BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2023-24/29101

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

In respect of:

Samco Securities Limited
(PAN- AAICS2455A)
(SEBI Reg. No.- INZ000002535)
(SEBI Reg. No.- IN-DP-CDSL-443-2008)

In the matter of Samco Securities Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as **'SEBI'**) conducted inspection of Samco Securities Limited (SEBI Reg. No.- INZ000002535), (hereinafter also referred to as **'Noticee' / 'Member'/ 'Samco'/ 'Depository Participant' or 'DP'**), a Member/Stock Broker of National Stock Exchange (hereinafter also referred to as NSE), Bombay Stock Exchange Ltd. (hereinafter also referred to as BSE) and Depository Participant of Central Depository Services Limited (hereinafter also referred to as CDSL), for the period April 01, 2020 to November 30, 2022 (hereinafter inspection by SEBI also referred to as the 'inspection by SEBI' / 'inspection' and period of inspection also referred to as the 'Inspection Period' / 'IP') to look into various compliance requirements including investor service / complaints, KYC compliance, on-boarding of clients, fees / charges, conditions of grant of registration and Anti Money Laundering (AML) guidelines issued by SEBI from time to time etc.

2. The findings were communicated by SEBI to the Noticee vide SEBI letter dated March 21, 2022 and vide letter dated April 15, 2022, the Noticee submitted its final reply to the observations on Inspection.

3. Pursuant to the Inspection by SEBI, based on the findings of the inspection and examination of replies of the Noticee, SEBI initiated adjudication proceedings under section u/s 15HB of SEBI Act, 1992 (hereinafter also referred to as 'SEBI Act') and under Section 19G of Depositories Act, 1996 against Noticee for alleged violations of provisions of following Circulars, Regulations & Guidelines during the Inspection Period:

3.1. SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
3.2. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.
3.3. SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.
3.4. SEBI (Stock Brokers) Regulations, 1992.
3.5. SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.
3.6. SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.
3.7. NSE Circular NSE/INSP/36889 February 02, 2018.
3.8. SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/ P/2020/73 dated April 24, 2020 (Communique CDSL/OPS/DP/POLCY/ 2020/203 dated April 27, 2020) and the FAQ issued by CDSL vide Communique CDSL/OPS/DP/POLCY/2020/342 dated August 10, 2020.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Upon being satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations by Noticee , SEBI, in exercise of powers under Section 19 of the SEBI Act, read with Sub-section (1) of Section of Section 15-I of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("*Adjudication Rules*") and under Section 19 of Depositories Act, 1996 read with Rule 3 of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter also referred to as the 'Depositories Rules') appointed Dr. Anitha Anoop, CGM as the Adjudicating Officer to inquire into and adjudge upon the aforesaid alleged violations against the Noticee. Pursuant to transfer of Dr. Anitha Anoop, SEBI vide communique dated September 05, 2022 had appointed the undersigned as AO in the instant matter.

C. SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. A Show Cause Notice No. SEBI/EAD-5/AN/NS/53574/1-2/2022 dated October 20, 2022 (hereinafter also referred to as "SCN") was issued to Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 15HB of SEBI Act and Section 19G of Depositories Act 1996 be not imposed on the Noticee for the violations as alleged.

6. The summary of allegations brought out in the SCN is given below:

"….

2. Pursuant to the inspection, following has inter-alia been observed and alleged by SEBI:

*3.1 **NON SETTLEMENT OF CLIENTS' ACCOUNTS:** It has been alleged that:*

*3.1.1 Active Clients – Out of sample 100 active clients, 40 clients' accounts were not settled. The amount of non-settlement ranges between Rs. 75.12 Lakh- Rs. 30.21 Crore. (Details are placed at **Annexure C**).*

*3.1.2 Delay in Settlement of Active Clients- In respect of 9 instances gap between two quarterly settlement dates is more than 90 days. The range of days for delay in settlement was 3 to 79 days (Details are placed at **Annexure D**).*

*3.1.3 Inactive Clients- Across five quarters 55,745 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 2.28 Crore and average amount of non-settlement across 5 quarters is Rs. 45.61 Lakh. Further, across 4 months 66,019 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 11.05 Crore (Details are placed at **Annexure E**).*

In view of the above, it is alleged that Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with clause 5.1 & 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.

*3.2 **INCORRECT SUBMISSION OF DATA TO EXCHANGE:***

*3.2.1 In 12 instances (3 clients) Noticee wrongly reported clients' holding of stock amounting to Rs. 9.02 Crore (Details are enclosed as **Annexure F)**.*

*3.2.2 In 16 instances the Noticee reported incorrect quantity in weekly holding submission to exchange (Details are placed at **Annexure G)**.*
*3.2.3 The broker incorrectly reported the data towards weekly monitoring of client funds for all 5 sample dates (Details are placed at **Annexure H)**.*
*3.2.4 In 80 instances, the broker incorrectly reported the data towards monthly client funds balances. SEBI observed that Noticee has reported the following (Details are placed at **Annexure I**):*
3.2.4.1 Excess reported in monthly submission: No. of clients - 6, Amount - Rs.1965/-
3.2.4.2 Short reported in monthly submission: No. of clients - 74, Amount - Rs.50,52,998/-

3.2.5 The broker incorrectly reported value of collateral of debit balance clients. SEBI observed that Noticee has not reported correctly the Value of collaterals from debit balance clients.

Particulars	Data uploaded by Trading Member	As per our calculation	Difference
Value of collaterals from the debit balance clients	67,31,39,968	7,12,64,541	60,18,75,427

3.2.6 The broker incorrectly reported three demat accounts details to exchange. Details are as follows-

Sr. No.	Account Number	DP Name	Tagging as per Exchange Records	Tagging as per DP Statement
1	1100002800000978	Metropolitan Clearing Corporation of India Limited	Pool Account	Early Pay-In Account
2	1302950000004891	IndusInd Bank Limited	Client Account	Own/Proprietary Account
3	1205420001020522	Samco Securities Limited	Client Account	Client Margin Trading Securities Account

In view of the details mentioned at paragraphs no. 3.2.1 to 3.2.6 above, it is alleged that Noticee has violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

3.3 ***STOCK RECONCILIATION***:

3.3.1 *In 13 instances Noticee has not done periodic reconciliation of back office holdings of client's securities with actual stocks lying in DP accounts. (Details are placed at **Annexure J**).*

In view of the above it is alleged that Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.

3.4 ***CLIENT FUNDING:***

3.4.1 *In 24 out of sample 75 instances the broker has funded clients beyond T+2+5 days. Total amount of funding is Rs. 2.77 Crore. (Details are placed at **Annexure K**).*

In view of the above, it is alleged that Noticee has Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

3.5 ***FUNDS IN SUSPENSE ACCOUNT NOT RECONCILED:***

3.5.1 *The Noticee has not done reconciliation of funds lying in suspense account either by allocating the credit of funds to respective clients or returning the funds from where it received. Balance in Suspense A/c as on November 30,2021 was Rs. 27.24 Lakh.*

In view of the above, it is alleged that Noticee has violated Clause A(1) & A(2) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

3.6 ***MISMATCH IN RETENTION STATEMENT:***

3.6.1 *During inspection SEBI observed the following (Details are placed at **Annexure L**):*

3.6.1.1 *Securities Balance mismatch - 1 client; 1 instance, Short Reported in retention statement - Rs. 41,85,87,259/-*

3.6.1.2 *225% of Margin Amount mismatch - 1 client; 3 instances, Excess Reported in retention statement - Rs. 1,07,65,502/-*

In view of above, it is alleged that Noticee has violated the Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

3.7 ***KYC & ACCOUNT OPENING PROCESS:***

3.7.1 In case of Online Account opening, out of 1016 sample data, 985 accounts were opened through online mode. There is delay in following the guidelines by Noticee for online account opening. Noticee has started capturing Live photograph of the client with effect from October 2021. In 931 accounts (out of 985) opened prior to October 2021, Noticee has not captured Live photograph of the client.

In view of the above, it is alleged that Noticee has violated provisions of SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/ P/2020/73 dated April 24, 2020 (Communique CDSL/OPS/DP/POLCY/ 2020/203 dated April 27, 2020) and point no. 2 of the FAQ issued by CDSL vide Communique CDSL/OPS/DP/POLCY/2020/342 dated August 10, 2020.

….".

7. The SCN was duly served on the Noticee through SPAD and by e-mail dated October 20, 2022. The receipt of SCN was acknowledged by Noticee vide email and letter dated November 07, 2022 and requested for inspection of all records and documents on which SCN was relied upon. Further, Noticee stated that it will thereafter file the reply to the SCN within a period of four weeks from completion of Inspection and receipt of copies of the documents inspected. Vide email dated November 22, 2022, Noticee was granted the opportunity of Inspection on November 24, 2022. On the scheduled date of Inspection, Authorised Representatives (hereinafter also referred to as the 'AR' / 'ARs') appeared for inspection on behalf of Noticee and copy of Inspection Report was provided to the ARs during the Inspection. On same day, vide email dated November 24, 2022, Noticee was provided the annexures of Inspection Report as requested by ARs during the Inspection.

8. Thereafter, vide Hearing Notice reference no. SEBI/EAD-5/AN/NS/60818/1/2022 dated December 05, 2022, Noticee was granted an opportunity of hearing on December 12, 2022. Vide its email dated December 09, 2022, Noticee requested to adjourn the said hearing and accordingly, vide email dated December 21, 2022, Noticee was granted another opportunity of hearing on December 27, 2022. Noticee vide email dated December 26, 2022 once again requested to adjourn the said hearing and accordingly, vide email dated December 26, 2022, Noticee was granted one more opportunity of hearing on January 11, 2023. Vide its email dated January 10, 2023, Noticee submitted its reply to the SCN.

9. On the scheduled hearing date, the Noticee appeared in person through its Authorised representatives (**ARs**) for the hearing. During the hearing, Noticee relied upon and reiterated the submissions made by it *vide* letter January 10, 2023. During the hearing, Noticee requested for time to make its additional submission and accordingly, time till January 17, 2023 was granted to the Noticee. Vide letter dated January 17, 2023, Noticee submitted its additional submissions.

10. I note that vide email dated December 22, 2022, Noticee had indicated that it had filed consent /settlement application with SEBI. Vide email dated December 26, 2022, the receipt of the settlement application filed by Samco Securities Ltd was confirmed by the concerned Department of SEBI. Further, in this regard, vide email dated March 15, 2023, the concerned department of SEBI inter alia informed that the said settlement application had been rejected and that the Noticee had been informed about the same vide SEBI email dated March 15, 2023.

11. The submissions made by the Noticee as its reply to SCN *vide* letter dated January 10, 2023 is reproduced below:

"….

1. *We refer to the captioned SCN and are hereby responding to it. At the outset, we deny the contents of the SCN unless specifically admitted herein. Nothing contained in the SCN may be deemed to be admitted by us for lack of specific traverse. We humbly reserve our right to provide further submissions and evidence if needed.*

2. *It is pertinent to note at the outset that the allegations in the SCN are based solely on an undated inspection report (a copy of which has been provided to us in course of the inspection) ("**Inspection Report**"). The Inspection Report was prepared pursuant to an inspection of Noticee conducted offsite by a joint team of SEBI and Exchange officials between December 20, 2021 and March 17, 2022. The inspection has been conducted for the period between April 1, 2020 and November 30, 2021 ("**Inspection Period**")*

3. *Pursuant to the inspection, SEBI had issued a letter dated March 21, 2022 to the Noticee, containing the findings of the inspection and seeking a response from the Noticee. The Noticee had, by its letter dated April 15, 2022, responded to each of the findings and had provided relevant information and documents to demonstrate that most of the findings were misplaced.*

4. *It is humbly submitted that, despite such clarifications/submissions being provided by the Noticee, the Inspection Report has been issued without considering the same – as set out in detail below. It is humbly submitted therefore that the Inspection Report is vitiated on account of non-consideration of relevant facts. The Noticee humbly submits that the issuance of the SCN would not have been necessary had the submissions of the Noticee been considered. Copies of the SEBI letter dated March 21, 2022, and the Noticee's reply dated April 15, 2022 are being annexed hereto and marked as **Annexure – A** and **Annexure – B** respectively.*

5. *It is further submitted that the Noticee had also requested for a personal hearing with the investigation team vide its letter dated April 15, 2022, to explain the contentions in its correct perspective. However, the same was not even responded to by SEBI. The Noticee humbly submits that the present proceedings could have been avoided if the Noticee was given an opportunity of being heard and the submissions made by them were considered before the issuance of the SCN.*

6. *In this context, it is pertinent to note the following decisions:*

6.1. *<u>Religare Securities Limited v. SEBI [Appeal No. 23 of 2022 decided on June 16, 2011]</u>:*

"2. We have heard the learned Counsel for the parties who have taken us through the record and, in the circumstances of this case, we are inclined to exonerate the Appellant by giving it the benefit of doubt. We are clearly of the view that the inspection carried out by the inspecting team was faulty which compels us to give the benefit of doubt to the Appellant.

… Only if the inspecting team at the time of inspection had made a query in this regard from the management, the reply would have then come and that would have made it clear whether the letters were then in existence or not. We would not have had to face the situation we are in. Again, if the letters were to be manufactured for the purpose of the defence, they would not have been left undated. In these circumstances, we cannot but give the benefit of doubt to the Appellant …

4. We have carefully perused the impugned order and find that all the deficiencies found by the adjudicating officer could have been adequately responded to by the Appellant if queries had been made by the inspecting team at the time of inspection. If this procedure/practice had been followed, there would have been no scope for an allegation that the supporting documents were subsequently prepared. It is not necessary for us to deal with each and every allegation as, in most of the cases, the adjudicating officer has refused to accept the stand of the Appellant on the ground that the supporting documents were not produced before the inspecting team. As already observed, the inspecting team did not make any queries nor did it ask for the supporting documents at the time of inspection.

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 in or 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 a lapse is found during the course of the inspection, the Board should not proceed against the delinquent."

6.2. *<u>Prashant J. Patel v. SEBI [decided on August 17, 2010]</u>:*

"11. Before concluding, we cannot resist observing that there appears to have been total non-application of mind of the respondent during the entire proceedings of this case. In the show cause notice that was issued there was reference made to Ketan Parekh and his entities which was scored off in two paragraphs and not in others. The charge as formulated was that the appellant had aided and abetted Ketan Parekh entities which was not so. If someone had applied his mind at that stage, a proper charge could have been framed. Again, the show cause notice alleged that the circular of September 14, 1999 had banned negotiated/ synchronized trades and the appellant had violated the same. Only, if someone had read the circular before framing the show cause notice, such an allegation would not have been made. Again, the enquiry officer did not apply his mind and recorded findings on charged that were not there in the show cause notice…

For the reasons recorded above, we allow the appeal and set aside the impugned order leaving the parties to bear their own costs."

7. *It is apparent from the ratios above that the purpose of an inspection is not to penalise an intermediary but to enable them to rectify any technical inadequacy. It is humbly submitted that the ratios above are squarely applicable in the facts of the present case where various issues would have been resolved - and the issuance of the SCN would have been prevented - had the submissions of the Noticee been considered before issuance of the Inspection Report/SCN.*

8. ***<u>ALLEGATIONS AND RESPONSES</u>***

<u>Alleged non-settlement of Active Clients:</u>

8.1. *Noticee has allegedly failed to settle 40 clients' accounts out of 100 sample active clients to an extent of Rs. 75.12 lakhs to Rs. 30.21 crores.*

<u>Response:</u>

8.2. *The SCN alleges that there was no settlement of accounts in relation to the above 40 clients – details of which are placed at Annexure C to the SCN. However, this is factually incorrect as there was indeed settlement effected, even in relation to these 40 clients as is apparent from the following:*

*8.2.1. The allegations in Annexure C to the SCN under the heading "**NSE Remarks**" inter alia were that in relation to 40 clients, there were no retention statements provided by the Noticee or there was difference in their account balances. It was therefore alleged that the settlement was not effected for these 40 clients.*

8.2.2. The fact that the settlement was effected even in relation to the 40 clients mentioned in Annexure C is apparent from the fact that the Noticee had provided the dates of settlements for each of these accounts. The Noticee is providing the retention statements as on the dates stated in the NSE's remarks, along with the retention statement for each client evidencing the submissions in the table.

8.2.3. It is submitted that the settlement in relation to each of the 40 clients was indeed effected. It is pertinent to note that SEBI's circular dated September 26, 2016 (at Clause 8.1.1) requires that settlement in relation to each client ought to be effected before 90/30 days as per the clients' instructions. The date of settlement for each of these 40 clients was set out in Annexure 4 to the Noticee's letter dated April 15, 2022.

8.3. *It is submitted therefore that the allegation that the settlement in relation to the 40 clients was not effected is incorrect and is demonstrated from the record.*

8.4. *The Noticee submits that the settlement of active clients' accounts happens at least once in a quarter, and the requirements of law are complied with in letter and spirit.*

8.5. *The Noticee performs multiple settlements in the same quarter rather than waiting for 90 days to settle the clients' accounts. However, during generating data for client settlement the control sheets capture only one entry, it for this reason that there seems to be a mismatch. A detailed client wise response for all 40 clients is hereto attached and marked as **Annexure – C** and the retention statements are attached hereto as **Annexure – D** collectively. In view of the above, it is humbly submitted that the allegation and corresponding allegation in this regard be dropped based on the data provided by the Noticee.*

***Alleged delay in settlement of active clients**:*

8.6. *In respect of 9 instances, there is an alleged gap between two quarterly settlements of more than 90 days – details at Annexure D of the SCN. The delay is allegedly in the range of 3 to 79 days.*

Response:

8.7. *The Noticee submits that this allegation is ex facie incorrect, as the record demonstrates that out of the 9 accounts, 6 accounts were settled on time.*

8.8. *The basis of the allegation in this regard are that retention statements are allegedly not provided by the Noticee and there is a gap of more than 90 days between two settlements.*

8.9. *The Noticee had specifically stated in its letter dated April 15, 2022 that the settlement was indeed effected between the dates set out in SEBI's letter. However, because the system followed by the inspection team was such that there was no provision for more than one date per quarter. It was because of that the dates in between were not considered by SEBI.*

8.10. *It is submitted that the inspection team had never sought the retention statements in relation to the instances where the absence of retention statement is held against the Noticee. Copies of the retention statement of these six clients with the dates of the settlement are annexed as **Annexure – E** collectively. It is submitted that had the inspection team sought the retention statement, the Noticee would have provided the same and the issue would have been resolved.*

8.11. *It is humbly submitted further that during the Inspection Period, the Noticee has settled the accounts of over 90,000 active clients. It is humbly submitted that there were only three instances where there is admittedly a minor delay of less than 7 days, which instance could have occurred due to some inadvertent error, and the same is miniscule. It is humbly submitted that the Inspection Period, i.e., April 2020 to November 2021 was during the period when the COVID-19 pandemic was at its peak. There was also a lock-down in place because of which there was a lack of complete coordination resulting in some instances of delayed settlement.*

8.12. *It is further submitted that all the accounts have been settled, and there is no violation as on date. The Noticee submits that there is not a single case of delay beyond one week. It is humbly submitted that out of 90,000, 3 minor delays be condoned and the allegation in this regard be dropped. The Noticee further states that the allegation of delay in 9 accounts is factually incorrect and ought to be reviewed.*

***Alleged delay in settling inactive clients**:*

8.13. *It is alleged that across five quarters, 55,745 inactive clients' accounts were allegedly not settled for a total amount of Rs. 2.28 crores. Further, across four months, 66,019 inactive clients' accounts were allegedly not settled and total amount of non-settlement was Rs. 11.05 crores.*

***Response**:*

8.14. *<u>55,745 inactive clients across five quarters amounting to Rs. 2.28 crores</u>: It is humbly submitted that the figure of 55,745 inactive clients' accounts not being settled is factually incorrect.*

8.15. *SEBI's circular dated September 26, 2016 (at Clause 8.1.1 of annexure) requires settlement to be effected within 90/30 days depending on the client's instructions. This requirement was amended by SEBI's circular of June 16, 2021 (w.e.f. August 1, 2021) as follows:*

> *"….5.4. For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled….."*

8.16. *There are multiple instances where clients' accounts have been settled, and the clients have transferred the amounts back to the Noticee. Further, there are also instances where the funds are transferred to the Noticee on a monthly basis by the client, in the form of an SIP. In certain instances, the clients have created long positions because of which the client accounts have not been considered as settled. In respect of certain accounts, the clients had provided incorrect bank details to the Noticee, because of which the payout made was refunded to the Noticee by the respective banks. The Inspection Report has not considered these circumstances and has taken the balance at the end of the quarter without considering that there were such transactions that makes it apparent that the SEBI's circular was indeed followed.*

8.17. *The 'NSE Remarks' in relation to this allegation set out in Annexure E to the SCN is only on the basis that the Noticee did not allegedly provide supporting documents in relation to each client. It is submitted humbly that it is not possible for the Noticee to provide particulars in relation to each instance. However, in relation to a sample set of 72 clients, the details are annexed herewith as **<u>Annexure – F</u>** collectively. It is submitted that out of 72 such clients, 32 clients had provided incorrect bank details to the Noticee, because of which the pay-out made was refunded to the Noticee by the respective banks. The Noticee has resolved this issue even prior to the issuance of the SCN and the accounts have been settled. Further, in relation to the 40 remaining accounts, the Noticee has already settled these accounts. The Noticee submits that there may have been a slight delay in the settlement of these clients' accounts inadvertently on account of human error and incorrect information provided by client. It is respectfully submitted that as on date all the inactive clients' accounts are settled. It is further submitted, that even at the time of the offsite inspection being conducted by SEBI and the exchange, all the inactive clients' accounts were already settled. In this regard, the allegation made in the SCN, that the inactive clients' accounts have not been settled, is incorrect and misleading. The Noticee submits, that there may have been a slight delay in settlement, if at all, but there is no instance where there has been "non-settlement".*

8.18. *The Noticee submits that the settlement standards for inactive clients' accounts during the Inspection Period was according to the past circulars and rules. Presently, the prerequisites of settlement are on the first Friday of each quarter, according to the NSE Circular dated July 27, 2022, bearing Reference No. NSE/INSP/53115. The Noticee has been compliant with these requirements and has affected timely settlement in the entirety of its clients' records in the last 2 quarters.*

8.19. *<u>66,019 inactive clients across four months</u>: The Noticee submits that the respective accounts have been settled and account-wise date of settlement is given in **<u>Annexure – G</u>**. It is further submitted that out of 66,019 client accounts, 10,632 clients' accounts have a balance below Re.1, for which it is not practically possible to effect the payouts.*

<u>Allegation about incorrect submission of data to Exchange:</u>

8.20. *The SCN alleges that the Noticee has:*

- *(a) In 12 instances (3 clients), allegedly wrongly reported client holding of stock amounting to Rs. 9.02 crores;*
- *(b) In 16 instances, allegedly reported incorrect quantity in weekly holding submission to stock exchange;*
- *(c) Allegedly reported incorrect data towards weekly monitoring to stock exchange;*
- *(d) In 80 instances, allegedly incorrectly reported the data towards monthly client funds balances;*
- *(e) The Noticee allegedly reported value of collateral of debit balance clients.*

<u>Response:</u>

8.21. *<u>12 instances of client's stock holding (3 clients)</u>: It is submitted that in the case of these 3 clients, the PAN details of the clients were incorrectly updated in CDSL, resulting in the mismatch of stock holding reporting. Despite taking all precautions, due to human error, the client PAN details were inadvertently not correctly updated in the UCC, due to which the holding was not captured, which resulted in the mismatch. The Noticee has duly updated the PAN of the respective clients in the UCC and rectified* *the errors even before the issuanece of the Inspection Report/ SCN. Considering the large-scale of transactions, the allegations in this regard are minor in nature and do not reflect upon the system. The Noticee humbly submits that there is no violation as such in this regard.*

8.22. *It is further submitted that in accordance with the CDSL compliance manual dated June 2021, operating instruction 16.6 states as follows:*

"SEBI has permitted the DPs to replace the hard copy statements by electronic statements, vide its circular no. MRD/DoP/Dep/Cir-27/2004 Dated August 16, 2004.

As per the circular it has been decided to permit the DPs to provide transaction statements and other documents to the BOs under Digital signature, as governed under the Information Technology Act, 2000, subject to the DP entering into a legally enforceable arrangement with the BO for the said purpose.

The providing of transaction statements and other documents in the aforesaid manner would be deemed to be in compliance of the provisions of the Regulation 43 of SEBI (Depositories & Participants) Regulations, 1996."

8.23. *In view thereof, the Noticee has duly complied with the requirement. The Noticee submits that they have kept the account holders duly informed at all times in respect of their holdings and have duly sent weekly transactions logs to the customers as per the extant guidelines.*

8.24. *<u>16 instances of incorrect weekly holding</u>: In various instances, the Noticee states that they have found that the data is correctly uploaded in the weekly reporting, which is matching as per their DP holdings, however the same is incorrectly reflecting in the SEBI allegations. Similarly, in various instances the difference is due to corporate actions (such as split share/ bonus shares etc.) where the additional quantity was not considered at the time of weekly reporting, therefore the same resulted in false impression and incorrectly reflecting that there is a mismatch.*

8.25. *Further, in a few instances due to the lock-in of shares of Yes Bank as per NSE circular dated June 2, 2020, number NSE/INSP/44529 the quantity was not uploaded in weekly holdings. Similarly, unlisted holding is not updated in the weekly holdings. It is reiterated that in all such instances, the clients are kept duly informed of all their stock holdings, on a weekly basis as per the requirements of law. There is not a single instance where there is an incorrect reporting made to a client of its holding.*

8.26. *Furthermore, in a few instances, the actual client who own the shares were not traceable. The Noticee has been able to trace some clients and has accordingly transferred the shared to those clients. However, for a few cases, even today, wherein accounts have insignificant values, the Noticee is still unable to find the actual clients and therefore the shares are lying with the Noticee. It is submitted that in accordance with the NSE circular dated January 10, 2020, bearing Ref. No. NSE/INSP/43180, NSE has issued directions to freeze such accounts for both debits and credits (except for corporate actions). As a result of the above, the Noticee is unable to move those shares and the same remain in the frozen accounts. The Noticee humbly submits that the above is not attributable to any negligence or contravention of the Noticee. A detailed instance wise response in respect if these 16 instances is annexed hereto and marked as* ***<u>Annexure – H</u>****.*

8.27. *<u>Incorrect submission of data towards weekly monitoring of clients' funds for 5 sample dates:</u> The Noticee humbly denies this allegation. The Noticee has reported the correct data towards weekly monitoring of clients' funds and has always ensured that the reporting is in line with the enhanced supervision principles. The Noticee further submits that the Noticee has always maintained a 'G' positive and there has never been any violation pertaining to use of clients' funds. The instances where the Inspection Report has observed incorrect submission of data, is a case of under reporting, wherein the Noticee has taken a conservative approach and on the basis of the true principles of enhanced reporting. For instance, in one case related to free collateral deposit with exchanges/ clearing corporation, the Noticee reduced available free balance by value of unutilized collateral given by the client, to the extent that it is not utilized by the said client for pure segregation of collateral at clients' level. The Noticee submits that this is done keeping in mind the true principles of enhanced supervision.*

8.28. *Further, the Noticee submits that the bank balance differences stated in the Inspection Report are on account of the fact that the Noticee has not considered the CDSL Accounts Balance, since there is no clarity and since it is a different segment. The Noticee submits that by not considering the CDSL Accounts Balance, the Noticee is taking a conservating view and is not overstating any figures. Copy of the Noticee's response to the instance wise allegations are annexed hereto and marked as* ***<u>Annexure – I</u>****.*

8.29. *<u>Incorrect data submission towards monthly client fund balances</u>: In respect of the mismatch in the client monthly balances, the differences occurred due to system glitch, because of which few clients* *were not considered while reporting data. It was never a case of short reporting from the Noticee's end. The said reporting system has been discontinued from December 2020 via NSE Circular dated December 29, 2020 bearing Ref. No. NSE/ISC/46823.*

8.30. *<u>Incorrect reporting of collateral</u>: The Noticee has correctly submitted risk-based supervision reporting at all times. However, the Noticee submits that its employees had inadvertently posted full value of collateral of all clients instead of collateral value of debit balance clients, which possibly led to the mismatch in data. The Noticee humbly submits that there was no mala fide intention of the Noticee but was a human error. The error was already rectified prior to the issuance of the Inspection Report/ SCN. A detailed list of client wise collateral is herewith attached and marked as **<u>Annexure – J</u>**.*

8.31. *<u>Incorrect reporting of 3 demat accounts:</u> In respect of the allegation in relation to reporting incorrect details of three demat accounts to the exchange, the Noticee humbly submits that the reported account are old and inoperative. After the allegation during the offsite inspection, the Noticee has updated the nomenclature of the said accounts, even before the issuance of the SCN. The Noticee humbly submits that this allegation ought to be dropped in light of the change made. Copy of the CML has been annexed hereto and marked as **<u>Annexure – K</u>**.*

<u>Allegedly periodic stock reconciliation not done:</u>

8.32. *It is alleged that in 13 instances the Noticee has allegedly failed to perform periodic reconciliation of back-office client holdings with actual stocks in DP accounts.*

<u>Response:</u>

8.33. *In response to the allegations pertaining to the 13 instances wherein the Noticee has failed to do periodic reconciliation of client back-office holdings with actual stocks, the Noticee submits that the data is correctly uploaded by the Noticee in the weekly reporting which is matching as per the Noticee's DP holdings. The Noticee humbly submits that the allegation in relation to this is incorrect in the SCN.*

8.34. *The Noticee further submits that in a few instances the difference was due to corporate actions wherein additional quantity was not considered at the time of weekly reporting and therefore depicts a mismatch.*

8.35. *In a few instances, due to the lock-in of shares of Yes Bank, the quantity has not been uploaded in weekly holdings. Similarly, in a few instances unlisted holding is not updated in the holdings. Further, in a few instances, the actual clients who own the shares were not traceable. For a few small cases having insignificant values, we are still not able to fine the real owners and the same are lying with the Noticee and the accounts are frozen as per NSE Circular (supra). A detailed client wise response to the instances is hereto attached and marked as **<u>Annexure – L</u>.***

<u>Allegation about client funding:</u>

8.36. *There is an allegation that the Noticee has funded clients beyond T+2+5 days for a total amount of Rs. 2.77 crores.*

<u>Response:</u>

8.37. *In the 25 instances wherein it is alleged that the Noticee was funding the clients, the Noticee submits that 24 instances where related to clients availing Margin Trading Facility (**MTF**). In respect thereto the T+2+5 days principle is not applicable. For these clients, the cumulative ledger is taken for consideration which is incorrectly reflecting a debit balance. However, if the MTF credit is added correctly, the ledger would be in net credit and hence is not a case of T+2+5 funding. The data is also submitted to the exchanges as per the MTF reporting requirement. The Noticee is willing to provide any further data if required for this purpose. In view thereof, the Noticee respectfully submits that the allegation in the SCN in this regard is incorrect and ought to be dropped. It is humbly submitted that this submission had been made previously to the inspection team in response to the SEBI letter dated March 21, 2022. However, the same has been blatantly ignored while issuing the SCN.*

8.38. *In the remaining one instance of client funding, it is submitted that the allegation was made during the peak period of the Covid '19 pandemic where due to operational difficulties the Noticee was unable to settle the accounts on time. Due to the difficulties being facts, the deadline of T+2+5 days ended on June 10, 2020 and the ledger was in credit on June 18, 2020, post 5 working days. In the meantime, the client had kept his shares as collateral with the Noticee, and considering the collateral value, the client was never in net debit. The Noticee humbly submits that there were sufficient margins for trading in terms of collateral. The detailed working of this account is provided is annexed hereto and marked as **<u>Annexure – M</u>**.*

9. ***<u>Allegation about funds in suspense account not reconciled:</u>***

<u>Response:</u>

9.1. *The Noticee humbly submits that there is a proper reconciliation system in the place for the funds of clients lying in suspense account. The Noticee continuously monitors the suspense accounts and allocates the credit to respective clients upon identifying the details of bank account from where the funds are received. There are certain funds that are not received from the designated bank accounts of the clients, therefore the refund of the same takes some time. Noticee periodically returns the funds on confirmation that the same were not received from clients registered bank account.*

9.2. *The Noticee submits that the opening balance of suspense as on April 1, 2020, was Rs. 28,76,668.66/-. Credit received during the FY 2020-21 was Rs. 4,08,07,451.74/-, accordingly the Noticee had refunded an aggregate amount of Rs. 4,18,68,289.60/- to the respective clients. Thereby the closing balance as on March 31, 2021, was Rs. 18,15,830.80/-. Thereafter, in FY 2021-22 till inspection period of November 30, 2021 the Noticee received new credit amounting to Rs. 4,16,18,099.70/- and accordingly the credit refunded to respective clients as on November 20, 2021, was Rs. 4,07,09,465.19, thereby the closing balance as on November 30, 2021 was Rs 27,24,465.31.*

9.3. *The Noticee further submits that out of the same, the Noticee has refunded Rs. 9,56,579.40/ back to clients. Therefore, as on date the balance in the suspense account to Rs. 17,67,885.91/-. Reconciliation of the funds lying in the suspense account is done on a continuous basis and a proper trail of every receipt and payment is made. In some instances, where the Noticee did not have proper details regarding the clients or bank details from which funds were received the Noticee has been continuously following up with the Banks to get such details. It is humbly submitted that the Noticee is not utilising the said funds in any manner whatsoever and the same is duly kept in the accounts maintained by the Noticee.*

10. ***<u>Allegation about mismatch in retention statement:</u>***

10.1. *It is alleged that there was a mismatch in the securities balance and 225% of margin amount mismatch.*

<u>Response:</u>

10.2. *In respect of the allegations pertaining to mismatch in retention statement, the Noticee submits that the client's opening margin was considered instead of the day ending margin. Therefore, the 225% of margin was miscalculated resulting in a much-inflated figure. In fact even if the initial margin has been considered, the Noticee has duly settled its clients' accounts as the same clients also had F&O margins as well, which was correctly calculated.*

11. ***<u>Allegation about KYC & Account opening process not complied with:</u>***

11.1. *It is alleged that the Noticee has not followed the guidelines for online account opening and failed to capture live photographs of its clients in 931 accounts.*

<u>Response:</u>

11.2. *The Noticee humbly denies the allegation in relation to KYC and account opening process. In respect of the allegations pertaining to compliance with taking Live Photos, the Noticee submits that they have captured live photo of the required clients along with time stamping and geo-location tagging for the accounts opened with online KYC. The Noticee submit that they duly maintained logs of time Stamp and Geo-Location in their database. However, the same was to be printed on PDF form previously. The Noticee submits that they have been compliant with the same and all the details in this regard have been duly uploaded.*

<u>SUBMISSIONS</u>

Data provided by Noticee not reconciled before SCN

12. *The Noticee submits vide its letter dated April 15, 2022, made detailed submissions before the Authority, making allegation wise submissions and annexing data to indicate what has been stated above. The inspection team, without going into the merits of the submissions made by the Noticee and considering the facts and submissions, issued the present SCN under reply, once again calling upon the Noticee to furnish data and records in response to the same allegations. The Noticee's request for a personal meeting was also not responded to by the inspection team. It is respectfully submitted that the issuance of the SCN would not be necessitated if the Noticee's submissions were considered by the inspection team.*

13. *In respect of the above submission, the Noticee submits that it is a settled position from various judgments of SAT that the AO needs to take into consideration the submissions of the Noticee before initiating any action. The same was also propounded in the matter of <u>Super Infincon Pvt. Ltd. v. SEBI, [Appeal No. 151 of 2014]</u>, wherein SAT has ruled that:*

"Ld. A.O. is required to deal with each and every submission of Appellants and thereafter arrive at his conclusions either accepting these, rejecting these or partially accepting/rejecting but must give

logical, acceptable and rationale reasons, based on applicable law, facts, circumstances, precedents, case laws, etc. but ignoring the submissions and not dealing with them is not acceptable to the Tribunal.

… This shows total non-application of mind on part of Ld. A.O. while issuing SCN.”

No profit or benefit has accrued to the Noticee

14. *It is a matter of fact that the Noticee has retrieved no benefit from the alleged violations. Neither the Noticee has made any profit of any nature whatsoever from the present allegation of non-compliance. There is no reason for which the Noticee would intentionally act in a way that would violate the guidelines and provisions applicable on the Noticee.*

15. *Without prejudice, the present case is that of a genuine nature, the alleged violations, if any, were a result of technical and human errors which resulted in certain mismatches in the data present before the Authority. The Noticee has at no occasion intentionally submitted incorrect data to the stock exchange or to the Authority.*

16. *In the given circumstances, the Noticee humbly submits that no penalty ought to be levied on the Noticee as there was no intentional violation on part of the Noticee. A similar ruling has been made by the SAT in a recent order passed in the matter of SPL Industries Ltd. vs. BSE Limited [Appeal No.411 of 2018] wherein the Appellate Tribunal has held that:*

“The violation, if any, appears to been done by inadvertent mistake, by a human error. Considering the aforesaid we are of the opinion that in the given circumstances and in the interest of justice the penalty is reduced to Rs.2,50,000/- which the appellant shall pay to the respondent within four weeks from today.”

17. *Similarly, in another recent Order of SAT in the matter of Neha Nilesh Patil vs. SEBI, [Appeal No. 688 of 2021], it was held that*

“We find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive.”

18. *In light of the above it has been ruled by the SAT that even though there was an error, the same was unintentional and by inadvertent human error, therefore the SAT reduced the penalty amount imposed by the Adjudicating Authority. Therefore, the Noticee submits that the present case is of similar nature and that the Noticee ought to be seen under the similar lens. The errors made by the Noticee were not intentional and due to inadvertent errors. Further, no loss has been caused to any investors/ clients on account of these alleged delays in compliance/ inadvertent errors, and no complaints or grievances have been raised by clients in this regard.*

The breach if at all, is a technical breach without any mala fide intention

19. *The Noticee submits that the underlying issues pertain to technical defaults and obligations of the Noticee. From the foregoing it can be observed that the Noticee has been duly conducting his business as a stockbroker and was complying with its obligations under the various provisions of law applicable on it. However, it was a matter of some technical glitches and errors resulting in such shortfalls.*

20. *In P.G. Electroplast Ltd. & Ors. vs. SEBI [Appeal No. 281 of 2017], SAT held that:*

“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.”

21. *In a similar judgment of SAT in the matter of Ashok Dal & Oil Mills vs. SEBI [Appeal No. 254 of 2022], it was held that*

“The violation committed by the appellants is technical as they have transferred the shares of the company in the name of the partners for which no loss was caused to the investors. Considering the aforesaid, that it was only a technical violation, we are of the opinion that in the given facts and circumstances, the imposition of penalty under Section 15HB of the SEBI Act appears to be excessive and on the higher side.”

Accordingly in the above matter the SAT reduced the penalty imposed on the Appellant considering that the violation was technical in nature.

22. *In another similar instance, in the matter of <u>State Bank of India vs. SEBI [Appeal No. 304 of 2020]</u>, SAT has once again established that:*

"We do not find any justifiable reason to impose any monetary penalty in the present matters, <u>as every technical violation need not be visited with monetary penalty. In these matters a warning is sufficient</u>."

23. *Without prejudice, the Noticee humbly submits that the present case is of similar nature, wherein the Noticee is being held liable for technical and minor grounds, if any, which may be humbly pardoned by the Learned Adjudicating Officer.*

24. *It is humbly submitted that the Noticee has at all times remained compliant with the principles of the guidelines and regulations applicable upon it. Therefore, we humbly request that the Show Cause Notice be disposed of without any monetary penalty on us.*

25. *We request that we be provided with an opportunity for a personal hearing before the learned Adjudicating Officer to enable us to explain the facts of our case in its true perspective.*

26. *Without prejudice to the above, the Noticee has availed of the settlement mechanism under the SEBI (Settlement Proceedings) Regulations, 2018 and has filed a settlement application with the concerned department of SEBI. The Noticee submits that the SCN is bad in law and ought to be disposed off without any adverse remarks or observation against the Noticee. The settlement application has been filed with a view to end the controversy as soon as possible, and not on account of any admission of violation by the Noticee.*

…."

The submissions made by the Noticee as its reply to SCN *vide* letter dated January 17, 2023 is reproduced below:

"….

1. *We are filing the present submissions as an aide memoire to the personal hearing on January 11, 2023 and the reply dated January 10, 2023 ("**Reply**") which is not repeated herein for brevity.*

2. *It is humbly submitted that, the Show Cause Notice (based solely on the Inspection Report) has failed to consider various updates and compliances made by the Noticee pre and post the issuance of Inspection Report.*

3. *It is submitted at the outset that the issuance of the Show Cause Notice would not have been necessitated had the inspection been conducted in a correct manner. The inspection team had, by its letter dated March 21, 2022 provided various allegations. We had, by our letter of April 15, 2022, responded in detail thereto, addressing each of the allegations. We had requested SEBI to allow us an opportunity of personal hearing to explain the responses in context. It is humbly submitted that had the inspection team allowed us an opportunity to explain the various responses in their correct perspective, in line with the Religare Securities ruling, the issuance of this Show Cause Notice would not have been necessitated.*

4. *It is submitted that the various allegations and our responses thereto have been set out in the table at **<u>Annexure A</u>** hereto.*

5. *We submit that we are a complaint intermediary with no major violation ever attributed to us. The instances in the Show Cause Notice have arisen only on account of the extraordinary circumstances arising from the COVID-19 pandemic and the resulting lock-down. In any case, none of the allegations are of a serious nature where there is any allegation of any client's interest being affected adversely. In view of the above, a reasonable view may be taken in the matter.*

…"

D. CONSIDERATION OF ISSUES AND FINDINGS

ISSUE I - Whether the Noticee has violated the provisions of various Circulars, Regulations and guidelines of SEBI as alleged in the SCN and as also brought out under para 3 above?

ISSUE II: If yes, whether the Noticee is liable for imposition of monetary penalty under provisions of Section 15HB of SEBI Act, 1992 and Section 19G of Depositories Act 1996?

ISSUE III - If so, what should be the monetary penalty that can be imposed upon the Noticee?

12. Before proceeding on merits, it would be pertinent to deal with the following preliminary issues raised by Noticee:

12.1. Noticee has submitted that it had by its letter dated April 15, 2022, responded to each of the findings and had provided relevant information and documents to demonstrate that most of the findings were misplaced. Noticee further submitted that *despite such clarifications/submissions being provided by the Noticee, the Inspection Report has been issued without considering the same*…. *the issuance of the SCN would not have been necessary had the submissions of the Noticee been considered*…Further, it has stated that Noticee had also requested for a personal hearing with the investigation team to explain the contentions in its correct perspective. To support its submission, Noticee also has relied upon the order of the Hon'ble Securities Appellate Tribunal in Religare Securities Limited v. SEBI [Appeal No. 23 of 2022 decided on June 16, 2011] and Prashant J. Patel v. SEBI [decided on August 17, 2010].

12.1.1. With regard to Noticee's submission that the clarification /submissions provided by Noticee to the inspection team has not been considered before issuance of SCN, I note that the SCN was issued based on conclusion of the matter by SEBI after taking into consideration the response of Noticee on the observations of the inspection. In this regard, it is a matter of record that alleged violations were regarding the non-compliance of cited provisions of the SEBI Circulars, Regulations and Guidelines as observed by SEBI during their inspection covering the stated period of inspection. Since the Noticee allegedly failed to comply with the provisions of those cited provisions of SEBI Circulars, Regulations and Guidelines during the relevant period, therefore, the Noticee had been alleged to have violated the stated provisions as cited in the SCN.

12.1.2. With regard to contention of Noticee that Noticee has not been given personal hearing with the inspection team so as to explain its contentions, and the present proceedings could have been avoided if the Noticee was given an opportunity of being heard and the submissions were considered. In this regard, in my opinion, Noticee was at liberty to provide its true and complete reply duly supported by relevant documents in support of its contentions to SEBI and during the instant proceedings as well. I also note that vide SEBI letter dated March 21, 2022, SEBI had communicated the observations /findings of the inspection and sought comments of the Noticee and vide its letter dated April 15, 2022 the Noticee had provided its reply on the observations and findings of the inspection, to SEBI. Accordingly, in my opinion, there is no merit in the said contention of the Noticee.

12.1.3. I also note that, initiation of adjudication proceedings under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of such exercise, inspection and findings thereof in instant case. I note that the subject matter of instant proceedings are as per the communique of appointment of AO, duly approved by the competent authority.

12.2. Noticee submitted that the purpose of an inspection is not to penalise an intermediary but to enable them to rectify any technical inadequacy. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit and accordingly the contention of the Noticee in this regard cannot be accepted. In this regard, firstly I note that in the instant case, the alleged violation related to provisions of law and secondly that the said provisions are applicable to entire class of the intermediary and not just Noticee alone. In the instant matter, the alleged violations are with regard to provisions of law which SEBI is duty bound to enforce.

12.3. I note that Noticee had inter alia also submitted that, *"…It is a matter of fact that the Noticee has retrieved no benefit from the alleged violations. Neither the Noticee has made any profit of any nature whatsoever from the present allegation of non-compliance. There is no reason for which the Noticee would intentionally act in a way that would violate the guidelines and provisions applicable on the Noticee. Without prejudice, the present case is that of a genuine nature, the alleged violations, if any, were a result of technical and human errors which resulted in certain mismatches in the data present before the Authority. The Noticee has at no occasion intentionally submitted incorrect data to the stock exchange or to the Authority…" In the given circumstances, the Noticee humbly submits that no penalty ought to be levied on the Noticee as there was no intentional violation on part of the Noticee. ..'.*

12.3.1. In this regard, I note that Noticee has relied upon the following judgement of hon'ble SAT Order in the matter of SPL Industries Ltd. vs. BSE Limited [Appeal No.411 of 2018], Neha Nilesh Patil vs. SEBI, [Appeal No. 688 of 2021], P.G. Electroplast Ltd. & Ors. vs. SEBI [Appeal No. 281 of 2017], Ashok Dal & Oil Mills vs. SEBI [Appeal No. 254 of 2022] and State Bank of India vs. SEBI [Appeal No. 304 of 2020].

12.3.2. Noticee also submitted in its reply dated January 17, 2023 that *"The instances in the Show Cause Notice have arisen only on account of the extraordinary circumstances arising from the COVID-19 pandemic and the resulting lock-down. In any case, none of the allegations are of a serious nature where there is any allegation of any client's interest being affected adversely. In view of the above, a reasonable view may be taken in the matter.*

12.3.3. I note that factors such as the loss suffered by Noticee, absence of mens rea, absence of any disproportionate gain made by him, absence of any loss caused to the investors and the breach was a technical one, COVID-19 pandemic cannot be considered relevant for determining whether the Noticee has violated the alleged provisions of Regulations, SEBI Circulars and Guidelines. At best such factors can only be considered as mitigating factors. I also note that the alleged violations by the Noticee are of the extant applicable provisions of law as are otherwise applicable to that entire category of the intermediary and not just about minor procedural aspects specific to the Noticee. In this regard, in my view nature of the violations committed by Noticee were fundamental to its operations as a registered intermediary more so having regard to mandate of SEBI regarding orderly functioning of the securities market, protecting the interest of investors etc. I also note from the text of judgement of Hon'ble SAT in IDBI Trusteeship Services Limited v. SEBI [Appeal No. 186 of 2023] had inter alia held that, 'if any serious lapse is discovered, then penalty action can be taken'. Further, in this regard, whether an alleged violation is merely procedural in nature or is grave depends upon the facts and circumstance of each case. In the instant case the alleged violation are not about the procedures but of extant applicable provisions of law, as applicable to entire class of the intermediary.

12.3.4. Further, I also note from the text of judgement submitted /cited by the Noticee itself that Hon'ble SAT in the matter of SPL Industries Ltd. vs.

BSE Limited and Neha Nilesh Patil vs. SEBI, P.G. Electroplast Ltd. & Ors. vs. SEBI, Ashok Dal & Oil Mills vs. SEBI and State Bank of India vs. SEBI, had only reduced the penalty after considering the factors viz. inadvertent mistake, by a human error, no disproportionate gain, technical breach etc., and it was not a case where the Hon'ble SAT did not impose any penalty.

12.3.5. Noticee also stated it was a human error and there was no intention of Noticee behind the same. In this regard, I note that intention is an essential element to prove the charges in criminal matters not in the matters of civil in nature. I find that the aforesaid submission of the Noticee cannot be considered relevant for determining whether the Noticee has violated the alleged regulations.

13. I now proceed to deal with the matter on merits with respect to the allegations made against the Noticee vide SCN.

ISSUE I - Whether the Noticee has violated the provisions of various Circulars, Regulations and guidelines of SEBI as alleged in the SCN and as also brought out under para 3 above?

14. Here it would be pertinent to draw reference to the relevant provisions alleged to have been violated, which are reproduced as under:

SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter also referred to as "SEBI Circular dated September 26, 2016")

"…

2. Reporting of Bank and Demat accounts maintained by Stock Broker:

…."

"….

2.6 "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in."

…"

8. Running Account Settlement

"8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;
8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.
8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.
8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.
8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

Running Account Authorization

"

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:
a. The authorization shall be renewed at least once a year and shall be dated.
b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.
c. The authorization shall contain a clause that the Client may revoke the authorization at any time.
d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations next 5 trading days, calculated in the manner specified by the exchanges.
e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.
f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.
g. Such periodic settlement of running account may not be necessary:
i. for clients availing margin trading facility as per SEBI circular
ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).
h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.
i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.
j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.

…".

6. *Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies*

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

6.1.1. Monitoring criteria for Stock Brokers

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

SEBI/HO/MIRSD/DOP/P/CIR/2021/577 June 16, 2021

"….

5. In partial modification of the aforementioned circulars dated December 03, 2009
and September 26, 2016 on settlement of running account, following has been decided:
5.1. The settlement of running account of funds of the client shall be done by the TM after considering the End of the day (EOD) obligation of funds as on the date of settlement across all the Exchanges, at least once within a gap of 30 / 90 days between two settlements of running account as per the preference of the client.
5.4. For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

….".

SECURITIES AND EXCHANGE BOARD OF INDIA (STOCK-BROKERS [***]) REGULATIONS, 1992

[26][CHAPTER II

REGISTRATION OF STOCK BROKERS

Conditions of registration.

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

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

SCHEDULE II
Securities and Exchange Board of India (Stock Brokers 102[***])
Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

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.

…".

SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008

"…

1. *In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that :-*

   2.3 *The records should be periodically reconciled with the actual collateral deposited with the broker.*

…"

SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

"…

2.SEBI has received further representationsfrom the market participants regarding certainprovisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

d.Clause2.6 stands modified as,"Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in,except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time."This clause would be effective from August 1, 2017.

…"

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

Annexure -A
Requirements relating to dealings between a Client and Stock Broker

Running Account Authorization

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

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

NSE Circular NSE/INSP/36889 February 02, 2018.

Annexure-A
FAQS – ACTUAL SETTLEMENT OF FUNDS & SECURITIES

"…

5. Can Members issue payments through physical mode, while settling the accounts of the clients?

For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients.

Members may issue a physical payment instrument, only in cases where electronic payment instructions have failed or have been rejected by the bank and after keeping adequate record of the same. However, settlement
will be deemed to have been done only if proof of clearing the funds is on record.

…
".

(Note: for Actual / complete text of the provisions etc., relevant Act / Regulation / Circular / guideline etc., may please be referred).

14.1. **NON SETTLEMENT OF CLIENTS' ACCOUNTS:**

14.1.1 **Active Clients – Out of sample 100 active clients, 40 clients' accounts were not settled. The amount of non-settlement ranges between Rs. 75.12 Lakh- Rs. 30.21 Crore.**

14.1.1.1 *In this regard, it was alleged in the SCN that out of sample 100 active clients, 40 clients' accounts were not settled. The amount of non-settlement ranges between Rs. 75.12Lakh- Rs. 30.21 Crore and therefore, Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with clause 5.1 & 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.*

14.1.1.2 In this regard, I note that Noticee as reply to the SCN its vide letter dated January 11, 2023 has inter alia submitted that, 'fact that the settlement was effected even in relation to the 40 clients mentioned in Annexure C is apparent from the fact that the Noticee had provided the dates of settlements for each of these accounts…' and that, 'date of settlement for each of these 40 clients was set out in Annexure 4 to the Noticee's letter dated April 15, 2022…', and that, 'Noticee is providing the retention statements as on the dates stated in the NSE's remarks, along with the retention statement for each client evidencing the submissions in the table…'. In this regard, in my opinion, mere providing of dates of settlement do not in any manner demonstrate or evince that settlement had been done.

14.1.1.3 As regards copies of documents claimed as retention statements, provided now, in my opinion, I note that despite being a crucial document apparently the same had not been submitted by the Noticee, neither during the inspection nor thereafter when comments of Noticee had been sought by SEBI upon sharing of observations /findings of the inspection. In this regard, I note that SEBI had vide its letter dated March 21, 2022 inter alia sharing the observations/findings made during the course of inspection sought comments, together with relevant supporting documents/records, if any, from the Noticee. From the material available on record, it is noted that neither such statements were provided by the Noticee during the inspection nor post inspection, upon seeking of response of the Noticee by SEBI on the observation /findings of the inspection. Further in this regard, I also note that Noticee has neither provided any reason nor demonstrated as to why it did not or could not provide the said statements during /post inspection earlier.

14.1.1.4 In this regard, I note that as per sub clause 8.1.2. of SEBI Circular dated December 26, 2016, the mode of transfer of funds shall be by way of electronic funds transfer viz., through NEFT / RTGS etc. However, while the Noticee has submitted copies of documents claimed to be retention statements (retention statements), relevant details in support have not been provided. To cite for example, the Noticee has neither provided any details as regards the mode of transfer nor documents in support of the mode of transfer of funds. As per clause 8 of said circular, extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled. Further in this regard, I also note that as regards sending of retention statements to the respective clients neither details like date of delivery, mode of delivery etc., nor any document with regard to proof of delivery, like for example, copies of emails and /or proof of dispatch and delivery have been submitted, by the Noticee to indicate that the said requirement was compiled with within five days.

14.1.1.5 In this regard, it is also noted that with regard to certain of the clients /instances, the Noticee had inter alia contended that, '*Customer returned the amt on the same date'*. In this regard, I note that while the Noticee has contended so, however no details whatsoever in support of the contention have been provided by the Noticee. To cite for example, details /documents regarding mode of receipt, date and time of receipt of amount returned by the customer have not been provided.

In view thereof, the contentions of the Noticee are devoid of merit hence cannot be accepted and the allegation that out of sample 100 active clients, 40 clients' accounts were not settled, stands established.

14.1.2 **Delay in Settlement of Active Clients- In respect of 9 instances gap between two quarterly settlement dates is more than 90 days. The range of days for delay in settlement was 3 to 79 days.**

14.1.2.1 *It was alleged in SCN that in respect of 9 instances gap between two quarterly settlement dates is more than 90 days and therefore, Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with clause 5.1 & 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.*

14.1.2.2 In this regard, I note that the submissions of the Noticee are in nature of admission in so far as, in respect of three out of total nine instances alleged, Noticee has inter alia submitted, '… there were only three instances where there is admittedly a minor delay of less than 7 days, which instance could have occurred due to some inadvertent error,.'. As regards the six out of nine instances alleged and disputed by the Noticee, it is noted that it has inter alia been contended by the Noticee that, '… the settlement was indeed effected between the dates set out in SEBI's letter…', and that '… the system followed by the inspection team was such that there was no provision for more than one date per quarter …' and that, 'the inspection team had never sought the retention statements in relation to the instances where the absence of retention statement is held against the Noticee. Copies of the retention statement of these six clients with the dates of the settlement are annexed'. In this regard, as regards the contention of the Noticee that the settlement was indeed effected, no details whatsoever in support of its contention have been submitted by the Noticee. As regards the contention of the Noticee regarding system followed by the inspection team, in my opinion, generally speaking for any inspection based on random sampling, choosing of sample clients, sample dates etc., are prerogative of inspection team and it was for Noticee to demonstrate compliance with relevant details, documents and evidences to the satisfaction of the inspection team, as of selected sample date. As regards the contention of the Noticee regarding inspection team having not sought retention statements, in my opinion, having regard to Clause 8 of SEBI Circular dated September 26, 2016 wherein it has inter alia been mandated that, 'a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled…,' retention statements and its sending to the respective clients were an important document and development evidencing settlement and accordingly it was for Noticee to provide the same to the inspection team then, which apparently Noticee did not do. In any case, it was for Noticee to demonstrate compliance and submit all required and relevant details and documents and that retention statements were not sought by inspection team cannot as such be a valid defense. Accordingly the contentions of the Noticee are devoid of merit and hence not acceptable and the allegation in this regard that there was delay in Settlement of Active Clients, stands established.

14.1.2.3 As regards contention of the Noticee regarding the Inspection Period being during the period when the COVID-19 pandemic was at its peak, lock-down etc., I cannot ignore that that alleged violations relate to extant applicable provisions of law which Noticee was required to comply and SEBI is duty bound to enforce. In my opinion such defense could at best be considered as a mitigating factor.

14.1.3 **Inactive Clients- Across five quarters 55,745 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 2.28 Crore and average amount of non-settlement across 5 quarters is Rs. 45.61 Lakh. Further, across 4 months 66,019 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 11.05 Crore.**

14.1.3.1 *It was alleged in SCN that across five quarters 55,745 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 2.28 Crore and average amount of non-settlement across 5 quarters is Rs. 45.61 Lakh. Further, across 4 months 66,019 inactive clients' accounts were not settled and total amount of non-settlement is Rs. 11.05 Crore and therefore, Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with clause 5.1 & 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.*

14.1.3.2 In this regard, I note that submissions of the Noticee are incomplete in so far as the Noticee has inter alia submitted that it is not possible for the Noticee to provide particulars in relation to each instance and the same are limited to sample set of seventy two clients, as against allegation pertaining to 55,745 /66,019 clients. I note that Noticee has otherwise as part of its submissions inter alia itself stated that, '… Noticee has settled the accounts of over 90,000 active clients…'. In my opinion, if the observations /findings of inspection relate to alleged violation involving certain number of clients of a registered intermediary, Noticee in instant case, as inspectee, it is for the inspectee to provide relevant details and documents etc., to demonstrate compliance when contended so, in order to negate the allegation.

14.1.3.3 Besides, in this regard, I note that it has inter alia been contended by the Noticee that,

'…There are multiple instances where clients' accounts have been settled, and the clients have transferred the amounts back to the Noticee. Further, there are also instances where the funds are transferred to the Noticee on a monthly basis by the client, in the form of an SIP. In certain instances, the clients have created long positions because of which the client accounts have not been considered as settled. In respect of certain accounts, the clients had provided incorrect bank details to the Noticee, because of which the payout made was refunded to the Noticee by the respective banks. …'.

14.1.3.4 In this regard, I note that while it has been contended so relevant details with regard to client account having been settled and clients having transferred the amount back have not been provided. To cite as example, details like date of settlement, date and time of refund, mode of refund, details of bank, copy of settlement statement and communication to client with regard to settlement and refund of amount etc., have not been provided. As regards the contention relating to SIP and long position, I note that the same are vague and /or incomplete and mere assertion in so far as while instant allegation pertain to inactive clients' accounts not being settled, it has not been demonstrated by the Noticee, along with relevant details and documents, as to how there was no violation as alleged.

14.1.3.5 As regards submission of the Noticee in relation to a sample set of 72 clients, firstly I note that the submissions of the Noticee in this regard are in nature of admission in so far as Noticee has inter alia submitted, '… The Noticee submits that there may have been a slight delay in the settlement of these clients' accounts inadvertently on account of human error and incorrect information provided by client…'. This apart, as regards the submission of the Noticee that, ' …out of 72 such clients, 32 clients had provided incorrect bank details to the Noticee, because of which the pay-out made was refunded to the Noticee by the respective banks…' I find that the submissions are without adequate and relevant details and documents. To cite as example, details like date of settlement of client account, date and time of refund, mode of refund, details of bank, copy of settlement statement and communication to client with regard to settlement and refund of amount etc., have not been provided.

14.1.3.6 As regards the submissions of the noticee that, 'It is respectfully submitted that as on date all the inactive clients' accounts are settled' and that, ' … Noticee has been compliant with these requirements and has affected timely settlement in the entirety of its clients' records in the last 2 quarters …' , I note that the submissions of the Noticee in this regard are apparently out of context in so far as the alleged violation pertained to the inspection period viz., April 01, 2020 to November 30, 2022.

14.1.3.7 As regards the submission of the Noticee that, ' … It is further submitted, that even at the time of the offsite inspection being conducted by SEBI and the exchange, all the inactive clients' accounts were already settled…', I note that the submissions of the Noticee are contradictory in nature in so far as Noticee has also inter alia submitted that, ' … ' … Noticee submits, that there may have been a slight delay in settlement, if at all, but there is no instance where there has been "*non-settlement*".' In any case, I note that save for stating so, Noticee has not submitted relevant details and documents in support of its contention, in this regard.

14.1.3.8 As regards 66019 inactive clients the Noticee had inter alia submitted that, '… The Noticee submits that the respective accounts have been settled and account-wise date of settlement is given in **Annexure – G**. It is further submitted that out of 66,019 client accounts, 10,632 clients' accounts have a balance below Re.1, for which it is not practically possible to effect the payouts … '. In this regard, I note that no date of settlement is provided in the Annexure G. I also note that contrary to the count of clients having a balance below Rs. 1.00 being 10632 as stated by the Noticee the count as per Annexure G submitted by the Noticee is 10362. In any case, I note that the submission of Noticee are apparently out of context in so far as , while Noticee has not inter alia submitted that respective accounts have been settled, the alleged violation pertains to violation in past viz, during the inspection period viz., April 01, 2020 to November 30, 2022.

In view of above, I hold that the Noticee has violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with clause 5.1 & 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.

14.2. **INCORRECT SUBMISSION OF DATA TO EXCHANGE:**

14.2.1. **In 12 instances (3 clients) Noticee wrongly reported clients' holding of stock amounting to Rs. 9.02 Crore.**

14.2.1.1. In this regard I note that alleged violation has not been disputed by the Noticee and that the submissions of the Noticee are in nature of admission in so far as the Noticee has inter alia submitted, ' … It is submitted that in the case of these 3 clients, the PAN details of the clients were incorrectly updated in CDSL, resulting in the mismatch of stock holding reporting. Despite taking all precautions, due to human error, the client PAN details were inadvertently not correctly updated in the UCC, due to which the holding was not captured, which resulted in the mismatch …'.

14.2.1.2. As regards submission of Noticee that, ' … the allegations in this regard are minor in nature and do not reflect upon the system …', I note that Noticee has not demonstrated as to how and why such instances had occurred, save for stating that these were owing to human error. In my opinion, having regard to the fact that PAN is one of key mandatory requirement for dealing in securities market, there is no scope for error and occurrence of such instances reflect upon the lack of adequate controls and mechanism including that of maker checker at the end of Noticee being an intermediary. I also cannot ignore that the amount involved in the alleged instances was to the tune of Rs. 9.02 cores, which has not been disputed by the Noticee.

Accordingly, I hold that the allegation that in 12 instances (3 clients) Noticee wrongly reported clients' holding of stock amounting to Rs. 9.02 Crore, stand established.

14.2.2. **In 16 instances the Noticee reported incorrect quantity in weekly holding submission to exchange.**

14.2.2.1. In this regard, I note that the Noticee has inter alia submitted that, '…In various instances, …. the data is correctly uploaded in the weekly reporting, which is matching as per their DP holdings, however the same is incorrectly reflecting in the SEBI allegations…', however I note that neither such instances have been explicitly identified and pointed nor has any rationale and /or justification, for why such instances were being contended to be incorrectly reflecting in the SEBI allegations, been provided. In this regard, in my opinion, once the instances, which are subject matter of alleged violation, have been identified and provided to the Notice inter alia along with details of holding data as per respective DP accounts and as reported in weekly holding submission to exchange for each of the instance, it was for the Noticee to provide complete details and documents in case the same are disputed by it and /or claimed to have been incorrectly reflecting. Accordingly, I find that the submissions of the Noticee, in this regard, are vague and incomplete.

14.2.2.2. It has inter alia been contended by the the Noticee that, ' … Similarly, in various instances the difference is due to corporate actions (such as split share/ bonus shares etc.) where the additional quantity was not considered at the time of weekly reporting, therefore the same resulted in false impression and incorrectly reflecting that there is a mismatch. …'. In this regard, I note that Noticee has not provided details and supporting documents with regard to the corporate actions such as split and bonus etc. In fact, the submissions of the Noticee here too are vague and /or incomplete in so far as while the alleged instances are identified and limited to count sixteen, the submissions of the

Noticee in this regard are citing 'in various instances' and corporate actions 'such as', despite the fact that there were only sixteen instances and instead of making submission in nature of 'in various', Noticee ought to have been specific and categorical as to how many and which out of the alleged sixteen instances, it was so contended and relevant supporting documents in support of such corporate actions submitted. In any case, otherwise too, logically speaking for any corporate action, credit of which is being reflected in the DP statement, generally speaking, there is no reason why the same is not reflected accordingly in the weekly holding submissions to the Stock Exchange.

14.2.2.3. I note that Noticee has inter alia also contended that in all such instances, the clients are kept duly informed of all their stock holdings, on a weekly basis as per the requirements of law. There is not a single instance where there is an incorrect reporting made to a client of its holding. In this regard, I note that the allegation is regarding weekly holding submission to exchange and accordingly, the submission of the Noticee are out of context and /or vague and incomplete.

14.2.2.4. I also note that Noticee has inter alia also contended that, ' … Furthermore, in a few instances, the actual client who own the shares were not traceable. …'. In this regard, I note that the alleged violation is about incorrect quantity in weekly holding submission to exchange and such incorrectness is alleged apparently having regard to the difference in quantity as per the holding in the respective DP account vis-à-vis holding as reported to the Stock Exchange. Accordingly, traceability of a client, in my opinion has no relevance, in so far there ought to be no difference in the holding in respect of a client so long the client is of the Stock Broker and there is a holding reflected as per the DP account of the respective client. Accordingly, the submissions of the Noticee are out of context and /or vague and incomplete.

In view thereof, I hold that the allegation that the Noticee reported incorrect quantity in weekly holding submission to exchange, stands established.

14.2.3. **The broker incorrectly reported the data towards weekly monitoring of client funds for all 5 sample dates.**

14.2.3.1. In this regard, the Noticee has inter alia submitted that, ' … The instances where the Inspection Report has observed incorrect submission of data, is a case of under reporting, wherein the Noticee has taken a conservative approach and on the basis of the true principles of enhanced reporting. For instance, in one case related to free collateral deposit with exchanges/ clearing corporation, the Noticee reduced available free balance by value of unutilized collateral given by the client, to the extent that it is not utilized by the said client for pure segregation of collateral at clients' level. The Noticee submits that this is done keeping in mind the true principles of enhanced supervision …' and that, ' … the Noticee submits that the bank balance differences stated in the Inspection Report are on account of the fact that the Noticee has not considered the CDSL Accounts Balance, since there is no clarity and since it is a different segment. The Noticee submits that by not considering the CDSL Accounts Balance, the Noticee is taking a conservating view and is not overstating any figures ….'.

14.2.3.2. In this regard, I note that the submission of the Noticee are without supporting documents. Further in this regard, I note that the submissions of the Noticee are vague and /or incomplete in so far as while the Noticee has inter alia submitted that 'in one case related to free collateral', it is unclear as to which one case

/instance Noticee has referred to. Accordingly, the submission of the Noticee in this regard are devoid of merit and cannot be accepted.

In view thereof, I hold that the allegation that the Noticee as broker incorrectly reported the data towards weekly monitoring of client funds for all 5 sample dates, stands established.

14.2.4. **In 80 instances, the broker incorrectly reported the data towards monthly client funds balances. SEBI observed that Noticee has reported the following:**

14.2.4.1. **Excess reported in monthly submission: No. of clients - 6, Amount - Rs.1965/-**

14.2.4.2. **Short reported in monthly submission: No. of clients - 74, Amount - Rs.50,52,998/-**

14.2.4.3. In this regard, I note that the submission of the Noticee are in nature of admission in so far as it has inter alia been submitted that, ' … in respect of the mismatch in the client monthly balances, the differences occurred due to system glitch, because of which few clients were not considered while reporting data…'. Further in this regard, from material available on record, I note that similar submissions had been made by the Noticee vide its reply letter date April 15, 2022 as its reply to the observations /findings wherein it has inter alia been stated that, '… Although we have a system in place wherein all client details are checked and uploaded, however due to system glitch few of our clients were inadvertently skipped & the balances were not uploaded in monthly submission reporting … '.

In view thereof, I hold that the allegation that in 80 instances, the broker incorrectly reported the data towards monthly client funds balances, stands established.

14.2.5. **The broker incorrectly reported value of collateral of debit balance clients. SEBI observed that Noticee has not reported correctly the Value of collaterals from debit balance clients.**

Particulars	Data uploaded by Trading Member	As per our calculation	Difference
Value of collaterals from the debit balance clients	67,31,39,968	7,12,64,541	60,18,75,427

14.2.5.1. In this regard, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee has inter alia submitted that, ' … the Noticee submits that its employees had inadvertently posted full value of collateral of all clients instead of collateral value of debit balance clients, which possibly led to the mismatch in data. The Noticee humbly submits that there was no mala fide intention of the Noticee but was a human error. The error was already rectified prior to the issuance of the Inspection Report/ SCN. … '. In this regard, I note that the difference in this regard was to the tune of approx. Rs. 60.18 crores. Considering that Noticee is a registered intermediary viz., as a stock broker, it was Noticee's responsibility to act with due skill, care and diligence in the conduct of all his business.

In view thereof, I hold that the allegation that the Noticee as broker incorrectly reported value of collateral of debit balance clients, stands established.

14.2.6. **The broker incorrectly reported three demat accounts details to exchange. Details are as follows-**

Sr. No.	Account Number	DP Name	Tagging as per Exchange Records	Tagging as per DP Statement
1	1100002800000978	Metropolitan Clearing Corporation of India Limited	Pool Account	Early Pay-In Account
2	1302950000004891	IndusInd Bank Limited	Client Account	Own/Proprietary Account
3	1205420001020522	Samco Securities Limited	Client Account	Client Margin Trading Securities Account

14.2.6.1. In this regard, I note that the submissions of the Noticee are in nature of admission in so far as the Noticee has inter alia submitted that, 'In respect of the allegation in relation to reporting incorrect details of three demat accounts to the exchange, … After the allegation during the offsite inspection, the Noticee has updated the nomenclature of the said accounts, ….'.

14.2.6.2. In view thereof, I hold that the allegation that the Noticee as broker incorrectly reported three demat accounts details to exchange, stands established.

In view of thereof I hold that Noticee has violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

14.3. **STOCK RECONCILIATION**:

14.3.1. **In 13 instances Noticee has not done periodic reconciliation of back office holdings of client's securities with actual stocks lying in DP accounts.**

In view of the above it is alleged that Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.

14.3.1.1. It was inter alia alleged in the SCN that in 13 instances Noticee has not done periodic reconciliation of back office holdings of client's securities with actual stocks lying in DP accounts and therefore, Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.

14.3.1.2. In this regard, firstly I note that the Noticee's submission are out of context and /or lacking in nature in so far as it has inter alia submitted that 'data is correctly uploaded by the Noticee in the weekly reporting'. While the alleged violation is about Noticee having not done periodic reconciliation of back office holdings of client's securities with actual stocks lying in DP accounts, Noticee had submitted about weekly upload.

This apart, I find that the submissions of the Noticee are contradictory in nature in so far as while it has on one hand inter alia submitted that 'data is correctly uploaded by the Noticee' on the other hand it has also submitted that difference was owing to corporate actions, lock-in, clients not traceable etc. I note that the provisions of the SEBI Circular alleged to have been violated viz., Clause 2.3 of SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 inter alia require that the records should be periodically reconciled with the actual collateral deposited with the broker having regard to the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral. Accordingly, in my opinion, it is for the broker to demonstrate that periodic reconciliation was done and also be able to demonstrate the same with proper records and documents. I note that the submissions of the Noticee in this regard are lacking in nature and without relevant and complete details and documents. To cite for example, in the member remarks column under Annexure J as regards DP Account No. ending with 1411, while the allegation is regarding reconciliation not done as on November 30, 2021, Noticee has submitted that, ‘Qty as per weekly holding is 57 only’. Apparently, Noticee seems to have bamboozled the submissions in this regard with that of another alleged violation of Noticee having reported incorrect quantity in weekly holding submission to exchange, as while the instant allegation pertains to periodic reconciliation of data as per back office holdings vis-à-vis that of DP holding and not related to weekly holding submissions to the exchange. I also note that the Noticee has not submitted complete details and documents with regard to the reconciliation done as only DP statements reflecting the balances have been submitted and no evidence /document relating to back office holdings have been provided. In any case, the Noticee has not submitted relevant details nor has the Noticee demonstrated to satisfaction that the reconciliation was indeed done on given date.

In view thereof I hold that the allegation that Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008, stand established.

14.4. **CLIENT FUNDING:**

14.4.1. **In this regard, it was inter alia alleged in the SCN that in 24 out of sample 75 instances the broker has funded clients beyond T+2+5 days. Total amount of funding is Rs. 2.77 Crore.**

Accordingly, it was alleged that Noticee has Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

14.4.1.1. In this regard, I note that Noticee as reply to the SCN its vide letter dated January 11, 2023 has inter alia submitted that, '…… *the Noticee submits that 24 instances where related to clients availing Margin Trading Facility …. In respect thereto the T+2+5 days principle is not applicable. For these clients, the cumulative ledger is taken for consideration which is incorrectly reflecting a debit balance ……. The Noticee is willing to provide any further data if required for this purpose …… It is humbly submitted that this submission had been made previously to the inspection team in response to the SEBI letter dated March 21, 2022. However, the same has been blatantly ignored while issuing the SCN .', and that '. In the remaining one instance of client funding, it is submitted that the allegation was made during the peak period of the Covid '19 pandemic where due to operational difficulties the Noticee was unable to settle the accounts on time. Due to the difficulties being facts, the deadline of T+2+5 days ended on June 10, 2020 and the ledger was in credit on June 18, 2020, post 5 working days…'*.

14.4.1.2. I note that the Noticee, as part of Annexure L titled 'Client Funding Allegation', has inter alia submitted two excel files viz., one titled 'Further Exposure', which apparently is similar to the one shared by SEBI to the Noticee and inter alia having details of the twenty four instances totaling to Rs. 2.77 crores and another excel file titled, 'MTF Log', which inter alia contains data in one column titled 'accountid;date_activated' and having twenty one rows with each row reflecting information in following form 'DA36846;2020-08-26'. To sum up briefly, besides simply making assertions /mere statements, the only document submitted by the Noticee is an excel file having twenty one rows of data of ‘accountid’ and ‘date activated’ in form of an ‘alphanumeric character’ and ‘date in yyyy-mm-dd format’ respectively and hence incomprehensible in nature.

Accordingly, I note that the submissions of the Noticee are lacking and /or incomplete in so far as Noticee has not provided complete and relevant details along with documents in support of its contentions nor has Noticee demonstrated as to how the alleged violation does not hold. Instead, the Noticee has inter alia submitted that ‘The Noticee is willing to provide any further data if required for this purpose…’. I note similar reply had been submitted by the Noticee earlier too to SEBI as part of its reply vide letter dated April 15, 2022 to the observations / findings of the inspection. In my opinion being well aware of the alleged violation since inspection, having been informed about the observations /findings of the inspection by SEBI in past vide SEBI letter dated March 21, 2022 and which are the subject matter of instant proceedings, it is for the Noticee to demonstrate with relevant details and documents, complete in nature, so as to invalidate /abrogate the alleged violation emanating out of the observation /findings of the inspection. I cannot ignore that the Noticee is not a novice in the field of securities market but a registered intermediary and also that the total amount alleged to have been funded was to tune of Rs. 2.77 Crores. Accordingly, in my opinion, the submissions of the Noticee being lacking /incomplete and without relevant documents are devoid of merit and hence not acceptable. In view thereof, I hold that the allegation that in 24 out of sample 75 instances the broker has funded clients beyond T+2+5 days, stands established.

In view thereof, I hold that the allegation that that Noticee had violated Clause 2.6 of Annexure of SEBI Circular

SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, stands established.

14.5. **FUNDS IN SUSPENSE ACCOUNT NOT RECONCILED:**

14.5.1. **In this regard, it was inter alia alleged in the SCN that the Noticee has not done reconciliation of funds lying in suspense account either by allocating the credit of funds to respective clients or returning the funds from where it received. Balance in Suspense A/c as on November 30, 2021 was Rs. 27.24 Lakh.**

Accordingly, it was alleged that the Noticee has violated Clause A(1) & A(2) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

14.5.1.1. In this regard, firstly I note that the Noticee has not disputed the alleged balance of Rs. 27.24 lakhs lying in suspense account as on November 30, 2021 and that the submissions of the Noticee in this regard are inter alia in nature of admission in so far as, it has inter alia submitted that, *' … The Noticee submits that the ….. closing balance as on November 30, 2021 was Rs 27,24,465.31.'*.

14.5.1.2. Further in this regard, I note that while Noticee has inter alia contended that '… there is a proper reconciliation system in the place…', and that, ' … Reconciliation of the funds lying in the suspense account is done on a continuous basis …', however neither relevant and specific details have been provided nor has the Noticee submitted any relevant documents, in this regard. To cite as example, assuming that there were a proper system in place, as contended by the Noticee, even basic relevant details like the periodicity of reconciliation, dates of few reconciliation exercises during relevant period etc., have not been submitted by the Noticee. I also note that no documents whatsoever in support of the contention relating to reconciliation having been carried out then periodically, continuous monitoring of the suspense account have been provided /submitted, say for example copy of document relating to policy /practice being followed with regard to periodic reconciliation of funds lying in suspense account, copies of document relating to actual reconciliation of funds having been done and put up and /or filed, copies of any communication internal or external relating to reconciliation of funds and /or related follow up with bank /clients etc. In my opinion, without relevant and important details and documents, the submissions of the Noticee are mere assertions and statements and hence lacking in nature and therefore devoid of merit and not acceptable.

14.5.1.3. Further in this regard, I also note that Noticee has inter alia also submitted that, *'… In some instances, where the Noticee did not have proper details regarding the clients or bank details from which funds were received the Noticee has been continuously following up with the Banks to get such details….'.* In my opinion occurrence of such instances and such submissions /admission only reflect upon lack of effective systems and control mechanism in place. Considering that Noticee is a registered intermediary viz., as a stock broker it was Noticee's responsibility to act with due skill, care and diligence in the conduct of all his business.

14.5.1.4. In view thereof, I hold that the allegation that the Noticee has not done reconciliation of funds lying in suspense account either by allocating the credit of funds to respective clients or returning the funds from where it received, stands established.

In view thereof, I hold that the Noticee has violated Clause A(1) & A(2) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

14.6. **MISMATCH IN RETENTION STATEMENT:**

14.6.1. **In this regard, it was inter alia alleged in the SCN that during inspection SEBI observed the following:**

14.6.2. **Securities Balance mismatch - 1 client; 1 instance, Short Reported in retention statement - Rs. 41,85,87,259/-**

14.6.3. **225% of Margin Amount mismatch - 1 client; 3 instances, Excess Reported in retention statement - Rs. 1,07,65,502/-**

In view of above, it was alleged that Noticee has violated the Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.

14.6.3.1. In this regard, I note that Noticee as reply to the SCN, vide letter dated January 11, 2023 has inter alia submitted that, *'In respect of the allegations pertaining to mismatch in retention statement, the Noticee submits that the client's opening margin was considered instead of the day ending margin. Therefore, the 225% of margin was miscalculated resulting in a much-inflated figure. In fact even if the initial margin has been considered, the Noticee has duly settled its clients' accounts as the same clients also had F&O margins as well, which was correctly calculated.'.*

14.6.3.2. In this regard, I note that the submissions of the Noticee, as regards securities balance mismatch, are in nature of admission, in so far as the same has not been disputed by the Noticee nor have any submissions been made in respect of the same. I note that while the alleged violation pertained to two aspects viz., securities balance mismatch involving approx. Rs. 41.85 crores and margin amount mismatch involving approx. Rs. 1.07 crores, the Noticee has apparently made submissions only with regard to 225% margin amount mismatch.

14.6.3.3. As regards the submissions made by the Noticee relating to 225% margin amount mismatch, in this regard, I note that the submissions of the Noticee are without relevant details and documents. I note that no documents whatsoever in support of its contentions have been submitted by the Noticee despite Noticee disputing the allegation and inter alia contending that opening margin was considered instead of day ending margin. It is for Noticee who has to submit complete and relevant details and documents so as to be able to demonstrate to the contrary in case it is being contended that there was no violation on part of the Noticee, as was alleged. I note that the submissions of the Noticee in this regard are lacking and /or impaired and clipped beyond being even sufficing enough to satisfactorily demonstrate what has been contended by it, which Noticee has failed to do. I also note that the amount of mismatch in respect of securities balance and margin account is to the tune of Rs. 41.85 crores and Rs. 1.07 crores respectively.

14.6.3.4. In my opinion occurrence of such instances and such submissions /admission only reflect upon lack of effective systems and control mechanism in place. Considering that Noticee is a registered intermediary viz., as a stock broker it was Noticee's responsibility to act with due skill, care and diligence in the conduct of all his business.

14.6.3.5. In view thereof, I hold that the allegation that there was securities balance and margin amount mismatch, per stated details, stands established.

In view thereof, I hold that the Noticee has violated the Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Annexure-1 to NSE Circular NSE/INSP/36889 February 02, 2018 read with Clause A(5) of the code of conduct**, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.**

14.7. **KYC & ACCOUNT OPENING PROCESS:**

14.7.1. **In this regard, it was inter alia alleged in the SCN that in case of Online Account opening, out of 1016 sample data, 985 accounts were opened through online mode. There is delay in following the guidelines by Noticee for online account opening. Noticee has started capturing Live photograph of the client with effect from October 2021. In 931 accounts (out of 985) opened prior to October 2021, Noticee has not captured Live photograph of the client.**

In view of the above, it is alleged that Noticee has violated provisions of SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/ P/2020/73 dated April 24, 2020 (Communique CDSL/OPS/DP/POLCY/ 2020/203 dated April 27, 2020) and point no. 2 of the FAQ issued by CDSL vide Communique CDSL/OPS/DP/POLCY/2020/342 dated August 10, 2020.

14.7.1.1. In this regard, I note that Noticee as reply to the SCN, vide letter dated January 11, 2023 has inter alia submitted that, 'The Noticee humbly denies the allegation in relation to KYC and account opening process. In respect of the allegations pertaining to compliance with taking Live Photos, the Noticee submits that they have captured live photo of the required clients along with time stamping and geo-location tagging for the accounts opened with online KYC. The Noticee submit that they duly maintained logs of time Stamp and Geo-Location in their database. However, the same was to be printed on PDF form previously. The Noticee submits that they have been compliant with the same and all the details in this regard have been duly uploaded.'.

14.7.1.2. in this regard, I note that the submissions of the Noticee are without relevant details and documents. I note that no documents whatsoever in support of its contentions have been submitted by the Noticee despite Noticee disputing the allegation.

14.7.1.3. It is for Noticee who has to submit complete and relevant details and documents so as to be able to demonstrate to the contrary in case it is being contended that there was no violation on part of the Noticee, as was alleged. I note that the submissions of the Noticee in this regard are lacking and /or impaired and clipped beyond being even sufficing enough to satisfactorily demonstrate what has been contended by it, which Noticee has failed to do. I also note that the count of 931 instances out of 985 of not having captured live photograph works out to approx. 94.52%, which is substantial.

14.7.1.4. In my opinion occurrence of such instances of non-compliance relating to KYC and online account opening norms viz., relating to capturing of live photographs of the clients, reflect upon lack of effective systems and control mechanism in place and /or may pose serious risk to orderly functioning of the securities market and cannot be overlooked.

14.7.1.5. In view thereof I hold that the allegation that there was delay in following the guidelines by Noticee for online account opening in so far as the Noticee had started capturing Live photograph of the client with effect from October 2021 and that in 931 accounts (out of 985) opened prior to October 2021, the Noticee had not captured Live photograph of the clients, stands established.

In view thereof, I hold that the Noticee has violated provisions of SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/ P/2020/73 dated April 24, 2020 (Communique CDSL/OPS/DP/POLCY/ 2020/203 dated April 27, 2020) and point no. 2 of the FAQ issued by CDSL vide Communique CDSL/OPS/DP/POLCY/2020/342 dated August 10, 2020.

ISSUE II: If yes, whether the Noticee is liable for imposition of monetary penalty under provisions of Section 15HB of SEBI Act, 1992 and Section 19G of Depositories Act 1996?

15. It has been established in the preceding paragraphs that Noticee has violated the stated provisions of SEBI (Stock Brokers) Regulations, 1992 and SEBI Circulars.

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

"….

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

….

”.

17. In view of the above, I conclude that the Noticee are liable for monetary penalty under the provisions of Section 15HB of the SEBI Act, 1992 AND Section 19G of Depositories Act 1996 which reads as under:

“

……

Penalty for contravention where no separate penalty has been provided.

Section 15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under 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.*

……

”.

CHAPTER IV

ENQUIRY AND INSPECTION

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

….

“.

(Note: for detailed /complete text/provisions etc., relevant Act may please be referred).

ISSUE III - If so, what should be the monetary penalty that can be imposed upon the Noticee?

18. While determining the quantum of penalty under section 15HB of SEBI Act, 1992 and Section 19G of Depositories Act 1996, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under-

> "….
>
> ***Factors to be taken into account while adjudging quantum of penalty***
>
> ***15J.*** *While adjudging quantum of penalty under section 15-I, or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:-*
>
> a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> b) *the amount of loss caused to an investor or group of investors as a result of the default;*
>
> c) *the repetitive nature of the default.*
>
> *….*
>
> *".*
>
> ***DEPOSITORIES ACT, 1996***
>
> *"…*
>
> ***[21][Factors to be taken into account while adjudging quantum of penalty]***
>
> *19-I. While adjudging the quantum of penalty under [22][section 19 or section 19H, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default.*
>
> *[23][Explanation.—For the removal of doubts, it is clarified that the power [24][***] to adjudge the quantum of penalty under sections 19A to 19F shall be and shall always be deemed to have been exercised under the provisions of this section.".]*
>
> *…".*

19. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. There is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, I cannot ignore the fact that in a regulated securities market, provisions of law are mandated inter alia with the perspective of orderly functioning of the securities market and /or protection of interest of investors etc. In the present matter, Noticee being SEBI Registered Stock Broker and Depository Participant was required to comply with the extant applicable provisions of

law which it failed to and accordingly such non-compliance needs to be dealt with suitable penalty.

E. ORDER

20. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the SEBI Adjudication Rules, 1995 and Section 19-H of Depositories Act, 1996, r/w rule 5 of the Depositories Rules, 2005, I hereby impose following penalty, as per Table below, on the Noticee for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of Noticee	Penalty Under Section	Penalty Amount (Rs.)
SAMCO Securities Limited	Section 15HB of SEBI Act, 1992	7,00,000/- (Rs. Seven Lakh only)
	Section 19G of Depositories Act 1996	
Total		7,00,000/- (Rs. Seven Lakh only)

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act

for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

PLACE: MUMBAI	**AMAR NAVLANI**
DATE: August 31, 2023	**ADJUDICATING OFFICER**