BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/VV/PSS/2022-23/22623

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

In respect of:
Asit C Mehta Investment Intermediaries Limited

In the matter of
Asit C Mehta Investment Intermediaries Limited

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15HB of Securities and Exchange Board of India Act, 1992 ('**SEBI Act**'), 1992 and under section 23D and 23H of the Securities Contracts (Regulation) Act, 1956 ('**SCR Act'**) against **Asit C Mehta Investment Intermediaries Limited**, (hereinafter referred to as "**Noticee")** for the alleged violations of provisions of SEBI Act, SCR Act, SEBI (Stock Brokers) Regulations, 1992 ('**Stock Brokers Regulations'**) read with various relevant circulars of SEBI and National Stock Exchange ("**NSE**").

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Geetha G, Chief General Manager was appointed as the Adjudicating Officer ("***erstwhile AO***") vide order dated February 09, 2022 to inquire into and adjudge under section 15HB of the SEBI Act and under sections 23D and 23H of the SCR Act for the alleged violations against the Noticee. Pursuant to transfer of erstwhile

AO, Shri Amit Kapoor, General Manager was appointed as Adjudicating Officer ("***earlier AO***") in the instant matter vide order dated August 29, 2022. Subsequently, pursuant to reallocation of cases, the undersigned has been appointed as Adjudicating Officer vide Order dated October 3, 2022 to inquire into and adjudge under section 15HB of the SEBI Act and under sections 23D and 23H of the SCR Act. The appointment of the current AO was communicated to the Undersigned vide communication order dated October 6, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD-6/ADJ/AK/AS/OW/48348/1/2022 dated September 14, 2022 (hereinafter referred to as "**SCN**") was issued by the earlier AO to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and under rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (both collectively referred to as '**Adjudication Rules**') to show cause as to why an inquiry should not be held and penalty be not imposed on the Noticee under section 15HB of the SEBI Act and under sections 23D and 23H of the SCR Act for the following alleged violations :-

   a) Section 23D of the SCRA, 1956 read with Clause 1 of Annexure 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.

   b) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.

   c) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

d) SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 read with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.

e) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011

f) Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

g) Regulation 6.1.5 of the NSE (F&O segment) Trading Regulations and Regulation 6.1.4 of Part A of the NSE (Capital Market Segment) Trading Regulations

h) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 r/w NSE circular NSE/INSP/27368 dated August 18, 2014.

i) Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001

j) Rule 8(3)(f) of Securities Contract (Regulation) Rules, 1957

k) Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016

l) Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016

m) Clause 6.1.1.e of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

4. The contents of the SCN are summarized as under :-

SEBI conducted a joint inspection of the books of accounts and other records of the Noticee from September 11, 2020 to October 20, 2020 along with Bombay Stock Exchange Limited ("**BSE**"), National Stock Exchange of India Limited ("**NSE**") and Central Depository Services (India) Limited ("**CDSL**"), and examined the compliance with various regulatory norms prescribed by SEBI. The period of inspection was from 1st April 2019 to 31st July 2020 (*hereinafter referred as*

"**Inspection Period / IP"**). On the basis of said inspection, following allegations were levelled against the Noticee:

Table 1

S.No.	Allegations	Violations
1	**Misuse of client funds -** the Noticee was funding its client / settlement bank account only on reporting dates of enhanced supervision and on the very next day the same funds were withdrawn and the value of G was negative for 48 sample days out of total 54 sample days.	a) Section 23D of the SCRA, 1956 r/w Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. b) Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016.
2	**Short collection of margin -** Noticee incorrectly reported margin to Exchange in Futures & Options (F&O) and Commodity Derivative (CD) segment.	SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.
3	**Client Funding -** The Noticee had funded 30 of its clients beyond T+2+5 amounting to Rs. 6.32 Crore	Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/ 95 dated September 26, 2016 r/w Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017.
4	**Client Registration Process (KYC and KRA Process) -** In 7 cases, the preference for settlement of clients' account was not obtained by the Noticee. Noticee did not upload KYC details of 7268 Individual Clients on the portal of CKYCR.	a) Clause 12 of Annexure A of the SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009. b) SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 r/w SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.
5	**Verification of Email ID & Mobile numbers -** Discrepancies in the contact details of the clients of the Noticee	a) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 r/w NSE circular NSE/INSP/ 27368 dated August 18, 2014. b) Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

		c) Regulation 6.1.5 of the NSE (F&O segment) Trading Regulations and Regulation 6.1.4 of Part A of the NSE (Capital Market Segment) Trading Regulations. d) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 r/w NSE circular NSE/INSP/ 27368 dated August 18, 2014.
6	**Incorrect reporting of Net worth -** Discrepancy in calculation of networth/ incorrect reporting of networth to exchange	a) Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016 r/w Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001.
7	**Non-adherence to rules of membership -** Noticee was involved in personal financial liability. Noticee has engaged itself as a principal in a business other than that of securities involving personal financial liability	Rule 8(3)(f) of Securities Contract (Regulation) Rules, 1957.
8	**Incorrect reporting of weekly enhanced supervision data to stock exchange -** Noticee has incorrectly reported the data towards weekly monitoring of client funds.	Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016 /95 dated September 26, 2016.
9	**Failure to upload clients' fund/securities balance -** Noticee did not report 121 clients traded in the last 12 months in the Monthly Enhanced Supervision.	Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/ 95 dated September 26, 2016.
10	**Failure in reporting of RBS data -** Noticee incorrectly reported the data towards RBS for total debit balances of all clients, total available collaterals from all debit balance clients and loan given to group companies/ associates/ subsidiaries/any other entity & key persons.	Clause 6.1.1.e of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016.

5. I note, from available records, that the SCN was duly delivered to the Noticee and it has filed a detailed reply dated October 21, 2022. An opportunity of personal hearing in the matter was provided to the Noticee on November 15, 2022, in terms of rule 4(3) of the Adjudication Rules, after considering the reply of the Noticee and the material available on the record and same was attended by the authorized representative on behalf of the Noticee. Accordingly, hearing in the matter concluded on November 15, 2022.

6. The Noticee vide his reply to the SCN dated October 21, 2022 has *inter alia* stated as follows: -

a) Noticee submits that since it was a joint inspection, BSE and NSE also have initiated the proceedings. BSE, vide letter dated April 30, 2021, has levied penalty of Rs.6,57,000 upon the Noticee for same set of violation. The said order was set aside by the Hon'ble Securities Appellate Tribunal ("**SAT**") and subsequently BSE had issued a SCN. Thereafter, BSE, vide letter dated May 27, 2022 levied penalty of Rs.3,18,174 upon the Noticee for same set of violation. Noticee has paid the penalty amount to BSE.

b) Noticee further submits that it has been penalized for the same set of violations flowing from the same inspection by both NSE and BSE. Noticee has paid penalty for same set of violation to two exchanges, hence no penalty be imposed in the present proceeding. If separate penalties are levied by each of the authority, the joint inspection by NSE, BSE CDSL and SEBI will not serve any purpose. In the interest of natural justice, Noticee ought not to have been penalized twice/thrice for the same set of violations.

Misuse of client funds

c) We have represented to SEBI vide our letter dated September 5, 2018 that the shares not being treated as liquid as per the mandated enhanced supervision norms is not fair. At the relevant point of time and as already informed in our reply dated December 21, 2020, we had enough stock to cover the outstanding payable to clients as is demonstrated from the following chart:

Table 2

Quarter	Outstanding balance	Hold stocks available with company	Margin stocks available with company	Cash Collateral from Sub-broker
Jul-20	4.59	5.16	2.23	2.60
Jun-20	6.57	4.17	3.50	2.60
May -20	3.96	3.77	2.05	2.60
Apr-20	3.96	4.85	1.89	2.60
Mar-20	3.04	2.8	2.5	2.6
Feb-20	13.32	10	8.4	2.6
Jan-20	11.32	9.01	8.35	2.6
Dec-19	8.18	6.04	3.62	2.61
Nov-19	11.82	10.95	3.58	2.63
Oct-19	9.62	7.66	2.19	2.65
Sep-19	11.49	7.45	2.84	2.65
Aug-19	9.67	6.47	4.89	2.65
Jul-19	12.44	9.29	18.18	2.68
Jun-19	11.79	7.72	17.9	2.7
May-19	19.18	17.85	11.89	2.7
Apr-19	15.3	12.03	6.01	3.51

d) Apart from the above, it had stock worth of Rs. 45.00 crores of these clients in its pledge/margin account. If the same are accounted for, the alleged shortage would not exist.

e) The Enhanced supervisory norms not taking this liquid asset in consideration leads to shortage in weekly and monthly reports, at the relevant point of time. However, as informed to SEBI vide our letter dated February 12, , we had made the necessary arrangements to ensure that there is no shortfall even as per the mandated format of the reporting formula for enhanced supervision reporting from reporting for date February 1, 2019 onwards till reporting for date 3rd January, 2020.

f) It is submitted that the Annexure 2 enclosed with the SCN does not take into consideration the shares available with us in CUSA (Client Unpaid Securities Account) and the unutilized overdraft balance. The shares in CUSA are those which are not paid for by the clients for purchases done by them and till such time as they are paid for by the client, are to be considered as the liquid assets of the company. If the value of shares held due to non-payment of the same and the unutilized portion of the Overdraft (OD) facility are accounted for, there is no shortfall on most of the dates. Thus, we have not misused client funds, and neither have we used credit balance funds for debit balance clients nor have we used the funds of credit balance clients for our own purposes.

g) We had availed of credit facility from ICICI Bank Limited (ICICI Bank) in order to fulfill our obligations as required under the prescribed format for enhanced supervision reporting. The aforesaid credit limit facility from ICICI Bank expired on 9th January, 2020 and could not be renewed at the relevant time due to some internal issues at ICICI Bank end. This has resulted in us reporting shortfall since the end of January 2020. We had suomoto informed this issue to exchanges via our letters dated 04th February, 2020.

h) We received '*Renewal credit Arrangement letter*' from ICICI Bank dated March 11, 2020 (received by us only on March 17 2020) informing us that our credit facilities were restored subject to us providing the documentation mentioned therein. We would request you to please note that we were in the midst of a severe COVID-19 pandemic, in 2020, which led to the disruption in normal operations in all industries including the banking and financial services industry and hence it took time for our credit facilities to be restored by the concerned bankers.

Short collection of margin

i) In 11 out of 14 instances detailed in the aforesaid annexure, we have received cheques/funds towards margin on T+1 day which is permitted as per the provisions of point number 6 of Annexure A to Exchange circular reference numbers NSE/INSP/19583 dated December 14, 2011 and NSE/INSP/24805 dated October 23, 2011.

j) In 2 of the remaining 3 instances, credit bill of 02/04/2019 (T-1 day) has not been considered against mark to margin and should be considered for the purposes of margin collection and reporting as per the provisions of point number 11 of Annexure A to Exchange circular reference numbers NSE/INSP/19583 dated Dec 14, 2011 and in the other instance, there is a difference between in calculation of value of margin stock considered by inspecting officials and by us. After considering the above, the instances of alleged short collection of margin in terms of value against total margin requirement is very miniscule.

k) In CD segment, in one of the given 2 instances, we have received cheques/funds towards margin on T+1 day which is permitted as per the provisions of point number 6 of Annexure A to Exchange circular reference number NSE/INSP/19583 dated Dec 14, 2011 and NSE/INSP/24805 dated October 23, 2013.In the remaining instance, we had sufficient stock of the said client in our pool account number , which is allowed toward margin collection as per the provisions of Exchange circular reference number NSE/INSP/19583 dated Dec 14, 2011 and NSE/INSP/24805 dated October 23, 2013.

l) Further, we have reported total margin deposit placed by the respective clients upto day T+1 as permitted under the applicable regulatory provisions. As such, we have not done any incorrect reporting of margin. Further, we have sent daily margin statements to all clients as required under the applicable regulatory provisions.

m) To summarise, we have neither short reported margin collection nor done any incorrect reporting of margin collection, and we have reported margins collected by us in the manner and form prescribed by the regulatory authorities from time to time. In view of the above, we humbly submit that we are in compliance with the provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.

Client Funding

n) We had vide our letter dated December 21, 2020, provided a detailed explanation in almost 70% of the cases amounting to Rs. 4.42 crores that the debit balance in most of these cases have arisen as a result of delayed payment charges, journal invoices and closeout entries and that these are not trade related debits.

o) BSE in its remarks to our reply appears not to have considered the June 22, 2017 circular is that of trade related debits since this circular modifies clause 2.6 as **"**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,*****(emphasis supplied)** 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".

p) We reiterate our reply dated December 21, 2020 and Please find enclosed herewith the same as Annexure 3.1 (in soft copy). SEBI circular SEBI/HO/MIRSD/MIRSD/2/CIR/P/2016/95 dated September 26, 2016 read with SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 is silent on debit balances arising out of levy of delayed payment charges, journal invoices and closeout entries.

Client Registration Process (KYC and KRA Process)

q) It is observed that in 9 instances, the preference for settlement of clients' accounts is not obtained: Please find enclosed herewith as Annexure 4.1 our detailed reply regarding the same. The tabular summary of the said reply is given below: -

Table 3

Particulars	**Number of clients**
Preference for settlement already available	1
Preference for settlement not required due to custodian settled client	1
Preference for settlement not required since settlement is done on a bill to bill to basis	1
Preference for settlement not required due to closure of account	1
Preference for settlement obtained in the remaining instances	5

r) In view of the above, we humbly submit that we are in compliance with and have not violated the provisions of Clause 12 of Annexure A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

s) We had given explanation in respect of the said 16,128 investors as under:

Particulars	Count
Number of investors repeated	29
Number of investors already CKYC registered	3459
Number of investors accounts closed	794
Number of investor accounts suspended	4578
Number of investors with whom we were continuously following up for the required documentation in the specified format	7268

t) With respect to the said 7268 investors referred to in the current notice, please find below the details thereof:

Table 4

Particulars	Number of investors
Account opened before year 2016 in which the circular for upload of investor information on CKYCR was issued	7117
Account opened after 2016	151

u) With respect to the CKYC status of the said investors, please find below the current status thereof:

Table 5

Particulars	Count
Number of investors already CKYC registered	2884
Of the above, number of accounts closed post inspection	231
Number of investor accounts suspended	4153 (all of whom have opened their account before the year 2016: of these 3 have opened their accounts before 2001).

v) We are following up with the suspended investors on regular basis for the required documentation in the prescribed format with valid documentary proof. In view of the above, we humbly submit that we are in compliance with the provisions of SEBI circular CIR/MIRSD/120/2016 dated November 10, 2016 ready with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016

Verification of Email ID & Mobile numbers

w) With respect to 835 clients, there was mismatch of mobile numbers as per Noticee's data *vis-à-vis* Exchange UCC database, as informed vide our letter dated December 21, 2020, we have updated the mobile numbers available in the Exchange UCC database and the same was informed to the inspecting officials vide e-mail dated 07.10.2020.

x) With respect to 857 clients, there was mismatch in email ids as per noticee's data vis-à-vis Exchange UCC database, as informed vide our letter dated December 21, 2020, we have updated the mobile numbers available in the Exchange UCC database and the same was informed to the inspecting officials vide e-mail dated 15.10.2020.

y) With respect to single mobile number mapped to multiple clients i.e.179 mobile numbers mapped to 486 clients, we have already provided the relationship in the case of 435 investors and declarations in this respect are available with us. It appears that some instances, where the mobile number is the same for HUF and its Karta in his capacity as individual client, or in his capacity as an individual having acceptable relationship (being father/mother/son/daughter/spouse) with another client has not been considered as valid relationship by the inspecting officials. The tabular representation of the said cases is as under:

Table 6

Particulars	**No. of investors**
Declarations with acceptable relationships available with us	435
HUF accounts	47
PMS account, hence regulation does not apply	2
Proper relationship proofs not available hence suspended	2

The detailed reply was provided as Annexure 5.4 to its reply.

z) With respect to single email id mapped to multiple clients i.e. 256 email id mapped to 739 clients, Noticee repeats its preceding submissions. Detailed reply further elaborating the relationship is enclosed herewith as Annexure 5.6**.** The tabular representation of the said cases is as under: -

Table 7

Particulars	**No. of investors**
Declarations with acceptable relationships available with us	625
HUF accounts	31
Proper relationship proofs not available hence suspended	83

aa) With respect to contract notes deemed not sent i.e. 256 email id mapped to 739 clients, as stated above, we have already provided the relationship between the said clients as Annexure 5.6. Further, we have not received any complaint from any client regarding non-receipt of contract notes. Hence, we humbly submit that we are in compliance with the provisions of Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

bb) With respect to documentary evidence not obtained from clients for mobile number uploaded as 6666666666 in the UCC database in case of 7 clients, it is submitted that the concerned clients have requested us in writing to update the e-mail field of UCC as 6666666666 and we have already provided the documentary supporting's to the inspecting officials during the course of inspection vide e-mail dated October 19 2020.

cc) In view of the above, we humbly submit that we are in compliance with Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 r/w NSE circular NSE/INSP/27368 dated August 18, 2014.

Incorrect reporting of Net worth *(re-iterating our reply dated December 21, 2020)*

dd) **Capital WIP towards intangible assets Rs. 1.55 Crores:** As per Annexure 1 to the circulars for networth submission issued by the Exchanges from time to time, fixed assets are to be deducted while computing networth. The difference between the figures taken by us and the figures taken by the inspecting officials is on account of work in progress. As per the guidelines on accounting standards issued by Institute of Chartered Accountants , fixed asset is an asset held for use in the production or supply of goods or services for rental to others, or for administrative purposes and is expected to be used for more than 12 months. Capital works-in-progress is the expenditure on fixed assets that are in the process of construction or completion, i.e. not ready for intended use at the time of incurring expenditure. Thus, there is a clear-cut differentiation between fixed assets and work in progress as per the accounting standards. The regulatory requirements are totally silent on the treatment given to a work in progress asset. As per the guidelines on accounting standards issued by Institute of Chartered Accountants of India (ICAI), fixed asset is an asset held for use in the production or supply of goods or services for rental to others, or for administrative purposes and is expected to be used for more than 12 months. Capital work-in-progress is the expenditure on fixed assets that are in the process of construction or completion, i.e. not ready for intended use at the time of incurring expenditure. Thus, there is a clear cut differentiation between fixed assets and work in progress as per accounting standards. In the past, only all those work in progress that cumulated into fixed assets over subsequent accounting periods have been duly treated as fixed assets for these subsequent periods and accordingly were reduced from the networth computations from these subsequent periods. Work -in-progress on Capital Expenditure is not to be reduced from net worth as it has not been converted into a usable fixed asset and hence cannot be used. As and when the work in progress is completed and it becomes a usable fixed asset, it is treated as per the Exchange Formula and deducted accordingly while computing networth. Hence, we humbly submit that we have strictly gone as per the formula given by the Exchanges and ICAI accounting guidelines, while computing the networth requirement.

ee) **Deferred Tax Assets — Rs. 80.52 Lakhs:** h Deferred tax assets on account of tax loss are immediately recovered on occurrence of profits in an assessee's financial workings. Advance taxes are also reduced accordingly leading to immediate recoupment of the deferred tax assets. Hence, the aforesaid is a real asset not to be reduced from the networth unless the assessee is wound up. With the aforesaid view, we have not deducted the same by error from the networth. With effect from the networth as on March 31, 2021, we have complied with the requirement and are deducting the same from the networth computation. Thus, we are complying with the regulatory requirement.

ff) **Loan to unrelated third party — Rs. 5.82 Crores :** As per the Annexure 1 to circular given for submission of net worth certificate and computation of net worth, loans and advances given to group companies/associates are to be excluded. The amounts reflected in the financial statements are Inter Corporate Deposits (ICDs) of Rs. 5,81,91,909/- (Rupees Five Lakhs Eighty-One Lakhs Ninety-One Thousand Nine Hundred Nine Only), given to companies (Nichi Investment Company Pvt Ltd and Devson Impex Private Limited). These companies are neither our associates nor our group companies and hence are not to be excluded. The same have been received back in the subsequent financial year as already informed to the National Stock Exchange of India Limited (NSE) vide our letter dated March 30, 2021. The same was also informed to SEBI vide our aforesaid letter dated April 8, 2021.

gg) **OD facility to group companies via FD — Rs. 12.25 Crores:** This Overdraft facility was given by the bank to the group company in March 2015. We have not given the overdraft to these companies. The FD at the relevant point of time was reflected in the respective company's books of accounts; hence it is not to be deducted. These were considered as third-party loans by the banks and treated accordingly. The company was exposed to the risk only in the case of defaults but these companies and that too to the extent of the loans outstanding which are much lesser than the FD sums. The borrowers were informed to find different security to the bank to release the TM's FDs. We have recouped the entire FDRs of Rs. 12.25 crores as informed to NSE, vide our aforesaid letter dated March 30, 2021.

hh) **Deposit given for premises for directors & holding co:** These deposits were deposits for rental premises and were commercial transactions duly registered with Government authorities over last many years having being given as under, for lease of premises and other facilities.

Table 8

Particulars	Rs.	Year of deposit
Deposit in respect of premises at Podar Chambers, S A Brelvi Road, For, Mumbai 400 001, given to Mrs. Deena Mehta.	80,00,000/-	2004

Deposit given to Mr. Asit C. Mehta in respect of the premises at Abhilasha Apartments, August Kranti Marg, Mumbai 400 036.	1,75,00,000/-	2012
Deposit given to Mrs. Deena A. Mehta in respect of the premises at Abhilasha Apartments, August Kranti Marg, Mumbai 400 036.	1,75,00,000/-	2012
Deposit given in respect of premises at 12th Floor, Nirmal Building, Nariman Point, Mumbai 400 021.	2,62,51,740/-	2013

ii) The lessors happened to be Group entities but the underlying commercial nature of the transaction cannot be ignored and recoverable in terms of the lease deed. Hence this is not to be deducted. We have submitted networth computation without deducting this amount since the date we kept the deposits with the aforesaid entities till the current inspection without any discrepancies being raised by the regulatory authorities though full-fledged regular inspection has been conducted by SEBI as well as the regulatory authorities on regular basis since then including in 2018 prior to the inspection which is the subject matter of the present notice.

jj) Pursuant to our proposal made in the MCSGFC meeting, we had deposited with NSE an FDR of Rs.1 Crore made out of our own funds which has been acknowledged by NSE. After considering our submissions, NSE vide its letter had conveyed to us the decision of the MCSGFC requiring us to recoup the FDR of Rs. 12.25 crores, against which facility was provided to our sister concern, recoup the Inter Corporate Deposits of Rs. 5.82 crores given to third parties and recoup the deposits of Rs. 6.93 crores given to sister concerns against premises.

kk) In compliance with the decision of the MCSGFC, we have received back the deposits of Rs. 80,00,000 given by us in respect of the premises at Podar Chambers, S A Brelvi Road, Fort Mumbai-400 001 and Rs. 3,50,00,000/ - given by us in respect of the premises at Abhilasha Apartments, August Kranti Marg, Mumbai 400 036. The same was informed to NSE vide our letter dated April 27, 2021.

ll) With reference to the balance deposit of Rs. 2,62,51,740/- rounded off to Rupees 2,63,00,000/- given in respect of the premises at 12th Floor, Nirmal Building, Nariman Point, Mumbai 400 02, the same have also been received back. This was also informed to NSE vide its letter dated June 15, 2021.

mm) We have also kept SEBI informed about the same as is evident from the copies of our letters dated April 8, 2021 and July 1, 2021. By submitting networth certificate as on October 28, 2021, we have recouped our networth as per the regulatory interpretation of the circulars. We have submitted the said certificate to NSE alongwith necessary documents and statements in support thereof. NSE vide its mail dated December 3, 2021 has acknowledged that we have complied with the directives of the NSE MCSGFC as on October 28, 2021. NSE has subsequently returned the aforesaid Fixed Deposit Receipt to us.

nn) In view of the above, we humbly submit that we are compliant with the provisions of Clause 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001.

Non-adherence to rules of membership

oo) The Exchange circulars dated January 7, 2022 and September 23, 2022 (already enclosed collectively as Annexure E) for the first time gave clarifications in respect of compliance with Rule 8(1)(f) and Rule 8(3)(f) of the Securities Contract (Regulation) Rules, 1957. The aforesaid circulars were issued only post the inspection which is the subject matter of this notice and hence, none of the aforesaid observations fall within the aforesaid regulations as can be seen from our response to the alleged violation of incorrect computation of networth.

pp) **FD worth Rs. 6.25 crore and Rs 6 crore to the bank as securities against overdraft facility granted to Asit C. Mehta Commodity Services Ltd and Nucleus IT Enable Services Limited:** The Company has provided fixed deposits in 2015 to provide necessary support to its group companies and at the relevant time, the cited rules did not prohibit this. Notwithstanding the above, we have, as per the directions of the NSE MCSGFC, recouped these deposits on March 30, 2021.

qq) **Inter Corporate Deposits of Rs. 5.82 crores given to unrelated parties:** These were given on a purely temporary basis and the same have been received back. In any event, the rules cited above did not prescribe any prohibition on this activity till the issuance of the 2022 circulars.

rr) **Deposits for office premises:** These deposits were given long back as can be seen from the aforementioned table. We have recouped these deposits as mentioned above in our reply to the alleged violation in respect of incorrect reporting of networth.

ss) **Rs. 1.12 crore given as a loan to Nucleus IT Enabled Services Ltd. and Rs. 19.25 lakhs given to Asit C. Mehta Commodity Services Limited by taking the short term secured loan of Rs. 21.11 crore:** The loan given to group company was temporary accommodation as such and not as a business involving all and sundry borrowers in public at large. The clarity regarding such activities are specifically prohibited was only given vide Exchange circular dated January 7, 2022.

tt) We are not in any lending business. From the audited financial statements for the year 2019-20 already submitted to the Exchange officials, it is seen that our major income for the year ended March 31, 2020 is from activities which we are registered with SEBI is Rs. 23.20 crores. Our other interest income is of Rs. 3.04 crores of which interest on loan is miniscule (only Rs. 66 lakhs) in comparison to our total income of Rs. 26.25 crores.

uu) In view of the above, we humbly submit that we have **not engaged** as a principal in a business other than that of securities involving personal financial liability, in violation of Rule 8(3)(f) of Securities Contract (Regulation) Rules, 1957.

Incorrect reporting of weekly enhanced supervision data to stock exchange

vv) We state that though we have opted for Indian Clearing Corporation Limited (ICCL) as a clearing member. None of the circulars pertaining to enhanced supervision reporting bar us from taking deposits available in both Clearing Corporations, viz. ICCL and NCL. Further, NSE had conducted an off-site supervision with respect to our reporting for reporting date July 10, 2020 for which date also we had considered the said amount and the Exchange officials themselves have given us benefit of the same, at all times.

ww) NSE as well as BSE during the period from September 2020 to June 2021 had been monitoring our activities on daily basis with reference to enhanced supervision norms and at all points of time, it has considered our collateral with NCL as valid inclusion for the purpose of computing collateral with exchanges and clearing corporation. Even on previous occasions as well now, the Exchanges are considering this as valid inclusion. The other differential amounts are miniscule in nature and we have taken the necessary corrective actions for the same.

xx) In view of the above, we humbly submit that we are in compliance with Clause 3.2 of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

<u>Failure to upload clients' fund/securities balance</u>

yy) We have submitted trades done by investors in NSE for monthly reporting in NSE and trades done by investors in BSE for monthly reporting in BSE. The investors' numbers shown as discrepancy in the monthly reporting are of investors who have traded in BSE only and we have reported the same in the monthly reporting for BSE. Hence there is no discrepancy in the data submitted by us.

<u>Table 9</u>

Total reporting	62476
Client last trade in BSE & reported in BSE	111
Client has traded in BSE	8
Client has not traded in last 12 months and traded after 31072020	2

Failure in reporting of RBS data

zz) We have submitted the data for the Risk Based Supervision within stipulated time and we therefore humbly submit that we are in compliance with the provisions of Clause 6.1.1.e of Annexure of SEBI circular SEBI /HO / MIRSD /MIRSD2 /CIR/P/2016/95 dated September 26, 2016. With reference to the observations pertaining to deposits given to group companies/associates we have disclosed the same correctly. For the remaining two observations, we have taken necessary corrective actions while submitting Risk Based Supervision Report for the half year ended 31st March, 2020. In this regard, the Noticee has attached supporting document, wherein, the disclosed loan given to group companies/associates correctly has been provided.

D. ISSUES

7. I have carefully perused the allegations levelled against the Noticee in the SCN, the replies of the Noticee, the documents produced by the Noticee during the proceedings and also the documents/evidence available on record. The issues that arise for consideration in the present case are :-

   I. Whether Noticee is in violation of the provisions mention in paragraph no.4?

   II. If the answer to Issue No.(i) is in affirmative, do the violations, if any on the part of the Noticee would attract monetary penalty?

   III. If the answer to Issue No.(ii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticee?

E. CONSIDERATION AND FINDINGS

8. Before moving forward, I find it appropriate to deal with the preliminary contention raised by the Noticee regarding the imposition of separate penalty by SEBI, BSE and NSE for same set of violations pursuant to joint examination conducted by the SEBI, BSE, NSE and CDSL. As per the Noticee, NSE has imposed a penalty of Rs 7,05,600/- (*later on reduced to Rs 3,50,000/- by the Hon'ble SAT vide order dated November 17, 2021*) and BSE has imposed a penalty of Rs 3,18,174/- vide letter dated May 27, 2022 considering the principle applied by the Hon'ble SAT in NSE order. Noticee contended that if separate penalties are levied by each of the authority, the joint inspection by NSE, BSE, CDSL and SEBI will not serve

any purpose and in the interest of natural justice, Noticee ought not to have been penalized twice/thrice for the same set of violations. In this regard, I have perused the aforementioned orders of NSE and BSE, respectively, and I note that, NSE penalty of Rs 7,05,600/- pertains to its SCN dated August 11, 2020. NSE SCN dated August 11, 2020 had been issued pursuant to its offsite supervision of stock brokers and the areas verified were pertaining to "*collection and reporting of margin*" and "*stock reconciliation*" as on July 10, 2020, in all segments wherein certain non-compliances were observed by the NSE. The observations brought out in the said SCN of NSE were – a) shortfall of client funds of Rs 6.57 crores as on July 10, 2020; and b) Non-Reconciliation of client securities. I further note that joint inspection of the Noticee had been undertaken from September 11, 2020 to October 20, 2020 i.e. a month later from the issuance of the said SCN by the NSE. I also note that w.r.t. the findings of joint inspection, NSE had issued a separate SCN to the Noticee on January 01, 2021 and for the same, NSE had issued directions to the Noticee to ensure compliance on "*minimum specified net worth requirement for Members*" and warned the Noticee, that if it failed to ensure compliance w.r.t. net worth requirement, its trading terminal will be disabled in all segments of the exchange.

9. Similarly, BSE order dated May 27, 2022 imposed a penalty of Rs 3,18,174/- on the Noticee w.r.t. shortfall of clients' fund of Rs 6.36 crores reported by the Noticee to BSE on week ending on July 10, 2020. Further, the BSE SCN dated December 10, 2021 pertains to – a) shortfall of clients' funds in the weekly submissions for the week ending July 10, 2020; and b) shortfall of clients' funds in the weekly submissions for the week ending September 04, 2020. Considering the aforesaid SCN dated August 11, 2020 of NSE and SCN dated December 10, 2021 of BSE, it is amply clear that same do not squarely cover the findings and violations brought out in the SCN issued to the Noticee in the instant proceedings. In fact, I found that the NSE had issued SCN to the Noticee prior to the commencement of the joint inspection. On perusal of the SCN issued in the instant proceedings, I found that charge of 'G' negative upon the Noticee also covers 39 trading days' period during September, 2019 to March, 2020, wherein, the extent of mis-utilization of client's funds increased from Rs 34.55 lakh on September 12, 2019 to Rs 26 crore on March 26, 2020 and same has not been

covered in aforesaid respective SCN issued by the NSE and BSE. I further found that NSE had issued warning and direction to the Noticee w.r.t. "*findings of minimum specified net worth requirement for Members*" observed during the joint inspection and initiated through separate SCN dated January 01, 2021. Therefore, in my opinion only a part of the violation pertaining to mis-utilisation of funds w.r.t. from the shortfall of clients' funds in the weekly submissions for the week ending July 10, 2020 (*for NSE and BSE*) and shortfall of clients' funds in the weekly submissions for the week ending September 04, 2020 (*for BSE*) is overlapping and penalty imposed earlier by NSE and BSE for these limited violations can be a mitigating factor in the instant proceedings. For other violations brought out in the SCN w.r.t. the Noticee, I find the contention of the Noticee to be devoid of any merit and thus, I reject the same.

10. Accordingly, I now proceed to deal with the other issues in the matter.

Issue no. (I)

Misuse of client funds

11. From the available record, I note that the value of '**G**' was negative on 39 days out of 45 sample days during September, 2019 to March, 2020. It may be noted that the formula of calculation of "**G**" is: **G = (A+B) – C**, wherein, '**A**' is cash and cash equivalents with the stock broker, '**B**' is cash and cash equivalents with the clearing corporation/clearing member and '**C**' is Clients' funds as per ledger balance. Further, in terms of Clause 3.3.1 of the Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, "**A+B**" should always be equal to or greater than "**C**". I further note that, in case the value of "**G**" is negative, it means that the total available fund is less than the ledger credit balance of clients and thus, it indicates that the clients' funds have been utilised 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*. Considering the above factum, I found that, during aforesaid period, the extent of mis-utilization of client's funds increased from Rs 34.55 Lakh on September 12, 2019 to Rs 26 crore on March 26, 2020. I also found that, for 9 samples date of period September 01, 2020 to September 11, 2020, the value of '**G**' continued to be negative on all the trading days and negative '**G**' value went up to Rs 28.21 crore on September 03, 2020. Therefore,

in total the value of '**G**' was negative for 48 sample days out of total 54 sample days during the inspection period.

12. I note that, in terms of Clause 3.3.1 of the Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, '**D**' is debit balance of all clients as per client ledger and if the absolute value of '**G**' is lesser than '**D**', then it means that 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**'. Further, if the absolute value of '**G**' is greater than '**D**', then it means that 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*". From the available record, I found that the absolute value of '**G**' for 18 dates out of the aforesaid 48 dates (when '**G**' was negative) is less than the value of '**D**' (Total debit balance of all clients) and therefore, I am of a view that the Noticee has used client's funds (*of credit balance clients'*) towards settlement obligations of debit balance clients'.

13. In terms of Clause 3.3.2 of the Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, '**I**' is the amount of proprietary margin obligation funded from clients' assets by the "*stock broker*" and the formula for calculation of '**I**' is – **I = P – (G +E+F)**, wherein, '**P**' means proprietary margin obligations, "**positive G**" means sum of the proprietary funds, '**E**' means value of proprietary securities and '**F**' means non-funded portion of bank guarantee available in the Stock Exchanges. I note that, the positive value of '**I**' ranged from Rs 52,58,143 (as on Sept 05, 2019) to Rs 21,61,75,993 (as on Sept 18, 2019). I further note that, the value of '**I**' was observed to be positive on 21 of the sample dates out of the 48 dates and therefore, I am of a view that the Noticee has used client's funds (*of credit balance clients'*) towards proprietary settlement obligations.

14. In terms of Clause 3.3.3 of the Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, '**J**' denotes the clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations of the "*stock broker*". I note that, the value of '**J**' was positive for 9 sample dates out of 48 dates and funds mis-utilised ranges from Rs 22,12,230 on Nov 20, 2019 to Rs 5,59,69,469 on Sept 17, 2019.

I further note that on 31-July-2020, client funds to the tune of Rs. 4,37,32501 was used for meeting the obligation of other clients and Rs.1,39,91,910 was used for own purpose i.e '**G**' was Negative to the tune of Rs.5,77,24,411. Therefore, I am of a view that the Noticee has used client's funds (*of credit balance clients'*) towards meeting the obligation of other clients and for own purpose.

15. I note that, in terms of Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, the "*stock broker*" is not allowed to make payment from the client's account for transactions in which it has taken a position as a 'principal'. Further, Section 23D of the SCR Act clearly states that, if a stock 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. In this case, I found that Noticee has used client's funds (*of credit balance clients'*) towards meeting the obligation of other clients and for own purpose and has failed to provide plausible explanation w.r.t allegation of mis-utilization of clients' funds and therefore, the allegations regarding misuse of client funds stand established against the Noticee. Thus, I found that the Noticee has violated the provisions of the Section 23D of the SCRA, 1956 r/w 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.

16. In terms of charge of mis-utilisation of funds, the Noticee has contested that as per the mandated enhanced supervision norms, the shares (*stocks available with company and Margin stocks available with company*) are not being treated as liquid and same is not fair. It further contested that shares available in CUSA and unutilized overdraft balance were also not considered in the calculations. In this regard, I note that SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016, has clearly brought out the constituents, which can be considered to be part of mandated enhanced supervision norms and as per the enhanced supervision norms, securities from clients, other non-cash margins or unpaid securities and Unutilized overdraft balance are not considered as the eligible constituents for enhanced supervision norms or as the part of the clients' funds available with stock broker.

17. Further, the Noticee has submitted it has taken certain measures to ensure that there is no shortfall even as per mandated norms including restoration of credit facility from ICICI Bank. The Noticee also submitted that it had made the necessary arrangements to ensure that there is no shortfall as per the mandated format of the reporting formula for enhanced supervision. I take note of the aforesaid efforts of the Noticee in taking corrective action post inspection and the same can be considered as mitigating factors in this case.

Short collection of margin

18. It is alleged in the SCN that Noticee has incorrectly reported margin to Exchange in Futures & Options (F&O) and Commodity Derivative (CD) segment. In F&O Segment, there was allegedly Shortfall in 14 clients (14 Instances) amounting to Rs.1,74,86,636 (1.75 Crores i.e. 4.60%) against minimum of collected & total margin requirement of all sample clients of Rs.38,02,011,888 (38.02 Crores). In CD Segment, there was shortfall in 1 client (1 Instance) amounting to Rs. 1,563.65 (i.e. 0.021%) against minimum of collected & total margin requirement of all sample clients of Rs.74,33,576 (0.74 Crores). In this regard, the Noticee has submitted that w.r.t 11 out of 14 instances of F&O segment and 1 instance of CD segment, it has received cheques/funds towards margin on T+1 day and same is permitted as per the provisions of point number 6 of Annexure A Exchange circular reference numbers NSE/INSP/19583 dated December 14, 2011 and NSE/INSP/24805 dated October 23, 2013.

19. I have perused the aforesaid provisions of the aforesaid circulars and I note that both the circulars state that, "*Cheques from clients shall be considered as adequate margin collected provided the same have been received / recorded in the books of trading member on or before T day and deposited by member by T+1 day (excluding bank holiday, if any) and cleared subsequently".* Noticee has admitted that in 11 instances of F&O segment and 1 instance of CD segment, it received cheques/funds towards margin on T+1 day, therefore, the benefit of cheque received on T+1 day cannot be extended to the Noticee, specifically, when the circulars prescribe for T day and considering the same, I reject such submissions of the Noticee.

20. With regard to one instance of F&O segment, Noticee has submitted that credit bill of 02/04/2019 (T-1 day) has not been considered against mark to margin ("**MTM**") and should be considered for the purposes of margin collection and reporting. In this regard, I note that as per Exchange circular NSE/INSP/38154 dated June 27, 2018 *"Securities, which are provided as margin, but are sold in the cash market can be considered up-to T+1 day from the date of sale without any haircut"*. In the given case, the credit bill of April 2, 2019 is arising out of following intraday position (*and not sale of securities provided as margin*) taken by the client resulting into the credit of Rs. 8,242.89, which is due on April 04, 2019 i.e. after the margin date:

Table 10

Date	Symbol	Buy Traded Value	Sell Traded Value	Buy Traded Quantity	Sell Traded Quantity
02-04-2019	GODREJPROP	6,06,815	6,16,110	700	700
02-04-2019	IBVENTURES	68,675.05	68,200	200	200

21. Considering the fact that the position undertaken by the Noticee was an intraday position and same has not been excluded in terms of aforementioned NSE circulars, I reject such submission of the Noticee.

22. With regard to another instance of F&O segment, Noticee has stated that there is a difference between calculation of value of margin stock considered by inspecting officials and by the Noticee. In this regard, I note that even after considering the submission of the Noticee, there is a shortfall of Rs.16,07,445 due to receipt of cheque of Rs.16,09,100 on T+1 day.

23. I further note that Noticee has not provided any explanation for the one instance/client out of the 14 instance w.r.t. short collection of margin. In view of the above, I am of a view that the Noticee has incorrectly reported margin to Exchange in F&O and CD segment and therefore, I find that the Noticee has violated the provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.

Client Funding

24. It has been alleged in the SCN that the Noticee had funded 30 of its clients beyond T+2+5 amounting to Rs. 6.32 Crore. In this regard, the Noticee has

stated that during post inspection submissions dated December 21, 2020, it has provided a detailed explanation in almost 70% of the cases amounting to Rs. 4.42 crores. As per the Noticee, the debit balance in most of these cases are pursuant to delayed payment charges, journal invoices and closeout entries and same are not trade related debits. On perusal of the available record and explanation of the Noticee, I note that Noticee has provided explanations w.r.t. 32 clients. Explanations of the Noticee w.r.t. 2 clients have been accepted in totality, wherein, explanations w.r.t. 4 clients have been accepted partially for few of the transactions. I further note that the Noticee has not provided any explanation w.r.t. 22 transactions pertaining to 6 clients'. The explanations of the Noticee w.r.t. 112 transactions pertaining to 26 clients are not accepted in totality, as the Noticee has provided fresh exposure to its debit balance client, beyond the prescribed period of T+2+5 days.

25. I note that, in terms of Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016, "*the 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, vide SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 the aforesaid clause 2.6 has been modified and accordingly, subsequent clause 2(d) of aforementioned circular dated June 22, 2017 has mentioned 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."* From the above para 25, I note that the Noticee has provided exposure to its 30 clients beyond the prescribed number of days i.e. T+2+5 and the total exposure w.r.t. these 30 clients is to the tune of Rs 6.32 crores (approx.). Therefore, in terms of aforementioned circulars, I found that the Noticee has funded Rs. 6.32 crores (approx.) to its 30 clients' and thus, the Noticee has violated the provisions of the Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 r/w

Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Client Registration Process (KYC and KRA Process)

26. It is alleged in the SCN that in 7 cases, the preference for settlement of clients' account was not obtained by the Noticee. Further, the Noticee has failed to upload KYC details of 7268 Individual Clients on the portal of CKYCR. In this regard, the Noticee has provided summarised reply for 7 instances as follows: -

Table 11

Particulars	Number of clients
Preference for settlement already available	1
Preference for settlement not required due to closure of account	1
Preference for settlement obtained in the remaining instances	5

27. In this regard, I note that, in terms of Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 pertains to Running Account Authorisation, wherein, it is stated that "*a client may specifically authorize the stock broker to maintain a running account subject to the authorization shall be renewed at least once a year and shall be dated*". However, in this case, as observed from the Noticee reply itself, no such preference or authorisation has been obtained from 6 of its clients' by the Noticee. The Noticee has obtained the same post-facto and therefore, same cannot be considered as due compliance. Further, with respect to the 1 instance, wherein, the Noticee has stated that the obtaining preference not required due to closure of account of clients', I found that the said closure of client account has taken place on February 6, 2020, whereas, this client account was active during the relevant period of the inspection i.e. April 01, 2019 to February 05, 2020 and during this period no preference/ authorization was available with the Noticee. In view of the above, I found that the Noticee has not obtained preference or authorisation from 6 of its clients' during relevant period of time and therefore, I am of a view that the Noticee has violated provisions of Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

28. I note that, SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 pertains to "*Uploading of the existing clients' KYC details with Central KYC Records Registry (CKYCR) System by the registered intermediaries*", wherein, it is stated that Intermediaries (*including the stock brokers*) other than mutual funds may ensure 50% completion of uploading of existing KYC data by November 30, 2016 and the remaining 50% of KYC data by December 31, 2016. Further, SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016, which deals with "*Operationalisation of Central KYC Records Registry (CKYCR)*", *inter alia* states that "*In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, wherever KYC is required to be carried out as per the circulars issued by SEBI from time to time and accordingly, shall take steps to prepare their systems for uploading the KYC data".* I further note that, a stock broker is part of the intermediary specified in the aforementioned circulars. From the available records, I note that during inspection KYC details of 7268 Individual Clients were not uploaded in the portal of CKYCR. Post inspection and during the proceedings, the Noticee has provided current status of the said 7268 clients, wherein, 231 accounts are closed, CKYC of 2884 clients obtained and uploaded and 4153 clients' accounts has been suspended and the Noticee is following up with the suspended investors on regular basis for the required documentation in the prescribed format. From the reply of the Noticee, it is made out that the Noticee has admitted allegation of non-upload of KYC details of 7268 Individual Clients and the Noticee has undertaken steps to rectify the issue post-inspection only. Therefore, I am of a view that the Noticee has violated the provisions of SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 r/w SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.

Verification of Email ID & Mobile numbers

29. During inspection it has been found that there was a mismatch of 835 mobile numbers and 857 email ids in the Noticee clients' records. In this regard, the Noticee has submitted that it has updated the clients' details post-inspection. With regard to allegation of single mobile number mapped to multiple clients, the Noticee has provided relationships in the case of 435 clients'. In this regard, I have perused the same and I note that same relationship has been shown for

multiple clients. Further, the relationship has been shown as '*self'* for multiple clients' having same mobile number. Similarly, with regard to mapping of single e-mail id to multiple clients, the Noticee has provided relationships in the case of 739 clients. On perusal of the same, I note that single e-mail id has been mapped to multiple clients' not having acceptable relationship as per Exchange circular no. NSE/INSP/32471 dated May 31, 2016. Point 1 of the said circular says that "*Family" for the aforesaid mapping purpose would mean self, spouse, dependent children and dependent parents*". However, the Noticee has mapped same email-id for relations such as "*brother, uncle, nephew, etc.*", which does not fall within the realms of acceptable relationships as per the said NSE circular. Further, in terms of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011, the Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more than one client provided such clients belong to one family. '*Family*' for this purpose would mean self, spouse, dependent children and dependent parents. Therefore, I note that there is no ambiguity regarding the term "*family*" for the purpose of mapping of mobile number and e-mail id and thus, the explanations of the Noticee regarding mapping of *brother, uncle, nephew, etc.* details cannot be considered. In view of the above, I conclude that the Noticee has violated Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

30. With regard to allegation of contract notes deemed not sent in cases of 256 email ids mapped to 739 clients', the Noticee has reiterated the aforesaid submissions of relationship among the clients. Since the aforesaid submission of the Noticee has not been considered in terms of reasons provided in above para, in my view, it can be fairly assumed that the Noticee has failed to issue contract notes to the aforesaid 739 clients' in terms of Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992, which states that – "*A stock-broker shall issue without delay to his client or client of the sub-broker, as the case may be a contract note for all transactions in the form specified by the stock exchange*". Accordingly, in my opinion the Noticee has violated the provisions of

Clause B.2 of Schedule II of Regulation 9 of the SEBI (Stock Brokers) Regulations, 1992.

31. With regard to allegation of mismatch in PAN details as per back office and exchange records, the Noticee has submitted that it has rectified the mismatches. In this regard, I note that, since the corrective measure has been taken by the Noticee only after the inspection, therefore, in my view during the relevant period, the Noticee has violated the provisions of Regulation 6.1.5 of the NSE (F&O segment) Trading Regulations and Regulation 6.1.4 of Part A of the NSE (Capital Market Segment) Trading Regulations.

32. With regard to allegation of documentary evidence not obtained from clients for email id uploaded as "*notprovided@notprovided.com*" and mobile number uploaded as "*6666666666*", the Noticee stated that, it has already provided the supporting documents to the inspecting officials during the course of inspection vide email dated 19-10-2020. In this regard, I note that the email dated 19-10-2020 referred by the Noticee has been marked to NSE and not to SEBI. During instant proceedings, I have received the said declarations w.r.t. email id and mobile number from the Noticee vide e-mail dated November 11, 2022. I have perused the documents provided by the Noticee and I find that Noticee is in possession of the necessary declarations for updating mobile number and email id as "6666666666" and "notprovided@notprovided.com", respectively. Since, no deficiency has been found in the documents provided by the Noticee, therefore, in my view the Noticee has not violated the provisions of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 r/w NSE circular NSE/INSP/27368 dated August 18, 2014 in this regard.

Incorrect reporting of Net worth

33. It has been alleged in the SCN that the Net Worth Certificate submitted by the Noticee to NSE that its net worth is Rs. 3.43 Crore was incorrect and actual net worth was negative i.e. (-) Rs 23.91 crores. In this regard, the Noticee in its reply has emphasized that – a) Capital WIP towards intangible assets – Rs. 1.55 Crore; b) Deferred Tax Assets – Rs. 80.52 Lakhs; c) Loan to unrelated third party – Rs. 5.82 Crore; d) OD facility to group companies via FD – Rs. 12.25 Crore; and e) Deposit given for premises for directors & holding co. – Rs. 6.93 Crore;

should have been included in its net worth. In this regard, I note that, Dr. L C Gupta has provided a formula for computation of Net worth for stock broker. In terms of the said formula, the intangible asset is considered as a non–allowable asset while computing the net worth. Further Capital WIP means work that is not yet completed but capital expenditure has already been incurred. Once the work is completed and asset is put to use, the asset is moved to intangible asset from capital WIP. So, the capital WIP towards intangible assets should be deducted from net worth and same cannot be considered to be part of net worth. I further note that vide circular NSE/COMP/48895 dated July 10, 2021, the NSE has issued the clarification on Dr. L.C. Gupta Net worth computation, wherein, it is clearly mentioned that capital WIP is to be deducted while calculating Net Worth.

34. Dr. L C Gupta has further provided that "*Deferred Tax Assets*" is a prepaid expense and prepaid expenses and losses are considered to be non–allowable asset while computing the net worth. I further note that, the Noticee has itself admitted in its reply that w.e.f. March 31, 2021, it has complied with the said requirement and is deducting the "*Deferred Tax Assets*" from the computation of net worth.

35. Dr. L C Gupta has also provided that "doubtful debts and advances including debts/advances overdue for more than three months or given to associates are required to be reduced from the Capital and Free Reserves". In this regard, the Noticee has stated that the Inter Corporate Deposits ("**ICDs**") has been extended to unrelated third parties, which are neither related parties nor its associates. I found that the aforesaid ICDs were overdue for more than 3 months in the books of the Noticees, therefore, even for the sake of the argument it is considered that the advance has been given to unrelated third parties, same cannot be considered as a part of net worth in terms of aforementioned Dr. L. C. Gupta method of computing net worth, as same were due for more than 3 months and needed to be reduced from the Capital and Free Reserves of the Noticee. Accordingly, the contention of the Noticee in this regard is rejected hereby.

36. Noticee in its submissions has further stated that overdraft ("**OD**") was given against collateral i.e. Fixed Deposit (FD) by the Bank to its group company and

it has not given any overdraft to its group company, as alleged in the SCN. In this regard, I note that the under lying asset based on which the said Bank has given the loan to its group companies is "*FD that belongs to the Noticee*". I further note that, though the said FD is appearing in the balance sheet of Noticee, however, there is a lien marked on same by the Bank w.r.t. the said loan given to its group companies. I also note the Noticee in its reply has admitted that it has informed the borrowers i.e. its group companies to find different security, so that the said Bank may release the Noticee's FDs and later on the Noticee has recouped the entire FDRs of Rs.12.25 crores pledged by it. Considering the aforementioned fact, I am of a view that the Noticee has indirectly provided the OD facility to its group companies *via* pledging its FD as underlying asset. Since, the aforesaid debts/ advances are provided to associates of the Noticee, the same is required to be reduced from the Capital and Free Reserves of the Noticee in terms of Dr. L C Gupta calculation for net worth. In view of the above, I find the Noticee's submissions in this regard to be unacceptable.

37. Noticee in its submissions has further stated that the deposit amount of Rs. 6.93 Crore provided by it to its directors and holding company is for rental premises and the said transactions are commercial transactions. In this regard, I note that the aforesaid deposit provided by the Noticee to its directors and holding company cannot be considered as commercial transaction, since the said deposit is not for the rental premises of the Noticee, instead it is provided for the "*office premises and residential flat of its holding company and directors*". I further note that pursuant to the inspection, the Noticee has received back the amounts of the aforementioned deposits from its holding company and directors. Therefore, in my view the Noticee has indirectly provided the loan to its holding company and directors in lieu of the deposit for their office premises & residential flat. Since, the aforesaid deposit is as good as loan, the same is required to be reduced from the Capital and Free Reserves of the Noticee in terms of Dr. L C Gupta calculation for net worth. In view of the above, I find the Noticee's submissions in this regard to be unacceptable.

38. In view of the findings in above paras 33 – 37, I found that the Noticees inclusion of - a) Capital WIP towards intangible assets – Rs. 1.55 Crore; b) Deferred Tax

Assets – Rs. 80.52 Lakhs; c) Loan to unrelated third party – Rs. 5.82 Crore; d) OD facility to group companies via FD – Rs. 12.25 Crore; and e) Deposit given for premises for directors & holding co. – Rs. 6.93 Crore; is incorrect and is in complete disregard to the Dr. L C Gupta formula for computation of Net worth for a stock broker. I further found that there is a huge mis-reporting in terms of reporting net worth of Rs. 3.43 Crore by the Noticee for the relevant period of time due to wrong calculation, wherein, actual net worth of the Noticee was (-)Rs 23.91 crores (negative). Therefore, I note that the Noticee has mis-reported its net worth to the tune of Rs 27.34 crores and thus, it has violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 r/w Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001.

39. The Noticee has also submitted that by submitting networth certificate as on October 28, 2021, it has recouped its networth as per the regulatory interpretation of the circulars and has submitted the certificate to NSE and NSE vide its mail dated December 3, 2021 has acknowledged that Noticee has complied with the directives of the NSE MCSGFC as on October 28, 2021.

Non-adherence to rules of membership

(a) I note that, in terms of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 ("**SCR Rules**"), a stock broker is not allowed to engage in any business involving personal financial liability, apart from securities/ commodities market dealings. I further note that, in this case the Noticee has been found to be engaged in – a) providing OD facility to Asit C Mehta Commodity Services Ltd and Nucleus IT Enable Services Limited which are associate/group companies of Noticee (*via pledging its FDs worth Rs.6.25 Crore and Rs.6 Crore to the bank*); b) extended ICD worth of Rs.5.82 Crore to 2 entities who are neither related parties nor associate there by deployed its funds in a business other than that of securities business; c) extended Rs.6.93 Crore as a deposit for office premises of its holding company and residential flat of the directors; and d) granted Rs.1.12 Crore given as a loan to Nucleus IT Enabled Services Ltd and Rs.19.25 lakhs given to Asit C. Mehta Commodity Services Limited by taking the short term secured loan of Rs. 21.11 Crore. In view of aforementioned transactions, I found that the Noticee has created personal financial liability upon itself pursuant to aforesaid loan/ advance related transactions and same are not at all related to its securities/ commodities market dealings. It is also noted from the reply of the Noticee that, it has received Rs. 66 lakhs as "*income from interest on loans"*. It further stated that, it has recouped these amounts to comply with the regulatory and exchange requirements. Therefore, I further found that the Noticee has generated revenues out of interest income on loans. Considering the same, I am of a view that the Noticee has engaged itself as a principal in a business other than that of securities involving personal financial liability, in violation of Rule 8(3)(f) of the SCR Rules.

Incorrect reporting of weekly enhanced supervision data to stock exchange

40. It is alleged against the Noticee that it has incorrectly reported the data to the stock exchange towards weekly monitoring of client funds. Further, it is alleged that post-interoperability, the Noticee opted for ICCL as a clearing member, while no exposure was available on the NCL deposit, which indicates that the said deposits were not clients' funds and thus, same could not be considered as part of collateral. With regard to the aforesaid allegations, the Noticee has stated that post inter–operability, they have opted for ICCL as a clearing member and none of the circulars pertaining to enhanced supervision reporting bar the Noticee from taking deposits available in both Clearing Corporations, *viz*. ICCL and NCL. In this regard, I note that the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016 and Exchange circular NSE/INSP/33276 dated September 27, 2016, clearly mentioned that "*fund available in client bank account together with balance available with clearing member & clearing corporation should not be less than fund payable to the client all the times*". Further, after inter-operability no exposure is available on the NCL deposit with the Noticee, which indicates that it is not the client fund and thus, same cannot be considered as part of collateral. I also found that the Noticee has admitted the differential amounts in other instances and stated that it has taken necessary corrective actions w.r.t. the same. Considering the same, I am of a view that the Noticee has incorrectly reported the data to the stock exchange towards weekly

monitoring of client funds and thus, it has violated the provisions of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Failure to upload clients' fund/securities balance

41. It has been alleged in the SCN that in the Monthly Enhanced Supervision, Noticee has failed to report that its 121 clients have traded in the last 12 months. In this regard, the Noticee has submitted that trades done by its investors in NSE has been reported in monthly reporting to NSE and similarly, trades done by investors in BSE been reported in monthly reporting to BSE. Further, the aforesaid 121 clients', who has been alleged to be not reported pertains to BSE and it has reported the same to BSE in the monthly reporting of BSE. I note that, in terms of Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016, a stock broker is obligated to upload the data (mentioned under clause 7) on a monthly basis for every client *onto each Stock Exchange system* where the broker is a member. Further, under Clause 7.1.2, it has been mentioned that *"Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges to be reported".* Accordingly, the Noticee was under the obligation to upload consolidated data of its clients on NSE and BSE, however, it has failed in complying with the requirement w.r.t. aforesaid 121 clients and therefore, I found that the Noticee has violated the provisions of Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

Failure in reporting of Risk Based Supervision ("RBS") data

42. It has been alleged in the SCN that Noticee has incorrectly reported the data towards RBS for –a) total debit balances of all clients; b) total available collaterals from all debit balance clients; and c) loan given to group companies/ associates/ subsidiaries/any other entity & key persons. In this regard, the Noticee has stated that it has disclosed the loan given to its group companies/ associates and for the remaining two observations, it has taken necessary corrective actions while submitting Risk Based Supervision Report for the half year ended 31st March, 2020. I found that the Noticee has itself admitted the failure in reporting - a) total

debit balances of all clients; and b) total available collaterals from all debit balance clients. Further, the Noticee has submitted Annexure 10.1 w.r.t. disclosure made by it for loan given to group companies/ associates/ subsidiaries/any other entity & key persons. I have perused the same and I note that for RBS half yearly report ending on September 30, 2019, the Noticee has reported Rs 1 crores (approx.) as "*Loan given to group companies/ associates/ subsidiaries/any other entity & key persons*", wherein, during inspection the amount under this head has been found to be Rs 20.18 crores (approx.), which includes, OD worth of Rs.12.25 crores, Deposit for the office's premises of it group company and residential flat & offices premises of directors worth of Rs. 6.93 crores. The aforesaid amount of Rs 19.18 crores, which includes said OD and deposits has not been reported by the Noticee under the said head of loans in RBS half yearly reporting on September 30, 2019. Therefore, I found that the Noticee has either failed in reporting or incorrectly reported the aforementioned information/ data in the half yearly Risk Based Supervision report for September 30, 2019 to the Stock Exchange and thus, the Noticee has violated the provisions of Clause 6.1.1.e of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

43. The Noticee has contended that the details of the loans and advances to its group companies has been already disclosed in its balance sheet. In this regard, I am of a view that the principle behind the 'Risk Based Supervision' in securities market is to "<u>*identify and address the most important risks*</u>". A Risk-based supervision focuses on the risks that are most significant from the point of view of the objectives of the supervisory authority. It is a forward-looking and judgment-based approach intended to pre-empt prudential and conduct failures, in contrast to other approaches that are backward-looking and compliance-based, with little scope for the use of judgement. Further, the regulator has prescribed this supervision model, based on the level of risks posed by a market entity, stock broker in this case, to help it better regulate the marketplace and strengthen its surveillance system. Therefore, the 'Risk Based Supervision' serves a special purpose for managing and addressing the risk posed by a market entity and thus, disclosing the desired data in "*balance sheet*" does not help in the serving the aforesaid purpose of assessing the level of risks posed by

a market entity, such as stock broker. In view of the above discussion, I reject the contention of the Noticee in this regard.

44. Noticee has contended that clarifications in respect of compliance w.r.t. Rule 8(1)(f) and Rule 8(3)(f) of the SCR Rules has been first time issued *via* exchange circulars dated January 07, 2022 and September 23, 2022. Since, the aforesaid circulars have been issued post-inspection and allegations w.r.t. the aforesaid Rules are part of the SCN, therefore, charge of incorrect computation of net worth cannot be fastened upon itself. In this regard, I note that the SCN has not alleged any violations pertaining to the aforementioned circulars of the exchange upon the Noticee. Further, the discrepancy/ error in calculation of the net worth by the Noticee has been discussed in detail in paras 33 – 37 of this order in terms of prescribed computation by Dr. L C Gupta Committee, which are already in place since 2002. I also note that the language of Rule 8(3)(f) of SCR Rules is clear in terms of "*non-involvement in any financial liability in any business other than that of securities or commodity derivatives except as a broker*" and no ambiguity exists in this regard. In this case, I have found that the Noticee has created personal financial liability *via* extending the loans and advances to non-related third parties, its associates, its group company and their directors and same are not found to be related to its broker activities in securities or commodity derivatives. Therefore, I found no merit in such contentions of the Noticee and reject the same.

Issue no.(II)

45. In this connection I would like to refer to the order of the Hon'ble SAT in the matter of *Religare Securities Limited v. SEBI (Appeal No. 23 of 2011 dated June 16, 2011)* wherein, the Hon'ble SAT has held that, "*It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious*

lapse is found during the course of the inspection, the Board should not proceed against the delinquent."

46. Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

47. In view of the discussion so far in this order, I found that the Noticee, being registered stock broker in the securities market was involved in gross misconduct, wherein, it has been found to be indulged in - *misusing of its clients' funds, incorrectly reporting margin to NSE and BSE in F&O and CD segment, funding its clients beyond T+2+5 amounting to Rs. 6.32 Crore, non-obtaining preference from 6 of its clients, not uploading KYC details of 7268 clients on the portal of CKYCR, discrepancies in uploading the contact details of the clients, gross discrepancy in calculation of net worth, incorrect reporting of net worth to exchanges, involving in personal financial liability, engaging in a business other than that of securities involving personal financial liability, incorrect reporting of the data towards weekly monitoring of clients funds, failure to report trading details of 121 clients in the Monthly Enhanced Supervision and failure to report or incorrect reporting w.r.t. RBS data for half yearly September 30, 2019*. Considering the same, I found that the Noticee has violated the provisions of the SCR Act, Stock Brokers Regulations, Circulars issued by SEBI and NSE from time to time and Rules of NSEIL Rules, as specified in Table 1 of the order, and therefore, I hold the Notice liable for monetary penalty under section 15HB of the SEBI Act and under sections 23D and 23H of the SCR Act for violation of the provisions discussed in paras 11 to 44 of this order.

48. The aforesaid sections of SEBI Act and SCR Act read as under:-

<u>SCRA, 1956</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 (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.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.

<u>SEBI Act, 1992</u>

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

49. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15I of the SEBI Act and 23I of the SCR Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCR Act read as follows: -

*"**15J.** 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 investor/+s as a result of the default;

(c) the repetitive nature of the default."

"23J. 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."

50. Having regard to the factors listed in Section 15J of the SEBI Act and Section 23J of the SCRA and the guiding principles laid down by the Hon'ble Supreme Court in the matter of *SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013)*, it is noted from the material available on record that any quantifiable gain or unfair advantage accrued to Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed.

51. I further note that, it is of utmost importance that every registered intermediary shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by SEBI. In this regard, any omission on part of the registered intermediary is detrimental to the interest of investors in securities market. I am of considered view as detailed above, that the Noticee has violated various provisions of SEBI Act, SCR Act, Rules and Regulation made and various circulars issued thereunder and that it is a fit case for imposition of penalty for violation of the aforesaid Acts, Rules, Regulations and SEBI/ Exchange circulars.

G. ORDER

52. In terms of the principle prescribed under section 15J of the SEBI Act and 23 J of the SCR Act, factors striking a balance between the gravity of default and mitigating factors as aforesaid, and exercising the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules and Section 23I of the SCR Act read with Rule 5 of the SCR Adjudication Rules, I hereby impose following monetary penalty upon the Noticee **Asit C Mehta Investment Intermediaries Limited** under the SEBI Act and the SCR Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case:

Noticee	Penalty Amount
Asit C Mehta Investment Intermediaries Limited	Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 15HB of the SEBI Act.
	Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 23D of the SCR Act.
	Rs. 4,00,000/- (Rupees Four Lakhs Only) under Section 23H of the SCR Act.
Total Penalty	**Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)**

53. 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 SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

54. The Noticee shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-3, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	

Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

55. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

56. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order shall be sent to the Noticee and also to the Securities and Exchange Board of India.

Date: December 30, 2022
Place: Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER