BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/16468]

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

In respect of

Shri. Ashok Kumar Kayan

(SEBI Registration Number: INB030491111)

In the matter of M/s. Ashok Kumar Kayan

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted a comprehensive inspection of Shri. Ashok Kumar Kayan (hereinafter referred to as ('**Noticee /You /Stock Broker/ Member/Broker'**) from March 07,2016 to March 09, 2016, at its office situated at Room No. 319, 3rd Floor, Martin Burn Building, 1, R. N. Mukherjee Road, Kolkata – 700 001, w.r.t. its Stock Broking activities. The period of inspection was from April 01, 2012 till date of inspection i.e. March 07, 2016 (hereinafter referred to as **'Inspection Period/IP'**).

2. Noticee is a SEBI-registered Stock Broker, having SEBI registration number as INB030491111 as Stock Broker. Noticee is a trading member of Calcutta Stock Exchange ("**CSE"**).

3. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee under Section 15HB of SEBI Act for the following alleged violations of :

    3.1. Clauses 2,3,4,5 and 6 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011, Clauses 1, 2, 3 and 4 of SEBI circular MIRSD/Cir-26/2011 dated December 23, 2011 and Clauses 3 and 4 of SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012; and

    3.2. Clauses A(2) and A(5) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("**Stock Broker Regulations/Broker Regulations"**).

4. Vide order dated September 16, 2019, Ms. Sangeeta Rathod was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995/ Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the aforesaid alleged violations committed by Noticee. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the matter. Thereafter, the undersigned was appointed as the Adjudicating Officer in the matter by SEBI vide order dated December 04, 2020.

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

5. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated April 13, 2022, was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 15HB of SEBI Act, for the aforesaid violations alleged to have been committed by Noticee.

6. The following charges were levelled against Noticee in the SCN:-

   *6.1. SEBI vide its circulars SEBI Circular nos. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/Cir-26/2011 dated December 23, 2011 and MIRSD/ Cir-5/2012 dated April 13, 2012, mandated the compliance towards Client Account Opening Forms, KYC and uploading of KYC forms with SEBI KYC Registration Agency ("**KRA**").During the course of inspection, on a sample basis KYC forms of 19 clients with the highest turnover were verified to ascertain the compliance of aforesaid circulars. The list of 19 clients and deficiencies observed in their KYC forms along with KRA status is given as **Annexure- 3.***

   6.2. From the Annexure-3, following was observed by SEBI during inspection:-

      6.2.1. Noticee has not ensured that all the Client Account Opening forms were complete in all respect. The Client Account Opening Forms had not been filled up by clients even though, the clients had signed on all the documents.

      6.2.2. Noticee has not ensured that all the Client Account Opening Forms were properly dated. All the documents were signed without having any proper date.

      6.2.3. In 12 instances, Noticee has not replaced the client-broker agreement with the Rights and Obligations documents, which shall be mandatory and binding on the existing and new stock broker (including trading members) and clients.

6.2.4. Noticee was not able to provide the KYC of 5 clients out of 19 KYC forms selected for sample.

6.2.5. Out of the 19 Client Account Opening Forms selected as sample during the course of inspection, Noticee failed to ensure that the income details of 8 clients were duly filled in Client Account Opening Form. The 8 clients whose income details were not available, were the top 25 clients of Noticee in terms of its turnover.

6.2.6. Out of the 19 Clients, in case of 2 clients, Noticee has not uploaded KYC forms of 2 clients with SEBI KYC Registration Agency ("KRA"). Further, in case of 15 clients, client's KYC documents sent by Noticee to KRA were incomplete in nature.

6.2.7. In case of 7 clients, Noticee failed to ensure that "Running Account Settlement Form" was duly filled up by clients along with their settlement preferences.

6.2.8. In view of the above, it is alleged that Noticee has violated Clauses 2,3,4,5 and 6 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011; Clauses 1, 2, 3 and 4 of SEBI circulars MIRSD/Cir-26/2011 dated December 23, 2011 and Clauses 3 and 4 of SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012.

6.2.9. The KYC forms of Ayodhya Vinimay Pvt. Ltd., Pachratan Enclav Pvt. Ltd, Vedic Promoters Pvt. Ltd., Chaaya Realty Pvt. Ltd., Sapna Kayan, Ashok Kumar Kayan, Gurru Dutt Dhadwal, Jaya Dhadwal, Aman Baid, Kamal Kanta Dhadwal, Levia Trading Pvt. Ltd., Templerun Marcom Pvt. Ltd., Littlestar Tradecom Pvt. Ltd., Groundzero Vincom Pvt. Ltd., Swaraj Retails Pvt. Ltd. has been placed as ***Annexure-4.***

6.3. During the course of inspection, it was observed that Noticee was not having the system in place to detect the large transactions/patterns and Noticee was setting the threshold limit for each client on the basis of availability of clients' fund. Further, it was observed that for few clients, their trading pattern were inconsistent with their financial back ground. The details of the same is are tabulated below:

Sl. No	***Name of client***	***Account Opening Date***	***Annual Income as per KYC (Rs. in lakhs)***	***Turnover value (Delivery based Cash Segment)***			
				FY 2012-13	***FY 2013-14***	***FY 2014-15***	***FY 2015-16***
1	*Ayodha Vinimay Pvt. Ltd.*	*04.02.2013*	*Not provided in KYC*	*14.48 Cr.*	*116.82 Cr.*	*19.55 Lakh*	*0*
2	*Levia Trading Pvt. Ltd*	*11.09.2013*	*Not provided in KYC*	*-*	*114.44 Cr.*	*2.98 Lakh*	*0*

Sl. No	Name of client	Account Opening Date	Annual Income as per KYC (Rs. in lakhs)	Turnover value (Delivery based Cash Segment)			
				FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
3	Templerun Marcom Pvt Ltd	10.02.2014	Not provided in KYC	-	48.34 Cr.	0.05 Lakh	0
4	Littlestar Tradecom Pvt. Ltd.	22.04.2014	less than 1 lakhs April 21, 2014	-	-	47.21 Cr.	0
5	Groundzero Vincom Pvt Ltd	28.04.2014	Not mentioned	-	-	37.97 Cr.	0
6	Swaraj Retails Pvt Ltd	23.04.2014	1 to 5 Lakhs	-	-	34.82 Cr.	0
7	Saraswati Vintrade Pvt Ltd	23.04.2014	Not provided in KYC	-	-	31.32 Cr.	0
8	Panchratan Enclave Pvt Ltd	06.10.2014	Not provided in KYC	-	-	17.43 Cr.	10.10 Cr.
9	Gurukul Enclave Pvt Ltd	07.10.2014	Not provided in KYC	-	-	16.67 Cr.	10.19 Cr
10	Vedik Promoters Pvt Ltd	14.11.2014	Not provided in KYC	-	-	7.28 Cr.	16.77 Cr.
11	Chaaya Reality Pvt Ltd	22.04.2014	Not provided in KYC	-	-	20.77 Cr.	0
12	Sapna Kayan	1996	1 to 5 Lakhs	6.07 Lakh	5.37 Lakh	7.26 Cr.	3.28 Cr.
13	Darshann Kayan	25.03.2015	Not provided in KYC	-		8.44 Lakh	8.88 Cr
14	Ashok Kumar Kayan Huf	1993	5-25 Lakh	1.60 Cr.	3.75 Lakh	3.11 Cr.	8.07 Lakh
15	Guru Datt Dhadwal	2005	1 to 5 Lakhs	0		64.84 Lakh	0
16	Lachhman Dass Huf	2005	Not provided in KYC	0	4.38 Lakh	20.25 Lakh	0
17	Jaya Dhadwal	2005	1 to 5 Lakhs	0		38.31 Lakh	0
18	Kamal Kanta Dhadwal	2007	Not provided in KYC	0	1.10 Lakh	25.29 Lakh	0
19	Aman Baid	2006	1 to 5 Lakhs	6.54 Lakh	3.93 Lakh	0	0

6.4. From the aforesaid table, it was observed that few clients' trading were inconsistent with their financial background and had unusually large transactions, their delivery based turnover ranges between 16.67 crores to 116.82 crores. Further, it was observed that the top eleven (11) clients of the broker had bought heavily only in the shares of few penny stocks with high buying concentration ranging from 80 to 100% of their total buying. Further, during the period of their trading in the targeted penny stocks, there have been abnormal spurt/ fluctuations in the price of the scrip ranging from 126.32% to 14,937.37%.

6.5. *In view of the above, it is alleged that Noticee has violated Clauses A(2) and A(5) of Code of Conduct as specified in Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The Sauda Registers for the year 2013-14, 2014-15 and 2015-16, ledgers of the clients are placed as* ***Annexure-4***

7. The SCN was sent to Noticee through Speed Post AD("**SPAD**") and through digitally signed email dated April 13, 2022 and was duly served upon Noticee. Noticee was given fifteen (15) days' time to submit its reply to the SCN. Noticee, vide email as well as letter dated April 20, 2022, submitted reply to the SCN and also desired a personal hearing in the matter. Accordingly, in the interest of natural justice, an opportunity of personal hearing was granted to Noticee on May 04, 2022, vide hearing notice dated April 22, 2022. The said hearing notice was sent to Noticee through SPAD and was duly served upon Noticee. On the scheduled date of hearing, Mr. Harshvardhan Kayan, Authorized Representative ("**AR"**) of Noticee, attended the hearing and reiterated the contents of the reply made by Noticee vide letter dated April 20, 2022. Due to ongoing covid pandemic, the aforesaid hearing was carried out online through webex platform.

8. The submissions made by Noticee are reproduced below:

   i. *We have received your SCN and the relevant annexure(s) in the matter of Ashok Kumar Kayan broadly alleging violations in statutory requirements and exercise of due skill and care in business conduct. In reply Of the same, we would like to make the following submissions/ clarifications.*

   ii. *As mentioned in your SCN, SEBI had conducted a comprehensive inspection from March 07 2016 to March 09 2016 at our registered office at "1 R.N. Mukherjee Road, Martin Burn Building, Room No 319, Kolkata 700001". During the course of inspection the SEB' officials asked for various documents including but not limited to, KYCs of Clients, Internal Reporting, PMLA Policies, Account Opening Process, Client settlement and so on. All of these were provided in a timely manner and to the satisfaction of the officials conducting the survey. It is also pertinent to mention that whenever SEBI had raised any queries it has been duly addressed (refer your Annexure 1_reply of entity). Moreover we have always complied with the exchange regulations and completed our internal audits timely, all of which had been shown at the time of inspection.*

iii. *Furthermore, there has never been a complaint on SCORES or any other platform by any of our clients. In our understanding, we had fully complied with the inspection and we have received this SCN with a time lag Of 6 years after the inspection. Our stockbrokerage was structured as a proprietor stock broker with a membership of The Calcutta Stock Exchange for which we have already submitted a letter to withdraw the membership and closed all trading in the same for over a year. (Annexure 1). Currently I am already a senior citizen and retired and find the notice after 6 years both distressing and delayed especially that the inspection period dated all the way back to 2012.*

iv. *Addressing the specific nature of the violations, it has been mentioned that few of our top volume clients traded penny stocks. In reply to the same we have attached the list of scrips traded each year at our firm from 2012 to 2016 and the volume traded of the same (Annexure 2). It is evident that most of the stocks traded are blue chip stocks which are now part of the Sensex and Nifty. Further many stocks traded at the time are now multi bagger stocks and some have become penny stocks. This is the general nature of the market and the stock broker has no way of determining the nature of the stocks traded are penny stocks, unless the stocks were very thinly traded, which was not the case in these "penny" stocks.*

v. *This is especially relevant given the volumes in the millions Of these penny stocks and holding by even some mutual funds. In this context I would like to refer you to stocks such as Kailash Auto, which had daily turnovers of at least 1 lac shares and had broad participation but was later classified as a penny Stock. That being said, as a stock broker we have always ensured that*

- *None of the stocks are clients have bought are being done to increase prices on thin volumes, Clients are price takers and not price makers,*
- *We as a group encouraged blue chip stocks for most of our clients as is evident from*
  Annexure 2
- *Personally did not hold any penny stocks. Had I known the tremendous price movement documented in your letter, could participate along with my clients to benefit from the same*

- *As a broker we are agnostic to fundamentals and more focused on processes and systems*
- *Many of our top 20 clients mentioned by you such as Sapna Kayan, Darshann Kayan, Ashok Kumar Kayan HUF, Guru Dutt Dhadwal, Lachhman Das HUE, Jaya Dhadwal, Kamal Kanta Dhadwal, and Aman Baid have never traded any stocks which were later classified as penny stocks.*

vi. *Now, addressing the issues regarding KYCs. During the short window of inspection we gave all the KYCs that were asked of us. Your letter in 5.2.4 mentions KYCs that we were not able to provide during the inspection. In your Annexure_3 this has been tabulated as to which KYCs are there. We find this data baffling as three out Of those 5 KYCs are Darshann Kayan, Lachhman Das HUF and Kamal Kant Dhadwal. It is surprising since Darshann Kayan is my son so even if theoretically the KYC wasn't there, it could be done in minutes and submitted during inspection. The Other two are our neighbors and a similar logic would apply there. Moreover we have and had all the KYCs that are mentioned. The Calcutta Stock Exchange has from time to time in SEBI matters asked us the KYCs of Panchratan Enclave and Vedic Promoters are that has been given to them in a timely manner. Since the KYCs are still with us we have attached them in Annexure 3 along with the CSE communications.*

vii. *Finally, with respect to the KYCs it is mentioned that in some KYCs income details are not there and in some running account form is not there, Your letter also mentions that for 2 clients KRA upload was not there. In your enclosed Annexure S, the copies of the submitted KYCs are there. We had a look at certain KYCs, case in point Levia Trading which is a 96 page document including all enclosures, bank statements etc. In the SCN it is tabulated that income details are not there for this company and which is correct since we checked your annexure. However, in a 96 page document, in a pre-digitized era it is bound that there can be some overlaps and mistakes from us at a clerical level or from the client. If the intention to submit KYC, maintain KRA was not there than none of these documents would be there like many Other CSE brokers at the time. It is also relevant to mention that we work as a small firm with proprietor and two staff. So in that spirit and considering we have sufficiently completed the KYC, we would pray for your leniency in small clerical mistakes that are present in the KYCs.*

viii. *In conclusion, we have addressed the two relevant issues of the SCN and offered our rationale along with supporting documents. We would reiterate that we have been* *always determined to be compliant stock brokers. If you deem it as required, kindly extend the opportunity for a personal hearing to us so we may be able to elaborate or explain any of the above points to your good self. We pray for your leniency in this matter especially given the fact that the SCN is issued to us after 6 years at a time I have retired and closed shop.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by Noticee in this regard. The issues that arise for consideration in the present case are:

    I. Whether Noticee has violated the provisions as mentioned in para 3 of the order?
    II. Do the violations, if any, attract monetary penalty under 15HB of SEBI Act ?
    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

10. Before moving forward, it is pertinent to refer to the relevant provisions at the relevant time which are reproduced hereunder:

    A. ***Stock Broker Regulations***

    Regulation 9*: Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely*

    (f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

    Schedule-II Code of Conduct for Stock Brokers*:*

    A. General: -

    (2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business

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

    B. *SEBI* circular CIR/MIRSD/16/2011 dated August 22, 2011

    1. *SEBI has been getting feedback from the investors that the present trading account opening procedure is very cumbersome. The investor has to enter into a number of*

agreements depending on his trading preferences i.e. stock exchanges, segments, internet / wireless technology based trading, etc. As a result, it requires a large number of signatures on various documents devised by the stock brokers/trading members.

2. *With a view to simplify and rationalize the account opening process, we have reviewed, consolidated and updated all the documents/requirements prescribed in respect of account opening process over the years, in consultation with major stock exchanges and market participants. The simplification includes replacement of all client-broker agreements with the 'Rights and Obligations' document, which shall be mandatory and binding on the existing and new stock brokers (including trading members) and clients. Accordingly, SEBI (Stock Broker and Sub-Broker) Regulations, 1992 have been amended suitably vide notification No. LAD-NRO/GN/2011-12/19/26273 dated August 17, 2011.*
3. *SEBI has devised the uniform documentation to be followed by all the stock brokers / trading members; a copy thereof to be provided by them to the clients. The details of such documents are listed below:*

   i. *Index of documents giving details of various documents for client account opening process - Annexure-1*

   ii. *Client Account Opening Form in two parts:*

      a. *Know Your Client (KYC) form capturing the basic information about the client and instruction/check list to fill up the form - Annexure-2.*

      b. *Document capturing additional information about the client related to trading account -Annexure-3.*

   iii. *Document stating the Rights & Obligations of stock broker, sub-broker and client for trading on exchanges (including additional rights & obligations in case of internet / wireless technology based trading)– Annexure–4*

   iv. *Uniform Risk Disclosure Documents (for all segments / exchanges) - Annexure-5*

   v. *Guidance Note detailing Do's and Don'ts for trading on exchanges - Annexure- 6.*

4. *In the account opening process, the stock brokers / trading members would also give the following useful information to the clients:*

   a. *A tariff sheet specifying various charges, including brokerage, payable by the client to avoid any disputes at a later date.*

   b. *Information on contact details of senior officials within the stock broking firm and investor grievance cell in the stock exchange, so that the client can approach them in case of any grievance*

5. It may be noted that any voluntary clause / document added by the stock brokers shall form part of the non-mandatory documents. The stock broker shall ensure that any voluntary clause/document shall neither dilute the responsibility of the stock broker nor it shall be in conflict with any of the clauses in the mandatory documents, Rules, Bye-laws, Regulations, Notices, Guidelines and Circulars issued by SEBI and the stock exchanges from time to time. Any such clause introduced in the existing as well as new documents shall stand null and void.

6. The client will now be required to sign only on one document i.e. Account Opening Form. Further, in the same form, the client shall continue to put his signatures instead of saying 'yes' or 'tick mark' while indicating preferences for trading in different exchanges / segments, in accordance with existing requirements. However, in case the investor wants to avail Running Account facility, execute Power of Attorney, etc., he would have to give specific authorization to the stock broker in order to avoid any dispute in the future.

7. In case the stock broker is also a depository participant, he can use the same KYC form (as specified in Annexure-2) for basic details and take additional information pertaining to demat account.

8. ……

C. SEBI circulars MIRSD/Cir-26/2011 dated December 23, 2011

Please refer to SEBI circular no. MIRSD/Cir-23/2011 dated December 2, 2011 providing you a copy of the KRA Regulations, 2011 notified on December 2, 2011. With a view to implement the Regulations effectively, the following guidelines are being issued:

1. Guidelines for Intermediaries:

i. After doing the initial KYC of the new clients, the intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch.

ii. In case a client's KYC documents sent by the intermediary to KRA are not complete, the KRA shall inform the same to the intermediary who shall forward the required information / documents promptly to KRA.

iii. For existing clients, the KYC data may be uploaded by the intermediary provided they are in conformity with details sought in the uniform KYC form *prescribed vide SEBI circular no. MIRSD/SE/Cir-21/2011 dated October 05, 2011. While uploading these clients' data the intermediary shall ensure that there is no duplication of data in the KRA system.*

iv. The intermediary shall carry out KYC when the client chooses to trade/ invest / deal through it.

v. The intermediaries shall maintain electronic records of KYCs of clients and keeping physical records would not be necessary.

vi. The intermediary shall promptly provide KYC related information to KRA, as and when required.

vii. The intermediary shall have adequate internal controls to ensure the security / authenticity of data uploaded by it.

2. Guidelines for KRAs

i. KRA system shall provide KYC information in data and image form to the intermediary.

ii. KRA shall send a letter to the client within 10 working days of the receipt of the initial/updated KYC documents from intermediary, confirming the details thereof and maintain the proof of dispatch.

iii. KRA(s) shall develop systems, in co-ordination with each other, to prevent duplication of entry of KYC details of a client and to ensure uniformity in formats of uploading / modification / downloading of KYC data by the intermediary.

iv. KRA shall maintain an audit trail of the upload / modifications / downloads made in the KYC data, by the intermediary in its system.

v. KRA shall ensure that a comprehensive audit of its systems, controls, procedures, safeguards and security of information and documents is carried out annually by an independent auditor. The Audit Report along with the steps taken to rectify the deficiencies, if any, shall be placed before its Board of Directors. Thereafter, the KRA shall send the Action Taken Report to SEBI within 3 months.

vi. KRA systems shall clearly indicate the status of clients falling under PAN exempt categories viz. investors residing in the state of Sikkim, UN entities / multilateral agencies exempt from paying taxes / filing tax returns in India.

vii. A client can start trading / investing/ dealing with the intermediary and its group / subsidiary / holding company as soon as the initial KYC is done and other necessary information is obtained while the remaining process of KRA is in progress.

3. In-*Person* Verification (IPV)

With regard to the requirement of in-person' verification (IPV), SEBI has issued guidelines to the stock brokers and depository participants (DPs). However, in line with the uniformity brought out in the KYC procedure across intermediaries, the IPV requirements for all the intermediaries have now been streamlined and harmonized, as follows:

i. It shall be mandatory for all the intermediaries addressed in this circular to carry out IPV of their clients.

ii. The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.

iii. The IPV carried out by one SEBI registered intermediary can be relied upon by another intermediary.

iv. In case of Stock brokers, their sub-brokers or Authorised Persons (appointed by the stock brokers after getting approval from the concerned Stock Exchanges in terms of SEBI Circular No. MIRSD/DR-1/Cir-16/09 dated November 06, 2009) can perform the IPV.

v. In case of Mutual Funds, their Asset Management Companies (AMCs) and the distributors who comply with the certification process of National Institute of Securities Market (NISM) or Association of Mutual Funds (AMFI) and have undergone the process of 'Know Your Distributor (KYD)', can perform the IPV. However, in case of applications received by the mutual funds directly from the clients (i.e. not through any distributor), they may also rely upon the IPV performed by the scheduled commercial banks

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4. Applicability:

The KRA system shall be applicable for all new client accounts opened from January 1, 2012. Only for the client accounts opened between Jan 1 and Jan 31, 2012, the intermediaries may upload the KYC data on the KRA system and send the relevant KYC documents to KRA, by February 15, 2012. However, for client accounts opened from February 1, 2011, the intermediaries shall continue to follow the requirement of sending the same within 10 working days as given in para1(i) of this circular. The existing clients can continue to trade / invest/ deal with their intermediaries as per the current practice

5. …..
6. ……
7. …
8. ….

D. SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012

Please refer to SEBI circular no. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/SE/Cir-21/2011 dated October 5, 2011, MIRSD/Cir-23/2011 dated December 2, 2011 and MIRSD/Cir- 26 /2011 dated December 23, 2011 on KYC related issues.

1. *SEBI simplified the account opening process for investors and made it uniform across intermediaries in the securities markets vide aforementioned circulars. Further, to avoid duplication of KYC process with every intermediary, KRA system was developed for centralization of the KYC records in the securities markets. The system was made applicable for new clients who opened accounts with the intermediaries from January 1, 2012.*
2. *Now, for convenience of the clients registered prior to January 1, 2012 (hereinafter referred to as 'existing clients') and to expand the centralized database of the KYC records of the entire securities market, it is decided to upload the KYC details of the existing clients of the intermediaries in the current KRA system, in a phased manner.*
3. *The following guidelines for uploading the KYC data of the existing clients are being issued in consultation with the major Stock Exchanges, Depositories, KRAs, AMFI Brokers' Associations and market participants:*
   a. *For existing clients who trade / invest / deal with the intermediary anytime during the time period specified in the table given below starting from April 16, 2012, the intermediaries shall forthwith upload their KYC details in the KRA system. They shall also send original KYC documents to the KRA on continuous basis and complete the process within the prescribed time limits. Considering the representations made by the intermediaries, they may send print outs of scanned documents to the KRAs instead of original documents in accordance with the schedule, certifying that they have retained the originals*
   However, they must complete the process of sending the original documents to the KRA by March 31, 2013.

The KRAs shall update their systems and send letters to the clients for the receipt of the initial / updated KYC documents from intermediary in accordance with the time schedule.

The intermediaries shall maintain electronic records of the KYCs of their clients and keeping physical records would not be necessary.

Schedule for implementation (For the year 2012-13):

Existing clients of intermediary who trade/ invest/ deal with it during the below mentioned time period	***Timeline for intermediary to upload existing client's KYC data on KRA system & send KYC documents to KRA***	***Timeline for KRA to update the record in their system & send acknowledgement to the existing client***
April 16, 2012 – June 15, 2012	*August 31, 2012*	*September 30, 2012*
June 16, 2012 - August 31, 2012	*October 31, 2012*	*November 30, 2012*
September 1, 2012 - October 31, 2012	*November 30, 2012*	*December 31, 2012*
November 1, 2012 - December 31, 2012	*January 31, 2013*	*February 28, 2013*
January 1, 2013 - February 28, 2013	*March 15, 2013*	*March 31, 2013*

The KYC data of the existing clients, who trade / invest or deal after the above mentioned schedule, shall be uploaded on a continuous basis.

b. While uploading the existing clients' KYC details in the KRA system, the intermediary shall indicate the date of account opening / activation / updation of information. Necessary provisions shall be made by the KRAs in their systems. In case the KRA system indicates that the client's KYC data already exists, the other intermediary shall upload the modifications, if any, after the aforesaid date so that the latest information about the client is available on the KRA system.

c. The intermediary shall highlight the KYC details about the existing client which is missing / not available, as per the KYC requirements specified vide circular dated October 5, 2011, only if it was not mandated earlier, when the client's account was opened. KRAs shall make necessary provisions in their systems to categorize the KYC of such clients under the category of existing clients and highlight the information which is missing / not available.

d. When the existing client approaches another intermediary, it shall be the responsibility of that intermediary which downloads the data of that client from the KRA system, to update the missing information, do IPV as per requirements (if not done already) and send the relevant supporting *documents, if any, to the KRA. Thereafter, the KRA system shall indicate the records as updated.*

4. *It is clarified that timelines mentioned in the schedule are the minimum requirements and the KYC data of the remaining existing clients can also be uploaded on the KRA system*.
5. ………
6. …..
7. ……

11. Before going into the merits, I would like to first deal with the preliminary objection raised by Noticee w.r.t. delay in issuing SCN i.e. six years after the completion of inspection. Noticee in its reply has contended that its broking business was structured as a proprietor stock broker with a membership of CSE for which they have already submitted a letter to withdraw the membership and closed all trading in the same for over a year. Further, it is stated that currently, proprietor of Noticee is a senior citizen and retired and finding the notice after 6 years was both distressing and delayed especially that the inspection period dated all the way back to 2012. In this regard, I note that it is a matter of fact that inspection of Noticee was carried out by SEBI on March 07, 2016 to March 09, 2016 and the inspection period was April 01, 2012 till the date of inspection i.e. March 07, 2016. From the material available on record, I note that the findings of inspection was communicated to Noticee on July 01, 2016. Subsequent to receipt of findings of inspection, Noticee forwarded its reply on July 18, 2016. Based on reply provided by Noticee, initiation of Adjudication Proceedings was approved by competent authority on May 16, 2019 and SEBI appointed Ms. Sangeeta Rathod as AO on September 26, 2019, in the present matter. However, before transferring case to AO, certain clarifications were sought and after receipt of clarifications, the file was transferred to AO on November 27, 2019.

12. From the documents available on record, I note that on January 27, 2020, AO had sought certain clarifications from SEBI, which were provided on May 04, 2020. Subsequent to transfer of Ms. Sangeeta Rathod, Shri. Prasanta Mahapatra, Chief General Manager, was appointed as AO by SEBI vide order dated October 21, 2020. Subsequently, undersigned was appointed as AO vide order dated December 04, 2020 in the present matter. Subsequent to appointment of undersigned as an AO, further clarifications were sought from SEBI on July 06, 2021 and September 30, 2021, which were received on August 13, 2021 and March 28, 2022, respectively. Subsequent to receipt of clarifications, SCN was issued to Noticee on April 13, 2022. Thus, I note that there was a delay in issuance of

SCN, on account of procedural issue and clarifications sought/received from SEBI. I further note that Noticee was provided Sauda Registers for the years 2013-14, 2014-15 and 2015-16 (as provided by him during the course of inspection) and KYC of clients as Annexure to SCN. Subsequently, Noticee submitted its reply to SCN on April 20, 2022 and also availed opportunity of personal hearing granted to it on May 04, 2022, which was duly attended by his AR. Thus, looking at the material available at the disposal of the Noticee, I find that Noticee has been provided with all the material that would have been abundantly adequate to facilitate recollection of events or collection of relevant data, thereby enabling them to form a definite defense to the charges in the SCN, which Noticee has provided through his reply/ submission. Thus, I note that no prejudice has been caused to Noticee for delay in issuance of SCN.

13. Now I proceed to deal with the case on merits.

<u>Issue I: Whether Noticee has violated the following provisions</u>:

13.1. Clauses 2,3,4,5 and 6 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011; Clauses 1, 2, 3 and 4 of SEBI circulars MIRSD/Cir-26/2011 dated December 23, 2011 and Clauses 3 and 4 of SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012

13.2. Clauses A (2) and A (5) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of Broker Regulations.

14. I note from the material available on record that during inspection, Account Opening Forms ("**AOF**"), Know Your Client Forms ("**KYC**") and status of uploading of KYC forms with SEBI KYC Registration Agency ("**KRA**") were checked w.r.t. 19 clients having highest turnover. SEBI observed certain deficiencies, the details of which are given below:

S. No.	Client name	Account Opening Date	Whether Rights and obligation specified	Whether KYC available	Whether income details provided	Whether KYC complete	Whether tariff has been provided	Whether Trading preference given by client	Whether Authorization form obtained from client availing running account	Whether KRA completed	Comments
1	Ayodhya Vinimay Pvt. Ltd.	04.02.13	No	Yes	No	No	No	No	Observation 1	No. Incomplete information.	

S. No.	Client name	Account Opening Date	Whether Rights and obligation specified	Whether KYC available	Whether income details provided	Whether KYC complete	Whether tariff has been provided	Whether Trading preference given by client	Whether Authorization form obtained from client availing running account	Whether KRA completed	Comments
2	Levia Trading Pvt. Ltd.	11.09.13	Yes	Yes	No	No	No	Yes	Observation 1	No. On hold. Various documents not submitted	• Broker has submitted incomplete KYC • No income range or details provided with KYC whereas the trading turnover is over 114 crores. • No In person Verification done in KYC.
3	Templerun Marcom Pvt. Ltd.	10.02.14	Yes	Yes	No	No	No	Yes	Yes	Yes	No income details provided with KYC or client opening account form whereas trading turnover is more than 40 crores
4	Littlestar Tradecom Pvt. Ltd.	22.04.14	Yes	Yes	Yes	Yes	No	Yes	Observation 1	No. Incomplete Information	
5	Groundzero Vincom Pvt. Ltd.	28.04.14	Yes	Yes	No	No	No	Yes	Observation 1	No. Incomplete Inf0ormation and IPV not done.	
6	Swaraj Retails Pvt. Ltd.	23.04.14	Yes	Yes	Yes	Yes	No	Yes	Observation 1	No. Incomplete Information and IPV not done.	
7	Saraswati Vintrade (P) Ltd.	23.04.14	Yes	Yes	No	No	No	No	Observation 1	Yes	
8	Pachratan Enclave Pvt. Ltd.	06.10.14	No	No	No	No	No	No	No	No. No KYC on KRA	Incomplete KYC has been provided by the Broker. It is not clear whether KYC was filed.
9	Gurukul Enclave Pvt. Ltd.	07.10.14	No	No	No	No	No	No	No	No. KYC not available.	• Broker has failed to provide the KYC of the client. • No income details available in client opening account form whereas trading turnover is more than 26 crores
10	Vedic Promoters Pvt. Ltd.	14.11.14	No	No	No	No	No	Yes	No	No. No KYC on KRA	The details of the directors are incomplete in the client opening account form. Broker has failed to submit the KYC of the client. No beneficiary ownership details or income details available whereas the trading turnover is over 24 crores.

S. No.	Client name	Account Opening Date	Whether Rights and obligation specified	Whether KYC available	Whether income details provided	Whether KYC complete	Whether tariff has been provided	Whether Trading preference given by client	Whether Authorization form obtained from client availing running account	Whether KRA completed	Comments
11	Chaaya Realty Pvt. Ltd.	22.04.14	No	Yes	No	No	No	No	No	No. Incomplete Information and IPV not done.	No income details of the company is available whereas trading turnover is more than 20 crores
12	Sapna Kayan	1996	No	Yes	Yes	Yes	No	No	Observation 1	No. Incomplete Information and IPV not done.	
13	Darshann Kayan	25.03.15	Yes	No	No	No	Yes	Yes	Yes	No. Incomplete Information and IPV not done.	• Both monthly and quarterly settlement preference ticked in the running account form. • Broker has failed to provide KYC
14	Ashok Kumar Kayan	1993	No	Yes	Yes	No	No	Yes	Yes	No. Incomplete Information	• No income details provided
15	Guru Dutt Dhadwal	2005	No	Yes	Yes	No	No	Yes	No	No. Incomplete Information and IPV not done.	• Income is given as below 5 lakhs. Has traded for more than 64 lakhs. No IPV done.
16	Lachhman Dass HUF	2005	No	No	No	No	No	No	Yes	No. KYC not available.	• Broker has failed to submit the KYC of the client. • No income details available
17	Jaya Dhadwal	2005	No	Yes	Yes	No	No	Yes	No	No. Incomplete Information and IPV not done.	• Broker has submitted incomplete KYC • Income range is given as below 5 lakhs whereas the trading turnover is more than 36 lakhs. • No In person verification done in KYC.
18	Kamal Kanta Dhadwal	2007	No	No	No	No	No	Yes	No	No. Incomplete Information	• Broker has failed to submit the KYC of the client. • No income details available
19	Aman Baid	2006	No	Yes	Yes	Yes	No	Yes	No	No. Incomplete Information and IPV not done.	

15. The allegations levelled against Noticee, their submissions and findings/observations in respect of the same are discussed in the subsequent paragraphs.

A. <u>Incomplete KYC forms</u>

16. It has been alleged in the SCN that Noticee has not ensured that all the AOFs were complete in all respect for all 19 clients and the AOFs had not been filled up by clients even though the clients had signed on all the documents.

16.1. In this regard, on perusal of the AOFs, I note as under:

a. In case of 2 clients, namely, Swaraj Retails Pvt. Ltd. and Chaaya Realty Pvt. Ltd., the AOFs belongs to some other SEBI Registered Intermediary instead of the AOFs executed by Noticee. In view of the same, the allegation levelled against Noticee that AOF were incomplete in nature is not tenable for the aforesaid 2 clients.
b. In case of 3 clients i.e. Templerun Marcom Pvt. Ltd., Lachhman Dass- HUF and Saraswati Vintrade (P) Ltd. the AOFs are not available on record. Therefore, I am unable to ascertain the allegations that the AOFs were incomplete in nature, in respect of the aforesaid 3 clients.
c. In case of 2 clients, namely, Sapana Kayan and Ashok Kayan, I note that the AOFs contain only address proof and PAN. The AOFs do not contain any other documents as required under SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011. Thus, I note that the AOFs with respect to aforesaid 2 clients were incomplete in nature.
d. In case of 12 clients, namely, Littlestar Tradecom Pvt. Ltd., Vedic Promoters Pvt. Ltd., Pachratan Enclave Pvt. Ltd., Gurukul Enclave Pvt. Ltd., Kamal Kanta Dhadwal, Guru Dutt Dhadwal, Aman Baid, Jaya Dhadwal, Ground Zero Vincom Pvt. Ltd., Ayodhya Vinimay Pvt. Ltd., Levia Trading Pvt. Ltd. and Darshann Kayan, I note that in the AOFs all the required fields as required under SEBI circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.I also find that Noticee failed to ensure that all the details which are required to be filled up, were properly filled up in KYC.

16.2. In view of the same, I find that Noticee has failed to ensure that the AOFs were complete in nature for the aforesaid 14 clients. In this regard, Noticee in its submission has not provided any reply in respect of the aforesaid allegations mentioned in the SCN. Therefore, I note that said non-compliance has not been refuted by Noticee.

16.3. In view of the same, I find that Noticee has violated Clauses 3 and 4 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

B. <u>The AOFs not properly dated</u>

17. It has been alleged in the SCN that Noticee has not ensured that all the AOFs were properly dated.

17.1. In this regard, on perusal of the AOFs, I note as under:

a. In case of 12 clients, i.e., Groundzero Vincom Pvt. Ltd., Pachratan Enclave Pvt. Ltd., Guru Dutt Dhadwal, Vedic Promoters Pvt. Ltd., Jaya Dhadwal, Kamal Kanta Dhadwal, Aman Baid, Darshann Kayan, Littlestar Tradecom Pvt. Ltd., Levia Trading Pvt. Ltd., Ayodhya Vinimay Pvt. Ltd. and Gurukul Enclave Pvt. Ltd., I note that the aforesaid clients have not specified the date while filing up the details or signing the AOFs. I also note that even Noticee has failed to ensure that the documents which were signed by his clients are properly dated as required in terms of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

b. In case of 2 clients, namely, Swaraj Retails Pvt. Ltd. and Chaaya Realty Pvt. Ltd., as earlier mentioned in the order, the AOFs belongs to some other SEBI Registered Intermediary instead of the AOFs executed by Noticee. In view of the same, the allegation levelled against Noticee that the AOFs were not dated is not tenable for the aforesaid 2 clients.

c. In case of 3 clients i.e. Templerun Marcom Pvt. Ltd., Lachhman Dass- HUF and Saraswati Vintrade (P) Ltd. the AOFs are not available on record. Therefore, I am unable to ascertain the allegation that the AOFs were not dated, in respect of aforesaid 3 clients.

d. In case of 2 clients, namely, Sapana Kayan and Ashok Kayan, I note that the AOFs contain only address proof and PAN. The AOFs do not contain any other documents as required under SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011. Thus, I note that the date which was required to be mentioned in the AOFs have not been mentioned in the AOFs of the aforesaid 2 clients.

17.2. In view of the same, I find that Noticee failed to ensure that the AOFs were properly dated for the aforesaid 14 clients. In this regard, Noticee in its submission has not provided any reply in respect of the aforesaid allegations mentioned in the SCN.

17.3. Therefore, I note that said non-compliance has not been refuted by Noticee Therefore, I find that Noticee has violated Clause 3 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

C. <u>Non-replacement of client-broker agreement with the Rights and Obligations documents</u>

18. It has been alleged in the SCN that in respect of 12 clients, namely, Ayodhya Vinimay Pvt. Ltd., Pachratan Enclav Pvt. Ltd., Gurukul Enclave Pvt. Ltd., Vedic Promoters Pvt. Ltd., Chaaya Realty Pvt. Ltd., Sapna Kayan, Ashok Kumar Kayan, Gurru Dutt Dhadwal, Jaya Dhadwal, Aman Baid, Lachhman Das-HUF and Kamal Kanta Dhadwal, Noticee has not replaced the client-broker agreement with the Rights and Obligations documents, which is mandatory and binding on the existing and new stock broker (including trading members) and clients in terms of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

18.1. In this regard, on perusal of the AOFs, I note that:

a. In case of 8 clients, namely, Ayodhya Vinimay Pvt. Ltd., Pachratan Enclav Pvt. Ltd., Gurukul Enclave Pvt. Ltd., Vedic Promoters Pvt. Ltd., Gurru Dutt Dhadwal, Jaya Dhadwal, Aman Baid and Kamal Kanta Dhadwal, Noticee has not replaced the client-broker agreements with the "Rights and Obligation" documents as specified in Clause 2 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.
b. In case of 2 clients, namely, Sapana Kayan and Ashok Kayan, I note that the AOFs contain only address proof and PAN. The AOFs do not contain any other documents as required under SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011. Thus, I note that Noticee failed to replace the client-broker agreement with Rights and Obligations as specified in SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011 for the aforesaid 2 clients.
c. In case of 1 client, namely, Chaaya Realty Pvt. Ltd., the AOF belongs to some other SEBI Registered Intermediary instead of AOF executed by Noticee. In view of the same, the allegation levelled against Noticee that Noticee failed to replace client-broker agreement with the Rights and Obligations documents is not tenable for the aforesaid client.
d. In case of 1 client namely, Lachhman Das-HUF, the AOF is not available on record. Therefore, I am unable to ascertain the allegation that Noticee failed to replace the client-broker agreement with Rights and Obligations as specified in SEBI Circular

ref. no. CIR/MIRSD/16/2011 dated August 22, 2011, in respect of the aforesaid client.

18.2. In view of the same, I find that Noticee has failed to replace the client-broker agreement with the Rights and Obligations documents, which is mandatory and binding on the existing and new stock broker (including trading members) and clients in terms of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011, for the aforesaid 10 clients. In this regard, I note that Noticee has not provided any reply for the aforesaid allegation mentioned in the SCN. Therefore, I note that said non-compliance has not been refuted by Noticee. In view of the same, it is established that Noticee has violated Clause 2 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

D. <u>Unable to provide KYC of clients</u>

19. It has been alleged in the SCN that Noticee was not able to provide the KYC of 5 clients, namely Gurukul Enclave Pvt. Ltd., Vedic Promoters Pvt. Ltd., Darshann Kayan, Lachhman Das-HUF, and Kamal Kanta Dhadwal, out of 19 KYC forms selected for sample.

19.1. In this regard, I note that Noticee has submitted that 3 out of the 5 KYCs are of the entities namely, Darshann Kayan, Lachhman Das- HUF and Kamal Kant Dhadwal. Noticee has further stated that Darshann Kayan is his son and so his KYC was not maintained and it could be done at any point of time. Noticee has provided similar logic for the other 2 clients, namely, Lachhman Das- HUF and Kamal Kant Dhadwal who he was claiming were his neighbors and that their KYC could be done at any point of time. Noticee has also submitted that KYC of 2 clients namely, Panchratan Enclave and Vedic Promoters, were submitted to CSE, as and when demanded by them. I am of the view that Noticee being a registered broker has to comply with various Acts, Rules, Regulations, circulars etc. of SEBI or Stock Exchanges. I note that from time to time, SEBI as well as Stock Exchange, have prescribed detailed guidelines or circulars to be followed by registered intermediaries before onboarding any clients. I also note that provision of law does not differentiate between associates/related clients and non-related clients. Therefore, I find that this contention of Noticee is not acceptable.

19.2. In this regard, on perusal of the material available on record, I note that the AOFs of 2 entities, i.e. Vedic Promoters Pvt. Ltd. and Kamal Kanta Dhadwal are available on record. However, the same were not in accordance with the SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011.

19.3. I also note that Noticee, in his reply to SCN, has submitted the AOF of Gurukul Enclave Pvt. Ltd. However, from the AOF submitted by Noticee, it is not possible to ascertain when such KYC was carried out by Noticee or when such account was opened.

19.4. In view of the foregoing and in view of Noticee's own admission, I find that the allegation that Noticee has violated the provisions of Clauses 2,3,4,5 and 6 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011 in respect of 5 clients stands established.

E. **Not capturing income details in AOFs**

20. It has been alleged in the SCN that out of the 19 AOFs selected as sample during the course of inspection, Noticee failed to ensure that the income details of 8 clients, namely, Levia Trading Pvt. Ltd., Templerun Marcom Pvt. Ltd., Gurukul Enclave Pvt. Ltd., Vedic Promoters Ltd., Chaaya Reality Pvt. Ltd., Ashok Kumar Kayan, Lachhman Dass- HUF and Kamal Kanta Dhadwal, were duly filled in the AOFs. It has also been alleged that the 8 clients, whose income details were not available, were the top 25 clients of Noticee in terms of its turnover.

20.1. In this regard, on perusal of the AOFs, I note that:-

a. In case of 4 clients, namely, Levia Trading Pvt. Ltd., Gurukul Enclave Pvt. Ltd., Vedic Promoters Ltd. and Kamal Kanta Dhadwal, the income details were not filled-up by the respective clients. Even Noticee has fail to ensure that the income details of aforesaid clients are furnished in the AOFs.
b. In case of 1 client, namely, Chaaya Realty Pvt. Ltd., the AOF belongs to some other SEBI Registered Intermediary instead of AOF executed by Noticee. In view of the same, the allegation levelled against Noticee that Noticee failed to mention the income detail is not tenable for the aforesaid client.
c. In case of 2 clients, namely, Templerun Marcom Pvt. Ltd. and Lachhman Das-HUF, the AOFs are not available on record. Therefore, I am unable to ascertain the allegation that Noticee failed to mention the income details for the aforesaid 2 clients.

d. In case of 1 client, namely, Ashok Kayan, I note that the income details have been mentioned in the AOF. Therefore, allegation levelled against Noticee that, it has failed to mention income details is not tenable for the aforesaid client.

20.2. I note that income details are one of the main components of KYC. Based on income details provided by clients, Noticee categorised clients into "*Low Risk Category/ Medium Risk Category/ High Risk Category*". Further, based on income/Net worth details, Noticee grants exposure to their clients. I also note that as per "The Prevention of Money Laundering Act (**PMLA**)", if a Registered Intermediary observes, after necessary enquiry, that its client's income details are not commensurate with their trading pattern and observe certain suspicious transactions, it has to report such transactions to "Financial Intelligence Unit–India (FIU-India)." I also note that as a risk containment measure, Noticee should ensure that any exposures granted to its clients are commensurate with their income details. I find that in case of 4 clients, income details have not been not mentioned in the AOFs. I also note that Noticee has not provided any explanation or justification for not capturing income details of aforesaid clients.

20.3. Noticee in his reply has admitted that income details were not captured by it w.r.t. Levia Trading, which was having 96 page documents including bank statement and other enclosures etc. Noticee has also submitted that in 96 page document, in a pre-digitized era, some overlaps and mistakes were bound to happen at a clerical level. Thus, I note that Noticee has admitted the default on its part of not capturing the income details in the AOFs. Thus, I note that Noticee has failed to capture income details for the aforesaid 4 clients. In view of the foregoing, I find that Noticee has violated Clause 3 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

F. Not uploading KYC with KRA

21. It has been alleged in the SCN that out of the 19 Clients, in case of 2 clients, namely, Pachratan Enclav Pvt. Ltd. and Vedic Promoters Pvt. Ltd., Noticee has not uploaded KYC forms with KRA. Further, it has been alleged that in case of following 15 clients, client's KYC documents sent by Noticee to KRA were incomplete in nature.

Sr. No.	Name of client	Sr. No.	Name of client	Sr. No.	Name of client
1	Ayodhya Vinimay Pvt. Ltd.	6	Sapna Kayan	11	Kamal Kanta Dhadwal
2	Littlestar Tradecom Pvt. Ltd.	7	Darshann Kayan	12	Aman Baid

3	Groundzero Vincom Pvt. Ltd.	8	Ashok Kumar Kayan	13	Levia Trading Pvt. Ltd.
4	Swaraj Retails Pvt. Ltd.	9	Guru Dutt Dhadwal	14	Gurukul Enclave Pvt. Ltd.
5	Chaaya Realty Pvt. Ltd.	10	Jaya Dhadwal	15	Lachhman Dass HUF

21.1. In this regard, I note that:-

a. There are no documentary evidence placed on record to show that KYC of 15 clients sent to KRA were incomplete in nature.
b. there is no evidence on record to show that Noticee has not uploaded the KYC of 2 clients with KRA

21.2. From the reply provided by Noticee, I note that Noticee has not offered any specific comments w.r.t. the aforesaid allegation raised in SCN. Noticee has merely stated that if the intention to submit KYC, maintain KRA was not there, then none of these documents would be there like any other CSE brokers at that time. In absence of any documentary evidence, I find that aforesaid allegation levelled against Noticee that KYC of 15 clients are incomplete and that Noticee failed to upload details of 2 clients, to KRA do not stand established. Thus, I find that allegation levelled against Noticee that it has violated Clauses 1 and 4 of SEBI Circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011 and Clauses 3 and 4 of SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012 do not stand established. Further, I note that the provisions of clauses 2 and 3 of SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011 are not applicable to the instant proceedings.

G. Running Account settlement forms and settlement preference

22. It has been alleged in the SCN that in case of 7 clients namely, Ayodhya Vinimay Pvt. Ltd., Levia Trading Pvt. Ltd., Littlestar Tradecom Pvt. Ltd., Groundzero Vincom Pvt. Ltd., Swaraj Retails Pvt. Ltd., Sapna Kayan and Saraswati Vintrade Pvt. Ltd., Noticee failed to ensure that "Running Account Settlement Form" was duly filled up by clients along with their settlement preferences.

22.1. In this regard, on perusal of the AOFs, I note that :

a. In case of 1 client, namely Swaraj Retails Pvt. Ltd. the AOF pertains another SEBI registered intermediary instead of AOF executed by Noticee. In view of the same, the allegation levelled against Noticee that "Running Account Settlement Form" was duly filled up by clients along with their settlement preferences is not tenable for the aforesaid client.

b. In case of 1 client, i.e., Saraswati Vintrade (P) Ltd. the AOF is not available on record. Therefore, I am unable to ascertain the allegation that "Running Account Settlement Form" was duly filled up by client along with their settlement preferences for the aforesaid client.

c. In case of 1 client, namely, Sapana Kayan, I note that the AOFs contain only address proof and PAN. AOFs do not contain any other documents as required under SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011. Thus, I note that the AOFs with respect to aforesaid 1 client was incomplete in nature.

d. In case of 4 clients, namely, Littlestar Tradecom Pvt. Ltd., Ayodhya Vinimay Pvt. Ltd., Levia Trading Pvt. Ltd., Groundzero Vincom Pvt. Ltd., I note that even though clients had signed the Running Account Forms, no preference were selected by them for settling their accounts either on "Monthly or Quarterly" basis. I also note that Noticee failed to ensure that clients incorporated the details regarding settlement preference in the Running Account Form.

e. Therefore, for the aforesaid 5 clients, I find that Noticee failed to ensure that Running Account Settlement Form" was duly filled up by clients along with their settlement preferences.

22.2. In this regard, Noticee in its submission has not provided any reply in respect of the aforesaid allegations mentioned in the SCN. Therefore, I note that said non-compliance has not been refuted by Noticee.

22.3. In view of the same, I find that Noticee has violated Clauses 3 and 4 of SEBI Circular ref. no. CIR/MIRSD/16/2011 dated August 22, 2011

23. It has also been alleged in the SCN that few clients' trading were inconsistent with their financial background and had unusually large transactions and that their delivery based turnover ranges between Rs. 16.67 crores to Rs. 116.82 crores. Further, it has been alleged that the top eleven (11) clients of the broker had bought heavily only in the shares of few penny stocks with high buying concentration ranging from 80 to 100% of their total buying. In addition to above, it has also been alleged that, during the period of their trading in the targeted penny stocks, there have been abnormal spurt/ fluctuations in the price of the scrip ranging from 126.32% to 14,937.37%.

24. In this regard, Noticee in its reply has provided a list of scrips traded each year for the period 2012 to 2016 and volume of trades by them. Further, Noticee has contended that most of the stocks traded by their clients as well as by Noticee were blue chip stocks and these are now part of the Sensex and Nifty. Further, it has been contended that many

stocks traded at the time are now multi bagger stocks and some had become penny stocks. Noticee has further contended that many of top 20 clients as mentioned in SCN had never traded any stocks which were later classified as penny stock. However, on perusal of the Sauda Register, I note that some of the top 20 clients had actually dealt in penny stocks during Inspection Period, which is contradictory to the aforesaid statement made by Noticee. Therefore, I find that contention of Noticee is not acceptable.

25. W.r.t. allegation that clients' trading details were not commensurate with their income details, on perusal of the AOFs, I note that:
    a. In case of 2 clients, namely, Swaraj Retails Pvt. Ltd. and Chaaya Realty Pvt. Ltd., the AOFs belongs to some other SEBI Registered Intermediary instead of the AOFs executed by Noticee. In view of the same, the allegation levelled against Noticee that trading turnover are not commensurate with income details are not tenable for the aforesaid 2 clients.
    b. In case of 4 clients, namely, Templerun Marcom Pvt. Ltd., Lachhman Dass- HUF and Saraswati Vintrade (P) Ltd., Ashok Kumar Kayan-HUF, the AOFs are not available on record. Therefore, I am unable to ascertain the aforesaid allegation that the trading turnover are not commensurate with income details for the aforesaid 4 clients.
    c. In case of 9 clients, namely, Groundzero Vincom Pvt. Ltd., Panchratan Enclave Pvt. Ltd., Vedik Promoters Pvt. Ltd., Kamal Kanta Dhadwal, Aman Baid, Darshann Kayan, Levia Trading Pvt. Ltd., Ayodha Vinimay Pvt. Ltd. and Gurukul Enclave Pvt. Ltd. the income details have not incorporated by Noticee in the AOFs and the total trading turnover of the aforesaid clients is in the range of Rs. 2.98 lakh to Rs. 116.82 crore for the Financial Year ("**FY**") 2012-13 to 2015-16. In case of another client, namely, Little Tradecom Pvt. Ltd., the income mentioned by the client in AOF is "less than Rs. 1 lakh" whereas its trading turnover was Rs. 47.21 crore during the FY 2014-15. In case of 3 clients, namely, Guru Dutt Dhadwal, Sapana Kayan and Jaya Dhadwal the income details mentioned by the said clients in their respective AOFs were in the range of "Rs. 1 lakh to Rs. 5 lakh". However, their respective trading turnover was in the range of Rs. 36.07 lakh to Rs. 7.26 crore for the FY 2012-13 to 2015-16.

26. From the foregoing, I note that Noticee has granted exposure to the clients for amount which were not commensurate with their income details. As a registered market intermediary, Noticee is bound to ensure that any exposure granted to their clients should match with their income details and Noticee should adhere to the prudent risk

management system. If income details mentioned by clients were not commensurate with their trading turnover, Noticee should have taken adequate steps to update the income details of the clients, after obtaining it from the clients. From the material available on record, I note that there is no evidence to show that Noticee has obtained the revised income details of their clients. Further, it is also seen that Noticee continued to grant abnormally high exposures to clients even when their reported income was not commensurate with their trading turnover, which tantamounts to non-adherence of prudent risk management policy by Noticee.

27. It has also been alleged in the SCN that there have been abnormal spurt/ fluctuations in the price of the scrip ranging from 126.32% to 14,937.37%, during the period when Noticee's client had traded in the target penny stocks. In this regard, I note that there are no specific details such as scrip name, price, volume traded by which clients etc. available in record. Further, I note that there is no documentary evidence to substantiate the allegation that on account of trading done by Noticee's clients, there was abnormal spurt/ fluctuations in the price scrip of such scrips. In view of lack of details / evidence, I am not able to ascertain about the allegation that there was abnormal spurts/ fluctuations in the price of the scrip ranging 126.32% to 14937.37% on account of trading done by Noticee's clients in such scrips.

28. Thus, in view of the foregoing, I note that Noticee failed to adhere with the Clause A(2) and Clause A(5) of code of conduct as specified in Schedule-II of Code of conduct for Stock Broker read with Regulation 9(f) of Stock Broker Regulation.

Issue No. II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act

29. It has been established in the foregoing paragraphs that Noticee has violated the following provisions: -
    a. Clauses 2,3,4,5 and 6 of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011;
    b. Clauses A (2) and A (5) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of Broker Regulations.

30. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"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……… .".

31. Therefore, in view of the violations as established and placing reliance on the aforesaid judgment, I find that monetary penalty would be attracted under Section15HB of SEBI Act for the aforesaid violations by Noticee.

32. The texts of Section 15HB of SEBI Act is reproduced as under:

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

Issue No. III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

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

Factors to be taken into account by the adjudicating officer under SEBI Act

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default

Explanation - For the removal of doubts, it is clarified that the power of an adjudicating officer *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.*

34. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the

exact monetary loss to the investors /clients on account of default by Noticee. As regards the repetitive nature of the default, I do not find the Inspection having brought on record any regulatory action taken by SEBI in past against Noticee for same violations as those observed in the instant inspection. I also observe that there are no investor complaints on record, arising out of failure on the part of Noticee. I further note that Noticee in his reply has contended that there was a delay in issuance of SCN, from the date of inspection. It has been noted in the earlier part of the order that there was a delay in issuance of SCN to Noticee, which can be considered as mitigating circumstance.

ORDER

35. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 15J of SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the penalty of Rs. 3,50,000/-(Rupees Three lakhs fifty thousand only) on Noticee, viz. Shri. Ashok Kumar Kayan.

    I am of the view that the said penalty is commensurate with the violations committed by Noticee.

36. 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.

    In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

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

    i. Name and PAN of the entity (Noticee)
    ii. Name of the case / matter
    iii. Purpose of Payment – Payment of penalty under AO proceedings
    iv. Bank Name and Account Number

v. Transaction Number

38. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee 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.

39. In terms of the provisions of Rule 6 of Adjudication Rules, copy of this order is being sent to Noticee viz. Shri Ashok Kumar Kayan and also to SEBI.

Date: May 19, 2022	**SOMA MAJUMDER**
Place: Mumbai	**Adjudicating Officer**