BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/BRK/JS/2022-23/17631)

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

In respect of:

Vijeta Broking India Private Limited

1c 2nd floor Jijubhoy Industrial Estate,

Ram Mandir Road, Goregaon West,

Maharashtra 400104

In the matter of

Vijeta Broking India Private Limited

1. BACKGROUND

1.1 A comprehensive joint inspection was conducted by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") along with the National Stock Exchange (hereinafter, referred to as "**NSE**") and the Bombay Stock Exchange (hereinafter, referred to as "**NSE**") into the business of Vijeta Broking India Private Limited (hereinafter referred to as "**Noticee**"), SEBI Registration No. INZ000254833 and PAN AACCV6700F. Inspection for the period of April 01, 2020 to September 18, 2020 (hereinafter, referred to as "**inspection period**") was conducted between September 21, 2020 and October 19, 2020. The inspection had brought out certain irregularities committed by Noticee and the findings of inspection were communicated to the Noticee vide letter dated December 11, 2020 and comments were sought. The Noticee vide letter dated January 06, 2021 responded to the findings of inspection.

2. APPOINTMENT OF ADJUDICATING OFFICER

2.1 Upon submission of Inspection report and proposed actions thereto, the competent authority has agreed with the actions recommended and approved the initiation of Adjudication Proceedings under Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**''). Thereafter, on July 30, 2021, the undersigned was appointed as Adjudicating Officer under Section 19 read with Section 15-I of SEBI Act and Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Rules**") to conduct Adjudication Proceedings under Section 15I of SEBI Act in respect of the Noticee for alleged violations of Section 23D and section 23 H of Securities Contracts (Regulation) Act, 1956 [hereinafter referred to as "**SC(R)A**"], Section 15 HB of the SEBI Act.

3. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3.1 Pursuant to the above mentioned appointment, as required under Rule 4 (1) of SEBI Rules, a Show Cause Notice dated March 04, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee informing that during the inspection conducted by SEBI, following alleged violations committed by the Noticee were reported

Section 23D of SC(R)A read with

i) Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

ii) Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016; (hereinafter referred to as "**Enhanced Supervision Circular**")

iii) Rule 8(1)(f) and Rule 8(3)(f) of Securities Contract (Regulation) Rules, 1957;

iv) Clause 3.2 of Annexure to Enhanced Supervision Circular;

v) Clause 7 of Annexure to Enhanced Supervision Circular;

vi) Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/ 2017/108 dated September 26, 2017.

Further, the Noticee was also informed that aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 23D and Section 23H of SC(R)A, Section 15HB of the SEBI Act.

3.2 In view of the above alleged violations, the Noticee was called upon to show cause in 21 days from the date of receipt of the SCN as to why an inquiry should not be held against the Noticee in terms of Rule 4 of the SEBI Rules read with 15 I of the SEBI Act, and why penalty should not be imposed under Section 23D and 23H of the SC(R)A and Section 15HB of the SEBI Act, for the alleged violations.

The SCN issued to the Registered office of the Noticee returned undelivered hence, on May 10, 2022 the SCN was forwarded to different address which got delivered as acknowledged by the Noticee vide letter dated May 31, 2022.

3.3 Thereafter, vide Personal Hearing Notice dated June 02, 2022, the Noticee was provided with an opportunity of personal hearing on June 16, 2022. However, the Noticee vide email and letter dated June 16, 2022, requested for the hearing to be re-scheduled between June 27, 2022 and July 01, 2022. As requested by the Noticee, personal hearing was re-scheduled to June 27, 2022.

3.4 Personal hearing was conducted on June 27, 2022 and the Noticee was represented by Mr. Yatin Shah, Director of the Noticee and Mr. Ravi Ramaiya, Authorised Representative who made submissions and sought 1day time to submit reply to SCN. The Noticee vide letter dated June 29, 2022 filed reply to the SCN wherein the submissions made during the personal hearing were reiterated.

3.5 In addition to responding to the allegations made in the SCN, the Noticee submitted as under

(a) *It is submitted that the lapses pointed out in the Inspection Report are merely technical, venial and procedural in nature. As a result of the alleged violations, we have not made any gains or derived any unfair advantage. We are committed to complying with the law and request that the procedural lapses be seen in the context of our overall scale of operations handled and the various compliance measures adopted by us. Further, on becoming aware of the stray instances pointed out during the course of inspection, we have immediately taken steps to rectify the same and avoid their recurrence in future.*

(b) *It is submitted that, in the past more grievous or similar procedural/technical violations, regulators and exchanges had merely issued warning to the brokers. In this context we invite your attention to the following Orders passed by SEBI, wherein similar procedural/ technical violations were condoned by SEBI and it had issued simple warning to the brokers, as stated in Order passed by Hon'ble Securities Appellate Tribunal in the matter of Chona Financial Services Pvt Ltd vs. SEBI (Appeal No 95 of 2003).*

(i) M/s. Bakliwala Investment
(ii) M/s. J.M. Morgan Stanley Retail Services Pvt. Ltd.
(iii) M/s. Bama Securities
(iv) M/s. Ratanbali Capital Markets Ltd.
(v) M/s. Twenty First Century Shares & Securities Ltd.
(vi) M/s. Sanjay C. Bakshi
(vii) M/s. Mahesh Kothari Share & Stock Brokers Pvt. Ltd.
(viii) M/s. MukeshSawhany

(ix) *Securities Appellate Tribunal in its Order dated 16.6.2011 in the matter of Religare Securities Ltd vs. SEBI*

(x) *UPSE Securities Ltd. v/s SEBI*

(xi) *SEBI Order dated 16.06.2017 in the matter of Inspection of Indiabulls Mutual Fund*

(c) *We may also point out that any action for the alleged violations would result in enormous misery not only to us but also to all our clients who are availing our services. We owe a duty to our clients and we say that we have acted as honest stock broker in the ordinary course of our dealings with all our clients. We have been being paying enormous government charges like STT and other charges which has helped in Nation building. We repeat and reiterate that the alleged lapses observed, in the Inspection Report, are at most isolated instances of human error and not forming any pattern which leads to doubt/suspicion or for personal benefit or with the intent to defraud the clients. Further on becoming aware of the stray lapses as pointed out in the Inspection Report, we have immediately taken steps to rectify the same and to avoid their recurrence in future. We reiterate that as a responsible and compliance conscious registered market intermediary, it has been our continuous effort to ensure that all the relevant rules, regulations and the guidelines issued by SEBI are properly complied with. We assure you that it will be our persistent endeavour that the stray incidents as stated in the report don't occur in future.*

(d) *Here it may be pertinent to point out that reputation of a person is always a matter of great importance to him. Reputation is not built or acquired in a day but it takes long years and sustained good work, conduct and sound integrity, which builds up the reputation of a person. In the instant case it is submitted that we have been in the business for last 30 years and we have built a very strong reputation and if any action is proposed against us, the same would adversely affect us and would besmirch our reputation.*

(e) *It is further submitted that while considering our submissions, we humbly request you to take into account the following factors:*

(i) *Since incorporation till date there is no client complaint against our company.*

(ii) *Unblemished and impeccable track record.*

(iii) *Neither we nor our clients have ever defaulted in meeting their payment/ delivery obligations.*

(iv) *The alleged discrepancies are at the highest a technical, procedural and venial breach.*

(v) *The alleged technical lapses were not deliberate, malafied or intentional and in contumacious disregard of provisions of law.*

(vi) *We have not indulged in any manipulative, fraudulent or unfair trade practices. Admittedly, there is no finding/observation in the Inspection Report of us indulging in any kind of fraudulent, manipulative or unfair trade practices in the market.*

(vii) *We have not made any gains or derived any unfair advantage as a result of alleged technical and minor lapses.*

(viii) *The alleged deficiencies as pointed out in the report have already been cured.*

(ix) *The alleged discrepancies have not caused any loss to any of our clients. Further, it may be noted that there are no client/investor complaints in this regard.*

(x) *That as result of alleged discrepancies, we have not made any gain or gained any unfair advantage. The same has not been even observed in the Report.*

(xi) *It is assured that we will continue to scrupulously abide by the provisions of the SEBI / Exchange Circulars and Regulations.*

(f) *In view of the foregoing submissions, we repeat, reiterate and submit that we have conducted our business and operations bonafide and in compliance with applicable Regulations and Circulars issued by SEBI and have not acted in disregard of statutory compliances. It is respectfully submitted that, we have not committed any violations, warranting initiation of any further proceedings and therefore it is humbly prayed that no action be taken in the matter.*

3.6 For the sake of brevity, the submissions made by the Noticee in response to the SCN are being dealt with in detail while considering the issues in following paragraphs of this order.

4. CONSIDERATION OF ISSUES AND FINDINGS

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

(i) Whether the Noticee has violated the provisions as mentioned at para 3 above?

(ii) **Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 23D and 23H of the SC(R)A and Section 15HB of SEBI Act? If so, what would the monetary penalty be that can be imposed upon the Noticee?**

I now proceed to deal with the issues: -

5. Issue (i): Whether the Noticee has violated the provisions mentioned at paragraph 3 above?

5.1 Mis-Utilisation of Funds and Securities of Clients

5.1.1 It was alleged that the value of "G", which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations as per clause 3 of Enhanced Supervision Circular was negative in 34 out of 50 sample dates as detailed in the SCN which is also reproduced in the table below

Date	Total fund balance available in all client bank accounts including the settlement account maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (ED) Bank guarantee (BG) etc.) across all Stock Exchanges.	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients uncleared cheques deposited by clients and	Total 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	Difference between total available fund & ledger credit balance of clients (G=A+B-C)

		Only funded portion of the BG i. e., the amount deposited by stock broker with the bank to obtain the BG shall be considered	**uncleared cheques issued to clients and the margin obligation)**	**cheques issued to clients and the margin obligations)**	
	A	**B**	**C**	**D**	**G**
16-Apr-19	1,368,472	173,544,245	127,057,655	10,913,491	47,855,061
25-Apr-19	1,719,934	140,544,245	113,926,422	15,361,694	28,337,757
7-May-19	1,457,755	139,594,245	121,772,201	13,563,103	19,279,799
3-Sep-19	1,709,496	118,050,701	125,772,534	7,522,731	**-6,012,337**
4-Sep-19	508,404	118,050,701	119,285,496	10,886,050	**-726,391**
5-Sep-19	960,624	118,050,701	114,485,752	9,540,784	4,525,573
6-Sep-19	6,810,146	117,901,562	122,055,005	9,248,605	2,656,703
9-Sep-19	1,089,946	117,901,563	127,488,868	6,902,227	**-8,497,359**
11-Sep-19	876,665	117,901,563	125,143,153	9,027,780	**-6,364,925**
12-Sep-19	2,010,138	117,901,563	125,143,153	9,027,780	**-5,231,452**
13-Sep-19	31,590,547	117,901,563	134,793,294	7,439,946	14,698,816
16-Sep-19	834,839	117,901,563	137,403,900	6,255,061	**-18,667,498**
17-Sep-19	966,686	117,901,563	123,273,739	7,916,051	**-4,405,490**
18-Sep-19	1,900,207	117,901,563	123,766,154	6,753,021	**-3,964,384**
19-Sep-19	807,168	117,901,563	128,849,535	7,185,395	**-10,140,804**
20-Sep-19	39,210,940	124,401,563	137,803,056	9,046,240	25,809,447
20-Sep-19	39,210,940	124,401,563	137,803,056	9,046,240	25,809,447
23-Sep-19	8,919,387	117,901,563	100,689,656	9,089,362	26,131,295
24-Sep-19	1,005,224	124,401,563	147,703,526	7,467,861	**-22,296,739**
25-Sep-19	1,006,979	124,401,563	129,433,614	8,805,800	**-4,025,072**
26-Sep-19	740,508	125,201,563	123,398,050	8,649,508	2,544,021
27-Sep-19	59,492,457	125,201,563	137,102,231	11,969,363	47,591,789
30-Sep-19	4,104,721	125,201,563	136,274,742	10,551,483	**-6,968,458**
14-Oct-19	1,135,599	116,431,563	128,076,860	6,557,266	**-10,509,698**
15-Oct-19	1,447,173	132,431,562	140,244,443	8,073,165	**-6,365,708**

8-Nov-19	41,738,506	116,431,563	123,010,317	11,751,351	35,159,752
26-Nov-19	1,684,895	116,431,563	126,213,878	19,638,868	**-8,097,419**
2-Mar-20	7,514,845	104,969,063	147,128,077	9,107,926	**-34,644,169**
3-Mar-20	4,027,698	104,969,063	136,927,644	7,435,093	**-27,930,884**
4-Mar-20	1,499,188	104,969,063	138,761,977	7,614,062	**-32,293,726**
5-Mar-20	8,418,375	104,969,063	141,518,690	9,069,088	**-28,131,251**
6-Mar-20	41,725,395	104,969,063	143,945,604	7,959,594	2,748,854
9-Mar-20	1,055,214	104,969,063	134,987,267	9,404,406	**-28,962,990**
11-Mar-20	4,813,588	104,469,063	128,839,482	11,134,991	**-19,556,831**
12-Mar-20	771,548	104,469,063	124,392,124	11,630,731	**-19,151,514**
13-Mar-20	33,184,903	104,969,063	138,104,691	14,096,569	49,275
16-Mar-20	4,967,286	104,469,063	131,004,944	14,548,636	**-21,568,595**
17-Mar-20	3,728,165	104,968,966	122,950,003	8,442,782	**-14,252,872**
18-Mar-20	1,583,121	99,969,063	117,272,905	8,042,596	**-15,720,720**
19-Mar-20	2,877,921	97,469,063	100,541,101	12,530,230	**-194,116**
20-Mar-20	20,374,775	97,469,063	116,922,436	6,421,324	921,402
23-Mar-20	22,744,512	96,479,063	148,672,141	8,679,161	**-29,448,567**
24-Mar-20	24,224,397	97,469,063	150,469,273	7,683,064	**-28,775,813**
25-Mar-20	26,750,166	97,468,966	152,016,174	7,664,951	**-27,797,042**
26-Mar-20	33,588,180	97,469,063	156,566,492	9,239,300	**-25,509,249**
27-Mar-20	56,711,065	97,468,966	153,774,786	9,956,469	405,245
30-Mar-20	42,772,948	72,468,966	156,633,510	9,085,059	**-41,391,596**
31-Mar-20	39,376,366	72,468,966	147,070,922	8,729,752	**-35,225,590**
1-Apr-20	42,612,163	72,468,966	147,448,571	8,735,485	**-32,367,443**
31-Aug-20	47,757,730	244,668,966	299,708,574	6,945,246	**-7,281,878**

As per the Enhanced Supervision Circular, negative “G” value indicates that the funds of credit balance clients were mis-utilized by the Noticee for meeting the settlement obligations of the debit balance clients and/or for its own purposes. The amount of misuse of funds for debit balance clients was observed to range from Rs. 1.94 Lakh to Rs 1.45 Crore.

5.1.2 Further, it was alleged that the value of “I” being positive on 20 out of 34G negative dates and the positive value of “I” ranged from Rs. 2.25 Lakh to Rs. 4.94 Crore indicating that the funds and securities of clients were mis-utilised towards proprietary margin obligations as detailed in the SCN. The value of “J” was also observed to be positive on one sample date (Rs. 7,18,265 on March 27, 2020) thus indicating that clients' funds were misutilized towards margin obligations of debit balance clients and proprietary margin obligations.

5.1.3 The Noticee in response to the communication of findings, in response to the SCN and during the personal hearing stated that the reporting of adequate liquidity is on every Friday and there has never been any instance of negative "G" on any Friday. All the observations pertain to days other than Friday and on such days the balances available with the Noticee in all accounts should be considered. Also the Noticee maintains an overdraft (hereinafter referred to as "**OD**") account no. 317904050000031 where a working capital limit of Rs. Crore is always at the disposal of the Noticee which can be used for making payment to clients. In many other instances there is a credit balance in the said account and after considering the credit balance in the OD account and the drawing power of Rs. 2 crores, the "G" does not remain negative in most instances and "I" does not remain positive in 8 out of 20 instances. After including the drawing power prior to March 2020, "G" negative is only on 5 days which is Rs. 67,32,899 and not on 17 days as alleged in SCN. In case of "I", in the remaining 12 instances, upon including the balance in the OD, the value of "I" positive is substantially reduced. For the period March 2020 onwards, the Noticee submitted that "G" was not negative on 6 days in the turbulent times of March 2020 and April 2020. Further, the value of Negative "G" is substantially low and "I" is substantially reduced after taking into account the amount available in account which could have always been used for repaying the credit balance clients. Above all, there have been no defaults from the clients to us or from our side to the Exchange and Clearing Corporation/ Members and taking into account the extreme volatility during initial days of Covid 19 Pandemic, the Noticee submitted that the observation may be dropped without any adverse inference.

5.1.4 The Noticee further submitted that the months March 2020 and April 2020 experienced extreme volatility and fall in markets due to Covid-19, the index fell sharply resulting in increased volatility which has increased the M2M losses and the margin substantially. Hence, though the clients had not taken any new position, “G” became negative because of M2M losses and increase in margin therefore the observations during March and April 2020 may be ignored.

5.1.5 With regard to the allegation that “J” was positive i.e., Rs. 7,18,265 on one sample date, March 27, 2020, the Noticee submitted that there seem to be some error in considering amount of “Unutilised Collateral lying with Clearing Corporation/ Clearing member” by SEBI. The working of SEBI records the amount is mentioned as Rs. 3,99,88,005/-, whereas the actual amount is Rs. 20,09,88,005/-. The difference in this amount is Rs. -16,02,81,734/- and as a result the observation of “J” being positive to an extent of Rs. 7,18,266/- is incorrect. The fact is that “J” is negative to an extent of Rs. -16,02,81,734/-. The actual amount of “Unutilised Collateral lying with Clearing Corporation/ Clearing member” was Rs. 20,09,88,005/- and the same was available with Exchanges and Clearing Member. The Noticee also provided details of various amounts available with various Exchanges and Clearing Members and requested that the charge be dropped.

5.1.6 In view of the acts mentioned at paragraphs 5.1.1 and 5.1.2, the Noticee is alleged to have violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Enhanced Supervision of Circular. Before proceeding with the consideration of these allegations it is important to see the meaning of the factors “G”, “I” and “J” as per Enhanced Supervision Circular which read as under

‘‘The value of G may indicate 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 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.

The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations"

Further, Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 reads as follows

"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."

5.1.7 From the reply of the Noticee, it is noted that the Noticee admitted to the value of "G" being negative on 17 days. However, the Noticee submitted that it maintains an OD account with Union Bank with a drawing limit of Rs. 2 crores which can be used to make payments to clients. In support of this submission, the Noticee submitted a copy of letter dated June 29, 2021 issued by Union Bank stating that the Noticee is extended OD facility of Rs. 2 crores. The Noticee also submitted that there was no wilful default. The Noticee also pointed out there have not been any investor complaints.

With regard to the value of "I" being positive, the Noticee admitted that after taking into account the OD facility of Rs. 2 crores, in 12 instances the value of "I" was positive which is detailed by the Noticee as under

Date	***Available Drawing Power in OD account***	***Balance in OD Account***	***Net Funds available***	***I(+) as per SEBI***	***Value of "I" upon including balance in SOD Account***
	A	***B***	***C=A+B***	***D***	***E=D-C***
31-Aug-19	*2,00,00,000.00*	*-1,17,07,907.17*	*82,92,092.83*	*3,34,00,253.00*	*2,51,08,160.17*
09-Sep-19	*2,00,00,000.00*	*-1,53,42,038.00*	*46,57,962.00*	*2,90,83,656.00*	*2,44,25,694.00*
11-Sep-19	*2,00,00,000.00*	*-1,26,66,112.00*	*73,33,888.00*	*3,74,71,285.00*	*3,01,37,397.00*
12-Sep-19	*2,00,00,000.00*	*-66,98,647.00*	*1,33,01,353.00*	*2,90,43,173.00*	*1,57,41,820.00*
17-Sep-19	*2,00,00,000.00*	*-1,70,28,869.00*	*29,71,131.00*	*4,43,72,416.00*	*4,14,01,258.00*
18-Sep-19	*2,00,00,000.00*	*-1,83,63,573.00*	*16,36,427.00*	*3,32,45,017.00*	*3,16,08,590.00*
19-Sep-19	*2,00,00,000.00*	*-1,65,92,095.00*	*34,07,905.00*	*4,50,51,519.00*	*4,16,43,614.00*
24-Sep-19	*2,00,00,000.00*	*1,50,83,478.00*	*3,50,83,478.00*	*4,07,30,851.00*	*56,47,373.00*

Date	*Available Drawing Power in OD account*	*Balance in OD Account*	*Net Funds available*	*I(+) as per SEBI*	*Value of "I" upon including balance in SOD Account*
25-Sep-19	*2,00,00,000.00*	*-35,46,305.00*	*1,64,53,695.00*	*4,94,43,205.00*	*3,29,89,510.00*
30-Sep-19	*2,00,00,000.00*	*-62,30,713.00*	*1,37,69,287.00*	*3,65,64,681.00*	*2,27,95,394.00*
14-Oct-19	*2,00,00,000.00*	*-1,51,86,790.73*	*48,13,209.27*	*4,49,74,063.00*	*4,01,60,853.73*
15-Oct-19	*2,00,00,000.00*	*-36,16,152.73*	*1,63,83,847.27*	*1,69,34,538.00*	*5,50,690.73*

The Noticee admitted to the value of "J" being positive. However, the Noticee contended that the actual amount "Unutilised Collateral lying with Clearing Corporation/ Clearing member" is Rs. 20,09,88,005 which is mentioned as Rs. 3,99,88,005 in SEBI records. In support of this submission, the Noticee provided copies of letters issued by NSE, MSEI, EDEL CDS and ILFS reflecting the amounts as mentioned in the table below as provided by the Noticee.

Amount	***Exchange/Clearing Member***
22404840	*NSE*
2200000	*MSEI*
1099903	*EDEL CDS*
173528750	*EDEL FO*
1222767	*ILFS FO*
125000	*ILFS CDS*
106744.87	*ILFS BSE CD*
100000	*ILFS BSE FO*
100000	*ILFS MSEI CDS*
100000	*ILFS MSEI FO*
20,09,88,004.9	*TOTAL*

5.1.8 As per the findings of inspection and as detailed in the SCN, the Noticee is alleged to have mis-utilised funds and securities of clients. In response to the allegations, the Noticee had admitted to the allegation while offering detailed explanations as brought out in preceding paragraphs. However, the Noticee contended that the extent of non-compliance with the Enhanced Supervision Circular. The Noticee downplayed the impact of the non-compliance by relying upon the OD available which would enable the Noticee to make payments should the need arise. While all this sounds convincing, the spirit of Enhanced Supervision Circular is to ensure that such situation does not arise. The language of the said Circular makes it very clear that the value of “G” may indicate 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 value of “I” indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations and the value of “J”, is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. The Noticee also submitted that the reporting of adequate liquidity is on every Friday and there has never been any instance of negative “G” on any Friday. All the observations pertain to days other than Friday and on such days the balances available with the Noticee in all accounts should be considered. This submission of the Noticee is not acceptable as the Noticee has the responsibility to ensure that the value of “G” remains positive. As registered intermediary, the Noticee also has to abide by and fulfil the statutory obligations as laid by the Enhanced Supervision Circular. The Noticee at length pointed out the differences between findings of inspection and the records of the Noticee, no matter to what extent, the fact remains that the Noticee has admitted to non-compliance even if it was not wilful. In view of the same, the allegation that the Noticee had not complied with of Section 23D of SC(R) Act, 1956 read with 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 stands established.

5.2 Non-adherence to the rules of membership

5.2.1 Based on the verification of unaudited financial as on 31st March, 2020, it is alleged that the Noticee has engaged as a principal in a business other than that of securities as detailed in the SCN, which involved personal financial liability and included total loans/guarantee amounting to Rs. 27.69 lacs as on 31st March 2020 as detailed in the SCN. Noticee was found to be extending loans to outside parties and earning interest on the same. As on 31st March 2020, loan amounting to Rs 27.69 lacs was outstanding for Kandela Innovations Private Limited and Noticee had booked interest of Rs. 2, 69,260/-(12% ROI). Noticee had also booked interest amounting to Rs. 35, 62,785 for the loan given to Sheth Construction Company, however there was no outstanding as on 31st March 2020. Apart from this, Noticee had also given loan to other parties during inspection but no interest was booked. This was alleged to be in violation of provisions of Rule 8(1) (f) and Rule 8(3) (f) of Securities Contract (Regulation) Rules, 1957 which reads as follows

"Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(1) No person shall be eligible to be elected as a member if —

....

....

(f) he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business

Provided that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in clauses (a) to (n) of sub-rule (8)

(2) ……

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if —

………

………

(f) *he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—*

(i) *the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,*

(ii) *in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,*

(iii) *nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (n) of sub-rule (8).*

5.2.2 In response to the allegation, the Noticee submitted that it had not given any loan to any parties and that it was permitted to invest surplus funds and the same was invested in the form of Inter Corporate Deposits. It was also pointed out that the interest from Sheth Construction was Rs. 22, 99,511/- and not Rs. 35, 62,785/- as mentioned in the SCN. Furthermore, all Inter Corporate Deposits from all parties have been taken back and as of now there is no outstanding from any party. The Noticee requested that the charge be dropped as the investments were made from its own funds and the Noticee has discontinued such investments after being highlighted during the Inspection.

5.3 Incorrect reporting of weekly enhanced supervision data and Failure to upload clients' fund/securities balance

5.3.1 During the inspection it was observed that there was difference in balance reported margin utilised for positions of credit balance of clients. There was also difference in client stock reported as per holding statement and monthly enhance supervision as detailed in the following table

Table A

Unique Client Code	ISIN	As per Monthly enhance Aug 2020	As per Stock Statement _Aug'2020	Difference	Value	Value (in Rs.)
25556	INE199G01027	500	0	500	39.8	19,900.00
7268	INE018E01016	20	10	10	804	8,040.00
JV001	INE399L01023	1000	0	1000	169.9	1,69,900.00
PS001	INE399L01023	672	691	-19	169.9	3,228.10
RS011	INE528G01035	500	0	500	14.35	7,175.00
7261	INE028A01039	0	1100	-1100	48.85	53,735.00
7261	INE043D01016	0	2050	-2050	27.35	56,067.50
D002	INE399L01023	0	102	-102	169.9	17,329.80
						3,35,375.40

It was further brought out that the Noticee made incorrect reporting of weekly enhanced supervision data and failure to upload clients' fund/ securities balance is follows

Table B

Date	Particulars	As per NSE	As per Member	Difference	%
11-Sep-20	Margin utilized for positions of Credit Balance Clients (In Rs.)	18,30,82,354.87	21,70,88,183.00	3,40,05,828.13	19%

In view of the above, the Noticee is alleged to in violation of Clause 3.2 of Annexure to Enhanced Supervision Circular which reads as under

"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."

5.3.2 In response to the allegation, the Noticee submitted that it had reported the total Margin utilised by client instead of only Credit Balance Client. According to the inspection report, Margin Utilised for positions of Credit Balance Clients was Rs. 18,30,82,354.87 which according to the Noticee was Rs. 21,70,88,183.00, the difference being Rs. 3,40,05,828.13. The Noticee further submitted that there is no material effect which is negative in nature and this is not affecting the calculation of margin utilised for debit balance clients. However, the Noticee submitted that it will ensure to report margin of only credit balance clients.

5.3.3 Further, the Noticee was observed to have not reported/ misreported client funds and securities in monthly submission to stock exchange for the months of August, 2020. In view of the aforesaid facts, Noticee is alleged to have violated provision of Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/ 95 dated September 26, 2016 which reads as follows

"7. Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system

The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member

7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/ from the client across all Exchanges

7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)

7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities

7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month.

7.2. Each Stock Exchange shall in turn forward this information to clients via Email and/ or SMS on the email IDs and mobile numbers uploaded by the stock broker to the Exchange for their clients.

7.3. The above provisions shall be applicable three months from the date of this circular."

5.3.4 With regard to difference in Client Stock reported as per Holding Statement and Monthly Enhance Supervision for the month of August 2020, the Noticee submitted that instances are very minor and technical in nature and not material in effect. The difference was attributed to delay in receiving file from National Securities Depository Limited or processing at Central Depository Services (India) Limited and the qualities of difference was in reconciliation/ process. In support of this submission, the Noticee provided copies of emails with National Securities Depository Limited and reiterated that complete reconciliation of stock is maintained and no adverse inference can be drawn from the instances pointed out during the inspection.

5.3.5 The Noticee did not deny the allegation, however, as mentioned above, the difference in client stock reported as per holding statement and monthly enhance supervision was attributed to the delay in receiving file from National Securities Depository Limited which is acceptable.

With regard to incorrect reporting of weekly enhanced supervision data and failure to upload clients' fund/ securities balance, it is noted that the difference was 19% as shown in the table B above. The Noticee submitted that the same is very minor and technical in nature. Irrespective of the non-compliance being minor or technical, the allegation still stands established.

5.4 Non-maintenance of evidence for client order placement

5.4.1 According to the inspection, it is required that the brokers shall execute trades of clients only after keeping evidence of the client placing such order and wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records. During the Inspection, based on the turnover, voice call records for 22 instances (11 in cash market segment and 11 in equity derivatives segment) were sought from the Noticee. However, call records for only 5 instances were provided, while in 3 instances client confirmation was submitted. As per the Noticee, 10 instances pertain to order placed through DIET (an internet trading facility). It was observed that the records do not capture details like client code, client name, etc. In some instances, the calls were made from numbers different from respective registered numbers. In case of DIET orders, it was observed that the details of orders placed by the client were not available with the Noticee. SCN contained the detailed analysis of these instances. It was alleged that the Noticee has violated provisions of Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 which read as under

"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, it 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 SMS messages,
f. Any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records."

5.4.2 The Noticee in response to the allegation submitted that that DIET is an Internet based Trading facility offered to clients, where the client login into broker's system using his own login credentials, as specified by the said SEBI Circular, in case of internet trading; Log for internet transactions is required to be maintained as evidence of the client placing such order. The Internet logs of these 10 instances are already provided. The Noticee provided details of confirmations received clients accepting the trade. The Noticee added that in all events all the necessary compliance including sending contract notes, SMS, email etc. are complied with and the Exchange also directly sends trade data to the clients on email and through SMS and that there is no dispute in any of the trades hence requested that the observation may be closed without any adverse inference.

5.4.3 Considering that the Noticee had submitted that information required, no adverse remarks can be made.

7. Issue (ii): - Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act? If so, what would the monetary penalty be that can be imposed upon the Noticee?

7.1 In view of the discussion in preceding paragraphs it has been established that the Noticee has violated the provisions as mentioned at paragraph 3 and consequently the Noticee has become liable for imposition of monetary penalty under Section 23D and 23H of SC(R) A and Section 15HB of the SEBI Act which read as follows

Section 23D of SC(R) A

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."

Section 23H of SC(R) A

"Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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."*

Section 15 HB of SEBI Act

"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."

7.2 In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006] 5 SCC 361} – wherein the Hon'ble Supreme Court of India 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…………..*"

8 ORDER

8.1 After taking into consideration the facts and circumstances of the case, the discussion in the preceding paragraphs and the factors mentioned in Section 15 J of SEBI Act, in exercise of the powers conferred upon me under Section 15 I of Securities and Exchange Board of India Act, I hereby impose a consolidated penalty of Rs. 3,00,000/- (Rupees three lakhs only) on Vijeta Broking India Private Limited for the violations of Section 23D of SC(R)A read with

(i) Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

(ii) Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016;

(iii) Rule 8(1)(f) and Rule 8(3)(f) of Securities Contract (Regulation) Rules, 1957;

(iv) Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016;

(v) Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016;

(vi) Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/ 2017/108 dated September 26, 2017.

8.2 I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.

8.3 The Noticee shall remit/ pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action - 3 [EFD1-DRA-3] SEBI Bhavan -II, Plot No. C-7, Block 'G', Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for	

	(penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

8.4 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 Securities and Exchange Board of India Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

8.5 In terms of the provisions of rule 6 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and to the Securities and Exchange Board of India.

BHAVANA RAVIKUMAR

GENERAL MANAGER & ADJUDICATING OFFICER

Place: Mumbai

Date: June 30, 2022