**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/14489]**

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**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) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

In respect of

**M/s. Hardik Fintrade Pvt. Ltd.**

**(PAN: AAACH2867F**)

In the matter of **M/s. Hardik Fintrade Pvt. Ltd.**

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## BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"*SEBI*"***), conducted a comprehensive inspection of M/s. Hardik Fintrade Pvt. Ltd. (hereinafter referred to as "**Noticee/Broker/DP/Hardik**") w.r.t. its Stock Broking and Depository Participants (hereinafter referred to as '**DP**') activities from October 29, 2018 to November 02, 2018. The aforesaid inspection was carried out at Noticee's registered office at 1006-1008, B wing, Atma House, Opp. Old RBI, Nr. Times of India, Ashram Road, Navrangpura, Ahmedabad- 380 009. The period covered in the inspection was from April 01, 2017 till date of inspection i.e. October 29, 2018 (hereinafter referred to as '**Inspection Period'**).

2. Noticee is a SEBI-registered Stock Broker and DP, having SEBI registration number as INZ000203537 as Stock Broker of BSE Ltd. (hereinafter referred to as '**BSE**') and INB2609653111, INE261314830 and INF260965331 of Metropolitan Stock Exchange of India Limited (hereinafter referred to as '**MSEI'**) for currency, Future & Option and cash segments respectively. Noticee is also a DP of Central Depository Services (India) Limited (hereinafter referred to as '**CDSL**') with registration number as IN-DP-184-2016.

3. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**) and Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) for the alleged violations of the following provisions by Noticee:

    a) Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993(herein after referred to as "**Transaction Regulation Circular**"); Clauses 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016(herein after referred to as "**Enhanced Supervision Circular**")
    b) Clause 12 of Annexure A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
    c) Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
    d) SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011
    e) Clause 1 of SEBI Circular No. MIRSD/ Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/ Cir-23/2011 dated December 02, 2011 and SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012
    f) SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010
    g) Clause 2(B)of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
    h) Clause 7 of Annexure to Enhanced Supervision Circular

**<u>APPOINTMENT OF ADJUDICATING OFFICER</u>**

4. Vide order dated January 20, 2020, Shri Prasanta Mahapatra was appointed as Adjudicating Officer (hereinafter referred to as **'AO'**) under Section 15-I of the SEBI Act read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ( herein after referred to as "**SEBI Adjudication Rules"**) and Section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005(herein after referred to as "**SCRA Adjudication Rules**") (Both the two Rules together are hereinafter referred to as **"Adjudication Rules")** to inquire into and adjudge under the provisions of Section 23 D of SCRA and Section 15 HB of the SEBI Act, the aforesaid alleged violations by Noticee.

Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide order dated December 04, 2020.

## SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated July 07 2021, 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 23D of SCRA and Section 15HB of SEBI Act, for the aforesaid violations alleged to have been committed by Noticee.

6. The SCN was sent to Noticee through Speed Post AD and through digitally signed email dated July 08, 2021 and was duly served upon Noticee. Noticee was given fifteen (15) days' time to submit the reply of SCN. Vide email dated July 22, 2021, Noticee requested for personal hearing. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on September 24, 2021 vide hearing notice dated September 06, 2021. The said hearing notice was sent to Noticee through SPAD and through email and was duly served upon Noticee. Noticee vide letter dated September 20, 2021(forwarded through email dated September 21, 2021), submitted reply to the SCN. Noticee also availed of the opportunity of hearing granted to it on September 24, 2021, through WebEx platform where Shri. Mahesh Aswani and Shri Mukesh Vaswani, the directors of Noticee attended the hearing and reiterated the submissions made vide its letter dated September 20, 2021.

7. The allegations levelled against Noticee, their submissions and findings in respect of the same are dealt with in the subsequent paragraphs of this order.

## CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. 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 Section 23D of SCRA and Section 15HB of SEBI Act**?**

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

9. Before moving forward, it is pertinent to refer to the relevant provisions which are reproduced hereunder: -

a. ***Section 23 D of SCRA:*** *If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*

*b.* ***Clause 1 of Transactions Regulation Circular:*** *It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account.*

*c.* ***Clause 12 of Annexure A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009: -*** *Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*

*a. The authorization shall be renewed at least once a year and shall be dated.*
*b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.*
*c. The authorization shall contain a clause that the Client may revoke the authorization at any time.*
*d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.*

*e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.*

*f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.*

*g. Such periodic settlement of running account may not be necessary:*

*i. for clients availing margin trading facility as per SEBI circular*

*ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR)*

*h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.*

*i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.*

*j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.*

***d. 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*

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. *The stock brokers shall take necessary steps to implement this circular immediately and ensure its full compliance in respect of all new clients acquired on or after 15 days from the date of this circular.*
9. *…*
10. *….*
11. *….*

***e. SEBI Circular No. MIRSD/Cir-23/2011 dated December 02, 2011***

1. *As you are aware, SEBI simplified the account opening process for investors vide Circular No. CIR/MIRAD/16/2011 dated August 22, 2011. Further, SEBI vide circular MIRSD/SE/Cir-21/2011 dated October 05, 2011 issued guidelines for uniform KYC requirements for investors while opening accounts with any intermediary in the securities market.*
2. *At present, if a client intends to open accounts with different intermediaries for the purpose of trading / investment in the*

*securities market, he has to undergo the process of Know Your Client (KYC) again and again. Therefore, to avoid duplication of KYC process with every intermediary, a mechanism for centralization of the KYC records in the securities market has been developed.*

3. *An intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client's details from the system of the KRA. As a result, once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary.*
4. *Accordingly, SEBI has formulated the KYC Registration Agency (KRA) Regulations, which have been notified vide notification no. LAD-NRO/GN/2011-12/29/36772 dated December 2, 2011 (copy enclosed). The Regulations cover the registration of KRAs, functions and responsibilities of the KRAs and intermediaries, code of conduct, data security, etc.*
5. *….*
6. *….*

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

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 15, 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. *….*

g. ***Clause 1 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011: 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*

h. ***SEBI Circular Cir/MRD/DMS/13/2010 dated April 23, 2010****:*

*1. A Power of Attorney is executed by the client in favour of the stock broker /stock broker and depository participant to authorize the broker to operate the client's demat account and bank account to facilitate the delivery of shares and pay – in/ pay – out of funds.*

2. *Generally, the PoA is taken from the clients who want to avail internet based trading services. For offering internet based trading services, a Stock Broker requires necessary authorizations for seamless trading, collection of margins as well as settlement of funds and securities. Further, some of the Stock Brokers also obtain authorizations from their clients to offer non-internet based services.*
3. *It has come to SEBI's notice that the clients are compelled to give irrevocable power of attorney to manage client's demat account and bank account so that the client is able to pay funds or deliver shares to its broker on time. In some cases, the PoA even allows a broker to open and close accounts on behalf of the client and to trade on client's account without the consent of the client.*
4. *In order to standardize the norms to be followed by stock brokers/ stock broker and depository participants while obtaining PoA from the clients guidelines have been finalized based on discussions in Secondary Market Advisory Committee of SEBI (SMAC) and feedback from market participants, investor associations, major stock exchanges and depositories on discussion paper on the captioned subject put on SEBI website. It has been decided that the guidelines as set out in the annexure shall be made applicable to stock brokers/ stock broker and depository participants.*
5. *Standardizing the norms for PoA must not be construed as making the PoA a condition precedent or mandatory for availing broking or depository participant services. PoA is merely an option available to the client for instructing his broker or depository participant to facilitate the delivery of shares and pay-in/pay-out of funds etc. No stock broker or depository participant shall deny services to the client if the client refuses to execute a PoA in their favour.*
6. *…..*

i. ***Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011**: As an additional measure, it has now been decided in consultation with the major stock exchanges and market participants that the stock exchanges shall send details of the transactions to the investors, by the end of trading day, through SMS and E-mail alerts. This would be subject to the following guidelines:*

*A. ……*

*B. Uploading of mobile number and E-mail address by stock brokers:*

*i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.*

*ii. Stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address.*

*iii. Stock brokers shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of clients.*

*iv. Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents.*

*j.* ***Enhanced Supervision Circular****:*

***Clause 2.6 of annexure to Enhanced Supervision Circular:-*** *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.*

***Clause 3 of annexure to Enhanced Supervision Circular: Monitoring of clients funds lying with the Stock Broker by the Stock Exchanges:***

*3.1 Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.*

*3.2 Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:*

*A -Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained bythe stock broker across stock exchanges*

*B -Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.*

*C - Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)*

*D- Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issues to clients and the margin obligations)*

*E-Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)*

*F-Aggregate value of Non-funded part of the BG across Stock Exchanges*

*P-Aggregate value of Proprietary Margin Obligation across Stock Exchanges*

*MC-Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges*

*MF-Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges*

*3.3 Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below: 3.3.1.Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:*

*Principle: The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per* *ledger balance (C)Stock Exchanges shall calculate the difference i.e. G as follows –*

*G = (A+B)-C*

*If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.*

*Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:*

*If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.*

*If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:*

*H= |G| -|D|*

*3.3.2. Funds of clients used for Margin obligation of proprietary trading:*

*Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:*

*Principle:*

*The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)*

*If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.*

*The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).*

*If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.I = P -(G+E+F)*

*If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.*
*The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.3.3.3.Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:*

*3.3.3.Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:*
*Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilized towards margin obligations of debit balance clients and proprietary margin obligations.*
*Principle: The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)*
*If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:*
*J = B - (MC + MF)*

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

*In such cases, (C-A)is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:*

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

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

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

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

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

***Clause 7 of annexure to Enhanced Supervision Circular**: Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system*

*The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member*

*7.1.1.Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges.*

*7.1.2.End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)*

*7.1.3.For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities*

*7.1.4.The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month.*

*7.2.Each Stock Exchange shall in turn forward this information to clients via Email and/or SMS on the email IDs and mobile numbers uploaded by the stock broker to the Exchange for their clients.*

*7.3.The above provisions shall be applicable three months from the date of this circular.*

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

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

a) Section 23D of SCRA read with Clause 1 of Transaction Regulation Circular, Clauses 3 of Annexure to Enhanced Supervision Circular
b) Clause 12 of Annexure A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
c) Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
d) SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011

e) Clause 1 of SEBI Circular No. MIRSD/ Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/ Cir-23/2011 dated December 02, 2011 and SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012
f) SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010
g) Clause 2(B)of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
h) Clause 7 of Annexure to Enhanced Supervision Circular

10. I will now proceed to deal with the aforementioned allegations leveled against Noticee in the SCN, the submissions made by Noticee and record my observations/ findings as under:

**A. Mis-utilization of client's funds and securities**

**Allegation in the SCN: -**

1. During the inspection, the total available funds of Noticee i.e. cash and cash equivalents across all stock exchanges and with the clearing corporation/clearing member was compared with total credit balances of all clients as obtained from Trial Balance across all stock exchanges for calculation of G for all the trading days in February 2018. In this regard, the analysis of sample data according to the principle laid down in point 3.3.1 of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, (hereinafter referred to as '**Enhanced supervision circular'**) is given in the following table:

| Date | Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges | Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all Stock Exchanges. Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered | Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation) | Amount of utilisation |
|---|---|---|---|---|
| 01/02/2018 | 1840857.76 | 3466796.43 | 19291470.82 | -13983816.63 |
| 02/02/2018 | 2469700.83 | 3341796.43 | 18498871.47 | -12687374.21 |
| 05/02/2018 | 2060720.52 | 3341796.43 | 20038769.17 | -14636252.22 |
| 06/02/2018 | 2728106.50 | 3491796.43 | 20361862.85 | -14141959.92 |

| Date | Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges | Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all Stock Exchanges. Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered | Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation) | Amount of utilisation |
|---|---|---|---|---|
| 07/02/2018 | 2325689.02 | 3491796.43 | 19127674.68 | -13310189.23 |
| 08/02/2018 | 2831018.73 | 2691796.44 | 19707124.90 | -14184309.73 |
| 09/02/2018 | 1113727.92 | 2691796.43 | 18023934.75 | -14218410.40 |
| 12/02/2018 | 1713454.71 | 2691796.43 | 16762728.15 | -12357477.01 |
| 14/02/2018 | 1277586.81 | 2691796.43 | 16718695.65 | -12749312.41 |
| 15/02/2018 | 2559870.77 | 2691796.43 | 18028001.15 | -12776333.95 |
| 16/02/2018 | 471301.28 | 2691796.43 | 17312120.15 | -14149022.44 |
| 19/02/2018 | 878954.98 | 2691796.43 | 17262684.65 | -13691933.24 |
| 20/02/2018 | 1359748.54 | 2691796.43 | 17937702.67 | -13886157.70 |
| 21/02/2018 | 1919001.87 | 2341796.43 | 18435835.92 | -14175037.62 |
| 22/02/2018 | 1407102.10 | 2091796.44 | 16635248.40 | -13136349.86 |
| 23/02/2018 | 1220688.85 | 2091796.44 | 16277954.33 | -12965469.04 |
| 26/02/2018 | 783834.35 | 2091796.44 | 15179724.11 | -12304093.32 |
| 27/02/2018 | 557304.84 | 2091796.44 | 15008059.08 | -12358957.80 |
| 28/02/2018 | 1355451.04 | 2091796.44 | 15971047.83 | -12523800.35 |

2. As per the provisions of the Enhanced supervision circular, the Principal G, as referred in the Table-1 i.e. the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (points A + B in the Table-1), should always be equal to or greater than Clients' funds as per ledger balance (point C in the Table-1). If G is negative, it implies that the total available fund is less than the ledger credit balance of clients. The value of G indicates utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

3. Based on the findings of inspection and analysis given in the Table-1 above, it was observed that on all the 19 instances, the value of G was negative. Therefore, it is alleged that on 19 instances, Noticee had mis-utilized credit balance client funds for the purpose of debit balance clients and for own purposes in the range of Rs. 1.23 crore to Rs. 1.46 crore. Thus, it is alleged that Noticee has violated the following provisions:

a. Section 23D of SCRA read with Clause 1 of SEBI Circular SMD /SED / CIR / 93/23321 dated November 18, 1993 (herein after referred to as '**Transactions Regulation Circular'**).
b. Clause 3 of Annexure to Enhanced supervision circular.

**Reply of Noticee:**

4. *We have attached Excel data showing details of Holding Valuation and POA status of all debit balance clients for some days (05/02/2018, 06/02/2018, 08/02/2018, 09/02/2018, 16/02/2018, 21/02/2018 to show that there was less Risk at client level.*

5. *Please also note that we are not doing pro trading and there is not a single grievance from Investor for any reason and also we have settled the funds of clients according to SEBI Norms (within 30/90 days) except some technical software error and minor amounts.*

6. *We have also provided latest enhance supervision data as on 09/09/2021(along with supporting documents) to show that we have improved our system and there is not any misuse of client Funds and No alert was generated.*

**Observations/ Findings**

7. I note that Noticee has not provided any reason for mismatch in valuation of G. I further note that Noticee, in its submission, has accepted that the funds of credit balance clients has been utilized for other purposes by it i.e. it has been utilized either for settlement obligation of debit balance clients in some instances. As per Enhanced Supervision Circular, the negative value of G indicates misutilization of fund of credit balance clients for settlement obligations of debit balance clients or for own purposes. As already brought out above, Noticee has accepted that there has been a lapse in this regard and there was mis-utilization of clients' funds. Noticee has also stated that subsequently, they have improved their systems to avoid such misutlization.

8. Therefore, in view of the admitted position of default by Noticee, I find that the allegation, that Noticee has violated Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular stands established.

B. **Segregation of Clients' funds**

**Allegation in the SCN**

1. During the inspection, bank books obtained from the stock broker was verified with the bank statements and active client list to ascertain, *inter- alia,* pay in and pay-out of funds, whether client funds and Noticee's own funds were maintained in separate bank accounts, whether clients funds were routed through the client bank accounts, whether funds received or paid were from or to respective clients' accounts only, etc. It was observed that dividend received on behalf of clients was routed through Noticee's own bank account. (HDFC Bank Account nos. 00060340000498 and 0006030000506). Further, it was observed that Noticee failed to transfer the dividends to clients within a time frame of 90 days. The total amount involved was Rs. 48,021/-. Therefore, it is alleged that Noticee has violated the following provisions:

i. Section 23D of SCRA read with Clause 1 Transactions Regulation Circular.
ii. Clause 3 of annexure to Enhanced supervision circular.

**Reply of Noticee**

2. We wish to inform you that due to non-availability of dividend details we were unable to find Investor details to whom amount to be paid. Due to this reason dividend payment was delayed. Now we have paid all pending dividends and copy of Dividend ledger is attached for your reference. Now onwards we are paying dividends within prescribed time limit.

**Observations/ Findings**

3. I note that Noticee, in its submission, has accepted that they were unable to find the investors details to whom the amount was required to be paid, due to

which there was delay in payment of dividend to the clients. Considering that Noticee has accepted the said allegation, I find that the allegation that Noticee has violated Section 23D of SCRA read with Clause1 of Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular, stands established.

## C. Non settlement of Clients' funds and securities

### Allegation in the SCN

1. During the inspection, it was checked whether the clients' accounts were settled on monthly/quarterly/ basis as per the preference given by the clients. During the inspection, it was observed that Noticee had not done the quarterly settlement of inactive clients for the different quarters during the inspection period, as per details given below: -

| **Quarters** | **Number of inactive clients not settled** | **Amount of non-settlement** |
|---|---:|---:|
| April 2017 to June 2017 | 14 | 95,519 |
| July 2017 to September 2017 | 13 | 1,17,828 |
| October 2017 to December 2017 | 07 | 14,803 |
| January 2018 to March 2018 | 08 | 19,558 |
| April 2018 to June 2018 | 19 | 34,665 |
| July 2018 to September 2018 | 33 | 63,454 |
| **Total** | **94** | **3,45,829** |

2. Therefore, on account of such non-settlement of clients' funds, it is alleged that Noticee has violated Clause 12 of Annexure to SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

### Reply of Noticee

3. We are doing settlement multiple times during the quarter/month. We had provided system generated settlement data and where multiple settlement was done, the system has taken random date during the quarter / month. Due to this reason, there is more than 90 days gap between two settlements.

4. In most cases non settlement is due to debit balance in DP Ledger. This was also informed to Inspection team during Inspection.

5. In our earlier reply we had given revised sheet. We are providing the same details again for your reference.

**Observations/ Findings**

6. I note that Noticee, in its reply has accepted that there was a time gap of more than 90 days between two settlements due to a system error. Further, Noticee in its reply has also admitted that there was non-settlement due to debit balance in DP ledger. I note that Noticee has also provided an excel sheet for reference. On perusal of the excel sheet I note that, the aforesaid excel sheet also does not indicate timely settlement of running account of clients by Noticee. In view of Noticee's own acceptance, I find that allegation levelled against Noticee that it has violated Clause 12 of Annexure to SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 stands established.

D. **Client Funding**

**Allegation in the SCN**

1. During the course of inspection, it was checked whether Noticee had granted further exposure to its clients after 5 days (from the 6th working day) from pay-in date of securities i.e. T+2+5, even though there were non-recovery of debit balances (after considering free collaterals) from the clients. It was observed that Noticee had granted exposure amounting to Rs. 2,36,91,424 /- to seventeen ('17') clients beyond T+2+5 days. Therefore, it is alleged that Noticee has violated clause 2.6 of Annexure to Enhanced supervision circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/64 dated June 22, 2017.

**Reply of Noticee**

2. As per SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated 22/06/2017 Point 2d clearly indicates that T+2+5 is effective from 01/08/2017.

But, As per your report you have taken records prior to 01/08/2017. We have attached revised details in for your reference.

3. Also note that you have mentioned further exposure of Rs 2,36,91,424/- which not correct and it is debit balance of clients. As per revised sheet further exposure is only Rs. 9,62,906

**Observations /Findings**

4. I note that SEBI, vide its circular Cir/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, modified Clause 2.6 of SEBI circular, which read as follows:

   *"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."*

5. I note that aforesaid circular became effective from August 01, 2017. On perusal of the excel sheet provided by Noticee along with their reply, I note that calculation where Noticee has granted further exposure in terms of this circular would be Rs.9,62, 906 instead of Rs. 2,36,91,424/- as alleged. In any case, by Noticee's own admission, Noticee had granted further exposure to the tune of Rs. 9.63 lakh to its clients beyond T+2+5 days subsequent to aforesaid SEBI Circular.

6. In view of the same, I find that the allegation that Noticee has violated clause 2.6 of Annexure to Enhanced supervision circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/64 dated June 22, 2017 stands established.

E. **Discrepancies in KYC and KRA Process**

7. During the inspection, client registration process w.r.t. following were verified on sample basis:

a. Account Opening Form (Blank), tariff sheet, In Person Verification (IPV) carried out of clients, Power of Attorney (POA) etc.
b. Uploading of KYC details with the KYC Registration Agency ('**KRA**').
c. Uploading of Email id and mobile number in the Unique Client Code ('**UCC**') database of the Exchange.
d. Email ids and mobile numbers of all active clients were uploaded in the platforms of stock exchanges

**i. <u>Allegation in SCN w.r.t. client registration process</u>**:

1. There was no specific mention of any charges to be levied from the client and the tariff sheet, which specifies various charges, including brokerage, payable by the clients, was either left blank in the KYC signed by the registered client or certain internal codes of the stock broker were specified which did not indicate how much exact charges will be levied by the stock broker from the clients.

2. In fifteen (15) KYC forms, the instructions for filling up the KYC form was not provided as mandated in SEBI Circular ref no. CIR/MIRSD/16/2011 dated August 22, 2011.

3. In twelve (12) KYC forms, running account settlement preference was not obtained from the clients for settlement on Monthly or Quarterly basis of funds and securities.

4. In fifty (50) sample POAs, none of the POA agreements were dated. It was further observed that in certain POAs, neither there was any mention of name of client, nor mention of his Beneficiary Ownership ID nor any mention of any date in the POA stamped agreements. In the POAs of client codes UCC A599 and D541, it was observed that just signatures of the clients were obtained. Similar discrepancies were also observed in POA for clients with BOID 48170, 48508, 48512. In view of the above, it is alleged that the Noticee has violated the following provisions:

    a. SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 for para E-7(i)(1) to E-7(i)(3)

b. SEBI circular CIR/MRD/DMS/13/2010 dated April 23, 2010 for para E-7(i)(4).

**Reply of Noticee**

5. As the Brokerage charges vary from client to client we have defined different Brokerage Module Numbers. We only mention Brokerage module number in the KYC Form. We are providing details of Brokerage module number and corresponding Brokerage to clients at the time of account opening. We have not charged any other charges except Brokerage and other Govt. Tax and Exchange Charges.

6. We have incorporated checklist for filling KYC forms and not given instructions for filling up the KYC Form. We have given sufficient instruction and only format has been changed.

7. We have incorporated option to select Monthly or Quarterly settlement option. But in some cases client has not selected any option and only signed the declaration. In such cases we have done Quarterly settlement. In some cases client has not selected any option but signed under Quarterly option( Client Code - Y37, Page -44)

8. Regarding POA Format, There is no specific format issued by exchange or SEBI. We have now changed our Format and witness and date has been incorporated in our new POA Format. In some cases POA form was not properly filled, we have taken note of the same and take due care while filling the POA Forms.

**Observations/Findings**

9. W.r.t. allegation regarding non- mentioning of specific charges to be levied from client, I note that Noticee in its submission has mentioned that they were charging different brokerage to different clients, for which they were having separate module number and the same were incorporated in KYC form. However, Noticee has not provided any documents/ evidence to justify that clients were provided with brokerage tariff. Therefore, I find the

contention of Noticee untenable. Therefore, I find that allegation levelled against Noticee that it has violated SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011, stands established.

10. W.r.t. allegations regarding instructions for filing up KYC forms, I note that Noticee, in its reply has admitted that they have not incorporated instructions for filling up the KYC Form. In view of the same, I find that allegations levelled against Noticee for violation of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011, stands established.

11. W.r.t. allegations regarding settlement option of running account i.e. monthly or quarterly, I note that Noticee, in its submission has mentioned that in some of the cases client has not selected any option and only signed the declaration and accordingly, they had selected quarterly segment. Noticee in its reply also submitted that in case of client code Y37, client had signed in quarterly segment and accordingly, they were settling the client account on quarterly basis. I find merit in the submission of Noticee and accordingly conclude that the allegation raised against Noticee for violation of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 does not stand established.

12. W.r.t. allegation regarding POA, I note that Noticee, in its submission, has accepted that they had not incorporated date and witness in the POA documents and they had made necessary changes in their system later. I note that Noticee has accepted the default on its part. Therefore, I find that allegation levelled against Noticee that it has violated SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010 stands established.

**ii. Allegation w.r.t. Uploading of KYC information on the system of KRA**

1. During the course of inspection, it was observed that there was delay in the range of twelve (12) days to four hundred ninety-eight (498) days in uploading KYC details in KRA for two hundred seventeen (217) clients during the inspection period. The age wise analysis is as under:

| Delay in days | No. of accounts |
|---|---|
| 12-20 | 115 |
| 21-50 | 81 |
| 51-76 | 05 |
| 166-169 | 02 |
| 216-231 | 07 |
| 262-298 | 03 |
| 321-351 | 02 |
| 475-498 | 02 |
| Total | **217** |

2. Therefore, it is alleged that Noticee has violated Clause 1 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with SEBI circular no. MIRSD/Cir-23/2011 dated December 2, 2011 and SEBI circular MIRSD/Cir-5/2012 dated April 13, 2012.

**Reply of Noticee: -**

3. We regularly upload the KYC details but in some cases it is delayed due to some technical reasons, like some missing details in KYC or documents not properly scanned. Now we have improved our internal procedure to avoid such instances

**Observation/Findings:**

4. I note that Noticee in its reply has admitted to the lapse, stating that there were delays in uploading KYC details due to technical reasons, and subsequently, they had improved their internal procedure. In view of the same, I find that the allegation that Noticee has violated Clause 1 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with SEBI circular no. MIRSD/Cir-23/2011 dated December 2, 2011 and SEBI circular MIRSD/Cir-5/2012 dated April 13, 2012 stands established.

**iii. Allegation w.r.t. Clients Email id & Mobile numbers**

1. One thousand ten (1010) emails ids were mapped to three thousand one hundred eighteen (3118) clients i.e. multiple clients.

2. One thousand forty-eight (1048) mobile numbers were mapped to three thousand four hundred twelve (3412) clients i.e. multiple clients.
3. In view of the above, it is alleged that Noticee have violated the Clause (B)(iv) of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011.

**Reply of Noticee**

4. Some clients have given same Email and Mobile Number for multiple accounts. We have suspended all such accounts for trading. We have activated such accounts only after submitting proper details.

**Observations/ Findings**

5. I note that as per SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011, stock brokers are permitted to upload same mobile number ad email id under exceptional circumstances at the specific written request of a client provided such clients belongs to one family. Family for this purpose would mean self, spouse, dependent children and dependent parents. I note that Noticee in its reply has not provided any reason for uploading the same email id and same mobile number for multiple accounts. I also note from the submission of Noticee that Noticee had granted trading access to such multiple accounts and only suspended these account at a later date. In view of the same, I find that the allegation, that Noticee has violated Clause 2(B) of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011 stands established.

F. **Analysis of Enhanced Supervision data**

**Allegation in SCN**

1. As per clause 7 of Annexure to Enhanced Supervision circular, stock broker has to upload details of all clients to the exchange under client funds & securities module. During the course of inspection, it was observed that Noticee failed to upload the details of all clients to the Exchange client funds & securities module of enhanced supervision for the month of April

2018. Therefore, it is alleged that Noticee has violated clause 7 of Annexure to Enhanced Supervision Circular.

**Reply of Noticee**

2. Noticee has not submitted any reply w.r.t. aforesaid allegation.

**Observation / Findings**

3. I note that Noticee has not disputed the allegation and has not provided any reply w.r.t. to the same. Therefore, I note that said non-compliance has not been refuted by Noticee. Accordingly, I find that allegation levelled against Noticee that it has violated Clause 7 of Annexure to Enhanced Supervision Circular stands established.

**Issue No. II: Do the violations, if any, attract monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act**

11. It has been established in the foregoing paragraphs that Noticee has violated the following provisions: -
    a) Section 23D of SCRA read with Clause 1 of Transaction Regulation Circular and Clauses 3 of Annexure to Enhanced Supervision Circular
    b) Clause 12 of Annexure A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
    c) Clause 2.6 of Annexure to Enhanced Supervision Circular read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
    d) SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011
    e) Clause 1 of SEBI Circular No. MIRSD/ Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/ Cir-23/2011 dated December 02, 2011 and SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012
    f) SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010
    g) Clause 2(B)of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
    h) Clause 7 of Annexure to Enhanced Supervision Circular

12. 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……… .".* Therefore, the aforesaid violations committed by Noticee attract monetary penalty under Section 23D of SCRA, Section 15HB of the SEBI Act and Section 19G of Depositories Act which read as follows:

***Section 23 D of SCRA-*** *Penalty for failure to segregate securities or moneys of client or clients**:** If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

***Section 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.*

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

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

***Factors to be taken into account by adjudicating officer under SCRA***

***23J.*** *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely: —*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default.*

*Explanation*-For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

***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*

14. 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. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Such disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent.

## ORDER

15. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act, I, in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on Noticee, viz. Hardik Fintrade Pvt. Ltd.: -

| **Sr. No.** | **Penalty** | **Under the provisions of** |
|---|---|---|
| 1 | Rs. 2, 50,000/-( Rupees Two Lkah Fifty Thousand only) | Section 23D of SCRA |
| 2 | Rs. 2, 00,000/-( Rupees Two only) | Section 15HB of SEBI Act |
| **Total** | **Rs. 4,50,000/-( Rupees Four Lakh Fifty Thousand only)** | |

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

16. 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

17. 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

18. 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.

19. In terms of the provisions of Rule 6 of Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Hardik Fintrade Pvt. Ltd. and also to SEBI.

**Date: December 14, 2021**
**Place: Mumbai**

**SOMA MAJUMDER**
**Adjudicating Officer**