BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30825]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995;

In respect of

Noticee No.	Name of the Noticee	PAN
1	Anand Rathi Share and Stock Broker Limited	AAACN3405F

In the matter of

Comprehensive Inspection of Anand Rathi Share and Stock Broker Limited

Background

1) Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted a comprehensive inspection of Anand Rathi Share and Stock Broker Limited (hereinafter referred to as **Noticee)** from January 23, 2024 to January 30, 2024 for the period from April 01, 2022 to October 31, 2023 (hereinafter referred to as **Inspection Period**).

2) The Noticee is a SEBI registered stock broker of BSE, NSE, MCX and NCDEX with SEBI Registration No. INZ000170832.

3) Based on the findings of inspection and reply dated April 05, 2024 received from the Noticee, certain alleged non-compliances were observed of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **Stock Brokers regulation**) and circulars issued by SEBI, NSE and BSE.

APPOINTMENT OF ADJUDICATING OFFICER

4) SEBI, vide communiqué dated July 03rd, 2024, appointed the undersigned as the Adjudicating Officer to inquire into and adjudge under the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**), for the following violations alleged to have been committed by the Noticee-

Table 1

Sr. No.	**Alleged Violations (summarized)**	**Regulatory provisions**
1	Monthly/ Quarterly settlement of funds	Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.
2	Passing of penalty to clients on account of short/ non-collection of upfront margins	BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
3	Margin Trading Funding	Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023
4	Observation of Business Continuity Planning (BCP) and Disaster Recovery Site DRS	Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25,2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992. Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023. Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and

		Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
5	Capacity Planning and Monitoring	Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.
6	Unreported Technical Glitches	Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

5) Show Cause Notice (hereinafter being referred to as the **"SCN"**) dated July 25, 2024 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 15HB of SEBI Act for the aforesaid alleged violations.

6) Following are allegations made against the Noticee in the SCN-

I. ***Monthly/ Quarterly settlement of funds***

a) On verification of Noticee's client trail balance, financial ledgers, month wise trading activities and ageing balances of the clients, it has been observed that Noticee did not settle funds of inactive clients with amount of non- settlement ranging from Rs. 25,444.39 (4 clients in Oct-2023) to Rs. 1,26,90,945.56 (125 clients in Nov-2022) during the inspection period on a monthly basis.

b) In view of the above, it is alleged that the Noticee has violated Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

II. ***Passing of penalty to clients on account of short/ non-collection of upfront margins***

c) During inspection on verification of Margin collection and reporting it is observed that the Noticee has passed penalty for short collection of upfront margins from clients. Also, Noticee has submitted via email dated February 22, 2024, that it has:

   a) Passed the penalty of Rs 4.56 crores to client.
   b) Reversed penalty of Rs. 2.32 Crores
   c) The penalty of Rs. 2.24 crores not yet reversed to the respective clients.

d) In view of the above, it is alleged that Noticee has violated BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

III. ***Margin Trading Funding***

e) During inspection on verification of Margin Trading Funding offered by the Noticee to clients, it is observed that in 55 instances there is a short collection of Margin/MTM amounting to Rs. 33.16 Lakhs by Noticee.

f) In view of the above, it is alleged that the Noticee has violated Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

IV. ***Observation of Business Continuity Planning (BCP) and Disaster Recovery Site (DRS)***

g) During inspection it was observed that the DR site of the Noticee was under testing. Therefore, it is alleged that Noticee has not conducted a disaster recovery drill and live trading from the DR on half yearly basis i.e. from Applicability of the Circular on April 1, 2023.

h) In view of the above, it is alleged that the Noticee has violated Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of

NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

i) As per SEBI circular dated February 06, 2023, Qualified Stock Brokers (QSBs) shall review comprehensive business continuity plan half-yearly basis. However, as per policy of Noticee, it is stated that policy document shall be reviewed on an annual basis. Accordingly, it is alleged that the policy of the Noticee is not in compliance with SEBI circular.

j) In view of the above, it is alleged that the Noticee has violated Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

k) As per technical glitch circular of NSE, governing board of members shall review the implementation of BCP-DR policy on a quarterly basis. However, during inspection it was observed that the BCP-DR policy was approved on Nov 02, 2023. Therefore, it is alleged that no review of implementation of BCP-DR policy was conducted for quarters April 2023-June 2023 and July-Sep 2023, Oct-Dec 2023.

l) In view of the above, it is alleged that the Noticee has violated Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

V. Capacity Planning and Monitoring

m) As per SEBI circular dated November 25, 2022 “Stock Brokers shall monitor peak load in their trading applications, servers and network architecture. During inspection, it was observed that Noticee did not monitor peak load and did not carry out capacity planning for the quarters (April –June 23, July- Sep 23 and Oct-Dec 23).

n) As per SEBI circular dated Nov 25, 2022, brokers shall deploy adequate monitoring mechanism within their networks and systems to get timely alerts on current utilization of capacity going beyond permissible limit of 70% of installed capacity. During inspection it was observed that Noticee set permissible limit of 80% for generation of alerts which was beyond the threshold of 70%. Therefore, it is alleged that Noticee has deployed monitoring mechanisms for utilization of capacity outside permissible limit.

o) In view of the above, it is alleged that the Noticee has violated Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

VI. Unreported Technical Glitches

p) During inspection, it was observed that Noticee has failed to report 7 incidents of technical glitch to the exchange.

q) In view of the above, it is alleged that the Noticee has violated Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

7) The SCN was sent to Noticee through Speed Post AD and via digitally signed Email on July 26, 2024 and was duly served upon Noticee. Vide email dated August 01, 2024, Noticee sought copy of the PIA report. Therefore, vide email dated August 07, 2024 relevant extracts of the PIA was shared with the Noticee. Vide email dated August 16, 2024 Noticee sought extension of 10 days for submission of reply, in view of the same, vide email dated August 22, 2024 Noticee was advised to submit its reply on or before August 30, 2024. Vide email dated August 30, 2024, Noticee submitted its reply. The Noticee's reply is summarised below:

I. Monthly/ Quarterly settlement of funds

a) *Point wise reply of the Noticee and category wise summary of the 4291 instances as given below.*

Point of PIA	***Category***	***Count of Instances***	***Sum of Not Settled Amount***	***Member Reply***
a	*Delay in settlement*	*60*	*9,80,394.69*	*Please refer to point wise detailed member*
	Margin amount not released, Ledger amount settled	*3*	*1,66,81,564.09*	
a Total		*63*	*1,76,61,958.78*	

b	*Legal Hold*	*5*	*33,73,862.48*	*reply given below*
b Total		*5*	*33,73,862.48*	
c	*Incomplete Bank details*	*4220*	*3,83,81,781.28*	
C total		*4220*	*3,83,81,781.28*	
d	*Margin amount not released , Ledger amount settled*	*2*	*42,99,982.43*	
	Purchase details not on record – NRI client	*1*	*6,78,303.37*	
D total		*3*	*49,78,285.80*	
Grand Total		*4291*	*6,43,95,888.34*	

PIA Point wise Member reply given below:

Point 'a':

b) Noticee submitted that total 63 instances given in this point, the delay was caused from their end due to operational barrier, however later these clients' account were also settled. Category wise reason for delay in settlement elucidated as under:

Category: Delay in Settlement (Total 60 Instances)

c) In these 60 instances, the delay in settlement is mainly due to inadvertent issue in their 'Non-traded client's settlement utility', due to this they were not able to settle these client accounts on time however later on these accounts were settled.

Category: Margin amount not released; Ledger amount settled

d) In these 5 instances, they have initiated the settlement but due to issue in their 'Non-traded client's settlement utility', the balance lying in the client's cash margin ledger was not captured while releasing the settlement amount.

e) Noticee submitted that the cash margin issue was observed while releasing settlement payout of non-traded clients only however, while releasing quarterly payout for traded clients, the cash margin was properly captured while payment.

f) Noticee submitted that the average total cash margin in the books of accounts during inspection period is around Rs. 250 crores, out of which they were not able to settle only Rs. 2.09 crore due to issue in utility of non-traded clients' settlement.

g) Client wise – Amount wise summary given below:

Month of Non-Settlement	***Client Code***	***Not Settled amount***
Nov-22	*GDLCMR105*	*1,00,00,000*

Nov-22	*JPPR3G180*	*19,81,869.76*
Dec-22	*HCG101*	*46,99,694.33*
Dec-22	*PCGKP131*	*24,99,982.43*
Jun-23	*PCHNLD0578*	*18,00,000*
		2,09,81,546.52

h) *Noticee submitted that the delay was purely unintentional in aforesaid instances and later those accounts were also settled which shows their genuine intent.*

Point b

i) *Noticee submitted that total 5 instances are mentioned in this category, comprising total non-settled amount Rs. 33.73 lakh, however, all the instances are belong to one client account only (i.e VAPA020). So, the actual amount UCC wise then non-settled amount is Rs. 6.74 lakh. It is pertinent to note that due to the ongoing legal matter the account was not settled earlier in order to safeguard the risk. However, post relevant proceedings this account was also settled completely on 3rd October, 2022 and made ledger account balance as 'zero'.*

j) *Noticee submitted that the findings given by NSE in aforesaid letter as "Member has claimed that the client was not settled due to ongoing legal case. Upon verification of the same from legal document it was found to be correct and hence no violation persists".*

Point C

k) *Noticee submitted that in this point, total 4220 instances are mentioned however total unique clients are 1063. Since 1063 unique clients are repeated, the cumulative count of instances is 4220.*

l) *Similarly the total cumulative amount for all 4220 instances is Rs. 3.83 crores however the highest actual unsettled amount of all unique clients is Rs. 1.78 crore. The same is depicted in table given below.*

Total Unique Clients	***Count of Instances***	***Highest Not Settled Amount***	***Total Cumulative Amount of all instances***
1063	*4220*	*1,78,53,101.85*	*3,83,81,781.28*

m) ***Reasons for not settling the client accounts due to improper client bank account details are-***

i. *Changes in bank details of the client (due to merger of registered bank in other bank)*

ii. *Closure of default registered bank account*

iii. *Branch merged with other branch of same bank (In this case existing IFSC will not be available to remit the fund)*

iv. *Changes in sponsor bank's tie-up in case of SAHAKARI Banks*

v. *Account freezed or hold by the bank due to incomplete KYC of clients with the bank or due to any other regulatory reason*

vi. *Issues related to Bank level process (which are further explained in below para's)*

Issues related to Bank level process:

n) *Noticee submitted that they are releasing all funds payouts (regular & compulsory settlement) via HDFC Bank/ YES Bank's bulk payout (E-CMS) utility. To process the funds payout correctly, they have to ensure that payout file should be in prescribed format as per Bank requirement and it must be having correct payee information.*

o) *Noticee submitted that they upload the payment file at bank portal with incorrect/incomplete bank details, the file gets rejected at bank portal itself. Therefore, to get the funds payout file processed successfully at bank portal, they uses some internal checks for aforesaid pointers. Like, if the requirement related to IFSC does not meet then they could not upload the records of those clients at bank portal.*

p) *This internal controls gives them many cases which are not proper for processing the payout instruction and all such cases are clear case of rejection at bank portal. Hence, these cases were tagged separately by them and not included in the final payout file. Since, these rejected cases were not the part of final payout file, it was not displayed in their bank statement also.*

q) *Noticee submitted that based on the rejection information at bank portal and their own internal checks, they are sending messages via SMS/ Email to the clients requesting to update the correct bank account details with them. They also send postal letters to the client in case of SMS or Email ID is not on record / not delivered. The same messages (SMS/ Email/ Postal letter) with complete content and proofs of dispatch the physical* *letters via Indian Postal department along with POD number were shared during Inspection proceedings.*

r) *Noticee submitted that they are in practice of posting only those payment entries in client's financial ledgers which are passed in their bank statement. The rejection of transactions can be due to the reasons like incomplete KYC of the client in recipient bank account. The aforesaid rejection receives after processing of payout and it also reflects in their bank statement, such payment entries get recorded/ passed in client financial ledger.*

s) *Noticee submitted that in those cases where the payment entries get rejected by the bank at initial level before processing the payout itself, they are unable to post any ad hock entry in client's financial ledger as these rejected entries are not the part of their Bank statement.*

Point d:

t) *Noticee submitted that out of 3 instances/clients, 1 client is NRI having account no. as NRIAJA113 and for NRI clients funds payout needs to be released post deducting the taxes. Since the purchase details of this client was not available to settle the transaction, bank had placed the payout on hold. The funds payout was not processed due to issue at HDFC Bank level and not from broker's end.*

u) *For 2 instances (Client code- PCGKP131 & PCHNLD0578) related to Cash Margin, Noticee referred to reason for non-settlement which is explained under Point-a.*

v) *Noticee submitted that the % of not accepted count is merely 1.37% in comparison to total counts processed for settlement during Inspection period and these counts, comprising just 0.40% of the total settlement amount, which also has genuine reasons for non-settlement.*

w) *Noticee submitted that they have parked the client fund balances of all the unsettled clients in separate client bank account as per Regulatory guidelines. They have also reported unsettled clients' in their Cash and Cash Equivalent reporting and T+1 day reporting of Segregation and Monitoring of Collateral at Client Level.*

Passing of penalty to clients on account of short/ non-collection of upfront margins

Noticee submitted the penalty was w.r.t increase of margin, shortfall due to previous day MTM loss, intraday peak margin, unhedged position and other such instances wherein they *have no role to play and is outside their purview to bear such penalties. Noticee explained the following scenarios:-*

i. ***Hedge Break:*** *At the time of trade execution sufficient margin is available during the day, the shortfall is due to hedge cut in client positions.*

ii. *Increase of Margin requirement post client takes position with sufficient fund.*

iii. *Client is having the margin in the ledger as per the margin required at the time of trade execution.*

iv. *There are cases of cheque return and penalty is levied for shortfall.*

v. *Noticee allows selling in cash segment as per client POA with us so that they could do pay-in of securities. In the case client sell the shares but buyback again which result into peak margin shortfall and client is not paying shortfall which he/she supposed to give, so they are debiting penalty to the client.*

x) *Noticee submitted that above points are beyond broker's control but within control of the client. In case client will not fulfil their margin obligation then 100% chance of penalty would be levied. And for some points there are no system restriction/ validation given by exchange empanelled vendor and system is allowed to trades without restrictions.*

y) *Noticee submitted that there is No fault of broker in above mentioned instances. Noticee highlighted that on Brokers' representation, the Regulator has changed the guidelines and currently exchange is charging as per morning (BOD) margin file for entire day and there is no chance of arising shortfall due to above reason.*

z) *Noticee submitted that they discontinued the practice of charging such upfront margin shortage penalty to the clients from August, 2023 onwards which shows their genuine and honest intent.*

aa) *Noticee submitted that out of total penalty amount Rs. 4.56 crore, they have refunded/ not debited the total penalty amounted to Rs.3.65 crore. The pending penalty amount Rs. 91 lakh is due to the scenarios which are beyond their control and detailed reasons explained herein above.*

Margin Trading Funding

bb) *Noticee submitted that para 4 of the SEBI Circular reference no. CIR/MRD/DP/54/2017 dated June 13, 2017 on 'Comprehensive review of Margin Trading Facility', states regarding the Initial Margin requirement, however, it does not specify regarding MTM*

Margin collection. They have appropriately collected Initial margin in all the cases. There was no Margin shortfall and they are adequately collecting margins from the clients and adhered to the regulatory guidelines.

cc) *Noticee submitted that RMS is broker's prerogative and they are following their RMS Policy. Since, MTM collection on funded stock is a part of Broker's Risk Management policy, and as per this policy they are initiating liquidation if there is MTM loss on funded stock and coverage goes below 17.5%. Noticee said that they have made necessary changes in their Risk Management Policy effective from 17th May, 2024.*

dd) *Thus, Noticee denied any violation of Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.*

Observation of Business Continuity Planning (BCPJ and Disaster Recovery Site (DRS)

ee) *Noticee submitted that their organization had initiated the Disaster Recovery (DR) planning & implementation process in the month of September, 2022. In their bi-annual system and cyber audits, they included management comments regarding these issues. Noticee submitted the sharing the number of DR drills in which we have participated.*

Date	Setup	Exchanges	Platform	Reason
01-Jul-23	Retail	BSE(CM, FO, CDS) , NCDEX	EXE	There was Load balancer not available (There were Exchange connectivity HA is not configured)
19-Aug-23	Retail	BSE(CM, FO, CDS) , NSE(CM, FO, CDS)	EXE, MOBILE , WEB	LTP issue on mobile apps
16-Sep-23	Retail	BSE(CM, FO, CDS) , NSE(CM, FO, CDS)	EXE, MOBILE , WEB	Chart issue
13-Jan-24	Retail	NSE(CM, FO, CDS)	EXE, MOBILE , WEB	Performance issue observed in Server during DR Execution
06-Apr-24	Retail	BSE(CM, FO, CDS,COM) , NSE(CM, FO, CDS), MCX , NCDEX	EXE, MOBILE , WEB	Limit updating issue - Payment gateway

20-Apr-24	Retail	BSE(CM, FO) , NSE(CM, FO) NCDEX	EXE	Performance issue observed in Server during DR Execution
04-May-24	Retail	BSE(CM, FO) , NSE(CM, FO) NCDEX	EXE, MOBILE , WEB	Limit updating issue - Payment gateway
29-Jun-24	Retail	BSE (CM, FO) , MCX	EXE	MCX IP Mapping issue(HSRP Configured and new IP not mapped)
06-Jul-24	Retail	NSE (CM, FO)	EXE	Performance issue observed in Server during DR Execution
20-Jul-24	Retail	NSECM , MCX	EXE, MOBILE , WEB	Performance issue observed in Server during DR Execution
27-Jul-24	Retail	BSE (CM, FO, CDS, COM)	EXE, MOBILE , WEB	There was an issue with load balancer for mobile application

ff) *Notice submitted that during FY 2023-24, they conducted 4 DR drills. Additionally, till date they have already completed 8 DR drills in FY 2024-25. Furthermore, they successfully conducted live trading in the Commodity segment on 5th July, 2024, and for all the segments/exchanges they conducted live trading on 5th August, 2024. Thus, they have complied with this requirement and have informed all relevant exchanges accordingly.*

gg) *Noticee submitted that they had received a letter from NCDX regarding DR live, levying the penalty of Rs. 8 Lakh for this issue of DR live.*

hh) *For the observation in para 15 & 16, Noticee reiterated their earlier submission dated 5th April, 2024; that they have taken this raised observation positively and have addressed it accordingly. In line with their standard procedure, they have been reviewing the Business Continuity Plan on a half-yearly basis. To substantiate their statement, they shared the minutes of 'IT and Cyber Security Committee' meeting held on 11th July, 2024; where the policy document review was included as an agenda item.*

ii) *For the observation in para 17 & 18, Noticee submitted that they faced significant challenges in hosting and going live with the Disaster Recovery (DR) setup. Despite these difficulties, they recently conducted a one-day live trading DR drill, and in response to aforesaid observation point IV regarding DR live, they have shared the DR drill report as. Noticee is now planning to present their BCP/DR plan document to the board for final review and approval. In the meantime, they regularly present their policies as agenda items in the 'IT and Cyber Security Committee' meetings for review.*

Capacity Planning and Monitoring

jj) Noticee submitted that they have increased their infrastructure load by 1.5 times the current capacity and are maintaining it accordingly.

kk) With reference to observation at para 20 & 21, Noticee submitted that they have taken the observation as a positive note and addressed it accordingly. They have reduced their threshold limit from 80% to 70% and made the necessary changes in our capacity planning. They have updated their monitoring tools to reflect this adjustment.

Unreported Technical Glitches

ll) Noticee submitted that the 7 instances received in this SEBI SCN are already covered in aforesaid MCX SCN and since penalty was paid by us the matter stands closed.

8) In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on September 11, 2024 vide hearing notice dated September 05, 2024. The said hearing notice was sent to Noticee through SPAD and digitally signed email dated September 05, 2024 and was duly served upon Noticee. Vide email dated September 06, 2024 Noticee sought adjournment of hearing scheduled on September 11, 2024. In view of the same, vide email dated September 09, 2024 another of opportunity of hearing was provided to Noticee on September 23, 2024. The Authorised Representative (ARs) of the Noticee appeared for the hearing scheduled on September 23, 2024 and made submissions on the lines of the Noticee's reply dated August 30, 2024. Further, Noticee sought time till September 25, 2024 for making following additional submissions-

a) Month wise details of settlement of inactive client's funds as alleged in the SCN.

b) Additional submission on alleged violation 5 of the SCN (i.e. capacity planning and monitoring).

c) MCX order against Noticee for the unreported technical glitches.

9) Vide email dated September 25, 2024 Noticee made the following additional submissions –

i. Noticee submitted the 'Month wise details of settlement of inactive client's funds as alleged in SCN' and also submitted the Month wise Ageing along with amount wise and instance count wise break up of Settled instances'.

ii. Noticee submitted that there systems trigger alerts when capacity utilization reaches 70% for critical devices and earlier 80% for non-critical and non-trading devices, enabling us to take timely action and prevent disruptions. During the scenario mentioned as 70% for critical and 80% for non-critical and non-trading systems our capacity was at 1.5 times considering additional resources availability on the said hyper converged infrastructure which gives them freedom to utilise on the fly vertical scaling considering the elasticity of the eco-system.

iii. Noticee also submitted the copy of the MCX order dated July 03, 2024.

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

10) The facts and circumstances of the case and the material available on record have been taken into consideration. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee has violated the following provisions of securities law-

(a) Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

(b) BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

(c) Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

(d) Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992. Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master

Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023. Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992

(e) Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

(f) Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

ISSUE II- Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992 for Noticee?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11) Before proceeding further, it will be appropriate to refer to the relevant provisions.

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

SEBI Master Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023
https://www.sebi.gov.in/legal/master-circulars/may-2023/master-circular-for-stock-brokers_71265.html

BSE Notice No. 20211012-54 dated October 12, 2021

https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20211012-54

BSE Notice No. 20200731-7 dated July 31, 2020

https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20200731-7

Securities and Exchange Board of India (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,-

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

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 no. CIR/MRD/DP/54/54/2017 dated June 13, 2017

https://www.sebi.gov.in/legal/circulars/jun-2017/circular-on-comprehensive-review-of-margin-trading-facility_35098.html

SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022

https://www.sebi.gov.in/legal/circulars/nov-2022/framework-to-address-the-technical-glitches-in-stock-brokers-electronic-trading-systems_65466.html

NSE Exchange circular no. NSE/COMP/54876 dated December 16, 2022

https://www.nseindia.com/resources/exchange-communication-circulars?f

SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023

https://www.sebi.gov.in/legal/circulars/feb-2023/enhanced-obligations-and-responsibilities-on-qualified-stock-brokers-qsbs-_67848.html

FINDINGS

12) On perusal of the material available on record, giving regard to the facts and circumstances of the case and submissions of the Noticee the findings are recorded hereunder.

ISSUE I: Whether Noticee has violated the following provisions of securities law-

(a) Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

13) During inspection it was observed that Noticee has not settled funds of inactive clients with amount of non- settlement ranging from Rs. 25,444.39 (4 clients in Oct-2023) to Rs. 1,26,90,945.56 (125 clients in Nov-2022) during the inspection period on a monthly basis. Therefore, it was alleged that Noticee has violated Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

14) For 65 instances Noticee submitted that delay was caused from their end due to operational barrier. For 5 instances account was not settled due to the ongoing legal matter. For 4220 instances, Noticee submitted that the non-settlement of these accounts were due to 'improper bank account details & Bank level process'. 1 client is NRI and NRI clients funds payout needs to be released post deducting the taxes, since the purchase details of this client was not available to settle the transaction, bank had placed the payout on hold.

15) It is noted that Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 provides that the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

16) It is noted that the Noticee has not settled funds of inactive clients with amount of non-settlement ranging from Rs. 25,444.39 (4 clients in Oct-2023) to Rs. 1,26,90,945.56 (125 clients in Nov-2022) during the inspection period on a monthly basis. Month wise details of inactive clients are summarized below:-

Period	Count of Client Code	Sum of Not Settled Amount
Apr-22	823	86,96,176.87
May-22	841	1,00,88,163.93
Jun-22	609	66,48,344.37
Jul-22	430	34,78,448.01
Aug-22	112	13,73,884.68
Sep-22	92	4,13,739.05
Oct-22	125	4,85,834.02
Nov-22	125	1,26,90,945.56
Dec-22	139	89,96,208.63
Jan-23	166	26,83,600.59
Feb-23	141	18,06,714.05
Mar-23	133	12,40,519.42
Apr-23	100	11,48,055.96
May-23	103	4,44,822.89
Jun-23	105	21,92,771.08
Jul-23	15	3,01,573.77
Aug-23	117	9,83,936.51
Sep-23	111	6,96,704.56
Oct-23	4	25,444.39

17) It is noted that for 65 instances out of total 4291 instances Noticee submitted that there were delay in settlement from their end due to operational barrier. Further, for 5 instances of one client, Noticee submitted that due to the ongoing legal matter the account of the client was not settled earlier in order to safeguard the risk and which was subsequently settled completely on October 03, 2022 post completion of legal proceedings. From the verification of the legal document and the client ledger statement of the Noticee, the contention of the Noticee for the alleged 5 instances is tenable.

18) It is also noted from the material available that for 4220 instances (the total unique clients are 1063) Noticee did not settled the client accounts due to the improper client bank account details. Further, it is noted that Noticee has sent messages via SMS/Email to the clients requesting them to update the correct bank account details. It is also noted that out

of 1063 clients, as of now Noticee has settled the 903 client accounts. Therefore, it is noted that the Noticee has taken the necessary measures and attempted the funds pay-out for the 4220 instances i.e. the total unique clients of 1063.

19) Further, it is noted from the material available that NRI clients funds needs to be relased post deducting the taxes. For 1 NRI client of Noticee, the bank had placed the pay-out on hold as the purchase details of this client was not available to settle the transaction. Later the funds pay-out was processed.

20) In view of the above discussion, it is observed that for 4226 instances accounts of clients were not settled because of incorrect bank account details, legal matter and NRI account and the follow up has been made by the Noticee to settle this account as early as possible. As a result, most of the clients accounts are settled later on by the Noticee, except of those clients who has not updated their bank account details. However, for 65 instances, there was a delay in settlement by Noticee due to issue in their non-traded clients settlement utility. Though the account was later settled, admittedly there was delay in settlement of 65 clients due to Noticee not having proper system in place.

21) In view of the above discussion it is concluded that the Noticee has violated Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 for non-settlement of funds of inactive clients by failure to have proper system in place.

(b) BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

22) During inspection on verification of Margin collection and reporting it is observed that the Noticee has passed penalty for short collection of upfront margins from clients. Therefore, it is alleged that Noticee has violated BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

23) Noticee submitted that penalty was w.r.t increase of margin, shortfall due to previous day MTM loss, intraday peak margin, unhedged position and other such instances wherein they have no role to play and is outside their purview to bear such penalties.

24) It is noted that as per BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 member shall not pass on the penalty w.r.t short collection of upfront margins to clients under any circumstances. In case of failure (cheque not cleared, margin* requirement not met by the client) on part of the client resulting which penalty is levied by the Clearing Corporation on the member for short reporting of client upfront margins/ margin on consolidated crystallized obligation/MTM losses, member may pass on the actual penalty to the client, provided he has evidences to demonstrate the failure on part of the client .Wherever penalty for short reporting of upfront margin/ margin on consolidated crystallized obligation/ MTM losses is being passed on to the client relevant supporting documents for the same should be provided to the client. The 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.

25) It is noted from the material available that via email dated February 22, 2024, Noticee submitted that it has:

a) Passed the penalty of Rs 4.56 crores to client.
b) Reversed penalty of Rs. 2.32 Crores
c) The penalty of Rs. 2.24 crores not yet reversed to the respective clients.

26) It is noted that as per BSE notice 20211012-54 dated October 12, 2021 member shall not pass on the penalty w.r.t short collection of upfront margins to clients under any circumstances and if penalty for short reporting of upfront margin/ margin on consolidated crystallized obligation/ MTM losses is being passed on to the client relevant supporting documents for the same should be provided to the client. The Noticee has submitted that it has passed the penalty on account of short/non-collection of upfront margins to the clients, however no supporting documents is provided by the Noticee. Therefore, it is observed that the Noticee has violated BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w

Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

(c) Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

27) During inspection it is observed that stock broker has not collected initial margin and daily MTM from MTF clients. Therefore, it is alleged that the Noticee has violated Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

28) It is noted that Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 provides that Stock brokers shall ensure maintenance of the margin as specified in circular at all times during the period that the margin trading facility is being availed by the client. In case of short fall, stock broker shall make necessary margin calls.

29) It is noted from the material available that the Noticee has not collected initial margin and daily MTM from MTF clients at following instances –

Date	CLIENT_ID	MTF LEDGER BAL (Including Cash Margin) (A)	Value of funded stock on verification day i.e 29.09.2023 (B)	Pledged Collateral Value after haircut for MTF (C)	Total assets of Clients available (D = B+C)	Short Collection of MTM (E = A-|D|)	Initial Margin requirement as per SEBI circular Initial Margin for FO Stock (VAR+3 times of ELM) or Initial Margin for Other than FO Stock (VAR+5 times of ELM) (F)	"Margin/MTM Shortage Total Shortage = (Initial Margin + Uncovered debit) (G = F + |E|)"
29/09/2023	GORWP558	-16,59,253	9,48,890	6,65,708	16,14,598	-44,656	3,27,221	3,71,877
29/09/2023	PCHNB246	-12,38,931	7,19,136	4,96,252	12,15,388	-23,543	2,11,282	2,34,825
29/09/2023	GBN7N071	-8,31,951	4,61,644	3,01,626	7,63,269	-68,682	1,04,516	1,73,198
29/09/2023	GKOHN9P112	-4,49,967	4,19,072	-	4,19,072	-30,895	1,30,543	1,61,438
29/09/2023	FDL170D101	-6,01,557	3,47,624	1,93,562	5,41,186	-60,371	82,109	1,42,480
29/09/2023	GNP75A122	-7,21,612	4,44,752	2,71,946	7,16,698	-4,913	1,22,382	1,27,296
29/09/2023	GKO270D102	-4,79,354	2,45,518	1,68,520	4,14,038	-65,317	59,268	1,24,585
29/09/2023	ROM02P103	-6,46,370	4,49,500	1,86,608	6,36,108	-10,262	1,12,150	1,22,413
29/09/2023	GBNHNR135	-4,84,979	2,35,877	2,13,929	4,49,805	-35,174	85,605	1,20,779

29/09/2023	LU58R112	-6,76,746	2,61,768	3,68,817	6,30,585	-46,161	72,510	1,18,670
29/09/2023	DNBDAV104	-5,59,502	3,63,393	1,92,609	5,56,002	-3,500	1,05,520	1,09,020
29/09/2023	HYDHP124	-5,62,516	3,23,752	2,32,689	5,56,442	-6,074	87,028	93,103
29/09/2023	SURTCR115	-4,93,849	3,35,003	1,57,879	4,92,881	-968	81,540	82,508
29/09/2023	GKO624C102	-5,11,818	2,92,900	2,14,916	5,07,816	-4,003	72,815	76,818
29/09/2023	HYDA203	-3,16,025	2,02,170	76,619	2,78,789	-37,236	39,423	76,659
29/09/2023	GHWKJS101	-3,57,878	1,96,995	1,48,682	3,45,677	-12,201	59,446	71,647
29/09/2023	DNBDAS142	-1,97,566	1,04,553	48,741	1,53,294	-44,272	23,064	67,336
29/09/2023	KBE2U009	-3,91,126	1,98,050	1,92,471	3,90,521	-605	65,527	66,133
29/09/2023	GDLC1A139	-2,42,440	1,25,286	94,180	2,19,466	-22,974	40,580	63,554
29/09/2023	GDLC1N110	-2,78,751	1,15,875	1,27,442	2,43,317	-35,434	27,819	63,253
29/09/2023	GBN12B013	-3,34,626	2,13,975	1,15,691	3,29,666	-4,961	56,464	61,425
29/09/2023	PCGKA127	-2,40,266	1,50,912	73,195	2,24,107	-16,158	44,816	60,975
29/09/2023	BVWR048	-3,04,166	1,99,720	93,964	2,93,684	-10,481	49,009	59,490
29/09/2023	PCGKS172	-3,10,412	1,87,984	1,16,333	3,04,317	-6,095	52,498	58,592
29/09/2023	GNP73S123	-2,10,305	1,01,252	89,460	1,90,713	-19,592	29,602	49,194
29/09/2023	ALBDP127	-2,67,784	1,67,664	92,900	2,60,563	-7,221	41,832	49,053
29/09/2023	BMB033	-1,78,658	71,421	77,867	1,49,288	-29,370	17,241	46,611
29/09/2023	GNPA27	-1,59,713	1,09,175	46,081	1,55,256	-4,458	38,169	42,627
29/09/2023	JBLS055	-1,60,770	93,696	48,130	1,41,826	-18,944	22,818	41,762
29/09/2023	JPJUM046	-2,52,245	1,20,340	1,29,494	2,49,834	-2,411	35,897	38,308
29/09/2023	HYD12VR157	-1,52,658	64,519	65,697	1,30,215	-22,443	14,995	37,438
29/09/2023	DIRW19A114	-1,43,288	75,251	60,417	1,35,668	-7,620	26,007	33,626
29/09/2023	ALBD1S003	-1,81,972	47,600	1,27,621	1,75,221	-6,751	17,769	24,520
29/09/2023	GKOXTT101	-2,54,130	66,367	1,85,834	2,52,201	-1,929	21,443	23,372
29/09/2023	VSNOS331	-90,685	48,292	29,141	77,432	-13,253	9,417	22,670
29/09/2023	DIRD11U101	-1,37,781	51,680	81,087	1,32,767	-5,014	14,914	19,928
29/09/2023	GBN50R223	-66,262	26,467	27,296	53,763	-12,499	6,389	18,888
29/09/2023	GKO345P103	-53,743	46,151	365	46,516	-7,227	11,141	18,368
29/09/2023	BMA155	-68,655	64,636	-	64,636	-4,019	13,257	17,276
29/09/2023	GKOCDM142	-1,02,695	62,258	38,336	1,00,594	-2,101	13,787	15,888
29/09/2023	SURTS793	-47,043	44,688	-	44,688	-2,355	10,788	13,142
29/09/2023	KBE2P081	-32,741	8,983	13,952	22,934	-9,806	3,075	12,881
29/09/2023	DIRW19R102	-74,138	27,472	45,383	72,855	-1,282	9,095	10,377
29/09/2023	GNP73S100	-53,871	29,593	20,195	49,788	-4,083	5,987	10,069
29/09/2023	GNPJ151	-34,848	33,905	-	33,905	-943	8,255	9,197
29/09/2023	GNP84U107	-47,726	25,296	21,913	47,209	-517	8,011	8,528
29/09/2023	GNP83R120	-42,356	18,223	21,396	39,618	-2,738	5,296	8,034
29/09/2023	GNPT817	-42,345	13,300	24,527	37,827	-4,518	3,211	7,729
29/09/2023	JLGNA023	-36,945	29,088	6,711	35,799	-1,146	6,214	7,360
29/09/2023	SURTCR103	-23,488	22,475	-	22,475	-1,013	5,608	6,620
29/09/2023	PCHNJLK116	-29,383	16,526	11,710	28,236	-1,147	5,254	6,401
29/09/2023	FNR328Y102	-12,457	6,138	5,560	11,698	-760	2,232	2,991
29/09/2023	GJUS1K102	-11,379	5,368	5,269	10,636	-743	1,695	2,438
29/09/2023	KBE2S241	-5,224	4,495	-	4,495	-729	1,122	1,850
29/09/2023	GKO624P102	-3,959	2,926	-	2,926	-1,033	706	1,740

30) From the above table, it is observed that in 55 instances there is short collection of Margin/MTM amounting to Rs. 33.16 Lakhs as mentioned in column G. Noticee submitted that there was no Margin shortfall and they are adequately collecting margins from the clients and adhered to the regulatory guidelines. However, no supporting documents is submitted by the Noticee, therefore the contention of the Noticee is not tenable.

31) Hence, it is observed that Noticee has violated Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

(d) Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992. Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023. Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992

32) During inspection it was alleged that Noticee has not conducted a disaster recovery drill and live trading from the DR on half yearly basis. In view of the above, it is alleged that the Noticee has violated Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

33) Noticee submitted that they had initiated the DR planning & implementation process in the month of September, 2022 and they have encountered several technical difficulties that delayed bringing DR to live and subsequently they have successfully a one day live trading DR drill on July 05, 2024 and August 05, 2024. Noticee also submitted that NCDX has levied the penalty of Rs. 8 Lakh for this issue of DR live.

34) It is noted that Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 provides that Stock brokers with a minimum client base of 50,000 clients across the exchanges, shall mandatorily establish business continuity/DR set up. Specified stock brokers shall conduct

DR drills / live trading from DR site. DR drills / live trading shall include running all operations from DRS for at least 1 full trading day. Stock exchanges in consultation with specified stock brokers shall decide the frequency of DR drill / live trading from DR site. The 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.

35) It is noted that the Noticee has admitted that in conducting DR drill they have encountered several technical difficulties, therefore there was a delay in bringing DR to live. Further it is noted that as per SEBI circular dated November 25, 2022 stock brokers shall conduct DR drills / live trading from DR site. DR drills / live trading shall include running all operations from DRS for at least 1 full trading day. However, in the present matter Noticee conducted its first live trading DR drill on July 05, 2024 and the other one on August 05, 2024 i.e. after the inspection period and after 15 months since SEBI circular dated November 25, 2022 came into effect (i.e. on April 01, 2023).

36) Therefore, it is observed that Noticee is in violation of Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

37) From the submission of the Noticee it is observed that the NCDX has levied penalty of Rs. 8 lakh for the issue of DR live.

38) As per SEBI circular dated February 06, 2023, Qualified Stock Brokers (QSBs) shall review comprehensive business continuity plan half-yearly basis. However, as per policy of Noticee, it is stated that policy document shall be reviewed on an annual basis. Therefore, it is alleged that the Noticee has violated Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

39) Noticee admitted the allegation made and submitted that now they are reviewing the business continuity plan on a half-yearly basis.

40) It is noted from the clause 9 of the policy document of Noticee on business continuity plan that the BCP shall be reviewed annually. As per SEBI circular dated February 06, 2023 BCP shall be reviewed half-yearly. The Noticee has admitted that they were reviewing the BCP annually during the inspection period. Therefore, I observe that Noticee has violated Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

41) It was alleged that no review of implementation of BCP-DR policy was conducted by Noticee for quarters April 2023-June 2023 and July-Sep 2023, Oct-Dec 2023. Therefore, it was alleged that Noticee has violated Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

42) Noticee submitted that they faced significant challenges in hosting and going live with the Disaster Recovery (DR) setup. Further, there was no intention of violating any regulatory norms.

43) It is noted that Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 provides that the Governing Board of the Members shall review the implementation of BCP-DR policy approved by the Governing board of the Members on a Quarterly basis and the 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.

44) It is noted from the policy document of Noticee on business continuity plan that it was first reviewed on January 25th, 2023 and thereafter it was reviewed on 2nd November, 2023. Therefore, no review of implementation of BCP-DR policy was conducted for quarters April 2023-June 2023 and July-Sep 2023. Hence, it is observed that Noticee has violated Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

(e) Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

45) During inspection, it was observed that Noticee did not monitor peak load and did not carry out capacity planning for the quarters (April –June 23, July- Sep 23 and Oct-Dec 23). It was also observed that Noticee has deployed monitoring mechanisms for utilization of capacity outside permissible limit. Therefore, it was alleged that Noticee has violated Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

46) It is noted that Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 provides that Stock brokers shall monitor peak load in their trading applications, servers and network architecture. The Peak load shall be determined on the basis of highest peak load observed by the stock broker during a calendar quarter. The installed capacity shall be at least 1.5 times (1.5x) of the observed peak load. Stock brokers shall deploy adequate monitoring mechanisms within their networks and systems to get timely alerts on current utilization of capacity going beyond permissible limit of 70% of its installed capacity.

47) During inspection, it was observed that Noticee did not monitor peak load and did not carry out capacity planning for the quarters (April –June 23, July- Sep 23 and Oct-Dec 23). Noticee submitted in reply to the SCN that their infrastructure is capable of handling 1.5 times the peak load based on current usage metrics. However, no submission has been made by the Noticee regarding monitoring peak load in their trading application, servers and network architecture on the basis of highest peak load observed by it during a calendar quarter. Therefore, it is observed that there was no capacity planning by the Noticee for the quarters (April –June 23, July- Sep 23 and Oct-Dec 23).

48) It is noted from the material available that the Noticee has set the permissible limit of 80% for generation of alerts. Further, it is noted that Noticee submitted that there systems trigger

alerts when capacity utilization reaches 70% for critical devices and earlier 80% for non-critical and non-trading devices. However, it is noted from the clause 4.3 of the SEBI circular dated November 25, 2022 that Stock brokers shall deploy adequate monitoring mechanisms within their networks and systems to get timely alerts on current utilization of capacity going beyond permissible limit of 70% of its installed capacity. Therefore, the aforesaid provision does not differentiate alerts as critical alerts and non-critical alerts. Therefore, the contention of the Noticee is not tenable.

49) In view of the above discussion, it is observed that the Noticee has violated Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023

(f) Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

50) During inspection, it was observed that Noticee has failed to report following 7 incidents of technical glitch to the exchange. Therefore, it was alleged that the Noticee has violated Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

51) Noticee submitted that 7 instances received in the SEBI SCN are already covered in MCX SCN and the penalty was paid by them, therefore the matter stands closed.

52) It is noted that Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 provides that the Stock brokers shall inform about the technical glitch to the stock exchanges immediately but not later than 1 hour from the time of occurrence of the glitch.

53) It is noted from the material available that the following 7 instances of technical glitches, known to the Noticee, were not reported to the exchange-

S.No	Date	Issue
1	12/06/23	Users were unable to login in trade Mobi as well as Trade Express
2	24/07/23	Users were complaining for slow login on NT, Mob and Web
3	22/08/23	Unable to buy the stock as they got broker token error
4	25/10/23	Users were unable to trade on Colo server
5	26/10/23	User were unable to trade on Colo server
6	23/11/23	Buyback holding not uploading
7	16/10/23	MCX MTM showing wrong in Omnesys

54) Noticee submitted that for the above 7 instances MCX has already imposed a penalty on it. In this regard, it is noted from the MCX order dated July 03, 2024 that the theme-based inspection of the Noticee was jointly conducted by SEBI and MCX on January 25, 2024. Upon verification, it was identified that a total number of ten (10) Technical Glitches (includes 7 technical glitches mentioned in above table) occurred Between April 01, 2022, and October 31, 2023, which were not reported to the Exchange by the Noticee. After analysing the reply of the Noticee, MCX observed that only two (2) number of incident out of Ten (10) incidents related to technical glitch and imposed penalty of Rs. 28,00,000/- for the non-compliances of the reporting requirements as per the SEBI circular ref. no. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, and MCX circular ref. no. MCX/TECH/726/2022 dated December 16, 2022.

55) Thus, Noticee violated Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 for which penalty has already been imposed by MCX on the Noticee.

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HB of SEBI Act?

56) As has been established above that the Noticee is in violation of the following provisions-

a) Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 47.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

b) BSE Notice No. 20211012-54 dated October 12, 2021 and Point 15 of Annexure A of BSE Notice No. 20200731-7 dated July 31, 2020 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

c) Clause 7 of SEBI Circular no. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

d) Clause 7.1 and 7.4 of SEBI Circular No. SEBI/HO/MIRSD/TPD1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.7.1 and 61.7.4 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023 and Clause 6 (i) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

e) Clause 8.5.10 of SEBI circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023 r/w Clause 18.5.5.10 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

f) Clause 6 (xi) of Annexure A of NSE Circular no. NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of Schedule II of Code of Conduct and Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

g) Clause 4.1, 4.2 and 4.3 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.4.1, 61.4.2 and 61.4.3 of SEBI Master Circular no. SEBI/HO/MIRSD /MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

h) Clause 3.1 of SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Clause 61.3.1 of SEBI Master Circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 for Stock Brokers dated May 17, 2023.

57) In view of the violations as established, the Judgment of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}, is referred to in which Hon'ble Supreme Court 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..............."

58) Thus, it is a fit case for penalty under section 15HB of the SEBI Act, which reads as given below:

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

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

59) While determining the quantum of penalty under sections 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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

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

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

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

(c) the repetitive nature of the default."

60) The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its failure nor has it been alleged by SEBI. As regard to the repetitive nature of the default, there is nothing on record to show that the nature of default by the Noticee is repetitive.

61) It is observed that the Noticee was under a statutory obligation to abide by and comply with the provisions of the Circulars / directions issued by SEBI and stock exchanges, which they failed to do during the inspection period. The very purpose of the said provisions is to deter wrongdoing and promote ethical conduct in securities market. While remedial action has been taken in some cases, Noticee being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. The violations as established above certainly deserve imposition of penalty. The penalty imposed by MCX and NCDEX is being taken into consideration while imposing penalty.

ORDER

62) Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticee, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, the following penalty is imposed under section 15HB of the SEBI Act, 1992 on the Noticee:

Noticee No.	Name of entity	Penalty Provisions	Penalty (Rs.)
1	Anand Rathi Share and Stock Broker Limited (PAN-AAACN3405F)	Section 15HB of SEBI Act, 1992	₹ 10,00,000/- (Rupees Ten Lakh Only)

63) The said penalty is commensurate with the lapse/omission on the part of the Noticee.

64) 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

65) 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, 1992 for realization of the said amount of

penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

66) In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE Digitally signed by BARNALI MUKHERJEE Date: 2024.09.30 17:08:40 +05'30'

Place: Mumbai **BARNALI MUKHERJEE**

Date: September 30, 2024 **ADJUDICATING OFFICER**