BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 30664]

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.

In respect of

SS Corporate Securities Limited

PAN: AABCS3726M

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted inspection of SS Corporate Securities Limited (hereinafter referred to as "**Noticee**" / "**SSCL**") on July 31, 2023 and August 07-08, 2023 to look into various compliance requirements adhered by the Noticee. The inspection was conducted for the period beginning April 01, 2022 to June 30, 2023 (hereinafter referred to as "**inspection period**").

2. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated December 12, 2023 submitted to SEBI, certain alleged non-compliances were observed of SEBI (Stock Broker) Regulations, 1992 ("**Brokers Regulations**") and various circulars issued therein. The extracts of the violation alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the tabulation below:

Sr. No.	Alleged Violations (summarized)	Regulatory provisions
A	Call recording/ order placement mechanism and maintenance of records	Clause III of SEBI circular SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018, regulation 21(1) and 21(4) of Brokers Regulations r/w clause A(1), A(2) and A(5) as specified under Schedule II of Brokers Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide order dated April 4, 2024, appointed the undersigned as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995'**) to inquire into and adjudge under the provisions of sections 15A(a), 15A(c), 15HAA(a), 15HAA(g) and 15HB of SEBI Act, the alleged violations of Brokers Regulations and various circulars issued therein, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated April 26, 2024 was issued to Noticee in terms rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed under sections 15A(a), 15A(c), 15HAA(a), 15HAA(g) and 15HB of SEBI Act on the Noticee for the aforesaid violations alleged to have been committed by it.

5. The Noticees, vide letter dated February 9, 2024 replied to the SCN stating, inter alia, the following:

- *The Noticee has sufficiently provided its submissions to SEBI by way of its earlier responses dated December 18, 2023 (Original Reply) and January 8, 2024 (Supplementary Reply), which seems to have not been considered by SEBI for the purposes of issuing this SCN, and, which sufficiently provides answers and evidences against the allegations put up by SEBI originally in the notice dated November 24, 2023, carried forward in this SCN, which if would have been considered by SEBI, would not have resulted to this SCN at all.*
- *Order slips duly signed by the following clients before placing their orders with Noticee or APs on the days of orders being questioned by the inspecting team- these order slips are signed by respective client which affirms them having placed the order and confirming that these were as per their instructions.*
- *The Noticee's robust system of compliance with the requirements of prevention of unauthorised trades are as follows:*

  a. All the orders to be placed by clients are confirmed in advance clearly and only then the orders are punched.

  b. Once the orders are placed in the system of the stock exchange, the trades are undertaken by the system.

  c. In case any order is to be modified, pending its execution, same is done by the broker only after client's confirmation in advance.

  d. All order slips as well as trade slips are generated and are signed by the clients where orders are being placed personally.

  e. All the trade confirmations are sent on the registered mobile number of clients immediately after the trade.

  f. On the same day evening, the clients are regularly sent contract note on their registered email ID which confirm these transactions and also the SMS confirming all positions for the day.
- *The Noticee has never had any dispute or difference of opinion or confusion about orders placed by the clients as the system of prohibition of unauthorized trading put up by the Noticee is very effective and robust.*
- *Para III of the 2018 Circular or any other provision in any other circular issued by SEBI, NSE and BSE, if any,* ***does not mention or provide*** *for a situation where the client is not placed remotely and is present live, there and then, at the location*

of the stock broker or the APs, giving instructions and evidencing the trade being placed directly under his/her supervision, instruction and presence, clearly and rightly in front of his/her eyes.

- *There is no need or requirement of evidencing the presence of the client by checking his/her entries in the office of the broker or the APs in a Visitor's register.*
- *Para II, III and Para IV of the 2018 Circular nowhere obliges or even hints that a stock broker needs to maintain a visitor register at its office and use this as evidence to confirm that the client visiting the stock broker office.*
- *The maximum of the allegations put up by SEBI in Annexure 2, Annexure 3 and Annexure 4 of the SCN, are talking about the non-maintenance of the Visitor Register and related issues, which is not required to be maintained by the applicable law.*
- *The Noticee submits that for each of the 16 client trades mentioned in Annexure 3, the Noticee has submitted detailed explanations relating to the gap in understanding from SEBI's side regarding those trades, in its replies dated December 18, 2023 and January 8, 2024.*
- *The Noticee submit that all the investors (Noticee's clients) in question have submitted respective* ***Affidavits*** *that all the orders were placed by them with the Noticee or with APs themselves, personally, while visiting the office of the Noticee. Inspite of clear evidence of all* ***Order Confirmation Slips*** *being countersigned by the said investors (clients) and provided to the inspection team duly supported by affidavit of each investor (client) that they have no complaint of any kind and all the orders were placed only with their consent. However, the inspection team from SEBI, without any requirement, insisted on production of visitors register to be provided to them.*
- *The investor (clients) of the Noticee have submitted their Affidavits swearing in that every order for trades undertaken by them through the Noticee has been duly placed by their advance approval and executed thereafter and that there is no complaint or non-compliance from the Noticee's side.*
- *The Noticee submits that the sample Visitor's Register taken of APs Banwari Lal Aggarwal, Sandeep Rathi and Gajender Singh, were maintained by the respective APs as a matter of administrative action done by their staff for the*

safety and security of their office premises and to keep a record of the persons going in and coming out of their offices, so that the confidentiality of the data, records and business of clients contained in the offices of the APs, whether electronically or not, is maintained.

- *At the Noticee's office and the APs office, generally, there is a person assigned for taking down the entries of the persons coming in and going out of their office premises. It could be a guard or staff member. That person takes down the names, contact info, if any, time of entry and exit.*
- *At the office of the Noticee and the APs connected to it, one guard/ staff each was responsible for making the entries in the Visitor's Register every day. The person responsible for physical security at the reception or gate is familiar to most of the people coming in and going out of their offices, as these are regular clients of the Noticees and APs who often visit these offices and place physical orders. These clients' particulars are entered in the Visitor's register by guard or reception person or by the visitor himself. There is no system to allow entry only when signatures have to made by visitor*
- *Even the **Master Direction - Know Your Customer (KYC) Direction, 2016 (Updated as on January 04, 2024)** nowhere provides for the use of KYC signature on any such confidential security document like Visitor's Register or so. It is only required to open a bank account. Nonnally, no organisation will allow any visitor or other person to inspect who else came in on different occasions except in case of emergency or when a crime is being investigated by police authorities or by internal security for operational control reasons.*
- *In the nutshell, the signatures given in the client's KYC is not legally and ethically required to be used for signing the advance Order Placement Proof and the Visitor's register. **Hence, the list prepared by SEBI in SCN in Annexure 4 for different APs, where any of the above mentioned are not matching to each other, or not matching any two others, or not matching** any one of the signature mentioned in the above three document types, stands no legal ground and does not prove any default against the Noticee.*

- *The 'Inspection Report of SS Corporate Securities Limited (Stock Broker), INZ000219533, FY 2023-24' prepared by SEBI in its 'Para 2– General Information About The Inspection provides that:*

14.07.2023	*Inspection Notice*
31.07.2023	*Start Date of inspection*
08.08.2023	*End Date of inspection*
04.09.2023	*Receipt of final observations from NSE*
21.09.2023	*Receipt of final observations from BSE*
31.10.2023	*Submission of final inspection report*

- *Once the Inspection Report was submitted to SEBI, SEBI could only take action under Chapter VIA of the SEBI Act or section 24 of the SEBI Act, which are discussed hereinafter, in the later paragraphs, Part II of this reply.*
- *Hence, these statements are* ***inadmissible as evidence*** *to that extent that these don't form part of the observations contained and allegations imposed in the Inspection Report, and, hence, the Noticee is not obliged to reply to these observations/recorded statements. In any case the notice has clearly explained that the exercise of the SEBI officials has been completely outside law and beyond normal action.*
- *Also, these statements were* ***neither shared, nor intimated*** *in the letter dated November 24, 2023 upon which the reply from Noticee was sought and hence, not considered in the Noticee's reply dated December 18, 2023 and Supplementary Reply dated January 8, 2024.*

- *It seems that SEBI, NSE or BSE is* ***not clear*** *as to whose registers are of concern and whom to ask for clarifications. Also, SEBI did not share the basis on which these 4 APs were called in for recording of statements and what allegations were up against them each, in their own case. Also, the recorded statements of the APs taken by SEBI shows enough jeopardy, as in one question, these APs answer that they used to maintain visitor register, and in the other, they say that there was no proper mechanism for visitor's register.*

- *The Noticee did not instruct any illegal act to the APs of falsely preparing the visitor's register. The APs have themselves given the statements that there was proper mechanism of visitor's register in place. In a 2-day inspection conducted by SEBI, NSE and BSE, SEBI inspectors instructed the Noticee to receive the visitor's register from the offices of APs also before/by the next day and the Noticee only did so and called for the visitor's register from their offices in scanned copies, as physical delivery overnight from far-away places was impossible to do.*
- *The Noticee reiterates here that all orders are placed as per legal procedure. For the orders, that are placed on the basis of calls, the Noticee has the call recordings. In respect of clients personally visiting the premises to place orders, order slips duly countersigned by them and affidavit confirming placement of orders by them are all on record and have to be considered as evidence, which clearly establish that the allegations in SCN are all without considering important facts.*
- *For all the physically placed orders, the Noticee used to take confirmation from the client that the Noticee shall place the order as instructed by the client, by way of Order Confirmation Slips, which have been earlier submitted by the Noticee.*
- *No APs admitted that fake/ forged visitor's register, were submitted to the SEBI Inspection Team. It may kindly be noted that all the alleged statements as enclosed with the Show Cause Notice are almost same I similar is most of the points. The alleged statements are type written and same wordings have been copied as it is in response to the number of questions.*
- *It is important to note that all the Aps were examined independent of each other, their statements should have been in difference language or different versions and could not have been in same rhythm.*
- *The Noticee is not in violation of Regulation 21 of the Stock Brokers Regulations as it has produced to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said inspecting officer required.*
- *The Noticee has furnished every possible document under its control to the inspecting authority during and after the inspection was carried out on August 7-8,*

2023. The document that SEBI is insisting and deliberating of being provided by the Noticee is "Visitors Register", which is nowhere provided in the entire capital markets law in India to be maintained by any stock broker at its premises. There is no circular or regulations or guidelines issued by SEBI in tenns of law to maintain a visitors register and there are no such requirement that the visitors should write the particulars in the register in their own hand writing. Also, there is no requirement that the signature in full are to be made by every visitor investor and their signature should be as it is the same as are in the client/ investors registration form.

- *The present issue in subject is not regarding the Noticee filing its books of accounts as required under SEBI Act, Stock Broker Regulations, etc. There is no observation made by SEBI or any stock exchange regarding the non-filing of books of accounts by the Noticee, and, hence, the said sub-section (c) of section 15A does not apply on the Noticee.*

6. The Noticee sought inspection of documents vide email dated May 2, 2024. Accordingly, an opportunity of inspection of documents was given to the Noticee on May 17, 2024 wherein the Authorised representative (hereinafter referred to as “AR”) appeared and inspected the relevant documents.

7. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on July 9, 2024 vide notice dated June 20, 2024. The Noticee sought adjournment of the personal hearing scheduled vide email dated July 4, 2024. Acceding to its request, another opportunity of personal hearing was given to the Noticee on August 2, 2024. The AR appeared on the scheduled date and reiterated the submissions made vide letter dated June 14, 2024. The Noticee was further asked to clarify that reason for not submitting the copies of the order slip to the inspection team during inspection. The Noticee vide letter dated August 9, 2024 stating, inter alia, the following:

- *The Stock Broker has the policy of getting an order slip signed by the client wishing to place an order, physically, at the time of placing the order on behalf of the client, at the Head Office or AP's office. We maintain and save such order slips as proof for authorisation at the time of placing client orders.*
- *The Stock Broker received a Notice dated July 14, 2023 from SEBI intimating about the inspection to be conducted, along with an elaborate 16 pager 'Pre-Inspection Questionnaire' enclosed to it, which also did not seek information on 'order slips' maintained by the Stock Broker.*
- *Thereafter, at the time of inspection, during August 7 – 8, 2023, the inspection team did not ask for the pre-order placement 'order slips' and only enquired about 'visitors register'. The 'order slips' were available with the stock broker in their storage at all times. It may be noted that there is no communication regarding the order slips to be provided.*

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

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

ISSUE I- Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding call recording/ order placement mechanism and maintenance of records and therefore violated Clause III of SEBI circular SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018, regulation 21(1) and 21(4) of Brokers Regulations r/w clause A91), A(2) and A(5) as specified under Schedule II of Brokers Regulations?;

ISSUE II- Does the violation, if any, attract monetary penalty under sections 15A(a), 15A(c), 15HAA(a), 15HAA(g) and 15HB of SEBI Act?;

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding further, it will be appropriate to refer the provisions of law referred to in the SCN. The same are reproduced hereunder:

SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018
https://www.sebi.gov.in/legal/circulars/mar-2018/circular-on-prevention-of-unauthorised-trading-by-stock-brokers-_38365.html

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, which 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 messages through mobile phones,
f. Any other legally verifiable record.
When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/ securities by client in respect of disputed trade, etc. shall also be considered.

Brokers Regulations

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

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

9. Conditions of registration

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

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(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.

FINDINGS

10. On perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case I record my findings hereunder:

ISSUE I:- Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding call recording/ order placement mechanism and maintenance of records and therefore violated Clause III of SEBI circular SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018, regulation 21(1) and 21(4) of Brokers Regulations r/w clause A91), A(2) and A(5) as specified under Schedule II of Brokers Regulations?

11. During verification of proof of order placement, it was alleged that the Noticee had no proper mechanism to maintain voice recording system during inspection period. Out of the initial sample of 100 trades provided, for 79 clients, Noticee provided post trade confirmation slip duly signed by clients, which implied that the confirmation is taken subsequent to order placement which is in violation of SEBI circulars mandating that all brokers shall execute trades of clients only <u>after</u> keeping evidence of the client placing such order. Further, upon perusal of corresponding visitor registers, it was observed that corresponding entries in

the visitor register for the 20 clients who have given post trade confirmation slip is not available.

12. The Noticee submitted that post April 2023, centralized voice recording has been implemented and in case of visiting clients, they had been getting client signatures on order/ trade confirmations. Hence, another sample of 20 orders across CM and F&O segments, all during the period May 2023 and June 2023 (i.e. after the stated implementation in April 2023) was provided by the Noticee. On examination, it is observed that out of the 20 clients / trades, 3 were self-trades by APs & 1 IBT trade.

13. Out of remaining sample of 16 client trades, there were issues related to maintenance of order placement proof for 15 trades. Further, it is alleged that not a single client for whom physical copy of post trade confirmation is provided matches with the visitor register maintained by broker/ AP. It is alleged that no proper records are being maintained by the Noticee and certain post trade confirmations have merely been provided on demand by the inspecting team as in every single case of physical trade confirmation, there is no corresponding entry in the visitor register.

14. Visitor registers of the APs were also sought from the Noticee and a few AP visitor registers were perused on sample basis wherein it is observed that for APs a) Banwari Lal Aggarwal, b) Sandeep Rathi, and c) Gajender Singh, the handwriting of all the visitors for the APs on a particular day is same throughout which is practically impossible as different visitors doing entry in visitor register will have different handwriting. On a plain perusal, even the flow and pattern of the signatures appear similar. Further, in some instances the signature of same client in visitor register is also different on different dates. Sample clients a few APs/ branches were also shared with the Noticee to provide KYC and order placement proof, wherein it is observed that in many cases Signature of Client in Visitor Register is not matching with Signature in KYC/Order Placement Proof

and in many cases Signature of Client in Visitor Register and Order Placement Proof is not matching with Signature in KYC.

15. Due to the alleged multiple instances of mismatch in the signatures available in KYC and order placement proof provided by the Noticee, the visitor registers also appeared suspicious, Notice for Statement recording for 4 APs was issued to the Noticee and statement recording was done on November 8, 2023 for APs (a) Banwari Lal Aggarwal, (b) Kamlesh Bansal, (c) Sandeep Rathi and (d) Sadhuram Mittal.

16. During statement recording, the APs have *inter-alia* stated that they recreated the visitor registers on the directions of the Noticee. They also accepted that they do not maintain any order placement proof like call recording and in certain cases, signatures of clients in visitor registers and order placement proof have been made by the APs or associated staff. APs also admitted that as certain order placement proof for sample trades were not available, the Noticee instructed the AP to create order proof in back date and hence the AP created back dated order placement proof by putting signatures of clients. It was also informed that while there is call recording machine for landlines, the efficiency and proper functioning of the machine is questionable.

17. From the above, it is alleged that the Noticee has serious lapses regarding maintenance of order placement proofs and call recordings. When asked for order placement proofs, the Noticee provided physical post trade confirmations for majority of the sample trades. However, for majority of these cases also, the respective names of the clients did not match with visitor register, for both Noticee's Head office/ APs.

18. It was further alleged that all the physical order placement proofs provided by the Noticee are post-order confirmations which imply that the confirmation was taken subsequent to order placement which is in violation of SEBI circulars

mandating that all brokers shall execute trades of clients only after keeping evidence of the client placing such order.

19. Further, on the basis of the statement recorded, it is alleged that the Noticee submitted fake/ forged visitor registers to SEBI inspection team which it admittedly used as proof for client visits, thereby projecting orders placed during walk in. It has *inter-alia* allegedly made false entries in documents which were required by the inspection team, to influence the inspection. Such alleged false entries in visitor registers are misleading submissions and misrepresentations to SEBI team in order to create evidence/ proof of order placement without having any record.

20. Accordingly, it is alleged that the Noticee has not only failed to maintain and provide evidence of the order placement by clients, it has blatantly submitted forged and falsified evidences thereby indulging in fraudulent practices and has knowingly submitted falsified information, records, documents to SEBI so as to influence the inspection being carried out by SEBI. The aforesaid actions of the Noticee are allegedly in violation of Clause III of SEBI circular SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018, regulation 21(1) and 21(4) of Brokers Regulations r/w clause A(1), A(2) and A(5) as specified under Schedule II of Brokers Regulations.

21. The Noticee submitted that it had provided all the relevant information to SEBI including affidavits of APs, clients stating that orders were placed only based on the instructions of the clients. The Noticee submitted that order slips were duly signed by the clients before placing the orders with the Noticee or the APs and submitted the order slips signed by the respective clients which affirms them having placed the order. The Noticee also submitted copies of affidavits by the clients affirming that the trades were done at the order of the client while they were personally visiting the premises where trading terminal is operational.

22. During the personal hearing the Noticee was specifically asked the reason for not submitting the order slips to the inspection team. The Noticee submitted that the inspection team did not seek information on the "order slips". From the stock broker questionnaire submitted by the Noticee I note that the Noticee was asked "*Explain the policy for maintenance of records or client orders, including policy for Aps for this purpose*". The Noticee replied that, "*The records for client placement of orders are maintained. The registered mobile numbers are saved on the incoming call servers to ensure that incoming mobile number and the trading code mapped to it are displayed to the dealer before receiving the call*." The Noticee simply submitted to the inspecting team that records for client placement of orders are maintained by it. It was the duty of the Noticee to provide the inspection team with all supporting documents to substantiate its claims. However, admittedly, the Noticee did not do so.

23. I have analysed the documents submitted by the Noticee after the inspection and also during this proceedings. For illustration I shall discuss one of the order slips of Lalita Bansal (one of the clients of Noticee) submitted by it.

Below mentioned orders are in my knowledge and as per my instructions:

Date	Time	UCC	Order Type	Buy/ Sell	Trading Symbol	Total Qty	Price	Modification
16-06-2023	9:10:01	IK283	Limit	Sell	WIPRO	9000	385.5	
16-06-2023	12:22:17	IK283	Limit	Sell	EXIDEIND	3600	215.35	
16-06-2023	12:22:30	IK283	Limit	Sell	EXIDEIND	3600	215.75	
16-06-2023	15:29:22	IK283	Limit	Buy	IEX	2000	126	

LALITA BANSAL (AJIPB3920B)

Trading Code – IK283

24. Generally the documents given by the clients before placing the orders are those which indicate the name of the shares, the quantity and whether to buy or

sell which has to be time stamped and countersigned. On receipt of the order slips the broker is to place the orders. It is noted from the specimen given by the Noticee that the trade time along with the order type is specified which can only be recorded after the execution of the trade. Further, the time mentioned in the specimen ranged from 9:10:01 to 15:29:22. Thus the specimen given by the Noticee are not order slips as claimed by the Noticee but are post order confirmation obtained from the clients.

25. The Noticee did not provide any order slips that were signed by the clients either to the inspection team or to the undersigned. In the absence of the same, I cannot accept the submission of the Noticee that prior approval of the clients were taken and proper records were maintained by the Noticee before placing orders.

26. I agree with the Noticee that nowhere in para II, III and IV of the 2018 circular obliges or even hints that a stock broker needs to maintain a visitor register at its office and use this as evidence to confirm that the client visiting the stock broker office. However, as a matter of prudent practice, the Noticee may maintain the visitor register to have proper record of the physical visits of the client in the office of the Noticee or AP. In the absence of any other documents to support the claim that the clients were present physically at the Noticee's office to place order, the inspection team perused the visitor's register to cross check its submission. On perusal of the visitor register, it is noted that the handwriting in the visitor register is same throughout and there was also mismatch of signatures of clients in the visitor register and in KYC. As the record in the visitor register seemed suspicious, the inspection team recorded statement for 4 Aps, viz., (a) Banwari Lal Aggarwal, (b) Kamlesh Bansal, (c) Sandeep Rathi and (d) Sadhuram Mittal on November 8, 2023, wherein they have stated under oath that no proper record of order placement is maintained by them and the visitor register is filled by their own staff.

27. However, the Noticee submitted copies of affidavit filed by the aforesaid 4 APs stating that they have not recreated the visitor's registers on the direction of the broker, they maintain order placement proofs like call recording and all the orders to be place by clients are confirmed in advance.

28. I observe that the same 4 APs have given two opposite statements under oath in two different situation. There is no credibility in their statements. Therefore, I do not consider either of their submissions.

29. I note that the Noticee had serious lapses regarding maintenance of order placement proofs and had only submitted physical post order confirmation which implied that the confirmation was taken subsequent to order placement which is in violation of SEBI circulars mandating that all brokers shall execute trades of clients only <u>after</u> keeping evidence of the client placing such order. By not maintaining evidence of order placement and failed to furnish the requisite documents, the Noticee has also failed to act with due skill and care and failed to comply with the statutory requirements.

30. In view of the above, I find that the allegation of violation of Clause III of SEBI circular SEBI/HO/MIRSD/ DOP1/CIR/P/2018/54 dated March 22, 2018, regulation 21(1) and 21(4) of Brokers Regulations r/w clause A(2) and A(5) as specified under Schedule II of Brokers Regulations by the Noticee stands established.

ISSUE II- Does the violation, if any, attract monetary penalty under sections 15A(a), 15A(c), 15HAA(a), 15HAA(g) and 15HB of the SEBI Act?

31. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established 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.''

32. Therefore, the aforesaid violations committed attract monetary penalty under sections 15A(a), 15A(c) and 15HB of the SEBI Act. The text of provision is reproduced hereunder:

Section 15A of SEBI Act: - Penalty for failure to furnish information, return, etc.

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

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15HB of SEBI Act: - Penalty for contravention where no separate penalty has been provided:

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

33. The power to impose penalty by the Adjudicating Officer is derived from section 15I of the SEBI Act which is reproduced below:

15-I. Power to adjudicate

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB, the Board may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

34. It is noted that the Board has not authorised the Adjudicating Officer to adjudicate under section 15HAA of the SEBI Act. Therefore, I am not proceeding under the said section.

ISSUE III- If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

35. While determining the quantum of penalty under SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act and 23J of SCRA which reads as under:

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

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

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

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

(c) the repetitive nature of the default

36. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its failure nor has it been

alleged by SEBI. As regard to the repetitive nature of the default, there is nothing on record to show that the nature of default by the Noticee is repetitive.

37. I find that the Noticee was under a statutory obligation to abide by and comply with the provisions of the Circulars / directions issued by SEBI and stock exchanges, which they failed to do during the inspection period. The very purpose of the said provisions is to deter wrongdoing and promote ethical conduct in securities market. Noticee being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. The violations as established above certainly deserve imposition of penalty.

ORDER

38. Having considered the facts and circumstances of the case, the factors mentioned in section 15J of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty:

Under section	**Penalty Amount**
15A(a) and (c)	Rs.2,00,000/- (Rupees Two Lakh only)
15HB	Rs.1,00,000/- (Rupees One Lakh only)
TOTAL	**Rs.3,00,000/- (Rupees Three Lakh only)**

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

39. 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.

40. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to Securities and Exchange Board of India.

BARNALI MUKHERJEE Digitally signed by BARNALI MUKHERJEE Date: 2024.08.19 14:43:05 +05'30'

DATE: August 19, 2024 **BARNALI MUKHERJEE**

PLACE: MUMBAI **ADJUDICATING OFFICER**