BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/VC/2023-24/29698)

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

In respect of

Bhansali Value Creations Private Limited

(PAN: AAECB3879K)

(SEBI Regn. Nos.: SB: INZ000245833

DP: IN-DP-CDSL-684-2013)

In the matter of Bhansali Value Creations Private Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (‘hereinafter referred to as **‘SEBI’**) conducted inspection of Bhansali Value Creations Private Limited (hereinafter referred to as the **‘Noticee’** or **‘BVCPL’**). The Noticee is registered with SEBI as a Stock Broker (Registration no.- INZ000245833) and Depository Participant (DP Registration no.- IN-DP-CDSL-684-2013) having its registered address as: UNIT No. PO5-02B, 5th Floor, Tower A, World Trade Center, Block No. 51, Road 5, E Zone-5, Gift City, Gandhinagar, Gujarat, India - 382355. A comprehensive offsite joint inspection of the Noticee with respect to its Stock broking activities was conducted by SEBI along with exchanges from November 14, 2022 to November 18, 2022 for the period of April 1, 2021 to September 30, 2022 (hereinafter referred to as **‘Inspection Period’**). In this regard, the Inspection Notice dated October 20, 2022 was sent to the Noticee. The scope of the inspection was to *inter alia* to verify: (a) the books of accounts and other books are being maintained in the manner specified under the SEBI (Stock Brokers) Regulation, 1992 (hereinafter referred as **‘Brokers Regulations, 1992’)** and (b) the provisions of the Securities laws such

as Securities Contracts (Regulation) Act, 1956; SEBI Act, 1992 and the Rules and regulations, bye laws, directions or circulars made thereunder are being complied with during the Inspection period.

2. The findings / observations made during the course of inspection were recorded as inspection report and findings were communicated to the Noticee vide SEBI letter dated January 05, 2023. The Noticee had submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its letter/email dated January 23, 2023.

3. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee for alleged violations of the provisions of the following SEBI Regulations and Circulars:

Table No. 1

Sr. No.	Alleged violations	Regulatory provisions violated
A	Non-settlement of client' funds (Monthly /Quarterly settlement)	Clause 5.4 of Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.
B	Client funding beyond T+2+5	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.
C	Non-maintenance of client order placement records/call recordings	Clause III & IV of Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.
D	Non-resolution of complaints in time	Regulation 9(e) of Brokers Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated June 07, 2023, under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules, 1995'**) read with Section 19 of the SEBI Act, to inquire into and adjudge under the provisions of the Section 15 C and 15 HB of the SEBI Act, 1192, for the various violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/AK/27595/2023 dated July 10, 2023 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the Adjudication Rules, 1995 read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15 HB and 15 C of the SEBI Act, 1992 for the alleged violations. I note that SCN issued to Noticee was duly served upon the Noticee and it was acknowledged by the Noticee.

6. Vide email dated August 07, 2023, Noticee sought extension up to August 20, 2023 for filing reply to the SCN on account of a death in the family of lawyer of the Noticee, which was granted to the Noticee. Thereafter, Noticee vide email / letter dated September 01, 2023 submitted reply to the SCN.

7. In the interest of natural justice, an opportunity of hearing on September 11, 2023 was granted to the Noticee vide Hearing Notice dated September 04, 2023. Authorized Representatives viz. Mr. Kunal Katariya, Advocate and Ms. Yesha Mehta, Compliance Officer of the Noticee (hereinafter referred to as **"ARs"**) attended the hearing through video conference on Cisco Webex platform on September 11, 2023 and reiterated the submissions made by the Noticee vide letter dated September 01, 2023. ARs also stated to furnish the relevant

documentary evidences by September 15, 2023. ARs further stated that they have no additional submissions in the matter. Vide email dated September 18, 2023, Noticee furnished the relevant documentary evidences in the matter. Noticee made further submissions in the matter vide e-mail dated October 05, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:
   I. Whether the Noticee has violated the provisions of SEBI Regulations and Circulars as indicated in table no. 1?

   II. Does the violation, if any, attract monetary penalty under Section 15 C and 15 HB of the SEBI Act, 1992?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

9. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

   A. Clause 5.4 of Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.

   "For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled."

   B. Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

   "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."

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

"*2. SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:*

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d.Clause2.6 stands modified 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, 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. "This clause would be effective from August 1, 2017."

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

"Sub: Circular on Prevention of Unauthorised Trading by Stock Brokers

III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:

- *a. Physical record written & signed by client,*
- *b. Telephone recording,*
- *c. Email from authorized email id,*
- *d. Log for internet transactions,*
- *e. Record of messages through mobile phones,*
- *f. Any other legally verifiable record.*

When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records."

E. Regulation 9(e) of Brokers Regulations, 1992.

"***Conditions of registration****.*

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;"

10. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the provisions of the SC(R) Act, SEBI Regulations and Circulars as indicated in table no. 1?

11. At the outset, I find that there are 4 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:
    - **A.** Non-settlement of client' funds (Monthly / Quarterly settlement),
    - **B.** Client Funding beyond T+2+5,
    - **C.** Non-maintenance of client order placement records / call recordings, and
    - **D.** Non-resolution of complaints in time.

A. Non-settlement of client' funds (Monthly / Quarterly settlement):

12. It was alleged in the SCN that Noticee has not returned credit balance to the clients who have not done any transaction in 30 calendar days since the last transaction. It was observed that, there was delay in settlement of 158 inactive clients and total delayed settlement amount is ₹3.64 lakhs with amount ranging from ₹1.04 to ₹1.93 lakhs.

Reply of Noticee

13. With respect to above allegations, Noticee *inter alia* submitted that the allegation is regarding not settling client accounts in the range of ₹1.04 Lakhs to ₹1.93 Lakhs, totaling to ₹3.64 lakhs. In this, SEBI has erroneously considered one client- (UCC 34800009) whose amount was ₹1,93,151.4, which was settled on August 25, 2021. Noticee stated that the client was having margin obligation hence the fund was retained and the account of client was settled on quarterly basis. Therefore, once this amount is deducted from the said ₹3.64 lakhs, allegation only with respect to ₹1.71 lakhs remain.

14. All the other amounts are less than ₹25000. BVCPL currently has about 25619 registered clients, out of which 6725 are inactive clients. The total delay in non-settlement is a minuscule percentage of the overall operations of BVCPL, which does not warrant any imposition of penalty.

Findings

15. I note that as per SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021 *"For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled."*

16. Noticee submitted that SEBI has erroneously considered one client- (UCC 34800009) whose amount was ₹1,93,151.40, which was settled on August 25, 2021. Noticee stated that the client was having margin obligation hence the fund was retained and the account of client was settled on quarterly basis. Therefore, once this amount is deducted from total amount of ₹3.64 lakhs, then allegation remain only with respect to ₹1.71 lakhs. From the Ledger copy and Retention Statement furnished by the Noticee, I find that an amount of ₹1,93,192.37 was retained by the Noticee on account of margin liability of the said client. Therefore, I am inclined to accept the submission of the Noticee with regard to non-settlement of ₹1,93,151.40.

17. Further, I note that Noticee has accepted the allegation with respect to non-settlement of the remaining amount of ₹1.71 lakhs in its reply dated September 01, 2023. Therefore, I hold that there was delay in settlement of funds of 157 inactive clients and Noticee has not settled the credit balance within time to the clients who have not done any transaction in 30 calendar days since the last transaction.

18. In view of the above, I hold that the allegation that Noticee has not settled the credit balance amount of ₹1.71 lakhs within the required time to the 157 inactive clients who had not done any transaction in 30 calendar days and therefore, the allegation of violation of the provisions of Clause 5.4 of Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021, stand established.

B. Client Funding beyond T+2+5:

19. SCN alleged that in 10 instances out of total 75 instances checked, the Noticee has funded clients beyond T+2+5 (Funded amount is ₹97.68 Lacs). It was alleged that the Noticee has given further exposure in 10 out of total 75 instances checked, beyond T+2+5 days for amounts ranging from ₹0.56 lakhs to ₹30.31 lakhs. Client wise summary is as given below:

Table No. 2: Further exposure given on debit balance beyond T+2+5 days

UCC	Date of debit	T+2+5 days	Amount of debit	Amount recovered	Amount not recovered	Further exposure date	Amount of exposure	Amount funded
10000288	29/06/2021	08/07/2021	13,90,301.32	6,61,754.86	7,28,546.46	13/07/2021	65,215.06	7,93,761.52
11100100	19/05/2021	28/05/2021	12,31,017.14	2,24,982.01	10,06,035.13	03/06/2021	5,04,102.03	15,10,137.16
11100100	30/06/2021	09/07/2021	31,22,836.36	94,663.57	30,28,172.79	13/07/2021	2,904.04	30,31,076.83
11100336	02/12/2021	13/12/2021	2,14,784.76	98,677.40	1,16,107.36	28/01/2022	69,989.27	1,86,096.63
11100354	07/04/2021	16/04/2021	1,63,003.78	83,075.01	79,928.77	04/05/2021	93,397.15	1,73,325.92
11100354	23/09/2021	04/10/2021	3,27,263.98	3,06,214.93	21,049.05	07/10/2021	35,117.79	56,166.84
25000046	31/07/2021	10/08/2021	10,96,561.75	6,85,297.77	4,11,263.98	16/08/2021	4,40,184.55	8,51,448.53
29100110	11/06/2021	22/06/2021	14,61,075.45	10,16,362.83	4,44,712.62	24/06/2021	4,37,894.34	8,82,606.96
30600013	27/01/2022	07/02/2022	7,59,879.62	4,00,000.00	3,59,879.62	08/02/2022	3,70,690.54	7,30,570.16
10000288	08/04/2022	19/04/2022	22,37,648.70	10,00,000.00	12,37,648.70	11/05/2022	3,15,275.02	15,52,923.72

Reply of Noticee

20. In response to the above allegation, Noticee *inter alia* submitted that it has not funded any client as such but erroneously granted them further exposure in some cases even though there was a debit balance at T+2+5 days. These were not major amounts and all the debit balances have been cleared by the said clients.

Findings

21. I note that as per SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, 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.

22. Noticee submitted that it has not funded any client as such but erroneously granted them further exposure in some cases even though there was a debit balance at T+2+5 days. These were not major amounts and all the debit balances have been cleared by the said clients. I find that Noticee has accepted the allegation of granting further exposure to the clients beyond T+2+5 days.

23. Further, regarding Noticee’s submission that debit balances have been cleared by the said clients, I find that Noticee has furnished documentary evidence only for 6 instances out of 10 instances. Moreover, I note that the debit balances cleared by the clients as stated by Noticee, does not absolve the Noticee from the past violations that persisted during inspection period. Thus, the reply of the Noticee cannot be accepted.

24. In view of the above, I hold that Noticee has granted further exposure to the clients beyond T+2+5 in 10 instances, amounting to ₹97.68 Lacs, and therefore the Noticee has violated the provisions of 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.

C. Non-maintenance of client order placement records / call recordings:

25. It was alleged in the SCN that call recording for 4 complaints was not provided by the Noticee. It was further alleged that the same is not available with the Noticee.

Reply of Noticee

26. In response to the above allegation, Noticee *inter alia* submitted that BVCPL operate out of 22 branches 345 Authorised persons and 367 locations and on some occasions, there are day-to-day systemic issues with the voice logger. These issues are not present on most of the days.

27. Noticee further submitted that post inspection, it has improved its internal control systems to minimize any chances of repetition of these alleged violations and imposition of penalty for such instances is not warranted.

28. These trades were done by the clients themselves. The Noticee had a fallout with one of its relationship manager who instigated the clients to file the complaints. He knowingly turned off the voice loggers and then instigated the clients to complain to NSE about unauthorised transactions. A perusal of the complaints itself shows that it is done by one person and in front of the IGRP members the clients have accepted and Noticee has even settled the amount of the said clients.

Findings

29. I note that as per SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 all brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of Physical record written & signed by client, Telephone recording, Email from authorized Email Id, Log for internet transactions, Record of SMS messages etc. When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone

recordings as part of its records. The circular intends to further strengthen regulatory provisions against un-authorized trades.

30. I note that Noticee has accepted the allegation and stated that on some occasions, there are day-to-day systemic issues with the voice logger. Noticee further submitted that it has improved its internal control systems to minimize any chances of repetition of these violations. I note that the corrective measures taken by Noticee does not absolve Noticee from the past violations that persisted during inspection period. Thus, the reply of the Noticee cannot be accepted.

31. With regard to the Noticee's submission that Noticee had a fallout with one of its relationship manager who knowingly turned off the voice loggers and then instigated the clients to file the complaints and in front of the IGRP members the clients have accepted it. I note that Noticee has not furnished any evidence / supporting documents to substantiate its claim. At the same time, I am of the view that the Noticee is responsible for all the actions and deeds of its staff. Therefore, the contentions of the Noticee cannot be accepted.

32. In view of the above, I hold that Noticee had not maintained call recording for 4 complaints and therefore the Noticee has violated the provisions of Clause III & IV of Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

D. Non-resolution of complaints in time:

33. During the inspection, the complaints received by BVCPL were examined. Age wise analysis of the complaints resolved (time taken to resolve) during the inspection period is given below:

Table No. 3: Age wise analysis of the complaints resolved by Noticee

Time	**No. of complaints resolved**
0-15 days	8
16-30 days	8
More than 30 days	12 (including 4 GRC matters)
Total	28

34. It was observed, as mentioned in table above that Noticee has taken more than 30 days to resolve 8 complaints. With regards to non-redressal of investor grievances within stipulated time, it was alleged in the SCN that Noticee has not resolved grievances of investors within one month from date of receipt of the complaint in 8 instances out of 28 instances, in 29% of instances. Noticee was alleged to be non-compliant during the inspection period and was alleged to have violated Regulation 9(e) of Brokers Regulations, 1992.

Reply of Noticee

35. In response to the above allegation, Noticee *inter alia* submitted that the Noticee is charged under Section 15C of the SEBI Act, 1992 for the same. Noticee submitted that Section 15C is not applicable in the present case. Section 15C applies only to cases where an intermediary has been called upon by the board in writing to redress a complaint and then has failed to do so. Therefore, the Noticee cannot be charged under Section 15C of the SEBI Act, 1992 as there is no allegation that the Noticee was called upon by the Board, in writing, to redress a complaint and it failed to do so.

36. Noticee further submitted client-wise submission for delay in resolution of grievances of investors as under:

   (a) "Kabir Sharan - UCC 42500036 – complaint lodged on 25-01-2022. The client had sold the stock on 24-01-2022 and the payment was issued to him on 27-01-2022. After issuing the payment, his ledger was still credit by 52735.77 and the client was active client, he again traded on 09-02-2022 and the payment was done on 14-02-2022 and 08-03-2022 hence there was no delay in solving the complaints. Also, the complaint is not a grievance as such but a payout request. As it was received in grievance, we have to treat the same a complaint.

   (b) Saurav Suresh Kadam UCC 29600044 - the client had lodged the complaint on 13 January 2022. Hence, on receiving the complaint from the client we had made the account inactive pending inquiry. On 17 February 2022, the client had transferred the amount of ₹60. The issues were finally redressed on 03-03-2022 in due course.

(c) Dolar Khara- not our client the client mailed to send the account opening form. As there was no such account with us we still searched in our system hence as she not being our client there is no complaint or delay in redressal thereof.

(d) Jatin A Shah - not our client and therefore allegation of delay in resolution is unsustainable.

(e) Ashesha Shah / Pratik C Shah- The client lodged the complaint on 09-08- 2021. On receiving the complaint, we talked with the client. But after an interval of some months, they came back with the same issue. We tried our level best by explaining the redressing their complaint and then when the client was finally convinced with the resolution, we closed the complaint.

(f) Jagwani Prakshabhai / Mansingh Gohil - as mentioned earlier these are the same codes where for the given trade as the call recording was missing hence, we settled the client's complaint.

(g) Girish Poal - the client had complained for excess brokerage charges and the complaint was resolved within 30 days. The complaint was lodged on 10 oct 2021 but was accepted on 26-10-2021 and resolved on 23-11-2021. So the complaint is resolved within 30 days as once nse accepts the complaint then only we can reply on the portal till that time the portal is locked."

Findings

37. I note that as per Regulation 9(e) of Brokers Regulations, 1992, all brokers shall take adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board.

38. With regard to the above allegation, I note that the Noticee has more than 25,000 clients and has in place measures to handle investor grievances. Noticee furnished the client wise response regarding delay in resolving the said 8 complaints as indicated in para 36. I am of the view that these are very little irregularities / deficiencies and which doesn't warrant any penalty. Further, considering the client wise response of the Noticee, I am inclined to accept the submission of the Noticee in this regard. Therefore, I hold that the allegation that Noticee violated the Regulation 9(e) of Brokers Regulations, 1992, does not stand established.

Issue II. Does the violation, if any, attract monetary penalty under Section 15 C and 15 HB of the SEBI Act, 1992?

39. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions as indicated in Table no. 1, except for 'D'.

40. The object of inspection of the books of accounts and records of any intermediary is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions as mentioned at Para no. 3 of this order, except for 'D'.

41. Noticee has quoted two judgments i.e. UPSE Securities Limited vs. SEBI and IDBI Trusteeship Services Limited vs. SEBI, passed by the Hon'ble Securities Appellate Tribunal (SAT) asserting that the purpose of carrying out inspection is not punitive and every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not attract penalty.

42. In this regard, I have perused the orders of Hon'ble SAT in matter of UPSE Securities Limited vs. SEBI and IDBI Trusteeship Services Limited vs. SEBI, relied upon by the Noticee. I note that Hon'ble SAT has held as a general principle that the object of the inspection is to ensure compliance with the provisions meant to regulate the securities market and every little irregularity/ deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. However, the Hon'ble SAT has not laid down that all defaults observed during inspection would attract no penal action. In-fact, Hon'ble SAT has also held that if any serious lapse is discovered, it would be always open to the Board to take penal action. Further, I find that the allegation of violations that stand established in the said cases are different from the allegation of violations that have

been established in the present case of the Noticee. Hence, I note that the said cases do not stand on the same footing as the given case of the Noticee.

43. At the same time, keeping the above in mind and considering the material available on record, I have held that Noticee has not violated Regulation 9(e) of Brokers Regulations, 1992 with respect to investor grievances. However, there have been non compliances by the Noticee which have been established and hence, I find that the Noticee has failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients by monthly / quarterly non-settlement of funds of clients, client funding by granting them further exposure beyond T+2+5 and non-maintenance of client order placement records / call recordings. The said violations make the Noticee liable for monetary penalty under the provisions of the SEBI Act, 1992.

44. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has 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...".

45. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

<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 III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

46. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, which reads as under: -

<u>SEBI Act, 1992</u>

Factors to be taken into account while adjudging quantum of penalty

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 investors as a result of the default;
(c) the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

47. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance of the provisions of the SEBI Regulations and Circulars is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. With respect to the repetitive nature of the default, I find that vide Adjudicating order dated September 06, 2022, a penalty of ₹2,00,000 was imposed on the Noticee for violation of Clauses A(1) and A(2) of Code of Conduct as specified in Schedule-II read with Regulation 9(f) of Brokers Regulations, 1992

for failing to demonstrate integrity and due care and diligence while executing transactions on behalf of certain clients trading in a scrip. In the present matter the inspection findings bring out a number of instances where the Noticee has not been complying with the requirements of the SEBI Regulations and Circulars as indicated above. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and Circulars / Directions issued thereunder, which it failed to do during the inspection period. The said violations by the Noticee attracts monetary penalty. At the same time, I am keeping in mind that the number of instances / quantum involved are less and Noticee has also taken steps to improve its internal control systems to minimize any chances of repetition of these violations.

ORDER

48. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated above, exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose a monetary penalty of ₹ 3,00,000/- (INR Three Lakh Only) under Section 15 HB of the SEBI Act, 1992, on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

49. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

50. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

51. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: October 31, 2023	**ADJUDICATING OFFICER**