**<u>BEFORE THE ADJUDICATING OFFICER</u>**

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

**[ADJUDICATION ORDER NO. Order/VV/NK/2022-23/20817]**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND 23-I OF SECURITIES CONTRACTS (REGULATIONS) ACT, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 5 OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

In respect of:-

**Ashika Stock Broking Limited**

**(**PAN No. AACCA7156Q**)**

**In the matter of Inspection of Books of Accounts and other Records of Ashika Stock Broking Limited**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15HB of SEBI Act and Section 23D of Securities Contracts (Regulations) Act (hereinafter referred to as **'SC(R) A'**) against **Ashika Stock Broking Limited** (hereinafter referred to as "**Noticee/ Stock Broker")** for the alleged violations of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of SEBI (Stock Brokers) Regulations, 1992 ('hereinafter referred to as '**Stock Broker**

**Regulations'**). Noticee is a SEBI-registered Stock Broker and a trading member of NSE, BSE and MCX-SX during the inspection period

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Undersigned is appointed as Adjudicating Officer *vide* Order dated August 05, 2022 to inquire into and adjudge under Section 15HB of SEBI Act and 23D of SC(R)A, the aforesaid alleged violations against the Noticee. A copy of the communiqué dated August 11, 2022 appointing the undersigned as the Adjudicating Officer is enclosed herewith as **Annexure-I**.

**SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. ADJ-SCN/EAD-9/VKV/NK/OW/2022/46534 dated September 02, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') and Rule 4(1) of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, ('SCR Adjudication Rules'), to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act and Section 23D of SC(R)A for the alleged violations of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations.

4. It was stated in the SCN that an inspection of the stock broker was carried out by SEBI officials during August 1, 4 & 5, 2014. The period covered under inspection was from April 2012 to till the date of inspection. The Registered office of the stock broker where the inspection was conducted is located Trinity, 226/1, AJC Bose Road, 7th Floor, Kolkata – 700 020, India.

a) Brief overview of the operations of the stock broker is as follows:

<table>
<tr><th>S. N.</th><th>Description</th><th>Details</th></tr>
<tr><td>A</td><td>No. of Branches<br>No. of Sub-Brokers<br>No. of Authorized Persons</td><td>NSE – 23, BSE- 16<br><br>BSE- 752,NSE-1375,MCX-SX-319</td></tr>
<tr><td>B</td><td>No. of Terminals</td><td>CTCL NSE CM – 994<br>NSE FO- 369<br>NSE CD- 36<br>MCX-SX- 90<br>NEAT NSE CM – 7<br>NSE FO- 7<br>NSE CD- 5<br>MCX-SX-2<br>BSE TWS- 13<br>BSE IML- 270</td></tr>
<tr><td>C</td><td>Total No of NON Institutional clients Including their Turn Over for the Financial Year 12-13 and Fy 13-14</td><td>
<table>
<tr><th>Segment</th><th colspan="2">FY 2012-13</th><th colspan="2">FY 2013-14</th></tr>
<tr><th></th><th>No. of Clients</th><th>Turnover</th><th>No. of Clients</th><th>Turnover</th></tr>
<tr><td>NSECM</td><td>1417</td><td>84,795,171,046.16</td><td>12008</td><td>58,378,034,395.76</td></tr>
<tr><td>BSECM</td><td>9002</td><td>23,076,135,172.00</td><td>6210</td><td>896,209,498.37</td></tr>
<tr><td>NSEFO</td><td>1476</td><td>300,464,098,131.25</td><td>1228</td><td>187,826,869,115.00</td></tr>
<tr><td>MCXSX</td><td>62</td><td>115,566,535,138.60</td><td>53</td><td>32,351,662,370.40</td></tr>
<tr><td>NSECD</td><td>113</td><td>32,371,451,782.80</td><td>123</td><td>72,142,268,930.50</td></tr>
<tr><td colspan="2">Total</td><td>556,273,391,270.81</td><td></td><td></td></tr>
</table>
</td></tr>
</table>

| | | Segment | FY 2012-13 | | FY 2013-14 | |
|---|---|---|---|---|---|---|
| D | Total No of Institutional Clients including their Turn Over for FY 12-13 and FY 13-14 | | **No. of Clients** | **Turnover** | **No. of Clients** | **Turnover** |
| | | NSECM | 12 | 1,779,292,355.06 | 13 | 2,286,956,525.17 |
| | | BSECM | 1 | 26,724,828.00 | 5 | 610,790,501.63 |
| | | NSEFO | | NIL | 1 | 266,358,595.00 |
| | | MCXSX | | NIL | | NIL |
| | | NSECD | | NIL | | NIL |
| | | **Total** | | | | |

| | | Segment | FY 2012-13 | FY 2013-14 |
|---|---|---|---|---|
| E | Proprietary Turn Over for FY 12-13 and FY 13-14 | NSECM | | |
| | | BSECM | | |
| | | NSEFO | | |
| | | MCXSX | 1,063,612.00 | - |
| | | NSECD | | |
| | | **Total** | | |

b) SEBI vide circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 mandated segregation of funds and securities of clients' accounts from Proprietary or Self Account. To check the veracity of information provided by the stock broker, the inspection team verified the bank account statements and demat statements for the period covered under inspection.

c) To ascertain whether clients' funds were being mis-utilized by the stock broker, the team checked the segregation of pay-in obligations of randomly chosen 10 days during the period of inspection on the basis of exposure taken by the clients having net debit position, pro trades etc., on a particular day. It was observed that settlement obligations are met from A/c. No.

00990610005014 (Settlement Account). Further, as per the practice of the Noticee, usually fund for pay-in obligation is moved from A/c No. 000140340001288 (Client A/c) to 00140340001278(Other Business Purpose A/c) and eventually moved to above mentioned settlement account.

d) Similarly in BSECM Segment major pay-in obligation is met from settlement account (A/c. No. 00990620002920). To meet pay-in obligation fund is moved from client account (A/c. No.00080340008134) to 00140340001278(Other Business Purpose a/c) and eventually moved to above mentioned settlement account.

e) Many instances were observed where clients having negative ledger balance or insufficient balance in ledger were having pay-in obligation. However, the settlement obligations were met in full from the client account itself.

f) Few of the examples of clients having negative or insufficient ledger balance in NSE & BSE Cash Market segment are enumerated below:

**Pay-in Obligation and Ledger Balance in NSE CM:**

| Sl. No. | Settlement No. | Date of settlement | Client Details | | |
|---|---|---|---|---|---|
| | | | **Name (trading account no.)** | **Pay in Obligation($)** | **Ledger Balance($)** |
| 1 | 2014109 | 13/06/2014 | RAMESH KUMAR AGARWAL[A030R1652] | 100,541.21 | -201,564.14 |
| 2 | | | PREM DUGAR[AP01P2494] | 308,795.86 | 19,370.71 |
| 3 | | | RAMPRASAD RAMBILAS AGRAWAL[K008R7610] | 798,880.57 | 0 |

| | | | | | |
|---|---|---|---|---|---|
| 4 | | | LALITA STEEL INDUSTRIES PVT LI[K023L079] | 6,652,273.53 | 3,317,513.12 |
| 5 | | | KESHAV KUMAR SARAF[K100K100] | 352,904.22 | - 1,346,722.48 |
| 6 | | | NIRMAL KUMAR JAIN [KO05N055] | 594,856.19 | -257,307.43 |
| 7 | | | WONDERMAX VINIMAY PVT LTD [KO36W002 ] | 1,531,472.24 | 0 |
| 8 | 2014097 | 28/05/2014 | RAKESH KUMAR GUPTA [ND10R3671 ] | 1,502,553.89 | -13,412.07 |
| 9 | | | MANISH NAYAK[ RK03KH617] | 1,256,400.74 | -2,641,906.16 |
| 10 | | | AMIT KAPOOR HUF [W087A10274] | 1,346,026.54 | -1,891,303.05 |
| 11 | | | AASHA BOTHRA [W397A7289 ] | 118,384.10 | 20.0 |
| 12 | | | DIPIKA RAKSHIT [X006D028 ] | 1,678,528.39 | -705,924.22 |
| 13 | | | ANIL SINGHVI HUF [ X101A10253] | 1,154,303.28 | 101,107.01 |
| 14 | 2013022 | 01/01/2013 | ANUP CHOWDHURY [J0AEA689] | 300,435.15 | 290,258.35 |
| 15 | | | GOURANGA BANERJEE [A105G734 ] | 740,457.57 | 2,995.32 |
| 16 | | | JIGAR JAYANTILAL SHAH [ASBAJ893] | 636,328.57 | -626,939.61 |
| 17 | | | KANHU CHARAN SAHOO [K022K2270 ] | 203,259.89 | -229,536.86 |
| 18 | | | MOUSUMI MUKHERJEE [MAL1M6082 ] | 303,405.18 | -140.00 |

|  |  |  |  |  |  |
|---|---|---|---|---|---|
| 19 | 2012216 | 16/11/2012 | BHIKAM CHAND DUGAR [AP01B1775 ] | 671,730.50 | -927,042.87 |
| 20 |  |  | SANGEETA JALAN [ ASSTS5539 ] | 499,894.29 | -11,370.70 |
| 21 |  |  | GANPATI ARBITRATORS PRIVATE LIMITED [H159G2439 ] | 645,382.86 | -4,173,109.14 |
| 22 |  |  | MUKTA AGARWAL[ H355M838] | 786,498.15 | 0 |
| 23 |  |  | SURESH KUMAR AGARWAL [J0ACS17075] | 84,760.37 | -965,129.83 |

## Pay-in Obligation and Ledger Balance in BSE CM:

| **Sl. No.** | **Settlement No.** | **Date of settlement** | **Client Details** | | |
|---|---|---|---|---|---|
| | | | **Name** | **Pay in Obligation($)** | **Ledger Balance($)** |
| 1 | 1415021 | 05/05/14 | MONO HERBICIDES LTD [A150M7376] | 5,060,774.15 | -4,563,021.80 |
| 2 | 1415051 | 16/06/14 | SHENTRACON TREXIM PRIVATE LIMITED[H159S5164] | 13,992,412.41 | -6,559,875.65 |
| 3 | 1415038 | 28/05/14 | PURSATTAM KUMAR DAIMA[Q010P5090] | 128,677.28 | -148,842.62 |
| 4 | 1415031 | 19/05/14 | JYOTI AGARWAL[X002J958] | 185,106.24 | 453.34 |
| 5 | 1213196 | 10/01/13 | KANHU CHARAN SAHOO[K022K2270] | 83,767.96 | -95,707.95 |
| 6 | 1213150 | 05/11/12 | RINKU AGARWAL[W157R3048] | 194,037.97 | -763,722.32 |
| 7 | 1213154 | 09/11/12 | NEHA RANI BATHWAL[W121N3847] | 744,493.40 | -9,181.94 |

g) In view of the above, as funds are regularly moved from client accounts to the Other Business Purpose(OBP) account and *vice versa* and clients' fund are being mixed with the own/ borrowed fund of the member. Stock Broker has, therefore, allegedly failed to segregate clients' funds from self or own funds.

h) Noticee was, therefore, alleged to have violated SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of the Stock Broker Regulations. The relevant clauses of SEBI Circular and Regulations are reproduced as under:

*SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993:*

***Regulation of Transactions between Clients and Brokers-***

***(1)*** *It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their 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.*

*Stock Broker Regulations:*

***Liability for monetary penalty-***

***26.*** *A stock broker shall be liable for monetary penalty in respect of the following violations, namely:*

***(xiii)*** *Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.*

***(xv)*** *Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.*

***(xvi)*** *Failure to exercise due skill, care and diligence.*

5. The SCN was issued at the addresses available on record through Speed Post Acknowledgement Due (SPAD) to the Noticee on September 02, 2022, which was delivered successfully on September 7 & 12, 2022.Vide SCN, Noticee was advised to submit reply to SCN within 14 days of receipt of SCN.

6. No reply to SCN was received from Noticee. Thus, In the interest of natural justice and in order to conduct inquiry as per Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, Noticee was granted an opportunity of personal hearing vide hearing Notice dated September 26, 2022 through WebEx on October 12, 2022 and was also granted time till October 03, 2022 to submit its reply to SCN.

7. Thereafter, Noticee vide email dated September 30, 2022 requested for grant of extension of one month to submit reply to the SCN. In this regard, Undersigned acceded to Noticee's request and also advised it to submit the reply to SCN latest by October 19, 2022 and adjourned the hearing to October 20, 2022.

8. Noticee filed the reply vide letter dated October 10, 2022 received on October 18, 2022 by undersigned.

9. The authorized representative of Noticee appeared for hearing before me on October 20, 2022. The authorized representative during the course of hearing reiterated the submissions made vide the aforesaid letter dated October 10, 2022 and also requested for 1 days' time to make additional written submissions. Vide

email dated October 21, 2022, Noticee made the addition written submissions which AR of Noticee stated orally during the hearing before me.

10. The key submissions made by the Noticee are reproduced hereunder:

a) Noticee has contended the inordinate delay in issuance of SCN which is issued after an inordinate delay of more than eight years from the inspection period and mentioned to dropped the SCN in the spirit of law and for natural justice. In this regard, Noticee has mentioned the following Judgments passed by Hon'ble SAT and Hon'ble Supreme Court wherein Show cause notice has been quashed on the account of inordinate delay :

i. Order of Hon'ble SAT in the case of Shriram Insight Brokers Ltd. vs. Securities and Exchanges Board of India Appeal No 559 of 2020 decided on January 04, 2022.

ii. Order dated March 28, 2022 of Hon'ble Supreme Court in Civil Appeal No(s). 1863 of 2022 Securities and Exchange Board of India vs. Shriram Insight Share Brokers Ltd.

iii. Order dated September 19, 2022 of Hon'ble SAT in the matter of Shriram Insight Brokers Ltd. vs. Securities and Exchanges Board of India Appeal No 565 of 2022.

iv. Order of Hon'ble SAT In the matter of Sanjay Jethalal Soni and Ors. vs. SEBI (Appeal No. 102 of 2019 decided on November 14, 2019.

v. Order of Hon’ble SAT In the matter of Ashlesh Gunvantbhai Shah & Ors. Vs. SEBI (Appeal No .169 of 2019.

vi. Order of Hon’ble SAT In the matter of Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019.

vii. Order dated November 15, 2019 of Hon’ble Supreme Court in Civil Appeal No. 8444 – 8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr, etc .

b) Noticee stated that, SEBI vide its circular no SEBI/HO/CDMRD/DMP/CIR/ 2016/74 dated 30.08.2016 , under para 2 explicitly requires preservation of specified book of accounts and other records for a minimum period of five years. The relevant extract of the said circular clearly spells out that “ *In terms of Rules 14 and 15 of SCRR, every recognised Stock Exchange and its members are required to maintain and preserve the specified books of accounts and documents for a period ranging from two years to five years. Further as per regulation 18 of the Broker Regulation , every stock broker shall preserve the specified books of accounts and other records for a minimum period of five years.”* The given circular is annexed as Exhibit I, therefore asking for the details for the period which is more than eight years is thus against the required norms pertaining to preservation of books of accounts by SEBI.

c) Noticee stated that the essence of the SEBI circular SMD/SED/CIR/93/2332 dated November 18, 1993 was to protect and prohibit the client funds’ utilisation for financing the proprietary trades of the brokers. The idea behind the compulsion for segregation of client account from that of the Broker was to strictly segregate the proprietary trades of the stock brokers from their clients and also the strict utilisation of their own funds in pro trades. Noticee stated that, it did not undertake Proprietary trades at all as could easily be verified from the records maintained with Exchanges. No trades in pro capacity had been executed at its end during the inspection period or any day thereafter. Hence the usage of client's funds to finance the settlement of its own trades or any other business activities has not happened.

d) Noticee also stated that, SEBI and Exchanges thereafter had conducted numerous inspections of its books of account and the given observation had never found any place in their respective observations. SEBI thereafter had conducted and concluded our inspections in the year 2015 and 2018 respectively wherein no such observations have been made.

11. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticee and material available on record.

**CONSIDERATION OF ISSUES AND FINDINGS:-**

12. The issues that arise for consideration in the present case are :

**Issue No. I** Whether Noticee is in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SC(R)A?

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

**Issue No. I Whether Noticee is in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations?**

13. I shall now proceed to examine the preliminary contention raised by the Noticee regarding delay in the issuance of SCN. I note that the Noticees have placed reliance on multiple orders passed Hon'ble Securities Appellate Tribunal (SAT) and Hon'ble Supreme Court (SC) in this regard. I have perused the contention of the Noticee and the cases cited by it. I note that the cases cited by the Noticee can be distinguishable on the facts of the instant case. I observe from the records that the inspection of broker was carried out by SEBI Officials on August 1, 4 and 5, 2014 and the period covered under inspection was from April 2012 to August 05, 2014. During inspection of Noticee it was found that Noticee has not complied with the SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993. I note that findings of the said inspection was communicated to Noticee vide letter dated July 30, 2015 and Noticee vide letter dated August 24, 2015 submitted its reply to inspection findings. Thereafter, Adjudication Proceedings in the matter was approved against the Noticee on February 01, 2016 and undersigned has been appointed as Adjudicating officer vide communique dated August 11, 2022 and SCN along with the annexures has been issued to Noticee on September 02, 2022. Noticee has also stated that, *SEBI vide its circular no SEBI/HO/CDMRD/DMP/CIR/ 2016/74 dated 30.08.2016 , under para 2 explicitly requires preservation of specified book of accounts and other records for a minimum period of five years*. In this regard,

I note that the said circular stipulates minimum period for preservation of specified book of accounts and other records by Stock broker. Nevertheless, I note that inspection report along with the bank account statements which were relied upon in the instant proceedings, were shared with the Noticee along with the SCN. Therefore, I find that, no prejudice has been caused to the Noticee, which would hamper its ability to suitably defend its case.

14. I note that the substantive case of the SCN is that the Noticee failed to segregate clients' funds from his own funds. In this connection, I note that documentary evidences available before me are inspection report and Bank account statements such as Clients' Account (Bank A/c No. 00140340001288 -NSE & A/c. No.00080340008134-BSE), Other Business Purpose a/c(Bank A/c No. 00140340001278), and Settlement Account (Bank A/c No. 00990610005014 &00990620002920- BSECM Segment). The copy of same has also been provided to Noticee alongwith the annexures to SCN.

15. Bank account statement relating to Client's Account for the period April 2012 to August 05, 2014 shows that settlement obligations are met from A/c No. 00990610005014 (settlement A/c.). Further, I note that, the funds for pay-in obligation is moved from A/c No. 000140340001288 (Client A/c) to 00140340001278(Other Business Purpose a/c) and eventually moved to above mentioned settlement account.

16. Similarly in BSECM Segment major pay-in obligation is met from settlement account (A/c. No. 00990620002920). To meet pay-in obligation fund is moved from client account (A/c. No.00080340008134) to 00140340001278(Other Business Purpose a/c) and eventually moved to above mentioned settlement account.

17. Noticee in its additional submission has *inter-alia* stated that, "*the essence of the SEBI* circular *SMD/SED/CIR/93/2332 dated November 18, 1993 was to protect and prohibit the client funds' utilisation for financing the proprietary trades of the brokers. The idea behind the compulsion for segregation of client account from that of the Broker was to strictly segregate the proprietary trades of the stock brokers from their clients and also the strict utilisation of their own funds in pro trades*." In this regard, from the perusal of the said Circular, I note that the said circular compulsory mandates all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. Thus, The issue before me is to determine whether the Noticee failed to segregate the clients' funds from that of Stock Broker and whether there is any mixing of clients' funds with own funds of stock broker. The question is not about if the Stock Broker has misused the clients' funds for his own purpose.

18. As also mentioned above, I note that huge funds in fact were transferred on several occasions from Clients' Account to Other Business Purpose a/c (OBP) of the Stock Broker and *vice-versa*. Further, funds were also moved from Other Business Purpose a/c to Settlement Account and *vice-versa*. In this regard, I note from the perusal of OBP account that, there are several transactions where the broker has paid/received amount which is not meant for pay-in/pay-out settlement. Few instances are tabulated below:

| **Sl. No.** | **Date** | **Description** | **Dr.(Rs.)** | **Cr.(Rs.)** |
|---|---|---|---|---|
| 1 | 06/06/14 | Intra day | 5500 | - |
| 2 | 16/06/14 | Infosys ltd. | - | 2150 |

| | | | | |
|---|---|---|---|---|
| 3 | 17/06/14 | Comm on gurantee issued | 38021 | - |
| 4 | 19/06/14 | Reliance Industries | - | 53532.5 |
| 5 | 26/06/14 | HDFC bank dividend | - | 38018 |
| 6 | 13/05/14 | Comm on gurantee amendment | - | 25381 |
| 7 | 06/03/13 | Service tax | 650524 | - |
| 8 | 06/03/13 | CBDT tax | 90005 | - |
| 9 | 16/03/13 | FD pre mat principle | - | 20000000 |

Therefore, I conclude that clients' fund is mixing up with broker's own fund.

19. Based on the evidences available, specifically bank account statements, it is clear that clients' funds were moved by Stock Broker on a frequent basis from Clients' Account to OBP Account and *vice-versa* and funds were also moved from OBP to Settlement Account and *vice-versa*. Thereby, it is clear that Stock broker failed to maintain clients' funds separately from Stock broker's funds.

20. Further, Inspection also observed following instances on NSE CM and BSE CM, where clients having negative ledger balance or insufficient balance in ledger were having pay-in obligation. However, the settlement obligations were met in full from the client account itself:

**Pay-in Obligation and Ledger Balance in NSE CM:**

| Sl. No. | Settlement No. | Date of settlement | Client Details | | |
|---|---|---|---|---|---|
| | | | **Name (trading account no.)** | **Pay in Obligation($)** | **Ledger Balance($)** |
| 1 | 2014109 | 13/06/2014 | RAMESH KUMAR AGARWAL[A030R1652] | 100,541.21 | -201,564.14 |

| | | | | | |
|---|---|---|---|---|---|
| 2 | | | PREM DUGAR[AP01P2494] | 308,795.86 | 19,370.71 |
| 3 | | | RAMPRASAD RAMBILAS AGRAWAL[K008R7610] | 798,880.57 | 0 |
| 4 | | | LALITA STEEL INDUSTRIES PVT LI[K023L079] | 6,652,273.53 | 3,317,513.12 |
| 5 | | | KESHAV KUMAR SARAF[K100K100] | 352,904.22 | - 1,346,722.48 |
| 6 | | | NIRMAL KUMAR JAIN [KO05N055] | 594,856.19 | -257,307.43 |
| 7 | | | WONDERMAX VINIMAY PVT LTD [ KO36W002 ] | 1,531,472.24 | 0 |
| 8 | 2014097 | 28/05/2014 | RAKESH KUMAR GUPTA [ND10R3671 ] | 1,502,553.89 | -13,412.07 |
| 9 | | | MANISH NAYAK[ RK03KH617] | 1,256,400.74 | -2,641,906.16 |
| 10 | | | AMIT KAPOOR HUF [W087A10274] | 1,346,026.54 | -1,891,303.05 |
| 11 | | | AASHA BOTHRA [W397A7289 ] | 118,384.10 | 20.0 |
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| 13 | | | ANIL SINGHVI HUF [ X101A10253] | 1,154,303.28 | 101,107.01 |
| 14 | 2013022 | 01/01/2013 | ANUP CHOWDHURY [J0AEA689] | 300,435.15 | 290,258.35 |
| 15 | | | GOURANGA BANERJEE [A105G734 ] | 740,457.57 | 2,995.32 |

| | | | | | |
|---|---|---|---|---|---|
| 16 | | | JIGAR JAYANTILAL SHAH [ASBAJ893] | 636,328.57 | -626,939.61 |
| 17 | | | KANHU CHARAN SAHOO [K022K2270] | 203,259.89 | -229,536.86 |
| 18 | | | MOUSUMI MUKHERJEE [MAL1M6082 ] | 303,405.18 | -140.00 |
| 19 | 2012216 | 16/11/2012 | BHIKAM CHAND DUGAR [AP01B1775 ] | 671,730.50 | -927,042.87 |
| 20 | | | SANGEETA JALAN [ ASSTS5539 ] | 499,894.29 | -11,370.70 |
| 21 | | | GANPATI ARBITRATORS PRIVATE LIMITED [H159G2439 ] | 645,382.86 | -4,173,109.14 |
| 22 | | | MUKTA AGARWAL[ H355M838] | 786,498.15 | 0 |
| 23 | | | SURESH KUMAR AGARWAL [J0ACS17075] | 84,760.37 | -965,129.83 |

### Pay-in Obligation and Ledger Balance in BSE CM:

| **Sl. No.** | **Settlement No.** | **Date of settlement** | **Client Details** | | |
|---|---|---|---|---|---|
| | | | **Name** | **Pay in Obligation($)** | **Ledger Balance($)** |
| 1 | 1415021 | 05/05/14 | MONO HERBICIDES LTD [A150M7376] | 5,060,774.15 | -4,563,021.80 |
| 2 | 1415051 | 16/06/14 | SHENTRACON TREXIM PRIVATE LIMITED[H159S5164] | 13,992,412.41 | -6,559,875.65 |

| | | | | | |
|---|---|---|---|---|---|
| 3 | 1415038 | 28/05/14 | PURSATTAM KUMAR DAIMA[Q010P5090] | 128,677.28 | -148,842.62 |
| 4 | 1415031 | 19/05/14 | JYOTI AGARWAL[X002J958] | 185,106.24 | 453.34 |
| 5 | 1213196 | 10/01/13 | KANHU CHARAN SAHOO[K022K2270] | 83,767.96 | -95,707.95 |
| 6 | 1213150 | 05/11/12 | RINKU AGARWAL[W157R3048] | 194,037.97 | -763,722.32 |
| 7 | 1213154 | 09/11/12 | NEHA RANI BATHWAL[W121N3847] | 744,493.40 | -9,181.94 |

21. Since funds are regularly moved from client accounts to the Other Business Purpose (OBP) account and vice versa, the same is prone to meeting the Pay-in obligation of clients having negative ledger balance by funds of clients having positive ledger balance. Thus, clients' fund are being mixed with the own / borrowed fund of the member.

22. In view of the facts on record, I find that the clients' fund are being mixed with the own / borrowed fund of the member and there is no iota of doubt that, Noticee failed to segregate the clients' funds from own finds of the stock broker and, thereby, violated provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations.

**<u>Issue No. II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SC(R)A?</u>**

**<u>Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act and 23J of SC(R)A read with Rule 5(2) of the SEBI Adjudication Rules and Rule 5(2) of the SCR Adjudication Rules?</u>**

23. As it has been established that the Noticee violated SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations, Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act and Section 23D of SC(R)A, which are reproduced below:

*<u>SEBI Act:</u>*

***<u>Penalty for contravention where no separate penalty has been provided.</u>***

> ***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [1][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

*<u>SC(R)A</u>:*

***Penalty for failure to segregate securities or moneys of client or clients-***

***23D****. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate*

[1] Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

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

24. I note that, the following clause, *"penalty which shall not be less than one lakh rupees"* was introduced under section 15HB of the SEBI Act and Section 23D of SC(R)A w.e.f. 08-09-2014 and the said inspection period pertains prior to the said amendment date. Thus, the same is also being considered. Further, while determining the quantum of penalty under section 15HB of the SEBI Act, and Section 23D of SC(R)A, the following factors stipulated in Section 15J of the SEBI Act and Section 23J of SC(R)A have to be given due regard:

*SEBI Act:*

***Factors to be taken into account by the adjudicating officer***

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

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

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

(c) *the repetitive nature of the default.*

*SC(R)A:*

***Factors to be taken into account by adjudicating officer.***

[2] Substituted for the words "liable to a penalty not exceeding one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

***23J.** While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as 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.*

25. I note that the material on record does not reveal any disproportionate gains or unfair advantage made/ taken by the Noticee or loss caused to the investors as a result of the violation. However, I observe that the Noticee has failed to maintain funds of clients separately and mixed the clients' funds with the own funds. Being a registered Stock Broker with SEBI, Noticee is obliged to comply with the regulatory requirement of maintaining clients' fund separately from own funds. However, I also take into consideration the fact that, there has been substantial elapse of time in the said matter and excessive penalty will not meet the purpose and ends of justice. Therefore, taking into account the aforesaid factors, and considering the facts and circumstances of the case, I am of the view that a penalty of Rs.50, 000/- (Rupees Fifty Thousand only) will be commensurate with the violations committed by the Noticee.

**ORDER**

26. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act and 23-I of SC(R)A read with Rule 5 of the SEBI Adjudication Rules and Rule of the SCR Adjudication Rules, I hereby impose the penalty of Rs.50,000/- (Rupees Fifty Thousand only) upon the Noticee viz. **Ashika Stock Broking Limited** under Section 15HB of SEBI

Act and 23D of SC(R)A for violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations.

27. 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 favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:-

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

28. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 3 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

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

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

**DATE: October 28, 2022**
**PLACE: MUMBAI**

**VIJAYANT KUMAR VERMA**
**ADJUDICATING OFFICER**