BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. ORDER/GR/PU/2022-23/24239

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

In respect of:

Kripa Securities Pvt. Ltd.,

Stock Broker

PAN: AACCK2399D

SEBI Regn No.: INZ000179335

In the matter of Kripa Securities Private Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), jointly with the Stock Exchanges i.e. the National Stock Exchange (**NSE**) and the Bombay Stock Exchange **(BSE**) had conducted an inspection of books of accounts of **Kripa Securities Limited.,** (hereinafter referred to as **"Noticee/ KSL / Broker"**), a stock Broker registered with SEBI, for the period from April 01, 2020 to July 31, 2021 (hereinafter referred to as **"Inspection Period/IP"**) in order to ascertain the possible violations inter alia of the provisions of Securities And Exchange Board Of India Act, 1992 ("SEBI Act"), Securities and Exchange board of India(Stock Brokers) Regulations,1992 ("Broker Regulations") and certain SEBI Circulars by the Noticee. The inspection was conducted between November 08 -12, 2021.

2. During the inspection, certain irregularities and violations of various provisions of SEBI Act, Securities Contracts (Regulation) Act, 1956 ("SCRA"), Regulations and Circulars by the Noticee were observed. Accordingly, the findings of the inspection observations were communicated to the Noticee on March 31, 2022 advising it to submit its explanation/comments together with supporting documents, if any, on the same. Subsequently, the Noticee had submitted its reply to the observations vide letter dated April 28, 2022. SEBI after examining those comments/ replies of the Noticee and not being satisfied with the same, it was allegedly observed the followings:

   a. Non-Segregation of client's funds,
   b. Non-settlement of client's accounts,
   c. Incorrect reporting of margin to exchange,
   d. client funding,
   e. Non-issuance of contract notes,
   f. discrepancies in running account,
   g. Discrepancies in e-mail ids and Mobile Numbers data of clients and
   h. Non-Cooperation.

3. The aforesaid alleged conduct of the Noticee were in violation of the followings:

   a. Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993; Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016,
   b. Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009,
   c. SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011,
   d. Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017,
   e. Clause B (2) in Schedule II of Regulation 9 of Broker Regulations,

f. Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009,

g. Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 and

h. Regulation 21 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (Brokers Regulations)

4. In view of the above, Adjudication proceeding was initiated under Section 15A (b), 15B, 5HB of the SEBI Act and Section 23D of SCRA against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. In this regard, the undersigned was appointed as the Adjudicating Officer **(“AO”)** by SEBI, vide order dated October 19, 2022, communicated vide communique dated October 27, 2022 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as **“Adjudication Rules”**) and Section 23-I of SCRA read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquire and Imposing Penalties) Rules, 2005 (hereinafter referred to as **“SCRA Rules”**) to inquire into and adjudge under Sections 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA for the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice dated November 14, 2022 (hereinafter referred to as **“SCN”**) was issued to the Noticee in terms of Rule 4 of SEBI Adjudication Rules, Rule 4 of SCRA Rules read with Section 23 I of the SCRA, calling it to show cause as to why an inquiry should not be held and penalty be not imposed on it under Sections 15A (b), 15B, 15HB of SEBI Act and Section 23D of SCRA, for the aforesaid alleged violations.

7. The said SCN was duly delivered on November 18, 2022 by SPAD and the same was acknowledged by the e-mail confirmation dated December 01, 2022, from the manager of the Noticee. Subsequently, vide e-mail dated December 08, 2022, the Noticee had sought time till January 15 to submit its reply in the matter. However, since more than 14 days had lapsed from the receipt of the SCN, vide e-mail dated January 03, 2023, an opportunity of personal hearing was granted to the Noticee on January 11, 2023.

8. The Noticee vide its e-mail dated January 10, 2023 had sought for an adjournment of the said hearing. Accordingly, another opportunity of personal hearing was granted to the Noticee on January 17, 2023 which was intimated to the Noticee vide e-mail dated January 10, 2023. Thereafter, vide another e-mail dated January 13, 2023, the Noticee had sought for another adjournment of the personal hearing and accordingly, a last and final opportunity of personal hearing was granted to the Noticee on February 07, 2023 which was intimated to the Noticee vide e-mail dated January 17, 2023. Consequently, the personal hearing in the matter was conducted on February 07, 2023, which was attended by Mr. Ajay Surekha, Director of the Noticee Company along with the Authorized Representative (AR), of the Noticee.

9. The Noticee vide its letter dated January 18, 2023, received by SEBI on January 27, 2023 had submitted its reply in the matter. The summary of the said reply is as under:

   Non-Segregation of client's funds: The Noticee submitted that there were software issues while capturing the data for uploading enhanced supervision details, which was later rectified and it discontinued the use of share margin control account to avoid incorrect presentation of enhanced supervision data and started to maintain combined ledgers from then on.

   Non-settlement of Client's accounts: The Noticee submitted that most of the client's offices were non-functional during Covid for around 6 months and hence requested not to transfer the funds as they were not in a position to re-transfer the same for further trading and mostly they were promoters / shareholders clients. It further stated that from October 01, 2021, it started to settle clients' payable and started to treat them on par with regular clients to improve efficiency of compliance of rules and guidelines of SEBI/exchanges.

Incorrect reporting of margin to exchange: The Noticee submitted that this was due to software issues as demonstrated to NSE and were resolved subsequently. It also submitted that it has started to maintain combined ledger for all exchanges including for margin reporting purpose.

Client Funding: The Noticee submitted that certain accounts went beyond stipulated time of Debit balance due to Covid lockdown and in some accounts due to non-availability of the client to transfer funds due to travel schedule. However, the same has been rectified and ensured that it will not happen again.

Non-issuance of contract notes: The Noticee submitted that the contract notes were issued on a regular basis as per exchange guidelines. Further, the Noticee has provided ECN log for two sample dates.

Discrepancies in running account: The Noticee submitted that this was a clerical mistake which was rectified immediately upon intimation.

Discrepancies in e-mail ids & Mobile numbers of clients: The Noticee submitted that all the discrepancies were immediately rectified and software has been installed to prevent such errors in the future.

Non-cooperation: The Noticee submitted that, it was severely constrained by shortage of back-office staffs due to Covid and also had issues with back-office software which was realized only during inspection of documents and were subsequently rectified.

10. Considering the above, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice were duly served upon the Noticee and sufficient opportunity was granted to it to reply to the SCN and appear for the personal hearing.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

11. After perusal of the material available on record and the submission made by the Noticee in this regard, I have the following issues for consideration:

    ISSUE I: Whether Noticee has violated the aforesaid provisions of Broker's Regulations and SEBI Circulars as mentioned at para 3 above?

    ISSUE II: Does the violation, if any, on part of the Noticee attracts penalty under Sections 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA, as applicable?

    ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23 J of SCRA?

12. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of law, which read as under:

Circulars

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

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.*

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 -
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.

D. What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -
i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;
ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;
iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

E. Right to lien, set-off etc., not affected. 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.

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

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

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

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

…

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

…

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

Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

8. Running Account Settlement

***8.1.** In partial modification of circular on running account settlement, the stock broker shall ensure that;*

8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

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

Running Account Authorization

***12.** Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*

a. The authorization shall be renewed at least once a year and shall be dated.

b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.

c. The authorization shall contain a clause that the Client may revoke the authorization at any time.

d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.

e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a "statement of accounts" containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.

g. Such periodic settlement of running account may not be necessary:

i. for clients availing margin trading facility as per SEBI circular

ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).

h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.

i. There shall be no inter-client adjustments for the purpose of settlement of the "running account".

j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.

SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 - *Short-collection/Non-collection of client margins (Derivatives Segments)*

CIR/MIRSD/15/2011 dated August 02, 2011 - SMS and E-mail alerts to investors by stock exchanges

2. As an additional measure, it has now been decided in consultation with the major stock exchanges and market participants that the stock exchanges shall send details of the transactions to the investors, by the end of trading day, through SMS and E-mail alerts. This would be subject to the following guidelines:

…

B. Uploading of mobile number and E-mail address by stock brokers

i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.

ii. Stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address.

iii. Stock brokers shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of clients.

iv. Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile *number/E-mail address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents.*

Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

2.6. *Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.*

Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

2. SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

…

Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time." This clause would be effective from August 1, 2017.

<u>Broker Regulations.</u>

Obligations of stock-broker on inspection by the Board.

21. *(1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.*

(2) The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.

(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

Clause B (2) in Schedule II of Regulation 9 of Broker Regulations

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

B. Duty to the Investor

…

(2) Issue of Contract Note: A stock-broker shall issue without delay to his client or client of the sub-broker, as the case may be a contract note for all transactions in the form specified by the stock exchange.

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submission of the Noticee No.1, I record my findings hereunder:

ISSUE I: Whether Noticee has violated the aforesaid provisions of Broker's Regulations and SEBI Circulars as mentioned at para 3 above?

a) Non-segregation of client's funds

14. I note from the Inspection Report (hereinafter called as **IR**), that the bank statements, bank ledger books maintained by the Noticee, that there were frequent transactions between client bank a/c (140340002729 and 3513422970) and proprietary bank a/c (140340002712 and 3513369954). In addition, few instances were also observed where funds have been moved from clients' bank a/c to proprietary bank a/c through settlement bank account and it was also observed that funds have been moved from client bank a/c to proprietary bank a/c and subsequently moved to other entities a/c namely M/s Kripa Advisory Services Pvt. Ltd.,

15. In this regard, Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 states as below:

    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.*

16. From the above, I note that the 1993 Circular mandates strict segregation of clients' funds and securities from own funds. The principle of segregation ensures adequate ring fencing of clients' assets from own funds so that even if the own funds and securities are stressed, the client funds and securities will be protected.

17. I further note that the segregation of clients' funds from that of brokers' own funds and prohibition of use of funds of clients for other clients or for own purpose aim towards instilling confidence amongst the investors that their funds shall not be mis-utilized.

18. The regulatory intent of the SEBI circular is to maintain the balance of clients' funds to avoid misuse of the funds etc., and the same is particularly relevant for clients as their accounts are prone to such misuse. This provision was brought

into place to particularly curb the menace of misuse of client accounts by stockbrokers.

19. It is therefore, based on the principles and guidelines stipulated in clause 3 of “Enhanced Supervision of Stock Brokers/ Depository Participants” circular dated September 26, 2016, reconciliation of clients’ funds lying with the stock broker was done with the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member to detect any mis-utilization of clients’ fund.

20. In order to determine whether the Noticee has utilized clients’ funds for purposes other than those permitted as stipulated in the foresaid circular, the principle specified in SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/138 dated December 20, 2016 has been applied such that the total available funds i.e. day end balance in all clients bank accounts (A), cash and cash equivalents with the stock broker and with the exchange / clearing corporation/ clearing member (B), should always be equal to or greater than clients’ funds as per ledger balance (C) and if [(A+B)–C = G] is negative, then it indicates that the credit balance clients’ funds have been misused by the stock broker for its own purposes or for settlement obligations of debit balance clients. In this regard, I note that during the inspection, the following bank accounts of Noticee have been selected on sample basis:

Type of Bank A/c	**Name of Bank**	**Bank A/c Number**
Client Bank A/c	HDFC Bank	140340002729
	ICICI Bank	605019511
	Kotak Mahindra Bank	3513422970
	State Bank of India	30840335197
Settlement Bank A/c	HDFC Bank	990610004757
	HDFC Bank	990620005277
Proprietary Bank A/c	HDFC Bank	140340002712
	HDFC Bank	140130000356
	Kotak Mahindra Bank	3513369954
Other Bank a/c	HDFC Bank	0990610004300

21. Futher, in the present case, I note that it has been specifically found in the inspection that the total of clients’ funds (available in bank accounts, cash / cash

equivalent deposits with exchange / clearing corporation / clearing member) available with the Noticee for 45 out of 45 sample dates were lesser than the total credit balance of all clients of the Noticee. Also the inspection has categorically brought out that the said mismatch between the clients' funds available with the Noticee and the total credit balance of clients which indicate that funds of the clients with credit balance were being used for meeting the obligations of clients with debit balance which is not permissible in terms of the aforesaid Circular. From the observations made by the inspection, I further note that the difference between the clients' funds available with the Noticee i.e. (A+B) and the total credit balance of clients i.e. (C) range from Rs. 3.39 Crore to Rs. 7.29 Crore.

22. This apart, upon verification of the enhanced supervision data submitted by the broker to SEBI during the inspection, it was observed that the actual value of G was negative for entire duration of September 2020 and March 2021. During this period out of 45 sample days collected, value of G was negative on all sample days. The total value of G negative was Rs.2,621,663,971.29. This indicates that the broker had utilized funds of credit balance clients for settlement obligations of debit balance clients or for own purpose. The calculation of 'G' is mentioned below:

- No of Instances: 45 / 45 (sample instances)
- Range: Rs. 3.39 Crores to Rs. 7.29 Crores
- Average: Rs. 5.82 Crores

23. It was also observed that out of the 45 instances, 'I' was positive in 13 instances during March 2021 which indicates that that clients' fund and securities possibly utilized towards proprietary margin obligations. The calculation of 'I' is mentioned below:

- No. of Instances: 13 / 45 (sample instances)
- Range: Rs. 2.79 Lakhs to Rs. 1.43 Crore
- Average: Rs. 59.69 Lakhs

24. Further, ‘J’ was also observed to be positive in 7 instances out of 45 instances during March 2021 which indicates that clients’ fund utilized towards margin obligations of debit balance clients and proprietary margin obligations. The calculation of ‘J’ is mentioned below:

- No. of Instances: 7 / 45 (sample instances)
- Range: Rs. 6.95 Lakhs to Rs. 94.78 Lakhs
- Average: Rs. 45.69 Lakhs

In view of the above, it was observed that the broker had misrepresented the value of collateral deposited with clearing member and total credit balance of all clients.

25. In respect of the above facts, I note that the Noticee submitted that there was software issue while capturing the data for uploading enhanced supervision details. Further, it stated that, the software issue was resolved subsequently and it has discontinued the use of ‘Share Margin Control Account’ to avoid any incorrect presentation of enhanced supervision data and started maintaining combined ledgers for all exchanges and G Negative was subsequently rectified within the time given by NSE for the same and the same being communicated to the exchange with sufficient documentary evidence. However, no comment was made on the charges of negative G, I and J value. The Noticee has further contended that the funds of the credit balance clients were never utilized for its own purposes.

26. I have considered the allegations levelled against the Noticee, the reply/submissions of the Noticee and the relevant material available on record. In the present matter, as the value of G, I and J during the inspection was found to be negative, I would refer to the judgement of the Hon’ble Securities Appellate Tribunal (Hon’ble ‘SAT’) in the matter of ***Samco Securities Ltd. vs SEBI*** (Appeal No. 493 of 2021 decided on March 30, 2022), wherein the Hon’ble tribunal held:

“.....We find that mis-utilization of the clients’ credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients’ accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016...”

27. It is further relevant to mention that instant proceedings have been initiated based upon the observation that the Noticee had not complied with the requirements of 1993 Circular. It is noted that the 1993 Circular lays down several exclusive requirements. One of the laid down requirements under Clause D of the 1993 Circular as applicable in this case is that –

    “....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”.

28. In terms of said Circular, the stock broker is mandated not only to keep separate accounts for clients’ and own dealings but also to not to withdraw money from clients’ account except in the situations permitted thereunder. However, as observed in preceding paragraph that there were fund transfers from clients’ accounts to proprietors’ accounts and also to a third party account i.e. Kripa Advisory, which is not in line with the provision mentioned in the aforesaid 1993 Circular.

29. Further, the provisions of Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stipulates that the value of ‘G’ should always be positive i.e. the total available funds and cash equivalents with the stock broker

and with the clearing corporation/clearing member should always be equal to or greater than the clients' funds as per the ledger balance.

30. With regard to the above I also refer to Section 23D of SCRA which states that:

"If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty"

31. Taking into consideration the aforesaid facts and the material available on record, it is noted that, though separate bank accounts were maintained by the Noticee, there were fund transfers between the aforesaid accounts that led to mismatch between the clients' funds available with the Noticee and the total credit balance of clients, which indicates that funds of the clients with credit balance were being used for meeting the obligations of either clients with debit balance or for its own purpose which is not in line with the provisions of the aforesaid Circular. This excess drawing of money from the clients' bank accounts, amounts to misuse of the clients' funds either for debit balance clients or for its own purpose and thereby the Noticee failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients. Hence, the alleged violation of Circular SEBI Circular ref. no. SMD/SED/CIR/93/23321 dated November 18, 1993 as against the Noticee stands established.

b) Non-settlement of client's accounts

32. During inspection it was observed that the Noticee had not done actual settlement at least once per month / quarter in 146 out of 600 instances amounting to Rs.98159971.59, as consented by the clients. Further there was also a delay in settlement in 68 out of 600 instances by the Noticee. Also, as regards 34 clients who were not settled by the Noticee in Q2 (2021-22) were subsequently settled in Q3 (2021-22) after the inspection.

33. It is pertinent to mention that the provisions of clause 12 of Annexure of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 in this regard mandates that the settlement of funds/securities shall be done within a day of the pay-out.

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

8. Running Account Settlement
8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;
8.1.1. <u>There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements</u>.

34. The Noticee, in this regard, has submitted that most of the client's offices were closed due to nationwide covid lockdown for around 6 months and they had requested to not to transfer funds as that will not be able to re-transfer the same funds again for further trading and mostly they were promoters'/shareholders clients. Further, post October 1, 2021, the Noticee had started settling all the clients' balances, of who were mostly promoter/shareholder clients, as per exchange rules. Further, the Noticee has also submitted that the entire clientele business has now been transferred to Motilal Oswal Finance Services Ltd. (w.e.f. April 10, 2022) On transfer 100% client collaterals were settled and at present they have NIL client payables.

35. Here, it is pertinent to mention that Hon'ble SAT in the matter of ***Indira Securities Pvt Ltd vs SEBI***, Appeal No. 50 of 2014, decided on June 23, 2014, had observed that:

....."The concept of monthly or quarterly running settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3,2009,with a view to instil greater transparency and discipline in the dealings between the clients and the broker. The circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advisory Committee (SMAC), Market Participants and major stock

exchanges. <u>Therefore, the circular dated December 3,2009, issued by SEBI is not a directive only but a mandatory one</u>".

36. I note that as on the date of the inspection, clients' accounts were found to have not been settled within the period as stipulated under the aforesaid Circulars, a fact which has not been controverted by the Noticee. The Noticee has also submitted that some of the clients did not intend to settle their accounts for various reasons as stated by the Noticee. This is also not a tenable defense. Legal stipulations contained in the aforesaid Circulars for settlement of accounts needs to be mandatorily followed by all brokers and sub-brokers and cannot be waived off for any reason. In view of the above settled principle, it was mandatory to comply with the said SEBI Circular of December 03, 2009 and the submission of Noticee in this regard that the clients have consented for non-settlement is not tenable as the Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 prescribes conditions to give such authorisation to the brokers which is not found to be complied in the instant case. Such violations involving funds of investors are always serious in nature and hence strict compliance with the applicable rules and directions is desired.

37. Further, I note that there is no provision of law which excludes the accounts of promoters/ directors/shareholders from being settled, as contented by the Noticee. There is also no provision of law which allows the Noticee to treat its clients in group i.e. family members as a group, where settlement could not be done due to debit balance of clients amongst the group. The provisions given under clause 12 of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, clearly states that 'there shall be no inter-client adjustments for the purpose of settlement of the 'running account'. In this context, I note that during the inspection period, the total amount of funds not settled by the Noticee is in the range of Rs. 65.05 to Rs. 2.83 crores, which is significantly a huge amount to ignore the violations of the Noticee. Therefore, the submissions of the Noticee cannot be accepted.

38. With regards to the aforesaid violation, the Noticee had further submitted that the clients have never raised any query regarding the non-settlement of the accounts. In this regard, I note that as a SEBI registered intermediary, it was the duty of the Noticee to comply with all the directives of SEBI including settlement of funds and securities of the clients. The Noticee cannot absolve itself from the violation by placing reliance on the reason/statement that no complaint was made by any investor in this regard. Further, it is an admitted fact by the Noticee that in respect of certain accounts, the Noticee settled the funds in the subsequent quarter instead of the required quarter. The reply of the Noticee in the context of the said charges/violations also show the tacit admission on its part w.r.t the said charges/allegations.

39. In view of the above, I hold that that the Noticee has violated clause 12 of Annexure of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

c) Incorrect reporting of margin to exchange

40. During Inspection, top 50 unique clients in CM, all 32 FO & all 5 CD segment were identified based on highest margin liability for each segment. For the sample clients the actual available margin reported by the trading member to the Exchange was verified with the margin provided by the Client to the trading member. Client provided margins in the form of Funds and Securities. Margin Verification for the sample instances was done to verify any wrong reporting of margin collection.

41. Non-compliance was observed for the sample instances with margin shortfall of Rs.6582.56 in FO Segment & Rs.1012536.75 in CD Segment. In this regard, the Noticee has blamed the software stating that the report which was regularly uploaded was not capturing client margin account balances lying in Share Margin Control Account due to software issue and mentioned that now they have stopped using the 'Share Margin Control Account' to avoid any future incorrect

misrepresentation and have started maintain combined ledger for all exchanges including for margin reporting purpose.

42. In this regard, it is pertinent to mention the significance of collection of margin as detailed by Hon'ble SAT in the matter of ***SMC Global Securities Ltd. Vs SEBI*** (Appeal No. 152 of 2013), wherein it held:

"....44. The significance of the concept of margin lies in the fact that it is treated as 'defaulter-pay'. This means that <u>in the event of a counter-party default, margin protects the surviving party by absorbing losses using the collateral provided by defaulting entity</u>. Each portfolio has its own designated margin for absorbing the potential losses in relation to that particular portfolio. In addition to the initial margin, another equally important risk management technique is the daily margining, i.e., collateralization of credit risk. ...It is a stock-broker's professional responsibility, rather it is his duty, to investigate the financial capability of an investor entering a margin transaction and to inform that investor of the implication of a margin transaction. <u>The form of collection of margin money, its adequacy and deposit, including limit on exposure, are extremely important ingredients of a purposeful and effective margining system in the present day capital market culture. Expeditious and correct reporting of margin also acquires great significance towards this end.</u>

…47. Margin money has always played an important role in containing risks which are inherent in the functioning of any capital market. Owing to its non-adherence huge market crashes have been witnessed all over the glove in the recent past. <u>The vital position that the margining system holds as a crucial instrument to maintain market equilibrium can never be undermined. It is, therefore, pertinent for all market players to maintain the sanctity of margining as a risk management tool while dealing in securities</u>, be it in the cash or in the F&O segment...." (emphasis supplied)

43. Considering the importance of margin and the impact it has on the market and investors, even a small discrepancy cannot be overlooked. By shifting the

responsibility to the faulty software, the Noticee is only exposing its carelessness and lack of awareness. I reiterate that where funds of investors are involved, the duty of the market intermediaries enhances and additional due diligence is expected. Wrong reporting to the exchange cannot be taken lightly even if it owes to the software issue. The responsibility of the broker cannot be shifted / excused and hence it has violated SEBI Circular CIR/DPND/7/2011 dated August 10, 2011.

d) Client funding

44. During the inspection, it was observed that the Noticee in the capacity of a Trading Member had undertaken fund-based activities by allowing client to take further position without clearing earlier dues in 2 out of the 25 instances verified i.e. client account N009 and N105 on the funding of total amount Rs.7.23 Lakhs.

45. In this regards, Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, states as below:

2.6. Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.

46. I note that the Noticee has submitted that, as a matter of practice we don't indulge in fund based activities and in the instant case of N009, this account went beyond stipulated time of Debit balance due to Covid lockdown and in N105, because of non-availability of the client to transfer funds due to travel schedule. Noticee further submitted that as a matter of additional precaution, it had sufficient collaterals to cover the outstanding balance.

47. In this regard, I note that the Noticee has admitted to the alleged violation of funding to the clients as observed during inspection. Further, the contention that sufficient collaterals to cover the balance were created is not tenable as the

circular nowhere makes any provision to fund the clients by taking such collaterals.

48. In view of the above, the violation of Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 is established.

e) Non-issuance of contract notes.

49. During inspection ECN email log for the sample dates were verified. It was observed that the contract note was not sent to all the clients who traded and accordingly the Noticee was alleged to have violated Clause B (2) in Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

50. Clause B (2) in Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 state as under:

(2) Issue of Contract Note: A stock-broker shall issue without delay to his client or client of the sub-broker, as the case may be a contract note for all transactions in the form specified by the stock exchange.

51. In this regard, I note that the investors or traders can access the summary of their trades on a specific day through contract notes. Apart from basic trade information, they also contain details of profits and losses. They are important documents that can be used to take legal action against the stockbroker in case of disputes. Hence, it is an important document as it serves to confirm all the trades that are executed by an investor or a trader on any given date. A contract note is generated when traders undertake trading and the total amount of brokerage charged is determined and the net amount that is payable or receivable is made clear.

52. For the aforesaid allegation, the Noticee has contended that the contract notes were issued on regular basis and has provided the ECN log for 2 sample dates who have traded on that particular dates.

53. I note that the clause 2.4 of the SEBI Circular No. MRD/DoP/SE/Cir-20/2005 dated September 8, 2005 on Electronic issuance of contract notes – Additional conditions stated as below:

"2.4. Requirements for acknowledgement, proof of delivery, log report etc.

2.4.2. Proof of delivery

i. The proof of delivery i.e., log report generated by the system at the time of sending the contract notes shall be maintained by the member for the specified period under the extant regulations of SEBI/stock exchanges and shall be made available during inspection, audit, etc.

ii. The member shall clearly communicate to the client in the agreement executed with the client for this purpose that non-receipt of bounced mail notification by the member shall amount to delivery of the contract note at the e-mail ID of the client."

54. In this regard, I note that the Noticee has submitted the ECN log and not the ECN email delivery log or ECN email as a proof of delivery and issuance of contract notes on a daily basis as required under the provisions of the aforementioned SEBI circular dated September 8, 2005. Hence, the above contention of the Noticee is not tenable.

55. In view of the above, it is established that the Noticee has violated Clause B(2) in Schedule II of Regulation 9 of the Broker Regulations by not sending contract notes to its clients.

f) Discrepancies in running account

56. Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, states as under:

"12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the conditions mentioned therein"

57. During the inspection, it was observed that the Trading member has not done actual settlement at least once per month / quarter as consented by the client in 146 out of 600 instances amounting to Rs.9,81,59,971.59/-. Further, there is a delay in settlement in 68 out of 600 instances. Following are the details of discrepancy:

    - No of Instances: 146/600 clients (across six quarters)
    - Range: Rs.65.05 to Rs.2.83 Crore
    - Average: Rs.1.63 Crore

58. Further, it was observed that 34 Clients not settled in Q2 (2021-22) which were subsequently settled in Q3 (2021-22) after the regular inspection was concluded and member was instructed to settle client accounts.

59. The Noticee has submitted that earlier there was a clerical mistake in marking the running account authorisation which has been now rectified subsequent to inspection. Now they mark the running account authorization in their back-office software "Share-Pro".

60. In this regard, it is pertinent to note that the rationale for coming out with Circular dated December 3, 2009 by SEBI was to instil greater transparency and discipline in the dealings between the clients and the stock brokers, so as to avoid misuse of (a) client funds and securities and (b) running account authorisation, by stock brokers. In such scenario, the Noticee is expected to comply with the statutory requirements in totality. However, I note that the Noticee failed to ensure compliance of aforesaid regulatory requirements.

61. Further, the Noticee has also admitted to the violation and hence consequently violated SEBI Circular MIRSD/SE/Cir-19/2009 dated December 3, 2009 on 'Dealings between a client and a stock broker (trading members included).

g) Discrepancies in e-mail ids and Mobile Numbers data of clients

62. On verification of the exchange UCC database and the data provided by the trading member, it was observed that the email ids and the mobile numbers updated in both the databases are not matching with each other. Further, on verification of the email ID and the mobile no. of the active clients, it was observed that trading member had uploaded same E-mail ID and mobile numbers to multiple clients without obtaining family declaration.

63. Again for this charge also the Noticee has submitted that the discrepancies observed were immediately rectified and proper alert system has been put in place to avoid duplication of mobile number and e-mail IDs. Hence, the Noticee has admitted the violation alleged and has consequently violated Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

h) Non-Cooperation

64. It was observed that during the inspection, the Noticee was found to be non-cooperative and had not provided the information as desired in timely manner and had not provided any tenable submission in support of their cooperation during inspection.

65. The Noticee has submitted in the present proceeding that due to hardship during the covid for their employees, there was shortage of back-office staff with the Noticee and further due to the software issues which were brought to their notice during the inspection they were constrained to cooperate. However, on other times they were cooperating. All those software issues are now fixed and the Noticee has shifted the back-office to "cloud" for smooth functioning and reports

are now uploaded at regular intervals. Hence, any future adversity like lockdowns will not impact the functioning of the Noticee.

66. From the submission of the Noticee I note that the reason for alleged non-cooperation was provided i.e. covid induced lockdown and software issue and it is also mentioned that the software part has been addressed so that in future lockdown won’t be effecting the functioning of the Noticee

67. For the aforesaid submissions and observations, I would like to mention that SEBI takes various steps and measures from time to time in order to protect the interest of investors in securities market and also to promote orderly, fair and transparent dealings by the stock brokers. Further, SEBI also prescribes various checks and balances by issuing various circulars to prevent any misuse by stock brokers while dealing in the market and with their clients.

68. Under the SEBI Act 1992, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the securities market by such measures as it may think fit. The role of the stock broker as a market intermediary is indeed very crucial, especially since any breach of duty will directly impact the market by allowing various prohibited activities by its clients either directly or indirectly.

69. The object of inspection of the books of accounts and records of any intermediary is to monitor and identity any non-compliances with respect to process, procedure and systems prescribed through various provisions of the SEBI Act, Rules, and Regulations made thereunder and Circulars issued from time to time and thereafter take necessary corrective steps for orderly, fair and transparent conduct of market participants.

70. Keeping in mind the role played by market intermediaries and the supervisory role played by SEBI over such intermediaries, I note that, the Noticee has majorly admitted to the shortfalls observed during the inspection and has submitted that remedial measures have been taken subsequently to rectify the same.

71. In view of the above observations, it is established that the Noticee has violated Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993; and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, Clause B(2) in Schedule II of Regulation 9 of Broker Regulations Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 and Regulation 21 of Broker Regulations.

ISSUE II: Does the violation, if any, on part of the Noticee attracts penalty under Sections 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA?

72. On the question of imposition of penalty, I would like to refer to the order of the Hon'ble Securities Appellate Tribunal in the matter of ***Religare Securities Limited v. Securities and Exchange Board of India*** (Appeal No. 23 of 2011 dated June 16, 2011) wherein, the Hon'ble SAT has observed, *"It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in*

regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. <u>This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."</u> (emphasis supplied)

73. The provisions of Sections 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA, read as under:

<u>SCRA</u>

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 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>SEBI Act</u>

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder, —*

(a) …

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations for who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure by any person to enter into agreement with clients.

15B. *If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Penalty for contravention where no separate penalty has been provided.

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

74. I further note that Hon'ble Supreme Court of India, in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

75. Since it is established that the Noticee has failed to comply with the provisions of law, I am of the view that it warrants imposition of penalty under 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA on it.

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of SCRA?

76. While determining the quantum of penalty under Sections 15A(b), 15B, 15HB of SEBI Act and Section 23D of SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of SEBI Act and Section 23J of SCRA which read as under:

SEBI ACT

15J -Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investor/+s as a result of the default;

(c) the repetitive nature of the default.

SCRA

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

23J *- While adjudging quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely: -*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

77. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee are available on record. However, the violations observed are serious in nature and hence should be dealt with sternly by imposing monetary penalty as effective deterrence.

ORDER

78. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules and Section 23-I of the SEBI Act, 1992 read with Rule 5 of SCRA Rules, hereby impose penalty on the Noticee as under:

Penalty Provision and Violation	Penalty amount in Rupees
Under Sections 15A(b) of the SEBI Act for the violation of Regulation 21 of Securities and Exchange board of India(Stock Brokers) Regulations,1992	Rs. 1,00,000/- (Rupees One Lakh Only)
Under Section 15B of the SEBI Act for the violation of Clause B(2) in Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992	Rs. 1,00,000/- (Rupees One Lakh Only)
Section 15HB of the SEBI Act for the violation of Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.	Rs. 5,00,000/- (Rupees Five Lakhs Only)
Under Section 23D of SCRA for the violation of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993; And Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular	Rs. 3,00,000/- (Rupees Three Lakhs Only)

SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016	
Total amount of penalty	**Rs. 10,00,000/- (Rupees Ten Lakhs Only)**

79. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

80. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - 3, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

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

82. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of SCRA Rules, a copy of this order is being sent to Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **G. RAMAR**

Date: February 28, 2023 **ADJUDICATING OFFICER**