BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AK/VP/2022-23/22991)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 IN THE MATTER OF

HARDIK MULTI-COM BROKING PRIVATE LIMITED
(PAN–AABCV8876F)
(SEBI Registration No. INZ000061032)
Regd. Office: 1006, B Wing, ATMA House,
Near Times of Indian, Ashram Road,
Ahmedabad – 380 009.

In The Matter of Inspection of Hardik Multi-Com Broking Private Limited

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BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an inspection of books of accounts and other records of Hardik Multi-Com Broking Private Limited (hereinafter referred to as **"Noticee"**), a SEBI registered Stock Broker, for the period April 1, 2020 to September 30, 2021 (hereinafter referred to as the **"Inspection period"**) to ascertain whether the Noticee violated any of the provisions of SEBI Act, 1992 (hereinafter referred to as **'SEBI Act'**) and/ or Rules and Regulation made thereunder.

2. The inspection team observed that the Noticee has, prima facie, violated following provisions during the inspection period:

2.1 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.

2.2 Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

2.3 Regulation 18 of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the **"Brokers Regulations"**) and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations r/w Chapter 13 of MCX/INSP/325/2016 dated September 29, 2016.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there were sufficient grounds to inquire into and adjudicate upon the violations of provisions of the SEBI Act, Brokers Regulations and circulars issued therein by the Noticee, in exercise of powers u/s 19 r/w section 15-I of the SEBI Act r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**) and u/s 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**) r/w Rule 3 of Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the **"SCRA Adjudication Rules"**), SEBI initiated adjudication proceedings against the Noticee and appointed Ms. Geetha G. as Adjudicating Officer (AO) to inquire into and adjudge the alleged violations by the Noticee. Pursuant to the transfer of Ms. Geetha G, SEBI appointed the undersigned as AO, vide order dated August 29, 2022, to inquire into and adjudge the alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice ref. no.EAD-6/AK/VP/51466/1/2022 dated October 6, 2022 (hereafter referred to as "**SCN"**) was issued to the Noticee in terms of the provisions of rule 4(1) of the Adjudication Rules r/w Section 15-I of SEBI Act and 4(1) of SCRA Adjudication Rule r/w Section 23-I of SCRA requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of Section 23D of SCRA, Section 15A(c) and Section 15HB of the SEBI Act, as applicable, for the alleged violations.

5. The following are the allegation against the Noticee in brief;

5.1 By misusing the clients' funds, the Noticee has violated 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;

5.2 By not maintaining the evidences in respect of the order placed by its clients, the Noticee has violated Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/ CIR/P/2018/54 dated March 22, 2018;

5.3 By not maintaining the order logs for various days, the Noticee has violated Regulation 18 of Brokers Regulations and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations r/w Chapter 13 of MCX/INSP/325/2016 dated September 29, 2016.

6. On non-receipt of any reply, an opportunity of personal hearing was granted to the Noticee on November 14, 2022, vide Hearing Notice dated October 31, 2022. The Noticee, vide email dated November 12, 2022 requested 30 days' time to file the reply to the SCN. The request of the Noticee was acceded to. The

Noticee, vide letter dated November 30, 2022, submitted its reply to the SCN and also sought inspection of documents. Since the Noticee failed to provide relevance of the documents of which inspection was sought, the same was denied and the Noticee was granted another opportunity of personal hearing on December 30, 2022. The Noticee gave further submissions, vide letter dated December 30, 2022. The authorized representative of the Noticee appeared on the scheduled date for hearing and reiterated the submissions, made vide its aforementioned letters.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have taken into consideration the submissions of the Noticee, facts and material available on record. The issues that arise for consideration in the present case are as follows:

7.1 Whether the Noticee violated 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, Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 18 of Brokers Regulations and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations r/w Chapter 13 of MCX/INSP/325/2016 dated September 29, 2016.

7.2 Do the violations, if any, attract monetary penalty u/s 23D of SCRA, u/s 15HB of SEBI Act and u/s 15 A(c) of SEBI Act.

7.3 If so, what should be the monetary penalty that should be imposed upon the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules and Section 23J of the SCRA r/w Rule 5(2) of the SCRA Adjudication Rules?

8. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticee. The said provisions are reproduced hereunder:

<u>SEBI Circular Ref No. Ref:SMD/SED/CIR/93/23321 dated 18.11.1993</u>

Sub: Regulation of transaction between clients and members

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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 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.

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SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016

Subject: Enhanced Supervision of Stock Brokers/Depository Participants

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"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 utilization 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 client's assets.

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

If G is negative, then, value of G is considered as 0, as there are 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. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the client's funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, Bis compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of

J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

3.4. Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.

3.5. Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.

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

CIRCULAR Ref. No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018

Clause 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.

SEBI (Stock Brokers) Regulations,1992

Maintenance of books of account and records.

18. Every stock broker shall preserve the books of account and other records maintained under regulation 17 for a minimum period of five years

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

(1) to (4)….

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

9. Before dealing with the main issues, I deal with the issue of inspection of documents. I note that the Noticee, vide email dated 01.12.2022 had sought certain documents. On perusal of the said email dated 01.12.2022 I note that the Noticee had relied on Circular Ref. No. MCX/MCXCCL/282/2020 dated 21-04-2020 issued by MCXCCL in respect of some relaxation of settlement of Crude Oil contracts expiring on April 2020. The Noticee had submitted that, said circular was challenged in various High Courts and Supreme Court and forwarded copy of the order passed by Hon’ble Supreme Court in the matter of Transfer Petition (C) Nos. 607-612 of 2020 01.09.2022 wherein all the cases in which the above circular was under challenge were transferred to the Bombay High Court. I note

that the Noticee has sought all the copies of petitions and orders connecting to the above proceedings and also requested not to proceed with the present matter since the matter is sub-judice before the Hon'ble Supreme Court of India. I also note from the reply dated December 30, 2022 of the Noticee that it has submitted that the irregularities occurred during the Covid-19 period when its business suffered huge losses due to Crude Oil negative price.

10. I note that the Noticee in its reply has impressed upon that the violation occurred due to the circular issued by MCXCCL. Since the circular dated 21-04-2020 of MCXCCL is under challenge, it was felt appropriate to take comments of MCXCCL. Vide email dated 12.12.2022, comments were sought from MCXCCL. It is noted from the email dated 15.12.2022 received from MCXCCL that the Circular no MCX/MCXCCL/282/2020 dated 21-04-2020 was only applicable to the Crude Oil contracts expiring on April 2020. I note from the SCN that the difference between aggregate of fund balances available in all Client Bank Accounts (Value-A) and aggregate value of collateral deposited with clearing corporations and/or clearing member (Value-B) which is Value G was negative for the period September 2020 and March 2021 and September 2021, hence, it was alleged that the Noticee has violated provisions of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016. I note that the MCXCCL Circular no. MCX/MCXCCL/282/2020 dated 21.04.2020 was applicable to Crude Oil contracts expiring on April 2020 only, hence, the documents sought by the Noticee were not relevant, not relied upon in the SCN and accordingly were denied to the Noticee.

Issue I: Whether the Noticee violated 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, Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/ CIR/P/2018/54 dated March 22, 2018, Regulation 18 of Brokers Regulations and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of

Brokers Regulations r/w Chapter 13 of MCX/INSP/325/2016 dated September 29, 2016.

11. I now proceed to deal with the issues as under;

11.1. **Misuse of clients funds**

11.1.1 I note from the SCN that, inspection team inspected client trial balance, obligation report and bank statement of all clients of the Noticee and settlement during September 2020 and March 2021 and September 2021 and observed as under:

i. In 39 instances value of G was negative i.e. funds of Credit balance client were used for debit balance client or for own purpose ('G' Value).

ii. The value of negative G ranged from Rs. 2.67 lakhs to Rs. 1.49 crores and average amount of misutilisation was 73.84 lakhs and total mis-utilisation is Rs. 28.79 crores.

iii. Additionally, sample month of September 2021 was checked with respect to misuse of clients' funds and it was observed that in 1 instance I & J was of positive for Rs. 1,997.

11.1.2 I note that Noticee has submitted in its reply that allegations made in the SCN was generic and vague in nature in respect of the violation of the Circular of 1993, as specific provision of the Circular of 1993 is not mentioned in the Show Cause Notice. Noticee has further submitted that it is unable to understand the specific instance that indicates mis- utilization of the credit balance of a particular client. Noticee also submitted judgment of Hon'ble Supreme Court in the case of Gorkha Security Services v. Govt. of NCT Of Delhi & Ors. in support of its contention that the SCN should cite specific instances of violations.

11.1.3 I note from the provisions of SEBI Circular dated 18.11.1993 that clause 1 of the said circular states that, 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 is allowed is given in sub clause A, B, C, D and E of clause 1 of SEBI Circular dated 18.11.1993. I further note from the provisions of Circular dated 26.09.2016 the title/ subject of the said circular is Enhanced Supervision of Stock Brokers/Depository Participants which is addition to the provisions given in Circular dated 18.11.1993 in which certain formulas are given and it is self-explanatory. I note from the SCN that the complete provision which is alleged to have been violated is provided in the SCN which is self-explanatory and the specific instances, as mentioned at para 11.1.1 above were also provided alongwith the SCN. Hence, the submissions of the Noticee are not tenable.

11.1.4 I note from clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 that it mandates the Member Broker to maintain separate accounts of its clients. I also note that SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides mandatory provisions in addition to those specified in SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and provides certain formulas, as given at para 8 above. When the said formulas are applied with the values maintained by the Member Broker, one can arrive at a conclusion that the funds of the clients were misused or not misused by the Member Broker.

11.1.5 I note that the Noticee during the hearing admitted to the misuse of clients funds and submitted that the G negative was due to Crude Oil Negative price and prayed that the said submission may be taken as a mitigating factor. I note that the Noticee has submitted, with respect to the allegation of misuse of clients funds based on additional instance of positive value of I & J value of Rs. 1,997, on September 27, 2021 that they had wrongly calculated the additional Rs. 10,000 for the client code K101 in its account as a credit balance and for that reason, the value I & J was coming positive. The Noticee further submitted that the said mistake has been rectified by it and given to the inspection team. However, there's nothing on record to support this and also the Noticee did not provide any proof as part of its reply to SCN, hence, I am not inclined to accept the said submission of the Noticee.

11.1.6 In light of the admission of charges and reasoning, it is conclusively established that the Noticee violated 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.

11.2. **Clients' Order Recording:**

11.2.1 I note from the SCN that it was alleged that client placing / modifying / cancelling orders for 27-May-20, 19-Jun-20, 09-Sep-20, 21-Oct-20, 27-Nov-20, 25-Jan-21, 21-Sep-21 (7 dates) were not available out of the following samples dates:

Sample Dates:

09-Apr-20	21-Oct-20	01-Apr-21
27-May-20	27-Nov-20	31-May-21
19-Jun-20	01-Dec-20	17-Jun-21
21-Jul-20	25-Jan-21	15-Jul-21
04-Aug-20	05-Feb-21	24-Aug-21
09-Sep-20	25-Mar-21	21-Sep-21

11.2.2 I note from the provision of circular dated 22.03.2018 that all brokers before executing trades of clients are required to keep evidence of the client placing such order and when any dispute arise, the broker shall produce the above mentioned records for the disputed trades.

11.2.3 I note that the Noticee has denied the allegation in toto and has submitted that his client's trades were internet based and it was not required to maintain the call order records, since it is directly traded through the internet.

11.2.4 I note from the Circular Ref. No. SEBI/HO/MIRSD/DOP/P/ CIR/2021/607 dated July 30, 2021 had extended the timelines for the broker for compliance with regulatory requirements. I note that due to Covid, Members were allowed to function their broking business from home or any place other than the address given to SEBI at the time of registration and the said relaxation was subject to permission of the Exchange. I note that Noticee had not taken any permission from MCX.

11.2.5 In light of the above, it is conclusively established that the Noticee has violated Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

11.3. **Trading Report (Order Book/Order Log and Trade Log)**

11.3.1 I note from the SCN that it is alleged that the Noticee had not maintained Order Log for 09-Apr-20, 04-Aug-20, 21-Oct-20, 25-Jan-21, 05-Feb-21, 25-Mar-21, 01-Apr-21, 31-May-21, 17-Jun-21 out of the following sample dates:

Sample Dates

09-Apr-20	21-Oct-20	01-Apr-21
27-May-20	27-Nov-20	31-May-21
19-Jun-20	01-Dec-20	17-Jun-21
21-Jul-20	25-Jan-21	15-Jul-21
04-Aug-20	05-Feb-21	24-Aug-21
09-Sep-20	25-Mar-21	21-Sep-21

11.3.2 I note that the Noticee has submitted that after receiving the inspection findings, it has retrieved back-office data and immediately submitted to the inspection team. The Noticee further submitted that the inspection team has failed to take note of its submission and has again submitted the nine dates order log with its reply.

11.3.3 I note from the provisions of Regulation 18 of Brokers Regulations which states that every stock broker shall preserve the books of account and other records maintained under regulation 17 for a minimum period of five years. I note from regulation 17 of Brokers Regulations wherein list of books of account, records and documents are provided which includes Register of transaction (Sauda Book).

11.3.4 I note from the records that, inspection team had forwarded the data given by the Noticee to MCX and MCX, vide email dated 06.04.2022 had submitted that, the Noticee had provided trade logs and not order logs, hence, the submission of the Noticee was not accepted by the inspection team.

11.3.5 Further, I note that the main difference between order log and trade log is that the order book reflects all orders that have been placed in the system, while the trade book reflects all the trades that were completed. Further, I note from the MCX Circular dated 29.09.2016 that it is specifically stated that order log is to be mandatorily maintain for the period prescribed by Exchange or SEBI.

11.3.6 I note from the reply of the Noticee that it has not provided the Order log details, hence, it is conclusively established that the Noticee has violated Regulation 18 of Brokers Regulations and Clause A(5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations r/w Chapter 13 of MCX/INSP/325/2016 dated September 29, 2016.

ISSUE No. II: Do the violations attract monetary penalty u/s 23D of SCRA, 15HB of SEBI Act and 15 A(c) of SEBI Act.

12. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is established that the Noticee has violated the following provisions:

12.1 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 and is liable for monetary penalty under the provisions of section 23 D of the SCRA.

12.2 Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and is liable for monetary penalty under the provisions of section 15 HB of the SEBI.

12.3 Regulation 18 of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the "Brokers Regulations") and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations and is liable for monetary penalty under the provisions of Section 15A(c) of the SEBI Act.

13. The contents of the said provisions are reproduced hereunder:

Section 23D of SCRA

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 (15 of 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 which shall not be less than one lakh rupees but which may extend to one crore rupees.

Section 15A(c) of SEBI Act.

Penalty for failure to furnish information, return, etc.

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

(a) to (b)…..

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

Section 15HB of SEBI Act.

"Penalty for contravention where no separate penalty has been provided.

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

ISSUE No. III: If so, 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 r/w Rule 5(2) of the Adjudication Rules and the factors stipulated in Section 23J of the SCRA r/w Rule 5(2) of the SCRA Adjudication Rules?

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

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

23J - Factors to be taken into account while adjudging quantum of penalty.

While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.
Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

15. I note from the submissions of the Noticee that it has prayed for considering the negative Crude Oil price as mitigating factor due to Covid, however the same is not acceptable in light of para 9 and 10 above. I note that the Noticee has submitted that the findings in the SCN do not lead to the conclusion that there has been disproportionate gain or unfair advantage by them and that there are no investor complaints filed at any Stock Exchange or SEBI in respect of their conduct and also that it has never been held guilty for any violation of SEBI laws.

16. I note that there is nothing on record to prove disproportionate gain or unfair advantage by the Noticee and any loss to the investors nor there are any investor complaints, however, misuse of clients' money is a matter of serious concern, as the same can lead to total collapse of the financial system and can challenge the

integrity of the securities market and thus has to be dealt with sternly. However, considering the facts of the matter, response of the Noticee, violations established against the Noticee, COVID pandemic which disrupted the normal functioning of systems, I am inclined to take a lenient view in respect of the violations as established at para 11.2 and 11.3 above.

ORDER

17. In exercised of powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of Adjudication Rules and 23-I of the SCRA and rule 5 of SCRA Adjudication Rules, I hereby impose the following penalty on the Noticee;

Noticee (PAN)	**Provisions Violated**	**Penalty u/s**	**Penalty**
Hardik Multi-Com Broking Private Limited	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.	Section 23 D of SCRA	Rs. 2,00,000/- (Rupees Two Lakhs only)
	Clause III of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.	Section 15 HB of SEBI Act	NIL
	Regulation 18 of Brokers Regulations and Clause A (5) of Code of Conduct for stock brokers prescribed in Schedule II of Brokers Regulations.	Section 15A(c) of SEBI Act	NIL

I feel that the said penalty is commensurate with the violations committed by the Noticee in this case.

18. 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

19. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-III), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	Penalty

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings u/s 28A of the SEBI Act and u/s 23 JB of SCRA for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai	**AMIT KAPOOR**
Date: January 23, 2023	**ADJUDICATING OFFICER**