BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/BRK/JS/2022-23/17545

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:

Kaynet Commodities Private Limited
633, Pulachi Wadi, 2nd Floor,
Abhinandan Plaza, Deccan Gymkhana,
Pune, Maharashtra - 411004

In the matter of

Kaynet Commodities Private Limited

1. BACKGROUND

1.1 A comprehensive joint inspection was conducted by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") along with the Multi Commodity Exchange of India Limited (hereinafter, referred to as "**MCX**") into the business of Kaynet Commodities Private Limited (hereinafter referred to as "**Noticee**"), SEBI Registration No. INZ000042538 and PAN ADWPS9388L. Inspection was conducted for the period of April 1, 2018 to June 30, 2019 (hereinafter, referred to as "**inspection period**") whereby the inspection had started on July 08, 2019 and concluded on July 12, 2019. The inspection had brought out certain irregularities committed by Kaynet and recommended initiation of Adjudication Proceedings.

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 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**''). Thereafter, on July 23, 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 of Securities Contracts (Regulation) Act, 1956 [hereinafter referred to as "**SC(R)A**"], Section 15A (b) and Section 15HB of SEBI Act.

3. SHOW CAUSE NOTICE 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 25, 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) Regulation 21(1) of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**");

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

iii) Clause 3 of Annexure of SEBI Circular SEB/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; (hereinafter referred to as

"**Enhanced Supervision of Stock Brokers/ Depository Participants Circular**")

iv) Clause 8.1 of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular;

v) Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009;

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

vii) Clause 6.1.1(a) of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular;

viii) Clause 6.1.1(j) of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular;

ix) Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/ 80 dated September 07, 2016 and Regulation 27(i) and (ii) of Stock Brokers Regulations.

The Noticee was also informed that aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 23D of SC(R)A, Sections 15A (b) and 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 SEBI Rules read with Section 15 I of the SEBI Act, and why penalty should not be imposed under Section 15HB of the SEBI Act for the alleged violations.

On April 11, 2022, the Noticee responded to the SCN through Thodur Law Associates.

3.3. Thereafter, vide Personal Hearing Notice dated May 19, 2022, the Noticee was provided with an opportunity of personal hearing on June 01, 2022 wherein Mr. Sanjay Shah, Director, Kaynet Group appeared on behalf of the Noticee and made submissions. Mr. Shah also sought time till June 15, 2022 to file written submissions. On June 15, 2022, the Noticee submitted written submissions.

4. Replies of the Noticee

4.1 In response to SCN vide letter dated April 11, 2022 and in written submissions dated June 15, 2022 pursuant to personal hearing, the Noticee inter-alia stated this is a case where the dictum “Nemo judex in causa sua” squarely applies, that is to say “no one should be a judge in his/ her own cause”, in as much as the cause of action in the case emanates from the General Manager, SEBI for adjudication by herself, which is contrary to the well accepted pre-requisite to a reliable, trustworthy judicial system. It is therefore just and necessary and in the interest of justice to terminate the proceedings forthwith.

4.2 The Noticee further stated that MCX had already commenced the proceedings against the Noticee by issuing a SCN dated February 26, 2020 which pertain to the same matters in issue raised by SEBI will tantamount to parallel proceedings and lead to multiplicity of proceedings and thus the principles of estoppel would apply and that the doctrine of Double Jeopardy as enshrined in the constitution of India would operate against any provisions of prosecution as against the Noticee.

4.3 The Noticee also submitted that the Noticee had responded to email dated June 23, 2020 issued by SEBI communicating the alleged findings – Inspection of books of accounts of the said Company as Broker MCX seeking the Comments/ explanations on the observations/ findings vide letter Ref. No.123/TLA/2020 dated July 20, 2020 through Advocates, Thodur Law Associates. The Noticee also mentioned that copy of the same is annexed to the reply received on June 15, 2020, however, the copy of letter dated July 20, 2020 was not annexed. The Noticee had submitted copies of

a) List of Employee - Kaynet Group

b) List of Branches - Kaynet Group

c) NSE Arbitration Award

d) NSE Arbitration Award

4.4 The Noticee also submitted that the Noticee in fact suffered a dominos effect pursuant to default by some clients in National Stock Exchange and Bombay Stock Exchange which led to an Arbitration Award against the Associate companies of the said company which had a shareholding pattern identical to the said company which factors will be elucidated in additional reply to be filed by the said company in response to the SCN. Further the sharing of the common Risk Management Information system for the operations in all the three exchanges namely National Stock Exchange and Bombay Stock Exchange and MCX had led to any anomaly which is the root cause of the syndrome as far as the MCX is concerned which will be elucidated in additional reply to be filed by the said company.

4.5 The Noticee also submitted that the order dated July 29, 2021 claimed to have been passed by the Learned Adjudicating Officer in the teeth of the subsistence of the Judgement dated March 23, 2020 in SUO MOTO WRIT PETITION (C) No. 3 of 2020 passed by the Hon'ble Supreme Court (hereinafter referred to as "**SC**") of India, in the light of the then prevalent Covid 19 pandemic is null and void and non-est in the eyes of Law and is rendered Otiose and the SCN is non-est and void non maintainable.

4.6 The Noticee also submitted that pending the reply to the SCN the Noticee was afforded an opportunity of being heard in person by putting the cart before the horse only as mere formality which cannot be said to be in consonance with principles of natural justice.

4.7 In both the replies the Noticee had denied each and every allegation made in the SCN. However, the Notice did not substantiate the denial nor did the Noticee provide any information or documents in support of the denials. The Noticee even denied that SEBI had carried out a comprehensive joint inspection along with MCX for detection mis-uitilisation of clients funds as per Enhanced Supervision of Stock Brokers/ Depository Participants Circular.

5. CONSIDERATION OF ISSUES AND FINDINGS

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

(i) Whether SEBI has jurisdiction to adjudicate the instant proceedings in view of the Noticee's Membership being terminated by MCX?

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

(iii) 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?

I now proceed to deal with the issues: -

6. Issue (i): Whether SEBI has jurisdiction to adjudicate in the instant matter in view of the Noticee's Membership being terminated by MCX?

Before responding to the allegations made in the SCN, the Noticee had contended that SEBI has no jurisdiction in the instant matter which are being addressed prior to addressing the merits of the matter.

6.1 With regard to the issue "Nemo judex in causa sua" raised by the Noticee, attention is drawn to SEBI Rules wherein the procedure for holding inquiry has been detailed. As per Rule 4 of SEBI Rules, it is the duty of the Adjudicating Officer to hold inquiry and pass order as per Rule 5 (1) of SEBI Rules. As such there is no situation of "Nemo judex in causa sua".

6.2 The Noticee had submitted that MCX had already commenced the proceedings against the Noticee by issuing Show Cause Notice dated February 26, 2020 which pertain to the same matters in issue raised by

SEBI wherein SEBI was proposing to go into which had caused to suspend the use of trading in the platform of MCX and thus ipso facto the Noticee ceased to be a participant member of MCX at that point in time and consequently the registration of the said company with SEBI is rendered otiose to that extent and hence the Noticee can be said to be out of the regulatory jurisdiction of SEBI. The proceedings are rendered a nullity as being without jurisdiction.

6.3 In this regard, while being Member of an Exchange is a pre-condition to apply for registration as Stock Broker with SEBI, the fact of being a Member of a Stock exchange does not entail automatic registration with SEBI. It is still mandatory for a Member to follow the procedure as laid down by Stock Broker Regulations to obtain registration with SEBI to operate as Stock Broker. Likewise, termination of Membership by an Exchange does not automatically render the registration granted by SEBI cancelled. In fact, Regulation 27 (i) of Stock Brokers Regulations, makes a stock Broker liable for actions such as suspension or cancellation under Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**"). Regulation 27 of Stock Brokers Regulations reads as follows

> ***"Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008***
>
> *27. A stock Broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as stock Broker if he–*
>
> *(i) ceases to be a member of a stock exchange; or"*

6.4 Further, Chapter V of Intermediaries Regulations lays down the procedure of action in case of Default and Manner of Suspension or Cancellation of Certificate of any person who has been granted a certificate of registration under the Act or Regulations made thereunder. Therefore, it is very clear that unless the registration granted by SEBI is cancelled by SEBI, the Member remains within the regulatory purview of SEBI. Proceedings conducted by exchanges are distinct from the proceedings conducted by SEBI and so are the consequential actions. Cancellation of membership by MCX does not absolve the Noticee from the liability for the acts i.e., commissions or omissions of the Noticee during the membership. Accordingly, the contention of the Noticee that by virtue of MCX terminating its membership, the Noticee is out of regulatory purview of SEBI is not acceptable.

6.5 The Noticee further stated that MCX had already commenced the proceedings against the Noticee by issuing a SCN dated February 26, 2020 which pertain to the same matters in issue raised by SEBI will tantamount to parallel proceedings and lead to multiplicity of proceedings and thus the principles of estoppel would apply and that the doctrine of Double Jeopardy as enshrined in the constitution of India would operate against any provisions of prosecution as against the Noticee.

In this regard, it is important to note that the actions being initiated are required by law hence cannot be said the actions are estopped by doctrine of Double Jeopardy. The issue was discussed in the order dated February 15, 2021 passed by the Hon'ble Securities Appellate Tribunal in the matter of G. V. Films Ltd. Vs. SEBI wherein the Hon'ble Tribunal had held that when the law permits the authorities to impose different penalties and therefore, it is not the case of double jeopardy.

6.6 The order dated March 23, 2020 passed by the Hon'ble Supreme Court relied up by the Noticee has been perused and it is noted that the Hon'ble SC had ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not, shall extended w.e.f. March 15, 2020 till further order/s to be passed the Hon'ble SC in present proceedings. However, the Hon'ble SC vide order dated January 10, 2022, brought the order dated March 23, 2020 to end with an outer limit of February 28, 2022.

In this regard, firstly, the order dated March 23, 2020 passed by the Hon’ble SC is not relevant to the instant proceedings. In any case, the Hon’ble SC had brought the SUO MOTO order dated March 23, 2020 to end vide order dated January 10, 2022. Considering, the SCN in the proceedings was issued on March 25, 2022 is after the order dated January 10, 2022 passed by the Hon’ble SC, the Noticee is not deprived of any benefit, if any at all, that was available to the Noticee by the order dated March 23, 2020 passed by the Hon’ble SC.

6.7 The Noticee was provided time to file reply to SCN and the Noticee had filed a reply dated April 11, 2022 through Thodur Law Associates. The personal hearing was conducted on June 1, 2022 which is after the receipt of reply of the Noticee so principles of natural justice were properly complied with. The Noticee did not only file a reply to SCN but also filed another reply pursuant to personal hearing. It’s a different matter altogether that the 2nd reply was the copy of the 1st reply, the only difference being that the 1st reply was sent through Thodur Law Associates and the 2nd reply was filed by the Noticee itself. Hence, I have no hesitation in asserting that the cart is safely behind the horse as it should be.

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

Having addressed the preliminary issues raised by the Noticee, I move on to consider the allegations on merits

7.1 Non-Segregation of Clients’ Funds

7.1.1 The inspection conducted by SEBI had brought out that the Noticee had failed to segregate clients’ funds. The same was also communicated to the Noticee vide letter dated June 23, 2020. Inspection had brought out that in 40 out of 40 trading days during the period of October 2018 and March 2019, credit clients' the value of “J” value was positive indicating that the funds had been utilized towards margin obligations of debit balance of clients.

As per clause 3 of “Enhanced Supervision of Stock Brokers/ Depository Participants” Circular dated September 26, 2016, the value of “J”, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

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

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

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

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

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

This value of “J” acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

Relevant portion of Clause 3 of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular reads as under

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

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

In this regard, inspection report brought out 40 instances wherein value of "J" was positive. The details of these instances were provided to the Noticee vide the SCN. It is noted that the maximum "J" value was Rs. 7,83,02,247.93 and the minimum "J" value was Rs. 38788450.83. Also, 32 out of 40 instances, "J" value was more than Rs. 7 crores. Further, as per the said Circular, value of "J" acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations. When the value of "J" is positive, the assumption is that the funds of clients' have been mis-used unless, there is proof to the contrary which is absent in this case by virtue of not being provided by the Noticee.

7.1.2 Further, Clause 1 of Annexure of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, "Regulation of transaction between clients and Brokers", makes it obligatory on the Noticee to segregate clients' funds from its own funds. However, from inspection report instances wherein the Noticee transferred funds to its own account and its associate entity were noted details of which were provided to the Noticee vide the SCN. It is observed that on April 02, 2018, Rs. 30,00,000/- (Rupees thirty lakhs only) was transferred from Client Account to own account and subsequently on April 03, 2018 the same was transferred to Kaynet Capital Limited (group company) account. Further, inspection of details of Client account i.e., 00070340000445 - Kaynet Commodities Pvt. Ltd. Client A/C MCX revealed that the Noticee had received Rs, 6,00,000/- (Rupees Six Lakh Only) from third party/ third person who was not a client of the Noticee. Further, there were 18 instances wherein the Noticee had made payment of Rs. 20,40,000/- (Rupees twenty lakh and forty thousand only) to third party/ third person(s) who was not a client of the Noticee. In addition, from the verification of client bank accounts maintained by the Noticee it was observed that the Noticee had transferred funds from said client bank account to Kaynet Capital Ltd. (group company) and vice versa by using narration “TRANSFER-K”. As per the bank book, total amount received of Rs. 1,29,739/- (Rupees One Lakh, Twenty-nine Thousand, Seven Hundred and Thirty-nine Only) and Payment made from client account of Rs. 6,08,073/- (Rupees Six Lakh, Eight Thousand and Seventy-three Only) by using narration “TRANSFER-K”. Furthermore, during the inspection it was observed that the Noticee had transferred excess amount of Rs. 7,79,20,451/- (Rupees Seven Crore, Seventy-nine Lakh, Twenty Thousand, Four Hundred and Fifty-One Only) from client bank and settlement bank account to own account. The relevant portions of provisions read as under

> *“Clause 1 of Annexure of SEBI Circular SMD/SED/ CIR/93/23321 dated November 18, 1993*
>
> *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.”*

7.1.3 As brought out in the inspection report it is clear that the Noticee had on various instances violated the aforesaid provisions of the circular. It is also interesting to note that the Noticee had transferred huge amount of Rs. 7,79,20,451/- (Rupees Seven Crore, Seventy-nine Lakh, Twenty Thousand, Four Hundred and Fifty-One Only) from client bank and settlement bank account to its own account in clear violation of the provisions of the circular. When called upon, the Noticee denied the allegation, however, has not provided any proof in support of denial. In the absence of proof to show that the Noticee did not violate the provisions of Clause 1 of Annexure of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, "Regulation of transaction between clients and Brokers" circular, the allegation stands established.

7.2 Non Settlement of Clients' accounts

7.2.1 During the inspection period it was noticed that the Noticee had not settled the accounts of 25 out of 100 clients' accounts which were examined. The Noticee had also not settled the accounts for inactive clients across three quarters wherein the amount of non-settlement ranged between Rs. 23.3 Lakh to Rs. 26.53 Lakh which is in violation of Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 – Dealings between a client and a stock broker (trading members included) and Clause 8.1 of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular.

Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 – Dealings between a client and a stock broker (trading members included)

Running Account Authorization

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

a. The authorization shall be renewed at least once a year and shall be dated.

b. *The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.*

c. *The authorization shall contain a clause that the Client may revoke the authorization at any time.*

d. *For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.*

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

f. *The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/ securities or statement, as the case may be.*

g. *Such periodic settlement of running account may not be necessary:*

i. *for clients availing margin trading facility as per SEBI circular*

ii. *for funds received from the clients towards collaterals/ margin in the form of bank guarantee (BG)/ Fixed Deposit receipts (FDR).*

h. *The stock broker shall transfer the funds/ securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/ Clearing Corporation.*

i. *There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.*

j. *These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.*

Clause 8.1 of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular reads as under

"8. Running Account Settlement

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

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

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock Broker may issue a physical payment instrument.

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

7.2.2. As per Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 – Dealings between a client and a stock broker (trading members included), a Member is duty bound to settle funds/ securities within 24 hours of the payout unless a client specifically authorizes the stock broker to maintain a running account. In the face of allegation of violation of this Circular, the Noticee did not submit any proof to show that accounts were not settled on the authorisation of clients to maintain running accounts thereby establishing the allegation.

Further, also as per Clause 8.1 of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular, it was the duty of the Noticee to settle running accounts within a month or a quarterly as per the choice of the client. However, the Noticee did not settle running accounts for 3 quarters and in the absence of anything to the contrary, the allegation stands established.

7.3 Client Registration Process

7.3.1 Client Registration Process and account opening process and KYC requirements were inspected wherein a sample of 6 HUF, 1 company and 18 individuals were analyzed and the Noticee had not provided copy for the verification of KYC for 25 clients mentioned below:

407S05	300DK24	9645
101A322	100A306	108H02
33141	300A232	101M86
1603A25	101R124	300DK06
107A10	101S216	101R198
S025	101S332	101G27
90122	12553	102A97
101K41	101R113	102RS11
103S18		

In view of the above, the Noticee is alleged to have violated Regulation 21 (1) of Stock Brokers Regulations which reads as under

"Obligations of Stock – Broker on inspection by the Board

21 (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-Broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require."

7.3.2 KYC is a basic and important document to be maintained for any client and non-production of the same for verification is a violation of the aforesaid Regulation and also casts a doubt on the system being followed by the Noticee. Once again, the allegation stands established by itself in view of the Noticee not submitting any proof to show that KYC documents were in fact prepared per Stock Broker Regulations.

7.4 Clients' Order Recording

7.4.1 During the inspection it was observed that the Noticee has not maintained call recording for 12 sample date for all traded clients as mentioned below:

11-Apr-2018	23-Oct-2018
22-May-2018	29-Nov-2018
29-Jun-2018	06-Dec-2018
17-Jul-2018	02-Jan-2019
30-Aug-2018	22-Feb-2019
18-Sep-2018	28-Mar-2019

In view of the same, the Noticee is alleged to have violated the 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."

This requirement was introduced to Strengthen Regulatory Provisions against un-authorised Trades, from the inspection report it is clear that the Noticee had failed to maintain call recording for all the 12 sample dates and for all traded clients. Therefore, in this case also the alleged violation is established also in view of there being any proof on record to show the contrary.

7.5 Non-submission of Net Worth Certificate to Exchange

7.5.1 The inspection report also alleged that the Noticee has not submitted the Net worth certificate to exchange for March 31, 2019 in violation Clause 6.1.1 (a) of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular which reads as under

"6. Standard Operating Procedures for Stock Brokers/ Depository Participants -

Actions to be contemplated by Stock Exchanges/ Depositories for any event based discrepancies

6.1. As per existing norms, Stock Exchanges/ Depositories are required to monitor their members/ depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

a. Failure to furnish Networth certificate to Stock Exchange within 60 days for half year ending September 30th and half year ending March 31st."

7.5.2 Net worth Certificate is an important document for Members/ Depository Participants to be furnished to Stock Exchange/ Depository and not furnishing of the same within the prescribed time line is a violation of the provisions of the aforesaid circular and the Noticee has also not provided any proof to show that the Net worth certificate was furnished as required hence, the said alleged violation stands established against the Noticee.

7.6 Incorrect submission of data to exchange

7.6.1 On Inspection of weekly reporting of data done by the Broker to the Exchange, it was observed that the Noticee had not correctly submitted the details lying with them on stock exchange system for March 2, 2019 as shown in the table below

Particulars	**Data Calculated by Inspection team during on-site visit at Member's Place**	**Data Submitted to exchange**
Collateral deposited with clearing corporation/ clearing member	2,01,72,551	1,01,72,551

Total Credit Balance	86,51,050	87,22,919
Total Debit Balance	12,89,05,806	8,10,67,079
Unutilized collateral	2,91,31,414	1,91,31,414

In view of the above, the Noticee is alleged to have violated Clause 6.1.1 (j) of Annexure of Enhanced Supervision of Stock Brokers/ Depository Participants Circular which reads as under

"6. Standard Operating Procedures for Stock Brokers/ Depository Participants -

………..

6.1.1. Monitoring criteria for Stock Brokers

(j) In case stock Broker shares incomplete/ wrong data or fails to submit data on time."

Wrong data was furnished to the Stock Exchange and the difference, variation is even to the tune of Rs 7Crore and the Noticee also did not place any evidence on record to the contrary therefore the alleged violation of the aforesaid clause of the circular stands established.

7.7 Incorrect reporting of margin

7.7.1 Inspection was carried out w.r.t Margin-short collection and Wrong Reporting wherein a sample of 50 clients, 12 dates and 335 instances were analyzed. From the analysis it was observed that in 23 instances margin were falsely reported to the exchange. The total amount of false reporting was Rs. 90.36 lakh in violation Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/ P/2016/80 dated September 07, 2016 which reads as under

“3. The penalty structure and framework for short-collection/ non-collection of margins by members from their clients shall be as under:

iii. The members shall report to the Exchange on T+5 day the actual short-collection/ non-collection of all margins from clients.”

7.7.2 From the allegations, it is noted that the amounts involved are huge, even to the tune of Rs. 7.8 crores in one instance. The Noticee was duty bound to protect the interest of its clients. The conduct of the Noticee is blatant disregard of its statutory duty towards its clients. Considering the Noticee had merely denied the allegations and not provided any proof in support, the submission of the Noticee is not acceptable. Therefore, the allegation that the Noticee had violated Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/ CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to Enhanced Supervision of Stock Brokers/ Depository Participants Circular stands established.

7.7.3 Total amount of false reporting was Rs. 90.36 lakh and it was also noted that in once instance the amount involved is huge to the tune of Rs. 7.8 Crores and considering the Noticee did not prove otherwise, from the material available on record, the alleged violation is established.

8. Issue (iii): - 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?

8.1 In response to all the allegations above, the Noticee vide response dated April 11, 2022 through Thodur Law Associates denied all the allegations and called upon SEBI to withdraw the SCN dated March 25, 2022. Further, after the personal hearing on June 01, 2022, the response dated June 15, 2022 submitted by the Noticee was a copy of the submissions made vide earlier response dated April 11, 2022, only this time the submissions were made by the Noticee through Mr. Sanjay Shah, Director, Kaynet Group and not Thodur Law Associates. The Noticee once again denied all the allegation and submitted that the SCN deserves to be withdrawn and the proceedings be terminated forthwith. However, the Noticee did not substantiate the denial or provide any documentary evidence in support of the denial. As such the allegations against the Noticee stand established. The charges in respect of Noticee cannot be dismissed on mere denials which interestingly includes even the comprehensive joint inspection that was carried out by SEBI along with MCX. It is difficult to accept the denials and set aside the allegations made in the inspection report. In the absence of any explanation or proof by the Noticee, the charges get established by themselves.

8.2 In view of the discussion at pre paras, it has been established that the Noticee has violated various provision(s) of SC(R)A, SEBI Act, Stock Brokers Regulations, various clauses of the Circulars as discussed and consequently the Noticee has become liable for imposition of monetary penalty under Section 23D of SC(R) A, Sections 15A (b) and 15 HB of SEBI Act which read as under:

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."

Sections 15A (b) and 15 HB of SEBI Act

"Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder, —

....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."

"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."

8.3 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…………..."

9. ORDER

9.1 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 the Securities and Exchange Board of India Act, I hereby impose a Consolidated penalty of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) on Kaynet Commodities Private Limited, the Noticee herein for the violations of Section 23D of SC(R)A read with

(i) Regulation 21(1) of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992;

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

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

(iv) Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

(v) Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009;

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

(vi) Clause 6.1.1(a) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

(vii) Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

(viii) Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016 and Regulation 27(i) and (ii) of Stock Brokers Regulations.

9.2 I am of the considered view that the said penalty is commensurate with the violation, Non Compliance, lapse/ omission on the part of the Noticee.

9.3 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 (EFD)-I, 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 pay through the link mentioned below https://siportal.sebi.gov.in/intermediary/AO PaymentGateway.html

9.4 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.

9.5 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