

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sub-section (3) of section 12 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of: -

Name of the Noticee	PAN/Registration details
Goldenmaple Commodities Private Limited	PAN: AAJCS8332D Stock Broker (Registration No.: INZ000020638)

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A. Background

1. The present proceedings have emanated from an Enquiry Report dated May 31, 2024, (hereinafter referred to as the “**Enquiry Report**”), submitted in terms of regulation 26 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) with respect to Goldenmaple Commodities Private Ltd. (hereinafter referred to as “**Noticee/ Stock Broker**”), who is a registered Stock Broker.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had carried out joint inspection with Stock Exchanges in respect of broking activities of the *Noticee*, for the period April 01, 2020 to November 30, 2021 (hereinafter referred to as the “**Inspection Period**”) and made certain findings/ observations during the course of inspection, which were communicated to the *Noticee* vide email dated March 14, 2022. After examining the reply submitted by the *Noticee* vide email dated March 23, 2022, SEBI observed certain non-compliances by the *Noticee* of provision of the circulars issued under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

B. Proceedings before the Designated Authority

3. Pursuant to findings/ observations made in the course of inspection, SEBI initiated enquiry proceedings under Chapter V of the Intermediaries Regulations against the *Noticee* by appointing a Designated Authority (hereinafter referred to as “**DA**”) in the matter on July 24, 2023.
4. Based on the findings of facts, the DA issued a show cause notice dated November 07, 2023 to the *Noticee* in terms of regulation 25 of the Intermediaries Regulations for the following alleged violations-
 - i. Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 for mis-

utilisation of clients' funds; and

- ii. Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 for non-maintenance of records for client order placement.

- 5. Pursuant to the transfer of DA, another DA was appointed on December 19, 2023. In response to the show cause notice issued by the DA, the *Noticee* filed its reply vide email dated March 22, 2024. Further, a personal hearing was also granted to the *Noticee* by the DA on April 19, 2024. Pursuant to hearing, the *Noticee* filed additional submissions on April 23, 2024.
- 6. The DA, after conducting the enquiry proceedings in terms of the Intermediaries Regulations, submitted the Enquiry Report dated May 31, 2024. In the Enquiry Report, the DA found that the violations alleged against the *Noticee* had been established. The DA also observed that the violations by the *Noticee* are grave in nature and the acts of the *Noticee* are detrimental to the interest of the investors in the securities market. Accordingly, the DA recommended suspension of certificate of registration of the *Noticee* for a period of two months in terms of regulation 26 of the Intermediaries Regulations.

C. Proceedings before the Whole Time Member

- 7. Pursuant to the submission of the Enquiry Report, post-Enquiry show cause notice dated July 04, 2024 (hereinafter referred to as “**SCN**”), based on violations alleged in the Enquiry Report and listed at paragraph 4 above, was issued to the *Noticee* in terms of sub-regulation (1) of regulation 27 of the Intermediaries Regulations, calling upon them to show cause as to why action as recommended by the DA or any other action in terms of the Intermediaries Regulations, be not taken against it. The Enquiry Report was also enclosed along with the SCN that was served upon the *Noticee*. The SCN was sent to the registered address of the *Noticee* as well as to

the alternate addresses. However, SCN could not be delivered to any of the addresses and the same were returned undelivered. Thereafter, the SCN was sent vide email dated July 08, 2024 to the registered email address of the *Noticee* and delivery of the same has been confirmed. I note that the *Noticee*, vide email dated July 25, 2024, submitted reply to the SCN.

8. Subsequently, a personal hearing in the matter was scheduled on September 24, 2024 and the hearing notice was served on the *Noticee* through the registered email. On the day of hearing, the *Noticee* appeared through its representatives (two Directors namely Mr. Rupesh Kumar and Mr. Sanjay Mishra) and made submissions. During the hearing, the *Noticee* was advised to provide proof in the form of an NOC from the exchanges certifying that the *Noticee* has settled the pending dues with respect to its clients'. The *Noticee* made post hearing submissions vide emails dated September 26, 2024, October 04, 2024 and October 07, 2024. In light of the aforesaid factual position, I am of the opinion that sufficient opportunity has been provided to the *Noticee* and the principles of natural justice have been duly followed in the matter.
9. The summary of submissions made by the *Noticee* (through its representatives) during the hearing and vide its replies dated July 25, 2024, September 26, 2024, October 04, 2024 and October 07, 2024 are as under:
 - i. The *Noticee* has been inactive since last two years and that the penalties have been paid to SEBI and the Multi Commodity Exchange of India Limited (MCX) for the observations made by the inspection official for the inspection period April 01, 2020 to November 30, 2021.
 - ii. The *Noticee* was not able to survive and continue the business. Further, the *Noticee* has placed surrender request with MCX and same is under process and pending for approval. The *Noticee* requested to consider its surrender request and direct MCX to approve the same instead of suspension.

- iii. The *Noticee* submitted bank statements through which pay-outs were processed for credit balance clients. The *Noticee* also submitted an excel file showing credit of clients in its books.
- iv. One of the Directors of the *Noticee* i.e. Shri Rupesh Kumar, *inter alia*, made submission regarding his non-involvement in the company's operations/ banking matters/ employee management and that the actions were taken without his knowledge. It was also submitted that the *Noticee* had fraudulently appointed him as director without his consent.
- v. The *Noticee* forwarded an email dated October 07, 2024 received from an officer of MCX stating as under-

".....In response to your email on the captioned subject, we would like to inform you that Golden maple Commodities (P) Limited, vide its emails dated Dec 15, 2022; Dec 26, 2022 & Jan 5, 2023 had made its submissions towards the requirement of settlement of accounts of clients for funds (for the period from April 1, 2020 to November 30, 2021), with relevant records/documents. While examining said submissions, the Exchange had observed that they were in order."

- 10. After noting the submissions of the *Noticee*, I now proceed to examine the matter on its merits. In the extant proceeding, it is required to ascertain whether the *Noticee*, by its acts and conduct, has violated the applicable provisions of securities law as mentioned in the enquiry report.
- 11. However, before proceeding further, it is necessary to refer to relevant provisions of law and the same are reproduced here under for reference:

SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12.(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(2).....

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Delegation

19. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

SEBI (Intermediaries) Regulations, 2008

Cancellation or suspension of registration and other actions.

23. Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –

(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,–

(i).....

.....

(vii) issuance of a regulatory censure to the Noticee:

Order

27. (1)

(2).....

.....

(5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.

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

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

- i. Moneys received from or on account of each of his clients and,
- ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

- i. money held or received on account of clients;*
- ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

- i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
- ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;*
- iii. money which may by mistake or accident have been paid into such account in contravention of para C above.*

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

Annexure

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

3.1. *Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.*

3.2. *Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:*

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

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

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

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

E- Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

F- Aggregate value of Non-funded part of the BG across Stock Exchanges

P- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

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

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

Principle:

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

$$G = (A+B)-C$$

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.

Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H = |G| - |D|$$

3.3.2. *Funds of clients used for Margin obligation of proprietary trading:*

Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P). If $P > (G+E+F)$, then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

3.3.3.

3.4.

3.5.

3.6. *Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.*

.....

Prevention of Unauthorised Trading by Stock Brokers

I...

...

III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:

- a. Physical record written & signed by client,***
- b. Telephone recording,***
- c. Email from authorized email id,***
- d. Log for internet transactions,***
- e. Record of messages through mobile phones,***
- f. Any other legally verifiable record.***

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

D. Examination of Evidence

12. I have carefully perused the material available on record including the Enquiry Report submitted by the DA, responses of the Noticee and applicable provisions of law. I shall now proceed to deal with the violations alleged in the SCN *in seriatim*.

I. Mis-utilization of clients' funds

13. It has been alleged in the Enquiry Report that the value of “G” was negative in the range of INR 42.94 Lakh to INR 46.53 Lakh on all 18 sample days in the month of April 2020. It has also been alleged that the value of “I” was positive in the range of INR1.96 Lakh to INR 3.51 Lakh on 12 out of 18 sample days. Accordingly, it has been alleged that the *Noticee* has violated the provisions of clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016.
14. The calculation for 18 sample days (for the value “G” and “I”) during the month of April 2020 are provided in the table below-

Table No. 1

Sr. No.	Date	A	B	C	G*	D	E	F	P	If G>0, I=P- (G+E+F) If G<0, I=P-(E+F)
1	01/04/2020	531.16	1,85,822.29	45,16,971.00	(43,30,617.55)	15,55,087.00	-	-	2,18,995.10	2,18,995.10
2	03/04/2020	531.16	1,83,475.37	45,20,297.00	(43,36,290.47)	15,55,087.00	-	-	2,15,498.72	2,15,498.72
3	07/04/2020	531.16	2,08,824.94	45,35,388.00	(43,26,031.90)	15,55,087.00	-	-	2,36,699.56	2,36,699.56
4	08/04/2020	531.16	2,30,011.94	45,96,575.00	(43,66,031.90)	15,55,087.00	-	-	2,28,046.07	2,28,046.07
5	09/04/2020	531.16	2,20,692.94	45,87,256.00	(43,66,031.90)	15,55,087.00	-	-	2,23,216.24	2,23,216.24
6	13/04/2020	531.16	2,29,825.94	45,95,153.00	(43,64,795.90)	15,55,087.00	-	-	2,18,088.68	2,18,088.68
7	15/04/2020	1,50,526.44	2,37,141.94	47,52,464.00	(43,64,795.62)	15,55,087.00	-	-	2,12,969.01	2,12,969.01
8	16/04/2020	20,526.44	4,44,047.94	47,59,370.00	(42,94,795.62)	15,55,087.00	-	-	3,37,095.37	3,37,095.37
9	17/04/2020	20,526.44	4,50,835.94	47,66,104.00	(42,94,741.62)	15,55,087.00	-	-	3,51,662.13	3,51,662.13
10	20/04/2020	526.44	4,07,748.94	47,22,884.00	(43,14,608.62)	15,55,087.00	-	-	2,62,204.77	2,62,204.77
11	21/04/2020	526.44	2,62,156.94	45,77,292.00	(43,14,608.62)	15,55,087.00	-	-	2,02,363.15	2,02,363.15
12	22/04/2020	25,526.44	(51,074.06)	45,77,482.00	(46,03,029.62)	15,55,087.00	-	-	1,96,195.35	1,96,195.35
13	23/04/2020	526.44	(52,418.06)	46,01,138.00	(46,53,029.62)	15,55,087.00	-	-	-	-
14	24/04/2020	526.44	(38,923.06)	46,14,212.00	(46,52,608.62)	15,55,087.00	-	-	-	-
15	27/04/2020	526.44	(38,923.06)	46,14,212.00	(46,52,608.62)	15,55,087.00	-	-	-	-
16	28/04/2020	1,526.44	(39,234.14)	45,87,930.00	(46,25,637.70)	18,15,304.00	-	-	-	-
17	29/04/2020	1,526.44	(39,234.14)	45,80,328.00	(46,18,035.70)	18,16,323.00	-	-	-	-
18	30/04/2020	526.44	(74,642.29)	45,79,328.00	(46,53,443.85)	18,16,323.00	-	-	-	-

* “()” implies negative (-) value

15. I note that as per SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 (refer page 8 of the order), a Stock Broker is obligated to keep the money of the clients in a separate account and its own money in a separate account. Further, the Stock Broker is not allowed to make payment from the client's account, for transactions in which the Stock Broker is taking a position as a principal. Further, I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer page 10 of the order), the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance "C". Further, Exchanges shall calculate the difference i.e. "G" as follows:

$$G = (A+B)-C$$

16. For better understanding, following may be referred to from SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016-

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

"B" - Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG shall be considered as part of B.

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

"D" - Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques

deposited by clients, uncleared cheques issued to clients and the margin obligations)

“E” - Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

“F” - Aggregate value of Non-funded part of the BG across Stock Exchanges

“P” - Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

17. I note that if “G” is negative, then the total available fund is less than the ledger credit balance of clients. The negative value of “G” may indicate mis-utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. From the Table No. 1, it is noted that “G” was negative on all 18 sample dates.
18. Further, I note that the positive value of “I” [calculated as $I = P - (E+F)$ when $G < 0$] indicates the extent of funds and securities of clients utilized towards proprietary margin obligations. From the Table No. 1, it is noted that “I” is positive on 12 sample dates in the range of INR1.96 Lakh to INR 3.51 Lakh with average mis-utilization of INR 2.41 Lakh.
19. I note that DA, in the Enquiry Report, found the violation established against the *Noticee* on the ground that the *Noticee* had not disputed the findings with regards to the values of “G” and “I” on the sample days and it had accepted the alleged violations in its reply. Further, the submission of the *Noticee* before the DA that it had transferred funds to clients and had submitted proof of the same to MCX, and that the *Noticee* was in the process of surrendering the membership/registration, was not accepted by DA in absence of evidentiary documents on record.

20. I note that the *Noticee*, in the extant matter, has not made any specific submission disputing the allegations made in the SCN. I also note that the *Noticee*, during the hearing, was enquired whether the *Noticee* had settled the pending dues with respect to its clients. In this regard, the *Noticee*, vide email dated September 26, 2024, forwarded the statements of bank account through which payouts were processed for credit balance clients along with an excel file showing credit of clients in their books. On perusal of the statements of bank account provided by the *Noticee*, I note that the bank account pertains to another entity (Krisha Incap Services Pvt. Ltd.) and not the *Noticee*.
21. However, I note that the *Noticee*, vide its email dated October 07, 2024, forwarded an email dated October 07, 2024 sent by MCX confirming that the submission of the *Noticee* towards the requirement of settlement of accounts of clients for funds (for the period from April 01, 2020 to November 30, 2021) along with relevant records/documents were in order. From the material available on record, I note that MCX, vide email dated October 18, 2024, confirmed the above submission made by the *Noticee*.
22. Considering the aforesaid and the fact that the *Noticee* has not disputed the alleged violation, I find that even though the settlement of accounts of clients for funds (for the period from April 01, 2020 to November 30, 2021) is now found to be in order by MCX, the value of "G" was negative on 18 days and "I" was positive on 12 days during the inspection period. This implies that on those instances, clients' funds for other purposes i.e. funds of credit balance clients were being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. Further, it also implies that funds and securities of clients were utilized towards proprietary margin obligations of the *Noticee*.
23. In this regard, I note that Hon'ble Securities Appellate Tribunal, in the matter of *Samco Securities Ltd. vs. SEBI* (Appeal No. 493 of 2021 decided on March 30, 2022), as regards the seriousness of mis-utilization of client's fund has held as under:

“We find that mis-utilization of the clients’ credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients’ accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016.”

24. In view of the aforesaid observations, I agree with the findings of DA and hold that the *Noticee* has violated the provisions of clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016.

II. Non-maintenance of proper order placement records

25. It has been alleged that the *Noticee* did not keep call recordings of order placement for 21 trades out of 25 sample trades. Accordingly, it has been alleged that the *Noticee* violated provisions of clause III of the SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR /P/2018/54 dated March 22, 2018 (refer page 13 to 14 of the order). The details of the observations with respect to call records of trade placement for 25 sample trades is mentioned below-

Table No. 2

S.No.	DATE	UCC	Mode	Comments
1	03/04/2020	GM609	Call recording	No mention of UCC, client repeatedly telling dealer not to trade without his permission
2	16/04/2020	MG037		No order placement records provided
3	16/04/2020	MG037		
4	17/04/2020	RP001		
5	17/04/2020	MG037	Call recording	client did not specified contract only mentioned to sell natural gas
6	17/04/2020	MG037	Call recording	Dealer called the client and recommended to deal in derivative to which client agreed. Client also sought advice to trade in equities
7	21/04/2020	MG037	Call recording	client did not specified contract only mentioned to sell goldmini, selling price quoted by dealer different than that in contract note
8	23/04/2020	JH004		No order placement records provided
9	23/04/2020	RP001		
10	23/04/2020	SM007		

11	23/04/2020	GM586	
12	23/04/2020	SM007	
13	23/04/2020	SM016	
14	23/04/2020	SM008	
15	23/04/2020	SM009	
16	23/04/2020	SM008	
17	23/04/2020	SM016	
18	23/04/2020	SM009	
19	23/04/2020	SM016	
20	23/04/2020	GM496	
21	23/04/2020	JH005	
22	23/04/2020	JH005	
23	23/04/2020	GM607	
24	23/04/2020	RP001	
25	23/04/2020	GM607	

26. The DA, in the Enquiry Report, *inter alia*, observed that the *Noticee*, despite contending that all the trades were confirmed, could not provide the recordings of order placement. Further, the DA did not accept the submission of the *Noticee* that it did not have adequate system in place during first covid lockdown. The DA observed that the *Noticee* did have a system for recording trade placement calls by clients, but still failed to maintain the call records in case of 21 sample trades. Accordingly, the DA found that the allegations were established against the *Noticee*. The DA also observed that with respect to 4 trades, the call records were maintained, but there were other discrepancies like non-confirmation of client ID, contract details etc. as mentioned in table above, which could be termed as lack of due diligence, however, the same was not alleged in the show cause notice issued by the DA.
27. I note that as per clause III of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, all brokers are mandated to execute trades of clients only after keeping evidence of the client placing such order, *inter alia*, in the form of physical record written and signed by client or telephone records etc.
28. I have perused the material on record and I note that inspection clearly highlighted the discrepancies in maintenance of records by the *Noticee*. I note that the *Noticee* has not

made any specific submission refuting the allegations in the SCN regarding non-maintenance of proper order placement records on 21 sample instances. In my view, if the *Noticee* had maintained the records, it would have been able to provide the same. I note that it is a mandatory requirement for Stock Brokers to ensure that record/ data is maintained as per requirement of law.

29. In view of the above, I agree with the findings of DA and hold that the *Noticee* has violated provisions of clause III of the SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.
30. Further, I note that Shri Rupesh Kumar, Director and one of the representatives of the *Noticee*, *inter alia*, made submission regarding his fraudulent appointment and non-involvement in the company's operations/ banking matters/ employee management. I note that the said representative requested to remove his name from any directorial responsibilities and also requested to investigate the fraudulent activities, including misuse of his Digital Signature Certificate. On perusal of the submission, I note that same does not address any of the allegations made against the *Noticee* in the SCN. Further, the requests made in the said submission is beyond the purview of this matter and the same does not warrant consideration in the instant proceedings.
31. In view of the foregoing, I find that the *Noticee* has violated the following provisions-
 - i. Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 for mis-utilisation of clients' funds; and
 - ii. Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 for non-maintenance of records for client order placement.

E. Conclusion

32. Stock Brokers are expected to strictly comply with the provisions of the relevant laws, both in letter and in spirit as they play an important role in retail and small investor participation in the securities market. For the reasons mentioned in the preceding paragraphs, I find that the *Noticee* has violated the provisions of the SEBI Circulars as mentioned at paragraph 31 above. I also note that an adjudication order dated May 31, 2024 was passed against the *Noticee* with respect to identical allegations arising out of the same inspection, wherein a penalty of INR 6 Lakh was imposed, which has been paid by the *Noticee*. It is true that Enquiry and Adjudication proceedings are separate and independent of each other. Even if penalty is imposed, direction under sub-section (3) of section 12 of the SEBI Act can also be passed. However, I am of the view that direction has to be in proportion to the gravity of the violation. For technical/procedural violations of minor nature, adjudicating proceeding may be taken as sufficient enforcement action. However, it is seen that violation like mis-utilization of clients' fund cannot be considered as technical violations of minor nature. However, it is noted that subsequently all outstanding clients' dues have been paid. Further, I also note that there are no complaints pending against the *Noticee* on SEBI Complaints Redressal System (SCORES) as on date.
33. I have also noted that MCX has confirmed the settlement of accounts of clients for funds (for the period from April 01, 2020 to November 30, 2021). Further, the *Noticee* has made a plea that it has placed surrender request with MCX and the same is under process and pending for approval with SEBI. However, it is established fact that during the inspection period, provisions of relevant laws as alleged have been violated by the *Noticee*.
34. Having regard to the facts and circumstances of the instant proceeding, I do not agree with the recommendation of the DA for suspension of certificate of registration of the *Noticee* for a period of two months. I am of the view that issuance of regulatory censure in terms of clause (vii) of sub-regulation (1) of regulation 26 of the Intermediaries

Regulations would commensurate with violations committed by the *Noticee* and the same would meet the ends of justice, on account of the following mitigating facts: -

- (i) The *Noticee* has cleared the accounts of all clients, with no complaints.
- (ii) *Noticee* has already closed down its business and had made application for surrendering its license.

35. I note that in terms of sub-regulation (5) of regulation 27 of the Intermediaries Regulations, after considering the facts and circumstances of the case, material on record and the written submissions made by the entity, it would be endeavoured to pass the order in 120 days from the date of receipt of the submissions or personal hearing, whichever is later. In the present case, the latest submission of the *Noticee* was received on October 07, 2024 and the present order is being passed within 120 days of receipt of the said submission. Further, in terms of section 19 of the SEBI Act, 1992, the power to pass such order has been delegated to Whole Time Members of the Board.

F. Order

36. I, in exercise of the powers conferred upon me under sub-section (3) of section 12 and section 19 of the SEBI Act, 1992 read with sub-regulation (5) of regulation 27 of the Intermediaries Regulations, hereby issue regulatory censure against Goldenmaple Commodities Private Limited (SEBI Registration No. INZ000020638).
37. The Order shall come into force with immediate effect.
38. A copy of this order shall be forwarded to the *Noticee*.

-sd-

DATE: DECEMBER 02, 2024

PLACE: MUMBAI

KAMLESH C. VARSHNEY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA