

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

Under Section 12 (3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Name of the Noticee	SEBI Registration No.	PAN
Eureka Stock & Share Broking Services Limited	INZ000169839	AAACE5410B

In the matter of Eureka Stock & Share Broking Services Limited

Background

1. The extant proceedings emanate from the inspection of books of accounts, other records and documents of Eureka Stock & Share Broking Services Limited (hereinafter referred to as the “**Noticee**”), who is a SEBI registered Stock Broker having registration number INZ000169839. Securities and Exchange Board of India (hereinafter referred to as the “**SEBI**”) and the Exchanges (NSE, BSE, MCX and NCDEX) conducted the joint inspection. The inspection was conducted during November 10-16, 2022 for the period April 2021 to September 2022 (hereinafter referred to as the “**Inspection Period**”/ “**IP**”).
2. During the course of inspection, certain irregularities were noticed in the affairs of the Noticee and thus enquiry proceedings in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the “**Intermediaries Regulations**”) were initiated against the Noticee. Accordingly, a Designated Authority (hereinafter referred to as the “**DA**”) was appointed under Regulation 24 of the Intermediaries Regulations to inquire into and submit a report pertaining to the probable violation of Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter also referred to as “**SCR Act, 1956**”) read with Clause 3 of Annexure of SEBI

Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter also referred to as “**SEBI Circular dated September 26, 2016**”).

Enquiry by the Designated Authority

3. The DA had issued a show cause notice dated December 14, 2023 (hereinafter referred to as the “**DA SCN**”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations advising the Noticee to submit its reply, if any, within 21 days of receipt of the notice, together with the copies of the documents, if any, that it may choose to rely upon to support its contentions, failing which it shall be presumed that the Noticee has no reply to submit and the matter shall be proceeded on the basis of the material available on record. The irregularities noticed during the course of the inspection and the allegations levelled in the DA SCN issued by the DA have been summarized hereunder:

Misutilisation of clients' funds:

- a) *With respect to calculation of J, it is observed that the clients' funds lying with the clearing corporation/clearing member (C-A) is more than the sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF) for eleven trading days 07/01/22, 11/01/22 to 13/01/22, 17/01/22 to 20/01/22, 24/01/22 to 25/01/22 and 31/01/22 (positive J balance), which indicates possible misuse of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations. Value of positive J balance for 11 trading dates is in range from approximately Rs 3.05 Crore to Rs 21.69 Crore.*
- b) *In this regard, as per SEBI, Stock broker has accepted misuse of funds of credit balance clients for own purposes or for debit balance clients during the course of inspection. As per the reply of the entity, the misuse had occurred due to misinterpretation of SEBI/NSE guidelines by the back office vender. The same was deemed not acceptable stating that it is the responsibility of the stockbroker to comply with the SEBI/NSE circulars and convey the requirements to their back office vendors.*
- c) *As per inspection, calculation of J is +ve in 11 out of 62 sample instances observed during inspection and the misutilization ranges from Rs. 3.05Cr to Rs. 21.69 Cr.*
- d) *In view thereof, the Noticee is alleged to have violated Section 23D of SCR Act, 1956 read with Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

4. I note that the DA SCN was duly served on the Noticee vide Speed post acknowledgement due and email dated December 14, 2023. Thereafter, the Noticee submitted preliminary response to the DA SCN and also sought inspection of documents, which was provided to and availed by the Noticee through its Authorised Representatives ('AR') on January 04, 2024. Thereafter, the Noticee was provided an opportunity of personal hearing before the DA on January 16, 2024, which was rescheduled upon the request of the Noticee, Thereafter, the Noticee appeared before the DA on January 19, 2024.
5. The key submissions made by the Noticee before DA are as under:
- a) *The NSE, on October 19, 2021, issued a circular bearing reference no. NSE/INSP/50012 on a new mechanism to calculate the margin utilised towards credit balance clients ("NSE Circular"). Vide the said NSE Circular, a provision was introduced that required re-pledged stocks to be reduced from the margins of credit balance clients.*
 - b) *As per the understanding and interpretation of the NSE Circular by the backend software vendor viz. Techexcel Software Solutions Pvt Ltd, it had incorporated certain changes in the software systems whereby it had considered the 'entire securities pledged by the client to the trading member' rather than the 'shares which were re-pledged to the Clearing Corporation'. The said change by the software vendor resulted in a huge fall in the margin utilised towards the margin obligation of the credit balance client for the period between January 7, 2022, to January 31, 2022.*
 - c) *Due to the software vendor's actions, the Noticee observed the following discrepancies –*
 - *That the re-pledged securities in total if deducted from the margin requirement will near or result in no margin to be collected from credit balance clients, if the total of re-pledge stock is sufficiently high in comparison to margin requirement.*

- *That the software vendor had started capturing the total value of re-pledge stocks, despite the eligible value as allowed by the Exchange might be lower than total re-pledged securities.*
 - *As a result, it was noticed that in a few instances in the securities pledge files provided by the Exchange, the utilised value of securities pledged were greater than / equal to the value of securities pledged. The same would contravene the Exchanges requirement to maintain a margin limit of 50% of the value of securities pledged by the trading member.*
 - *Similarly, in the case of both the credit and debit balance clients, it was observed that though such clients had re-pledged securities, but the utilisation was showing 'nil' as the securities were utilised by the Clearing Corporation in the first in first out (FIFO) method.*
 - *That considering the above, it is assumed that the entire margin was funded by the trading member / Noticee in respect of the debit balance clients and also the credit balance clients' margin is fulfilled by pledged securities, though the cash component being utilised by such credit balance clients has been completely ignored.*
- d) *In view of the double adverse effect being caused by the above, the Noticee had forthwith pointed out the above discrepancies to its software vendor and they had refused to co-operate with the Noticee in view of the absence of an Exchange circular clarifying this position.*
- e) *Accordingly, the Noticee addressed 2 urgent emails dated, January 17, 2022, and February 4, 2022, to NSE explaining the above discrepancies along with supporting data and examples of the issues being faced by the software vendors causing incorrect positions for the Noticees' clients. Apart from that, the Noticee had even reached out to the one of the officials through Whatsapp, seeking clarifications for the issues faced by the Noticee.*

- f) *The representatives of the Noticee even engaged with certain senior officials of the Exchange on January 13, 2022, and February 2, 2022, over calls, and video conference for a quick resolution the said issue, and the said officials after having discovered the ambiguity caused by the NSE Circular, informed the Noticee that only the 'securities re-pledged to the Clearing Corporation' is required to be considered. The Exchange officials had even issued clarificatory instructions to the software vendor, which was immediately implemented by February 2022.*
- g) *The Noticee submits that, this is not a case of misutilization of client funds, but an incorrect reporting caused due to disconnect at the software vendor's end in adopting the updated system of reporting of the Exchange. The issue was addressed after the Exchange agreed to the ambiguity and issued clarifications to software vendor. There was a mere glitch in the technological system and no investor was harmed whatsoever.*
- h) *Without prejudice to the above, it however submitted as a matter of fact that the Noticee has neither retrieved no benefit from the alleged violations, nor has it made any profit therefrom. Even assuming that the Noticee, and not the software vendor, was in fact responsible for the 'mis-reporting' of the client balances, the same does not amount to 'misutilization' of the same. SEBI has grossly erred in concluding the same.*
- i) *It may also be noted that the proprietary surplus maintained by the Noticee always exceeded the mandated proprietary margin obligation. Out of the 11 days that are impugned in the DA SCN, on 8 days, the proprietary surplus far surpassed the debit margin clients, as can be seen from below –*

Date	Surplus amount in the proprietary	Total margin of debit balance of clients
07.01.2022	25,86,92,244.63	14,79,17,094.64
11.01.2022	21,92,65,271.60	20,23,49,108.16
12.01.2022	28,41,07,263.21	37,63,65,705.41

13.01.2022	26,92,33,998.99	21,32,59,642.51
17.01.2022	32,33,97,285.43	22,97,41,202.24
18.01.2022	39,23,23,577.01	37,75,40,721.05
19.01.2022	37,89,43,368.14	35,97,76,042.92
20.01.2022	31,45,80,655.53	27,71,94,749.60
24.01.2022	30,18,47,063.01	55,29,27,119.03
25.01.2022	27,80,19,730.67	61,85,57,217.55
31.01.2022	24,43,94,204.87	24,24,33,928.35

- j) *Therefore, the Noticees proprietary surplus was so high that even in an event where the debit balance clients were unable to meet their obligations, the same could have been fulfilled with the proprietary surplus available with the Noticee. Infact, this would have even generated revenue by way of interest which is permissible under the SEBI rules.*
- k) *It is pertinent to highlight that Section 23D of Securities Contracts Regulations Act, 1956 ("SCRA") specifically addresses failure to segregate or to mis- utilize securities or client funds. However, the allegation outlined in the DA SCN only alludes to a "possibility of mismanagement". Therefore, without prejudice to the submissions made herein, it may be noted that the Noticee cannot be charged under Section 23D of the SCRA, when the findings of the Inspection Team are only of a mere "possibility" of mis- utilization, while in reality there was no misutilization of clients' securities/ funds whatsoever. It may be reiterated that the said finding of a "possibility" is however erroneous in view that there was only "misreporting" caused due to the ambiguous interpretation of the NSE Circular by the software vendor of the Noticee, which was however, immediately rectified due to the Noticees prompt actions. The charging provisions are therefore not attracted nor even applicable to the present case.*

6. After considering the allegations levelled in the DA SCN and replies filed by the Noticee, the DA has observed that:

“The Noticee in its reply to the DA SCN submitted that it was confirmed to the Noticee by NSE that MG01_02 file is required to be referred to while determining the value of free collateral specifically the “balance available”, instead of the MG01 file and the same was confirmed by SEBI. Therefore, I am inclined to give benefit of the doubt to the Noticee in this regard. I note that as per Noticee’s calculation J was positive in 5 out of the 11 instances viz., 07.01.2022, 11.01.2022, 12.01.2022, 24.01.2022 and 25.01.2022. I also note from the material available on record that while the inspection period was April 2021 to September 2022, the violations as regards the value of J had only been in the month of January 2022. I also note that for the same violation Adjudication proceedings had been initiated and the Noticee had been penalised vide Adjudication Order No. Order/AN/RG/2023-24/30201 dated March 28, 2024. Accordingly, in my opinion, the instant matter may not call for any directions against the Noticee.”

7. Basis above, DA submitted an Enquiry Report dated March 28, 2024 (hereinafter referred to as **‘Enquiry Report’/ ‘ER’**) recommending:

“After taking into consideration the facts and circumstances of the case, material available on record and submissions made by the Noticee, I recommend that the enquiry proceedings initiated against the Noticee i.e., Eureka Stock & Share Broking Services Limited, SEBI Registration No: INZ000169839, be disposed of without any adverse action under Regulation 26(1) of SEBI (Intermediaries) Regulations, 2008.”

Post Enquiry Proceedings

8. After considering the ER, a Post Enquiry Show Cause Notice dated May 30, 2024 (hereinafter referred to as the **“SCN”**) enclosing therewith the ER, was issued to the Noticee under Regulation 27(1) of the Intermediaries Regulations

calling upon to show cause as to why action as recommended by the DA or any other action including passing of appropriate directions, other than recommended by the DA, as deemed appropriate by the Competent Authority, should not be taken against the Noticee. The SCN further advised the Noticee to submit its reply, if any within 21 days of receipt of the said SCN, failing which it shall be presumed that the Noticee has no reply to submit.

9. I note that the SCN was delivered to the Noticee, vide email dated May 31, 2024. On June 20, 2024, The Noticee submitted its written reply. Subsequently, an opportunity of personal hearing was granted to the Noticee on July 04, 2024. The same was communicated vide email dated June 26, 2024. The same was adjourned to July 08, 2024 upon the request made by the Authorised Representative ('AR') of the Noticee vide email dated June 28, 2024. On the said date the AR appeared and submitted the following:

- a. *This is not a case of 'mis-utilisation' but that of 'misreporting' resulting from an error of interpreting the Exchange circular by the back-end software vendor. Due to incorrect inputs entered into the Exchange files, the J calculation has been erroneously computed.*
- b. *Due to the error in interpreting the exchange circular dated October 19, 2021, the software vendor had incorrectly recorded and reported the data of the Noticee to the NSE. That subsequently, on its own accord, the Noticee clarified and rectified the issues with the NSE and its software vendor; and starting February 2022, there was no such error in misreporting. That the Noticee acted diligently and promptly addressed the issues arising out of its software vendor's misinterpretation of the ambiguous NSE circular, even before SEBI conducted the inspection.*
- c. *Further, it was also explained how the Noticee, at all times, had maintained a high proprietary surplus which was more than sufficient for meeting the obligations of debit balances of its clients at any point in time. Even on the impugned 11 days,*

the Noticee had more than 10 times proprietary surplus in comparison with the total margin of debit balances of its clients.

d. The Noticee even offered to have its data re-verified with SEBI in order that the entries that were 'misreported' could be validated.

10. I note that the principles of natural justice have been duly complied with and both SCN and hearing notice were duly served upon the Noticee explaining the charges and providing opportunity of personal hearing. Hence, the matter is fit to be proceeded with on merits.

11. I have carefully examined the allegations made against the Noticee and its reply to the DA SCN and the documents / material available on record. The issue that arise for consideration in the present case is to examine as to whether the Noticee has misused the clients' funds during the inspection period and violated the SCR Act and SEBI Circular as alleged in the DA SCN and the observations as well as the recommendation of DA on the same.

Consideration of Issue

12. I have carefully perused the SCN including the Enquiry Report issued to the Noticee and other material available on record. The issues which arise for my consideration in the present proceeding is: -

Whether the Noticee has misused the clients' funds during the inspection period, thereby violated Section 23D of SCR Act, 1956 read with Clause 3 of Annexure of SEBI Circular dated September 26, 2016?

13. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions

of the law, which are alleged to have been violated by the Noticee and the same are reproduced below:

SEBI Circular dated September 26, 2016

“ ...

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

3.1. Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.

3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

'A'- Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

'B'- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

'C'- Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

'D'- Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

'E'- Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

'F'- Aggregate value of Non-funded part of the BG across Stock Exchanges

'P'- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

'MC'- Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

'MF'- Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

3.3. Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:

...

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

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

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

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

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

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

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

3.4. Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought

and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.

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

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

..."

SCR Act, 1956

"23D. Penalty for failure to segregate securities or moneys of client or clients.

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

14. I shall now proceed to deal with the key issue, i.e.

Whether the Noticee has misused the clients' funds during the inspection period?

15. SEBI Circular dated September 26, 2016 titled '*Enhanced Supervision of Stock Brokers/Depository Participants*' provides certain parameters to access the working and maintenance of proper funds by the stock brokers with their respective exchanges. The circular aimed to address, *inter alia*, the following key issues:

- I. Uniform nomenclature to be followed by stock brokers for Naming/Tagging of Bank and Demat Accounts and the reporting of such accounts to the Stock Exchanges/Depositories.

II. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges, through a sophisticated alerting and reconciliation mechanism, to detect any mis-utilisation of clients fund.

16. The aforesaid circular proposes various formulae to generate alert with the exchanges if there is any *possible* irregularity with the business of stock brokers. In this regard the circular states:

“3.4. Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections.”

17. The SEBI Circular dated September 26, 2016 provides various 'values' like 'G', 'I', 'J' etc. alongwith their formula to calculate the same and to detect any possible irregularity. In the instant case, the value of 'J' was in question. In this respect, the SEBI Circular dated September 26, 2016 says,

“The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

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

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

18. The underlying principle for the calculation of 'J' value is that the clients' funds lying with the clearing corporation/clearing member (C-A) should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF).

19. In the present matter, I note from the DA SCN that the value of 'J' was found to be positive in 11 out of the sample of 62 instances during the inspection period. Accordingly, it was alleged that the Noticee had misused the credit clients' funds towards the margin obligations of debit balance clients and proprietary margin obligations and the said misutilisation ranges from Rs.3.05 Cr to Rs.21.69 Cr.
20. In this regard, I note from the ER that the Noticee for the said violation submitted before the DA that, *"J alerts in the month of January 2022 had occurred on account of the ambiguity caused by the NSE Circular in the mind of the software vendor. Hence, this is not a case of misutilization of client funds, but an incorrect reporting caused due to disconnect at the software vendor's end in adopting the updated system of reporting of the Exchange."*
21. I further note from ER that the Noticee had provided manual calculation of the value of 'J' for the said 11 instances where irregularity was observed. Upon providing, the manual calculation of the value of 'J' the Noticee submitted that there are hardly few instances of 'J' alert in the month of January. As per recalculation, the value of 'J' was found to be positive on five (5) instances out of the alleged 11. The above submission of the Noticee was treated by the DA as an admission of the violation alleged in the DA SCN.
22. In addition to above, I note from ER, it was also submitted that, the proprietary surplus maintained by the Noticee always exceeded the mandated proprietary margin obligation and on 8 out of 11 days, the proprietary surplus far surpassed the debit margin clients. Accordingly, there was enough surplus in proprietary account to meet any shortfall in the debit balance client's margin requirement. For the said claim, the Noticee shared the following data with regard to the proprietary surplus lying with the Noticee, on those 11 days, to meet any possible shortfall in the debit balance clients' margin requirement.

Table -1

DATE	DEBIT CLIENT MARGIN	DEBIT CLIENT SECURITIES	PROP SURPLUS
07.01.2022	14,79,17,094.64	12,42,36,507.16	25,86,92,244.63
11.01.2022	20,23,49,108.16	15,14,42,951.60	21,92,65,271.60
12.01.2022	37,63,65,705.41	28,73,45,188.14	28,41,07,263.21
13.01.2022	21,32,59,642.51	16,80,26,459.60	26,92,33,998.99
17.01.2022	22,97,41,202.24	20,23,04,953.53	32,33,97,285.43
18.01.2022	37,75,40,721.05	26,99,72,132.49	39,23,23,577.01
19.01.2022	35,97,76,042.92	25,92,49,241.93	37,89,43,368.14
20.01.2022	27,71,94,749.60	23,07,33,103.07	31,45,80,655.53
24.01.2022	55,29,27,119.03	42,95,67,667.23	30,18,47,063.01
25.01.2022	61,85,57,217.55	51,35,40,657.62	27,80,19,730.67
31.01.2022	24,24,33,928.35	20,82,48,864.82	24,43,94,204.87

23. I note from ER that the DA has concluded that the Noticee has admitted to 'J' value being positive on 5 instances viz., 07.01.2022, 11.01.2022, 12.01.2022, 24.01.2022 and 25.01.2022, which as per SEBI Circular dated September 26, 2016 indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. Accordingly, DA held that the allegation that the Noticee has misused of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations, stands established.

24. Keeping in view the above observation, the DA has held that the Noticee has violated provisions of Section 23D of SCR Act, 1956 read with Clause 3 of Annexure of SEBI Circular dated September 26, 2016. However, the DA gave benefit of doubt to the Noticee due to the following reasons:

- a. The violation was observed only in one month i.e. January 2022, whereas inspection period was of more than a year i.e. April 2021 to September 2022.
 - b. For the same violation, the Noticee had been penalized *vide* Adjudication Order No. Order/AN/RG/2023-24/30201 dated March 28, 2024.
 - c. NSE confirming to the Noticee that 'MG01_02' file is required to be referred to while determining the value of free collateral specifically the "balance available", instead of the 'MG01' file, which lead to wrong calculation of value of 'J' at the first instance and the same was accepted by SEBI.
25. Accordingly, the DA has recommended disposing of the present enquiry proceedings initiated against the Noticee without any adverse action under Regulation 26(1) of SEBI (Intermediaries) Regulations, 2008.
26. Upon examining the facts and material on record including the ER, I note that though the inspection period was from April 2021 to September 2022, on a sample basis 62 instances were taken to calculate the value of 'J' as per the SEBI circular dated September 26, 2016. Out of these 62 instances, initially *vide* DA SCN 11 were alleged to have positive value of 'J' which, after seeking clarification from the NSE and NSCCL (National Securities Clearing Corporation Limited) by Noticee and SEBI respectively, was recalculated. Upon recalculation, I note that, the Noticee submitted before DA that the value of 'J' was positive on 5 (five) instances out of the alleged 11 (eleven). As per the Noticee, it was positive on 07.01.2022, 11.01.2022, 12.01.2022, 24.01.2022, 25.01.2022.
27. In this regard, I note that, the positive value of 'J' only point towards the possibility of misutilisation of clients' funds. The SEBI circular dated September 26, 2016 states, *"This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations."* The said SEBI circular further casts duty upon the respective Stock Exchange to take necessary action post receiving the alert, which includes, *inter alia*, seeking clarification and carrying out inspection.

28. I further note that for considering misutilisation of clients' funds, the Noticee's submission regarding surplus amount in the proprietor account of the Noticee also needs due consideration. As demonstrated in Table-1 above, on 8 instances out of 11 the surplus amount in proprietary account of the Noticee is more than the total margin of debit balance clients. Accordingly, it was submitted that any shortfall in meeting the obligations by the debit balance clients' could be met out of the proprietary surplus.
29. In view of this and having examined the issues above, I agree with the recommendations given by DA vide Enquiry Report dated March 28, 2024 that enquiry proceedings initiated against the Noticee i.e., Eureka Stock & Share Broking Services Limited, SEBI Registration No: INZ000169839, be disposed of without any adverse action under Regulation 26(1) of SEBI (Intermediaries) Regulations, 2008.

Direction

30. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12(3) of SEBI Act, 1992 and Section 19 of SEBI Act, 1992 read with Regulation 23, Regulation 27 of SEBI (Intermediaries) Regulations, 2008 and Regulation 23 of SEBI (Stock Brokers) Regulations 1992, hereby dispose of the present enquiry proceedings against Eureka Stock & Share Broking Services Limited having SEBI registration number – INZ000169839.
31. This order comes into force with immediate effect.
32. A copy of this order shall be forwarded to the Noticee.

DATE: JULY 31, 2024
PLACE: MUMBAI

G. RAMAR
QUASI-JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA