BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/GD/2022-23/24212)

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 matter of:

Swastika Investmart Limited

(PAN: AABCS6585J)

(SEBI Regn. No.: INZ000192732)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection of Swastika Investmart Limited ('hereinafter referred to as the 'Noticee'/Swastika'/ 'Company') for the period April 2020 to June 2021 (hereinafter referred to as "Inspection Period / IP"). Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee for alleged violations of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:

Sr. No.	**Alleged violations**	**Regulatory provisions violated**
A	Misuse of clients funds	Section 23D of 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 clients' accounts	Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
C	Mismatch in retention statement	Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
D	Incorrect reporting of margin to the exchange	SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
E	Discrepancies in Mobile numbers data of clients	Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
F	Incorrect submission of data to exchange	Clause 6.1.1(j) of Annexure of SEBI Circula SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as the Adjudicating Officer vide order September 21, 2022 under Section 19 of SEBI Act read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') and Section 23I (1),(2) of the Securities Contracts Regulation Act, 1956 (hereinafter referred to as SCRA, 1956) read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act and 23D of SCRA, 1956, for the violations alleged

to have been committed by the Noticee. The said proceedings of appointment was communicated to the undersigned vide communique dated October 12, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice bearing ref. no. SEBI/HO/EAD-8/AS/GD/2022/57532 dated November 11, 2022, (hereinafter referred to as 'SCN') was issued to Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules read with section 15-I of SEBI Act, 1992; and rule 4(1) of the SCRA 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 the Noticee was duly served by Speed Post Acknowledgement Due and by e-mail. 2022.

4. Since no reply was received to the SCN, vide Hearing notice dated December 07, 2022, Noticee was provided time till December 19, 2022 to reply to SCN and opportunity of hearing on December 21, 2022. Vide email dated December 22, 2022, Noticee sought additional time of three to four days to submit its reply to the SCN, which was granted to the Noticee. In the absence of any reply submitted by the Noticee, another hearing notice dated December 29, 2022 was served wherein Noticee was provided time till January 03, 2023 to reply to SCN and opportunity of hearing on January 05, 2023. Noticee submitted its reply to the SCN vide email/letter dated January 04, 2023. On the scheduled date of hearing, Authorized Representative (hereinafter referred to as **"AR"**) of Noticee appeared and reiterated the submission made vide email/ letter dated January 04, 2023. AR further requested time till January 08, 2023 to submit additional submissions which was acceded to. Vide email dated January 09, 2023 Noticee submitted its additional submissions.

5. The allegations levelled against the Noticee in the SCN are as under:
    a) Misuse of clients funds
    b) Non settlement of clients' accounts
    c) Mismatch in retention statement
    d) Incorrect reporting of margin to the exchange
    e) Discrepancies in Mobile numbers data of clients
    f) Incorrect submission of data to exchange

6. The key submissions made by the Noticee *vide* email/letter dated January 04, 2023 and email dated January 09, 2023 are as under:

Misuse of Clients funds

a. *In reference to the instances of negative "G" occurred on 6 days in March, 2021, we hereby wants to submit that there was sufficient fund availability on these particular days as well, against our credit balance clients. Apart from Balances in Client and settlement bank account and deposit available with Clearing Corporation and Clearing member, we had three FD's worth Rs. 25 lakhs each (FD No. 300738945124 / 300715435099 / 300715435129) and one FD worth Rs. 50 Lakhs (FD No. 300716427451) available with the bank. These FD's created for the purpose of keeping it as margin for BG's and the BG's were kept with clearing corporation. The detail for the BG which get expired during March 2021 is here as under (MG05 file for the date 30th September, 2020 is also enclosed for the detail of BG which get expired during March, 21 against which these FD's got free)*

BG No.	Amount	Bank	Maturity Date
OGT0011160002802	15000000	INDUSIND BANK LTD	07-Mar-21
OGT0011200041277	5000000	INDUSIND BANK LTD	12-Feb-21
OGT0011200041902	5000000	INDUSIND BANK LTD	01-Mar-21

In March, 2021 during initial month itself these BG's amounting Rs. 2,50,00,000 get matured for which these FD's were kept as margin and accordingly in order to renew the said BG's again these FD's were kept in bank without any charge during this period. However due to some reason the BG's could not get renewed and therefore from on 25th March, 2021 we deposited the said free FD's itself in clearing corporation (MG-05 for the date 25th March, 2021 is enclosed for your verification). Hence, from 1st March, 2021 till 24th March, 2021 these free FD's were kept with bank for the purpose of renewing BG and the same has not been taken by the inspection team in their calculation of Principle "G" and because of this reason only the Principle "G" is reflecting negative on these six days. The detail for the same has also been provided to the inspection team. If these FD's has been considered by the inspection team then the principle "G" is positive on these 6 days also.

As the above mentioned FD's were created form client bank account and were free from any charge therefore it should be considered while calculating the principle "G" (Bank account statement from which the FD created and FD statement is enclosed herewith for your verification).

The calculation for principle "G" on all six days after considering the above mentioned free FD's are here as under:

Date	Total Fund Balance available in all client bank accounts and settlement bank accounts	Free FD's created from Client bank account	Total of A+B	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents	Total credit balances of all clients as obtained from trial balance across stock exchanges	The value of "G"
	A	B	C	D	E	(C+D)-E
03-03-2021	3,33,05,074	50,00,000	3,83,05,074	1,04,69,44,068	1,08,08,93,920	43,55,222.98
12-03-2021	2,47,07,205	1,25,00,000	3,72,07,205	99,99,76,915	1,02,65,00,541	1,06,83,580
16-03-2021	2,60,01,002	1,25,00,000	3,85,01,002	99,99,32,788	1,02,72,49,275	1,11,84,514
17-03-2021	3,10,81,126	1,25,00,000	4,35,81,126	99,99,20,987	1,03,22,77,460	1,12,24,653
18-03-2021	2,56,22,509	1,25,00,000	3,81,22,509	99,98,53,883	1,03,92,97,599	- 13,21,207
24-03-2021	4,62,21,104	1,25,00,000	5,87,21,104	96,97,94,793	1,02,40,41,888	44,74,010

In all the above mentioned instances Principle "G" is positive after considering the aforesaid mentioned FD's. Only on one day the "G" is reflecting negative amount and that too occurred just because one amount which has been credited to bank account but not entered to creditor's ledger account on the particular day due to which funding on behalf of debtor's from our own behalf remained short. This occurred only due to some operational error and it was a very small and minor amount which occurred due to above mentioned reason otherwise on all days our "G" is positive. Therefore, we request you to consider the same.

Further, no funds of clients is being used for purpose of proprietary margin obligation and nor utilized for meeting the debtor clients Margin obligation. As the same has already been submitted above that we did not having pro trading and for funding the debtors obligation we use either the own funds or the other source of funds such as Bank CC limits etc. The instances for positive "J" on all the 43 days has been occurred because the inspection team has not taken in their calculation the "Unutilized collateral lying with the clearing member" i.e. Globe Capital. After including the unutilized collateral lying with the clearing member the "J" is *reflecting negative on all days accept 4 days and on those 4 days also creditors funds are not been utilized for meeting the debtor balance clients as the debtor clients had sufficient collateral available in order to cover their margin requirement.*

Non- Settlement of Clients accounts

This is to bring to your kind notice that no account remains un-settled. Out of 24 instances reported by the inspection team, 22 instances occurred due to differentiation in the settlement date taken by the inspection team. However, we are submitting herewith the correct date of settlement along with complete calculation for all 22 instances in Annexure - 2. Further, in the remaining 2 instances the accounts are settled completely. The inspection team while calculating the retention amount does not consider the margin requirement of client in cash segment and because of this according to their calculation the accounts remain unsettled.

It can be clearly seen in above calculation that the accounts are settled in the respective Quarter. At the outset, we want to bring to your kind notice that out of 564 instances, in 544 instances, settlement have been done by us, the only thing that the criteria of 90 days Gap between the two settlements could not be fulfilled because of some genuine reasons. The summarized explanation for all the instances is given below (Quarter wise) and detailed reason on client to client basis is mentioned in Annexure – 3 enclosed herewith. Further, the reason for the remaining 20 instances of non- settlement is that the updated/current bank details are not available with us and client is also not traceable due to which each time we try to make payment, the same gets rejected. We continuously sending request to these clients by every mode of communication i.e. mails, calls, etc. to update their latest bank details in order to settle their accounts. But the same have not been updated by them till date. Because of this reason only the settlement of these accounts are pending. The summarized reason for the delay in settlement of clients (Quarter – wise) is here as under –

Quarter -1 "April 20 – June 20"

This was the very initial phase of COVID-19 and complete lockdown. Many relaxations has been given by Hon'ble SEBI for many of the compliances via circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020; SEBI/HO/MIRSD/DOP/CIR/P/2020/68 dated April 21, 2020 and SEBI/HO/MIRSD/DOP/CIR/P/2020/72 dated April 24, 2020. 2. Later, vide circular nos. SEBI/HO/MIRSD/DOP/CIR/P/2020/82 dated May 15, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/101 dated June 19, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/112 dated June 30, 2020.

And also there were many restrictions imposed by government. We were managing the complete work with less staff and that too from home. Due to all these situations these inactive clients remain unsettled during this Quarter. However, the same were settled in very next Quarter. Therefore, we request your good self to please consider and provide the relief for the instances observed in this quarter.

All the instances with regards to inactive client's settlement mentioned by the inspection officials have been settled by us, only those accounts remain unsettled wherever the client's *not updated their bank details. Further, we request to consider the delayed settlement of some client for the Quarter April 20 – June 20, as at this time the situation was not at all normal. Many of our staff member also infected with COVID – 19 which hinders our working efficiency. Although we still tried our best to serve our clients and follow all the norms and provisions of SEBI and exchange. Only this was the reason due to which this delay have been taken place. Moreover, we always ensure that all the clients account get settled in within due time. And there is no single complaint with regards to settlement from any client as we always follow all the norms of SEBI and exchange.*

Mismatch in Retention statement

In reference to above stated observation we hereby want to submit that there was some technical glitch due to which the retention statement reflecting the ledger difference and also the mismatch in securities balance for certain period. However, later the same has been rectified. This was informed to inspection official also and because of this a complete calculation for settlement has been submitted by us for all the sample clients which reflecting that inspite of this glitch the account were correctly settled. Further, The CM turnover was earlier the part of Retention statement and later it was discontinued but for some period the retention statement was reflecting the CM turnover which was rectified on immediate basis. The calculation for all the clients has been submitted to inspection team and without considering the CM turnover also the accounts were settled. It was just a back office error which was later rectified and updated.

In-correct reporting of Margin to exchange.

Out of the 21 instances reported, 7 instances belongs to the period 01 August, 2020 to 31st August, 2020. In these cases, sufficient collateral was available in order to cover the client's margin requirement. The inspection team did not taken the total collateral available with us in Client Collateral account and the stock kept in the form of POA. If the same has been considered then there will be no short reporting of Margin. In all the 7 instances we have more than sufficient collateral available with us of in Client Collateral account and in the form of POA and accordingly we considered the same against the margin requirement of client while reporting the margin of clients. As mentioned above that SEBI parallerly allowed the old process with the new mechanism, we interpret that the POA will also be considered as per the old criteria till 31st August, 2020. Accordingly we considered POA stock and reported the margin of the clients in the 7 instances, which have not been considered by the inspection team. Therefore, we request to consider the same as there was more than sufficient collateral available with us against the margin of these clients. Further, we also want to bring to your kind notice that all these 7 instances mentioned above are of Cash Margin instances which was newly introduced. SEBI and exchange has given relaxation to the members from the penalty so levied on short collection as well as on false reporting via its circular no. NSE/INSP/45533 dated 31st August, 2020 in which it is clearly mentioned that "the penal provision for false reporting of Margins in Cash segment shall come into force with effect from September 01, 2020." Therefore, we request to consider these instances this time and does not levy any penalty for the same. Moreover, in the remaining 14 instances, we have sufficient collateral available with us against the margin requirement of the client and we had correctly reported the margin so collected from clients. Here, in these cases the upfront margin reported is covered through the ledger balances and the collateral available with us in TMCM pledge account on T- day and the Additional margin and MTM have been collected in T+1 day and T+2 day as per the exchange provisions through the Margin release on T+1 day and the *collaterals available in CUSA and EPI. The inspection official did not considered the margin so released on the T+1 day and the margin collected in the form of securities in CUSA and EPI account wherever applicable. If the same has been considered there will be no false reporting occurred.*

We request your good self to consider our submission for the reported instances. As this was the peak time of COVID-19 and there were several new provisions has been implemented by SEBI and exchange but still we tried our best to adopt all the new changes and implement the same. As there were many circulars issued by SEBI and exchange with regards to extension and relaxation, we mis-interpret the point of consideration of POA stock against margin till 31st August, 2020 and because of that only the 7 instances mentioned above occurred. The only thing here was that the stock was not transferred to client collateral account.

Discrepancies in Mobile Numbers data of clients

There is no mismatch in the mobile number of the 25 instances mentioned in the observation letter. On verification we found that the mobile number are same both in back officedatabase and on Exchange UCC database. Further, on deep verification it was also found that in all the 25 instances, clients submitted the request to modify their current mobile number with the new mobile number and as per their request the new mobile number have been updated both in back office database as well as in exchange records. The observation might be occurred because of this reason as the back office data that have been provided to the inspection officials was before modification and during the time of inspection the new mobile number have been updated in the given instances due to which mismatch occurred as the exchange officials verifying the old back office data with the modified data on Exchange UCC database.

Incorrect submission of data to Exchange

Reply to BSE Observation:

No incorrect reporting has been done for the client Submission for any of dates mentioned by the inspection team. We have correctly reported the detail. There is no difference in Bank balance and collateral available with Clearing member and Clearing Corporation (Supporting documents and the reported detail is enclosed in Annexure -7) and further in Creditors figure the difference in of only Untraceable receipts which has not been entered in clients ledger and the inspection team considered the same in their calculation due to which mismatch is reflecting.

Reply to NSE Observation:

In reference to the observation raised by the inspection team with regards to mismatch in 42 instances reported in the weekly Cash and cash equivalent report. For this, we hereby want to submit that there is no difference in the given 42 instances. The inspection team verified the ledger balance reported in Cash and Cash equivalent report with the Trial balance without containing MTF balance while the balance reported in Cash and cash equivalent report contains both MTF and Non MTF balance. And this the reason that the difference stands out with these 42 instances. We are submitting herewith both MTF and Non- MTF trail balance for the particular day along with reconciliation of the same with the balances reported in cash and *cash Equivalent report in “Annexure – 8” for your verification. Hence, there is no mismatch in the reported balances.At the outset, we hereby want to convey that no mis-utilization of clients funds have been taken place. We always ensure that our client’s payables remain intact and always maintain sufficient line of credit against our debtor client’s. We always adhere to comply all the guidelines, rules and regulations prescribed by SEBI and the Stock Exchange both in word and spirit. Some of the discrepancies that were observed during the inspection period were small operational and procedural issues. None of the Rules and regulations has been violated by us while complying with the exchange norms and procedure. We always maintain our “G” positive on day to basis. In the given instances also the “G” is positive. The reason for all the instances why the observation have been occurred is mentioned in the above explanation. There is no mismatch in reporting of stock of client. The 2 instances which has been observed, occurred only due to some procedural and operational issues which has been taken place on the particular day. Otherwise, there are no instances of mismatch in reporting of holding of client’s. Nor there are any observation with regards to reporting/collection of margin occurred in our earlier inspections. Further, we have always followed the settlement system and taken adequate steps to provide timely settlement of client running accounts as per their preferences of monthly/ quarterly basis. The observations which have occurred in relation increasing of gap between the two settlements occurred only due to some genuine reason which have already been explained above. Rest all the instances which have been mentioned by the inspection team have been clarified by us with all the supporting documents. Therefore, we request you to take our above submission in to your kind consideration and consider the small discrepancies due to which these findings have been observed. Kindly refer the annexure submitted along with detailed clarification on the particular instances. We ensure your good self that these types of procedural issues/discrepancies will not repeat in future. Further, we also want to highlight key factor of this particular period and year in which we all had faced many problems as we all were working from remote location due to the outbreak of COVID – 19 pandemic and lockdown situations. With less no. of staff between the peak months of COVID -19, we tried to comply with all the norms and provisions of the SEBI and exchange and followed all rules and regulations in tough time as well. Therefore, we request your good self to consider our submission and take some lenient view on the small procedural and operational errors which has been taken place.*

CONSIDERATION OF ISSUES AND FINDINGS

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

   I. Whether the Noticee has violated the following provisions:

      a. Section 23D of 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. Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
c. Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
d. SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
e. Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
f. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

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

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

8. Before proceeding further, it is pertinent to refer to the relevant provisions 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

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.

………………..

*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.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.

Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992

***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

A. General

(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.

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:

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

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

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

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

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

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

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

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

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

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

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

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

Relevant provisions of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011

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

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

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

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

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

Relevant provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011

6. If during inspection it is found that a member has reported falsely the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment.

7. The penalty shall be collected by the Stock Exchange within five days of the last working day of the trading month and credited to its Investor Protection Fund.

9. 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.

10. At the outset, I find that there are six major alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter: (i) Misuse of clients funds; (ii) Non settlement of clients' accounts; (iii) Mismatch in retention statement (iv) Incorrect reporting of margin to the exchange; (v) Discrepancies in Mobile numbers data of clients; and (vi) Incorrect submission of data to the exchange.

Misuse of clients funds

Allegation in SCN:

(a) 'G' negative: Mis-utilisation of clients' funds for other purposes

11. It was alleged in the SCN that during inspection, out of the sample size of 43 days, it was observed that the Noticee had a negative balance of "G" on 6 days ranging from Rs.6.44 Lakh on 03.03.2021 to Rs.138.21 lakhs on 18.03.2021. The negative value of G shows that the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

Reply of Noticee

12. With respect to negative balance of "G" on 6 days, Noticee submitted that three FD's worth Rs. 25 lakhs each (FD No. 300738945124 / 300715435099 / 300715435129) and one FD worth Rs. 50 Lakhs (FD No. 300716427451) available with the bank . The FD's were created from the client account and was for the purpose of keeping it as margin for BG's and the BG's were kept with clearing corporation. Noticee further submitted that in March, 2021 Bank guarantee amounting to Rs. 2,50,00,000 got matured and accordingly in order to renew the said BG's again, the FD's were kept in bank without any charge during this period. However due to some reason the BG's could not get renewed and therefore from on 25th March, 2021 the FDs were deposited in clearing corporation. Hence, from 1st March, 2021 till 24th March, 2021 free FD's were kept with bank for the purpose of renewing BG.

Findings

13. 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 utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

14. Noticee has *inter alia* submitted that FD's were created from client account without any charge. I have perused the bank account statements and FDR statements and other records. I note that FDR statements of FD No. 300738945124, 300715435099, 300715435129 and 300716427451 contains lien amount of Rs. 25,00,000, Rs. 25,00,000, Rs. 25,00,000, Rs. 25,00,000 and 50,00,000 respectively. Thus, FDs were not freely available, were used as margins for the Bank Guarantees and cannot be considered for the calculation of 'G'. Therefore, the contention of the Noticee cannot be accepted. Thus, I hold that value of 'G' was negative in 6 instances out of 43 days as alleged in the SCN and therefore the Noticee has not complied with the above referred SEBI circular. I note that the amount of mis-utilization of credit balance client funds ranged between Rs 6.44 lakhs to Rs. 1.38 crores during the period of inspection.

15. In view of the above, I hold that the allegation that Noticee has mis-utilized the funds of its credit balance clients for the purpose of settlement/ margin obligations of debit balance clients, and hence violated that provisions of Section 23D of SCRA read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 stands established.

(b) J' Positive: Mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations

16. It was alleged that the value of 'J' is Positive on all 43 days in September 2020 and March 2021. The positive value of J indicates the extent of clients' funds utilised

towards margin obligations of debit balance clients and proprietary margin obligations.

Reply of Noticee

17. Noticee submitted that the inspection team has not taken in their calculation the "Unutilized collateral lying with the clearing member" i.e. Globe Capital. After including the unutilized collateral lying with the clearing member, "J" is reflecting negative on all days accept 4 days and on those 4 days also creditors funds are not being utilized for meeting the debtor balance clients as the debtor clients had sufficient collateral available in order to cover their margin requirement

Findings

18. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that the clients' funds lying with the clearing corporation/ clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF).

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

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

20. 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:

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

21. 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.

22. As regards instances of positive “J” on all the 43 days Noticee submitted that the “Unutilized collateral lying with the clearing member” i.e. Globe Capital is not taken into account and has submitted the margin statements of the clearing member for all the dates in support of their contentions.

23. I have perused the margin statements of clearing member “Globe Capital” submitted by the Noticee and upon consideration of the untilized collateral lying with the clearing member, I find that the Noticee has rightly contended that margin balance with clearing member was not considered while arriving at the value of “J” during inspection.

24. After taking into account unutilized collateral lying with the clearing member “Globe Capital”, I find that value of value of J is Negative in 39 instances out of 43. However in the remaining 4 instances, the value of J is positive, therefore the violation in this regard still persists. However, reduced number of instances can be taken as mitigating factor while imposition of penalty.

25. In this regard, it is pertinent to mention the following judgement of the Hon’ble Securities Appellate Tribunal (Hon’ble ‘SAT’): “.

In Samco Securtiies Ltd. vs SEBI (Appeal No. 493 of 2021 decided on March 30, 2022) the Hon’ble SAT held as under:-We find that mis-utilization of the clients’ credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients’ accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to *abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016."*

26. In view of the above, I hold that the allegation that Noticee has violated Section 23D of 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 stands established.

Non settlement of clients' accounts

Allegation in SCN:

27. It was alleged in the SCN that there were 24 instances of non- settlement of funds & securities out of 100 active clients (i.e. 100 instances) for each quarters ended June 2020, September 2020, December 2020, March 2021 and June 2021 as provided by the Noticee.

28. Further it was alleged that there were 564 instances of non- settlement of funds & securities of 1,02,626 inactive clients having Client Trial Balance for 5 quarters ended June 2020, September 2020, December 2020, March 2021 and June 2021.

Reply of Noticee

29. In response to the above allegation, Noticee submitted that with respect to active accounts, out of 24 instances reported by the inspection team, 22 instances occurred due to differentiation in the settlement date taken by the inspection team, the remaining 2 instances the accounts are settled completely. While calculating the retention amount, margin requirement of client in cash segment was not considered. The summarized calculation for each instance is mentioned below:

Quarter	Correct date of settlement	Client Code	Clear Ledger	Value of security	Total collateral available	Total Pay-in obligation	Total Margin (225 %)	Amount Payable
Apr to Jun 2020	15-04-2020	DTYT7060	8,01,628	-	8,01,628	5,49,091	23,43,532	-20,90,995
Apr to Jun 2020	08-04-2020	DPK2186	28,92,453	-	28,92,453	10,44,224	21,09,662	-2,61,434
Apr to Jun 2020	07-04-2020	NG20050	8,50,679	-	8,50,679	4,82,890	4,70,415	-1,02,626
Apr to Jun 2020	13-05-2020	SI14701	21,29,081	-	21,29,081	7,74,075	39,06,853	-25,51,847
Apr to Jun 2020	02-06-2020	BP1398	66,366	-	66,366	-	36,299	30,067
July to Sep 2020	03-07-2020	NG20029	85,698	-	85,698	85,407	-	291
July to Sep 2020	10-07-2020	DPK2186	15,91,863	-	15,91,863	19,20,889	-	-3,29,026
July to Sep 2020	28-09-2020	GA9203	2,27,018	-	2,27,018	2,15,479	-	11,539
Oct to Dec 2020	28-10-2020	YNSA108	-2,02,515	-	-2,02,515	36,521	-	-2,39,036
Oct to Dec 2020	28-12-2020	DPT243	30,06,521	-	30,06,521	27,04,654	18,33,012	-15,31,145
Oct to Dec 2020	30-10-2020	SF61	-	-	-	-	-	-
Oct to Dec 2020	30-12-2020	NG20029	-	-	-	-	-	-
Oct to Dec 2020	21-12-2020	DPK2186	10,41,570	-	10,41,570	98,971	21,38,935	-11,96,336
Jan to Mar 2021	26-03-2021	4234	6,362	-	6,362	-	-	6,362
Jan to Mar 2021	10-02-2021	1094	-32,31,055	-	-32,31,055	-	-	-32,31,055
Jan to Mar 2021	03-03-2021	JLD181	4,40,775	-	4,40,775	1,71,159	7,38,729	-4,69,113
Jan to Mar 2021	14-01-2021	S9197	23,35,583	-	23,35,583	32,64,102	-	-9,28,519
Jan to Mar 2021	27-01-2021	SF61	-	-	-	-	-	-
Apr to Jun 2021	01-04-2021	HOE1639	80,54,130	-	80,54,130	84,60,243	-	-4,06,113
Apr to Jun 2021	27-04-2021	SF15	0	-	0	16,18,698	-	-16,18,697

Quarter	Correct date of settlement	Client Code	Clear Ledger	Value of security	Total collateral available	Total Pay-in obligation	Total Margin (225 %)	Amount Payable
Apr to Jun 2021	08-04-2020	DPK2186	28,92,452			10,44,224	21,38,393	-31,82,618
Apr to Jun 2021	15-05-2021	CHD999	12,29,791			-	17,04,441	-17,04,441
Apr to Jun 2021	05-06-2021	IB160	9,473			-	-	-
Apr to Jun 2021	08-04-2021	S9197	13,34,834			53,35,889	28,18,413	-81,54,302

30. With respect to inactive clients out of 564 instances, in 544 instances, Noticee submitted that the criteria of 90 days Gap between the two settlements could not be fulfilled. For the remaining 20 instances, the updated/current bank details are not available and client is also not traceable due to which payment is also rejected. Noticee have made request to clients through mails, calls, etc. to update their latest bank details in order to settle their accounts but the same isn't updated by clients till date.

Quarter	No. of clients unsettled	Amount Involved	Settled in Quarter	Remark
April 2020 – June 2020	494	21844202	Quarter 2 (F.Y. 2020-21)	This was the initial phase of COVID- 19 pandemic and complete lock down in the country. Our staff was managing work from home through the medium of remote system and with less staff, as during this phase the COVID cases were at its peak. Because of this reason only the settlement of some clients were delayed and done in the next Quarter.
July 2020 – Sep 2020	3	89176	Quarter 2 (F.Y. 2021-22)	The bank of clients was not updated. After many follow-up client updated the bank account and pay-out done on immediate basis
	3	1563781	Quarter 3 (F.Y. 2021-22)	
	2	3641	-	Client not traceable

Quarter	No. of clients unsettled	Amount Involved	Settled in Quarter	Remark
Oct 2020 – Dec 2020	3	23529	Quarter 3 (F.Y. 2021-22)	The bank of clients was not updated. After many follow-up client updated the bank account and pay-out done on immediate basis
	3	46818	-	Client not traceable
	1	499928	Settlement Criteria not applicable	New fund received in same Quarter
Jan 2021 – March 2021	4	35580	Quarter 1 (F.Y. 2021-22)	The bank of clients was not updated. After many followup client updated the bank account and payout done on immediate basis
	6	115974	Quarter 2 (F.Y. 2021-22)	
	2	4119	Quarter 3 (F.Y. 2021-22)	
	1	10000	Quarter 4 (F.Y. 2021-22)	
	2	5806	Quarter 1 (F.Y. 2022-23)	
	1	10000	Settlement Criteria not applicable	New fund received in same Quarter
	5	51186	-	Client not traceable
April 2021 – June 2021	14	266451	Quarter 2 (F.Y. 2021-22)	The bank of clients was not updated. After many follow-up client updated the bank account and pay-out done on immediate basis
	4	12203	Quarter 3 (F.Y. 2021-22)	
	1	10000	Quarter 4 (F.Y. 2021-22)	
	3	40084	Quarter 1 (F.Y. 2022-23)	
	10	66219	-	Client not traceable

Findings

31. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, there must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 specify that 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.

32. With respect to active clients, I note that Noticee has submitted its reply taking into account correct date of settlement along with remarks. However, upon perusal of reply and other material on record, Noticee has failed to provide any documentary evidences in support of its submission. Noticee has also failed to provide any evidence with respect to with respect to accounts being settled. Therefore, in the absence of any material evidence, I am not inclined to accept submission of the Noticee.

33. With respect to inactive clients, Noticee has admitted that settlements could not be done for 544 clients. For remaining clients, Noticee submitted that clients were not traceable through emails, calls etc. However, in this regard, Noticee has failed to produce any evidence that steps were taken to pursue the clients to update bank details. Therefore, contention of the Noticee is not acceptable.

34. In this regard, I note that the said SEBI circular 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 mis-utilization of funds by the stock brokers, thereby safeguarding the integrity of the market which in the instant case, has been disregarded by the Noticee. I also note that considering the violation period was falling under Covid -19 period and miniscule number of instances of non-settlement in subsequent quarters of 2020, thus it can be taken as mitigating factor while imposition of penalty.

35. In view of the above facts and admissions, I hold that the allegation that Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause

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

Mismatch in retention statement

Allegation in SCN:

36. Following mismatches were observed in Retention Statements sent to clients for the IP.

a) Quarter Ledger Balance mismatch – 20 clients; 26 instances where mismatch amount is Rs. 25,992.

b) Securities Balance mismatch – 29 clients; 44 instances where mismatch amount is Rs.2,76,40,697.

c) CM Turnover value mentioned in retention statement which was discontinued – 51 clients; 133 instances amounting to Rs.67,16,78,801.

Reply of Noticee

37. In response to the above allegation, Noticee submitted that there was some technical glitch due to which the retention statement reflecting the ledger difference and also the mismatch in securities balance for certain period. Noticee also submitted that CM turnover was earlier the part of Retention statement and later discontinued but for some period the retention statement was reflecting the CM turnover which was rectified on immediate basis.

Findings

38. I note that Noticee in its reply has already admitted the alleged violation and attributed the mismatch to technical glitch. Noticee further submitted that it subsequently rectified the same, however post inspection compliance does not absolve the notice of the violation already committed that mismatch in securities and ledger balances was due to technical glitch. Noticee also submitted that the retention statement was rectified.

39. Noticee has further furnished the rectified retention statements that can be taken as a mitigating factor while imposition of penalty.

40. In view of the above admissions, I hold that the allegation that Noticee has violated Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992 stands established.

Incorrect reporting of margin to exchange

Allegation in SCN:

41. It is alleged that in 21 instances out of 225 instances (9.3%) Noticee has reported incorrect margin collection to the exchange valuing shortfall of Rs.6.82 crore.

Reply of Noticee

42. Noticee submitted that period of incorrect reporting was from August, 2020 to July, 2021. During the start of August, 2020, a new mechanism of collection of margin from clients by way of pledge and re-pledge has been came into effect. The SEBI introduced this mechanism via Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020. Initially, the provisions of this circular were to come into effect from June 01, 2020, but due to COVID – 19 pandemic the SEBI extended the implementation date of the aforesaid circular to August 01, 2020 via its circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/88 dated May 25, 2020. Out of the 21 instances reported, 7 instances belong to the period 01 August, 2020 to 31st August, 2020. In these cases, sufficient collateral was available in order to cover the client's margin requirement. In the remaining 14 instances, sufficient collateral was against the margin requirement of the client. In these cases, the upfront margin reported is covered through the ledger balances and the collateral available with us in TM/CM pledge account on T- day and the Additional margin and MTM have been collected in T+1 day and T+2 day as per the exchange provisions through the Margin release on T+1 day and the collaterals available in CUSA and EPI.

Findings

43. I note that as per SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, if during inspection it is found that a member has falsely reported the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment. The objective of the circular is that the members should report the margins correctly to the Exchanges, to increase the transparency in dealings of the stock brokers, so that the margins of clients are regularly monitored by stock exchanges and client collateral is not used for any purposes other than meeting the respective client's margin requirements.

44. I note that with respect to 7 instances in August 2020, Noticee has taken a plea that SEBI has issued circular dated July 29, 2020 wherein SEBI allowed parallel acceptance of the client securities by way of title transfer. Noticee also submitted that sufficient collateral available with them in Client Collateral account and in the form of POA. I have perused the said circulars and relaxations provided by SEBI. Therefore, I note that in these seven instances, the benefit can be extended to the Noticee and can be taken as a mitigating factor on account of peak covid-19 pandemic and consequential lockdown as relaxation were provided by SEBI vide circular dated May 25, 2020.

45. In remaining 14 instances, Noticee has submitted that sufficient collateral was available in TM/CM pledge account on T- day and the Additional margin and MTM have been collected in T+1 day and T+2 day and the collaterals available in CUSA and EPI. I note that Noticee has provided its calculation of upfront and additional margin. However, Noticee has not provided any evidence i.e. Collateral trail and EPI proof. Thus, in the absence of any documentary evidence on record, I am unable to accept this submission of the Noticee.

46. With respect to 14 instances violation still persists, therefore I hold that the allegation that Noticee has violated the provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 stands established.

Discrepancies in Mobile numbers data of clients

Allegation in SCN:

47. It was alleged that upon verification of 81,995 active clients during inspection period that, there was a mismatch in 25 number of clients' mobile numbers uploaded in Exchange UCC database and the member back office.

Reply of Noticee

48. In response to the above allegation, Noticee submitted that in all the 25 instances, clients submitted the request to modify their current mobile number with the new mobile number and as per their request the new mobile number have been updated both in back office database as well as in exchange records. Noticee further submitted the back office data provided at the time of inspection was before modification due to which mismatch is occurred.

Findings

49. In accordance with SEBI circular dated August 02, 2011, Noticee is required to update the details such as, name, mobile number, address for correspondence and E-mail address of their clients, preferably, in sync with the UCC updation module.

50. Noticee has furnished modification log and request forms in support of its claim. Upon perusal of same, only 7 modification requests can be found and as per the modification log file submitted, mobile numbers of 17 clients were updated during July 2021 which was the period when the inspection data was given to the inspection team. Taking note that the inspection team has verified 81,995 active clients and after taking into account the arguments and documentary evidences

available on record, the contention of the Noticee that the back office data provided at the time of inspection was before modification due to which mismatch is occurred is acceptable.

51. In view of the above, I hold that violation of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 is does not stand established.

Incorrect submission of data to exchange

Allegation in SCN:

BSE Observation

52. It was observed that Noticee has reported incorrect details for submission of clients' assets for September 18, 2020, September 25, 2020, March 19, 2021, March 26 2021, March 30, 2021(weekly).

NSE Observation

53. On verification of client ledger balance on June 30, 2021, it was observed that in respect of 42 clients and 42 instances the Noticee incorrectly reported client's ledger balance with mismatch amounting to Rs.1,33,97,455.

Reply of Noticee

54. In response to the above allegation, with respect to BSE observations, Noticee submitted that no incorrect reporting has been done for the client submission for any of dates mentioned by the inspection team. Noticee further submitted that there is no difference in Bank balance and collateral available with Clearing member and Clearing Corporation. The difference in creditors figure is due to untraceable receipts which has not been entered in client's ledger.

55. With respect NSE observations, Noticee submitted that there is no difference in the given 42 instances. The ledger balance reported in Cash and Cash equivalent report with the Trial balance without containing MTF balance while the balance

reported in Cash and cash equivalent report contains both MTF and Non MTF balance.

Findings

56. With respect to BSE observations, Noticee in its reply accepted the observation/alleged violation and stated that the difference in creditors figure is due to untraceable receipts which was not entered in client's ledger. Further as indicated in the observations with respect to "misuse of client funds" the FDs were also not considered for the calculations as there was a lien on the same and used as margin for the bank guarantees and hence the same cannot be considered while submitting the data to the exchanges.

57. In view of the above, I hold that the allegation that Noticee has violated clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stands established.

58. With respect to NSE observations, I note that upon perusal of the documentary evidence submitted by the Noticee in reply to SCN, viz. MTF and Non-MTF trial balance and the reconciliation of figures reported by the Noticee in its weekly submission vis-à-vis trial balance, that there is no difference in ledger balances and trial balances reported by the Noticee in its weekly submission. Hence, the contention of the Noticee is acceptable

59. Therefore, with respect to NSE observations violation of clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 does not stands established.

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

60. 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 following provisions:
    (a) 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.
    (b) Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.
    (c) Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992
    (d) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
    (e) clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

61. I find from the 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 by mis-utilizing the funds of clients, Non settlement of clients' accounts, Mismatch in retention statements, Incorrect submission of data to the exchange and Incorrect reporting of margin to the exchange. The above 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.

62. 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...".

63. The aforesaid violations, makes the Noticee liable for penalty under section 15HB 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>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*

<u>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.*

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 15J 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?

64. 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.]

65. 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 of the provisions of the SC(R) Act, 1956 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 find that vide Adjudicating order dated November 30, 2011, a penalty of Rs. 7,00,000 was imposed on the Noticee for violation of PFUTP Regulations and Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulation. Further vide Adjudicating order dated December 15, 2017, a penalty of Rs. 8,00,000 was imposed on the Noticee for violation of SC(R) Act, 1956 and SEBI Circulars on account of mismatch in retention statements, Non-settlement of running account of clients etc. Further *vide* Adjudicating order dated March 31, 2021, a penalty of Rs.10,00,000 was imposed on the Noticee for violation of SEBI Regulations and Circulars on account of mis-utilization of clients funds, non-segregation of Clients' funds and non-settlement of Clients' funds etc. Therefore, I note that the Noticee is repetitive violator. The inspection findings do bring out instances where the Noticee has not been complying with the requirements of the SC(R) Act, 1956 and SEBI circulars as listed above. 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 Noticee in not complying with the provisions of the SC(R) Act, 1956 and SEBI Circulars cannot be taken lightly. The violations by the Noticee are serious considering and have a detrimental impact on the market integrity and therefore, should be dealt with sternly by imposing monetary penalty

as effective deterrence. However, I also note that the number of instances where the violations were observed are Noticee were not very large after taking into account the submissions made by the Noticee with respect to misutilisation of client funds and steps have been taken by Noticee by sending the revised retention statements, settlement of inactive client account which is taken as a mitigating factor while determining the quantum of penalty.

ORDER

66. Considering all the facts and circumstances of the case 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 SCR Act 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	₹ 10,00,000/- (Rupees Ten lakhs only)
2	Section 23D of SC(R) Act, 1956	₹ 5,00,000/- (Rupees Five lakhs only)
Total amount of penalty		**₹ 15,00,000/-** **(Rupees Fifteen lakhs only)**

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

67. 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

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

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

ASHA SHETTY Digitally signed by ASHA SHETTY Date: 2023.02.28 14:17:55 +05'30'

Place: Mumbai **ASHA SHETTY**

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