BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BS/YK/2023-24/29087]

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

In respect of:

Noticee	**PAN**
Millennium Stock Broking Private Limited	AACCM2853Q

In the matter of Inspection of Millennium Stock Broking Private Limited

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FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) carried out an inspection of Millennium Stock Broking Private Limited (hereinafter referred to as **"Noticee"**) jointly with National Stock Exchange of India Limited (hereinafter referred to as **"NSE"**), BSE Limited (hereinafter referred to as **"BSE"**) and Multi Commodity Exchange of India Limited (hereinafter referred to as **"MCX"**) during October 13, 2022 to October 19, 2022 for the purposes as specified in Regulation 19 of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **"Broker Regulations")** – The text of which is stated below:

   "19. (1) Where it appears to the Board so to do, it may appoint one or more persons as inspecting authority to undertake inspection of the books of account, other records and documents of the stock brokers for any of the purposes specified in sub-regulation (2).

   (2) The purposes referred to in sub-regulation (1) shall be as follows, namely :—

   (a) to ensure that the books of account and other books are being maintained in the manner required;

(b) that the provisions of the Act, rules, regulations and the provisions of the Securities Contracts (Regulation) Act, and the rules made thereunder are being complied with;"

2. The Period of Inspection was from April 2021 to August 2022. The irregularities observed during the inspection were divided into four parts given as under:
   a. Part-1: Non-Segregation of client's funds and securities
   b. Part-2: Monthly/Quarterly settlement of funds and securities
   c. Part-3: Terminal Verification & Certification
   d. Part-4: Placement of Client's Orders and Recording

3. Based on the findings of Inspection, SEBI initiated an adjudication proceeding under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) for the alleged violation of the provisions of Clause 12(e) of Annexure-A to SEBI circular MIRSD/ SE /Cir-19/2009 dated December 03, 2009 (hereinafter referred to as **"SEBI Circular dated December 03, 2009"**), Clause 8.1 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter referred to as **"SEBI Circular dated September 26, 2016"**), Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (hereinafter referred to as **"Certification Regulations"**), Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations and Clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 (hereinafter referred to as **"SEBI Circular dated September 26, 2017"**) and Section 23D of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **''SCRA''**) for the alleged violation of the provisions of Clauses 2.4.1 and 2.4.2 of Annexure to SEBI Circular dated September 26, 2016.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated June 21, 2023 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"**) and under

Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **"SCRA Rules"**) to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act and Section 23D of SCRA for the violation of the provisions of law alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD-1/BS/YK/26655/1/2023 dated June 30, 2023 (hereinafter referred to as **'SCN/Notice'**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act and Rule 4 of the SCRA Rules read with Section 23-I of the SCRA to show cause as to why an inquiry should not be held against the Noticee and why penalty not be imposed on it in terms of the provisions of the Section 15HB of the SEBI Act and Section 23D of SCRA for the violations alleged to have been committed by the Noticee.

6. During the course of inspection by SEBI, the following irregularities were observed and the same alleged in the Show Cause Notice:

6.1. Non-Segregation of client's funds and securities:

6.1.1 It was observed from bank statements and bank ledger book as maintained by the broker that there are instances of transactions where funds have been transacted between Clients' Bank Accounts and Proprietary Bank Accounts through Settlement Bank Accounts. The Settlement Bank Accounts have been used for fund transfer to/from with Clients'/Proprietary Bank Accounts.

6.1.2 Some of the instances are placed below where funds have been transferred from Client's Bank A/c to Proprietary Bank A/c through Settlement Bank A/c.

Date	**From Client Bank A/c**	**To Proprietary Bank A/c**	**Through Settlement Bank A/c**	**Amount in Rs**
13/04/2021	00080340003548	00080340003531	00990610016602	86,00,000
30/04/2021	00080340003548	00080340003531	00990610016602	2,00,000
05/05/2021	00080340003548	00080340003531	00990610016602	20,00,000

14/05/2021	00080340003548	00080340003531	00990610016602	20,00,000
24/05/2021	00080340003548	00080340003531	00990610016602	15,00,000
01/06/2021	00080340003548	00080340003531	00990610016602	30,00,000
09/06/2021	00080340003548	00080340003531	00990610016602	31,00,000
22/06/2021	00080340003548	00080340003531	00990610016602	9,00,000
28/06/2021	00080340003548	00080340003531	00990610016602	23,00,000
07/07/2021	00080340003548	00080340003531	00990610016602	5,000,000
30/09/2021	00080340003548	00080340003531	00990610016602	11,00,000
30/09/2021	00080340003548	00080340003531	00990610016602	41,500,000
11/11/2021	00080340003548	00080340003531	00990610016602	5,00,000
20/11/2021	00080340003548	00080340003531	00990610016602	32,00,000
25/11/2021	00080340003548	00080340003531	00990610016602	3,14,000
25/01/2021	00080340003548	00080340003531	00990610016602	3,00,000

Date	From Client Bank A/c	To Proprietary Bank A/c	Through Settlement Bank A/c	Amount in Rs
13/04/2021	000605008946	00080340003531	000405112294	2,50,00,000
13/04/2021	000605008946	000605008883	000405112294	1,25,00,000
15/04/2021	000605008946	000605008883	000405112294	2,95,00,000
15/04/2021	000605008946	000605021790	000405112294	
30/04/2021	000605008946	000605008883	000405112294	2,35,26,025
30/04/2021	000605008946	000605021790	000405112294	
03/05/2021	000605008946	000605008883	000405112294	2,50,00,000
03/05/2021	000605008946	000605008883	000405112294	10,00,00,000
02/06/2021	000605008946	000605008883	000405112294	1,80,00,000
02/06/2021	000605008946	000605008883	000405112294	2,50,00,000
02/09/2021	000605008946	000605008883	000405112294	2,30,00,000

6.1.3. As per the provisions of Clauses 2.4.1 & 2.4.2 of Annexure to SEBI Circular dated September 26, 2016, transfer of funds from Clients' Bank A/c to Proprietary Bank A/c is permitted only for legitimate purposes. Findings aforementioned in above para were communicated to the Noticee vide letter dated November 30, 2022. However, Noticee in its reply dated December 15, 2022 has not submitted any reason for transfer of such funds. Hence, it was alleged that Noticee has violated the provisions of Clauses 2.4.1 & 2.4.2 of Annexure to SEBI Circular dated September 26, 2016.

6.2. Monthly/Quarterly settlement of funds and securities:

6.2.1. It was observed that Noticee has fully/partially not settled the dues of clients. It was noted that on 60 instances out of 581 instances, the Noticee failed to settle the dues of clients aggregating to Rs 23,48,19,733/-.

6.2.2. In view of the same, it was alleged that Noticee has violated the provisions of Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009 and Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016.

6.3. Terminal Verification & Certification:

6.3.1. It was observed that Proprietary trading terminals were operated by persons such as Director of Associate Company, Director's father, Trainee without proper proof of employment/appointment, Third party Algo Strategy Manager, Shareholder, Son of Authorised Person (AP) of the Noticee etc. It was further observed that NISM certificate was not available for 32 Terminal operators of the Noticee.

6.3.2. It was further observed that aforesaid findings were communicated to the Noticee vide letter dated November 30, 2022. Noticee vide its reply dated December 15, 2022 submitted that all the 32 terminals were for the Clearing Member segment, where NISM certification is not mandatory. However, it was observed from annexure to Inspection report that 30 Terminal Operators are using terminals in Clearing Member segment. However, the balance 2 Terminals pertain to Futures & Options segment, where NISM certification is mandatory.

6.3.3. Hence, from the aforesaid, it was alleged that Noticee has violated the provisions of Regulation 3(2) of Certification Regulations and Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations.

6.4. Placement of Client's Orders and Recording:

6.4.1. It was observed that Sample of dates i.e. April 19, 2021, May 27, 2021, June 24, 2021, July 28, 2021, November 16, 2021, January 10, 2022, March 03, 2022 and August 25, 2022 were chosen randomly to inspect Compliance of Noticee with Call recordings. It was further observed that call recordings were not available for April 19, 2021 and May 27, 2021. Further, on other given dates also very few call recordings were available.

6.4.2. It was further observed that during Inspection, the broker submitted that "*the call recordings are missing from April 19, 2021 to May 27, 2021. Although the calls for these dates were recorded, recording device malfunctioned before we could take backup".* Subsequently, the Noticee submitted that they have started using cloud based solution from September 09, 2022.

6.4.3. Hence, from the aforesaid, it was alleged that Noticee has violated the provisions of Clause III of SEBI Circular dated September 26, 2017 which mandate that all brokers shall execute trade of clients only after keeping evidence of the client placing such order. It could be, inter alia, in the form of Physical record written & signed by client, Telephone recording, Email from authorized email id, Log for internet transactions, Record of SMS messages, any other legally verifiable record etc.

REPLY OF THE NOTICEE

7. Vide letter dated July 17, 2023 and August 07, 2023, Noticee made the following major submissions in its reply to the SCN: -

7.1. Segregation of Client's Funds and Securities: *Complied with the provisions of G Value and G is positive on all the days. Also, on all the dates the amount withdrawn from Client A/c is less than total Proprietary fund eligible for withdrawal.*

7.2. Monthly/Quarterly settlement of funds and securities: *Non-settlement of Clients was caused due to misinterpretation of Circulars by the Back-office vendor. To be more specific, two logical errors were happening:*

- *Instead of considering only pay-in of funds on T and T-1 Day, software was considering both pay-in of funds and securities. 34 instances were due to this issue.*
- *Second logical mistake was to consider cash margin before non-cash. 24 instances of error were due to this issue.*
- *2 instance had both the above mentioned issues.*

While calculating 'Funds to Retain', calculations done by back office software was due to gaps in understanding with respect to securities pay-in obligations and adjustment of cash collateral before non –cash collateral.

Errors in 60 instances out of 61 were the result of above misinterpretation only. Only in one instance there is a delay of 1 day. This error was purely unintentional and we had, at no point in time, used client funds for our own purpose, thereby not violating the spirit of the Circular.

7.3. Terminal Verification & Certification: *As regards non-availability of NISM certificate for 32 terminals, 30 terminals pertain to Capital Market Segment where NISM is not mandatory. As regards 2 terminals pertaining to F & O Segment, it appears that we may have missed to submit the NISM certificates during the course of inspection. The same are enclosed herewith for your perusal and records.*

As regards to Proprietary trading terminals being operated by persons such as Director of Associate Company, Director's father, Trainee without employment/appointment proof, Third party Algo Strategy manager, Shareholder, Son of Authorized Person etc, we would like to submit that most of the persons operating the trading terminals are close associates of the Company and management has effective control over them.

7.4. Placement of Client's Order and Recording:

We would like to submit that we have an effective mechanism for recording the Client's order. While there was a mal-functioning with our call recording device during a period of 5 weeks out of the approximately 74 weeks period for which the inspection was carried out, you can also observe that these 5 weeks are a mid-period of inspection. We have provided records of calls before and after the said missing period. Hence we had an effective mechanism to record all client's orders. While the calls were recorded for the missing period, the device malfunctioned before we could take a backup. As regards the observation of the Inspecting team that on "other given dates also very few call recordings were available", we would like to submit that we· deal with very few clients and do not entertain online/walk-in clients, hence only few recordings are *available. We would like to add here that issuance of Margin Statements, Contract Notes and Pay-in/Pay-out of funds and securities were done smoothly during the period and no complaints/dispute has been raised by any of our clients for orders placed and trades executed during the said period. We would also like to submit that we are currently using a cloud based solution along with an effective backup mechanism to record all the calls of clients to mitigate the risk of losing any data.*

HEARING

8. After receipt of the written reply in the interest of the principles of natural justice, an opportunity of personal hearing was also granted to the Noticee on July 27, 2023 which was communicated to the Noticee vide hearing notice dated July 17, 2023. The Noticee vide e-mail dated July 18, 2023 requested to re-schedule the personal hearing to July 28, 2023 which was acceded to. On the scheduled date of personal hearing, the Noticee appeared through their Authorized Representatives (ARs) who made submissions primarily on lines of the written reply filed with SEBI vide letter dated July 17, 2023. ARs were further advised to file their additional submissions, if any latest by August 08, 2023 which had been provided vide letter dated August 07, 2023.

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the charges levelled against the Noticee in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. Whether Noticee had violated the provisions of Clause 2.4.1 and 2.4.2 of Annexure to SEBI Circular dated September 26, 2016, Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009, Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016, Regulation 3(2) of Certification Regulations, Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations and Clause III of SEBI Circular dated September 26, 2017?

II. **Do the violation, if any, on the part of the Noticee attract monetary penalty Section 23D of SCRA and Section 15HB of SEBI Act?**

III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?**

Issue I. Whether Noticee had violated the provisions of Clause 2.4.1 and 2.4.2 of Annexure to SEBI Circular dated September 26, 2016, Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009, Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016, Regulation 3(2) of Certification Regulations, Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations and Clause III of SEBI Circular dated September 26, 2017?

10. Before adverting to the factual conspectus of the case, I note that the Noticee had been alleged to have violated certain provisions of SEBI Circulars, Broker Regulations and Certification Regulations.

Non-Segregation of Client's Funds and Securities:

11. From the material available on record, I note from the Inspection Report that there were instances of transactions mentioned in para 6.1.2 above where funds have been transacted between Clients' Bank Accounts and Proprietary Bank Accounts through Settlement Bank Accounts during the inspection period.

12. I note from the submissions of the Noticee that it has admitted to the fact that there were instances of transactions where funds have been transacted between Clients' Bank Accounts and Proprietary Bank Accounts through Settlement Bank Accounts and the same is not in dispute. Noticee has submitted that they have complied with the provisions of G Value, G is positive on all the days and on all the dates the amount withdrawn from Client A/c is less than total Proprietary fund eligible for withdrawal. However, reason behind such transaction has not been submitted by Noticee in its contention.

13. In this regard, I note that, vide Clause 2.4.1. & 2.4.2 of SEBI Circular dated September 26, 2016, Transfer of Funds from Client Account to Proprietary Account is permitted only for legitimate purposes such as recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. However, in the instant case, Noticee has not submitted any proof which permits such transfer in the limited circumstances as mentioned in circular.

14. In view of the above, I am of the opinion that the charge of transfer of funds from Client's Bank Accounts to Proprietary Bank Accounts through Settlement Bank Accounts against the Noticee stands established. Therefore, I conclude that the Noticee has violated the provisions of Clauses 2.4.1 & 2.4.2 of Annexure to SEBI Circular dated September 26, 2016 - The text of which is stated below:

"2.4.1. Stock Broker shall not use client funds and securities for proprietary purposes including settlement of proprietary obligations.
2.4.2. Transfer of funds between "Name of Stock Broker - Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker - Client Account" to "Name of Stock Broker - Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred."

Monthly/Quarterly Settlement of Funds and Securities:

15. From the material available on record, I note from the Inspection Report that there were 60 instances out of 581 instances on which Noticee failed to settle the dues of clients fully/partially aggregating to Rs 23,48,19,733/-

16. I note from the reply of the Noticee that it has admitted to the fact that there were instances of non-settlement of dues of clients on its part. In fact, the Noticee has

admitted to the lapses on its part in its reply to the SCN. Noticee contended in its submissions that Non-Settlement in 60 instances was caused due to misinterpretation of Circulars by the Back-Office Vendor (Instead of considering only Pay-In of Funds, software is considering both Pay-In of funds and securities and adjustment of cash collateral before non-cash collateral) and in 1 instance payment was settled next day i.e. with delay of 1 day.

17. The submission of the Noticee that the aforesaid violations have happened due to misinterpretation on the part of the Back-Office Vendor is devoid of merit. As a prudent intermediary, Noticee should have diligently monitored the monthly/quarterly settlement of Funds and Securities. The instructions contained in the aforementioned SEBI Circulars dated December 03, 2009 and September 26, 2016 are clear and unambiguous.

18. In the context of non-settlement of funds and securities by stock broker, I would like to place reliance on a judgment of Hon'ble SAT in the matter of Indira Securities Pvt Ltd vs SEBI, Appeal no 50 of 2014, decided on June 23, 2014, wherein Hon'ble SAT had observed the following *"We have minutely perused the contents of SEBI's circular in question as well as the three clarifications issued by NSE and we do not subscribe to the view advanced by the learned counsel for the appellant. The concept of monthly or quarterly running settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3 2009 with a view to instill greater transparency and discipline in the dealings between the clients and the broker. The circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advisory Committee (SMAC). Market Participants and major stock exchanges. Therefore, it cannot be said that SEBI issued this circular dated December 3, 2009 as a directive only and not as a mandatory one "*

19. In this context, I would like to also refer to the order of the Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014), Hon'ble SAT observed that *"……….penal liability arises as soon as* *provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

20. Non-Settlement of Funds is a serious violation. I note that the Noticee has clearly failed to meet the aforementioned requirements and therefore, has acted in a manner unbecoming of a prudent stock broker. I note that such a stringent requirement was brought in to instill a greater efficiency of Brokers and safeguard the investors from their funds being misutilized by the broker. The Noticee's actions which is in total disregard to the same cannot be viewed leniently and therefore, I conclude that the Noticee is in violation of the aforementioned provisions of Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009 and Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016 – The text of which is stated below:

"**SEBI Circular dated December 03, 2009**

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

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

SEBI Circular dated September 26, 2016

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."

Terminal Verification & Certification:

21. From the material available on record, I note from the Inspection Report that Proprietary trading terminals were operated by persons such as Director of Associate Company, Director's father, Trainee without employment/appointment proof, Third party Algo Strategy Manager, Shareholder, Son of Authorised Person (AP) of the Noticee etc. I further note that during the course of the inspection, NISM certificate was not available for 32 Terminal operators of the Noticee out of which 30 Terminal Operators are using terminals in Clearing Member segment where NISM certification is not mandatory. However, the balance 2 Terminals pertain to Futures & Options segment, where NISM certification is mandatory.

22. I note that in respect of NISM certificate of 2 Terminal Operator using terminals in Futures & Options segment, Noticee in its submissions contended that they did not submit the NISM certificates during the course of inspection and the same had been enclosed along with submissions made in response to SCN.

23. From the perusal of the copy of NISM certificates, I find that NISM certificate for one Terminal operator has been issued on October 05, 2022 while for the other Terminal operator the same had been issued on February 25, 2022 and the period of Inspection was from April 2021 to August 2022. I therefore find that NISM certificate for one

Terminal operator was issued Post Inspection period and for the other Terminal operator, it was available only for some portion of Inspection period. Hence, obtaining the certificate during the course of the Inspection as well as Post Inspection and submitting the same at this juncture might be an afterthought.

24. In view of the above, I conclude that the allegation levelled against the Noticee that NISM Certificate were not available for 2 Terminal Operator using terminals in Futures & Options segment stands established.

25. I note that Proprietary trading terminals were operated by persons such as Director of Associate Company, Director's father, Trainee without employment/appointment proof, Third party Algo Strategy Manager, Shareholder, Son of Authorised Person (AP) of the Noticee etc. Noticee in its submissions contended that most of the persons operating the trading terminals are close associates of the Company and that the management has effective control over them.

26. I find that Noticee in its submissions has not made it clear whether such persons were approved users or not during the time of inspection. Therefore, I conclude that the allegation levelled against the Noticee that Proprietary trading terminals were being operated by other than approved users, stands established. Allowing the terminals to be used by persons without sufficient expertise would expose the operations to higher risks.

27. In view of the above, I conclude that the Noticee has violated the provisions of Regulation 3(2) of Certification Regulations and Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations – The text of which is stated below:

<u>“Certification Regulations</u>

“Obligation to obtain certificate

3.

(2) An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.”

<u>Broker Regulations</u>

“CODE OF CONDUCT FOR STOCK BROKERS

A. General.

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

“Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

……………

…………....

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

<u>Placement of Client’s Order and Recordings:</u>

28. From the material available on record, I note from the Inspection Report that out of the sample dates chosen randomly to inspect Compliance of Noticee with Call recordings, the same was not available for April 19, 2021 and May 27, 2021 and during Inspection, Noticee submitted that “*the call recordings are missing from April 19, 2021 to May 27, 2021. Although the calls for these dates were recorded, recording device malfunctioned before we could take backup*”.

29. I note from the reply of the Noticee that it has admitted to the fact that Call recordings was not available from April 19, 2021 to May 27, 2021 and the same is not in dispute. Noticee contended in its submissions that while the calls were recorded for the missing period, the device malfunctioned before they could take a backup and currently they are using a cloud based solution along with an effective backup mechanism to record all the calls of clients.

30. I note that it is a mandatory obligation for stock brokers to preserve records so as to produce the same in case of dispute in order to discharge the burden of proof on it in such cases. In view of the same, the submission of the Noticee that calls were recorded but the device malfunctioned before they could take a backup and that too for the period of more than 5 weeks cannot be accepted, given the fact that such failure will facilitate scope for illegal trades through the brokers. Further, current deployment of cloud based solution with effective backup mechanism as contended by Noticee does not make good the lapses occurred in prior period.

31. In this context, I would like to refer to the order of the Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014) aforementioned in para 19.

32. Therefore, noting that the Noticee failed to maintain evidence of client order placements in the form of any verifiable record, I conclude that the Noticee has violated the aforementioned provisions of Clause III of SEBI Circular dated September 26, 2017 – The text of which is stated below:

"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."

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

33. In the instant case, the following violations have been established against the Noticee:

Violations established	Penal Provision
Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009, Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016, Regulation 3(2) of Certification Regulations, Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations and Clause III of SEBI Circular dated September 26, 2017	Section 15HB of SEBI Act
Clause 2.4.1 and 2.4.2 of Annexure to SEBI Circular dated September 26, 2016	Section 23D of SCRA

34. In this context, I would also like to also refer to the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*, 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 A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

35. As the violation of above mentioned provisions has been established, I hold that Noticees are liable for monetary penalty under section 15HB of SEBI Act and Section 23D of SCRA.

36. The aforesaid provisions read as under:

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

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

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."

Issue III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

37. While determining the quantum of penalty under section 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

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

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

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

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

(c) the repetitive nature of the default."

38. It is necessary that registered intermediaries follow the various procedures and practices prescribed for smooth and transparent functioning of the securities market.

Noticee has failed to act with skill, care and diligence in the conduct of its business as a stock broker. As the violations of the provisions under Clause 2.4.1 and 2.4.2 of Annexure to SEBI Circular dated September 26, 2016, Clause 12(e) of Annexure-A to SEBI Circular dated December 03, 2009, Clause 8.1 of Annexure to SEBI Circular dated September 26, 2016, Regulation 3(2) of Certification Regulations, Clause A(5) of Schedule II read with Regulation 9(f) of Broker Regulations and Clause III of SEBI Circular dated September 26, 2017 stands established, I am convinced that it is a fit case for imposing monetary penalty on the Noticee under Section 15HB of the SEBI Act and under Section 23D of SCRA.

39. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the inspection conducted by SEBI in the said matter has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor/clients or group of investors/clients as a result of the default of the Noticee. I am of the view that with respect to the lapses on the part of the Noticee as found in the Inspection, the Noticee in the present adjudication proceedings has submitted that it has rectified the lapses found in the Inspection. Considering the same, I am inclined to take a lenient view with regard to the penalty attracted in respect of the defaults as found in this case.

ORDER

40. In view of the above observations/findings, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of Adjudication Rules and section 23-I of SCRA and Rule 5 of the SCRA Rules, I hereby impose the following monetary penalty on the Noticee;

Penal Provision	Penalty Amount (in ₹)
Section 15HB of SEBI Act	1,00,000 (one Lakh only)
Section 23D of SCRA	1,00,000 (one Lakh only)

I am of the view that the said consolidated penalty of Rs. Two Lakhs is commensurate with the violations committed by the Noticee in the present case.

41. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

42. The Noticees shall forward the details/ confirmation of payment made in the format as given in table below to "The Division Chief, EFD – DRA - 3, 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)	

43. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : August 31, 2023
Place : Mumbai

Biju S
Adjudicating Officer