BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/VC/2023-24/29834)

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

In respect of

Tradeswift Broking Private Limited

(PAN: AAECA3760A)

(SEBI Registration No.: INZ000166439)

In the matter of Tradeswift Broking Private Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection in respect of Tradeswift Broking Private Limited (hereinafter referred to as the **'Noticee'**). Noticee is registered with SEBI as a Stock Broker (Registration No.**:** INZ000166439) and DP (Registration No.**:** IN-DP-CDSL-563-2010) having its registered address as: 4th Floor, Baid House, 1, Tara Nagar, Ajmer Road, Jaipur - 302006. A comprehensive joint inspection of the Noticee with respect to its stock broking activities was conducted by SEBI along with the Exchanges from October 17, 2022 to October 28, 2022, for the period of April 1, 2021 to September 30, 2022 (hereinafter referred to as **'inspection period'**).

2. The findings / observations made during the course of inspection were recorded as Inspection Report, and the inspection findings were communicated to the Noticee vide SEBI letter dated December 08, 2022. Noticee had submitted its

comments / explanations on the aforesaid findings of the inspection vide its letter dated December 16, 2022.

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

Table No. 1

Sr. No.	**Alleged violations**	**Regulatory provisions violated**
A	Mis-Utilisation of clients' Funds	Section 23D of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **'SC(R) Act, 1956'**) 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.
B	Non-settlement of client's funds and securities	Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 and SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022.
C	Reporting and short collection of Margin	Clause A.5 of Schedule II to Stock Brokers Regulations read with Regulation 9(f) of Stock Brokers Regulations and Clause 15 to Annexure A of NSE circular NSE/INSP/45191 dated July 31, 2020, NSE/INSP/49929 dated October 12, 2021 and NSE/INSP/53525 dated September 02, 2022.

Sr. No.	Alleged violations	Regulatory provisions violated
D	Client Funding	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	Issues in client registration process (KYC and KRA process)	• Clause 1 of SEBI circular MIRSD/Cir- 26 /2011 dated December 23, 2011, • Clause 5.6 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, and • Clause 2 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021.
F	Discrepancies in E-mail IDs & mobile numbers	Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.
G	Incorrect reporting under Enhanced Supervision data	Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
H	Incorrect reporting under Risk based supervision	Clause 6.1.1.e and 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
I	Incorrect reporting of financial ratios & indicators	Clause A (1) of Code of Conduct of Schedule II of Stock Brokers Regulations read with Regulation 9 (f) of Stock Brokers Regulations.
J	Noticee's engagement as a principal in a business other than that of securities	Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957, read with NSE circular NSE/COMP/50957 dated January 07, 2022.

Sr. No.	Alleged violations	Regulatory provisions violated
	involving personal financial liability	
K	Investment Advice without disclosure of interest	Clause (B) (7A) of Schedule II of Code of Conduct for Stock Brokers read with Regulation 9(f) of Stock Brokers Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated July 04, 2023, under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) and under section 23-I of the SC(R) Act, 1956 read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules, 2005'**) to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/34118/2023 dated August 23, 2023 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, 1992; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SC(R) Act, 1956, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1996 for the alleged violations. I note that SCN issued to Noticee was duly served upon the Noticee and it was acknowledged by the Noticee.

6. Vide e-mail dated September 13, 2023, Noticee requested to provide the additional documents / information relied upon for issuing the SCN. In this regard, NCDEX e-mail dated January 27, 2023 and BSE e-mail dated April 06, 2023 along with the e-mail of SEBI sent to NCDEX and BSE for seeking their comments was provided to the Noticee. Thereafter, Noticee vide email / letter dated September 27, 2023 submitted reply to the SCN.

7. In the interest of natural justice, an opportunity of hearing on October 10, 2023 was granted to the Noticee vide Hearing Notice dated October 05, 2023. However, vide e-mail dated October 05, 2023, Noticee requested to reschedule the hearing after October 16, 2023, therefore, the hearing in the matter was rescheduled on October 17, 2023. Authorized Representatives viz. Deepika Vijay Sawhney, Advocate and Ajay Mundhra, Employee of the Noticee (hereinafter referred to as **"ARs"**) attended the hearing on October 17, 2023 through video conference on Cisco Webex platform and reiterated the submissions made by the Noticee vide letter dated September 24, 2023. ARs stated that they have no additional submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

9. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993:

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

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.

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

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

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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.

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 utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement *obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.*

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

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

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

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

3.3.2. 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, Bis compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

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

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

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

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

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

3.4. *Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from* *being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.*

3.5. Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.

3.6. Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.

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6. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

6.1. As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

6.1.1. Monitoring criteria for Stock Brokers

e. Failure to submit data for the half yearly Risk Based Supervision within the time specified by Stock Exchange.

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

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.

SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009:

Annexure-A

Running Account Authorization

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

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

Web link of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021:
https://www.sebi.gov.in/legal/circulars/jun-2021/settlement-of-running-account-of-client-s-funds-lying-with-trading-member-tm-_50570.html

Web link of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022:
https://www.sebi.gov.in/legal/circulars/jul-2022/settlement-of-running-account-of-client-s-funds-lying-with-trading-member-tm-_61222.html

<u>Relevant provisions of Stock Brokers Regulations:</u>

Conditions of registration.

***9.** Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

SCHEDULE II

Code of Conduct for Stock Brokers

[Regulation 9]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

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(5) Compliance with statutory requirements: A stock - broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

B. Duty to the Investor.

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(7A) Investment advice in publicly accessible media—

(a) A stock broker or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including the interest of his dependent family members and the employer including their long or short position in the said security has been made, while rendering such advice.

(b) In case an employee of the stock broker is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.

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:

d. Clause2.6 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.

Web link of SEBI circular MIRSD/Cir- 26 /2011 dated December 23, 2011:
https://www.sebi.gov.in/legal/circulars/dec-2011/guidelines-in-pursuance-of-the-sebi-kyc-registration-agency-kra-regulations-2011-and-for-in-person-verification-ipv-_21803.html

SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021:

2) In this regard, Stock Exchanges are directed to advise Stock Brokers to bring the Investor Charter for Stock Brokers to the notice of their clients (existing as well as new clients) through disclosing the Investor Charter on their respective websites, making them available at prominent places in the office, provide a copy of Investor Charter as a part of account opening kit to the clients, through e-mails/ letters etc.

Web link of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011:
https://www.sebi.gov.in/legal/circulars/aug-2011/sms-and-e-mail-alerts-to-investors-by stock-exchanges_20373.html

Relevant provisions of Securities Contracts (Regulation) Rules, 1957:

Qualifications for membership of a recognised stock exchange.

8. *The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:*

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(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

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(f) he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n) of sub-rule (8)].

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

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

11. At the outset, I find that there are 11 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

    A. Mis-Utilisation of clients' Funds,
    B. Non-settlement of client's funds and securities,
    C. Reporting and short collection of Margin,
    D. Client Funding,
    E. Issues in client registration process (KYC and KRA process),
    F. Discrepancies in E-mail IDs & mobile numbers,
    G. Incorrect reporting under Enhanced Supervision data,
    H. Incorrect reporting under Risk based supervision,
    I. Incorrect reporting of financial ratios & indicators,
    J. Noticee's engagement as a principal in a business other than that of securities involving personal financial liability, and
    K. Investment Advice without disclosure of interest.

A. Mis-Utilisation of clients' Funds:

12. It was alleged in SCN that 'G' was negative on 4 out of 22 sample instances (viz. May 17, 2021, May 18, 2021, May 19, 2021 and May 20, 2021), indicating that the funds of credit balance clients were misutilised by the Noticee for meeting the obligations of debit balance clients and/or for its own purpose. The misutilised

amount ranged from ₹22.42 lakhs to ₹1.98 crore and the average misutilised amount was ₹84.18 lakhs.

Reply of Noticee

13. With respect to above allegations, Noticee *inter alia* submitted that shortage was due to pressing and beyond control situation largely driven by 2nd wave of COVID 19. May 2021 was the time when 2nd wave of COVID 19 was playing havoc in the country and almost each of the family was grappling with painful situations. In times so distressing, it was highly difficult to insist upon clients to clear their dues and fund inflow was getting delayed. During the 4 days under consideration the total pay-in Obligation of the Noticee on account of client's trading was also very high. In these unavoidable situations (various clients and their families suffering on account of acute illness and in some case also the departure of their close ones) Noticee had to infuse the available funds to meet the pay-in obligation and faced the Negative G during this period.

14. Noticee further submitted that the instance of negative G was only during the limited instances and one-off, and that the shortfall was purely unintentional and beyond its control.

Findings

15. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation / clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C). Stock Exchanges shall calculate the difference i.e. G as follows:

$$G = (A+B)-C$$

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

16. Noticee submitted that shortage was due to pressing and beyond control situation largely driven by 2nd Wave of COVID 19 and during the said 4 days the total pay-in obligation of the Noticee on account of client's trading was very high. In this regard, I am of the view that COVID 19 cannot be an admissible reason for misutilisation of funds of credit balance clients by the Noticee for meeting the obligations of debit balance clients and/or for its own purpose.

17. Further, I note that the Noticee's contention that it had high pay-in obligation on account of client's high trading and therefore the Noticee had to infuse the available funds to meet the pay-in obligation is not relevant as the Noticee is alleged for misutilisation of funds of credit balance clients and not for infusion of funds to meet the pay-in obligation. Therefore, the infusion of funds by the Noticee to meet the pay-in obligation is not an appropriate justification for misutilisation of funds of credit balance clients.

18. Further, from Noticee submission that the instance of negative G was only during the limited instances and one-off, and that the shortfall was purely unintentional and beyond its control, I note that the Noticee has accepted the allegation with respect to misutilisation of funds of credit balance clients by the Noticee for meeting the obligations of debit balance clients and/or for its own purpose. In this regard, I note that the measure taken by SEBI (provisions of the circular) are intended to increase transparency in fund / client management by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than meeting that specific clients' obligation as permissible under SEBI rules and regulations.

19. In view of the above, I hold that the allegation that the funds of credit balance clients were misutilised by the Noticee on 4 instances (viz. May 17, 2021, May 18, 2021, May 19, 2021 and May 20, 2021), for meeting the obligations of debit balance clients and/or for its own purpose, stand established. Therefore, I hold that Noticee violated the provisions of 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.

B. Non-settlement of client's funds and securities:

20. Regarding Monthly / Quarterly settlement of client funds and securities the following was alleged in the SCN:

(a) Noticee had not settled clients' funds in 242 instances (Settlement period till July 2021 - 1 instance + Settlement period on or after August 2021 - 241 instances) out of 993 sample instances.

(i) Regarding 235 instance out of 241 instances after August 2021, Noticee, in its comments on the findings of the inspection, had submitted that it retained securities pledged by client through depository's Margin Pledge Re-pledge mechanism as additional margin.

(ii) In this regard, comments of NCDEX were sought and NCDEX submitted that as per prevailing regulations, total margin obligations should be adjusted first from securities pledged/re-pledged. However, the Noticee did not take cognizance of these securities at all by stating that these securities are retained as additional margin liability. NCDEX submitted that additional margin cannot be simply equal to the amount of securities pledged / re-pledged as it would defeat the sole purpose of SEBI circular on running account settlement dated June 16, 2021. Thus, it was alleged that the Noticee's intent was to retain the funds of clients.

(b) Noticee had done settlement of client funds/securities beyond prescribed time limit of 90 days, as per the preference chosen by the clients (i.e. delayed settlement) in 6 instances.

(c) Retention Statements issued to client did not contain/reflect the value of pledged securities/commodities as on the date of settlement and the value of pledged securities/commodities was also not considered as collaterals available for settlement in 2 instances.

Reply of Noticee

21. With respect to 235 instance out of 241 instances indicated at para 20 (a) (i) and (ii), Noticee *inter alia* submitted that while making settlement of clients, reliance was placed on NSE Circular no. NSE/INSP/49458 dated August 31, 2021, which

states that *‘The margin liability may also include the margin collected by the Member from their clients as per the risk management policy and informed to the clients’.* The Noticee’s Risk Management Policy indicates that the Member may retain securities pledged / re-pledged as additional margin.

22. Noticee further submitted that as per SEBI circular dated June 16, 2021, Margin Liability is defined to include *“the end of the day margin requirement excluding the MTM”,* whereas NSE circular specifically allowed inclusion of *“margin collected by the Member from their clients as per the risk management policy and informed to the clients”*. So it is clear that in addition to what is provided in the Circular, NSE FAQs have allowed whatever provision is there in the risk management policy of the Noticee, specifically to add to the Margin Liability.

23. For remaining 6 instances out of 241 instances, Noticee has submitted that funds could not be released on settlement day due to peak margin utilisation by clients on settlement day. In this regard, Noticee furnished the documents w.r.t. peak margin utilisation by the said 6 clients.

24. With respect to 6 instances indicated at para 20 (b), Noticee *inter alia* submitted that due settlement has been done in each of the 6 cases although there has been slight delay in the settlement, for the reasons beyond control of the Noticee. In this regard Noticee further submitted that the delay has been of marginal 2 to 15 days in 5 of the cases. Only in one case the delay is of 45 days.

25. With respect to allegations indicated at para 20 (c), Noticee *inter alia* submitted that the retention statements are system generated and there is absolutely no intervention of employees in this regard. The error which may have occurred was on account of some system error /software lag. Noticee further submitted that the value of pledged securities/commodities was duly accounted for in client settlement in both the case. Therefore, it is only that in the statement so shared, there was technical error and that client has not been prejudiced in any manner.

Findings

26. As per SEBI Circular no. CIR/MIRSD/SE/Cir-19/2009 dated December 03, 2009, 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. SEBI Circular dated September 26, 2016 further provides that there must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements. Further, SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022 provides that the settlement of running account of funds of the client shall be done by the TM after considering the End of the day (EOD) obligation of funds as on the date of settlement across all the Exchanges on first Friday of the Quarter (i.e., Apr-Jun, Jul-Sep, Oct-Dec, Jan–Mar) for all the clients i.e., the running account of funds shall be settled on first Friday of October 2022, January 2023, April 2023, July 2023 and so on for all the clients. If first Friday is a trading holiday, then such settlement shall happen on the previous trading day.

27. With regard to the allegation of non-settlement of client's funds amounting to ₹45,520.96 on 1 instance (settlement period till July 2021), I find that Noticee admitted the violation and stated in its response to the findings of the inspection that the funds could not be released on settlement day due to procedural reasons.

28. In response to the allegation of non-settlement of client's funds on 235 instances out of 241 instances (settlement period on or after August 2021), Noticee submitted that NSE Circular dated August 31, 2021 allowed members to retain funds as per their Risk Management Policy, and Risk Management Policy of Noticee allows it to retain securities pledged / re-pledged as additional margin. In this regard, I find that the said NSE circular in FAQs provides that "*Value of securities (after applying appropriate haircut) accepted by trading member as collateral from the clients by way of 'margin pledge', shall be adjusted/ considered towards margin liability while doing the settlement of accounts, even if the same is not re-pledged with CM/CC.*

29. Further, SEBI circular dated June 16, 2021 stipulates the following:

"Margin liability as on the date of settlement of running account, in all segments and additional margins (maximum upto 125% of total margin liability on the day of settlement). The margin liability shall include the end of the day margin requirement excluding the MTM and pay-in obligation, therefore, TM may retain 225% of the total margin liability in all the segments across exchanges. Computation for arriving at retention of excess client funds based on above points would be as under":

Table No. 2

Scenario	*Fund pay in obligation of T day & T-1 day*	*EOD/peak margin requirement*	*225% of the margin*	*Securities pledged/ repledged*	*Client fund balance*	*Excess client funds retained*
	A	*B*	*C=225%*B*	*D*	*E*	*F=E-[(C-D)+A]*

30. I note that SEBI circular on Settlement of Running Account of Client's Funds lying with Trading Member provides computation method for arriving at retention of excess client funds, which clearly provide that for arriving at client funds retention amount, total margin obligations should be adjusted first from securities pledged/re-pledged. Thus, the value of securities pledged/ repledged can be considered towards the margin liability and needs to be set off as provided in above table, however, Noticee erred in the manner he calculated what amount of funds can be retained and what needs to be accordingly settled.

31. In view of the above, I hold that Noticee did not settle the clients' funds amounting to ₹40.57 Crore at 235 instances within the stipulated time. (settlement period on or after August 2021).

32. For remaining 6 instances out of 241 instances, Noticee has submitted that funds could not be released on settlement day due to peak margin utilisation by clients on settlement day and Noticee also furnished the documents w.r.t. peak margin utilisation by the said 6 clients. In this regard, I find from the margin files for Trading

Member (MG13) furnished by the Noticee that peak margin was utilisation by the 6 clients on settlement day, therefore, with respect to the said 6 instances, I hold that the allegation that Noticee violated the provisions of SEBI Circular dated June 16, 2021, does not stand established.

33. Regarding allegation of 6 instances where settlement of client funds/securities was done beyond prescribed time limit of 90 days, as per the preference chosen by the clients, I note that the Noticee has accepted the violation and submitted that due settlement was done in each of the 6 cases though there was slight delay in the settlement, for the reasons beyond control of the Noticee. Therefore, I hold that Noticee has violated the provisions of the said SEBI circulars on settlement of running account of client's funds lying with trading member.

34. With respect to the allegations of retention statements issued to client not contained/reflected the value of pledged securities/commodities as on the date of settlement, Noticee submitted that the retention statements are system generated and there is absolutely no intervention of employees in this regard. The error which may have occurred was on account of some system error /software lag. Thus, I note that the Noticee has accepted the violation. Further, I am of the view that such explanations are not acceptable as the Noticee being a registered stock broker is expected to have the necessary checks and balances to eliminate such errors and issue the requisite appropriate statements to its clients and thus effectively discharge its responsibilities as a stock broker.

35. Further, with respect to the allegations the value of pledged securities/commodities not considered as collaterals available for settlement in 2 instances, Noticee submitted that the value of pledged securities/commodities was duly accounted for in client settlement in both the cases. Therefore, it was technical error only in the statement so shared, and client has not been prejudiced in any manner. In this regard, I note that Noticee has admitted the violation.

36. I note that the said SEBI circulars intends that the stock brokers should settle the funds of clients periodically, so that clients' funds are not kept unsettled by the stock

broker for indefinite period on any pretext. The circular was issued with a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers and to keep the investor informed about his/her account, so as to curb any misutilisation of funds by the stock brokers, thereby safeguarding the integrity of the market. In view of the above findings given from para 26 to 31 and 33 to 35, I hold that the allegation that Noticee violated the provisions of Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 and SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022, stands established.

C. Reporting and short collection of Margin:

37. It was alleged in the SCN that the Noticee had passed on the penalty levied by Clearing Corporation (**‘CC’**) for short collection of upfront margin, to its client on 2 dates out of 8 sample dates (belonging to 1 client out of 30 sample clients). The total amount of penalty passed on to its client was ₹2464.95.

Reply of Noticee

38. With regard to above observations, Noticee *inter alia* submitted that it has continuously adhered to the requirement of margin and ensured that the sufficient margin is available in the client’s account before placing the order. However sometimes due to peak margin variations & intraday changes in VAR etc., deposit of upfront margin became insufficient. For such events, it immediately informs the clients about increased margin requirement and requested clients to reduce the exposure according to the available margin, or submit the additional deposits towards margin. In most of the cases clients have acted upon its request, but in some cases, where client assured Noticee to bring in additional margins or reduce the exposure before the end of the day, but failed to do so. Noticee has not squared off / reduced the exposure of such clients on its own to avoid client grievances and undue losses to them. Thus, Noticee passed the penalty on the clients to ensure future compliance by client.

39. Noticee further submitted that the language of NSE circular no. NSE/INSP/45191 dated July 31, 2020 was not very clear and created ambiguity, wherein on one hand it was allowing passing of penalty and on the other hand, restraining from passing of penalty. NSE itself brought in the clarification and also modified the language of the foretasted provision vide NSE circular no. NSE/INSP/49929 dated October 12, 2021. 1 out of the 2 instances pertain to the period prior to the issuance of October 2021 i.e. as on May 17, 2021.

40. Further, the penalty at second instance was transferred to the said client to make him more proactive and to warn him of its repetitive default. Noticee also submitted that it has totally discontinued the practice of passing of the penalty levied by CC to the clients, ever since August 2022.

Findings

41. With respect to above allegations, I note that Noticee has admitted that it passed on the penalty to the clients. However, Noticee contended that Clause 15 of Annexure A of NSE circular dated July 31, 2020 was not very clear and created ambiguity. In this regard, the guidelines/clarifications provided in Clause 15 of Annexure A of the said NSE circular regarding passing of the penalty to the clients is as under:

'In case of failure (cheque not cleared or margin requirement not met by the client) on part of the client resulting which penalty is levied by the Clearing Corporation on the member for short reporting of client upfront margins/ margin on consolidated crystallized obligation/MTM losses, member may pass on the actual penalty to the client, provided he has evidences to demonstrate the failure on part of the client'.*

………….

*'*Member cannot pass on the penalty w.r.t. short collection of upfront margin to client'.*

42. From above, I note that the said Clause of NSE circular clearly states that *'Member cannot pass on the penalty w.r.t. short collection of upfront margin to client'.* However, Noticee has passed on the penalty levied by CC for short collection of upfront margin to its client and Noticee's interpretation to the provisions of the

circular that Clause 15 of Annexure A of NSE circular dated July 31, 2020 was not very clear and created ambiguity, is not correct. Therefore, I do not find any merit in this contention of Noticee. Therefore, I hold that the allegation that Noticee has violated the provisions of Clause A.5 of Schedule II to Stock Brokers Regulations read with Regulation 9(f) of Stock Brokers Regulations and Clause 15 to Annexure A of NSE circular NSE/INSP/45191 dated July 31, 2020, NSE/INSP/49929 dated October 12, 2021 and NSE/INSP/53525 dated September 02, 2022, stands established.

D. Client Funding:

43. It was alleged in the SCN that Noticee has given further exposure beyond T+2+5 days in 1 out of 47 sample instances and amount involved was ₹63,543.86.

Reply of Noticee

44. With respect to above allegations, Noticee *inter alia* submitted that further exposure to the said client was given only after considering the value of securities pledged by the client and duly ensuring that necessary system and check in place to prevent undue risk or fallout. The instance is just one and amounting to ₹0.63 lacs, which is a miniscule amount as against the size of the Noticee's business and could not have posed any risk to the market on the whole. In this regard, Noticee also furnished collateral valuation statement reflecting the value of securities pledged by the said client and client holding statement.

Findings

45. From the Client-Scrip Wise Stock Valuation Report furnished by the Noticee, I find that stock valuation of the said client (VRP204) was ₹478620.00. Therefore, considering the submission of Noticee and material available on record, I hold that the allegation that Noticee has violated the provisions of 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, does not stands established.

E. Issues in client registration process (KYC and KRA process):

46. Regarding client registration process (KYC and KRA process), the following was alleged in the SCN:

    (a) Noticee had failed to update the KYC details on KRA system in 6 instances (Client codes - A572, A573, A574, JRB255, R66 and V693) out of 33 sample instances.

    (b) Redundant clauses (with regard to retention of funds for administrative and operational difficulties) were observed in running account authorisation in 9 out of 33 sample instances.

    (c) Noticee had failed to provide copy of investor charter to clients as a part of account opening kits in 5 out of 33 sample instances.

Reply of Noticee

47. With respect to above allegations, Noticee *inter alia* submitted the following:

    (a) Regarding allegation of failure to update the KYC details on KRA system in 6 instances, Noticee reiterated its earlier submissions that KYC data was submitted to KRA upon receipt of the KYC documents from the client, however due to some additional documentary requirements raised by the KRA agencies, some of the KYC registration requests submitted to KRA agencies was put on hold by them. Noticee further submitted that it was only that certain further queries were raised which only could be clarified by the respective client and can be updated once the information/document provided by the client and hence the KRA update could not be completed in these 6 cases. The process of uploading KYC details on KRA was duly initiated within 10 working days of receipt of KYC information as per the requirement under SEBI Circular MIRSD/Cir- 26/2011 dated December 23, 2011 and the same was duly uploaded on the portal. In this regard, Noticee also furnished the documentary proof substantiating its claim.

    (b) Regarding allegation of redundant clauses (with regard to retention of funds for administrative and operational difficulties) in running account authorisation, Noticee reiterated its earlier submissions that redundant clause has been deleted from new version of KYC and same has been communicated to the clients. Noticee further submitted that there is no observation with regard to the misutilization of client funds owing to the said clause. It was only on account of unintentional error of using of old stationary in only some of the registration documents and no fraudulent or deceitful use was made of such clause. Further the Noticee has rectified the error in the earlier documents and therefore as on date there is no pending non-compliance or error on its part.

(c) Regarding allegation of failure to provide copy of investor charter to clients as a part of account opening kits, Noticee submitted that its submission was not accepted on the ground that Noticee merely declared/undertaken that investor charter was provided but could not produce any verifiable evidence/receipt/confirmation from the client in this regard. However, proof of dispatch along with sample customer copy of KYC documents dispatched to clients (which also included investor charter) produced to the Inspection Team at the time of visit has been completely ignored. Noticee further submitted that the observation is merely in 5 cases out of 33 sample instances and the receipt is not there in these cases merely on account of use of old stationary /receipt copy in which investor charter was not printed. The submission that the investor charter is duly available on its website has also been ignored.

Findings

48. Regarding allegation of failure of Noticee to update the KYC details on KRA system in 6 instances, I find that the process of uploading KYC details on KRA portal was duly initiated within 10 working days of receipt of KYC information from the client as submitted by Noticee. Noticee also furnished the documentary evidence to substantiate its claim. Considering the submission of the Noticee and evidences furnished by the Noticee, I hold that the allegation that Noticee violated the provisions of Clause 1 of SEBI circular MIRSD/Cir- 26 /2011 dated December 23, 2011, does not stand established.

49. Regarding allegation of redundant clauses (with regard to retention of funds for administrative and operational difficulties) in running account authorisation, Noticee submitted that it was on account of unintentional error of using of old stationary in only some of the registration documents and no fraudulent or deceitful use was made of such clause. Further, Noticee stated that it has rectified the error in the earlier documents and therefore as on date there is no pending non-compliance or error on our part. In this regard, I note that Noticee has accepted the violation that it was on account of unintentional error of using old stationary. Further, the rectification of error post inspection does not absolve Noticee from violation that persisted during the inspection period. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 5.6 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, stand established.

50. Regarding allegation of failure to provide copy of investor charter to clients as a part of account opening kits, Noticee accepted the violation and submitted that observation is merely in 5 instances and the receipt is not there in these cases merely on account of use of old stationary /receipt copy in which investor charter was not printed. At the same time, Noticee stated that proof of dispatch along with sample customer copy of KYC documents dispatched to clients was produced to the Inspection Team, however, Noticee has not furnished any evidence in this regard. Noticee's submission that the investor charter is duly available on its website is not acceptable as Noticee is required to provide a copy of investor charter to clients as a part of account opening kits as per the SEBI circular dated December 02, 2021. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 2 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021, stand established.

F. Discrepancies in E-mail IDs & mobile numbers:

51. Regarding verification of E-mail IDs & Mobile Numbers, the following was alleged in the SCN:

    (a) Noticee updated incorrect E-mail IDs in UCC database of the Exchange(s) in 13 (Traded Clients) out of 7165 sample instances.

(b) Noticee updated incorrect mobile numbers in UCC database of the Exchange(s) in 4 (Traded Clients) out of 7165 sample instances.

(c) It was alleged that same E-mail IDs were mapped in multiple active / traded client codes in the UCC databases of the Exchange(s). Noticee had mapped 145 E-mail IDs to 519 clients.

(d) It was alleged that same mobile numbers were mapped in multiple active / traded client codes in the UCC databases of the Exchange(s). Noticee had mapped 103 mobile numbers to 393 clients.

Reply of Noticee

52. With respect to above allegations, Noticee *inter alia* submitted as under:

(a) Regarding updation of incorrect E-mail IDs in 13 instances and incorrect mobile numbers in 4 instances in UCC database of the Exchange(s) in (Traded Clients), Noticee submitted that updation for E-mail IDs and mobile numbers was skipped due to clerical error, Noticee has updated the correct E-mail ID(s) and mobile numbers on the exchange portal. Noticee further submitted that the error is purely unintentional, miniscule in nature and without any fraudulent intent. Also, as per the requirements of the Circular itself, there has been a mandate of double checking and the onus is on the stock exchanges to verify that the information uploaded is correct.

(b) Regarding same E-mail IDs and mobile numbers mapped in multiple active / traded client codes in UCC database of the Exchange(s), Noticee submitted that its earlier submission that the same belong to same 'family' was accepted by SEBI. Although it was further observed that the specific written request is not provided in this regard. Regarding missing written request, Noticee submitted that the KYC forms are each filled out and signed by the respective client itself. The client itself fills in the form and details of mobile number and Email-Id at which is desires communication. In the form itself the client indicates that whether the mobile number and email id is that of the client itself or of its "family person". Thus, this itself qualifies for the written request of the client and therefore there is no violation of provisions of SEBI Circular dated

August 02, 2011. Also, there is no observation of any erroneous mapping of number or email being mapped with someone other than “family”.

Findings

53. Regarding updation of incorrect E-mail IDs in 13 instances and incorrect mobile numbers in 4 instances in UCC database of the Exchange(s) in (Traded Clients), I note that Noticee has accepted the violation and submitted that updation of E-mail IDs and mobile numbers was skipped due to clerical error which was purely unintentional, miniscule in nature and without any fraudulent intent. Further, with respect to Noticee’s contention that as per circular the onus is on the stock exchanges to verify that the information uploaded is correct, I note that stock exchanges are required to verify the details, but it does not absolve the Noticee from its responsibilities. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011, stand established.

54. AS per SEBI circular dated August 02, 2011 *“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.”*

55. Regarding same E-mail IDs and mobile numbers mapped in multiple active / traded client codes in UCC database of the Exchange(s), Noticee submitted the client itself fills in the KYC form and details of mobile number and Email-ID at which communication is desired and indicates that whether the mobile number and E-mail id is that of the client itself or of its “family person”. Thus, this itself qualifies for the written request of the client. In this regard, I note that SEBI circular dated August 02, 2011 provides that 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. Thus, specific written request of a client is mandatory for mapping of an E-mail ID

and mobile number of its family person to the clients UCC database, which is not furnished by the Noticee, hence the contention of the Noticee is untenable. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 2 (B) (iv) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011, stand established.

G. Incorrect reporting under Enhanced Supervision data:

56. It was alleged in the SCN that Noticee made incorrect reporting in respect of the following:

  (a) Incorrect reporting of ₹2.70 crore was made by Noticee under the head 'Margin utilised for positions of credit balance clients'.

  (b) Incorrect reporting of ₹14,000 was made by Noticee under the head 'Total credit balance of all clients'.

  (c) Incorrect reporting of ₹6.50 crore was made by Noticee under the head 'Free/unblocked collateral deposited with Clearing Corporation (CC)'.

Reply of Noticee

57. With regard to above observations, Noticee *inter alia* submitted the following:

  (a) Regarding difference of ₹2.70 crore in reporting of margin utilised for positions of credit balance clients, Noticee vide its reply to inspection findings submitted that difference existed as inspection team considered valuation of securities accepted by CC whereas the Noticee considered value of securities submitted to CC. Noticee further summitted that the SEBI circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 does not provide for manner of calculation of "Margin utilized for positions of credit balance clients" and only ask for submitting the data on last trading day of every week to the stock exchange on or before the next trading day. That the manner of calculation of "Margin utilized for positions of credit balance clients" is provided by NSE circular bearing reference no. 47/2022, which state that *'Margin utilized (Minimum of Credit Balance of clients & Margin Obligation of such clients after deducting the value of* *securities/commodities repledged with CC/CM after appropriate haircut for the purpose of margin) for positions of credit balance clients across all Clearing Corporation'.*

(b) The aforesaid NSE circular nowhere mention that the value of securities as accepted by CC is to be taken into account. The circular is very clear that the value of those securities which has been repledged with the CC/CM after deducting haircut has to be taken into account, which was done by the Noticee. The NSE inspection team has made a mistake by solely taking into account the value of the securities for which exposure has been granted by the CC. According to the depository system workflow, to complete the cycle of pledge/repledge, the pledge/repledge request initiated by the pledger must be accepted by the pledgee. In the situation mentioned above, the repledge request initiated by the Noticee was accepted by the CC, which completed the repledge transaction and the securities were marked as "Repledged" in the Demat Account. According to the guidelines provided in NSE circular reference no. 47/2022, the Noticee was required to factor in the value of the securities (after applying the appropriate haircut) for which repledging to the CC had occurred and had been accepted by the CC.

(c) Regarding incorrect reporting of credit balance of all clients, Noticee submitted that during the inspection period it had maintained an average credit balance of INR 50 Crore for all its clients on a daily basis. The discrepancy of Rs. 14,000 in the reporting of this balance is tiny, negligible and unintentional. Additionally, throughout the inspection period, the reporting of client's balances to the exchanges, has been carried out on a weekly basis and the error has only been identified in a single instance only. This error occurred due to debit entry passed after the reporting of cash and cash equivalent balances. The said debit pertains to the recovery of option premium withheld by the CC in the client's account.

(d) Regarding incorrect reporting of ₹6.50 crore under Free/unblocked collateral deposited with CC, Noticee submitted that the reporting of Free/ unblocked collateral deposited with CC involves certain manual interventions. Moreover, due to the frequent alterations in the margining structure and collateral blocking mechanism, the outcomes of reporting calculations and the procedures defined by the member necessitate periodic updates. Within this process, there is a possibility of occasional misinterpretation of the data. The error was purely typographical in nature, where the reporting person inadvertently inputted the incorrect amount from the CC file when reporting the "Free/unblocked Collateral deposited with CC." Importantly, there was no breach of any fundamental principle.

Findings

58. With regard to difference of ₹2.70 crore in reporting of margin utilised for positions of credit balance clients, I note that the manner of its calculation is provided in NSE circular bearing no. NSE/INSP/52724 dated June 24, 2022, which state that *'Margin utilized (Minimum of Credit Balance of clients & Margin Obligation of such clients after deducting the value of securities/commodities repledged with CC/CM after appropriate haircut for the purpose of margin) for positions of credit balance clients across all Clearing Corporation'.* Noticee submitted that according to the guidelines provided in NSE circular, the Noticee was required to factor in the value of the securities (after applying the appropriate haircut) for which repledging to the CC had occurred and had been accepted by the CC.

59. In this regard, I note that the value of the securities which are eligible for granting the exposure by the CC should be reported by the Noticee under Enhanced Supervision data. Only the securities which have been accepted by the CC and which qualifies for the benefit of margin is to be reported. In this context, I also rely upon the comments of NSE vide email dated April 06, 2023 that NSE inspection team considered the valuation of securities accepted by CC for giving the exposure but Noticee is considering the overall securities in which no benefit was given by CC. Therefore, the contention of the Noticee is not acceptable. Therefore, I hold that the allegation that Noticee made the incorrect reporting of ₹2.70 crore under the head 'Margin utilised for positions of credit balance clients', stand established.

60. With regard to incorrect reporting of credit balance of all clients, I note that Noticee in its submission has accepted the violations as alleged against it. Thus, I hold that the allegation that Noticee made the incorrect reporting of ₹14,000 under the head 'Total credit balance of all clients', stand established.

61. Regarding incorrect reporting of ₹6.50 crore under free/unblocked collateral deposited with CC, Noticee's submitted that the reporting of Free/ unblocked collateral deposited with CC involves certain manual interventions. Moreover, due to the frequent alterations in the margining structure and collateral blocking mechanism, the outcomes of reporting calculations and the procedures defined by the member necessitate periodic updates. Within this process, there is a possibility of occasional misinterpretation of the data. I note that such explanation is not acceptable as Noticee being a registered stock broker requires to keep all checks and balances in place and must report the correct figures. Further, I note that Noticee has accepted the violation and stated that the error was purely typographical in nature, where the reporting person inadvertently inputted the incorrect amount from the CC file when reporting the "Free/unblocked Collateral deposited with CC." Therefore, I hold that the allegation that Noticee made the incorrect reporting of ₹6.50 crore under the head free/unblocked collateral deposited with CC, stand established.

62. In view of the above, I hold that Noticee was non-compliant during the inspection period and has violated the provisions of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

H. Incorrect reporting under Risk based supervision:

63. SCN alleged that loan the given by the Noticee to its associate company i.e. Baid Leasing & Finance Co. Ltd. was not reported to the Exchange under Risk Based Supervision (RBS) submissions as on March 31, 2022. The outstanding balance as on March 31, 2022 was ₹36.54 lakhs.

Reply of Noticee

64. With respect to above allegations, Noticee *inter alia* submitted that as on March 31, 2022 there was no loan outstanding from Baid Leasing. The loan amount was duly settled on November 30, 2021. The amount of ₹36.54 Lakhs was towards interest accrued but not received and hence did not need disclosure under RBS. Thus, in light of the fact that nature of the outstanding amount was not of the loan extended to Baid Leasing & Finance Company, but was the interest accrued but not received, as on March 31, 2022, hence no disclosure was needed in RBS. In this regard, Noticee enclosed the "Statement of Accounts" for the period from April 01, 2021 till March 31, 2022 and bank account statement reflecting the receipts of funds of ₹36.54 Lakhs as on June 16, 2022.

Findings

65. Regarding above allegation, Noticee submitted that the said amount of ₹36.54 Lakhs was towards 'interest accrued but not received' and not the loan extended to Baid Leasing & Finance Co. Ltd., hence no disclosure was needed in RBS. I note that 'interest accrued but not received' also emanate from and related to the loans given by the Noticee to its associate company, thus I am of the view that amount of interest accrued on loan also needs to be reported to the Exchanges under RBS. However, Noticee did not report the interest accrued on loan the given by it to its associate company to the Exchanges under RBS.

66. In view of the above, I hold that Noticee was non-compliant during the inspection period and has violated the provisions of Clause 6.1.1.e and Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

I. Incorrect reporting of financial ratios & indicators:

67. It was alleged in the SCN that Noticee reported ₹21.78 crore trade payables in balance sheet as on March 31, 2022, however as per trial balance actual trade payables was ₹54.80 crore. Further, it was alleged that Noticee reported ₹13.68

crore trade receivables in balance sheet as on March 31, 2022, however as per trial balance actual trade receivables were ₹61.83 lakhs.

Reply of Noticee

68. With respect to above allegations, Noticee reiterated its earlier submissions to the inspection report that the Creditors (Trade Payable) and Debtors (Trade Receivables) reported in Balance Sheet have been presented after setting off gross exchange margin liability for the respective client, by applying the principle "The amount towards gross exchange margin liability is not payable/ due to the client on a particular date." Noticee further submitted that financial records are subject to thorough audits by certified auditors, in compliance with the relevant provisions of the Income tax and Companies Act, Accounting Standards along with SEBI regulations as applicable.

69. Regarding BSE's comments that *"Noticee has followed incorrect accounting practice for preparation of financial statement. The margin obligation is a component which is blocked by CC but not debited from the collateral of TM /CM, therefore debiting the client ledger with amount which supposed to be blocked only, may not be considered as correct practice"*, Noticee submitted that it is only suggested that the practice as followed by "may not be considered correct" and it is not that our practice is incorrect. The balance sheet is duly certified by the Statutory auditor without any limitation. That there are no directives of SEBI or BSE as well in this regard mandating certain kind of practice to be followed. Hence it is erroneous to state that we are following an incorrect practice especially considering the fact that Noticee has given clear and unambiguous disclosure in our Notes to Financial Statement as well.

Findings

70. Noticee submitted that Creditors (Trade Payables) and Debtors (Trade Receivables) reported in Balance Sheet have been presented after setting off gross exchange margin liability for the respective client, by applying the principle "The amount towards gross exchange margin liability is not payable/ due to the client on a particular date". Noticee has also stated that it had given clear and unambiguous

disclosure in Notes to the Financial Statements in this regard. Therefore, I am inclined to accept the submission of the Noticee and hold that the allegation that Noticee has violated the provisions of Clause A (1) of Code of Conduct of Schedule II of Stock Brokers Regulations read with Regulation 9 (f) of Stock Brokers Regulations, does not stand established.

J. Noticee's engagement as a principal in a business other than that of securities involving personal financial liability:

71. It was alleged in the SCN that Noticee was engaged as a principal or employee in a business other than that of securities involving personal financial liability as the Noticee had provided loans and advances to related parties during the inspection period. Loan given to Baid Leasing & Finance Co. Ltd. by Noticee was ₹43.52 lakhs as on March 31, 2022 and outstanding balance of loan as on March 31, 2022 was ₹36.54 lakhs. Also, Noticee had done investment in related parties which is not related to securities market.

Reply of Noticee

72. With regard to above observations, Noticee reiterated its earlier submissions to the inspection report that the transaction w.r.t. to advances given/ unsecured loan received from the related parties have been executed with Noticee's own money, however the lending and borrowing is not a part of business of the Noticee. Noticee further submitted that client's money was not involved in the said transactions and confirmed that as on date the said advance is fully recovered and account is settled.

73. Noticee further submitted that Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 reads as following:

"8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that :

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if –

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability".

74. The provision of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 very specifically restrict only engagement in business which involves any "personal financial liability". The business involving personal financial liability means any business which will create a compulsion or responsibility to pay or repay any amount as debt or obligation. That extending advances or loans to related party does not tantamount to creating any such obligation on the lender (in this case Noticee) and thus falls under the exception "not involving any personal financial liability". Also, the funds so extended had been out of own funds of the Noticee and does not involve any client money.

75. With regard to compliance of NSE Circular NSE/COMP/50957 dated January 07, 2022 is concerned, the relevant provisions are reproduced below:

"In consultation with SEBI and other Stock Exchanges, the illustrative list of activities that are construed as non-compliance to Rule 8(1)(f) and 8(3)(f) of SCRR, if undertaken by a member, are provided as below:

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9. Entering into any arrangement for extending loans or giving deposits / advances to any entity, including group companies such as subsidiaries & associates etc., not in connection with or incidental to or consequential upon the securities/ commodity derivatives business ………."

76. Noticee submitted that the aforesaid circular so issued in January 2022, there are two things pertinent to note, firstly that there had been general confusion/ non clarity in the industry which even compelled your good office to come out with aforesaid circular with respect to discontinuance of certain activities by stockbroker. Secondly and most importantly the circular has been issued in January 2022 and any loan/advance that is under consideration is prior to that of January 2022.

Findings

77. As per the Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 member shall not engage either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability. In this regard, I note that the interpretation of the Noticee that Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 very specifically restrict only engagement in business which involves any "personal financial liability" and the business involving personal financial liability means any business which will create a compulsion or responsibility to pay or repay any amount as debt or obligation, is not correct. I am of the view that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. The intent behind the said Rule is prevent negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system, however lending the money may have negative impact on the balance sheet of a broker. It is noted that personal financial liability is a wider term which doesn't mean only creating any obligation on the lender, it was further clarified vide NSE circular dated January 07, 2022 that members cannot be engaged into any arrangement for extending loans or giving deposits / advances to any entity, including group companies such as subsidiaries & associates etc., not in connection with or incidental to or consequential upon the securities/ commodity derivatives business.

78. In this regard, I find it appropriate to rely upon the Order dated November 17, 2020 of the Hon'ble Securities Appellate Tribunal in the matter of **M/s. Jitendra Pukhraj Jain vs NSE**, wherein, it was *inter alia* held that:

"...we note that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. Hence the finding in the impugned order that by giving loans to other entities, including employees/family members of the appellant, the appellant has violated the said Rule 8(3) (f) of the Securities Contracts (Regulation) Rules, 1957. We also note that the intention behind the said provision is to prevent

negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system."

79. With regard to Noticee's contention of the compliance with the NSE Circular NSE/COMP/50957 dated January 07, 2022, I find that NSE Circular was issued on January 07, 2022 and outstanding balance of loan as on March 31, 2022 was ₹36.54 lakhs. Thus, I note that despite specific prohibition through NSE circular, Noticee still had outstanding from loan to Baid Leasing & Finance Co. Ltd., hence Noticee remained non-compliant with the said NSE circular from January 07, 2022 to March 31, 2022. Further, I note that even if the outstanding loan as on September 30, 2022 was fully recovered, however, it does not absolve Noticee from loan observation that persisted as on March 31, 2022.

80. I further note that Noticee has contended that funds so extended were out of Noticee's own funds and does not involve any client money, however, Noticee has not submitted any evidence / documents to substantiate its claim.

81. In view of the above, I hold that Noticee has violated the provisions of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957, read with NSE circular NSE/COMP/50957 dated January 07, 2022.

K. Investment Advice without disclosure of interest:

82. SCN alleged that Noticee as well as Mr. Sandeep Jain (Director and Employee of the Noticee) was providing investment advice on social media (Twitter) and Zee Business (Jain Saahab ke Gems - TV Show) without any disclosure of his interest including the interest of his dependent family members and Noticee.

Reply of Noticee

83. With respect to above allegations, Noticee *inter alia* submitted that event of non-disclosure of the interest including interest of dependent family members and Noticee is entirely unintentional and devoid of any malicious intent. In this context, Noticee has furnished undertaking given by Directors (Mr. Sandeep Jain & Mr. Nishant Jain). Noticee further submitted that as of now required disclosures are

being provided at official website & social media accounts of Noticee & Mr. Sandeep Jain. There is no instance or observation of any wrongdoing or of prior trades /front running of the recommendations. Consequently, the omission of disclosure was solely a procedural matter and did not adversely affect any client or investor.

Findings

84. As Noticee submitted that the said non-disclosures were unintentional errors on part of it, thus, I note that Noticee has accepted the violation. Further, I note that Noticee's current disclosures being made and undertakings in this regard does not absolve Noticee from the violations persisted during the inspection period. Therefore, I hold that Noticee has violated the provisions of Clause (B) (7A) of Schedule II of Code of Conduct for Stock Brokers read with Regulation 9(f) of Stock Brokers Regulations.

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

85. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions as indicated in Table no. 1, except for 'D' (viz. client funding), SEBI circular MIRSD/Cir- 26 /2011 dated December 23, 2011 and 'I' (viz. incorrect reporting of financial ratios & indicators).

86. The object of inspection of the books of accounts and records of any intermediary is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SC(R) Act, 1956, SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions as mentioned at Para no. 3 of this order, except for 'D', 'I' and SEBI circular MIRSD/Cir- 26 /2011 dated December 23, 2011.

87. I find from the observations made in the inspection report and other material available on record that the Noticee has failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients. Noticee has submitted that Inspection Period was coincided with the second wave of Covid-19, and thus there were below average expectations and follow-ups from employees and clients having due consideration to the difficulties being faced and it was humanly not possible to ensure strict regulatory compliances. In this regard, I note that Noticee is trying to take the shelter under Covid pandemic, but neither the Exchange nor SEBI had granted any relaxation on account of pandemic with regard to compliance of the specific guidelines, circulars, etc., where Noticee's violation has been established. Further, from the nature of violations, I note that violations are not resulted due to Covid, hence, Noticee cannot be exonerated on the pretext of Covid. Accordingly, such submissions of the Noticee are untenable. The aforesaid violations are serious in nature and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act, 1992 and section 23D of the SC(R) Act, 1956.

88. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".*

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

<u>Relevant provisions of SC(R) Act, 1956:</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 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities* *or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>Relevant provisions of SEBI Act, 1992:</u>

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.*

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

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

<u>SEBI Act, 1992</u>

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

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

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

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

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

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

(c) the repetitive nature of the default.

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

91. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SC(R) Act, 1956, SEBI Regulations and SEBI Circulars is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. With respect to the repetitive nature of the default, I do not find anything on record. The inspection findings bring out a number of instances where the Noticee has not been complying with the requirements of the SC(R) Act, 1956, SEBI Regulations and SEBI circulars as listed hereinabove. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, rules and regulations and circulars / directions issued thereunder, which it failed to do during the inspection period. The conduct of the

Notice in not complying with the provisions of the SC(R) Act, 1956, SEBI Regulations and SEBI Circulars cannot be taken lightly. The violations by the Noticee are serious considering, therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence. Since, the number of instances of violation and value involved therein is less in some of the violations established, the same is being taken as a mitigating factor while deciding the amount of penalty.

ORDER

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

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

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

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

95. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: November 30, 2023	**ADJUDICATING OFFICER**