BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/GD/2022-23/18768)

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

In the matter of Shree Bahubali Stock Broking Limited
Registration No. INZ000103838
(earlier known as Shree Bahubali International Ltd
Old SEBI Registration No. INB/INF010781830)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted inspections of books of accounts and other records of the Shree Bahubali Stock Broking Limited (earlier known as "Shree Bahubali International Ltd") (hereinafter referred to as "Noticee"), a trading member of National Stock Exchange (hereinafter referred to as NSE), Bombay Stock Exchange Ltd. (hereinafter referred to as BSE) and Multi Commodity Exchange Stock Exchange (hereinafter referred to as MCX-SX). The said inspections were carried out in October, 2012 and in July, 2014. The registered office of the broker where the KYC documents are kept is located at 12, India Exchange Place, 3rd Floor, Kolkata-700001. The scope of the inspection was to verify the compliance of the Noticee with the provisions of various SEBI circulars, rules and regulations, more specifically to the provisions of the SEBI Broker Regulations and the circulars. The inspection carried out on October 17, 18, 19 and 31, 2012 covered the period from April 2011 till October 2012 and the

inspection carried out on July 24 & 25, 2014 covered the period from April 2012 to July 2014.

2. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15HB SEBI Act, 1992 read with Regulation 26(xiii), 26(xv) and 26(xvi) of the Securities and Exchange Board of India (Stock Broker & Sub-brokers) Regulations, 1992 (hereinafter referred to as 'SEBI Brokers Regulations') and Section 23D of SCRA, 1956 for the alleged violation of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:
   a) SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, (hereinafter referred to as "SEBI Circular dated November 18, 1993"),
   b) SEBI Circular no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 (hereinafter referred to as "SEBI Circular dated August 27, 2003"),
   c) SEBI Circular no. CIR/MIRSD/SE/Cir-19/2009 dated December 03, 2009 (hereinafter referred to as "SEBI Circular dated December 03, 2009"),
   d) SEBI Circular no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011 (hereinafter referred to as "SEBI Circular dated May 13, 2011"),
   e) Clause A (1), A (2) and A (5) of the code of conduct specified in schedule II read with Regulation 9 of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as "SEBI Brokers Regulations"),
   f) SEBI Circular no. CIR/MIRSD/16/2011 dated August 22, 2011 (hereinafter referred to as "SEBI Circular dated August 22, 2011")

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI vide Communiqué dated 14 July 2021 had appointed Shri Parag Basu as Adjudicating Officer. Pursuant to transfer of Shri Parag Basu, vide order dated March 10, 2022, the matter was transferred to Shri Prasanta Mahaptra. Subsequently, upon transfer of Shri Prasanta Mahapatra, vide order dated June 06, 2022, the matter was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref. SEBI/EAD-2/PB/S./9477/2022 dated March 04, 2022 (hereafter referred to as **SCN**) was served on the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of section 15HB of the SEBI Act, 1992 and 23D of SCRA,1956. I note that SCN served was duly delivered to the said Noticee vide speed post Acknowledgement due.

5. The allegations levelled against the Noticee in the SCN are as follows:

A. The findings of the Inspection carried out on July 24 & 25, 2014 are as follows:

a. *The funds are moving from client account to settlement account routed through the self account of the Noticee. It was observed that funds are regularly moved from client accounts to the self-account and vice versa and clients' fund are being mixed with the own/borrowed fund of the Noticee, as a regular practice. Hence, it indicates a high likelihood that pay-in obligation of clients having negative or insufficient ledger balance was being met by using the funds of clients having positive ledger balance or member is using its own fund. This is in violation of SEBI vide circular no. SMD/SED/CIR/93/23321 dated November 18, 1993. The aforesaid finding was based on the analysis of exposure taken by the clients' having net debit position, pro trades etc. on a particular day as well as the fund flow for the purpose of meeting exchange obligations. It is alleged that the Noticee has failed to segregate the client funds from its own funds. This finding was reached based on examination and analysis of accounts which are laid out as follows:*

Account No.	***Name of the bank and Branch/DP***	***Purpose***	***Segment***
00140140000057	*HDFC BANK, CENTRAL PLAZA*	*OWN A/C*	*SELF*
00140340000397	*HDFC BANK*	*CLIENT A/C*	*NSECM*
00140340000415	*HDFC BANK*	*CLIENT A/C*	*F&O*

Account No.	Name of the bank and Branch/DP	Purpose	Segment
00990610000973	HDFC BANK	SETTLEMENTA/C	NSECM
00140130000061	HDFC BANK, CENTRAL PLAZA	LOAN AGAINST SECURITIES	NSECM
00990650000899	HDFC BANK	DUES A/C	NSECM
00990630001315	HDFC BANK	SETTLEMENT A/C	FO
153010200003988	AXIS BANK ,CLIVE ROW	CLIENT A/C	NSECM
00080340007764	HDFC BANK, STEPHEN HOUSE	DIVIDEND	NSECM
10650340000014	HDFC BANK,KHARAGPUR	CLIENT A/C	NSECM
02340340000061	HDFC BANK,DURGAPUR	CLIENT	NSECM
1000054426	STATE BANK OF INDIA, TARAKESWAR	CLIENT	NSECM
00140340000405	HDFC BANK	CLIENT	DP
00990620002910	HDFC BANK	SETTL	BSE
00080340008065	HDFC BANK	CLIENT	BSE
30413259408	STATE BANK OF INDIA	CLIENT	NSE
00080340027206	HDFC BANK	CLIENT	MCX-SX
00080340027216	HDFC BANK	CLIENT	BSE CURRENCY
00990640002233	HDFC BANK	SETTL	BSE CURRENCY
00080340027198	HDFC BANK	CLIENT	NSE CURRENCY
10650340000014	HDFC BANK, KHARAGPUR	CLIENT	NSE
00990620006961	HDFC BANK		BSEFO
00080340017469	HDFC BANK	CLIENT	BSEFO
00990640002191	HDFC BANK	SETTL	BSEFO
019083000000642	YES BANK	CLIENT	NSE

Account No.	Name of the bank and Branch/DP	Purpose	Segment
019083000000391	YES BANK	OWN	SELF
00080340053453	HDFC BANK	CLIENT	MCX-SX FO
00080340053014	HDFC BANK	CASH	MCX-SX-CAPITAL
00990680031509	HDFC BANK	SETTLEMENT	MCX-SX CAPITAL

b. The details pertaining to the aforesaid accounts were analysed along with the balances in the following demat accounts provided in Table below:

ACCOUNT NO.	NAME OF THE DP	OPERATIVE SINCE	PURPOSE	SEGMENT
10000414	SBIL	25/01/1999	NSE PAYIN AND PAYOUT	NSE
10092627	SBIL	13/08/2003	CLIENT BEN HOLDING	NSE & BSE
10000220	SBIL	18/01/1999	OWN ACCOUNT	OWN TRADING
10080759	SBIL	15/01/2002	FO MARGIN (COLLETRAL)	NSE FO
1207200000000039	SBIL	29/08/2011	NSE PAY IN PAYOUT	NSE
1207200000000043	SBIL	29/08/2011	BSE PAYIN	BSE PAYIN
1207200000000058	SBIL	29/08/2011	BSE PAYOUT	BSE PAYOUT
10303329	SBIL	30/0112013	PAYIN & PAYOUT	MCX-SX

c. The details pertaining to the aforesaid demat accounts were analysed along with the balances in the following ledger balances of accounts as provided in the table below:

Sl. No.	*Settlement No.*	*Date of Settlement*	*Client Details*		
			Name (trading account no.)	***Pay in Obligation of client( )***	***Ledger Balance of client on payin day( )***
1	*2013065*	*April 5, 2013*	*ANKUR AGARWAL [DX029]*	*3736864.36*	*-3932188.92*
2			*SWATI JAIN [VK241]*	*1845069.83*	*-2556868.71*
3			*RAMESH AGARWAL HUF [M2526]*	*521091.09*	*-392595.95*
4			*SHIVANI SETHIA [V0774]*	*376111.25*	*-492108.41*
5	*2013215*	*November 13, 2013*	*RASHMI SINGH [DA194]*	*1084275.86*	*-796498.34*
6			*PUSHPA DEVI JAIN [VK229]*	*739045.33*	*-582243.25*
7	*2014100*	*June 02, 2014*	*DIPAK SHAH[F3008]*	*2082965.55*	*-57219.69*
8			*KIRAN PANDEY [VK244]*	*439221.29*	*-431938.27*
9			*SUNIL KUMAR SHAH[F3007]*	*1389735.63*	*-7445.33*
10			*KETNA SHAH [F3109]*	*1387372.15*	*-145290.45*
11			*RAHUL KUMAR SINGH [DA280]*	*437645.84*	*-1322379.92*

Sl. No.	*Settlement No.*	*Date of Settlement*	*Client Details*		
			Name (trading account no.)	***Pay in Obligation of client( )***	***Ledger Balance of client on payin day( )***
12			*SIPRA MONDAL [DK331]*	*359647.98*	*-955962.31*
13	*2014109*	*June 13, 2014*	*RAMESH KUMAR RATHI [2674]*	*1549297.7*	*-2153347.65*
14			*SHYAM SUNDAR AGARWALA [X291]*	*1489516.93*	*-1295069.19*
15			*PRADIP KUMAR AGARWALA [W0428]*	*741081.04*	*-1007369.6*
16			*KIRAN PANDEY [VK244]*	*408041.49*	*-1444518.53*

d. *The details pertaining to the ledger balances of accounts aforesaid were analysed along with Pay-in Obligation and Ledger Balance in BSE CM as provided in in in the following table:*

Sl. No.	*Settlement No.*	*Date of Settlement*	*Client Details*		
			Name (trading account no.)	***Pay in Obligation of client( )***	***Ledger Balance of client on payin day( )***
1	*BW2012003*	*April 4, 2012*	*PRAKASH KUMAR SHETH [AP0007]*	*228158.46*	*-228158.46*
2			*ASHOK KUMAR JEEWANI [L1002]*	*225659.19*	*-225659.19*
3			*GORDHAN DAS CHANDAK [SG031]*	*155078.28*	*-155078.28*

Sl. No.	Settlement No.	Date of Settlement	Client Details		
			Name (trading account no.)	**Pay in Obligation of client( )**	**Ledger Balance of client on payin day( )**
4			*RAJESH P. SHETH [AP0009]*	*113724.75*	*-113724.75*
5	*2013215*	*November 13, 2013*	*TAPASI MISTRY [2416]*	*318669.17*	*-1046469.33*
6			*RAJ KUMAR LALWANI [L0738]*	*260574.91*	*-260574.91*

e. Thus, it was observed that in NSECM settlement obligations are met from A/c No. 00990610000973 (settlement A/c.) held with HDFC Bank. Further, as per the practice of the member, usually fund was routed from A/c No. 00140340000397 (Client A/c), held with HDFC bank, to self a/c. of broker 00140140000057 and therefrom to settlement account. In many instances, funds were transferred from 00140130000061 (Loan Against Securities A/c.) to settlement account to meet pay-in obligation.

f. Further many instances were observed where clients having negative ledger balance or insufficient balance in ledger were having pay-in obligation However, the settlement obligations were met in full from the client account itself. In view of the above, as funds had regularly moved from client accounts to the self-account and vice versa and clients' funds were being mixed with the own/borrowed fund of the member, which is a continuous process, it could not be ascertained whether pay-in obligation of clients having negative or insufficient ledger balance was met by the funds of clients having positive ledger balance or member is using its own fund.

***In view of the above, it is alleged that the Noticee failed to comply with the requirements of SEBI vide circular no. SMD/SED/CIR/93/23321 dated November 18, 1993**.*

B. During the inspection carried out on October 17, 18, 19 and 31, 2012, following observations were made:

a. *On the basis of examination and analysis of the ledger of client and beneficiary account of the broker where securities are kept temporarily were examined and the compliance pertaining to quarterly and/or monthly settlement of funds and securities of clients was checked. It was found that for seven clients the Noticee falied to settle clients' funds/securities on a quarterly/monthly basis. This was in violation of applicable SEBI Circular dated December 03, 2009. It is further noted that there were numerous instances of non-compliance of applicable KYC norms. It was also noted that the Noticee failed to send Statement of Accounts to 2,147 clients for the quarter ended March, 2012 as the Noticee sent Statement of Accounts to only 4,653 clients out of 6800 active clients. This was in violation of applicable SEBI Circular dated December 03, 2009 and also in violation of applicable SEBI Circular dated August 22, 2011.*

b. *The results of the analysis of the data provided by the Noticee to the inspection team are laid down in the following table which states the Quarterly position of clients who don't fall under clause 12(d) or 12(g) of SEBI circular dated December 03, 2009 and settlement of funds/securities not done by broker required as per clause 12(e) of the abovementioned circular:*

Sl. No.	***Client Code***	***Name***	***Quarterly Status if funds/securities for the year April 1, 2011 to March 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December, Q4-January to March)***	***Quarterly Status if funds/securities for the year April 1, 2012 to December 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December)***
1	*M9018*	*Ashit Baran Parbat*	*Q2- funds not settled* *Q2- shares held with broker*	*Q2- funds not settled* *Q2- shares held with broker*
2	*P99*	*Manish Lahoti*	*Q1, Q2, Q3,Q4- funds not settled* *Q1, Q2, Q3, Q4-shares held with broker*	*Q1, Q2-funds not settled* *Q1 and Q2-shares held with broker*
3	*P1548*	*Pramod Kumar Singh*	*Q1, Q2, Q3- funds not settled* *Q1- shares held with broker*	*Q1-funds not settled* *Q1-shares held with broker*
4	*4534*	*Minakshi Haldar*	*Q4- funds not settled*	*Q1, Q2-funds not settled*

Sl. No.	Client Code	Name	Quarterly Status if funds/securities for the year April 1, 2011 to March 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December, Q4-January to March)	Quarterly Status if funds/securities for the year April 1, 2012 to December 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December)
				Q1, Q2- shares held with broker
5	M12018	Mayank Somani	Q1, Q2-funds not settled Q2- shares held with broker	Q1, Q2-funds not settled Q2- shares held with broker
6	8532	Manoj Kumar Surana	Q1, Q2-funds not settled	----
7	M14106	Babita Dugar	Q3-funds not settled Q3- shares held with broker	Q2-funds not settled Q2- shares held with broker
8	VKOOS	Prem Narayan Khandel	Q1- funds not settled Q1- shares held with broker	Q1, Q2- funds not settled Q1, Q2- shares held with broker
9	T211	A.J.Pitalia & Other(HUF)	-	Q1- funds not settled Q1- shares held with broker
10	MA011	Aruna G. Oaga	Q4- funds not settled	--
11	OA9	Archana Bagla	Q4- funds not settled	--
12	3106	Amar Chand Jain	Q4- funds not settled	Q1- funds not settled
13	02558	Amarnath Mukhopadhaya	-	Q1- funds not settled
14	F216	Amit Ranjan Maitra	-	Q1- funds not settled Q1- shares held with broker
15	04122	Abhijit Majumder	-	Q1- funds not settled Q1- shares held with broker
16	C0065	Anima ghosh Oastidar	Q4- funds not settled	Q1- funds not settled

Sl. No.	Client Code	Name	Quarterly Status if funds/securities for the year April 1, 2011 to March 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December, Q4-January to March)	Quarterly Status if funds/securities for the year April 1, 2012 to December 31, 2012 (Q1-April to June, Q2-July to September,Q3-October to December)
17	3669	Anita Jain	-	Q1- funds not settled
18	04589	Anjali Seth	-	Q1- funds not settled Q1- shares held with broker
19	M10031	Aparna Panigrahi	-	Q1- funds not settled
20	M2706	Apala Mukherjee	Q4- funds not settled Q4- shares held with broker	-
21	90	Bimal kumar Saraogi	Q4- funds not settled	-
22	DC162	Biswanath Das	Q4- funds not settled Q4- shares held with broker	-
23	08048	Kusum Oevi Agarwal	Q4- funds not settled Q4- shares held with broker	-
24	08087	Abhishek Mohanty	Q4- funds not settled Q4- shares held with broker	-

c. *It was also observed that there were several irregularities in the KYC forms of above mentioned clients. The same irregularities are tabulated as follows:*

Code	Name of client	Account opened on	Observation
P1548	PRAMOD KUMAR SINGH	17/06/09	a) Authorization for electronic contract note (ECN) was signed. However, no email id is written. b) The clause 'any change in the email-id shall be communicated by the client through a physical letter to the broker.' is not included in ECN authorization form. c)Running account authorization is not there. d)Bank statement is not attached
M14106	BABITA DUGAR	25/06/09	a) Authorization for electronic contract note was signed. However, no email id is written b) The clause 'any change in the email-id shall be communicated by the client through a physical letter to the broker. ' is not included in ECN authorization form c) Running account authorization is not there. d) Old Power of Attorney (POA) where it was irrevocable is not modified.
B532	MANOJ KUMAR SURANA	13/12/09	a) Running account authorization is not there b) The clause 'any change in the email-id shall be communicated by the client through a physical letter to the broker.' is not included in ECN authorization form c)During opening of account bank statement provided was old.
M9018	ASHIT BARAN PARBAT	04/08/09	a) Authorization for electronic contract note was signed. However, no email id is written. b) The clause 'any change in the email-id shall be communicated by the client through a physical letter to the broker.' is not included in ECN authorization form. c) Running account authorization is not there.

Code	*Name of client*	*Account opened on*	*Observation*
AH004	*SANKAR HAZRA*	*26/09/11*	*a) Brokerage slab column is blank.* *b) The clause 'any change in the emai/-id shall be communicated by the client through a physical letter to the broker. ' is not included in ECN authorization form.*

d. *It was also observed that the Noticee allowed/enabled a particular client named Manoj Kumar Surana to trade prior to entering into Broker Client Agreement such client. It was noted that the Broker Client Agreement was dated December 13, 2004. However, it was noted that the NSE submitted vide email dated September 12, 2014 the first date of trade by the aforesaid client was November 19, 2004. It was also noted that the Bank Statement submitted by the Noticee in respect of the same client was older than the Broker Client Agreement. This shows that the broker allowed the client to trade in the market before making the broker client agreement. During inspection it was seen that broker client agreement in respect of the aforesaid client was dated 13/12/2004. However, as per documents submitted later at the stage of replies, the broker client agreement date is changed by the Noticee to 13/10/2004 by overwriting. Thus, it appears that the Noticee has changed the month 'December' to 'October' in the aforesaid agreement. Copies of the Broker Client Agreement in this regard and the relevant email received from NSE dated September 12, 2014 was enclosed as Annexures to the SCN.*

In view of the above, it is alleged that the Noticee failed to comply with requirements of SEBI Circular dated December 03, 2009 and SEBI Circular dated August 22, 2011.

e. *During inspection it was observed that brokerage slab in the relevant KYC documents pertaining to a client, contained some code instead of brokerage charges. It was only as an afterthought that the said documents were modified and re-submitted by the Noticee to show that the brokerage slab has been filled up. It implies that the even though the Noticee did not comply with requirement of displaying the brokerage in the said KYC documents, the Noticee has altered the same KYC* *documents later to indicate the percentage of brokerage being charged by him. The aforesaid non-compliant KYC documents was enclosed as Annexures to the SCN.*

In view of the above, it was alleged that the Noticee failed to comply with the requirements of Clause A(1),A(2),A(5) of the code of conduct specified under schedule II read with Regulation 9 of the SEBI (Stock broker & Sub-brokers Reulations,1992.

f. *Therefore, it is alleged that the Noticee has violated the provisions of the following SEBI circulars and SEBI Regulations:*

   a. *SEBI Circular dated November 18, 1993.*

   b. *SEBI Circular dated December 03, 2009.*

   c. *SEBI Circular dated August 22, 2011.*

   d. *SEBI Circular dated August 27, 2003.*

   e. *SEBI Circular dated May 13, 2011.*

   f. *Clauses A (1), A (2) and A (5) of the code of conduct specified in schedule II read with Regulation 9 of SEBI Brokers Regulations.*

   g. *Regulation 26(xiii), 26(xv) and 26(xvi) of the SEBI Brokers Regulations.*

6. I note that Noticee has not submitted any reply to the SCN. Subsequently vide Hearing Notice dated May 09, 2022, Noticee was granted an opportunity of hearing on May 18, 2022 by the erstwhile Adjudicating officer. Hearing notice sent was delivered as per SPAD, however Noticee has not availed of the said hearing opportunity. *Vide* email dated May 18 2022, Noticee has forwarded its reply dated January 28, 2015 which has been submitted to Inspection Authority. Pursuant to transfer of the case to the undersigned, Noticee was granted another opportunity of hearing on July 18, 2022 vide email dated July 11, 2022. On the scheduled date of hearing, the compliance officer of the Noticee appeared on behalf of the Noticee. During hearing, the compliance officer made oral submissions and reiterated the contents of the reply submitted vide email dated May 18, 2022. Further the compliance officer sought time till July 25, 2022 to make additional submissions which was acceded to.

7. The Noticee *vide* email dated July 26, 2022 has forwarded its letter reply dated July 25, 2022, wherein it is submitted as under:

   a. *Regarding non settlement of client's funds and securities, as stated by us during our hearing that at the time of inspection and After 2-3 quarters of inspection we were unable to settle 100% client account due to some technical error of our back office and the same was reported and accepted by us in our Exchange inspection and after that we had gradually settled client account as per SEBI/Exchanges guidelines. Copy of the same is enclosed as Annexure-A for your reference. We also want to inform you that the client account mentioned in observation sheet had debit balances and had also done F&O trades. Please note that at the time of settlement of client account we had sent client ledger, holding statement of hold back account, demat account holding statement and security transaction statement of hold back account to client. We had sent margin account security position, margin account securities transaction statement in addition to the above statements to the client dealing in F&O segment. Please consider our remarks regarding settlement of mentioned clients (Point No-3.3) & sending of retention statement (Point No-3.5) of our reply dated 31/07/2013. Copy of SEBI/Exchanges inspection observations replies is enclosed for your reference.*

   b. *Regarding transfer of fund from client account to self-account and the clients having negative or in sufficient ledger balances were having pay in obligations, we already said in our earlier reply dated 28/01/2015 that we had given the authority to bank to transfer the fund from self /LAS account to settlement account to meet pay-in obligations of the clients and then again transfer the fund to other relevant account after pay out and we had also provided temporary funding to our client by pledging our own shares to meet their pay-in obligations. However after the SEBI inspection we totally changed our fund transfer route and are properly following the SEBI/Exchanges guidelines in this regard and this type of observation is not repeated in any SEBI/Exchanges inspection further. Copy of SEBI/Exchanges inspection observations replies is enclosed for your reference.*

   c. *Regarding the point of KYC irregularities, we admit our mistake for correction in agreement date that was mistakenly occurred by our officer and we also confirm you that this type of mistake will not be repeated in future. However we also want to inform you that after the inspection this* *type of observations was not further repeated in any exchanges inspections. We also want to inform you that we just mentioned slab codes of brokerages during the time of account opening. However the full brokerage slab was provided to client during the time of providing the KYC documents after the account opening. However the same practice was changed by us after the inspection and this type of observation was not further pointed in any exchanges inspections. Copy of SEBI/Exchanges inspection observations replies is enclosed for your reference. Further note that we are still in process of improving our system as per your guidelines and also ensure that such non-compliances shall not re-occur in the future.*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:
    I. Whether the Noticee has violated aforesaid provisions of SEBI circulars and SEBI Regulations.
    II. Does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992 and 23D of SCRA, 1956?
    III. If the answer to Issue No. II is in affirmative, then what should be the quantum of monetary penalty?

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

SEBI Brokers Regulations

Conditions of registration.

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

(a) ……………

(b) …………….

(c) …………….

(d) …………….

(e) …………….

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

(g) ……………

Liability for monetary penalty.

26. *A stock broker or a sub-broker shall be liable for monetary penalty in respect of thefollowing violations, namely—*

…

(xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

(xv) Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.

(xvi) Failure to exercise due skill, care and diligence.

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

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.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) …………….

(4) …………….

(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.

10. At the outset, I find that there are three major violations to be established for attracting the provisions stated in Issue I in the instant matter: (i) Failure to segregate securities or monies of client or clients; (ii) Non settlement of client's funds and securities and failure to send statement of accounts; and (iii) Non-compliance of applicable KYC norms.

Failure to segregate securities or monies of client or clients

11. As per SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, Noticee is compulsorily required 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. Further, 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.

12. As per SEBI Circular no. SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003, all payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions.

13. Inspection of the Noticee revealed that the funds are moving from client account to settlement account routed through the self-account of the Noticee. It was found that funds are regularly moved from client accounts to the self-account and vice versa and clients' fund are being mixed with the own/borrowed fund of the Noticee, as a regular practice.

14. Inspection also revealed that in many instances, funds were transferred from 00140130000061 (Loan Against Securities A/c.) to settlement account to meet pay-in obligation. Further many instances were observed where clients having negative ledger balance or insufficient balance in ledger were having pay-in obligation, however, the settlement obligations were met in full from the client account itself.

15. Noticee had *inter alia* submitted that they had given the authority to bank to transfer the fund from self /LAS account to settlement account to meet pay-in obligations of the clients and then again transfer the fund to other relevant account after pay out and had also provided temporary funding to client by pledging their own shares to meet their pay-in obligations. Noticee further submitted that after the SEBI inspection it had changed the fund transfer route and are properly following the SEBI/Exchanges guidelines and this type of observation is not repeated in any SEBI/Exchanges inspection. In this regard, Noticee has placed reliance on its reply dated January 28, 2015 submitted to Inspecting authority.

16. I Note that upon perusal of reply, Noticee had admitted regarding transfer of fund from client account to self-account which was not in accordance with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003. Hence by mixing clients fund with the own/borrowed fund, Noticee failed to segregate the client funds from its own funds. I also note that post inspection compliance does not absolve the Noticee from violation already committed.

17. In view of the above facts and admissions of the Noticee, I hold that Noticee has violated the regulatory provision mentioned above by failing to segregate the transaction between client and proprietary account and not complied with the provisions of circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003.

Non settlement of client's funds and securities and failure to send statement of accounts

18. As per SEBI Circular no. CIR/MIRSD/SE/Cir-19/2009 dated December 03, 2009, a client may specifically authorize the stock broker to maintain a running account in terms of which he may authorize 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. 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. In partial modification to the above referred circular, SEBI vide Circular no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011 stated that the authorisation shall be dated and shall contain a clause that the clients may revoke the authorisation at any time. The stock brokers, while sending periodical statement of accounts to the clients, shall mention therein that their running account authorisation would continue until it is revoked by the clients.

19. I note from material available on record, that for seven clients the Noticee failed to settle clients' funds/securities on a quarterly/monthly basis.

20. Noticee has primarily attributed non settlement of client's funds and securities, due to some technical error at the back office and submitted that it had gradually settled client account as per SEBI/Exchanges guidelines. In this regard, Noticee has placed reliance on reply dated July 31, 2013 submitted to SEBI/Exchanges. Further noticee indicated that the client account mentioned in SEBI inspection had debit balances and had also done F&O trades. Noticee also submitted client account mentioned in observation sheet had debit balances and had also done F&O trades.

21. Inspection also revealed that the Noticee failed to send Statement of Accounts to 2,147 clients for the quarter ended March, 2012 as the Noticee sent Statement of Accounts to only 4,653 clients out of 6800 active clients.

22. Upon perusal of reply and communication with exchanges and SEBI, I note that Noticee being a registered stock broker must have adequate systems in place pertaining to settlement of client's funds and securities. The Noticee cannot absolve itself from the violation owing to any technical fault. As a SEBI registered intermediary, it is the duty of the Noticee to comply with all the directives of SEBI including settlement of funds and securities of the clients. Therefore, I am not inclined to accept the submission made by Noticee.

23. I also note that as per SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI Circular dated May 13, 2011, there is no exclusion of clients having debit balances and had having F&O trades from being settled, as contended by the Noticee. Therefore, I find no merit in the said contention of the Noticee that the clients had debit balances and had done F&O trades.

24. In view of the facts and admissions of the Noticee, I hold that Noticee had violated the provisions of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI Circular dated May 13, 2011.

Non-compliance of applicable KYC norms

25. I note from material available on record, there were numerous instances of non-compliance of applicable KYC norms as indicated at Para 5 (B)(c) above. It was also observed that the Noticee allowed/enabled a particular client named Manoj Kumar Surana to trade prior to entering into Broker Client Agreement such client at Para 5 (B)(d) above. Subsequently the Noticee has changed the month 'December' to 'October' in the aforesaid agreement to show that the agreement was entered into before allowing the client to trade.

26. Inspection findings also showed that brokerage slab in the relevant KYC documents pertaining to a client, contained some code instead of brokerage charges. Subsequently the said documents were modified and re-submitted by the Noticee to show that the brokerage slab has been filled up.

27. With regard to the above, the Noticee accepted their mistake for making the correction in the agreement date that was due to a mistake by its staff and has reiterated that such mistakes will not be repeated in future. They further indicated that during the account opening they mention slab codes of brokerage to their client. However full brokerage slab is provided to client at the time of KYC documents after account opening. However, the said practice was changed after inspection.

28. As per SEBI (Stock broker & Sub-brokers Reulations,1992, the stockbroker shall maintain the high standards of integrity and act with due skill, care and diligence while conducting its business. It is observed that the Noticee failed to exercise due care, skill and diligence as observed in the irregularities in KYC documents, changes being made to documents during inspection process. However, the Noticee had admitted the deficiency and error on its part in conduct of its business.

29. In view of the facts and admissions of the Noticee, I hold that the Noticee has violated provisions of Clause A(1),A(2),A(5) of the code of conduct specified under schedule II read with Regulation 9 of the SEBI (Stock broker & Sub-brokers Reulations,1992, SEBI Circular dated August 22, 2011 and SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

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

30. In light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee as a stock broker had committed irregularities during the inspection period. The above violations, are serious in nature and make the Noticee liable for monetary penalty under the provisions of Section 23D of SCRA and Section 15HB of the SEBI Act. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which inter-alia has held that - "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".* The relevant provisions of the aforementioned Section 23D of SCRA and Section 15HB of the SEBI Act are as under:

Penalty for contravention where no separate penalty has been provided.
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [104][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

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

Penalty for failure to segregate securities or moneys of client or clients.
23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [121][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

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

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

31. While determining the quantum of penalty under the provisions of Section 23D of SCRA and Section 15HB of the SEBI Act, it is important to consider

the relevant factors as stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act, which reads as under:

SCRA

Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default."

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

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

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default.

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

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

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

33. In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under section 23D of SCRA, 1956 and section 15HB of the SEBI Act 1992.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of the SCRA and Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules1995 and Adjudication Rules 2005, I hereby impose a penalty of Rs. 200,000/-(Rupees Two lakhs only) under Section 23D of SCRA and a penalty of Rs. 350,000/-(Rupees Three lakhs fifty thousand only) Section

15HB of the SEBI Act, totalling to Rs. 550,000/- (Rupees Five lakhs fifty thousand only) on the Noticee i.e. Shree Bahubali Stock Broking Limited. I am of the view that the said penalty is commensurate with the violation/allegations levelled against the Noticee.

35. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

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

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

Place: Mumbai **ASHA SHETTY**

Date: August 30, 2022 **ADJUDICATING OFFICER**