary MTM loss

21. During the course of inspection, it was observed that the Noticee had utilised client funds for proprietary MTM pay-in obligations in F&O segment on 2 sample dates i.e., ₹ 1,89,02,020 on January 21, 2022 and ₹ 2,53,80,713 on February 24, 2022. The details regarding the same are provided in the table below:

Table No. 5.

Particulars	Amount (₹)	
	January 21, 2022	February 24, 2022
Total of day end balance in all Client Bank Accounts (A)	9,86,51,045.76	96,88,398.64
Collateral deposited with exchanges in form of Cash and Cash Equivalents (B)	2,08,28,828.00	10,08,28,828.00
Collateral deposited with clearing member in form of Cash and Cash Equivalents (B)	9,13,52,083.69	10,13,97,437.27
Total Credit Balance of all clients (C)	22,97,33,977.47	23,72,95,377.10
Difference (G)	(1,89,02,020.02)	(2,53,80,713.19)

22. In response, the Noticee has submitted that the alleged violation is interlinked with the misuse of client funds as the value of FDRs created from clients' funds of around ₹ 3 Crore which were kept with the Noticee were not considered by the DA. Further, the Noticee has submitted that the observation of misuse of clients' funds for proprietary margin obligation were alleged for the dates (January 21,

2022 and February 24, 2022) and there was no requirement to keep the FDRs with CC/CM prior to April 01, 2022.

23. I note that the value of 'G', if negative, would imply that the clients' funds have been utilized 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. Further, the value of 'I', if positive, would indicate the extent of clients' funds and securities utilised towards proprietary margin obligations. SEBI 2016 Circular also provides for computation of 'J', which if positive, would indicate the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations.

24. The allegation of misuse of clients' funds specifically towards proprietary margin obligation can be made only on the basis of computation of value of 'I'/'J'. As discussed in earlier paragraphs, since the observed violations are prior to April 01, 2022, I am inclined to accept the submission of the Noticee that there was no requirement to pledge the FDRs made from client accounts with CC/CM for it to be considered for computation of 'G'. However, based on the material available on record, the value of free & unencumbered FDRs created out of clients' funds cannot be conclusively determined which is relevant for the calculation of 'G'. Even if the value of 'G' is calculated based on the data provided by the Noticee and with the assumption that the utilised FDRs are entirely made out of clients funds, the value of 'I'/'J' cannot be conclusively determined.

25. Therefore, I find that the material available on record is insufficient to determine the allegation of misuse of clients' funds towards proprietary margin obligations.

IV. Engaged as principal in a business other than that of securities involving personal financial liability

26. During the course of inspection, it was observed that the Noticee had taken unsecured loan from its registered clients amounting to ₹ 2,37,12,859. It was also observed that the Noticee had given unsecured loan & advances to related entities/ outside parties which were not involved in securities/ commodities

business to the extent of ₹ 32,50,000. In view of the same, it was alleged that the Noticee had violated provisions of Rule 8(1)(f) and Rule 8(3)(f) of SCRR and Clause A(5) of schedule II read with Regulation 9(f) of Stock Brokers Regulations. Rule 8(1)(f) and 8(3)(f) of SCRR *inter alia* states that a stock broker shall not engage either as a principal or employee in any business other than that of securities except as a broker or agent not involving financial liability.

27. On perusal of the material available on record, I note that the registered clients from whom the Noticee had taken unsecured loans were its directors/ promoters and associate company. The practice of obtaining loans from directors/ promoters and associate company by a registered Broker is a permitted activity as evidenced by the BSE Circular dated September 22, 2022. The Noticee has also submitted documentary evidence to show that the amounts given to the two entities as mentioned in the SCN were towards business transactions. In view of the aforesaid observations, I agree with the observations of the DA and find that the violation of Rule 8(1)(f) and 8(3)(f) of SCRR has not been made out.

V. Investor related issues

28. Pursuant to the inspection, the Noticee was alleged to have violated Regulation 4(2)(p) of PFUTP Regulations based on a complaint by K'Roll Impex Private Limited. The DA did not establish the charge of fraud against the Noticee due to insufficiency of the evidence available on record. I note that the said complaint has also been unconditionally withdrawn by the complainant vide letter dated December 22, 2022 based on the amicable settlement between the complainant and the Noticee. I note that dispute between both the parties has also been settled before the Arbitral Tribunal of BSE Ltd. Thus, I agree with the findings of the DA that the material available on record is insufficient to establish the charge of fraud against the Noticee.

Additional Submissions

Principle of Res Judicata:

29. The Noticee has submitted that MCSGFC of NSE had already imposed a penalty and restriction from registering new clients *inter alia* for violation of misuse of clients' funds on the same dates as in the present proceedings. Further, the Noticee has also stated that the DA of SEBI while acting as Adjudicating officer of SEBI have considered the principle of Res judicata but completely overlooked the same principle while acting as DA and made recommendation for restriction from on boarding new clients for a period of 1 month.

30. I note that the NSE had issued various show cause notices to the Noticee for violation of its circulars *inter alia* alleging misuse of clients' funds for the period from July 05, 2021 to March 28, 2022. Many of the instances for which violations of SEBI circular(s) have been alleged in the instant case, are common. After considering the submissions of the Noticee, MCSGFC of NSE, vide its Order dated April 18, 2023, had levied monetary penalty on the Noticee and prohibited it to on-board any new clients for a period of six months. Aggrieved by the decision, the Noticee vide letter dated May 11, 2023 requested MCSGFC to reconsider the penalty and the prohibition imposed upon it. MCSGFC vide its Order dated October 25, 2023, while taking into consideration the additional documents submitted by the Noticee, reduced the penalty from ₹ 95,89,300 to ₹ 50,75,600 and removed the restriction imposed upon it for on-boarding new clients. The Adjudicating Officer had taken into consideration the said fact and decided to not levy penalty for misuse of the clients on the Noticee.

31. I note that SEBI and Stock Exchanges are independently empowered to take action against an intermediary for the violation of the provisions of law. In terms of section 11(1) of the SEBI Act (contained in Chapter IV), SEBI is empowered to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Further, Chapter VI of the SEBI Act, 1992, empowers SEBI to adjudicate and impose penalty, by appointment of an adjudicating officer, for violation of provisions of SEBI Act and/or Rules and Regulations made under it. Furthermore, Section

12(3) of the SEBI Act, 1992 empowers SEBI, to suspend or cancel a certificate of registration, by order, granted to any registered intermediary in such manner as may be determined by regulations.

32. For taking action against any registered intermediary, SEBI has framed the Intermediaries Regulations which *inter alia* provide the manner in which action against registered intermediaries is required to be taken. I note that the present proceedings have been initiated against the Noticee under these Intermediaries Regulations, 2008. Regulation 23 of the Intermediaries Regulations *inter alia* states that SEBI is empowered to cancel or suspend or take any other action against any registered intermediary for the contravention of any of the provisions of securities laws or directions, instructions or circulars issued thereunder and such power is without prejudice to any other action taken under the securities laws or directions, instructions or circular issued, which unequivocally includes proceedings under Chapter IV and VI of the SEBI Act. Since, SEBI is empowered to initiate multiple proceedings against the Noticee for violation of provisions of securities laws, I find no merit in the prayer made by the Noticee.

33. SEBI, as the securities market regulator, is empowered to take actions against intermediaries in case of default in a separate and distinct proceedings without prejudice to the proceedings, if any, initiated by the Stock Exchanges under the provisions of its respective rules/ bye laws. Therefore, the action taken by the Exchange does not restrict the powers of SEBI to take action for violation of its regulations/ circular. Therefore, I find that the argument of the Noticee regarding the applicability of the doctrine of res judicata is misplaced.

D. CONCLUSION

34. I note that the violation of 2 out of the 5 allegations made in the SCN has been established against the Noticee. The DA has recommended that the Noticee may be prohibited from on-boarding new clients for a period of 1 month. NSE had already imposed monetary penalty for various violations including misuse of clients which are also a part of the instant proceedings. I also note that monetary

penalty has been imposed by the Adjudicating Officer also. While, I acknowledge that these are independent proceedings, any punitive/ remedial directions already ordered in the context of the violations need to be considered while issuing directions to ensure proportionality in punishment. Accordingly, these penal actions taken against the Noticee for the same violations have been considered as mitigating factors. Considering the above, I am of the considered view that issuance of a regulatory censure to the Noticee would be apt and proportionate.

E. ORDER:

35. In view of the above, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 27(5) of the Intermediaries Regulations, issue a regulatory censure to the Noticee.

36. A copy of the Order shall be served on the Noticee and the concerned Market Infrastructure Institutions for their information and record.

Sd/-

AMARJEET SINGH

DATE: SEPTEMBER 11, 2025

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA