BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/17636]

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

In respect of

M/s. Pune E stock Broking Ltd. (Formerly known as Pune E Stock Broking Private Limited)

(SEBI Registration Number: INZ000161438)

In the matter of M/s. Pune E stock Broking Ltd. (Formerly known as Pune E Stock Broking Private Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**), BSE Limited (herein after referred to as '**BSE'**), National Stock Exchange of India Ltd. (herein after referred to as '**NSE')(both BSE and NSE collectively being referred to as 'Exchange'),** and Central Depository Services (India) Limited (hereinafter referred to as '**CDSL'**) conducted a comprehensive joint inspection of M/s. Pune E stock Broking Ltd. (Formerly known as Pune E Stock Broking Private Limited) (hereinafter referred to as **'Stock Broker / Noticee'**) from December 02, 2019 to December 13, 2019, at its registered office w.r.t. its Stock Broking and Depository Participants (hereinafter referred to as '**DP**') activities. The period covered in the inspection was from April 01, 2018 to November 30, 2019 (hereinafter referred to as '**Inspection Period'**).

2. Noticee is a SEBI-registered Stock Broker, having SEBI registration number as INZ000161438. Noticee is a Stock Broker of BSE and NSE. Further, Noticee is registered DP of CDSL bearing registration number as CDSL-481-2008.

3. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA/SC(R)A**") and Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") for the alleged violations of the following provisions by Noticee:

   a) Section 23D of SCRA read with Clause 1 of Annexure to SEBI Circular SMD/SED/CIR/93/23321 dated November 18,1993 (herein after referred to as "**Transaction Regulation Circular"**) and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016 (herein after referred to as "**Enhanced Supervision Circular"**);
   b) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 (herein after referred to as "**SEBI Circular dated December 03, 2009"**) read with Clause 8.1.1. of Annexure to Enhanced Supervision Circular;
   c) Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017;
   d) Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 200;
   e) Clause 3.2. of Annexure to Enhanced Supervision Circular; and
   f) Clause 7 of Annexure to Enhanced Supervision Circular

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. Vide order dated May 05, 2021, undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995'**) and also under Section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules 2005**'), (both rules collectively being referred as "**Adjudication Rules**") to inquire into and adjudge, under the provisions of Section 15HB of SEBI Act and Section 23D of the SCRA, the aforesaid alleged violations committed by Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter being referred to as the "**SCN**") dated September 29, 2021 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against it and why penalty, if any, should not be imposed upon Noticee under Section 23D of SCRA and Section 15HB of SEBI Act, for the aforesaid violations alleged to have been committed by Noticee.

6. The SCN was sent to Noticee through Speed Post AD("**SPAD**") and through digitally signed email dated September 29, 2021 and was duly served upon Noticee. Noticee was given fifteen (15) days' time to submit the reply to the SCN. Vide email as well as letter dated October 26, 2021, Noticee requested additional time of 3 weeks for submitting the reply. The request of Noticee was acceded to and vide email dated October 29, 2021, Noticee was granted time till November 22, 2021 to furnish their reply. Vide email as well as letter dated November 25, 2011, Noticee once again requested additional time of 3 weeks to submit the reply. The request of Noticee was once again acceded to and vide email dated December 13, 2021 Noticee was granted time till December 17, 2021 to submit the reply. Vide its letter dated December 27, 2021, Noticee submitted the reply to SCN.

7. Subsequently, vide email dated April 01, 2022, Noticee was informed that there was an error in the figures mentioned in "Annexure-9 (para-15(b) of SCN dated September 29, 2021)", which had been sent to Noticee along with the SCN and therefore, a revised "Annexure-9" was provided to Noticee vide the said email and Noticee was granted 14 days' time to submit additional reply, if any. Vide email dated April 06, 2022, Noticee submitted that the reply provided by them on December 27, 2021, may be considered as its reply and requested for personal hearing in the matter.

8. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on April 28, 2022, vide hearing notice dated April 13, 2022. The said hearing notice was sent to Noticee through SPAD and through digitally signed email dated April 13, 2022 and was duly served upon Noticee. On the scheduled date of hearing, Authorized Representatives (**AR**) of Noticee namely, Mr. Robin Shah & Mr. Rushin Kapadia, Advocates, Bodhi Legal and Mr. Jatin Gandhi, compliance officer of Noticee, attended the hearing and reiterated the contents of the reply made by Noticee vide its letter dated December 27, 2021. During the hearing, AR requested for additional time to submit further reply. Accordingly, Noticee was granted time till May 06, 2022, to file additional

reply. Noticee submitted additional reply on May 04, 2022. On June 28, 2022, Noticee vide its email dated submitted documents w.r.t. penalty imposed by NSE for the violations observed by NSE during the course of their inspection.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. Before going into the merits, I would like to first deal with the issue raised by Noticee that NSE vide its invoice for the month of December 2019, had levied a penalty of Rs. 1,47,100/-for the violation of mis-utilization of clients' funds & securities , clients' funding and running account settlement etc. for the inspection period and any action at this stage would amount to "double jeopardy". To support its contention, Noticee, vide email dated June 28, 2022, provided the document in the manner of "Invoice for Fines/ Penalties Dec-2019" and letter dated September 19, 2019, forwarding the extract of minutes of Internal Committee of NSE. In this regard, I note that the inspection carried out by NSE, as referred to by Noticee, is separate from the inspection carried out by SEBI jointly with BSE and NSE pursuant to which the instant adjudication proceedings have been initiated. Therefore, these two are different proceedings and imposition of penalty on Noticee by NSE does not take away SEBI's right to initiate a separate proceeding for determining the violations and assessing the quantum of penalty if any, under the provisions of SEBI Act. Therefore, I am not inclined to accept the aforesaid contention of Noticee.

10. Having dealt with this aspect, I am now proceed to deal with the matter on merits. The allegations levelled against Noticee, the submissions and findings in respect of the same are dealt with in the subsequent paragraphs of this order.

11. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by Noticee in this regard. On perusal of the replies submitted by Noticee, I note the issues that arise for consideration in the present case are:

    I. Whether Noticee has violated the provisions as mentioned in para 3 of the order?
    II. Do the violations, if any, attract monetary penalty under Section 23D of SCRA, and Section 15HB of SEBI Act as specified in para 3 of the order?
    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

<u>Issue I: Whether Noticee has violated the following provisions</u>:

a) Section 23D of SCRA read with Clause 1 of Annexure to Transaction Regulation Circular and Clause 3 of Annexure to SEBI Enhanced Supervision Circular;
b) SEBI Circular dated December 03, 2009 read with Clause 8.1.1. of Annexure to Enhanced Supervision Circular;
c) Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017;
d) Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 200;
e) Clause 3.2. of Annexure to Enhanced Supervision Circular; and
f) Clause 7 of Annexure to Enhanced Supervision Circular

12. I now proceed to deal with the aforementioned allegations leveled against Noticee in the SCN, the submissions made by Noticee and record my observations/ findings in the subsequent paragraphs as under:

A. **<u>Misuse of the clients' funds</u>**

<u>Allegation in the SCN:</u>

1. *During the inspection, based on the principles and guidelines stipulated in clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD 2/CIR/P/2016/95 dated September 26, 2016 (herein after referred to as **"Enhanced Supervision Circular"**) reconciliation of clients' funds lying with the stock broker was done with the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member, to detect any mis-utilization of clients' fund.*

2. *During the course of inspection, all trading days during the two months of October 2018 and February 2019, top 10 days of highest pay-in obligation and top 5 days of margin utilization and enhanced supervision dates were selected as sample (total 134 dates). The analysis of the same is given as **Annexure-3**. It was observed that for 39 sample days out of the total 134 sample days, the value of 'G' was negative. For these 39 sample days the total funds available with Noticee was less than the ledger credit balance of clients. This showed that on these 39 days, the funds of credit balance clients were utilized for settlement obligations*

of debit balance clients and/or for its own purpose which shows that Noticee misutilized the funds of credit balance clients. The amount of mis-utilization of clients' funds amounted to Rs. 203,32,51,449 and ranged from Rs. 16,66,90,498 (Feb 13, 2019) to Rs. 26,27,392 (Oct 24, 2018). Further, the value of 'I' was observed to be positive on 11 out of 134 sample dates indicating that credit balance clients' funds has been used towards proprietary settlement obligations. Positive value of 'I' ranged from Rs. 15,94,34,019 (Jun 25, 2018) to Rs. 9,19,793 (Oct 16, 2018) and the average 'I' positive was Rs. Rs. 4,18,29,172/- .The value of 'J' was also observed to be positive for two sample dates (Rs. 11,45,07,169 on Sep 25, 2019 and 12,33,34,042 on Nov 20, 2019) out of 134 sample dates indicating that funds of clients misutilized for margin obligation of debit balance clients and proprietary margin obligation.

3. *In view of the foregoing, it is alleged that Noticee has violated the following provisions:*

   a. *Section 23D of SCRA read with Clause 1 of Annexure to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993(herein after referred to as "**Transaction Regulation Circular"**);*
   b. *Clause 3 of Annexure to Enhanced Supervision Circular*

<u>Reply of Noticee:</u>

<u>Letter dated December 27, 2021</u>

4. *In this regard to the above-mentioned observations and calculation of G is given below:*
   a. *We have a proper system of segregation of funds and securities .We ensure that clients' funds are used for the purpose for the meeting of the obligation of the clients as mentioned in SEBI circular dated September 26, 2016.*
   b. *In respect to calculation of G, if the credit balance funds of M/s. Vraj Enterprises (promoter's fund) are not considered, the value of G will be impacted. For actual margin utilization towards credit balance clients. Accordingly, revised calculation of G is enclosed as **Annexure-1** for your reference along with supporting document i.e. ledger of Vraj Enterprises as **Annexure 2**.*

c. *Based on the revised calculation of G, the value of G was negative on 5 days out of 134 sample days i.e. 3.7% of the total selected sample days. Kindly refer* ***Annexure-1****.*
d. *Further, we would like to submit that where the value of G is negative on 5 days, we had merged the back office data of M/S PSE Securities Ltd with our books on April, 23 2018. In this regards, the email received from NSE is attached* ***Annexure 3****.*
e. *Considering the clientele of PSE Securities and Pune e Stock, there was some errors in the report's generation. Accordingly, before submitting the data, we had to cross-verify the same multiple times. Though matter was taken up with the vendor, the issue got resolved only in the month of December, 2018. Therefore there was a technical error while calculating the value of G .In view of the above, there is no actual violation of mis-utilization of credit balance clients' funds for meeting debit balance client obligation.*
f. *In this regard, we would like to draw your attention of Adjudication Order in the matter of M/s Finquest Securities Private Limited dated July 28, 2020, wherein learned Adjudicating Officer has also considered the promoters' funds available with the broker and dropped the charges levelled against broker for negative value of G, for 2 days out of sample selected for 39 days.*

5. *As per SCNs, value of I was positive in 11 days out of the 134 Sample days.*

   a. *With respect to 11 days where I is positive out of 134 days, if we consider the revised value of "G" as per* ***Annexure 1****, the value of I is positive on 8 days. Further, the number of instances where I is positive is 8out of almost 20 months of Inspection period which is just i.e.01% of inspection period, which is minuscule in nature. The revised the said 8 days positive of I is hereby attached at* ***Annexure-4*** *for your reference.*
   b. *Further, it is submitted that corrective measure has been taken and we have closed our proprietary trading in the FY 2018-19. Hence, there is no probability of I being positive in future. Further, on other days the value of I is found to be negative, which establishes that no credit clients' fund, has been utilized towards margin obligations of debit balance clients and proprietary margin obligation in sample period.*

6. As per SCNs, value of J was positive in 2 days out of the 134 Sample days.

a. *We hereby submit that that there was a typographical error by our staff while making input of the margin utilized positions of credit balance clients across all Stock Exchanges. The same was submitted in reply of findings of inspection observation.*
b. *We once again reiterate the same that there was an error in providing data to inspection team. The amount of revised J is given as under:*

Date	*Amount submitted to inspection team*	*Actual amount*
25.09.2019	*3,31,23,895*	*56,20,42,085*
20.11.2019	*2,23,67,940*	*55,57,46,491*

7. Detailed *calculation is attached as* ***Annexure-5*** *for your reference. The summary of the revised calculation of J is given as under:*

Date	***Total Fund balance in all client bank accounts, including the settlement account***	***Total Credit balances of all clients as obtained from trial balance across stock exchanges***	***Margin utilized positions of credit balance clients across all Stock exchanges (As mentioned in Annexure 3 of SCN)***	***Actual Margin utilized positions of credit balance clients across all Stock exchanges***	***Unutilized collateral lying with the clearing corporations /or Clearing member***	***Revised Value of J***
	A	***B***	***D***	***Revised D***	***E***	***Revised Value of J = Revised C - A - (Revised D +E)***
25.09.19	*130,076,109.*	*393,880,861.*	*33,123,895*	*56,20,42,085*	*116,173,688.00*	*-509,764,088.21*
20.11.19	*52,433,645.*	*364,287,461.*	*22,367,940*	*55,57,46,491*	*166,151,835.00*	*-530,479,348.70*

8. *We are providing the Exchange files along-with list of creditors attached at* ***Annexure -6****. Hence, value of J is negative in all cases.*

9. *Hence, from above the submission, it has submitted that we do not have any mala-find intention. On perusal of the size of our business and transaction carried out, number of days on which shortfall arises and amount of shortfall is very minuscule. Hence, we humbly submit that the alleged violations, if any are technical in nature and do not warrant any adverse inference.*

Email dated May 04, 2022

10. ***For calculation of G****:-*

- *We have a proper system of segregation of funds/securities and funds of client are used for the purpose as mentioned in SEBI circular dated November 18, 1993 and September 26, 2016.*
- *Credit Balance Funds of promoters (viz. Vraj Enterprises) are not considered. If considered, G will be positive in 6 out of 11 impugned days.*
- *For the remaining 5 days, there was a reconciliation error in the back-office software due to merger of PSEB and PSE Securities Ltd.*
- *As on date, all such technical/ software issues have been resolved.*

11. ***For calculation of "I"***

- *If we consider the revised calculation of "G"(per the Annexure 1), the value of I will be positive only on 8 days out of overall 20 months(0.1% of inspection period)*

12. ***For calculation of "J"***

- *There was a typographical error in submission of data to inspecting team. If the learned AO reviews the original files uploaded on the Exchange, it can be observed that the typo error was only in providing the data to inspection team. If one consider the actual data (exchange file list), calculation of J is negative in all cases.*

Observations/Findings

13. Noticee in its reply has admitted that the value of "G" was negative for the selected 39 dates. However, Noticee in its reply has contended that the 'Creditors Balance' as specified in Annexure 3 of SCN includes the credit balance of a promoter's fund, namely, Vraj Enterprises. Noticee has further contended that if the value of Promoter fund is not considered, the value of "G" will be impacted and value of "G" will be negative on 5 days out of 134 sample days i.e. 3.7% of the total selected sample days. Noticee has provided the ledger of Vraj Enterprises to support its contention. Noticee in its reply has also placed reliance on Adjudication Order in the matter of M/s. Finquest Securities Private Limited dated July 28, 2020, wherein Learned Adjudicating Officer has

also considered the promoter's fund available with the broker and dropped the charges levelled against the broker for negative value of "G" for 2 days out of sample selected for 39 days.

14. I note that Enhanced Supervision circular specifies the method for arriving value of "G". As per Enhanced Supervision circular, the value of "G" is arrived after considering the funds available in client bank accounts and cash/cash equivalent deposits with clearing corporation/clearing member, across all Stock Exchanges. From the said figures, the figures of total credit balance clients (after adjustment of open bills and uncleared cheques) needs to be deducted. I also note that the value of "G" was ascertained, based on the data provided by Noticee like bank statements, trial balance etc. during the course of inspection.

15. I also note that vide letter dated February 27, 2020, SEBI had forwarded the findings of inspection to Noticee, in response to which Noticee, vide its letter dated June 11, 2020, submitted its reply. I also note that subsequent to the receipt of findings of inspection, Noticee in its reply to the findings of inspection, had taken a similar plea that credit balance funds of M/s. Vraj Enterprises has not been considered by SEBI Inspection Team.

16. I note from the material available on record that M/s. Vraj Enterprises is a client of Noticee and the partners of M/s. Vraj Enterprises are promoter of Noticee. I have also perused the revised "G" calculation submitted by Noticee and ledger of M/s. Vraj Enterprises provided by Noticee as an Annexure to its reply dated December 27, 2021. On perusal of the ledger submitted by Noticee, I note that Noticee has not maintained separate ledgers for the business transactions and trading transactions of M/s. Vraj Enterprises with the Noticee. Further, the single ledger provided by the Noticee for M/s. Vraj Enterprises does not provide any bifurcation of entries pertaining to trading and business activities. Thus I note that there has been no segregation of clients' funds and own funds by Noticee. This is the separate aspect, which has not been alleged in the SCN. Therefore, I am not inclined to deal on the said issue. I note that while submitting the reply to the findings of inspection, Noticee has raised the same contention that credit balance funds of M/s. Vraj Enterprises needs to be deducted while ascertaining the value of "G". I note that at the time of Post Inspection Analysis, SEBI has not considered the said aspect.

17. As detailed above, on account of lack of bifurcation of trading/business entries in the ledger provided by Noticee for M/s. Vraj Enterprises, it is not possible to conclusively take into consideration the payables (only on account of the trading activities) pertaining to M/s. Vraj Enterprises as client of Noticee, whereas it is noted from the ledger that there were numerous trading entries. Further, on records there is no details of calculation carried out by inspection team in regard to arriving at value of ‘C’.

18. However, even if the entire payable to M/s. Vraj Enterprises is considered as promoter fund for business activities and its trading activities are ignored, the value of creditors would stand reduced. However, I find that even if the revised calculation is considered the value of “G” would still be negative for 5 days, i.e., September 25, 2018, October 01, 2018, October 08, 2018, October 29, 2018 and February 07, 2019, which has also been accepted by Noticee in its submission.

19. Noticee in its reply has further contended that the value of “G” was negative on 5 days due to merger of the back office data of M/s. PSE Securities Ltd. (“**PSEL**”) with their books on April 23, 2018 and also provided a copy of email received from NSE as an Annexure to support its contention. Noticee has further contended that there was some errors in the report’s generation. The issue was taken up by them with the vendor and the issue got resolved in the month of December 2018. In this regard, on perusal of the email provided by Noticee as an Annexure- 3 to its reply, I note that subject of the email mentioned as, *“….. PSE SECURITIES LTD. is merging with PUNE E STOCK BROKING PRIVATE LIMITED*”. Further, it has been mentioned in the email that, “*This is with reference to your application for merger, please note NOC from the respective department still awaited but we have taken into consideration the April 23, 2018 to be the effective date as informed by you*.” I have also perused the BSE website in this regard. On perusal of the same, I note that BSE, vide its Notice no. 2018420-5 dated April 20, 2018, had informed all the trading members regarding approval of amalgamation of PSEL with Noticee. I note that although Noticee has claimed that the value of “G” was negative on September 25, 2018, October 01, 2018, October 08, 2018, October 29, 2018 and February 07, 2019 due to some technical issue, Noticee has not provided any documentary evidence to justify its contention. Therefore, I am not inclined to accept the said contention of Noticee.

20. In view of the foregoing, I find that on 5 days, the funds of credit balance clients were utilized for settlement obligations of debit balance clients and/or for its own purposes.

21. W.r.t. allegation regarding positive value of "I", Noticee in its reply has contended that if the revised value of "G" is considered, the value of "I" is positive on 8 days out of almost 20 months of Inspection Period which is just 0.01% of the inspection period and miniscule in nature. Noticee has further contended that as a corrective measure they had stopped proprietary trading in financial year 2018-19 and hence there is no probability of "I" being positive in future. In this regard, I note that Noticee has accepted the infractions in this regard, albeit stating it to be miniscule in volume. In view of the same, I find that credit balance clients' funds has been utilized towards proprietary settlement obligations.

22. W.r.t. allegation regarding the value of "J" found positive in 2 days out of 134 days sample days, from the material available on record, I note that Noticee had taken the same plea while submitting the reply to findings of inspection. However, the rationale and revised calculation provided by Noticee has not been taken into account while finalizing the charges against Noticee. I also note that SEBI has not provided any reasons for not accepting the aforesaid contention raised by Noticee in its post inspection analysis. In the face of such ambiguity in calculation of collateral figures, I am unable to proceed further in this regard.

23. In view of the foregoing, I find that the allegation that Noticee has violated Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular stands established.

B. <u>Monthly / Quarterly Settlement of Funds and Securities</u>

<u>Allegation in the SCN</u>

1. During the course of inspection, verification of running account settlement of active and inactive clients were carried out on sample basis. Accordingly, top 100 clients having credit balance at the end of each quarter during the inspection period were

selected as sample. Further, during the course of inspection, retention statement issued to the clients and funds ledgers were examined for the sample of top 100 clients, for each of the six quarters. It was observed that out of 538 samples of quarterly settlement based on Funds & Securities, in 175 instances, gap between two settlement dates is more than 90 days. The details of the same is given as Annexure 4. In view of the same it is alleged that Noticee has violated the SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with Clause 8.1.1 of Annexure to Enhanced Supervision Circular

Reply of Noticee:

Letter dated December 27, 2021

2. *In this regard, it is hereby submitted that we have automated the system of settling client funds and securities as per SEBI circular dated December 03, 2009 and other relevant circulars and hence do not have manual intervention for the same. The said system is being implemented to ensure that alleged lapses, if any do not recur. We humbly submit that we have around 17,700 active client and their accounts were settled as per the provision of law. Even on comparison of the alleged instances of lapses i.e. 175 with the total active clients as on date, the alleged violation days to 0.9% of the total clients*

3. *From the instances specified in running account, we hereby submit that we had settled the funds and securities of all clients with the eligible retention of funds and securities on trade obligation of clients. During the inspection period, there was a merger of PSE Securities Ltd. with Pune e stock due to which there was merger of clients' data of PSE Securities with Pune e Stock. (as refer earlier annexure) PSE Securities were having 11123 clients at the time of merger. Due to merger of data, there were certain back office issues in generating reports. The said issues got resolved once come in our notice. Due to technical issues in certain instances settled in more than 90 days. However, there are multiple settlements happened at system end and it did not come to our notice about such retention. Subsequent to resolve this issue, we had done settlement on timely basis and no instances of not settling running accounts were observed by Exchanges. Further, we had not received any single complaint for non – settlement of funds and securities through Exchanges. The Exchange status report as attached **Annexure 7**.*

4. *Hence, it is humbly submitted that no adverse inference be drawn against us in this regard.*

<u>Email dated May 04, 2022</u>

5. *We have automated the system of settling client funds and securities as per SEBI circular dated December 03, 2009 and extant rules/regulations. The said system is implemented to ensure that alleged lapses, if any do not recur.*

6. *PESB has almost 17,700 clients and accounts are settled as per the extant law. Impugned instances are only 0.9% of total clients.*

7. *Also, due to merger of PSEB and PSE Securities Ltd. (having 11123 clients) there were certain reconciliation issues (in the software).*

<u>Observations/Findings</u>

8. I note that Noticee in its reply has accepted the aforesaid allegation levelled against it. Noticee in its reply has submitted that they have around 17,700 active clients and their accounts were settled as per the provisions of law. Noticee has further contended that the instances brought out is 0.9% of the total clients. In its reply, Noticee has stated that during the inspection period there was merger of PSE Securities Ltd. (PSEL) with Pune E Stock Broking Private Limited i.e. Noticee, due to which 11,125 clients of PSEL merged with Noticee and also due to merger there were certain back office issues and technical issues in generating reports. Noticee has accepted that due to technical issues, in certain instances the accounts were settled after more than 90 days. As noted in the earlier part of the order, PSEL was merged with Noticee w.e.f. April 23, 2018. I note that on account of merger, there could have a possibility that the accounts which were transferred from PSEL to Noticee, could not be settled for within stipulated time period. However, on perusal of Annexure 4 of SCN, I note that SEBI has found instances of delay in settling the accounts during the year 2019, i.e., much after the aforesaid merger. Therefore, I am not inclined to accept the said contention of Noticee.

9. In view of the foregoing, I find that there has been a delay in settling the clients' accounts by Noticee. Therefore, I find that allegation levelled against Noticee that it has violated SEBI Circular dated December 03, 2009 read with Clause 8.1.1 of Annexure to Enhanced Supervision Circular stands established.

C. Client Funding

Allegation in the SCN

1. During the course of inspection, scrutiny of client ledgers for top 50 clients, who had highest delayed payment charges levied by Noticee, were verified to ascertain whether any exposures were provided to clients without recovering the original debit amount within T+2+5 days. It was observed that out of 50 sample clients, Noticee had funded 34 clients beyond T+2+5 days during the inspection period. The total amount funded was Rs.33,15,30,650/- and the amount ranged from Rs. 2.24 lakhs to Rs. 3.97 crores. The details of the same is given as **Annexure-5**. In view of the same it is alleged that Noticee has violated the Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Reply of Noticee

Letter dated December 27, 2021

2. *With respect to the allegations regarding further exposure, we submit that the methodology adopted i.e. (i) "Ledger ...." and(ii) "top debit client under risk enhanced data submitted by the us to the Exchange" for identifying instances of grant of further exposure as stated in the above para is misconceived. The "ledger balance" and "exposure" are two different things. The instances recorded in Annexure 5 of SCNs are identified based on ledger balance of the client and the same is based on presumption that, wherever there is debit bill posted, it is on account of further exposure granted to the client.*

3. *We hereby submit that, a large part of transactions by such clients are in equity segment. The value of collateral of the client with us must also be considered before arriving at the conclusion of grant of further exposure. The contract note or the trade should have been looked into before arriving at a conclusion of "further exposure" and merely on the basis of ledger statement, such view of violation of clause 2.6 of 2016 Circular ought not to have taken.*

4. *In this regard, without taking into consideration the contract note, the data contained in Annexure - 5 to the SCN does not lead to establish the violation of clause 2.6 of*

2016 circular. The violation of further exposure after T+2+5 can be said to have taken place after comparing the contract note value and the value of collateral, if the contract value exceeds the collateral.

5. *It has also categorically clarified that, in case of client account being in debit balance beyond T+2+5 days, further exposure allowed based on availability of free and unencumbered collateral of the client with the Pune e Stock. We hereby submit that, in respect of instance trade dates, sufficient collateral were deposited by the clients in excess of the dues owed by the client in the form of eligible securities were available with the Pune e Stock . There was no violation of the impugned SEBI circular as alleged.*

6. *In summaries, we submit that as against approximately 17,700 active clients, the instances of grant of further exposure identified are only 34 clients i.e. 0.19%, which are minuscule in nature. The same deserves exoneration on account of settled law. As per above alleged instance, all clients are low risk categorized client as per our PMLA and Risk based supervision policy. Further, all these clients having high net-worth clients. Hence, no risk involved for this instance and thereby, it was deemed to be fully secured as such.*

Email dated May 04, 2022

7. *Large part of transactions is the equity segment. The inspecting team has not considered the value of collateral with us. The inspecting team has come at an erroneous finding since they only reviewed the 'ledger' had the contract note or trade been reviewed by the inspecting team, it would have been clear that there is no violation.*

Observations/Findings

8. W.r.t. aforesaid allegation, Noticee, in its reply, has admitted that they had granted further exposures to some debit balance clients beyond T+2+5. However, Noticee has contended that they were having sufficient collateral deposited by the clients in excess of the dues owed by the clients in the form of eligible securities. Noticee in its reply has further contended that instances recorded in the SCN are based on the presumption that wherever there is a debit bill posted, it is on account of further exposure granted to the client. Noticee has also contended that contract note or the trade should have been considered before arriving at a conclusion of further

exposure and merely on the basis of ledger statement, does not lead to establish the violation of Clause 2.6 of Annexure to Enhanced Supervision Circular. In this regard, I note that as per Clause 2.6 of Annexure to Enhanced Supervision Circular as well as Clause 2(d) of SEBI circular CIR / HO/ MIRSD/ MIRSD2/ CIR/P/2017/64 dated June 22, 2017, Stock Brokers are not allowed to give further exposure to their clients, if debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in. As the client had a debit balance, Noticee should have ensured the debit balance was first cleared before giving the client further exposure. However, the Noticee failed to do so and the same has been accepted by Noticee also. In view of the same, I find that Noticee had granted further exposures to clients beyond the stipulated time period. Therefore, I find that allegation levelled against Noticee that it has violated the provisions of Clause 2.6 of Annexure Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/64 dated June 22, 2017, stands established.

D. <u>Net worth Verification</u>

<u>Allegation in the SCN</u>

1. *During the course of inspection, the Net worth certificate submitted by Noticee as on March 31, 2019 was verified to ascertain whether the Net worth certificate submitted by Noticee was calculated as per L.C. Gupta Committee Method. It was observed that Noticee has not considered "Non Allowable Assets" i.e. the Non-allowable securities(unlisted securities) of Rs. 5,06,000/-. If the "Non allowable securities" were not considered the networth of Noticee comes out to be Rs. 28.79 crores. The calculation of the networth is given as* ***Annexure- 6****. Therefore, it is alleged that Noticee has violated Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001*.

<u>Reply of Noticee</u>:

<u>Letter dated December 27, 2021</u>

2. *It is alleged that at the time of providing the Net Worth Certificate we had not considered Non – Allowable assets worth Rs 5,06,000/-. (Ref. Para 12, Page No. 4 and 5 of SCN).*

3. *In this regard, it is hereby to submit that there was an error from our staff member while computation of Net worth as on 31.03.2019. However, even though after considering the Non – Allowable assets worth Rs. 5,06,000/- the net worth of our company having of Rs.28.79 crore i.e. above the limits as per LC Gupta method. The same has been confirmed in your SCN. Hence, the allegation is baseless and out of context. Therefore, we request you to kindly drop the said observation. Further, we have ensured that such instances of errors would not occur in future.*

Email dated May 04, 2021

4. *Even though after considering the Non – Allowable assets worth Rs. 5,06,000/-, the net worth of our company is Rs.28.79 crore i.e. above the limits as per LC Gupta method. The same has been confirmed in SEBI's SCN.*

Observations/Findings

5. W.r.t. the aforesaid allegation, Noticee, in its reply, has submitted that there was an error in calculating the networth as on March 31, 2019 , as Non-Allowable Assets, i.e., "Unlisted Securities" amounting to Rs. 5,06,000/- was considered by them while computing networth. Noticee in its reply has contended that even after considering the "Non Allowable" assets amounting to Rs. 5,06,000/-, the net worth of company is Rs.28.79 crore, i.e., above the threshold limit specified by L.C. Gupta Committee method and the same has been confirmed by SCN itself. In this regard, I note that Noticee has admitted that there was an error in calculating the networth as on March 31, 2019 at their end. From the material available on record, I note that SEBI has also acknowledged in its Inspection Report that even after considering the "Non-Allowable Asset" of Rs. 5,06,000/-, the networth of Noticee as on March 31, 2019, is above the minimum requirements as specified as per Exchange Norms. Therefore, on the basis of records and evidence, I find that Noticee has maintained its networth above the requisite threshold limit even though this networth calculation was not as per L.C. Gupta Committee Method. In this regard, I place reliance of Adjudication Order in respect of CD Integrated Services Ltd. (Adjudication Order no. ORDER/KS/VC/2020-21/8672) dated August 14, 2020, wherein Adjudicating Officer has noted that, *"…….However, in any case, the net worth of the Noticee is well within the requirement of net worth of a stock broker…..*" In view of the same, I am inclined to take a lenient view in respect of this allegation.

E. <u>Incorrect Reporting of data towards the weekly monitoring of client funds.</u>

<u>Allegation in the SCN</u>

1. During the course of inspection, enhanced supervision data submitted by Noticee as on October 25, 2019 was verified. It was observed that Noticee has incorrectly reported the data towards weekly monitoring of client funds for the below mentioned details:-
    a. Total of day end balance in all Client Bank Accounts
    b. Collateral deposited with exchanges in form of Cash and Cash Equivalent
    c. Total Credit balance of all clients
    d. Total debit balance of all clients
    e. Margin utilized for positions of Credit Balance Clients

2. The details of the aforesaid instances is given as **Annexure- 7**. In view of the same, it is alleged that Noticee has violated Clause 3.2 of Annexure to Enhanced Supervision Circular.

<u>Reply of Noticee</u>:

<u>Letter dated December 27, 2021</u>

3. *It is alleged that we have incorrectly disclosed the following data toward weekly monitoring of client funds.*
    a. Total of day end balance in all Client Bank Accounts
    b. Collateral deposited with exchanges in form of Cash and Cash Equivalents
    c. Total Credit Balance of all clients
    d. Total debit balance of all clients
    e. Margin utilized for positions of Credit Balance Clients

4. *With.respect.to allegation regarding total day of end balance we would like to submit that, we have reported Rs. 4,71,45,180.72 in Enhanced Supervision data. As per Exchange calculation, the amount was Rs. 4,72,84,606.01. Thus, we have underreported the data as compared to actual balance. Due to this balance there is no adverse impact on our solvency. Therefore, there is no determinate loss/gain to investors. In this regard, we would like to submit that the no complaints received from any clients.*

5. *With.respect.to. collateral deposited with exchanges in form of Cash and Cash Equivalents, it is hereby submitted that we were not considering Additional Base Minimum Capital Amount of Rs. 10,00,000/-deposited with BSE. During the course of inspection, inspection team instructed us to include the said amount. Even if we have not consider additional BMC, the same has not affected our solvency. Accordingly, you are requested to drop the said observation.*

6. *With.respect.to. total Credit Balance of all clients, debit balance of all clients, Margin utilized for positions of Credit Balance Clients, we would like to submit that the said error has occurred only on single instance i.e. on October 25, 2019 out of 80 weekly data submitted during the course of inspection. The said error occurred due to software issue, which is technical in nature. For submitting, the said data there is no manual intervention. Considering the amount involved and it is only single instance, you are requested to drop the said allegation.*

Email dated May 04, 2022

7. ***Day end balance:***

   - *We have reported Rs. 4,71,45,180.72 in Enhanced Supervision data. As per Exchange calculation, the amount was Rs. 47,284,606.01. Thus, we have underreported the data as compared to actual balance. Due to this balance there is no adverse impact on our solvency*.

8. ***Collateral with exchange***:

   - *We were not considering Additional Base Minimum Capital Amount of Rs. 10,00,000/-deposited with BSE. During the course of inspection, inspection team instructed us to include the said amount. Even if we have not consider additional BMC, the same has not affected our solvency*.

9. ***All other heads:***

   - *The said error has occurred only on single instance i.e. on October 25, 2019 out of 80 weekly data submitted during the course of inspection. The said error occurred due to software issue, which is technical in nature. For submitting, the said data there is no manual intervention.*

Observations/Findings

10. W.r.t. aforesaid allegations, the submission made by Noticee under Enhanced Supervision data and amount observed during the course of inspection, are given below:

Particulars	Amount Submitted towards Enhanced Supervision as on 25.10.19	Amount Observed during inspection	Difference
Total of day end balance in all Client Bank Accounts (In Rs.)	4,71,45,180.72	4,72,84,606.01	-1,39,425.29
Collateral deposited with exchanges in form of Cash and Cash Equivalents (In Rs.)	8,53,36,795.00	8,63,36,795.08	-10,00,000.08
Total Credit Balance of all clients (In Rs.)	30,66,42,398.28	30,78,84,291.34	-12,41,893.06
Total debit balance of all clients (In Rs.)	45,24,17,047.10	45,25,18,479.53	-1,01,432.43

11. Noticee, in its reply, has contended that they had reported the end of bank balance as Rs. 4,71,45,180.73 instead of Rs. 4,72,84,606.01 as observed during the course of inspection. Noticee has further stated that due to such incorrect reporting, there has been no adverse impact on their solvency and there was no determinate loss/gain to investors. In this regard, I note that Noticee in its replies has accepted the allegation levelled against it. Even if I were to accept that there has been no adverse impact on solvency, the admitted facts is that Noticee has wrongly reported the total day end balance in client bank accounts. Therefore, I am not inclined to accept the said contention of Noticee.

12. W.r.t. allegation regarding wrong reporting of collateral as on October 31, 2019, I note that Noticee in its reply has admitted that they had not considered Additional Base Minimum Capital ("**Additional BMC**") of Rs. 10,00,000/- deposited by them with BSE while submitting the data. Noticee has further contended that there has been no impact on solvency of the company, even if they had not considered Additional BMC. In this regard, I note that Noticee in its replies has accepted the allegation levelled against it. Even if I were to accept that there has been no adverse impact on solvency, the admitted facts is that Noticee has wrongly reported collateral deposited with the exchange in the form of Cash and Cash Equivalents. Therefore, I am not inclined to accept the said contention of Noticee.

13. W.r.t. allegation regarding wrong reporting of credit balance clients and debit balance clients, I note that Noticee in its reply has admitted that they had reported the credit balance clients and debit balance clients. Noticee in its reply has contended that the said error had occurred only on single instance i.e. on October 25, 2019 out of 80 weekly data submitted during the course of inspection. Noticee has further contended that the said error occurred due to software issue, which was technical in nature. Noticee has also stated that it was a single instance and the amount involved to drop the said observation. In this regard, I note that Noticee has admitted to the default. I note that even if it was a single instance, the fact remains that Noticee has wrongly reported the figures of credit balance clients and debit balance clients to the Exchanges. Therefore, I am not inclined to accept the said contention of Noticee.

14. In view of the foregoing, I find that Noticee has incorrectly reported the weekly data under Enhanced Supervision data. Therefore, I find that allegation levelled against Noticee that it has violated Clause 3.2 of Annexure to Enhanced Supervision Circular stands established for the wrong reporting of creditors amount.

F. <u>Incorrect reporting of data towards the Monthly monitoring of client funds</u>

<u>Allegation in the SCN</u>

1. During the course of inspection, verification of monthly upload of clients' funds and securities submitted to Exchange was verified for the sample date October 31, 2019. During the course of inspection, it was observed that:-

   a. In case of 154 scrips, there were discrepancies in the clients' securities balances as reported to the Exchange and the Depository Participant Holdings' statements. The details of the same is given as **Annexure- 8.**

   b. In 9 instances, there were discrepancies in the client ledger (funds) balances uploaded. The details of the same is given as **Annexure- 9**.

2. In view of the same, it is alleged that Noticee has violated Clause 7 of Annexure to Enhanced Supervision Circular.

<u>Reply of Noticee</u>:

<u>Letter dated December 27, 2021</u>

3. *It is alleged that on verification of monthly upload of client funds and securities as submitted to the exchange, in case of 154 scrips there were discrepancies in the client's securities balances as reported to the Exchange and DP Holding Statement. Further, in case of 9 instances there were discrepancies in the client's ledger (funds) Balances uploaded. (Ref. Para 15, Page No. 5 of the SCN),*

4. *In the above 9 instances for client ledger (funds) balance out of 14,809 instances uploaded on October 31, 2019, it is submitted that this was the single date where discrepancies has been observed by Inspection team. On comparing the data as submitted in Enhanced Supervision data and as per trail balance, there is a difference of Rs. 2,07,838.15/-, that is very miniscule in nature as compared to our cliental business with turnover of <u>Rs.51,553.47 (in crores)</u> during inspection period. The said error occurred due to cheque deposited by the clients in our bank account without intimating to us. Till the time, we came to know about actual beneficiary clients, we have kept the said amount in suspense account. Accordingly, you are requested to drop the said observation.*

5. *With respect to mismatch in 154 scrips of securities balances out of 1,507 instances reported to Exchange for 31.10.2019. Further, we state that only one date i.e. 31.10.2019 where there was discrepancies observed by inspection team. The said discrepancies occurred due to software related issue. The same issue has been rectified. Further, we state that for the said 154 scrip, we have reported less quantity as compared to holding DP quantity. The actual quantity as per back office software was <u>17,99,656</u> and as per holding DP quantity was <u>19,62,891</u> Therefore, there is no determinate loss/gain to any investors. In this regard, we hereby submit that the no complaints received from any clients. Accordingly, you are requested to drop the said observation.*

<u>Email dated May 04, 2022</u>

6. *Only on one day i.e. October 31, 2019 there was discrepancies observed by inspection team. The said discrepancies occurred due to software related issue. The same issue has been rectified. In-fact, we have reported less quantity as*

compared to holding DP quantity. The actual quantity as per back office software was 17,99,656 and as per holding DP quantity was 19,62,891.

7. *On comparing the data as submitted in Enhanced Supervision data and as per trail balance, there is a difference of Rs. 2,07,838.15/-, that is very miniscule in nature as compared to our cliental business with turnover of Rs.51,553.47 (in crores) during inspection period. The said error occurred due to cheque deposited by the clients in our bank account without intimating to us. Till the time, we came to know about actual beneficiary clients, we have kept the said amount in suspense account.*

Observations/Findings

8. W.r.t. allegation regarding discrepancies observed in the uploading of client ledger balance, I note that Noticee has wrongly uploaded details of following clients:-

Client Code	As per Monthly Enhanced	As per TB	Difference
40200014	7,22,306.58	-7,18,008.37	4,298.21
530010021	75,828.49	-40,743.13	35,085.36
890015759	-785.90	238.95	-546.95
1020016554	13,189.72	-13,000.00	189.72
1020018013	1,47,407.00	-1,47,006.00	401.00
1530014591	10,52,59,094.80	-10,51,89,700.81	69,393.99
3090002713	-3,486.50	1,726.50	-1,760.00
5120100073	5,53,428.73	-5,52,651.91	776.82
05200DD	-7,09,983.16	8,09,983.16	1,00,000.00

9. Noticee in its reply has admitted the allegation levelled against it. Noticee has further contended that out of 14,809 clients, there were only 9 instances where discrepancies was observed by SEBI and this was the only single date where such type of discrepancies has been observed. Noticee has further stated that the total difference as per data submitted under Enhanced Supervision Data and as per Trail balance is of Rs. 2,07,838/- which is miniscule in nature as compared to their total cliental business with turnover of Rs.51,553.47 crores during the inspection period. In this regard, I note that Noticee has admitted to the allegation leveled against it. Therefore, I am not inclined to give benefit of doubt to Noticee in this regard on account of only 9 instances which have been brought out.

10. W.r.t. allegation regarding mismatch in 154 scrips of securities balance out of 1507 instances, Noticee in its reply has accepted the allegation levelled against it.

Noticee in its reply has however contended that it was the single day where there was discrepancies observed by SEBI and the said discrepancies occurred due to software issue and the same was rectified. Noticee has further contended that for the said 154 scrips, they had reported less quantity, i.e., 17,99,656 as compared to DP quantity which was 19,62,891. In this regard, I note that Noticee has accepted the allegation levelled against it. Further, though Noticee has contended that it was a single instance, I note that they had reported less quantity as compared to actual DP quantity and the fact remains that it has disclosed incorrect figure of DP quantity. Therefore, I am not inclined to accept the said contention of Noticee.

11. In view of the above, I find that Noticee has reported incorrect data towards monthly monitoring of clients fund and securities as on October 31, 2019. Therefore, I find that allegation levelled against Noticee that it has violated Clause 7 of Annexure to Enhanced Supervision Circular stands established.

Issue No. II: Do the violations, if any, attract monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act

13. It has been established in the foregoing paragraphs that Noticee has violated the following provisions: -
    a. Section 23D of SCRA read with Clause 1 of Annexure to Transaction Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular;
    b. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 (herein after referred to as "**SEBI Circular dated December 03, 2009"**) read with Clause 8.1.1. of Annexure to Enhanced Supervision Circular;
    c. Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017;
    d. Clause 3.2. of Annexure to Enhanced Supervision Circular; and
    e. Clause 7 of Annexure to Enhanced Supervision Circular

14. Noticee, in its submissions has submitted that every little deficiency or technical violation noticed during the course of the inspection is not culpable and does not call for penalty. To support its contention, Noticee has quoted the judgment of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matters of UPSE Securities Ltd. v/s SEBI (Appeal No. 109 of 2011), DSE Financial Services Ltd. v/s SEBI (Appeal No.153 of 2012). However,

I note that the facts of the above cases are different from the facts of the present proceedings and therefore, not relevant.

15. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"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……… .".*

16. Therefore, in view of the violations as established and placing reliance on the aforesaid judgment, I find that :

    a. Monetary penalty would be attracted under Section 23D of SCRA for the violations of Section 23D of SCRA read with Clause 1 of Annexure to Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular

    b. Monetary penalty would be attracted under Section 15HB of SEBI Act for the violations of Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI Circular ref. no. CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/64 dated June 22, 2017, SEBI Circular dated December 03, 2009 read with Clause 8.1.1 of Annexure to Enhanced Supervision Circular, Clauses 3.2 and 7 of Annexure to Enhanced Supervision Circular

17. The texts of Section 23D of SCRA and Section 15HB of SEBI Act are reproduced as under:

    Section 23 D of SCRA- *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.*

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

<u>Issue No. III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty</u>?

18. While determining the quantum of penalty under Section 23D of SCRA and Section 15HB of SEBI Act factors stipulated in Section 23J of SCRA and Section 15J of the SEBI Act have to be given due regard:

Factors to be taken into account by adjudicating officer under SCRA

23J. *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

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.

Factors to be taken into account by the adjudicating officer under SEBI Act

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

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

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

(c) the repetitive nature of the default

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer *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.*

19. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it is not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. As regards the repetitive nature of the default, I do not find the Inspection having brought on record any regulatory action taken by SEBI in past against Noticee for same violations as those observed in the instant inspection. I also observe that there are no investor complaints on record, arising out of failure on the part of Noticee. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent.

20. Noticee has stated that NSE vide its invoice for the month of December 2019, levied a penalty of Rs.1,47,100/- for the violation of mis-utilization of clients' funds & securities , clients' funding and running account settlement etc. for the inspection period. On perusal of the submission by Noticee, I note that NSE had carried out the inspection of Noticee for the Financial Year 2018-19 and had imposed a penalty of Rs. 75,000/- for non-settlement of running account and Rs. 50,000/- for client funding and Rs. 22,100/- for pledging of client securities. I note that in the present matter, inspection period was from April 01, 2018 to November 30, 2019. Thus, inspection period of SEBI is overlapping the inspection period of NSE and there is also overlap in the nature of violations in the two proceedings. Therefore, penalty imposed on Noticee by NSE may be considered as a mitigating factor. I note that in the case of Maanibhadra Commodities, the learned Adjudicating Officer in Adjudication Order no. MC/VS/2019-20/4180 dated August 29, 2019 has considered the penalty imposed by MCX as one of the mitigating factor. The relevant extract of the same is given below:-

"I also take note of the fact that the Noticee has been penalized by MCX for similar defaults, and there is some overlap in the defaults penalized by MCX and in the instant proceedings"

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15J of SEBI

Act, as enumerated above I, in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on Noticee, viz. M/s. Pune E Stock Broking Private Limited -

Sr. No.	Penalty	Under the provisions of
1	3,00,000/- (Rupees Three Lakh only)	Section 23D of SCRA
2	1,50,000/-(Rupees One Lakh Fifty Thousand only)	Section 15HB of SEBI Act
Total	**Rs. 4,50,000/-(** Rupees Four Lakh Fifty Thousand only)	

I am of the view that the said penalty is commensurate with the violations committed by Noticee.

22. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

23. Noticee shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below which should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051” and also to e-mail id:-tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

24. 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 against Noticee 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 of Noticee.

25. In terms of the provisions of Rule 6 of Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Pune E Stock Broking Private Limited and also to SEBI.

Date: June 30, 2022	**SOMA MAJUMDER**
Place: Mumbai	**Adjudicating Officer**