<u>BEFORE THE ADJUDICATING OFFICER</u>

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

[ADJUDICATION ORDER NO. Order/MC/VS/2020-21/9324]

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

In respect of –

Sanchay Fincom Ltd. (Registration No. INB011139632) having address at 209, Rajani Bhavan, 569, M.G.Road, Indore (MP)-452001 and 806, Dev Plaza, S.V.Road, Andheri (West), Mumbai-400058.

In the matter of Sanchay Fincom Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Sanchay Fincom Ltd. (hereinafter referred to as "**SFL**" or "**the Noticee**") under Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "**SCRA**") and Section 15 HB of the SEBI Act, 1992 ("**the SEBI Act**") for alleged violation of the SCRA and provisions of various SEBI Circulars.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act read with Rule 3 of the Securities And Exchange Board Of India (Procedure for Holding Inquiry and Imposing Penalties)

Rules, 1995 ("**Adjudication Rules**") and Section 23 I of the SCRA read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCRA Adjudication Rules**") vide order dated December 18, 2019 to inquire into and adjudge under Section 23D of the SCRA and Section 15 HB of the SEBI Act, the aforesaid alleged violations by the Noticee.

3. The appointment of the AO was communicated vide order dated January 20, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/VS/2020/10686/1-2 dated May 28, 2020 (hereinafter referred to as "**SCN**"), was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules and the SCRA Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 23D of the SCRA and Section 15HB of the SEBI Act, as applicable, for the respective alleged violation of the SCRA and the SEBI Circulars as detailed in the following paragraphs.

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

<u>Non-segregation of client funds and securities</u>

a) In terms of SEBI circular dated September 26, 2016, the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing broker, i.e. A + B should always be equal to or greater than clients' funds as per ledger balance (C). The difference G shall be calculated as, [G = (A+B)-C] and if value of G is negative, then it indicates that the credit balance clients' fund may have been utilized by the broker for other purposes such as funding the debit balance clients, proprietary purpose etc.

b) Analysis of sample data from all trading days between October 01, 2018 to November 30, 2018 to detect misutilisation of client funds showed that in the sample 41 cases, the value of 'G' was found to be negative (in the range of Rs. 1.50 Crore to 2.14 Crore) which indicates that funds of credit balance clients have been used for purpose of debit balance clients.

c) In terms of SEBI circular dated September 26, 2016, the value of 'I' indicates the amount of proprietary margin obligation funded from clients assets.

d) In 29 instances the value of 'I' was found to be positive in the range of Rs.356 to Rs.9 lakhs, indicating use of client's funds towards the margin obligation of proprietary trading. Details were enclosed as Annexure – 3.

e) In view of the above, the Noticee allegedly violated Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 ("the 1993 Circular") and Clause 3.3.1 of Annexure of SEBI Circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 ('the 2016 Circular").

Monthly/quarterly settlement of funds and securities

f) Upon analysis of data pertaining to all active and inactive clients of the Noticee, it was observed that the Noticee had not settled accounts for inactive clients. The Noticee submitted vide e-mail dated June 14, 2019.

g) Instances where the same figure for credit balance of the clients remained outstanding for at least two consecutive quarters, indicating inactive clients, were given in Annexure-5 to SCN. Credit balances of more than Rs.100/ - have been considered. A summary of this non-settled amount is provided in the following table:-

Sr .No.	**Quarter**	**Number of inactive clients having credit balance not settled**	**Total Amount of non-settlement (In Rs.)**
1	Apr 17 to Jun 17	87	11,727,583
2	Jul 17 to Sep 17	89	11,769,919
3	Oct 17 to Dec 17	90	14,271,141

4	Jan 18 to Mar 18	27	11,405,905
5	Apr 18 to Jun 18	28	11,394,702
6	Jul 18 to Sep 18	31	6,414,856
7	Oct 18 to Dec 18	27	3,920,083

h) In view of the above, the Noticee was alleged to have violated SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of the 2016 Circular.

Client funding and further exposure to clients

i) Client ledgers of the top 30 clients were scrutinised to check whether any exposure was provided to the client without recovering the original debit within T+2+5 Days.

j) It was observed that the Noticee funded its clients in 7 instances for amounts ranging from Rs. 1.62 lakhs to Rs. 1.84 crores beyond T+2+5. It was further observed that the Noticee has given exposure to its clients in 7 instances for amounts ranging from Rs. 21.27 thousand to Rs. 3.86 lakhs beyond T+2+5.

k) In view of the above, it was alleged that the Noticee violated Clause 2.6 of Annexure to the 2016 Circular read with Clause 2(d) of SEBI Circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 ("the 2017 Circular")

Enhanced supervision of stock brokers – Failure to submit data

l) From reporting of bank and demat accounts as well as submission of details of client assets for the dates September 28, 2018 and March 1, 2019 made by the Noticee under enhanced supervision requirements, it was seen that the Noticee had made wrong reporting for details of client assets as follows:-

AS ON DATE: 28-09-2018				AS ON DATE: 01-03-2019		
	As reported by the stock broker	As per Exchange Calculation	Difference	As reported by the stock broker	As per Exchange Calculation	Difference
TOTAL OF DAY END BALANCE IN ALL CLIENT BANK ACCOUNTS - (A)	953,796.00	753,557.36	**200,238.64**	1054521	1054282.56	**238.44**
COLLATERAL DEPOSITED WITH CLEARING CORPORATIONS IN FORM OF CASH AND CASH EQUIVALENTS - (B1)	9099478	7017653	**2,081,825.0**	9099478	7980173	**1,119,305.0**
COLLATERAL DEPOSITED WITH CLEARING MEMBER IN FORM OF CASH AND CASH EQUIVALENTS -(B2)	-	**-**	**-**	-	**-**	**-**
TOTAL CREDIT BALANCE OF ALL CLIENTS - (C)	27966641	27966641	**-**	19608012	19608012	**-**
DIFFERENCE = G=(A+B1+B2)-C	-17,913,367.0	-20,195,430.6	**2,282,063.6**	-9,454,013.0	-10,573,556.4	**1,119,543.4**
TOTAL DEBIT BALANCE OF ALL CLIENTS - (D)	17271366	17271366	**-**	13622766	13622766	**-**

m) It was further observed that the Noticee had not uploaded detail of 37 clients in Client funds and securities in Enhanced supervision for the month April 2019.

n) In view of the above, the Noticee was alleged to have violated Clause 6.1.1.j of the 2016 Circular to be read with Exchange Notice nos. 20160927-41, dated September 27, 2016.

KYC / Client registration process

o) Out of a sample of 39 clients registered during the inspection period, verification of sample KYCs of different type of clients viz., individual and partnership clients was done to see if the documents, as required by various SEBI circulars, were being collected.

p) Sample of KYCs were selected on random basis using criterion such as accounts opened during the inspection period, having high turnover, reflecting different risk categories etc. The inspection team checked a sample of 30 KYCs in the below mentioned categories of clients:

    i. Individual - No Additional Documents were taken for Trading in Derivatives for UCC M257

    ii. Partnership - Copy of Balance Sheets for last 2 yrs not taken and Authorized signatory list not taken for UCC A260.

q) In view of the above, the Noticee was alleged to have violated Clauses 3 and 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 on "Simplification and Rationalization of Trading Account Opening Process".

6. An opportunity of personal hearing was granted to the Noticee on August 25, 2020 vide Hearing Notice No. EAD-5/MC/VS/OW/P/2020/12913/1&2 dated August 5, 2020.

7. The Noticee responded to the SCN and Hearing Notice vide e-mail dated August 18, 2020 and sought an extension of 30 days for conducting hearing and filing its reply in the matter on grounds of exigencies resulting from the Covid19 pandemic. The Noticee's request was acceded to in the interest of natural justice and the hearing was rescheduled to September 21, 2020.

8. During the hearing conducted by videoconferencing on September 21, 2020, the Noticee appeared through its Authorised Representatives, Mr. Ramesh Chandra Mishra, Company Secretary and Mr. Avinash Tiwari, Manager. A copy of reply dated September 17, 2020 was e-mailed by the Noticee on the date of hearing, and the Authorised Representatives reiterated the submissions made by the Noticee in the said reply.

9. The submissions made by the Noticee in its reply dated September 17, 2020 are summarized as follows:-

   <u>Non-segregation of Clients fund and securities</u>

   a) Noticee submitted that during the period under inspection, it had approximately 70 active clients who traded or transacted and in case of majority of the credit balance clients, there has been bill to bill settlement of accounts except few of the accounts of the sister concerns, directors and their family members.

   b) Further there have been debit/credit balances pertaining to old clients whose accounts have not been settled or realized and are continuing in the books from last 6-7 years as management is hopeful of recovery, which also led to excess of credit over debit lying in the books of accounts.

   c) It was observed that the value of "G" was found to be negative (in the range of Rs. 1.50 crore to Rs.2.14 crore) as there were credit balances of sister concerns M/s Sanchay Finvest Limited (Client Code :5006), directors and their family members {Client Code : NOlO, N077) (in the range of 1.50 crore to Rs.2.20 crore) throughout the period of inspection lying in the books of accounts as per their wish and consent in order to enable the company to meet its working capital requirements.

d) During the period under inspection one of the Noticee’s credit balance client Mr. Chainroop Duggar {Client Code : C015) and his company M/s Suraj Resources Pvt Ltd (Client Code : 5162) in which he is director and promoter shareholder, requested the Noticee to not to pay credit balance of Rs.33.25 Lacs because of outstanding debit balances of their group which includes friend and relatives of equal amounts.

e) Also one of the Noticee’s credit balance client Mr. Prafulbhai Satra (Client Code:P057) and his wife Mr. Minaxi P Satra (Client Code : M076) having a credit balance of Rs.52 lacs requested the company to keep the credit balance to be used as a margin against their future exposures and obligations. However during the inspection period the company settled the account fully irrespective of their request on 05.11.2018 as there were no transactions carried out by them during the period.

f) Considering the above facts Noticee submitted that the "G" value was not negative on the dates selected for inspection as per annexure to SCN and specific to say in the month of October & November, 2018. There were no negative "G" values during the said period.

g) Since there has been major credit balance outstanding of sister concern, director and their family members including the old credit balance clients who have not traded during the period of inspection but were having debit balances in their family members accounts and could not be settled, the same resulted in negative values in columns G,I & J as observed. Therefore, the Noticee prays to kindly set aside the allegation as there has been no utilization of general credit client funds/client securities to meet the pay-in/margin obligation of debit clients / proprietary margin obligation at any point of time.

Monthly /Quarterly settlement of funds and securities

h) As regards monthly/quarterly settlement of client fund and securities during the inspection period, it was submitted that in case of 90% of active clients during the period under inspection, there has been bill to bills settlements and only in case of few clients having running accounts as mentioned in para above, it has not been done including the accounts of sister concern, directors and few of their family members as explained above.

i) As per the observation the total non settled amounts range from Rs. 39.20 lakhs to 142.71 lakhs during the inspection period and if we take into account the non settled credit amount of sister concern M/s Sanchay Finvest limited (Client Code :5006), directors and their family members (Client Code : NOlO, N077), during the period under inspection it is ranging from Rs. 45 lakhs to 150 lakhs, which were allowed by the director and their family members to be retained as per their wish and comfort.

j) Further there have been many credit balance clients against whom there were debit balances in their family accounts or were having debit balances in the Noticee's sister concern M/s Sanchay Finvest limited (Member : NSE), which were not settled during the period under inspection.

k) There has not been use of any credit client fund (not related to company or its management) in general for any of the purposes not permitted as per the rules and regulations of SEBI and stock exchanges. (Copies of ledgers of director and family members were provided during the inspection).

Client Funding and further exposure to clients

l) The company directly/indirectly did not facilitate any client funding. As regards observation pertaining to funding of clients and allowing them further exposure without recovering the original debit balance within T+2+5, are concerned Noticee submitted that there has been no funding done to clients. There has been some delay in realizing the payments in case of certain clients as detailed in Annexure-6 viz.(B024,S174,U004) beyond T+2+5 days, as they were having running account and these accounts have been settled fully by March 18 quarter. In these referred accounts there were late realization of funds and the total exposure individual client wise in these matter was not more than Rs.15-20 thousand at any given point of time.

m) Further as regards client code N077, this particular account pertains to HUF of director who were having sufficient credit balance in their account and their family members account and the debit in said account (N077) is fully realized and settled in March 18 qtr.

n) As regards client code M236, they are having their other family accounts which were having excess credit balance in and around the period of exposure.

o) Further as regards client codes V135, Noticee has stopped trading for the client since 17.01.2018 and is trying to recover the payments from him. Also in the year 2018-19 Noticee has sold some of the shares of this particular client to recover Noticee's debit but the collaterals are not sufficient to recover the debit and Noticee is trying to recover and settle the same as early as possible. (copies of all relevant ledgers were provided to SEBI during inspection).

<u>Enhanced supervision of stock brokers-Failure to submit data</u>

p) As regards wrong reporting done for client assets under enhanced supervision, Noticee submitted that this was due to oversight and technical error by the new staff, bank balances as per books were uploaded instead of balances as per Bank statement and collateral deposited with exchange were wrongly uploaded including the amount of trade guarantee fund (TGF).

q) The same was an unintentional and inadvertent mistake which could not be rectified within 7 days from the date of upload as Noticee were not aware that there was error in data uploaded and not been informed by the concerned staff. This error has not put any person or authority in any loss/inconvenience.

r) Now henceforth Noticee is taking extreme care and caution in reporting the client asset details and further assure of due compliance in future in this regard. Therefore Noticee requests to set aside the allegation stated therein as the error was purely due to human error.

s) As regards observation regarding non uploading of 37 client details in in client fund and securities in enhanced supervision for the month of April 2019, Noticee submitted that out of these 37 clients details of 5 clients (B024, M207,N021, R030 & V106) are very well reported in CFS and can be cross verified by the file. Client code 0001 pertains to Noticee's PROP/OWN account and does not need reporting. Further in case of rest of the 31 clients whose ledger was showing miniscule balance aggregating to Rs.3500/- being miscellaneous differences due to error ranging from 0.50 paise to Rs.·100 were written off in the month of March 2019 while finalization of books of accounts for the FY 2018-19 in order to clean the books and give a better presentation of financial figures.

<u>KYC/Client Registration Process</u>

<u>a.INDIVIDUAL</u>

t) No Additional Documents were taken for Trading in Derivatives for UCC - M257 - As regards non taking of additional documents for trading in derivative segment for UCC-M257 is concerned, Noticee is dealing only in

CM segment of the exchange and that was the reason, no additional documents were collected from the client.

u) The client while executing the KYC had signed wrongly against the Derivative Segment also, of which Noticee is not a member. However, Noticee has rectified the said mistake with the consent of the client as he was also aware that we are not dealing in the derivative segment of the exchange.

b.Partnership

v) Copy of Balance Sheets for last 2 years not taken and authorized signatory list not taken for UCC-A260 - Noticee had duly collected the financial accounts as well as list of signatories but unfortunately at the time of inspection the same could not be located because of the renovation of the office. But now Noticee has retrieved the same and if needed will provide the same.

w) As Noticee is very small broker and its monthly average brokerage income Rs.50,000/- and expenses of more than Rs 2.50 Lacs. The promoters mainly fund the day to day running working capital from their own resources. During this pandemic the company has suffered a lot. Any monetary penalty will be an undue financial hardship on the organization.

10. Vide further submissions made in e-mail dated September 24, 2020, the Noticee also submitted the following:-

a) Audited Balance sheet, Profit & Loss A/c and Income Schedule for FY-2018-19 & 2017-18 in support of our claim as regards income from brokerage operation.

b) The Total Brokerage from operation during FY 17-18 was Rs.6,14,320/- and during the FY 2018-19 was Rs.6,03,186/- (Please refer schedule 14 of the annual accounts) and there was operational business loss for both the FY (relevant period).

11. In the light of the allegations contained in the SCN, the Noticee's submissions dated September 21, 2020, and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I Whether the Noticee had violated the following provisions:-

i. Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 ("**the 1993 Circular**") and Clause 3.3.1 of Annexure of SEBI Circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 ('**the 2016 Circular**").
ii. Clause 12 of Annexure of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 ("**the 2009 Circular**") and Clause 8.1 of Annexure of the 2016 Circular
iii. Clause 2.6 of Annexure to the 2016 Circular read with Clause 2(d) of SEBI Circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 ("**the 2017 Circular**")
iv. Clause 6.1.1.j of the 2016 Circular to be read with Exchange Notice nos. 20160927-41, dated September 27, 2016, and
v. Clause 3 and 4 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011

Issue No. II If yes, whether the abovesaid failures on the part of the Noticee would attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act, as applicable?

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 Section 23J of the SCRA read with Rule 5 (2) of the Adjudication Rules and Rule 5 (2) the SCRA Adjudication Rules?

Issue No. I Whether the Noticee had violated the following provisions:-

i. **Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3.3.1 of Annexure of SEBI Circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016**
ii. **Clause 12 of Annexure of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of the 2016 Circular**
iii. **Clause 2.6 of Annexure to the 2016 Circular read with Clause 2(d) of SEBI Circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017**
iv. **Clause 6.1.1.j of the 2016 Circular to be read with Exchange Notice nos. 20160927-41, dated September 27, 2016, and**
v. **Clause 3 and 4 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011?**

13. In a sample of 41 cases taken from October 01, 2018 to November 30, 2018 , the value of ‘G’ was found to be negative (in the range of Rs. 1.50 Crore to 2.14 Crore) in all instances, indicating that funds of credit balance clients was used to fund debit balance clients. In 29 instances 'I' was positive in the range of Rs. 356 to Rs. 9 lakhs, indicating that client funds were used towards meeting margin obligations of proprietary trading. These instances of negative 'G' and positive 'I' indicated violation of SEBI Circular SMD/SED/CIR/93/23321 dated

November 18, 1993 and Clause 3.3.1 of Annexure of SEBI Circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

14. The Noticee has contended that the accounts of most of its 70 active clients were being settled regularly, and has admitted that the accounts of some inactive clients and of some related clients such as its directors, their family members, and sister concern M/s Sanchay Finvest Limited were not settled upon their request, leading to excess of credit over debit in the Noticee's books of accounts. However, the legal obligation to segregate client funds in terms of the 1993 Circular read with Clause 3.3.1 of the 2016 Circular does not make any exception for cases of negative 'G' where credit balance (‘C’) exceeds (A+B) due to non-settlement of inactive clients’ accounts or accounts of family members/owners of the broker. Treatment of credit and debit balances of clients which are sister concerns as belonging to a single integrated account has not been permitted by the 1993 Circular or the 2016 Circular, and goes against the principle of segregation of client funds and securities laid down in the said Circulars. While the Noticee has claimed that other than owners/ family members/ sister concerns, client funds have not been used to meet other clients requirements, the practice is not only against the requirements of the aforesaid circular, but also encourages laxity in treatment of client funds.

15. The Noticee has admitted that the accounts of inactive clients with running accounts such as those of sister concern, directors and few of their family members remained unsettled as per client's request or due to debit balances in accounts of sister concern or family accounts. Further, no explanation has been given by the Noticee to explain the positive value of 'I' indicating use of client funds to meet margin obligations of proprietary trading by the Noticee.

16. Therefore, I find that the charge of violation of the 1993 Circular and Clause 3.3.1 of the 2016 Circular due to non-segregation of client funds stands established in respect of the Noticee.

17. In respect of the allegation pertaining to non-settlement of running accounts, as per the SCN the unsettled amount for the respective applicable quarters ranged from Rs. 39 lakhs to Rs. 1.42 crore. The Noticee has admitted that in the case of a few clients having running accounts, including accounts of sister concerns, directors of the Noticee and a few of their family members, settlement has not been carried out as requested by the said clients, or because of debit balances in the accounts of family members or related concerns of the said clients.

18. As per Clause 12 i. of the December 2009 Circular, no inter-client adjustments for the purpose of settlement of the 'running account' is permitted. Further, as per Clause 12 e. of the 2009 Circular as well as Clause 8.1 of the 2016 Circular, running accounts are required to be settled at least once a month or once a quarter depending on client preference. The only exception to this is mentioned in Clause 12 g. which states that such periodic settlement may not be necessary for clients availing margin trading facility as per SEBI circular or for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR). None of these reasons have been offered as explanation for the non-settlement of running accounts in terms of the 2009 Circular by the Noticee.

19. Therefore, I find that the allegation of violation of the SEBI Circular dated December 3, 2009 by the Noticee stands established.

20. With reference to the charge of client funding and granting further exposure to its clients, as per the SCN the Noticee has funded its clients in 7 instances for total amounts ranging from Rs. 1.62 lakhs to Rs. 1.84 crores beyond T+2+5,

granting exposure beyond T+2+5 to the said clients for amounts ranging from Rs. 21271.44 to Rs. 3.86 lakhs. In this regard, Clause 2.6 of the 2016 Circular stipulates that "*Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in*." Further, Clause 2(d) of SEBI Circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 ("the 2017 Circular") states that "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time."

21. In its reply the Noticee has admitted to delay in realising payments in the running accounts of three clients B024, S174, U004 claiming that these were settled fully by quarter ended March 2018. It is also submitted by the Noticee that total exposure individual client wise in these matter was not more than Rs.15-20 thousand at any given point of time.

22. Regarding client code N077 Noticee has stated that the account pertains to HUF of director who had sufficient credit balance in their account and their family members account and the debit in said account (N077) is fully realized and settled in March 18 quarter. A similar submission has been made regarding client code M236, that they had their other family accounts which had excess credit balance in and around the period of exposure. Regarding client code V135 as well it has been contended that Noticee has stopped trading for the client since 17.01.2018 and is trying to recover the payments from him also in the year 2018-19, having sold some of the shares of this particular client to recover Noticee's debit but the collaterals are not sufficient to recover the debit.

Thus, there is an admission from the Noticee of having failed to realise client-wise debit balances within T+2+5 period and still continued to grant further exposure in respect of the said 7 clients. The explanation given by the Noticee that the said accounts belonged to its director or that family accounts of the client had credit balances is not acceptable, funds of one client are not permitted to be used for settling dues of other clients.

23. In the light of admitted facts regarding grant of further exposure to the said 7 clients beyond the T+2+5 period, I find that the charge of violation of Clause 2.6 of Annexure to the 2016 Circular read with Clause 2(d) of the 2017 Circular stands established.

24. As per the SCN, the Noticee reported to the exchange a higher figure of total of day end balance in all client accounts ('A') and collateral deposited with clearing corporation in form of cash and cash equivalents ('B1') as on 28.09.2018 and 01.03.2009, by amounts ranging from Rs. 238 to Rs. 20.81 lakhs. This misreporting reflected in a lower figure of negative 'G' than would have been the case had client bank account and collateral figures been accurately computed and reported. Further, the Noticee had failed to upload details of 37 clients in Client funds and securities in Enhanced supervision to the exchange for the month April 2019. The misreporting has been admitted by the Noticee as data entry errors by staff which went unnoticed. In respect of 37 instances of failure to upload client details, the Noticee has submitted that details of five clients (B024, M207,N021, R030 & V106) had been reported in CFS and the same is verifiable, and client code 0001 belonged to proprietor of broker whose asset details did not need reporting. As per post-inspection findings available on record, it is noted that upon cross-verifying with the Exchange it was found that the said data was not uploaded in the five instances.

25. In the light of the admissions made by the Noticee, I find that the Noticee failed to comply with the obligation of uploading client's funds and securities balances by Stock Brokers to Stock Exchange System and onwards transmission of the same to the clients for better transparency in terms of the BSE Exchange Notice Nos. 20160927-41 dated 27.09.2016 and para. 6.1.1 of the 2016 Circular, which requires a broker to submit complete and correct data.

26. In view of the above, I find that the allegation of violation of the above said BSE Exchange Notice dated 27.09.2016 and para. 6.1.1 of the 2016 Circular stands established in respect of the Noticee.

27. As per the SCN, the Noticee has failed to follow KYC requirements by not taking additional documents for trading in derivatives in respect of an individual client (UCC M257), and by not taking copy of balance sheets for last 2 years and Authorised Signatory list in respect of UCC A260 in violation of the stipulation laid down in Clauses 3 and 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 on "Simplification and Rationalization of Trading Account Opening Process". In this regard, the Noticee has submitted that since it was dealing only in the cash (CM) segment of the exchange, no additional documents pertaining to derivatives trading were taken from the client. The Noticee has submitted that as the said client had mistakenly signed against the derivatives segment, the error was duly rectified after taking the consent of the said client. I am inclined to accept the said contention of the Noticee.

28. Further, in respect of copies of balance sheets and authorised signatory list in respect of UCC A260, the Noticee has submitted that the said documents could not be produced at the time of inspection but were subsequently located. I am inclined to accept the said contention of the Noticee.

29. In view of the above, I find that the allegation of non-compliance with KYC requirements in respect of UCC A260, thus violating Clauses 3 and 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 is not established.

Issue No. II If yes, whether the abovesaid failures on the part of the Noticee would attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act, as applicable?

and

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 Section 23J of the SCRA read with Rule 5 (2) of the Adjudication Rules and Rule 5 (2) the SCRA Adjudication Rules?

30. It has been established that the Noticee has violated the provisions of
   - (i) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3.3.1 of Annexure of SEBI Circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
   - (ii) Clause 12 of Annexure of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of the 2016 Circular
   - (iii) Clause 2.6 of Annexure to the 2016 Circular read with Clause 2(d) of SEBI Circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
   - (iv) Clause 6.1.1.j of the 2016 Circular to be read with Exchange Notice nos. 20160927-41, dated September 27, 2016

31. Hence, the Noticee is liable for imposition of monetary penalty under Section 23D of the SCRA for violation of the 1993 Circular and 2016 Circular due to

non-segregation of client funds at (i), and under Section 15HB of the SEBI Act for violation of the provisions at (ii) to (iv) as aforementioned.

32. Text of the relevant provision is reproduced as under;

<u>SCRA:</u>

<u>Penalty for failure to segregate securities or moneys of client or clients.</u>

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.*

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

33. While determining the quantum of penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA, the following factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA have to be given due regard:

"***15J. Factors to be taken into account by the adjudicating officer***

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.

SCRA

"*23J. Factors to be taken into account by the adjudicating officer*

While adjudging 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."

34. I note that inspection did not reveal any specific disproportionate gains or unfair advantage made by the Noticee or specific loss suffered by the investors. I also observe that no complaints against the Noticee in relation the charges levelled against it in the SCN are available on record. I also take note of the Noticee's submission that its total Brokerage from operation during FY 17-18 was Rs.6,14,320/- and during the FY 2018-19 was Rs.6,03,186/- as stated in schedule 14 of the annual accounts, and there was operational business loss for both the financial years.

35. At the same time, it cannot be ignored that as a market intermediary, the Noticee failed to comply with several applicable provisions of the SCRA and SEBI Circulars pertaining to its client accounts.

36. 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. 4,00,000/- under Section 23D of the SCRA, and of Rs. 3,00,000/- under Section 15HB of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

37. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act

read with Rule 5 of the Adjudication Rules and under Section 23I of the SCRA read with Rule 5 of the SCRA Adjudication Rules, I hereby impose the following penalty upon the Noticee as shown in the table below:-

Name of Noticee	Penalty Provisions	Penalty Amount
Sanchay Fincom Limited	Under Section 23D of the SCRA	Rs. 4,00,000/- (Rupees Four Lakhs only)
	Under Section 15HB of the SEBI Act	Rs. 3,00,000/- (Rupees Three Lakhs only)
Total Penalty		**Rs. 7,00,000/- (Rupees Seven Lakhs only)**

38. The Noticees 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

    ENFORCEMENT ⟶ Orders ⟶ Orders of AO ⟶ PAY NOW

39. The Notice 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 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

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

DATE: September 30, 2020
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER