<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. Order/MC/HP/2020-21/9136]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND UNDER SECTION 19-H OF DEPOSITORIES ACT, 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

M/s Monarch Networth Capital Limited (PAN : AAACN1184F) having address at 901/902, 9th Floor, Atlanta Centre, Sonawala Road, Opp. Udyog Bhavan, Goregaon (E), Mumbai - 400063.

In the matter of M/s Monarch Networth Capital Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, '**SEBI**'), initiated adjudication proceedings under Section 15HB of SEBI Act, 1992 (hereinafter referred to as, the '**SEBI Act'**), Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, the '**SCRA**') and Section 19G of Depositories Act, 1996 (hereinafter referred to as, the "**Depositories Act**") against M/s Monarch Networth Capital Limited (Broker - NSE, BSE, MSEI and DP - CDSL having SEBI Registration No. INZ000008037, IN-DP-278-2016) (hereinafter be referred to as, "**the Noticee/Broker/You**"), for the alleged violations of various Acts, SEBI Circulars and CDSL Operating Instructions as under:

a) Section 23D of SCRA read with Clause 1 and 2 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

b) SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

d) SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

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

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

g) Chapter No. 6.5.4.9 of CDSL Operating Instruction.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated February 17, 2020 to inquire into and adjudge under Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated February 25, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/10622/2020 dated May 18, 2020 (hereinafter referred to as '**SCN**'), was issued to the Noticee in terms of Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, Rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Rule 4(1) of Depositories (Procedure For Holding Inquiry And Imposing Penalties) Rules, 2005 (hereinafter referred to as '**Adjudication Rules**'), to show cause as to why an inquiry should not be held and penalty not be

imposed against the Noticee in terms of Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. SEBI carried out an inspection of the broking operations and depository participant operations of the Noticee during December 17, 2018 to December 21, 2018 for the inspection period from April 2017 to November 2018 (hereinafter referred to as, the "**Inspection Period**").

Non - segregation of clients' funds and securities

6. In terms of SEBI circular dated September 26, 2016, the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing broker, i.e. A + B should always be equal to or greater than clients' funds as per ledger balance (C). The difference G shall be calculated as, [G = (A+B)-C] and if value of G is negative, then it indicates that the credit balance clients' fund may have been utilized by the broker for other purposes such as funding the debit balance clients, proprietary purpose etc.

7. It was observed that on 35 days out of 38 trading days during February 2018 to March 2018 the total cash and cash equivalents lying in the client and settlement bank accounts and with the clearing corporation/ clearing broker at the end of the day (i.e. A+B) were less than gross creditors, indicating misutilization of such funds i.e. the value of 'G' was negative. This indicates that Noticee has misutilized funds of credit balance clients for settlement obligations of debit balance clients or for own purposes on 35 days and the misuse was in the range of Rs. 2.36 crore to Rs. 33.62 crore. The details of instances are as given below:

Sr. No.	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 (FD), Bank guarantee (BG), etc.) across all Stock Exchanges. Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered	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 uncleared cheques issued to clients and the margin obligation)	Funds of credit balance clients used for settlement obligation of debit clients or for own purpose; G=(A+B)-C
		A	B	C	G
1	2/1/2018	369675996	625077313	1247365546	-252612237
2	2/2/2018	384941395	625077313	1271100983	-261082276
3	2/5/2018	264730396	625077313	1149798602	-259990893
4	2/6/2018	226021702	625077313	1100068537	-248969522
5	2/7/2018	330179573	525077313	1050190897	-194934011
6	2/8/2018	309766899	555077313	1031974998	-167130786
7	2/9/2018	405516563	555077313	1080408280	-119814404
8	2/12/2018	236774305	555077313	1128088415	-336236796
9	2/14/2018	414360024	615077313	1102652931	-73215594
10	2/15/2018	474236287	675077313	1218406096	-69092496
11	2/16/2018	304110287	675077313	1105984139	-126796539
12	2/19/2018	283812206	675077313	1121696869	-162807350
13	2/20/2018	154540829	675077313	1027027310	-197409168
14	2/21/2018	231786225	630077313	1005763303	-143899765
15	2/22/2018	201566567	630077313	978700083	-147056203
16	2/23/2018	170545320	580077313	958940384	-208317751
17	2/26/2018	285514821	600077313	1020385266	-134793132
18	2/27/2018	324530870	600077313	1049027258	-124419075
19	2/28/2018	531640760	600077313	1024318485	107399588
20	3/1/2018	249783836	600077313	1003438952	-153577803
21	3/5/2018	280532397	602077313	953832485	-71222774
22	3/6/2018	236370944	602077313	938567225	-100118968
23	3/7/2018	161504553	602077313	871435830	-107853965
24	3/8/2018	244373130	574577313	911615981	-92665538
25	3/9/2018	191083040	575077313	932230098	-166069744

26	3/12/2018	248280049	575077313	885818058	-62460697
27	3/13/2018	160224336	575077313	838875008	-103573359
28	3/14/2018	203937382	575077313	836857703	-57843008
29	3/15/2018	209864230	607577313	853392971	-35951428
30	3/16/2018	312619910	597577313	940438938	-30241716
31	3/19/2018	185970057	597577313	841035345	-57487975
32	3/20/2018	174464003	597577313	795620288	-23578972
33	3/21/2018	153952847	587677313	872253367	-130623207
34	3/22/2018	277070668	557777313	893744661	-58896680
35	3/23/2018	200316629	567677313	880173587	-112179646
36	3/26/2018	178953180	577577313	738501601	18028891
37	3/27/2018	152216250	517677313	755560264	-85666702
38	3/28/2018	266142658	517677313	779399054	4420916

8. It was also observed that the funds raised by pledging Client securities with Financial Institutions were not used by the Noticee for obligation of respective clients. On two days the shares in excess of client's obligation were pledged and/or client's obligation was more than the proportionate amount of funds raised against respective clients pledged shares. Summary of observations is as given below:

Sr. No.	Date	TOTAL OD Availed (In Crores)	Value of Securities Pledged (In Crores)	Mis-utilization (In Crores)	Total no of clients whose Securities were pledged	Total no of clients whose securities have been mis-utilized
1	12-Apr-2017	13.10	29.43	3.66	3109	1367
2	31-May-2017	17.97	39.21	0.37	1690	87

9. In view of the above, it was alleged that Noticee is in violation of provisions of Section 23D of SCRA read with Clause 1 and 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 and 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Non Settlement of Clients Funds and Securities

10. It was observed that Noticee has not settled the accounts of inactive clients during all the quarters under inspection. It was observed that the amount of non-settlement ranges from Rs. 8,00,120 (Jun-17) to Rs. 1,85,18,209 (Sep-17). Summary of such instances is as given below:

Quarters	Number of inactive clients not settled	Amount of non-settlement (in Rs.)
Apr 17 to Jun 17	519	31,88,632.63
Jun 17 to Sep 17	680	2,19,49,384.68
Sep 17 to Dec 17	693	2,14,99,699.57
Dec 17 to Mar 18	633	78,03,058.82
Mar 18 to Jun 18	639	75,54,255.24
Jun 18 to Sep 18	499	69,35,430.46

11. In view of the above, it was alleged that Noticee is in violation of Clause 12 of Annexure A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

Analysis of Enhanced Supervision reporting

12. It was observed that Noticee has not uploaded the details of 600 clients for the month of April 2018 and 2,452 clients for the month of September 2018 to the exchange under client funds and securities module of Enhanced Supervision.

13. In 625 instances for April 2018 and 953 instances for September 2018 that fund balances reported by the Noticee in CFS under Enhanced Supervision is not matching with back office record.

14. It was also observed in 157 instances for April 2018 and in 221 instances for September 2018, that there is mismatch between ISIN reported by the Noticee in CFS under Enhanced Supervision and back office record.

15. In view of the above, it was alleged that Noticee is in violation of Clause 7 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

16. Further, it was observed in 3496 instances that Email ID uploaded by the Noticee in CFS under Enhanced Supervision is not matching with exchange UCC records. In 1894 instances, mobile numbers uploaded by the Noticee in CFS under Enhanced Supervision is not matching with exchange UCC records.

17. In view of the above, it was alleged that Noticee is in violation of Clause 2 (B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 and Clause 6.1.1 (j) of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Client Registration Process

18. During Inspection 50 samples of KYCs of different categories such as Individual Clients, Corporate Clients and HUF Client were checked. Following was observed with respect to different categories of Clients.

i) Individual Clients

a) No additional documents collected for derivative trading in 2 instances for UCC 899631 and 1071813.

b) No Proof of Address taken in 2 instances for UCC 1071813 and 898736.

c) No IPV done for UCC CHE2253.

d) No PAN card taken for UCC 1071813.

ii) Corporate Clients

a) Shareholding pattern not taken or not dated for UCC 904629, 901637, 898855, 903059, 906238, 904001, 903336 and 903638.

b) No balance sheet taken for UCC 904629, 909858, 903336 and 903638.

c) DIN not taken for UCC 901637, 898855, 895900, 909858, 907226, 903059, 904001, 903336 and 903638.

d) No Board Resolution taken for UCC 907226 and 909858.

iii) HUF Client

a) KYC form not dated for UCC 902500.

19. In view of the above it was alleged that Noticee is in violation of Annexure 2 and 3 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 and Clause 3 (i) of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

Depository Operations

KYC and Account opening process

20. It was observed that Noticee has not uploaded the scanned images of KYC documents on KRA within 10 working days for 9 cases out of 254 account opening samples. The details of such 9 cases are as given below:

Sr. No.	BO ID	Date of A/c Opening	Name of Client	PAN Card
1	1203500001516187	17-Sep-18	KUMARPAL R JAIN HUF	AAKHK1238E
2	1203500001495801	26-Jul-18	PINAKIN HEMRAJBHAI DESAI HUF	AAMHP8524Q
3	1203500001526725	23-Oct-18	HRITHIK KHANDELWAL	EQLPK6124E
4	1203500001531070	16-Nov-18	KANISHKA TIWARI	AZFPT7630P
5	1203500001512070	05-Sep-18	NITIN PRADIP BETHARIYA	AIYPB0430F
6	1203500001521431	03-Oct-18	MANISH KUMAR	EEGPK3510D
7	1203500001530949	15-Nov-18	GIRISH MAHENDRABHA I GANDHI	AKMPG9492J
8	1203500001486725	05-Jul-18	ATULKUMAR JASHBHAI PATEL	ENHPP3270H
9	1203500001522171	05-Oct-18	NETWORTH SOFTTECH LIMITED	AACCN5427H

21. It was also observed that certain KYCs were not under verified status. It was observed that total 408 KYCs were on ''Hold'' status on CVL KRA portal.

22. In view of the above it was alleged that Noticee is in violation of Clause 1 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

23. It was observed in case of demat account opened under NRI repatriable category (BO ID 1486725) that bank details were obtained as NRO status instead of NRE status. In view of the above it was alleged that the Noticee is in violation of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

DIS Issuance and Execution

24. It was observed that on 8 instances Noticee had not verified transactions originating from dormant accounts independently with the account holders before execution and recorded the details of the process on instruction slip. The details of such 8 instances are as given below:

Sr. No.	Execution Date	BO ID	DIS Sr. No.
1	27.11.18	1308269	244134
2	16.11.18	970511	448121
3	02.07.18	1206864	138242
4	02.07.18	1205706	137013
5	17.07.18	1340193	278201
6	26.09.18	1178158	292587
7	10.09.18	1098851	117919
8	07.09.18	1385087	443823

25. In view of the above it was alleged that Noticee is in violation of Chapter No. 6.5.4.9 of CDSL Operating Instruction.

26. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act.

27. In response to the SCN, Noticee filed its reply on August 25, 2020. An opportunity of hearing was provided to the Noticee on July 16, 2020 *vide* notice dated June 24, 2020. Vide email dated July 15, 2020, Noticee requested for extension for filing submission and adjournment of hearing scheduled on July 16, 2020. Considering the request of the Noticee, another opportunity of hearing was provided to the Noticee on August 18, 2020. Noticee further sought extension of time for filing reply and adjournment of hearing scheduled on August 18, 2020. Considering the request of the Noticee, another opportunity of hearing was provided to the Noticee on August 26, 2020. Hearing on August 26, 2020 was attended by Mr. Manish Chhangani, Advocate and Mr. Balveer Singh Choudhary, Chartered Accountant, the Authorised Representative of the Noticee (AR). AR of the Noticee reiterated the submissions made in its reply dated August 25, 2020. Vide email dated September 11, 2020, Noticee filed its additional submissions.

28. The key submissions of the Noticee are summarized as below:

29. Noticee stated that it has network of more than 500 sub brokers, more than 550 employees, and 55 branches with more than 2.32 Lacs registered clients across India.

30. Noticee submitted that the Inspection team has not considered the submissions made by it and also not appreciated the explanations given during the course of inspection proceedings and initiated the instant proceedings. Noticee further stated that, no explanation has been given for not accepting the submissions and the full inspection report has been forwarded to AO without considering the comments of the Noticee.

31. Noticee submitted that due to present pandemic, Noticee is working under lot of constraints and difficulties. This has affected the preparation of reply and for that reason Noticee sought adjournment to submit the reply by August 31, 2020 which was not granted.

32. With respect to allegation of misutilization of credit balance clients funds for settlement obligations for debit balance clients or for own purposes, Noticee submitted that as per observations in Inspection, the value of I and J are also found to be negative which establishes that no credit clients fund has been utilized towards margin obligations of debit balance clients and proprietary margin obligation in sample period. Further, SEBI is also of the view that Noticee has not misutilized credit balance of clients towards the margin obligations of debit balance clients and proprietary margin. Hence, the allegation is baseless and out of context. Noticee further submitted that SEBI has not considered the balances available with the Noticee in total fund balance which establishes that Noticee got enough funds and value of G was positive.

a) A total of four clients are associated with majority shareholders or promoter group of Noticee, therefore, the balances lying in their accounts (credit) may not be considered in the calculation. In this regard, Noticee has provided details like ROC details, Partnership deeds, shareholding pattern etc.

b) Funds to the tune of Rs. 25 crore and Rs. 10 crore on February 12, 2018 and on March 01, 2018 were invested in Reliance Liquid Fund for 1 day and Noticee got credit of redemption amount of same value on T+1 day i.e. on February 14 and March 05, 2018 respectively. Same fund was available with the Noticee on mentioned days and should be considered as funds available in banks to pay the sum of ceditors.

c) Noticee had an amount of Rs. 1.55 crores available on continuous basis during the period of February 2018 and March 2018 in own tagged bank account A11039 (ICICI bank, account number 40005023724) that could have been also used to pay the creditors. Noticee submitted a copy of the bank statement evidencing the same.

d) Noticee has an arrangement with HDFC Bank to take a loan against its own property to the extent of Rs. 15 crore and same was used on intraday basis during the period. Noticee provided a copy of HDFC Bank sanction letter mentioning Rs. 15 cores withdrawal limit sanctioned and Bank statement of HDFC Bank account number 00060340003234 for the mentioned period.

e) In case the above funds are considered as part of the funds available with Noticee, the same was enough to pay the total creditors even for the days selected by the inspection team. Noticee provided a revised table wherein G is positive on all 38 days selected by the inspection team.

f) Pursuant to the completion of inspection, Noticee increased cash collaterals with exchanges and fresh capital has also been infused in the system, so that the fund is always available to pay the creditors on daily basis. In this regard, Noticee submitted a copy of the statement of funds available in April to June 2019.

33. In its additional submission Noticee provided a revised calculation of G, wherein, G is negative on nine trading days and out of these nine days on two days the negative balance is very miniscule. Noticee further submitted that, NSE *vide* its order dated October 14, 2019 levied a penalty of Rs. 6.67 lacs for the same violation and any action at this stage would amount to 'double jeopardy'.

34. In respect of the allegation that the funds raised by pledging of client securities with Financial Institutions were not used by the Noticee for obligation of respective clients, Noticee submitted that it had changed its back office software from April 01, 2017 with "Tech Excel" and for the first couple of months there were some technical glitches which was not giving true picture. Noticee further submitted that it has completely stopped pledging clients' securities for borrowing funds from October 06, 2017 and there is no pledge or misutilization after that. In this regard, Noticee

provided the ledgers of ECL Finance for FY 2017-18 and 2018-19 which evidences the same. Further, Noticee submitted the ledgers of all the NBFC's with whom Noticee used to pledge securities in FY 2016-17.

35. Noticee further submitted that, as a corrective action it stopped pledging client's securities for availing Bank Guarantee (BG) from August 2018. Noticee also have funded BG and increased its cash collaterals with exchanges and clearing members. Further, NSE, *vide* its order dated October 14, 2019 levied a penalty of Rs. 5 lacs for the same violation and any action at this stage would amount to 'double jeopardy'.

36. As regards the allegation of non settlement of the accounts of inactive clients during all the quarters under inspection, Noticee submitted that as per its policy the balance of funds and securities below Rs. 1000/- is settled subject to DP charges and any balance due in commodities market. Noticee provided a summary of clients having settled after the inspection till date. Noticee submitted that majority of clients are settled now and were pending only due to recovery in DP charges and balances due in commodities market. As per the policy as soon as any balance due in DP and commodity is cleared, the client accounts get settled.

37. Noticee submitted that the list contains the maximum number of client codes which are actually not clients but they are AP ***/*** Sub brokers, Marketing Associates (MA), expenses accounts opened in client category erroneously, advanced brokerage and the clients who are settled in the quarter due to turnover or margin but appearing in the list. Noticee provided the list/details of aforesaid clients. Further, one client namely Ratnamani Metals & Tube Ltd had given a fund of Rs. 50 lacs to be used as margin collateral in FD form against their exposure in currency markets, and had requested not to break the FD for settlement in case it is not settled with the Noticee. In this regard, Noticee has provided a quarter wise settlement summary citing different reasons for non- settlement, which reveals that there are practically nil cases of non-settlement.

38. Noticee further submitted that, a small number of clients are not contactable and not traceable either and whenever it try to settle their funds through NEFT, same is also reversed due to multiple reasons like wrong IFSC code etc. In these circumstances, Noticee tried to send cheque drawn on their name to their respective addresses but if same is undelivered or cheque is not represented by them in banks then Noticee intimated such clients and held funds of thse clients till they arrange re-mapping of their banks.

39. Noticee submitted that over the years it had taken the following steps to settle the funds and securities of inactive clients:

a) Upgraded back office software to attain successful settlement of funds and securities on daily basis and release funds and securities of clients where 90 days are completed and send settlement statements to clients on daily basis. It also started to mark settlement of clients, when client was settled as per turnover or outstanding margin obligations.

b) From April 2017, changed back office software from "Trade Plus" to 'Tech Excel* as back office vendor was not supporting for changes and upgrades to make settlement process user friendly and compliant. New back office software is equipped with all required capabilities and functions to achieve smooth and robust settlement process.

c) For settlement of inactive clients wherein pay-out of funds was not successful even after sending cheques to clients, Noticee passed on the information to locate clients to local resources in its branches or AP's. By this way of communication many account got settled and reduce the number of unsettled client accounts to around 400.

d) As regards the clients whose securities are not settled, Noticee moved these securities stocks to client margin beneficiary DP account 11430305210836659 and made it as an escrow DP account for non-settled inactive DP account clients, which is not used for any other purposes.

e) Noticee provided a list of unsettled clients as given below:

Non-Settled client Summary as on June 30, 2020		
Category	**Number of Clients**	**Value of Stock (Rs.)**
Not responding through Mobile/Email/Letter	243	53,76,787
No Email/Mobile	105	20,33,986
No PAN	38	4,51,234
SEBI debarred or EOW Notice	(13)	51,99,718
Total	**399**	**1,30,61,725**
Non Settled Clients	**386**	**78,62,007**

f) Noticee submitted that the quarter wise analysis of the unsettled inactive client shows that as on June 2020, the percentage of clients unsettled are only 0.87% of total clients. Also, in inspections carried out after the instant inspection by exchange and SEBI, no major violation was found in settlement of active clients. Further, no client has ever complained in exchanges regarding non receipt of funds and securities on time.

40. With respect to allegation of not uploading the details of 600 clients and 2,452 clients for the month of April 2018 and September 2018 respectively, Noticee submitted that at that point software did not capture the details of inactive clients who were marked as inactive due non-completion of Central KYC and who were having Zero fund and Zero stock holding, hence the details were not provided and there was no

malafide intention behind it. Noticee has provided the list of the clients along with the status like inactive, closed etc. Further, when this was pointed out, Noticee had updated the software to fetch the complete details of all clients including details of inactive, closed clients.

41. In respect of allegation that fund balance reported to the stock exchange is not matching with back office records, Noticee stated that inspection team has taken Trial balance with MTF (Margin Trading Funded) balances. Team has considered the Trial balance of un reconciled balances i.e. unrealized receipt or unrealized payments as on day of upload i.e. April 30, 2018 and September 28, 2018 and same was considered as realized. Inspection team has considered combined balance of 7 clients with their FD accounts and taken trial balance of only main account. Noticee submitted that it found only 57 mismatches for April 2018 and 28 mismatches for September 2018, as against total 625 instances in April 2018 and 953 instances in September 2018 alleged in the SCN. The mismatch of 57 and 28 in April 2018 and September 2018 amounts to 9.12% and 2.94% of total clients and is miniscule percentage of total area of operations. In this regard, Notice also has submitted the revised list.

42. With respect to the allegation that there is mismatch between ISIN reported in CFS under enhanced supervision and back office records, Noticee submitted that Inspection team has taken stock trial with MTFBENE and MTFCOLL (MTF Beneficiary and MTF Collateral DP Account) balances for matching the Enhanced supervision upload; however, Noticee is uploading the MTF stock details on daily basis. In addition Noticee was sending margin statement to clients with all the details of MTF Funded and MTF collateral stocks on respective email ids on daily basis. Noticee further stated that the above discrepancy, if any, was not pointed out by stock exchanges despite the data being uploaded every month. In case they would have done so Noticee would have updated the system accordingly. Further, the aforementioned lapses have been observed in only 220 clients out of total clients of 5330, which is only 4.12% of total clients in data uploaded for September 2018

upload. Similarly, lapses have been observed in only 157 clients out of total clients of 7096, which is only 2.21% of total clients for data uploaded in April 2018.

43. With respect to allegation that email id and mobile number uploaded in CFS under enhanced supervision is not matching with Exchange UCC record, Noticee submitted that the email ids and mobile numbers have been updated**.** Noticee submitted that discrepancy, if any, has been rectified and it undertakes to ensure that the same shall not be repeated in future.

44. In respect of the allegation with respect to KYC, Noticee submitted as under:

    a) As regards additional documents not collected for derivative trading in 2 instances for UCC 899631 and 1071813, Noticee submitted that:

        i. Client with UCC 899631 had done first trade in derivative segment on June 22, 2017 and before that, client had provided the required documents like 6 months DP statement with segment addition form and only after completing required formalities, Noticee had allowed trades in derivative segment.

        ii. Client with UCC 1071813 had opened account with Noticee on June 17, 2015 in only Cash and CD segments and had provided required documents at the time of KYC only for opening account in CD segment like 6 months bank statement etc.

    b) As regards, proof of address in 2 instances for UCC 1071813 and 898736, Noticee provided the documents with respect to proof of address.

    c) As regards IPV not done for UCC CHE2253, Noticee submitted that same was carried out at the time of opening of the account, however, stamp was not inscribed. Therefore, Noticee has carried out fresh IPV of the client.

d) As regards PAN card, Noticee submitted that PAN was taken at that point in time since without PAN a person is not allowed to trade in securities market. Further, Noticee had taken fresh copy of PAN from the client with UCC 1071813.

e) As regards the shareholding pattern not available or not updated for UCC 904629, 901637, 898855, 903059, 906238, 904001, 903336 and 903638, Noticee submitted that the same is now taken with signature and date.

f) As regards balance sheet not taken for UCC 904629, 909858, and 903638, Noticee submitted that all the necessary details like networth certificate etc. and the balance sheets have been taken now.

g) As regards UCC 903336, Noticee submitted that the said client account was opened on October 13, 2017 with all the other requirements like Networth Certificate, share holding pattern but balance sheet was not submitted as it was new company incorporated on February 27, 2017. Client informed the Noticee that they will submit balance sheet at the end of FY 2018. As client did not submit the same by July 2018, the status of client account was changed to dormant and client has not traded since July 10, 2018.

h) As regards DIN not taken for UCC 901637, 898855, 895900, 909858, 907226, 903059, 904001, 903336 and 903638, Noticee submitted that pursuant to inspection, it had taken DIN of directors of these clients.

i) As regards Board Resolution not taken for UCC 907226 and 909858, Noticee submitted that it had now taken the Board Resolution.

j) As regards date not available for UCC 902500, Noticee submitted that the account opening date in the system is August 05, 2017, however, due to oversight same was not entered in the form. Noticee was in receipt of communication from the said client that they have signed the AOF on August 01, 2017, however, due to oversight did not write the date on the same. Noticee submitted that the same has now been entered.

k) Noticee submitted that it had received all the records and hence, the corrective action has been taken which establishes there was no malafide intention on its part. Noticee stated that the same shall not be repeated in future. Further, as a matter of abundant caution, Noticee also checked KYCs of all other clients whose accounts were opened during the inspection period and the same have also been rectified.

45. In so far as the allegations with respect to KYC and account opening process under depository opeartions is concerned, Noticee submitted as under:

a) As regards KRA not done within 10 working days, Noticee submitted that delay was due to some technical glitches and not due to any malafide intention. The sample shows that Noticee had not uploaded the documents in only 9 cases out of the 254 samples selected, which is only 3.54% of the samples selected and nearly ZERO percentage of total KYC documents uploaded considering the number of clients of the Noticee.

b) As regards KYCs not being verified and 408 KYCs were on "hold" status, Noticee submitted that out of total 6840 KYCs uploaded, this amounts to only 5.85% of total KYCs which were kept on hold status and that too due to some documents being rejected and which were required to be reloaded.

c) As regards 408 cases shown on CVL KRA as on December 21, 2018, Noticee submitted that 100 KRA's were registered by January 23, 2019 and for the rest of 308 clients, Noticee had sent KRA intimation letter as per its policy and compliance. Further, of 308 clients, 182 clients have been registered in KRA on the basis of documents provided. The remaining 126 clients who were not providing documents, their account has been made 'inactive'.

d) Noticee submitted that the corrective action by it shows that there was no malafide intention on its part. Further, Noticee stated that the same shall not be repeated in future.

46. In case of demat account opened under NRI repatriable category, Noticee submitted that it had taken fresh modification request from client for changing its bank mapped in DP account from NRE bank account to NRO bank account and the same was informed to CDSL.

47. With respect to the allegation of execution of DIS in dormant accounts, Noticee submitted that out of total 22714 DIS executed during the inspection period, Noticee could not verify only 8 transactions with the clients having dormant accounts before execution. However, in these cases Noticee verified the transactions post execution by sending transaction cum holding statement through CDSL centralized system which has been accepted by them. Further, Noticee issued instructions internally to strictly carry out pre verification in case of dormant accounts. Further, Noticee did not receive any complaint from any of the above clients with respect to DIS execution.

48. Noticee in its additional submissions stated that it had opened more than 15,000 new accounts in each of last 3 years. Hence, the non-compliances with respect to KYC, if any were exceedingly miniscule to warrant any allegation of violation of any circular/any instructions. Further, the non-compliance, if any was rectified immediately and proof of the same was provided to the inspection team. Noticee further stated that despite having such large operations, the number of complaints received by the Noticee are exceedingly miniscule which certifies the satisfaction level of its clients.

49. Noticee submitted that, in the present case, it is an admitted fact that during inspection, information was provided to SEBI to consider before recommending any action against the noticee, however, the same aspect has not been considered and action of adjudication has been recommended against the notice without following

due procedure of law including principles of natural justice. In this regard, Noticee referred few orders of Hon’ble Supreme Court and Hon’ble SAT.

50. Noticee also relied on observations made by Hon'ble SAT in the following judgements:-

a) In the case of Religare Securities Ltd. Vs SEBI (SAT Appeal No. 23 of 2011 decided on 16.6.2011), the Hon'ble SAT held that the purpose of carrying out inspection is not punitive and the object is that the intermediary should comply with procedural requirements. The Hon'ble SAT held as follows:

“5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that *every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent.*

For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs.”

b) Noticee submitted that in the case of P. G. Electroplast Ltd. Vs SEBI (SAT Appeal No. 281 of 2017 decided on 02.08.2019), the Hon’ble SAT made an observation on Section 15HB of SEBI Act which should be taken into consideration before levying any penalty in the instant proceedings. Section 23D of SCRA and Section 19G of Depositories Act are pari materia to Section 15HB of SEBI Act, therefore, the aforesaid observations would also be applicable to said provisions. The Hon’ble SAT observed as follows:

“17. Under Section 15HB a maximum penalty of Rs. 1 crore can be imposed. For facility, the said provision is extracted hereunder:-

"15HB. Penalty for contravention where no separate penalty *has been provided.- Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."*

18. Penalty can be imposed for failure to carry out a statutory *obligation under the SEBIs Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or* not. *Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act. The above was precisely held by the Supreme Court in* ***Ms. Hindustan Steel Ltd. vs. State of Orissa, 1969(2) SCC 627.***

19. In Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari, (2019) 5 SCC 90, the Supreme Court held that the provisions of Clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. The Supreme Court further held that factors other than those enumerated in Clauses (a), (b) and (c) of Section 15J can also be considered by the Adjudicating Officer.''

51. Finally, Noticee submitted that the alleged violations, if any, neither caused any loss to any investor nor adversely affected any investor and the securities market in any manner. Further, as a result of alleged violations, Noticee did not make any gain or gained any unfair advantage. Same has not been even alleged. Furthermore, the alleged violation is not repetitive. Noticee reiterated that the alleged violations are at the highest a technical, procedural and venial breach and does not warrant, imposition of any monetary penalty.

52. As the inquiry in the matter is complete, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

53. The issues that arise for consideration in the instant matter are:

Issue No. I **Whether the Noticee has violated the following Act, SEBI Circulars and CDSL Operating Instructions:**

a) Section 23D of SCRA read with Clause 1 and 2 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. (1993 circular)

b) SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. (2016 circular)

c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. (2009 circular)

d) SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

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

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

g) Chapter No. 6.5.4.9 of CDSL Operating Instructions.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act.**

And

Issue No. III	**If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, Section 23J of SCRA and Section 19I of Depositories Act read with Rule 5(2) of the Adjudication Rules?**

Issue No. I	**Whether the Noticee has violated the aforesaid Act, SEBI Circulars and CDSL Operating Instructions:**

54. Before going into the merits of the case, I note that Noticee has submitted that principle of natural justice is not followed in the matter, as the Inspection team has not considered the submissions made by it and also not appreciated the explanations given by it during the course of inspection proceedings. Noticee further stated that, no explanation has been given for not accepting the submissions and the full inspection report have been forwarded to AO without considering the comments of the Noticee. In this regard, I note from the available records that the submissions of the Noticee have been taken into account by the inspecting department before framing the aforesaid allegations levelled against the Noticee. In view of the above, the contention of the Noticee with regard to framing charges against it without considering its explanations / submissions is not correct.

55. Noticee further submitted that due to present pandemic, Noticee is working under lot of constraints and difficulties. This has affected the preparation of reply and for that reason Noticee sought adjournment to submit the reply by August 31, 2020 which was not granted. I note that the said difficulty raised by the Noticee has been considered at the time of personal hearing and sufficient time provided to the Noticee to make additional submissions to the SCN.

56. In view of the above, I find that the contention of the Noticee regarding violation of principles of natural justice is untenable. Now, I proceed to deal with the merits of the case.

57. It was alleged in the SCN that in 35 out of 38 instances Noticee had misutilized funds of credit balance clients for settlement obligations of debit balance clients or for own purposes. In this regard, Noticee submitted that as per observations in Inspection, the value of I and J are found to be negative which establishes that no credit clients fund has been utilized towards margin obligations of debit balance clients and proprietary margin obligation in sample period. I note that as per relevant SEBI Circular, the negative value of G indicates misutilization of fund of credit balance clients for settlement obligations of debit balance clients or for own purposes, and the value of I and J further indicates mis-utilization of fund of credit balance clients for margin obligation of the Broker. Hence, negative I and J only implies that client funds have not been used for broker obligations.

58. Noticee further submitted that several accounts with credit balances were of related clients. I find that even after deducting funds of related clients from total funds of credit balance clients, as per the revised calculation submitted by Noticee, G is observed to be negative on 31 instances out of alleged 35 instances. In this regard, I further note that broker may feel that he is not risking client funds by utilizing funds only of his own related clients. However, the principle of non-utilisation of funds of one client for meeting obligation of other clients still gets violated.

59. The Noticee has also submitted that sufficient fund balances were available with the Noticee in terms of investment made in liquid fund, funds available in its own bank account, and arrangement with HDFC Bank for loan. In this regard also, it is important to note that the funds were all available in the Noticee’s own name and not in the name of clients, nor in clients’ accounts. The Liquid Fund was own investment of the Noticee, the overdraft facility with HDFC Bank has been taken on own property of the Noticee and thus, is not funded by way of clients’ money. Rs. 1.55 crore was available in own account of the Noticee, and has not been deposited as cash with clearing corporation/clearing member. Thus, while sufficient funds may have been available with the Noticee, the client funds were not maintained in the client accounts.

60. It was also alleged in the SCN that the funds raised by pledging of client securities with Financial Institutions were not used by the Noticee for obligation of respective clients. I note that the Noticee has accepted the said allegation. I also note that the Noticee had wrongly pledged client securities in excess due to change in software and technical error. I note from the submission that Noticee had subsequently stopped pledging clients' securities for borrowing funds from October 06, 2017.

61. In view of the above, it is established that the Noticee violated the provisions of Section 23D of SCRA read with Clause 1 and 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 and 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

62. The next allegation against the Noticee is with respect to non settlement of the accounts of inactive clients during all the quarters under inspection. In this respect, Noticee submitted that the balances of AP / Sub brokers or Marketing Associates and expenses accounts opened in client category may not be taken while calculating unsettled client balances as these are broker's business accounts. I accept this submission of the Noticee as the balances in such accounts do not belong to the clients. Noticee further submitted that for clients who are not contactable/not traceable, it has made all the efforts to contact such clients and took all possible actions required to settle such clients. I note from the submission of the Noticee that efforts had been taken to settle the said inactive clients. I also note that from Sep 2017 to Sep 2018, the number of unsettled inactive clients as well as value of amount not settled has come down from 693 to 499, and from Rs.2.15 crores to Rs.69.35 lakhs. I find that Noticee took further efforts after observations made by the Inspection Team to reduce the unsettled inactive clients and that the number has come down to 386 accounts not settled due to clients not being traceable which is only 0.87% of total clients. Noticee submitted that as per its policy, the balance of funds and securities below Rs. 1000/- is settled subject to DP charges and any

balance due in commodities market. In this regard, I note that in terms of clause 12d of Annexure A of 2009 circular, broker may retain funds toward outstanding obligations of clients on settlement date. Noticee further submitted that, one client namely Ratnamani Metals & Tube Ltd had given a fund of Rs. 50 lacs to be used as margin collateral in FD form against their exposure in currency markets, and had requested not to break the FD for settlement. I note that this permitted in terms of clause 12 g(ii) of Annexure A of 2009 circular. In view of the above, I find that Noticee has been making efforts to settle the accounts of inactive clients and has shown progress during as well as after the inspection period. In view of the Noticee's submission that it opened over 15000 new accounts in the last 3 years, I find this to be a technical and venial violation of Clause 12 of Annexure A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

63. It was alleged in the SCN that Noticee has not uploaded the details of 600 clients for the month of April 2018 and 2,452 clients for the month of September 2018 to the exchange. In this regard, Noticee submitted that software did not capture the details of inactive clients who were marked as inactive due to non-completion of Central KYC and having Zero fund and Zero stock holding, hence the details were not provided. I note from the submission that Noticee has accepted the said allegation. Noticee further submitted that as corrective step it had updated the software to fetch the complete details of all clients including details of inactive, closed clients. It was further alleged that in 625 instances for April 2018 and 953 instances for September 2018, fund balances reported by the Noticee in CFS under Enhanced Supervision is not matching with back office record. In this regard, Noticee submitted that inspection team has taken Trial balance with MTF (Margin Trading Funded) balances. Team has considered the Trial balance of un reconciled balances i.e. unrealized receipt or unrealized payments as on day of upload i.e. April 30, 2018 and September 28, 2018 and same was considered as realized. Inspection team has considered combined balance of 7 clients with their FD accounts and taken trial balance of only main account. Noticee further submitted that it found only 57

mismatches for April 2018 and 28 mismatches for September 2018, as against total 625 instances in April 2018 and 953 instances in September 2018 alleged in the SCN. Even after taking into consideration the Noticee's submissions, admittedly, there are still mismatches between fund balance of clients and that reported by the Noticee.

64. It was also alleged in the SCN that in 157 instances for April 2018 and in 221 instances for September 2018, there was mismatch between ISIN reported by the Noticee in CFS under Enhanced Supervision and back office record. In this regard, Noticee submitted that Inspection team has taken stock trial with MTFBENE and MTFCOLL balances for matching the Enhance supervision upload; however, Noticee is uploading the MTF stock details on daily basis. In addition Noticee was sending margin statement to clients with all the details of MTF Funded and MTF collateral stocks on respective email ids on daily basis. I note from the submission that Noticee has accepted the aforementioned lapses observed in 220 clients, which is 4.12% of total clients in data uploaded for September 2018 upload, while the same is observed in 157 clients, which is 2.21% of total clients for data uploaded in April 2018. In view of the above, I find that Noticee is in violation of Clause 7 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

65. It was alleged in the SCN that in 3496 instances, Email IDs and in 1894 instances, mobile numbers uploaded by the Noticee in CFS under Enhanced Supervision is not matching with exchange UCC records. In this regard, Noticee submitted that the email ids and mobile numbers have been updated now**.** Noticee further submitted that discrepancy, if any, has been rectified and same shall not repeat in future. I note that Noticee has accepted the said allegation. Therefore, I find that Noticee has violated Clause 2 (B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 read with Clause 6.1.1 (j) of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

66. The next allegation is with respect to KYC. It was alleged that additional documents were not collected for derivative trading in 2 instances for UCC 899631 and 1071813. In this regard, Noticee submitted that Client with UCC 899631 had done first trade in derivative segment on June 22, 2017 and client had provided the required documents like 6 months DP statement with segment addition form before execution of trades in derivative segment. Noticee further submitted that Client with UCC 1071813 had opened account with it on June 17, 2015 in only Cash and CD segments and had provided required documents at the time of KYC only for opening account in CD segment like 6 months bank statement. I perused the annexures provided by the Noticee. I find that the documents provided by the Noticee do not include any proof of date of commencement of trading by the clients in derivatives segment. However, it is clear from the documents submitted by the Noticee that client with UCC 899631 has provided additional document on June 22, 2017 as application for trading in derivatives segment. Further, client with UCC 1071813 had given its trading preference as Currence Derivatives. Therefore, I am inclined to give benefit of doubt to the Noticee in respect of the allegation of not collecting additional documents for derivatives trading in 2 instances.

67. It was alleged that balance sheet was not collected for UCC 903336. In this regard, Noticee stated that the said client account was opened on October 13, 2017 with all the other requirements like Networth Certificate, share holding pattern but balance sheet was not submitted as it was new company incorporated on February 27, 2017. Client informed the Noticee that they will submit balance sheet at the end of FY 2018. As client did not submit the same by July 2018, the status of client account was changed to dormant and client has not traded since July 10, 2018. I perused the documents provided by the Noticee. I find that Noticee has provided the screenshot of document wherein client status is showing as freeze for Branch. However, reason for such action and date of action is not mentioned anywhere in the said document. I am of the view that benefit of doubt can be given to the Noticee in respect of submission of the Noticee that the company was incorporated only on February 27, 2017 and account was changed to dormant as soon as the company failed to provide its balance sheet.

68. It was further alleged with respect to KYC that proof of address was not collected for UCC 1071813 and 898736, No IPV done for UCC CHE2253, No PAN card collected for UCC 1071813, shareholding pattern was not available or not dated for UCC 904629, 901637, 898855, 903059, 906238, 904001, 903336 and 903638, balance sheet was not collected for UCC 904629, 909858, and 903638, DIN was not taken for UCC 901637, 898855, 895900, 909858, 907226, 903059, 904001, 903336 and 903638 and Board Resolution was not collected for UCC 907226 and 909858. In this regard, Noticee stated that after aforesaid observations were pointed out during Inspection, Noticee took remedial actions to comply with the same. It was further alleged that account opening date was not available for UCC 902500. In this regard, Noticee submitted that the account opening date in the system is August 05, 2017, however, due to oversight same was not entered in the form. I note that the Noticee has not disputed that there were lapses in KYC process for aforesaid instances. Therefore, the said allegations stands established against the Noticee.In view of the above, I find that Noticee is in violation of Annexure 2 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 and Clause 3 (i) of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

69. The next allegations is with respect to KYC and account opening process under depository operations. It was alleged that Noticee has not uploaded the scanned images of KYC documents on KRA within 10 working days for 9 cases out of 254 account opening samples. It was also alleged that total 408 KYCs were on ‘’Hold’’ status on CVL KRA portal. In this regard, Noticee stated that delay in uploading KYC documents was due to some technical glitches and not due to any malafide intention. Noticee further stated that out of 408 cases shown on CVL KRA as on December 21, 2018, 100 KRA's were registered by January 23, 2019 and for the rest of 308 client Noticee had sent KRA intimation letter as per its policy and compliance. Further, of 308 clients, 182 clients have been registered in KRA on the basis of documents provided. The remaining 126 clients who were not providing documents, their account has been made 'inactive'. In this regard, I note that the Noticee has admitted that delay in uploading KYC documents was due to technical glitches.

Therefore, the said allegations stands established against the Noticee. In view of the above, I find that Noticee is in violation of Clause 1 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

70. It was alleged in the SCN that for demat account opened under NRI repatriable category (BO ID 1486725), bank details were obtained as NRO status instead of NRE status. In this regard, Noticee stated that it had taken fresh modification request from client for changing its bank mapped in DP account from NRE bank account to NRO bank account and the same was informed to CDSL. I note that this is a single instance which has been corrected by the Noticee. I also do not find which specific clause is alleged violated of the SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 which pertains to trading account opening with a broker. Hence I find that the alleged violation is not established.

71. It was alleged in the SCN that on 8 instances Noticee had not verified transactions originating from dormant accounts independently with the account holders before execution and recorded the details of the process on instruction slip. In this regard, Noticee submitted that out of total 22,714 DIS executed during the inspection period, Noticee could not verify only 8 transactions with the clients having dormant accounts before execution. However, in these cases Noticee verified the transactions post execution by sending transaction cum holding statement through CDSL centralized system which has been accepted by them. I note that the Noticee has not disputed the allegation of non verification of transactions originating from dormant accounts independently with the account holders before execution. Therefore, I find that the allegation of violation of of Chapter No. 6.5.4.9 of CDSL Operating Instruction is established against the Noticee.

72. The text of relevant provisions of the aforesaid SEBI circulars is as below:

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

1. D)"No money shall be drawn from clients account other than –

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

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

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

2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities.

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

2.5. As per existing norms, a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants) Regulations,1996. To strengthen the existing mechanism, the stock brokers shall ensure the following:

2.5.1.Securities of only those clients can be pledged who have a debit balance in their ledger.

2.5.2.Funds raised against such pledged securities for a client shall not exceed the debit balance in the ledger of that particular client.

<u>Client Fund Monitoring</u>

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

3.1 Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3.
3.2 Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

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

B - Aggregate value of collateral deposited with clearing corporations and/or clearing member
C - Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)
D - Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

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

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

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

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate 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.

6.1.1. Monitoring criteria for Stock Brokers

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

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 numberof 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.

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.

SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 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.

SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011

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

A. Applicability: These guidelines are applicable to equity - cash and derivative - segments of the stock exchanges.

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

i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.

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

iii. Stock brokers shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of clients.

SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011

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

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

ii. Client Account Opening Form in two parts:

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

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

SEBI Circular MIRSD/Cir-26/2011 dated December 23, 2011

1. Guidelines for Intermediaries:

i. After doing the initial KYC of the new clients, the intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch.

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

i. It shall be mandatory for all the intermediaries addressed in this circular to carry out IPV of their clients.

Chapter No. 6.5.4.9 of CDSL Operating Instructions

6.5.4.9 If a DIS is received from an account, which has been dormant i.e. not operated for a long period, SIX months or more or any such period specified by CDSL and / or SEBI from time to time, the DP may verify the same with the account holders independently before executing the instruction.

- *The authorized official of the DP verifying such transactions with the account holders shall record the details of the process, date, time, etc., of the verification on the instruction slip under his / her signature*
- *Moreover, Such DIS may be checked and countersigned by another employee of the DP (that is, two step verification).*

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act.**

73. It has been established that the Noticee violated the following provisions:

a) Section 23D of SCRA read with Clause 1 and 2 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

b) SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

d) SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

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

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

g) Chapter No. 6.5.4.9 of CDSL Operating Instructions.

74. I note that with respect to imposition of penalty the Noticee has referred to the orders of Hon'ble SAT which have been considered and taken note of. In this context, I refer the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established 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.''

75. In view of the above, the Noticee is liable for monetary penalty under Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act.

76. The text of Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act is as below:

SEBI Act:

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, liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

SCRA:

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 subbroker, 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.

Depositories Act:

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, Section 23J of SCRA and Section 19I of Depositories Act read with Rule 5(2) of the Adjudication Rules?**

77. While determining the quantum of penalty under Section 15HB of SEBI Act, Section 23D of SCRA and Section 19G of Depositories Act**,** of the following factors stipulated in Section 15J of the SEBI Act, Section 23J of SCRA and Section 19I of Depositories Act have to be given due regard:

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

Factors to be taken into account by adjudicating officer
23J. *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as aresult 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.

Factors to be taken into account by adjudicating officer
19I. *While adjudging the quantum of penalty under section 19H, 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.

78. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by the Noticee.

79. The Noticee has stated that NSE *vide* its order dated October 14, 2019 levied a penalty of Rs. 6.67 lacs for the violation of misutilization of clients' funds and Rs. 5 lacs for the violation of pledging of client securities, therefore, any action at this stage would amount to double jeopardy. I have perused the documents provided by the Noticee in this regard. I note that the violations mentioned in NSE report are with respect to funds available with the Noticee as on December 31, 2017 and pledging of client securities as on January 06, 2017. However, in instant proceedings, the instances of misutilization of clients' fund are for the period during February 2018 to March 2018 and instances of misutilization in pledging of clients securities are as on April 12, 2017 and May 31, 2017. Therefore, the contention of the Noticee that any action at this stage would amount to double jeopardy is not tenable due to violations in different periods.

80. Noticee further stated that in recently concluded NSE inspections, there has not been any adverse observation on enhanced supervision against the Noticee. I note that the said Inspection Report comprises of two observations including Non-settlement of inactive clients. I also take note of the Noticee's submission that there has not been any client complaint against the Noticee for non receipt or delayed receipt of funds or securities in last 3 financial years.

81. I find that though the Noticee has attempted to be compliant to various norms, there have been gaps in the compliance levels, and the Noticee has made efforts to meet with the compliance gaps post the inspection. In view of the violations of various circulars as established above and the mitigating factors, I find that a penalty of ₹3,00,000/- under Section 15HB of SEBI Act, ₹5,00,000/- under Section 23D of SCRA and ₹1,00,000/- under Section 19G Depositories Act will be commensurate with the violations committed by the Noticee.

ORDER

82. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, Section 23J of SCRA and Section 19I of Depositories Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, Section 23-I of the SCRA and Section 19-H of Depositories Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee viz. Monarch Networth Capital Limited:

S. No.	**Penalty Amount**	**Under the provisions of**
1	₹3,00,000/- (Rupees Three lakhs only)	Section 15HB of SEBI Act
2	₹5,00,000/- (Rupees Five lakhs only)	Section 23D of SCRA
3	₹1,00,000/- (Rupees One lakhs only)	Section 19G of Depositories Act
Total	₹9,00,000/- (Rupees Nine lakhs only)	

83. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility

available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

84. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

85. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: SEPTEMBER 23, 2020
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER