BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/RM/2024-25/30382-30384)

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1	Krisha Incap Services Private Limited	AAACK2230
2	Sanjay Kumar Mishra (Director and Compliance Officer)	APNPM0684G
3	Rupesh Kumar (Director)	AMYPK4943N

In the matter of Krisha Incap Services Pvt Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection in respect of Krisha Incap Services Pvt Ltd. (hereinafter referred to as the **'Noticee 1/ Stock Broker / Member / Broker'**). Noticee is registered with SEBI as a Stock Broker (Registration No.**:** INZ000014530). A comprehensive joint inspection of the Noticee with respect to its stock broking activities was conducted by SEBI along with the Exchanges. The inspection team visited the premises of the stock broker on December 20, 2021 and from December 21-24, 2021 inspection was carried our remotely. The period of inspection was April 01, 2020 to November 30, 2021 (hereinafter referred to as **'inspection period'**). Mr. Sanjay Kumar Mishra (hereinafter referred to as "**Noticee 2**") and Mr. Rupesh Kumar (hereinafter referred to as "**Noticee 3**"), were the designated directors of the member during the period of inspection and were responsible for the day to day operation of the member.

2. Prior to proceeding for inspection, Notice of Inspection along with the pre-inspection questionnaire(s) (PIQ) was sent vide SEBI email dated June 29, 2021 to Noticee, wherein the Noticee was asked to furnish information with regard to SEBI PIQ. Noticee submitted the response to SEBI PIQ vide email dated December 09, 2021.

3. The findings of inspection was communicated to Stock Broker vide SEBI letter dated March 14, 2022 and Stock Broker submitted reply to findings of inspection dated March 23, 2022. Based on the findings of inspection and reply of the Noticees, SEBI observed certain non-compliances, inter-alia, of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), Regulations and Circulars made thereunder, Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') by Noticee.

4. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticees for alleged violations, details of which are as follows:

Table No. 1

Sr. No.	**Alleged violations**	**Regulatory provisions violated**	**Enquire and adjudge under**
A	Mis-Utilisation of clients' Funds	Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.	Section 23D of SCRA and Section 15 HB of SEBI Act
B	Quarterly/ monthly settlement of funds/securities of clients	Clause 8.1.1. and 8.1.4. of Annexure of SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12. e. of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.	
C	CLIENT REGISTRATION PROCESS (KYC AND KRA PROCESS)	Clause 4 of SEBI Circular No. MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006, Clause 3. ii. of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011, Clause 7 of SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 and Annexure 1 and	

Sr. No.	Alleged violations	Regulatory provisions violated	Enquire and adjudge under
		Annexure 3 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.	
D	Enhanced supervision of stock broker	Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.	
E	Verification of UCC- PAN, Email ID & Mobile numbers	Clause 2.B. ii. and 2.B. iv. of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011	
F	Analysis of RBS Data	Clause 6.1.1. e. of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.	
G	Certification requirement and CTCL Verification	Clause B(8) of schedule II read with Regulation 9(f) of SEBI(Stock Broker) Regulation,1992 and Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.	
H	Maintenance of Client and General ledger	Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992 and NSE/INSP/38743 dated August 30, 2018.	
I	Maintenance of Register of Securities, Holding Statement, Bank Book and Client Ledger in the prescribed standard format	Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992 and NSE/INSP/39393 dated November 13, 2018.	
J	Display of correct information on website	Clause 2 of SEBI circular No. Cir/MIRSD/ 9 /2010 dated November 4, 2010.	
K	Record of Order placement	Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.	
L	Segregation of clients funds and securities	Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, Clause 2.4.2 of Annexure of	

Sr. No.	Alleged violations	Regulatory provisions violated	Enquire and adjudge under
		SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Rule 8(1)(f) and Rule 8(3)(f) of SC(R) Rules, 1957.	
M	Net Worth Verification	Clause 6.1.1(i) & 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Regulation 9(g) of SEBI (stock broker) regulation, 1992 read with Circular NSE/COMP/47873 dated April 02, 2021	

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI appointed Ms. Soma Majumder as Adjudicating Officer in the matter vide order dated August 23, 2023. Pursuant to the transfer of the erstwhile AO, undersigned was appointed as the Adjudicating Officer, vide order dated December 07, 2023, under Section 19 of the **SEBI Act** read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) and under section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules,'**) to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act and Section 23D of the SCRA for the violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice bearing reference no.- EAD-IO/ADJ/SM/AS/OW/44659/1-6/2023 dated November 06, 2023 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticees in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SCRA, requiring the Noticees to show cause as to why an inquiry should not be held against them

and why penalty, if any, should not be imposed upon the Noticees under Section 15HB of the SEBI Act and Section 23D of the SCRA for the alleged violations. I note that SCN was issued to Noticees, and was duly served upon the Noticees and it was acknowledged by the Noticees. The Noticees submitted response to SCN vide email dated March 21, 2024.

7. In the interest of natural justice, vide hearing notice dated April 08, 2024 an opportunity of hearing on April 19, 2024 was granted to the Noticees. Noticee 2 on behalf of himself and as Authorized Representative for Noticee 1 and 3 (hereinafter referred to as **"AR"**) attended the hearing on April 19, 2024 through video conference and reiterated the submissions made by the Noticees vide letter dated March 22, 2024. Further AR submitted additional submission vide email dated April 23, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

   II. Does the violation, if any, attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act?

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

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

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

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

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

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

Annexure

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

2.4. In line with the prevalent regulatory requirement, it is reiterated that;

2.4.2. Transfer of funds between "Name of Stock Broker - Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker - Client Account" to "Name of Stock Broker - Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)Stock Exchanges shall calculate the difference i.e. G as follows –

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

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

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

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

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

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

3.3.2. Funds of clients used for Margin obligation of proprietary trading:

Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

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

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

Principle:

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

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, 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.

………………..

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

6.1.1. Monitoring criteria for Stock Brokers

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

i. If, at any point of time, Net worth of the Broker is negative or lower than 75 per cent of the requirement.

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

8. Running Account Settlement

8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;

8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

Prevention of Unauthorised Trading by Stock Brokers

III. *To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:*

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of messages through mobile phones,

f. Any other legally verifiable record.

When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

SEBI Circular no. MIRSD/ SE /Cir-19/2009 dated December 3, 2009.

Annexure A

Running Account Authorization

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

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

SEBI Circular no. MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006

4. *Accordingly, all the stock exchanges/registered brokers/registered sub-brokers/listed companies/depositories/registered depository participants are advised to designate an e-mail ID of the grievance redressel division/compliance officer exclusively for the purpose of registering complaints by investors. The above entities are also advised to display the email ID and other relevant details prominently on their websites and in the various materials/pamphlets/advertisement campaigns initiated by them for creating investor awareness.*

SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011

3. In-Person Verification (IPV):

With regard to the requirement of in-person' verification (IPV), SEBI has issued guidelines to the stock brokers and depository participants (DPs). However, in line with the uniformity brought out in the KYC procedure across intermediaries, the IPV requirements for all the intermediaries have now been streamlined and harmonized, as follows:

…..ii. *The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.*

SEBI Circular No. CIR'HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019

7. *Accordingly, the provisions with regard to running account settlement of clients' funds and securities specified in SEBI Circulars MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 shall stand modified to the extent as stated hereinabove and the said circulars shall be applicable only as guidelines for running account settlement of clients' "funds" only.*

SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011

3. *SEBI has devised the uniform documentation to be followed by all the stock brokers/ trading members; a copy thereof to be provided by them to the clients. The detailsof such documents are listed below:*

i. Index of documents giving details of various documents for client account opening process - ***Annexure-1***

ii. Client Account Opening Form in two parts:

a. Know Your Client (KYC) form capturing the basic information about the client and instruction/check list to fill up the form - Annexure-2.

*b. Document capturing additional information about the client related to trading account -****Annexure-3.***

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,-*

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

(g) *he shall at all times maintain the minimum networth as specified in Schedule VI.*

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

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

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

B. Duty to the Investor

(8) *Competence of Stock-Broker: A stock-broker should have adequately trained staff and arrangements to render fair, prompt and competence services to his clients.*

SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011

2. As an additional measure, it has now been decided in consultation with the major stock exchanges and market participants that the stock exchanges shall send details of the transactions to the investors, by the end of trading day, through SMS and E-mail alerts. This would be subject to the following guidelines:

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

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

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

SEBI (CERTIFICATION OF ASSOCIATED PERSONS IN THE SECURITIES MARKETS) REGULATIONS, 2007

Obligation to obtain certificate

3. (1) The Board may by notification in the Official Gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification:

Provided that an associated person employed or engaged by an intermediary prior to the date specified by the Board may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

SEBI circular No. Cir/MIRSD/ 9 /2010 dated November 4, 2010

Display of Details by Stock Brokers (including Trading Members

2. In consultation with the Investors Associations and major stock exchanges, it has been decided that while a stock broker may use the brand name / logo of its group companies, it must display more prominently:

(a) its name as registered with SEBI, its own logo, if any, its registration number, and its complete address with telephone numbers in its portal/web site, if any, notice / display boards, advertisements, publications, know your client forms, and member client agreements;

(b) its name as registered with SEBI, its own logo, if any, its registration number, and its complete address with telephone numbers, the name of the compliance officer, his telephone number and e-mail address in contract notes, statement of funds and securities, and correspondences with the clients.

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

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

11. At the outset, I find that there are 13 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

A. ***Mis-Utilisation of clients' Funds:***

12. It was alleged that during the inspection upon the calculation of the value of G, I and J for all the dates in the month of September 2020 and March 2021 the following was observed:

    i. September 2020: The value of G was negative on all 22 dates of and the value of J was positive on 20 dates in September 2020.

    ii. March 2021: The value of G was negative on 18 dates and the value of J was positive on 10 dates in March 2021.

13. The negative value of G indicates utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The amount of misutilisation ranged from Rs.1.04 lac to Rs. 17.90 lac. The positive value of J indicates the extent of clients' funds utilized towards margin obligations of debit balance clients and proprietary margin obligations. The amount of misutilsation ranged from Rs 0.01 lac to 3.63 lac.

14. It was observed that G was negative in 40 out of 42 sample instances which suggests funds of credit balance clients misutilized for meeting the obligations of debit balance clients and/or for own purpose. The average misutilised amount was Rs. 9.69 lac. The amount of misutilization ranged from Rs. 1.04 lac to Rs. 17.90 lac. Further, value of 'J' was positive in 30 out of 42 sample instances, funds and securities of client misutilised towards margin obligations of debit balance clients and proprietary margin obligations. The average misutilised amount was Rs. 84.43 thousand. The amount of misutilisation ranged from Rs. 0.01 lac to Rs. 3.63 lac.

15. In view of the foregoing, it is alleged that Broker violated Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95.

<u>B.</u> QUARTERLY/MONTHLY SETTLEMENT OF FUNDS/SECURITIES OF CLIENTS:

16. During the inspection it was observed that on verification of Settlement sheet, Trial balances and securities holding from back office of the member dated as on 30-Nov-2021, it was observed that:

    i. <u>For Active clients:</u> - There was delay in settlement of 8 clients out of 94 clients (Minimum delay of 94 days and maximum delay of 184 days). Stock Broker did not settle 34 active clients on 60 instances out of 470 instances of 94 clients (funds & securities value Rs 1.01 crores).

    ii. <u>For Inactive clients</u>: On comparing quarter to quarter trial balance (till June 30. 2021) and month on month trial balance (from Aug 31,2021 to Nov, 30 2021), it was observed that Stock Broker did not settle funds of 75 inactive clients on 174 instances amounting to Rs 0.65 crores across the inspection period.

17. In view of the same, it was alleged that Broker violated the following provisions:

    i. Clause 8.1.1. and 8.1.4. of Annexure of SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
    ii. Clause 12. e. of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

C. ***CLIENT REGISTRATION PROCESS (KYC AND KRA PROCESS)***

18. It was observed that 5 out of 10 client registration documents had following major irregularities:
    i. Know Your Client (KYC) was not filed properly, in1 instance;
    ii. Compliance officer and CEO details were not in KYC;
    iii. In-person verification (IPV) details were not filled;
    iv. Contravening clause pertaining to running account authorization of securities has been included in KYC. The clause was contravening as running account of securities has been discontinued.

19. In view of the same, it was alleged that Broker violated the following provisions:
    i. Clause 4 of SEBI Circular No. MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006;
    ii. Clause 3. ii. of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23,2011;
    iii. Clause 7 of SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/7 dated June 20, 2019;
    iv. Annexure 1 and Annexure 3 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

D. ***ENHANCED SUPERVISION OF STOCK BROKER***

20. It was observed that Stock Broker had submitted incorrect report of weekly supervision data. It was also observed that Stock Broker incorrectly reported

Collateral deposited with clearing corporation, Margin utilized for positions of Credit Balance Clients & Free/unblocked Collateral deposited with Clearing corporation. The details of the same are as followed:

Particulars	Date	Value Reported by TM (In Rs.)	Value calculated (In Rs.)	Difference (In Rs.
Collateral deposited with clearing corporation in form of Cash and Cash Equivalents	26-03-2021	68,00,013/-	39,80,069.38	28,19,943.62
	26-11-2021	68,00,013/-	39,80,069.38	28,19,943.62
Margin utilized for positions of Credit Balance Clients	26-11-2021	12,934/-	25,594.8	-12,660.8
Free/unblocked Collateral deposited with Clearing corporation (In Rs.)	26-03-2021	67,74,821/-	39,54,877.17	28,19,943.83
	26-11-2021	67,87,079/-	39,67,135.22	28,19,943.78

21. It was therefore, alleged that Broker violated Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

E. *OBSERVATIONS WITH RESPECT TO VERIFICATION OF UNIQUE CLIENT CODE (UCC)- PAN, EMAIL ID & MOBILE NUMBERS*

22. It was alleged that with respect to 90 clients there was a mismatch in clients address and PAN details as per back office and exchange records. It was further observed that multiple Unique Client Codes (UCC) were opened against single PAN.

23. In view of the same, it was alleged, that Broker violated Clause 2.B. ii. and 2.B. iv. of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011.

F. *OBSERVATIONS WITH RESPECT TO ANALYSIS OF RISK BASED SUPERVISION (RBS) DATA*

24. On analysis of the RBS data, it was observed that stock broker did not report details of loans given as on 31-03-2021 in its RBS submission. As on 31-03-2021, Stock Broker had extended loans worth Rs 45.73 lacs to 8 parties, however, same was not reported in broker's RBS submission. Therefore, it was alleged that

Broker violated Clause 6.1.1.e of Annexure of SEBI Circular SEBI/H0/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

G. OBSERVATIONS ON CERTIFICATION REQUIREMENT AND COMPUTER-TO-COMPUTER LINK (CTCL) VERIFICATION

25. It was observed that the associated person of the stock broker were not certified in NISM series VII- Securities Operations and Risk Management and therefore, it was alleged that Broker violated Clause B(8) of Schedule II read with Regulation 9(f) of Stock Broker Regulations and Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

H. OBSERVATIONS ON MAINTENANCE OF CLIENT AND GENERAL LEDGER

26. On verification of trial balances and client ledgers, it was observed that stock broker did not maintain client ledgers properly. It was observed that stock broker debited amounts from client's ledgers through Journal Voucher (JV). In some cases, in narration the reason for such debits was cited as "Advanced brokerage" and in many cases the narration was also blank. JVs of value Rs 1,000/- and more were analyzed. Additionally, JVs of value less then Rs 1,000/- was considered in working where they could be easily identified like end of ledger JVs. It was also observed that in many instances actual bank transactions were recorded as JVs.

27. As per broker's trial balance as on 30-11-2021, value of creditors was Rs 0.40 crores, however, after reversing JVs entries in aforesaid manner, the revised creditors clients was of Rs 0.56 crores.

28. It was therefore, alleged that Noticee violated Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of Stock Brokers Regulations and NSE/INSP/38743 dated August 30, 2018.

I. OBSERVATIONS ON MAINTENANCE OF REGISTER OF SECURITIES (ROS). HOLDING STATEMENT. BANK BOOK AND CLIENT LEDGER IN THE PRESCRIBED STANDARD FORMAT

29. It was observed that Stock Broker did not maintain Holding statement, ROS, client ledger and bank book properly. For eg.:
    i. details like "Narration", "Settlement number", "Reference number" & "Purpose" etc. were not being recorded properly in Bank books.
    ii. In ledgers, details like "Transaction Type" and "Particulars/ Narrations" were missing in many instances.
    iii. In ROS "Purpose" was not being recorded.
    iv. In holding statement "Member Account Type" was not appearing.

30. It was therefore, alleged that Stock Broker violated Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of Stock Brokers Regulations and NSE/INSP/39393 dated November 13, 2018.

J. OBSERVATIONS ON DISPLAY OF CORRECT INFORMATION ON WEBSITE

31. During the inspection, it was verified if member displayed on its portal /web site if any:-
    i. its SEBI registration name,
    ii. own logo if any,
    iii. registration number,
    iv. its complete address with telephone numbers
    v. an E-mail ID designated for Investor Complaints
    vi. compliance officer name, his telephone number and e-mail address where applicable.

32. It was observed that Stock Broker did not display correct details of its address and compliance officer on its website.

33. Therefore, it was alleged that Stock Broker violated Clause 2 of SEBI circular No. Cir/MIRSD/ 9/2010 dated November 4, 2010.

K. OBSERVATIONS ON RECORD OF ORDER PLACEMENT

34. SEBI vide Circular CIR/H0/MIRSD/MIRSD2/CIR/P/2017/I08 dated September 26, 2017 mandated that all brokers shall execute trades of clients only after keeping

evidence of the client placing such order, which could be, *inter alia,* in the form of physical record written and signed by client, telephone recording, etc. In this regard, the contract notes and call recording were analysed and following was observed:

<table>
<tr><th>S. No</th><th>DATE</th><th>UCC</th><th>Mode</th><th>Comments</th></tr>
<tr><td>1</td><td>07/08/2020</td><td>GM588</td><td>Call recording</td><td>Client name Shobha Khera, however, a male voice is placing order. Order placed for UCC 588 and not GM588.</td></tr>
<tr><td>2</td><td>07/08/2020</td><td>LK008</td><td>Call recording</td><td>Recording matches with contract note</td></tr>
<tr><td>3</td><td>07/08/2020</td><td>PU003</td><td colspan="2" rowspan="2">No record available</td></tr>
<tr><td>4</td><td>13/08/2020</td><td>GM016</td></tr>
<tr><td>5</td><td>13/08/2020</td><td>GM105</td><td>Broker submitted client came to office and put trade</td><td>Visitor register for the entire inspection period is blank, hence the submission is unacceptable.</td></tr>
<tr><td>6</td><td>13/08/2020</td><td>GM608</td><td colspan="2" rowspan="3">No record available</td></tr>
<tr><td>7</td><td>13/08/2020</td><td>LK035</td></tr>
<tr><td>8</td><td>13/08/2020</td><td>SP001</td></tr>
<tr><td>9</td><td>20/08/2020</td><td>GM613</td><td rowspan="7">order book</td><td rowspan="7">Since the order book mentions order number which matches with contract note, the same appears to be post trade intimation/confirmation</td></tr>
<tr><td>10</td><td>20/08/2020</td><td>RP001</td></tr>
<tr><td>11</td><td>20/08/2020</td><td>RP002</td></tr>
<tr><td>12</td><td>20/08/2020</td><td>RP003</td></tr>
<tr><td>13</td><td>26/08/2020</td><td>RP010</td></tr>
<tr><td>14</td><td>26/08/2020</td><td>RP011</td></tr>
<tr><td>15</td><td>26/08/2020</td><td>RP014</td></tr>
<tr><td>16</td><td>26/08/2020</td><td>RP013</td><td colspan="2" rowspan="5">No record available</td></tr>
<tr><td>17</td><td>26/08/2020</td><td>RP019</td></tr>
<tr><td>18</td><td>26/08/2020</td><td>RP028</td></tr>
<tr><td>19</td><td>26/08/2020</td><td>RP030</td></tr>
<tr><td>20</td><td>26/08/2020</td><td>RP030</td></tr>
</table>

35. Based on the aforesaid table, it was alleged that Stock Broker violated Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

L. ***OBSERVATIONS ON SEGREGATION OF CLIENTS FUNDS AND SECURITIES***

36. It was observed that Stock Broker paid & received fund from/ in its settlement account and client account from non- client entities. In net Rs 0.43 lacs were received in settlement account. It was observed that Stock Broker transferred fund of clients from settlement bank accounts to own bank accounts. In net Stock Broker transferred Rs 11.42 lacs from its own account to settlement account. Stock Broker paid/ received a total fund of Rs. 145.17 Lakh in this account from such parties.

37. Therefore, it was alleged that Stock Broker violated:

   i. Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18,1993,
   ii. Clause 2.4.2 of Annexure of SEBI Circular SEBI/H0/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and
   iii. Rule 8(1)(f) and Rule 8(3)(f) of SC(R) Rules, 1957

M. OBSERVATIONS ON NET WORTH VERIFICATION

38. It was observed that stock Broker did not adjust correct value of Free reserve, Fixed Assets, Doubtful debts and Prepaid expenses while calculating its networth. As on 30-Sep- 2021, net worth provided by stock broker to the Exchange was Rs.1.03 Crore. However, revised net worth after considering actual values under various heads was Rs.0.57 Crore. The revised net worth was not in compliance with the net worth requirement of the stockbroker.

39. It was therefore, alleged that Stock Broker violated:

   i. Clause 6.1.1(i) & 6.1.1 (j) of Annexure of SEBI Circular SEBLHO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and
   ii. Regulation 9(g) of Stock Broker Regulations read with Circular NSE/COMP/47873 dated April 02, 2021.

40. It was further alleged that Noticee 2 (from August 19, 2015 to March 25, 2023) and Noticee 3 (from December 12, 2018 to October 04, 2021), being the designated directors of the Stock Broker (Noticee 1) during the period of inspection were involved in the day to day activities of Broker, and hence were responsible for the conduct and the alleged violations by Broker.

Reply of Noticees

41. With respect to above allegations, Noticees vide email dated March 22, 2024 *inter alia* submitted the following:

"WE ARE SMALL BROKER BIG DREAM STAKE ALL OUR MONEY ,DUE TO COVID-19 WE FAILED .THIS MEMBERSHIP IS BLESSING IN DISSGIUSE

NOW DUE TO THIS WE ARE LIKE ABSCOUNDER AND OUR DMAT FROOZEN .

I CONTACTED NSE FOR REACTIVATION OF OUR MEMBERSHI DATED JUNE 2022 , TO SELL OUR BUSINESS AFTER NINE LONG MONTH DOCUMENTAION WITH NSE DELHI AND MUMBAIL OFFICE THEY CANOT GIVE US PERMISSION TO ACTIVATE OUR MEMEBERSHP. THEN IN THE MONTH OF JUNE 2023 WE CLOSED OUR OFFICE BECAUSE I AM NOT ABLE TO PAY RENT .

WE ARE IN THE PROCESS OF SURRENDER OF OUR MEMBERSHIP .SIR AGAIN I SEND YOU SAME REPLY GIVEN TO NSE OR GAFRANA JEE IN DELHI .

POINT-6) I ACCEPT THE VOILATION AS WE ARE SHORT OF FUND , ONE OF OUR PERMOTAR DIRECTOR DIED DUE TO COVID AND HE SUPPOSE TO PAY 35 LAC SINCE THEN WE STRUGLING WITH THIS , HIS ALL CHQ WAS BOUNCED AND I WAS HELP LESS .I DO ACCEPT MY VOILATION SIR .

POINT-7) I DO ACCEPT THE VOILATION SIR DUE TO FUND SHORTAGE , IN MONTH OF JUNE WE JULY WE PAID ALL FUND AND NOW CLINT BALNCE IN OUR COMPANY IS NILL .

POINT-9) AS WE NOT HAVE OUR DEPOSITARY WE USE STOCKHOLDING AS OUR DEPOSITARY PARTNER ,WITHIN 24 HOUR WE TRANFERED SECURITES TO CLINT ACCOUNT , IN FEW INSTANCE WE ARE NOT ABLR TO SETTEL CLINT FUND AS I AM ALSO IN HOSPITAL DUE TO COVID ,

POINT-10)SIR WE TRY TO SETTEL ALL THESE PETTY AMOUNT IN CLINT ACCOUNT LOT MANY INACTIVE ACCOUNT CHANGED THERE BANK ACCOUNT , WE DON'T HAVE IDEA HOW TO MAINTAIN THESE ACCOUNT .I ACCEPT MY VOILATION SIR.

POINT-11)IN COVID PERIOD THIS MATTER OF OUR SURVIVAL SOME HOW WE MANAGE TO OPEN 15-20 ACCOUNT IN THIS PERIOD AS WE DON'T HAVE ELECTRONIC ACCOUNT OPENING FACILITY , MY BE SIR CEO NAME LEFT IN FORM OR IPV STAMP WAS NOT THERE .

POINT-14) SIR OUR REPORTING IS CURRECT AFTER CONFERMATION WITH NSE WE FILED OUR DEPOSIT 68 LACK , AS PER YOU THERE IS ONLY 38 LAC , SAME WE CONFIRM WITH NSECCL DEPARTMENT THE BLOCKED OUR 20 LAC FUND YOU CAN CORR VERYFIE WITH EXCHANGE . AS PER YOUR EXCEL DATE 23-11-2021 OUR TM DEPOSIT 12934 HIS IS NOT POSSIBLE ON THAT DAY ITSELF OUR DEPOSIT 66 LAC VERY WITH FSR REPORT

POINT-15) AS PER OUR BACKOFFICE RECORD ALL CLINT ADDRES IS SAME AS ON AADHAR , YOU CAN CROSS VERIFY WITH CONTRACT NOTE ,AS OUR BACK OFFICE VENDOR IS FORM WEST BENGOLE ON COMPUTER AT THE END OFF THR ADDRES IN ALL CLINT WEST BENGOLE SHOWS , BUT IN CONTACT NOT THERE ACTUAL ADDRES REFLECT , SAME DAY WE ASK OUR VENDOR HE MOMENTALY CORRECT THIS , IF YOY ASK WE SEND YOU CONTRACT NOTE SIR.

SIR NOT EVEN SINGALE CLINTE OPEN IN DIFFERENT PAN CARD , I GIVEN REPLY TO NSE ALSO , IF SAY I AGAIN SEND YOU DEATIL IF SHARE ME PAN NUMBER ,TODAY CALLED MR NAVEEN JEE CAME AS INSPECTION TEAM FROM NSE DELHI OFFICE, HOW THIS WILL POSSIBLE AS I SEND YOU REPLY ON THIS ISSUE. WE AGAIN SAY SIR YOU CAN CORRS VERYFY WITH NSE .

F)IN THE HOLE YEAR WE ARE SHORT OF FUND HOW CAN WE EXTAND LOAN TO SOME ONE ,WE COULD NOT ABLE PAID RENT SALARY BILLS EXCHANGE PAYIN , I ASKED NSE KINDLY SHARE PARTY WISE NAME.IF THEY SHARE I WILL REPLY ON THAT SIR , I CONFIRM YOU SIR WE WERE NOT EXTEND LOAN SUCH A HUGE AMOUNT ,

G) WE HAVE ONLY THREE STAFF ONE OF THEM WAS NISM CERTIFYED DUE TO COVID HE WAS NOT CERTIFIED.

H)AS WE DON'T HAVE DEPOSITARY LICENCE WE USED TO OPEN CLIENT DEPOSITARY IN STOCK HOLDING ,WE OPEN THIS ACCOUNT FOR 1000 IN ALL ASE AND IN SOME CASE ME BE LESS , STOCK HOLDING CHARGES US THIS OPENING FEE , THIS IS THE JV AMOUNT REFLECTED IN CLINT LEDGER.

WE ARE ALSO CHARGING ADVANCE BROKREG FEOM CLINTS FOR YEARLY OR QUTERLY BABIS AS WE DECIDED TO CLOSE OUR BUSINESS WE REFUNDED ALL ADVANCE BROKREG TO CLIENT IN HIS LEDGER AND REFUN HIS FULL VALUE IN HIS BANK ACCOUNT

I) AS WE WERE NOT MEMBER OF DEPOSITARY WE ONLY SETTEL SECURITES BUY AND SELL OTHER THAN WE DON'T HAVE ANY ACTIVITY , THTS WHY THIS FORMATE WAS NOT MAINTAIN OR SIR WE HAD LACK OF COMPLINCE ,ON AUDIT WAS DONE SIX MONTH BEFORE BY NSE DELHI TEAM EVEN THEY DON'T TELL US TO RECTIFY THIS SO WE USE TO FOLLOW THIS .

J)WE HAVE VERY SMALL OFFICE AND DUE TO WORK FROM HOME DISPLY WAS CEMOVED BY SOME ONE ,AS WE WERE ABOUT TO CLOSE OUR BUSINESS WE FORGET TO DO THIS WE ACCEPT OUR VOILATION SIR .

H) SIR WE NEVER EVER DONE TRADE WITHOUT RECORDING ,WE NEVER EVER GET ANY COMPLAIN REGARDING UNAUTHORISE TRADE , SHOBHA KHERA HUSBAND PICKING PHONE ON HER BEHALF SIR THAT'S WHY MAIL VOICE IS THERE, REST ALL CLINT TRADE WES CONFIRMED BUT IRONY IS THIS OUR RECORDING WAS NOT AVAILABLE , THOUGH WE SETTEL ALL FUND TO CLIENT .

L) WE SETTEL ALL SECURITES TO CLINTS ACCOUNT THERE IS NO MISSMATCH , IN ON INSTANCE THRE WAS PAY IN SHORT AND TERMINAL WILL CLOSE IF NOT SETTEL MY WIFE MANGE THIS FUND SO TERMINAL WILL REMAIN ACTIVE.

SIR SOME FUND TRANSFERRED AS PICK COVIED PERIOD MARKET WAS SO DOWN THIS WAS OUR MATTER OF SURVIVAL , BY MISTAKE HAPPENED .

SIR MY HUMBALE REQUEST IS KINDLY CLOSE BOTH MY MEMBERHIP , LAST FOUR YEARS I AM FASING THIS TJOUGH WE EARN NOTHING PAID PENELTIES ONLY , I AM EXTREMLY SORRY TO SEBI , NSE , MCX FOR THIS SOME HOW I MANGE MY SURVIVAL , PLS WHAT EVER PENELTIES YOU KINDLY CONSIDER MY POINT AND DIDUCT PENELTIES FROM MY DEPOSIT . (sic)"

42. Further, the AR also submitted during the personal hearing that all funds and securities of the clients have been returned by Broker, further vide email dated April 29, 2024 Broker submitted that they are unable to get data from NSE for fund and securities settlement for NSE clients, and NSE informed that they would share the same with SEBI on receipt of such requisition from SEBI

Findings

A. Mis-Utilisation of clients' Funds:

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

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

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

44. Further, as per circular, 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:

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

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations.

45. I have perused the calculation given in inspection report and note that the calculation for the sample dates is as given below in the tables:

Table 2

S.No.	Date	A	B	C	G=(A+B)-C	D	MC	MF	J=(C-A)-(MC+MF1+MF2), if G>0 J=B-(MC+MF1+MF2), if G<0
1	01-Sep-20	21,597	45,52,928	59,23,429	-13,48,904	2,23,610	2,82,478	42,58,736	11,714
2	02-Sep-20	27,655	42,88,986	56,86,500	-13,69,859	1,85,290	79,687	40,60,619	1,48,680
3	03-Sep-20	1,26,949	42,88,986	57,98,020	-13,82,085	1,98,513	0	39,85,368	3,03,618
4	04-Sep-20	60,126	42,88,986	57,46,193	-13,97,081	1,86,498	0	39,25,221	3,63,765
5	07-Sep-20	3,31,959	42,88,986	60,81,169	-14,60,224	1,86,508	1,88,781	40,92,780	7,425
6	08-Sep-20	27,809	42,88,986	57,23,893	-14,07,098	1,85,582	34,487	42,49,498	5,001
7	09-Sep-20	25,803	42,88,986	54,80,702	-11,65,913	1,91,559	75,489	41,29,385	84,112
8	10-Sep-20	2,05,962	42,88,986	57,23,366	-12,28,418	1,73,882	1,31,583	40,85,298	72,106
9	11-Sep-20	25,170	42,88,986	55,47,500	-12,33,344	1,87,309	82,247	41,20,449	86,290
10	14-Sep-20	1,06,467	42,88,986	56,92,601	-12,97,148	2,12,093	81,919	40,84,434	1,22,633
11	15-Sep-20	79,876	42,88,986	55,70,131	-12,01,269	1,73,882	2,48,482	39,96,035	44,470
12	16-Sep-20	1,64,532	42,88,986	56,70,583	-12,17,065	1,86,479	5,06,871	37,39,927	42,189
13	17-Sep-20	28,761	42,88,986	55,77,692	-12,59,945	1,86,479	5,32,773	35,59,668	1,96,546
14	18-Sep-20	28,871	42,88,986	56,53,922	-13,36,065	1,89,889	0	38,35,649	3,05,397
15	21-Sep-20	2,62,696	42,88,986	60,18,510	-14,66,827	1,75,745	0	40,40,409	2,04,114
16	22-Sep-20	27,112	42,88,986	57,93,751	-14,77,653	1,80,191	1,47,940	41,10,637	1,32,295
17	23-Sep-20	25,371	42,88,986	56,20,967	-13,06,610	1,75,755	44,463	42,44,523	12,922
18	24-Sep-20	25,371	42,88,986	56,10,950	-12,96,593	1,75,755	46,054	42,42,932	27,772
19	25-Sep-20	24,371	42,88,986	54,75,812	-11,62,454	1,75,755	31,540	42,53,828	-21,550
20	28-Sep-20	3,10,116	42,88,986	57,29,768	-11,30,666	1,75,755	18,282	42,65,631	-59,417
21	29-Sep-20	18,045	39,80,069	57,77,274	-17,79,160	1,75,755	56,708	39,23,361	56,708
22	30-Sep-20	23,755	39,80,069	57,93,883	-17,90,059	1,75,755	82,772	38,95,069	85,001

Table 3

S.No.	Date	A	B	C	G	D	MC	MF	J=(C-A)-(MC+MF1+MF2), if G>0 J = B - (MC+MF1+MF2), if G<0
1	01-Mar-21	2,16,946	39,80,069	53,11,417	-11,14,401	1,75,624	1,54,846	38,15,047	10,176
2	02-Mar-21	73,551	39,80,069	48,66,776	-8,13,156	1,75,624	78,350	38,77,525	24,194

5	05-Mar-21	38,088	39,80,069	47,99,405	-7,81,248	2,04,751	2,06,930	37,33,912	39,227
4	04-Mar-21	27,988	39,80,069	47,23,553	-7,15,496	2,22,738	1,40,979	37,87,674	51,416
3	03-Mar-21	27,988	39,80,069	47,10,739	-7,02,682	2,22,755	59,270	38,61,528	59,271
7	09-Mar-21	50,907	39,80,069	46,76,994	-6,46,018	1,63,234	79,423	38,88,034	12,613
8	10-Mar-21	15,907	39,80,069	46,22,201	-6,26,225	1,63,234	63,275	39,16,794	-0
9	12-Mar-21	15,907	39,80,069	44,77,415	-4,81,439	1,44,079	81,768	38,98,301	-0
6	08-Mar-21	2,46,588	39,80,069	47,04,848	-4,78,191	1,63,274	87,345	38,91,474	1,250
12	17-Mar-21	69,087	39,80,069	45,24,535	-4,75,378	1,29,655	77,384	39,02,685	-0
11	16-Mar-21	69,988	39,80,069	44,47,596	-3,97,538	1,55,183	89,171	38,78,019	12,879
13	18-Mar-21	33,004	39,80,069	43,96,969	-3,83,896	1,29,655	66,322	39,13,747	-0
10	15-Mar-21	74,335	39,80,069	44,27,145	-3,72,741	1,44,079	1,37,843	38,42,226	-0
14	19-Mar-21	22,056	39,80,069	43,52,732	-3,50,607	1,42,125	77,017	39,03,053	-0
15	22-Mar-21	13,150	39,80,069	42,75,316	-2,82,097	1,39,064	54,452	39,19,080	6,538
16	23-Mar-21	14,150	39,80,069	41,64,420	-1,70,201	1,29,355	69,766	39,10,304	-0
17	24-Mar-21	12,132	39,80,069	41,61,556	-1,69,354	1,39,673	62,764	39,17,306	-0
18	25-Mar-21	12,132	39,80,069	40,97,157	-1,04,955	1,31,042	26,022	39,54,048	-0
21	31-Mar-21	17,735	37,13,625	37,29,085	2,276	1,40,994	3,188	37,10,984	-547
19	26-Mar-21	11,226	39,80,069	36,92,448	2,98,848	1,29,748	22,466	39,54,877	2,726
20	30-Mar-21	17,806	39,80,069	36,72,032	3,25,844	1,29,748	15,484	39,79,522	-14,937

46. I note from the tables above, that the G value was found to be negative for 40 sample dates, and value of J was found to be positive for 30 sample dates.

47. I note that the Noticees have not disputed the findings with regard to the values of ‘G’ and ‘J’ on the sample dates and have accepted the alleged violations in their reply. Further Noticees have submitted that they have transferred funds to clients. Though no supporting evidentiary documents have been placed on records for the same.

48. In this regard, I note that the Noticees have accepted that on 40 sample instances there was misutilisation of funds of credit balance clients by the stock broker for meeting the obligations of debit balance clients and/or for its own purpose, as well as Noticees have also accepted that on 30 sample instances clients' funds were utilized towards margin obligations of debit balance clients and proprietary margin obligations. Further, Noticee submitted that the same was on account of fund shortage, and in July all funds were paid.

49. In this regard, I note that the measure taken by SEBI (provisions of the circular) are intended to increase transparency in fund/ client management by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than meeting that specific clients' obligation as permissible under SEBI rules and regulations.

50. In view of the above, I hold that the allegations of misutilisation of funds of clients by the Stock Broker stands established. Therefore, I hold that Stock Broker violated the provisions of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

B. ***QUARTERLY/MONTHLY SETTLEMENT OF FUNDS/SECURITIES OF CLIENTS:***

51. In SCN it was alleged that for active clients, for 8 clients there was delay in settlement, whereas for 34 active clients were not settled on 60 instances, whereas 75 inactive clients were not settled on 174 instances during the inspection period.

52. In this regard, Noticees submitted that they did not have their depository participant, and used 'Stockholding' as their depositary participant, and within 24 hour transferred securities to clients' accounts, however in few instance they were not able to settle client fund as Noticee 2 was also in hospital due to covid. Further, lot many inactive client account changed their bank accounts, and stock broker didn't know how to maintain these account.

53. I note that the Noticees have contended that the reason for non-settlement of accounts in timely manner was on account of (i) hospitalization of Noticee 2 and (ii) change of bank accounts by inactive clients. In this regard, I note that the Noticee 1 as Stock Broker is expected to have robust system in place to carry out their broking operations which should run smoothly even in absence of key management persons or directors. The failure to have such system in place cannot be a reason for not settling the client accounts in timely manner.

54. Further I note that the instances of non-settlement were from December 2020 to November 2021, which is a very long duration for Broker to make necessary arrangements for resumption of orderly operations. Further, Noticees have not submitted any documentary evidence in support of the contentions. In view of the same the contention of the Noticee is not accepted.

55. Further the Noticees have not submitted any documentary evidence in support of their contention that the bank accounts of the inactive clients had changed, resulting into failing of transactions leading to non-settlement. In this regard, I note that the Noticees have neither placed any documentary evidence in its support, nor placed any documents to showcase the stock broker's efforts to update the bank account details of the clients or issuance of physical payment instrument to settle the client accounts. In view of the same the contention of the Noticee is not accepted.

56. I note that the Noticees have admitted to the violation, and have only given their reasons for it, and I find that the reasons put forward by the Noticees for non-settlement of clients in timely manner as specified in the regulations and circulars are not justified.

57. I note that the said SEBI circulars intends that the stock brokers should settle the funds of clients periodically, so that clients' funds are not kept unsettled by the stock broker for indefinite period on any pretext. The circular was issued with a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers and to keep the investor informed about his/her account, so as to curb any misutilisation of funds by the stock brokers, thereby safeguarding the integrity of the market. In view of the above findings, I hold that the allegation that Stock Broker violated the provisions of Clause 8.1.1 and 8.1.4 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, stands established.

C. ***CLIENT REGISTRATION PROCESS (KYC AND KRA PROCESS)***

58. SCN alleged that during inspection 5 out of 10 client registration documents had major irregularities, in this regard Noticees have contended that they didn't have electronic account opening facility and during Covid Period they opened 15-20 accounts and they may have had made some errors in it.

59. In this regard, I note that the Noticees have accepted the irregularities and thereby admitted to the violations. In view of the above, I hold that it is established that the Stock Broker violated the following provisions:
    i. Clause 4 of SEBI Circular No. MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006:
    ii. Clause 3. ii. of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011;
    iii. Clause 7 of SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019:
    iv. Annexure 1 and Annexure 3 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

D. ***ENHANCED SUPERVISION OF STOCK BROKER***

60. SCN has alleged, (i) incorrect reporting of Collateral deposited with clearing corporation, (ii) Margin utilized for positions of Credit Balance Clients & (iii) Free/unblocked Collateral deposited with Clearing Corporation in weekly supervision data by the Stock Broker to the Stock Exchanges.

61. The Noticees have contended that there Deposit with NSE was Rs.68 Lakhs, and accordingly the reporting was correct, however Noticees have not supported the claim with any documentary evidence. Further I note that this observation is observation from NSE, hence without any documentary evidence from the Noticees to repudiate the irregularity, I am inclined to not accept the contention of the Noticees, and find that the reporting by Broker was incorrect.

62. I note that submission of correct information under the enhanced supervision system was imperative for effective monitoring by Stock Exchanges of clients' funds lying with the stock brokers through the mechanism. In view of the above, it is established that the Stock Broker is in violation of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

E. ***VERIFICATION OF UNIQUE CLIENT CODE (UCC)- PAN, EMAIL ID & MOBILE NUMBERS***

63. SCN alleges that during inspection it was observed that there were 2 UCC allotted for a single PAN, whereas for 90 clients there was mismatch in clients address and PAN details as per back office and exchange records. In this regard Noticee has submitted that as per Noticee's back office record all client address is same as on the Aadhar of the client, which can be cross verified with contract note. Further Noticee submitted that Stock Broker's back office vendor is from West Bengal, and due to error at the end in addresses of all clients, West Bengal reflects. Further, not even single client account is open in a different pan card.

64. In this regard, I note that the referred annexure in the SCN detailing 2 UCC with same PAN, its noted that the list refers two columns, to Client Code 'GM533' with 'PAN-BHZPS1967D'. I note that there were no two different UCC with same PAN number. Further I note that the Client Name is also same 'Anshu Suman'. The only difference is the last trade date i.e. March 16, 2021 and January 06, 2021. In view of the above, it is not established that there were two different UCC with same PAN numbers. Accordingly, violation of Clause 2.B. iv. of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011 is not established.

65. I note that in regard to allegation of 90 clients' address state incorrectly referred as 'West Bengal", Noticee has accepted that the state is wrongly mentioned as West Bengal on account of allegedly issue in the software of the vendor, whose address is of West Bengal, and the same was brought to the notice of vendor and same has been corrected.

66. I note that the remaining address of all such clients were reflecting correct details, and it seems that the incorrect mentioning of 'West Bengal' as state seems to be some systemic error, as claimed by the broker. The Noticee however has not submitted any documentary evidence in support of correction of the errors for the clients. In view of the above, I note that there were mismatch in the addresses as far as name of the state in addresses are concerned.

67. I note that the Clause 2.B. ii. of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011, states that Stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address. In view of the above, I note that the stock broker had uploaded the requite details, however due to some system issue, error crept in name of State, which is a technical lapse or lack of diligence at most. In view of the above, it is not established that the Noticee has violated Clause 2.B. ii. of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011.

F. ***ANALYSIS OF RISK BASED SUPERVISION (RBS) DATA***

68. In the SCN it was alleged that as on 31-03-2021, Stock Broker had extended loans worth Rs 45.73 lacs to 8 parties, however, same was not reported in your RBS submission. The Noticees in their reply refuted such allegation and claimed they were in shortage of funds, how they could lend such huge amount to others.

69. In this regard, I note that the annexure 14 of the Inspection report is just a list in excel which provides name and closing debit balance of certain entities. I note that just a list in excel without the supporting documents basis which such a list is prepared, cannot be considered as valid evidence for alleged extension of the loans to these 8 entities.

70. In view of the same, there is insufficient evidence to establish that the stock broker violated Clause 6.1.1.e of Annexure of SEBI Circular SEBI/H0/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

G. ***CERTIFICATION REQUIREMENT AND COMPUTER- TO-COMPUTER LINK (CTCL) VERIFICATION***

71. The SCN alleged that the associated person of the member were not certified in NISM series VII- Securities Operations and Risk Management. The Noticees have contended that they had three staff members, and one of them was NISM certified, however due to Covid the certification could not be obtained. In regard to the above, it is noted that the Noticee has accepted the violation. In view of the same, it is established that the Stock Broker has violated Clause B(8) of schedule II read with Regulation 9(f) of Stock Broker Regulations and Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

H. ***MAINTENANCE OF CLIENT AND GENERAL LEDGER***

72. It was alleged in the SCN, that the client ledgers were not maintained properly, and clients ledgers were debited through JV with narration as “Advanced Brokerage” or without narration, and actual bank transactions have been recorded as JVs, and upon reversing JVs entries the value of creditors is revised to Rs.0.56 Crores. In this regard Noticees have contended that since Stock Holding’s DP services were taken for clients, the account opening fees of Stockholding was debited as charges, through JVs. Similarly advance brokerage was collected from clients for yearly or quarterly basis, which upon closure of the business has been refunded to the client.

73. In this regard, I note that the NSE Notice Ref. No.: NSE/INSP/38743 to standardize the maintenance of books of accounts/records, prescribed standard format for Register of Securities, Holding Statement, Bank Book and Client Ledger; as well as prescribed guidelines with respect to the implementation of the same.

74. In this regard, I note that as per Notice it was mandated that the narration needs to be updated in the voucher entry, and specific transactions like Receipt, Payment, Margin etc., needs to be populated with specific value. I note that Journal Vouchers (JV) are used to process accounting entries, allocations and corrections for which other means of entry into the financial system are not available. In this regard I note

that the entries made by the broker in the client ledger pertained to specific transactions, for which specific entries and narration needed be entered. I note that the Stock Broker has not maintained the records as per the prescribed guidelines.

75. In view of the above, it is established that the Stock Broker has violated Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of Stock Brokers Regulations and NSE/INSP/38743 dated November 13, 2018.

I. ***MAINTENANCE OF REGISTER OF SECURITIES (ROS). HOLDING STATEMENT. BANK BOOK AND CLIENT LEDGER IN THE PRESCRIBED STANDARD FORMAT***

76. SCN alleged that the Broker has not maintained Holding statement, ROS, client ledger and bank book properly. In this regard Noticee has accepted that since they were not member of depository, the format was not maintained and this resulted into non-compliance.

77. In this regard I note that the Holding statement, ROS, client ledger, bank book maintained by the broker, lacked details as specified by NSE vide circular no.39393 and certain columns were left blank. Thus, I note that the Stock Broker has not maintained the records as per the prescribed guidelines.

78. In view of the above, it is established that the Stock Broker has violated Clause A (2) and A (5) of Code of Conduct for Stock Brokers under Schedule II, read with Regulation 9 (f) of Stock Brokers Regulations and NSE/INSP/39393 dated November 13, 2018.

J. ***OBSERVATIONS ON DISPLAY OF CORRECT INFORMATION ON WEBSITE***

79. SCN alleged that the Stock Broker has not displayed correct details of its address and compliance officer on its website. In this regard, it is noted that the Noticee has accepted the violation and have submitted that the display was removed, and as broker was about to close business it forget to put it back.

80. In view of the above, I note that the display of details by brokers is important to remove any confusion among the clients and render them correct details. The Broker has accepted the violation, and in view of the same, I find that it is established that the broker has violated Clause 2 of SEBI circular No. Cir/MIRSD/ 9/2010 dated November 4, 2010.

<u>K.</u> RECORD OF ORDER PLACEMENT

81. Further, in regard to Non-maintenance of proper order placement records, I refer the table below illustrating alleged observations with respect to call recordings of trade placement for 25 sample instances:

<u>Table 3</u>

<table>
<tr><th>S. No</th><th>DATE</th><th>UCC</th><th>Mode</th><th>Comments</th></tr>
<tr><td>1</td><td>07/08/2020</td><td>GM588</td><td>Call recording</td><td>Client name Shobha Khera, however, a male voice is placing order. Order placed for UCC 588 and not GM588.</td></tr>
<tr><td>2</td><td>07/08/2020</td><td>LK008</td><td>Call recording</td><td>Recording matches with contract note</td></tr>
<tr><td>3</td><td>07/08/2020</td><td>PU003</td><td colspan="2" rowspan="2">No record available</td></tr>
<tr><td>4</td><td>13/08/2020</td><td>GM016</td></tr>
<tr><td>5</td><td>13/08/2020</td><td>GM105</td><td>Broker submitted client came to office and put trade</td><td>Visitor register for the entire inspection period is blank, hence the submission is unacceptable.</td></tr>
<tr><td>6</td><td>13/08/2020</td><td>GM608</td><td colspan="2" rowspan="3">No record available</td></tr>
<tr><td>7</td><td>13/08/2020</td><td>LK035</td></tr>
<tr><td>8</td><td>13/08/2020</td><td>SP001</td></tr>
<tr><td>9</td><td>20/08/2020</td><td>GM613</td><td rowspan="7">order book</td><td rowspan="7">Since the order book mentions order number which matches with contract note, the same appears to be post trade intimation/confirmation</td></tr>
<tr><td>10</td><td>20/08/2020</td><td>RP001</td></tr>
<tr><td>11</td><td>20/08/2020</td><td>RP002</td></tr>
<tr><td>12</td><td>20/08/2020</td><td>RP003</td></tr>
<tr><td>13</td><td>26/08/2020</td><td>RP010</td></tr>
<tr><td>14</td><td>26/08/2020</td><td>RP011</td></tr>
<tr><td>15</td><td>26/08/2020</td><td>RP014</td></tr>
<tr><td>16</td><td>26/08/2020</td><td>RP013</td><td colspan="2" rowspan="7">No record available</td></tr>
<tr><td>17</td><td>26/08/2020</td><td>RP019</td></tr>
<tr><td>18</td><td>26/08/2020</td><td>RP028</td></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td>19</td><td>26/08/2020</td><td>RP030</td></tr>
<tr><td>20</td><td>26/08/2020</td><td>RP030</td></tr>
</table>

82. I observe that the Noticees have contended that for Shobha Khera her husbad picked the call, and for rest all the trades were confirmed but they do not have recordings.

83. I note from the records that for 1 sample trade of client with UCC-LK008, call recordings provided by broker matched with the contract note, however for the remaining 19 trades, I note that the call records or order placement records were not provided, hence, it is inferred that the same were not maintained. In view of the above, I hold that broker did not keep order placement records for 19 trades out of sample 20 trades, hence it is established that the stock broker violated Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR /P/2018/54 dated March 22, 2018.

L. ***SEGREGATION OF CLIENTS FUNDS AND SECURITIES***

84. SCN alleged that during inspection it was observed that stock broker paid & received fund from/ in its settlement account and client account from non- client entities. In net Rs 0.43 lacs have been received in settlement account. Further, it was observed that broker transferred fund of clients from settlement bank accounts to own bank accounts. In net broker transferred Rs 11.42 lacs from its own account to settlement account. Broker paid/ received a total fund of Rs. 145.17 Lakh in this account from such parties. Broker has not given any reply on merit on the same, and has accepted the violation.

85. I note that the Broker has accepted the violation, and the documents available on records evidences that there was non-segregation of funds, contrary to the mandated segregation of client and brokers fund. Further, Broker has not showcased any reason for such non-segregation, or contended that such transfers were for legitimate purposes as given in circulars. In view of the same, it is established that the Broker has violated the following:
    i. Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18,1993,

ii. Clause 2.4.2 of Annexure of SEBI Circular SEBI/H0/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and

iii. Rule 8(1) (f) and Rule 8(3)(f) of SC(R) Rules, 1957.

M. ***NET WORTH VERIFICATION***

86. SCN alleged that the Broker did not adjust correct value of Free reserve, Fixed Assets, Doubtful debts and Prepaid expenses while calculating its networth. As on 30-Sep- 2021, net worth provided by Broker to the Exchange was Rs.1.03 Crore. However, revised net worth after considering actual values under various heads was Rs.0.57 Crore. The revised net worth was not in compliance with the net worth requirement of the stockbroker.

87. In this regard, I note that the broker has not made any submissions on merit. In view of the same it is inferred that the broker has accepted the violation. In view of the same, it is established that the Broker has violated Clause 6.1.1(i) & 6.1.1 (j) of Annexure of SEBI Circular SEBLHO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Regulation 9(g) of Stock Broker Regulations read with Circular NSE/COMP/47873 dated April 02, 2021.

88. Further I note that the Noticee 2 and 3, were the designated directors of the Noticee 1 during the period of inspection and were involved in the day to day activities of Noticee 1, hence in view of Section 24 of SCRA and Section 27 of SEBI Act, they were responsible for the conduct and the violations by Noticee 1, and are found to be in violation of the aforesaid clauses, circulars, regulations and Acts of which Noticee 1 has been found to be in violation of.

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

89. In the light of findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that the Noticees have violated the regulatory provisions as indicated in Table no. 1, except for at S. No. E and F.

90. The object of inspection of a Stock Broker is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SCRA, SEBI Act and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticees had failed to comply with the provisions as mentioned at Table no. 1, except for at S. No. E and F.

91. Further, the Noticees have submitted that they want to surrender the membership of the exchange and surrender the registration as broker, since they are not earning anything from the business, but only paying fees and penalties. In this regard, I note that the future business plans and the financial conditions of the Noticee, can not be considered as justification for non-imposition of penalty for established violations.

92. I find from the observations made in the inspection report and other material available on record that the Noticees have failed in performing their duties as a registered stock broker and its directors. Noticees have also failed to adhere to high standards of service to its clients. It is observed that the Noticees have violated the circulars and regulations in various areas of stock broking services which were jointly inspected by SEBI, Stock Exchanges and Depositories. However, I have noted that the SCN has not alleged non-resolution of investor complaints owing to the established violations.

93. Further, the aforesaid established violations are serious violations in nature and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act and section 23D of the SCRA.

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

and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

95. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act and section 23D of the SCRA. The contents of the said provisions of law is reproduced herein below:

<u>Relevant provisions of SCRA:</u>

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

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

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

Penalty for contravention where no separate penalty has been provided.

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

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA1956 read with Rule 5(2) of the SCR Adjudication Rules?

96. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act and Section 23-J of the SCRA, which reads as under: -

SEBI Act

Factors to be taken into account while adjudging quantum of penalty

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

- *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
- *(c) the repetitive nature of the default.*

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

SCRA

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

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

- *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
- *(c) the repetitive nature of the default.*

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

97. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SCRA, SEBI Regulations and SEBI Circulars is not available. With respect to the repetitive nature of the default, I do not find anything on record.

98. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and circulars / directions issued thereunder, which it failed to do during the inspection period. The conduct of the Noticee in not complying with the provisions of the SCRA, SEBI Regulations and SEBI Circulars cannot be taken lightly. Considering, the violations by the Noticees are serious, therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence.

ORDER

99. Considering all the facts and circumstances of the case including the submissions of the Noticee, factors stipulated in Section 15-J of the SEBI Act and Section 23-J of the SCRA and exercising the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, and section 23-I of the SCRA read with Rule 5 of the SCR Adjudication Rules, 1956, I hereby impose the following monetary penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA, on the Noticees:

Sr. No.	**Penalty Provisions**	**Name of the Noticee**	**Amount of penalty (in ₹)**
1	Section 15HB of SEBI Act	Krisha Incap Services Pvt Limited Sanjay Kumar Mishra Rupesh Kumar	₹ 9,00,000/- (Rupees Nine Lakhs Only) Jointly and Severally
2	Section 23D of SCRA	Krisha Incap Services Pvt Limited Sanjay Kumar Mishra Rupesh Kumar	₹ 3,00,000/- (Rupees Three Lakhs Only) Jointly and Severally

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

100. 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

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

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

Place: Mumbai **SHASHI KUMAR VALSAKUMAR**

Date: May 31, 2024 **ADJUDICATING OFFICER**