BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/CB/2019-20/3313]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of –

Choice Equity Broking Private Limited [**PAN** AADCC8390B] having address at – Choice House, Shree Shakambhari Corporate Park, Plot No. 156-158, Kanti Nagar, J B Nagar, Andheri (East), Mumbai – 400 099

In the matter of *Choice Equity Broking Private Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") carried out an inspection of broking operations of Choice Equity Broking Private Limited (hereinafter be referred to as, the "***Noticee***") which is registered with SEBI as a stock broker on January 06, 10-12, 12, 20 of 2017 for the period April 01, 2015 – September 30, 2016 (hereinafter be referred to as, the "***Inspection Period***").

2. Analysis of observations made in the inspection of the Noticee revealed certain violations of circulars issued by SEBI. Therefore, SEBI initiated adjudication proceedings under Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter be referred to as, the "***SCRA***") for violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter be referred to as, the "***Circular dated November 18, 1993***") & SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter be referred to as, the "***Circular dated September 26, 2016***") read with Regulation 26(xiii) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter be referred to as, the "***Stock Broker Regulations***") alleged to have been committed by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 23I of the SCRA read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter be referred to as, the "***SCR Adjudication Rules***") *vide* order dated December 28, 2018 to inquire into and adjudge under Section 23D of the SCRA, the alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. EAD/EAD5/MC/CB/5250/2019 dated February 26, 2019 (hereinafter be referred to as, the "***SCN***") was served upon the Noticee under Rule 4(1) of the SCR Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the SCR Adjudication Rules and penalty be not imposed under Section 23D of the SCRA for the alleged violations of Circular dated November 18, 1993 and Circular dated September 26, 2016.

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

a) During inspection, an analysis of the data (as produced in the table hereunder), including total fund balance available, collateral deposited with clearing corporation / clearing member, total credit balance of all clients etc. was carried out to ascertain whether funds of credit balance clients were used for settlement obligations of debit balance clients or for own purpose.

Date	**Funds Available in client bank accounts and cash/cash equivalent deposits with clearing corporation/ clearing member - across all Stock Exchanges**		**Clients' Funds as per the client ledger- across all Stock Exchanges**	**Difference**			
	Total of end of the day balance in all Client Bank Account s	**Collateral deposited with clearing corporation/ clearing member in form of Cash**	**Total Credit Balance of all clients (after adjusting for open bills and**		**Total debit balance (after adjusting for open bills and uncleared cheques)**	**Amount of funds of one client used for another client**	**Amount of fund used for own purpose (only if absolute value G is greater**

		and Cash Equivalents*	uncleared cheques)				than debit balance clients)
	A	**B**	**C**	**G=(A+B)-C**	**D**	**G, if G<D**	**H=G-D**
06/04/2015	19,994,459	185,375,000	350,318,255	(144,948,796)	744,059,090	144,948,796	(599,110,294)
20/04/2015	23,404,818	191,875,000	394,326,576	(179,046,758)	778,481,449	179,046,758	(599,434,691)
21/04/2015	18,705,921	192,375,000	378,411,748	(167,330,827)	776,676,547	167,330,827	(609,345,720)
05/05/2015	18,206,644	179,595,000	316,782,152	(118,980,509)	850,248,029	118,980,509	(731,267,520)
06/05/2015	16,375,585	171,595,000	407,723,223	(219,752,639)	817,900,111	219,752,639	(598,147,472)
08/05/2015	19,333,595	172,095,000	355,365,571	(163,936,976)	815,320,536	163,936,976	(651,383,561)
12/05/2015	18,238,432	196,895,000	353,258,364	(138,124,932)	804,976,372	138,124,932	(666,851,439)
25/08/2015	26,987,691	162,025,000	392,839,945	(203,827,254)	1,047,215,909	203,827,254	(843,388,655)
19/10/2015	20,090,628	140,625,000	295,028,631	(134,313,003)	904,305,559	134,313,003	(769,992,557)
04/11/2015	10,648,731	130,500,000	329,538,141	(188,389,409)	931,670,600	188,389,409	(743,281,191)
18/01/2016	21,957,400	108,625,000	238,718,173	(108,135,774)	801,270,746	108,135,774	(693,134,972)
02/02/2016	7,028,382	109,855,000	198,795,142	(81,911,760)	792,482,723	81,911,760	(710,570,963)
04/04/2016	11,147,547	121,864,940	229,524,334	(96,511,847)	710,468,289	96,511,847	(613,956,442)
05/04/2016	10,956,679	105,864,940	176,996,587	(60,174,968)	750,669,181	60,174,968	(690,494,214)
11/04/2016	15,963,849	108,164,940	223,783,892	(99,655,103)	724,922,756	99,655,103	(625,267,652)
12/04/2016	12,943,663	108,164,940	223,398,750	(102,290,147)	753,727,143	102,290,147	(651,436,996)
13/04/2016	11,318,290	108,164,940	201,118,754	(81,635,524)	741,965,916	81,635,524	(660,330,392)
18/04/2016	18,834,713	108,164,940	267,648,869	(140,649,217)	718,795,035	140,649,217	(578,145,818)
26/04/2016	10,966,718	102,886,940	201,639,075	(87,785,417)	773,693,582	87,785,417	(685,908,165)
27/09/2016	28,617,679	104,793,750	308,272,136	(174,860,707)	958,188,388	174,860,707	(783,327,681)

Since the value of difference between funds available in client bank accounts plus cash/cash equivalent deposits with clearing corporation/clearing member across all stock exchanges and clients' funds as per client ledger is in negative on all the twenty dates (data of which was provided to the Noticee), it was alleged that funds of clients with credit balance were used to meet settlement obligation of clients with debit balance.

b) During the inspection, to ascertain the amount of usage of funds of clients with credit balance, an analysis of the following data obtained from the Noticee was also carried out:

Date	Difference in funds available in client account and clients credit balance (G)	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) (C)	Percentage (G/C*100)	Funds Misused for Debit Balance Clients	Funds Misused for Own Purpose	% Funds Misused for Debit Balance Clients
	(A+B)-C					
06/04/2015	-144,948,796	350,318,255	41.38	144,948,796	0	41.38
20/04/2015	-179,046,758	394,326,576	45.41	179,046,758	0	45.41
21/04/2015	-167,330,827	378,411,748	44.22	167,330,827	0	44.22
05/05/2015	-118,980,509	316,782,152	37.56	118,980,509	0	37.56
06/05/2015	-219,752,639	407,723,223	53.90	219,752,639	0	53.90
08/05/2015	-163,936,976	355,365,571	46.13	163,936,976	0	46.13
12/05/2015	-138,124,932	353,258,364	39.10	138,124,932	0	39.10
25/08/2015	-203,827,254	392,839,945	51.89	203,827,254	0	51.89
19/10/2015	-134,313,003	295,028,631	45.53	134,313,003	0	45.53
04/11/2015	-188,389,409	329,538,141	57.17	188,389,409	0	57.17
18/01/2016	-108,135,774	238,718,173	45.30	108,135,774	0	45.30
02/02/2016	-81,911,760	198,795,142	41.20	81,911,760	0	41.20
04/04/2016	-96,511,847	229,524,334	42.05	96,511,847	0	42.05
05/04/2016	-60,174,968	176,996,587	34.00	60,174,968	0	34.00
11/04/2016	-99,655,103	223,783,892	44.53	99,655,103	0	44.53
12/04/2016	-102,290,147	223,398,750	45.79	102,290,147	0	45.79
13/04/2016	-81,635,524	201,118,754	40.59	81,635,524	0	40.59
18/04/2016	-140,649,217	267,648,869	52.55	140,649,217	0	52.55
26/04/2016	-87,785,417	201,639,075	43.54	87,785,417	0	43.54
27/09/2016	-174,860,707	308,272,136	56.72	174,860,707	0	56.72

c) On the basis of the analysis reproduced hereinabove, it was observed that 34% to 57.17% of the funds of clients with credit balance were alleged to have been used for the purpose of settling the obligations of clients with debit balance by the Noticee.

d) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 relating to "Regulation of Transactions between Clients and Brokers" *inter alia* requires a stock broker to withdraw money from clients' accounts only when money is required for payment to or on behalf of clients or towards payment of 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 the money so drawn shall not in any case exceed the total of the money so held for the time being for such each client.

e) Similarly, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 relating to "Enhanced Supervision of Stock Brokers / Depository Participants" *inter alia* requires that 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.

f) Therefore, it was alleged that the Noticee, by misusing the funds of the clients with credit balance to settle the obligations of clients with debit balance, had violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 & SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Regulation 26(xiii) of the Stock Broker Regulations.

6. It was stated in the SCN that the aforesaid alleged violation of Circular dated November 18, 1993 and Circular dated September 26, 2016, if established, would make the Noticee liable for monetary penalty under Section 23D of the SCRA, text of which is reproduced as under:

SCRA

*"**23D. Penalty for failure to segregate securities or moneys of client or clients.** If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees."*

7. The Noticee was advised to file its reply towards the SCN within 14 days from the date of receipt of the SCN. However, the Noticee, *vide* letter dated March 06, 2019 requested for an opportunity of hearing to be provided in the instant matter. Thereafter, an opportunity of hearing was provided to the Noticee on March 25, 2019 which was communicated to the Noticee *vide* Notice of Hearing dated March 07, 2019. The Noticee was also directed to file its reply, if any, towards the SCN by March 20, 2019.

8. Thereafter, the Noticee, *vide* e-mail dated March 20, 2019 submitted its submissions towards the SCN which are summarized as under:

a) SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 relating to "Enhanced Supervision of Stock Brokers / Depository Participants" *inter alia* requires that, "*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*." However, the above mentioned circular was issued on September 26, 2016 and was followed by SEBI circular no SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/138 dated December 22, 2016, making it applicable and effective from April 01, 2017. However, inspection was carried out on it during the period April 01, 2015 to September 30, 2016. Therefore, it submitted that the above mentioned circular was not applicable to it for the stated Inspection Period and hence there is no matter of violation of the above mentioned circular.

b) SEBI circular no SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 relating to "*Regulation of transactions between Clients and Brokers*" *inter alia* requires a stock broker to withdraw money from clients' accounts only when money is required for payment to or on behalf of clients or towards payment of 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 the money so drawn shall not in any case exceed the total of the money so held for the time being for such each client. Noticee submitted that it had complied the said regulations by keeping separate client accounts for funds & securities from its own account. It had withdrawn money from clients' accounts only when money was required for payment to or on behalf of clients and it has never used clients' money for its own purpose which is stated in the Inspection Report and the SCN. It had given funds to all its clients within 24 hours of their demand majorly through NEFT.

c) There has been no complaint from any client for delay / non-receipt of funds since inspection.

9. Hearing scheduled on March 25, 2019 was attended by Mr. Ajay Kejriwal, Mr. Premkumar Harikrishnan and Mr. Pravin Khanvilkar (hereinafter collectively be referred to as, the "***Authorised Representatives***"). During the hearing, the Authorised Representatives reiterated the submissions dated March 20, 2019.

10. Thereafter, the Noticee *vide* letter dated April 18, 2019 had made additional submissions, summary of which is produced as under:

a) With respect to Circular dated November 18, 1993:

   i. There is nothing on record to substantiate that money of the clients is not kept in a separate account and own money not kept in a separate account. Since last several years, it has been maintaining separate accounts for clients and separate accounts for its own dealings.

   ii. It has never paid for own position as a principal from clients' account. It maintains separate ledgers for each client. Moneys received on account of each client is always reflected correctly in their ledgers.

   iii. It is maintaining client's bank accounts and others separately, namely: client account, settlement account and own account.

   iv. All moneys received from clients are deposited exclusively in client accounts and in no other account and the details of which are also recorded in clause 4 i. on page 5 of the report annexed with the SCN.

   v. The SCN or the report does not highlight a single instance where it has withdrawn funds from clients account for purposes other than those permitted.

b) The SCN records a table allegedly containing instances of 20 sample dates where a working of alleged difference between available funds and credit balance of clients is calculated. This is based on the working suggested by circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which was made effective from April 1, 2017 vide circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/138 dated December 20, 2016.

c) Prior to implementation of the said circular there was no necessity or requirement of carrying out such a working. The period covered under the inspection conducted by SEBI was for the period April 1, 2015 to September 30, 2016 and during this period the working annexed in the report was never required to be carried out and maintained by the brokers. The SCN should, therefore, find no fault with it even if the calculation of "G" column gives a negative result as the said circular was implemented prospectively and not retrospectively.

d) As regards to the allegation of using one clients money for another client, it submitted that none of its clients have ever complained that they have not been allowed to transact in spite of having credit balance and this in itself suggests that their credits were always made available to them for trading and fund & securities withdrawal as and when demanded. The total credit balance as arrived by SEBI in its report is the credit balance without taking into account the margin applicable to the clients. Column 'G' allegedly contains a shortage of balance, but the margin requirement of the clients against the same is ignored. The margin requirement of clients having credit balance is in excess of the alleged shortage.

e) There has not been even a single incidence of client's complaint against it for denial of limits of fund & securities withdrawal. Had it resorted to use one client's money for other, then at least on few days, clients with credit balance would have not been allowed to take position as the same would have been already consumed by other clients as wrongly alleged. The fact that there has never been any single instance where clients with credit balance have been restricted in using their balance and this substantiates that the allegations in the SCN are misplaced.

f) As regards utilization of funds for own purposes, there is not at all any adverse inference in the inspection report for this allegation. The SCN has in fact specified that credit client funds misutilized for own purpose is nil.

g) The process of working adopted by SEBI is only applicable from April 1, 2017 and not prior to that. Without prejudice to the above submissions, assuming for a moment, but not accepting that some violation has taken place, the same is purely unintentional and technical in nature. Further, it has followed the working of enhanced supervision in letter and spirit from the date of its applicability and therefore there has never been a single instance when the calculation of "G" has been negative. This shows that it has robust systems in place to ensure all the compliance requirements implemented by SEBI and Exchanges.

h) This is the first inspection of books by SEBI. The inspections conducted by various exchanges (as produced below) have not pointed out any violation of the above circulars mentioned in SCN nor have they cautioned it for the same.

Exchange	Period from	Period To	Inspection Month
NSE	01-May-17	28-Feb-18	April 2018
NSE	01-Apr-16	31-Mar-17	May 2017
NSE	01-Apr-14	31-Mar-15	June 2016
NSE	01-Apr-12	31-Mar-13	November 2013
BSE	01-Apr-14	31-Mar-15	October 2015
BSE	01-Nov-14	30-Sep-16	January 2017
BSE	01-Apr-13	31-Mar-14	October 2014
BSE	01-Apr-12	31-Mar-13	January 2014

i) It drew attention towards the order of Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "***SAT***") in the matter of ***UPSE Securities Limited*** v. ***SEBI*** (Appeal No. 109 of 2011 decided on July 25, 2011) which held, "….*before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity / deficiency noticed during the closure of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity…".*

j) It also drew attention towards the orders of Hon'ble SAT in the matter of ***DSE Financial Services Ltd.*** v. ***SEBI*** (Appeal No. 153 of 2012 decided on September 11, 2012) and ***Religare Securities Limited*** v. ***SEBI*** (June 16, 2011) to state that every minor discrepancy / irregularity found during the course of inspection is not culpable.

k) The Noticee requested to accept its submissions and not penalize it as it did not violate any rule or regulation.

11. By way of e-mail dated March 27, 2019, information relating to interest earned from delayed payments by clients during the Inspection Period was sought from the Noticee. However, it is observed that the Noticee did not file any response towards the e-mail dated March 27, 2019. An e-mail dated May 21, 2019 was again addressed to the

Noticee wherein, details of interest earned from delayed payments by clients during the Inspection Period. The Noticee was also informed that on non-receipt of any reply towards the e-mail dated May 21, 2019 by May 22, 2019, it shall be presumed that it does not dispute the fact of interest earned on delayed payments during the Inspection Period. It is noted that no response has been filed towards the query raised by way of e-mails dated March 27, 2019 and May 21, 2019.

12. Since inquiry in the instant matter has been concluded, I proceed to decide their case on merit taking into consideration allegations mentioned in the SCN, submissions of the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I Whether the Noticee violated Circular dated November 18, 1993 and Circular dated September 26, 2016 by misusing funds of the clients with credit balance to settle the obligations of clients with debit balance?

Issue No. II If yes, whether the failure, on the part of the Noticee attracts monetary penalty under Section 23D of the SCRA?

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

Issue No. I. **Whether the Noticee violated Circular dated November 18, 1993 and Circular dated September 26, 2016 by misusing funds of the clients with credit balance to settle the obligations of clients with debit balance?**

14. Before dealing with the issues considered for examination, it is relevant to understand the Circular dated November 18, 1993 and Circular dated September 26, 2016. The Circular dated November 18, 1993 made it compulsory for all member brokers to keep the money of clients in a separate account and their own money in a separate account. It specifically prohibited any payment to be made from clients' accounts for any transaction in which a member broker is taking a position as a principal. For transfer from a client's account to member broker's account, the Circular dated November 18, 1993 *inter alia* permits a stock broker to withdraw money from clients' accounts <u>only when</u> money is required for payment to or on behalf of clients or towards payment of 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 the money so drawn shall not in any case exceed the total of the money so held for the time being for such each client.

15. Therefore, the Circular dated November 18, 1993 required member brokers to not only to keep separate accounts for clients' and own dealings but also to not withdraw money from clients' account except in the situations provided thereunder. The circular does not permit using excess funds of one client to meet liability of another client, as funds cannot be drawn for liability of a client in excess of the total money held for each such client.

16. The Circular dated September 26, 2016 is aimed to enhance supervision of stock brokers and it requires reporting of data to monitor clients' funds lying with stock brokers to generate alert on any misuse of clients' funds by the stock brokers. It is noted that the Noticee has submitted that the Circular dated September 26, 2016 came into effect after expiry of the Inspection Period and therefore, it should not be applicable on it. The contention of the Noticee is accepted as the Circular dated September 26, 2016 is made effective only from April 01, 2017, which is beyond Inspection Period.

17. At the same time, I also note that the principles enumerated in Circular dated September 26, 2016, i.e. *Funds of credit balance clients used for settlement obligation of debit clients or for own purpose* flow from the Circular dated November 18, 1993 itself. Therefore, I now proceed to examine the analysis done during the Inspection *vis-à-vis* submissions of the Noticee and material available on record for compliance with Circular dated November 18, 1993.

18. Details relating to total credit balance of all clients (after adjusting for open bills and uncleared cheques) and total debit balance (after adjusting for open bills and uncleared cheques) for sample 20 dates during the Inspection Period was examined by SEBI, are produced as under:

Date	**Total of end of day balance in all clients' accounts**	**Collateral deposited with clearing corporation / clearing member**	**Total credit balance of all clients**	**Difference in total credit balance of all clients and total**

		in form of cash and cash equivalents		**funds available with the Noticee**
06/04/2015	1,99,94,459	18,53,75,000	35,03,18,255	-14,49,48,796
20/04/2015	2,34,04,818	19,18,75,000	39,43,26,576	-17,90,46,758
21/04/2015	1,87,05,921	19,23,75,000	37,84,11,748	-16,73,30,827
05/05/2015	1,82,06,644	17,95,95,000	31,67,82,152	-11,89,80,509
06/05/2015	1,63,75,585	17,15,95,000	40,77,23,223	-21,97,52,639
08/05/2015	1,93,33,595	17,20,95,000	35,53,65,571	-16,39,36,976
12/05/2015	1,82,38,432	19,68,95,000	35,32,58,364	-13,81,24,932
25/08/2015	2,69,87,691	16,20,25,000	39,28,39,945	-20,38,27,254
19/10/2015	2,00,90,628	14,06,25,000	29,50,28,631	-13,43,13,003
04/11/2015	1,06,48,731	13,05,00,000	32,95,38,141	-18,83,89,409
18/01/2016	2,19,57,400	10,86,25,000	23,87,18,173	-10,81,35,774
02/02/2016	70,28,382	10,98,55,000	19,87,95,142	-8,19,11,760
04/04/2016	1,11,47,547	12,18,64,940	22,95,24,334	-9,65,11,847
05/04/2016	1,09,56,679	10,58,64,940	17,69,96,587	-6,01,74,968
11/04/2016	1,59,63,849	10,81,64,940	22,37,83,892	-9,96,55,103
12/04/2016	1,29,43,663	10,81,64,940	22,33,98,750	-10,22,90,147
13/04/2016	1,13,18,290	10,81,64,940	20,11,18,754	-8,16,35,524
18/04/2016	1,88,34,713	10,81,64,940	26,76,48,869	-14,06,49,217
26/04/2016	1,09,66,718	10,28,86,940	20,16,39,075	-8,77,85,417
27/09/2016	2,86,17,679	10,47,93,750	30,82,72,136	-17,48,60,707

19. On perusal of the table reproduced in the paragraph 18 hereinabove, it is observed that the total funds of clients (available in bank accounts, cash / cash equivalent deposits with clearing corporation / clearing member), available with the Noticee for all sample dates were lesser than the total credit balance of all clients of the Noticee for all 20 sample dates selected. The mismatch between the clients' funds available with the Noticee and the total credit balance of clients indicate that funds of the clients with credit balance were being used for meeting obligations of clients with debit balance which is not permissible in terms of the Circular dated November 18, 1993. It is also noted that the difference between the clients' funds available with the Noticee and the total credit balance of clients range from 34% to 57% of funds of clients with credit balance, which is significant.

20. I note that the Noticee has submitted that it kept separate bank accounts for own funds and for the funds of the clients. It also submitted that it withdrew money from clients' accounts only when money was required for payment to or on behalf of clients. It also submitted that it did not use clients' money for its own purpose. However, I note that the Noticee did not provide any justification for the mismatch between total credit balance of clients and total funds of clients available with the Noticee.

21. I also note that the Noticee had submitted that the total credit balance as arrived by SEBI is the credit balance without taking into account the margin applicable to clients. However, I note that the aforesaid submission of the Noticee is not backed by any documentary evidence. Therefore, I am not inclined to accept this submission of the Noticee.

22. The Noticee submitted that there has not been any complaint from its clients for denial of limits or funds & securities withdrawal. However, I am of the view that utilization of funds in the manner mentioned in Circular dated November 18, 1993 is a statutory requirement and the Noticee was duty bound to adhere to the provisions of Circular dated November 18, 1993 irrespective of any clients' complaints.

23. In view of the aforesaid, I am of the view that consequent to the mismatch on account of total funds of clients available with the Noticee being lesser than the total credit balance of the clients, the Noticee was misusing funds of the clients with credit balance for purposes other than those mentioned in the Circular dated November 18, 1993, i.e. to settle the obligations of clients with debit balance. While doing so, the Noticee violated the Circular dated November 18, 1993.

Issue No. II **If yes, whether the failure, on the part of the Noticee attracts monetary penalty under Section 23D of the SCRA?**

&

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

24. Since it is established that the Noticee was misusing funds of the clients with credit balance to settle the obligations of clients with debit balance, I am of the view that it is a violation of statutory obligation enshrined in the Circular dated November 18, 1993 which requires imposition of monetary penalty under under Section 23D of the SCRA, text of which is reproduced as under:

> ***SCRA***
>
> *"**23D. Penalty for failure to segregate securities or moneys of client or clients.** If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees."*

25. While determining the quantum of penalty under Section 23D of the SCRA, the following factors stipulated in Section 23J of the SCRA, have to be given due regard:

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.

26. I note that by way of e-mails dated March 27, 2019 and May 21, 2019, details of interest earned from delayed payments by clients during the Inspection Period were sought from the Noticee. Noticee was also informed that in the absence of any response, it will be presumed that the Noticee does not dispute the fact of interest earned on account of delayed payments by clients during the Inspection Period. However, it is observed that the Noticee did not response to any of the e-mails. Therefore, it is noted that the Noticee did not dispute the fact of interest earned on account of delayed payments by clients during the Inspection Period. Thus, the Noticee made a disproportionate gain by using the funds of clients with credit balance to settle the obligation of clients with debit balance. However, since the Inspection dealt with only sample 20 dates which are only indicative of funds being used for purposes other than those provided in Circular dated November 18, 1993, the gain is not quantifiable.

27. From the material available on record, it is also noted that the amount of loss caused to an investor or group of investors and repetitive nature of default cannot be ascertained. I also note from the submissions of the Noticee that there have been no complaints registered against it for denial of limits of funds & securities withdrawal.

28. I note that the Noticee has placed reliance on the orders of Hon'ble SAT in the matter of ***UPSE Securities*** (*supra*), ***DSE Financial*** (*supra*) ***and Religare Securities*** (*supra*) to contend that every minor discrepancy / irregularity found during the course of inspection is not culpable. However, I note that the requirement of segregation of clients' funds from those of its own and other clients' as stipulated under Circular dated November 18, 1993 aims towards instilling assurance among the investors that their funds shall not be misappropriated as they are clearly identified as belonging to specific investor.

29. I also note that an entity acting as a registered intermediary in the securities market is duty bound to protect the interest of investors. It is noteworthy to mention that the Circular dated November 18, 1993 was aimed to protect the interest of investors and all the member brokers were required to comply with the mandate of utilization of funds of clients in the manner prescribed in this Circular. Thus, any non-compliance of the Circular dated November 18, 1993 would put the interest of investors at risk, which is serious in nature. Therefore, I note that ratio of judicial precedents cited by the Noticee, to state that every minor discrepancy is not culpable, does not apply to the facts of instant case.

30. Therefore, taking into account the facts and circumstances of this case I am of the view that a penalty of ₹10,00,000/- under Section 23D of the SCRA will be commensurate with the violations committed by the Noticee.

ORDER

31. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 23I (2) of the SCRA read with Rule 5 of the SCR Adjudication Rules, I hereby impose penalty of ₹10,00,000/- (Rupees Ten Lakh only) upon Noticee, i.e. M/s Choice Equity Broking Private Limited under Section 23D of the SCRA for violations of Circular dated November 18, 1993.

32. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

33. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

34. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the SCR Adjudication Rules.

Date : May 30, 2019 **(Maninder Cheema)**
Place : Mumbai **Adjudicating Officer**