BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/KL/2019-20/7089]

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) 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 BY ADJUDICATING OFFICER) RULES, 2005.

In respect of
NNM Securities Pvt. Ltd.
PAN: AAACN8070G

In the matter of
NNM Securities Pvt. Ltd.

FACTS OF THE CASE

1. The Securities and Exchange Board of India (‘**SEBI’**) conducted an inspection of the stock broker NNM Securities Pvt. Ltd. (hereinafter referred to as ‘**NNM’ / ‘the Noticee’**) for the period April 01, 2016 to March 31, 2018 (hereinafter referred to as ‘**Inspection period**’) to verify whether NNM had complied, *inter alia,* with the provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ‘**SCRA’**), SEBI Circular SMD/SED/CIR/93/23321 (Regulation of Transactions Between Clients and Brokers) dated November 18, 1993, SEBI Circular MRD/DoP/SE/Cir-11/2008 (‘Collateral Deposited by Clients with Brokers’) dated April 17, 2008, and SEBI Circular MIRSD/SE/Cir-19, 2009 (‘Dealings Between a client and a Stock Broker’) dated December, 2009. The aforementioned circulars are hereinafter collectively referred to as ‘**SEBI Circulars**’.

2. Based on the findings of the inspection, it is noted that the Noticee during the inspection period, as a Stock Broker, has not settled funds of its inactive clients ranging from Rs 97.19 lakhs to Rs 2.15 crores. It was further noted that out of the 135 randomly selected instances, the running account settlement of active clients was not done in 93 instances, which was aggregating to Rs.26.97 crores. Further, it was also alleged that on 16 out of 19 trading days of March 2018, the Noticee has misused the funds of credit balance clients for the purpose of its debit balance clients. Such misuse of funds ranged from 17% to 83% of the funds of credit balance clients and the amount ranged from Rs. 3.38 crore to Rs. 18.09 crore. In view of the above allegations/findings, it is alleged that the Noticee has violated the following provisions of SCRA and SEBI Circulars:
   i. SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009.
   ii. Section 23D of SCRA, 1956.
   iii. SEBI Circular SMD/SED/CIR/93/23321 dated Nov 18, 1993.
   iv. SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer, vide order dated August 26, 2019 under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) and also under Section 23 I of the SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act')** and Regulation 23D of SCRA, for the alleged violations of relevant provisions of SCRA and SEBI Circulars, committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice with reference number SEBI/EAD/AA/KL/33478/2019 dated December 13, 2019 (hereinafter referred to as '**SCN'**) was issued to the Noticee

under Rule 4 of the Adjudication Rules and SCRA Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty should not be imposed on it under Section 15HB of the SEBI Act and Section 23D of the SCRA, wherever applicable. The allegations made against the Noticee in the SCN are summarised below:

5. The Noticee vide its letters dated January 23, 2020 and January 27, 2020 submitted the following in its reply to the SCN:

Settlement of running account

Running Account Settlement of active and inactive clients:

a) *We respectfully submit that while calculating the details of clients whose accounts were not settled under the inactive clients, only ledger balance of clients who have executed transactions for sale and purchase of shares at NSE can be considered and the credit balance of other categories like Remisiers' deposit, loan from family members or clients cannot be considered while calculating alleged defaults.*

b) *We state that the information given in Annexure 5 is not only about the clients whose balance were unsettled, but the said code (described by SEBI as client code) falls into 19 categories which cannot be considered as our failure to settle the clients dues.*

   i. Promoters account: Client Code M049 is our promoters account and there is no obligation to settle the account.

   ii. Family account- Code B001 (Rs. 4,062.00), G014 (Rs.100.00), G102 (Rs. 337.03), G166 (Rs.1,02,086.13), G211 (Rs. 71,534.56), G214 (Rs. 1,930.29), G215 (Rs 500.00), G216 (Rs. 500.00), G217 (Rs. 10,116.04), G222 (Rs. 246.06), G223 (Rs. 246.06), G224 (Rs. 246.06), K059 (Rs. 6,795.54), K060 (Rs. 672.02), K062 (Rs. 6,767.80) and K264 (Rs. 6,276.04). Since these accounts belongs to the family members of our promoters therefore, they were not required to be settled on quarterly basis. Non-settlement of dues to the family cannot be considered as misutilisation of credit balances of the clients for the benefits of clients who have debit balances.

   iii. Account opening charges: 3 clients (M477, M478 and MS07) Rs. 5,000/-. The Account opening charges were not debited and hence the outstanding cannot be considered for the purpose of quarterly account settlement.

   iv. Court case: Mr. Anand Agarwal (Client code A302) has filed Commercial Suit No. 614/2017 and made our Managing Director as Guarantor and therefore Rs. 1,96,117.16 unpaid cannot be considered as non- payment/settlement of clients' *dues as there is dispute between us. Annexure 1 is the copy of Bombay High Court Suit and copy of the order.*

v. Remisiers deposit: Code D110 (Rs. 30,000/-), Code V089 Rs. 15,000/- and Code S783 Rs. 61,47,538.23 are the deposits by Remisier not payable on pay-out or quarterly settlement. Annexure 2 are the copies of Remisier registration certificates issued by the Exchange.

vi. Inactive clients: client code S131, S98, P454, S004, B271 belongs to the category of inactive clients whose whereabouts are not known to us. We attempted to transfer funds but were unable to do so and hence cannot be considered as violation of SEBI circular.

vii. ZEAL: Code ZEAL (Rs. 3,15,000/-) is not client code but related to the fees received towards professional services rendered for market making. Annexure 3 is the bill raised by us on ZEAL.

vii. KAR MALCO: KAR MALCO is not a client account, but a balance shown as a Balance Sheet entry and not an obligation to pay as constituent. •

ix. Difference in trial balance under code OPDIFF - Rs. 3,214.13 is not a client account.

x. DIFF SD: DIFF SD is not a client account but some difference in stamp duty payment and cannot be considered as amount payable to the client.

xi. Annual maintenance and demat charges not debited: 111 clients who have not paid annual demat account maintenance charges and demat transaction charges, the outstanding amount were less than these charges and therefore not payable. In view of this, no amount was outstanding and payable. Annexure 4 is the printout of XL sheet based on Annexure 5 of the captioned SCN giving details of client code, balance outstanding and category in which belongs.

xii. Client deposit: Client code A237 (Rs. 5,00,000/-). the client has made deposit and the amount is not due and payable as pay-out of any transaction executed by the client. Since this amount is not due against the transaction executed at NSE, same cannot be considered as violation. Annexure 5 is the confirmation letter issued by the client code A237.

xii. Client expired and legal heirs have not submitted

Succession Certificate: Client code D280 (Rs .30,99,000/-), the client expired on 28th May 2018 and we have not yet received Succession Certificate from the legal heirs and therefore funds cannot be transferred. Annexure 6 is the copy of death certificate of Mr. Jayant Dave.

xiv. Deposit from client: K420 given a loan of Rs .27,04,529.23 and no obligation to make pay-out.

xv. Clients regularly executing transactions: 166 clients are executing transactions on regular basis and therefore the amount outstanding at the end of the quarter was retained to meet obligations in the next 5-6 days of the next quarter which is permissible under SEBI circular no. MIRSD/SE/Cir-19/2009 dated 3rd December 2.009. Annexure 7 is the XL sheet printout showing the client codes of 166 clients whose accounts were settled every 2/3/4 quarters.

xvi. Clients regularly executing transactions: 45 clients are executing transactions on regular basis and therefore the amount outstanding at the end of the quarter was retained to meet obligations in the next 5-6 days of the next quarter which is permissible under SEBI circular no. MIRSD/SE/Cir-19/2009 dated 3rd December 2009. Annexure 8 is the XL sheet printout showing the client codes of 45 clients whose accounts were settled every 5/6/7 quarters.

c) *We state that the maximum amount under the head not settled given under Table 1 in para 4 of the SCN is erroneous as Rs. 34,99,000/- shown for first three quarter belongs to Loan given by Late Mr. Jayant Dave who died on 28th May 2018 and his legal heirs have not submitted legal heirship certificate. Similarly, Rs 61,47,538/- shown for next four quarter is neither the amount due to inactive client nor against the transactions executed. Mr. Kamal Sodhani has given deposit as his wife Mrs. Varsha Sodhani is acting as Remisier. In view of these, it is clear that average amount calculated in Table 1 under para 4 is also wrong. Annexure 9 is the copy of Remisier registration paper of Mrs. Varsha K. Sodhani.*

d) *We state that the information given in column 2 of Table 1 under para 4 is also erroneous as out of the numbers shown in the column 2, majority of client's balances were pending towards demat account AMC as well as demat transaction charges. As such we have only 5 inactive clients (Code C131, NS98, P454, S004 and 8271) having aggregate outstanding of Rs. 46,528.47. We attempted to make the payment, but the bank details given by the said clients have changed and therefore we could not pay. We respectfully submit that non- payment of credit balance to these clients should not be considered as our default as the same is beyond our control.*

e) *The other accounts were the ledger balance showing same balances from quarter to quarter are not inactive clients, but the small amounts of credit balance were not settled as the demat account AMC as well as demat account transaction charges are outstanding. Once we give effect to both these debits for which we are entitled, majority* *of the account falling in the category shown under Column 1 in Table 1 under para 4 will be eliminated.*

f) *In view of the information given above, it is clear that the information given in Table 1 under para 4 of the SCN is erroneous as the number of clients mentioned in each quarter and the maximum amount outstanding differ significantly and therefore the information given under the Head 'Aggregate credit balance not settled' requires reconsideration.*

g) *We state that your allegation in para 5 and 6 of the SCN is based on erroneous presumption as we have provided the details and categorised the clients head wise. Number of inactive clients are only 5 whose outstanding amount is only Rs. 46,239 .97. The major category of 111 clients whose amounts were not paid aggregating Rs. 1,55,849.72 because the demat AMC and demat transaction charges are recoverable from the said clients. There are other accounts like family accounts, account opening charges etc. The quantum of funds amounting to Rs. 1.37 crores is erroneous. We shall refer to and rely upon Annexure 4 at the time of personal hearing.*

Misuse of client funds.

h) *We respectfully submit that while calculating the obligation of a TM, the credit balance shown under the other categories like promoters fund, sub-broker/remisier's deposit, fees deposit by a client towards markets making assignment, amount withheld due to High court case etc. are required to be deleted. In other words, while calculating the availability of the funds in the hands of TM, only the credit balance in the account of the clients who have executed transactions subject to the Byelaws and Regulation of NSE should be considered.*

i) *We respectfully submit that while calculating the availability of the funds and/or shortage of funds, as alleged, it is necessary to consider the debit balance lying in the account of family members of a creditor client, who has given undertaking to treat all the family accounts as one for the purpose of availability of funds for continuous transactions.*

j) *We respectfully submit that while calculating the funds available under Column A of Table 1 in para 10, you have erroneously not considered the funds available in our all the bank accounts viz. Bank of India, ICICI Bank and HDFC Bank. Similarly, while calculating the collateral deposits with Clearing House and Clearing Member you have erroneously not considered our deposit with Clearing Member Edelweiss. Due to these error total funds available with us is showing wrong amounts. Annexure 10 is the printout of the XL sheet giving details of date wise funds available with banks and Clearing House I Clearing Member, Annexure 11 are the copies of bank statement with Bank of*

India, Yes Bank, HDFC Bank and ICICI Bank and Annexure 12 are the copies of the statement issued by NSCCL, ICCL and Edelweiss showing our deposits.

k) *We respectfully submit that after considering all the funds available with the Banks and deposits with the Clearing House and Clearing Member, it is clear that the amount shown under Column A and B of Table 1 under para 10 requires substantial correction. We are producing below a table showing actual availability of cash in the bank account and deposit with Clearing House and Clearing Member and excess amount to the amount shown in Table 1 under para 10 as under*

l) *We respectfully submit that after considering the credit balance of other than the clients like promoters, Remisier deposit unsecured loans, the net amount due and payable to client is substantially lower than total credit balance shown under Column C in Table A under para 10. We are reproducing below a table showing total credit balance as per Column C of Table A under para 10 of the SCN and the total credit balance of other category to show that actual amount payable to client were much less than the amount shown in the SCN. Annexure 13 is the printout of XL sheet giving details of the promoter's credit balance, deposit from Sub- broker/Remisier and unsecured loan, Annexure 14 is the printout of the ledger for the relevant period as per accounting package for the promoter category, Annexure 15 is the printout of the ledger account for deposit by Sub- broker/Remisier and some clients and Annexure 16 is the printout of ledger account of unsecured loans from friends and relatives.*

m) *We state that in addition to the credit balances of the promoters, Remisier deposit and unsecured loans, as detailed in Annexure 13, there are group of clients wherein one member of the family/group has a credit balance but the other members of the family/group have debit balance. On the basis of the authority given by the family/group, the credit balance of a member of a family/group retained to accommodate the debit balance of other members of the family/group. This clearly shows that the credit balance of a client is not misused as alleged for the benefit of debit balance clients not connected with the credit balance client but same is used for the family/group. We are giving below the amount belongs to this category of family/group to reach to a final amount of clients credit balance which were lying with us.*

n) *In view of the above facts and circumstances and information given in the above tables, it is clear that the allegation under para 9 of the SCN under the Head 'Misuse of client funds ' is erroneous as the amount of shortage shown in the SCN is based on incorrect input of data furnished by us in our reply dated 10th December 2018. We, further state that the information given in Annexure 10 and 13, documents attached with other*

Annexures and the analysis of data in Table 1 to 3 read with Table no. 4 indicate availability of sufficient funds at all point of time except on 121h March 20 18 when there was shortage of Rs. 39,58,008.71. We are producing below a table showing net availability of funds (including the funds with Clearing House and Clearing Member) and the actual credit balance of clients and the net funds available.

o) *The funds considered in Table 1 under Para 10 of the SCN is based on some wrong data about the clients ' balances. The amount considered under the Head 'Total credit balances' under Column C is erroneous for the following reasons:*

   i. *Promoters' funds: Our promoters have deployed funds to enable us to do the braking business and there is no obligation to repay the said promoters ' capital. At least this amount cannot be considered for the purpose of calculating the availability of funds to discharge the clients' obligations. We are giving below details of the promoters' funds as under:*

   ii. *Deposit from sub-broker Remisier : During the relevant period, as given in Table 1 under Para 10, we had 4 sub-brokers/ Remisiers who had made deposits and the said amount was not payable on settlement to settlement but was a security deposit and therefore the same amounts are liable to be reduced from the debit balance. We are giving below details of the Sub- brokers /Remisiers deposits as under:*

   iii. *Unsecured loans from friends and relatives: During the relevant period as given in Table 1 under Para 10, we had taken loans from friends and relatives for the purpose of our business of market making and same were posted under the ledger code. These amounts were not payable from settlement to settlement and wrongly considered and included in Column C. We are giving below details of the loan taken from friends and relatives as under*

   iv. *Debit balances of clients' family members were not considered: There are clients who have credit balance but their group of clients having debit balances. While arriving at the amount of misutilization of funds these data were not considered. We are giving below details of the debit balances of clients or clients ' family members as under:*

p) *We state that your observation under para 11 of the SCN that in 16 out of 19 cases the broker has misused client funds and misuse client funds range from 17% to 83% and the allegation that funds of credit balance clients have been used for the purpose of debit balance clients is erroneous in view of the above information and the documents attached herewith. The Table No. 3 and Annexure referred therein clearly shows that on all the dates the availability of funds was much higher than the clients credit balance and there is no misutilization of client who have credit balance for the benefit of the client who have debit balance*

q) *We state that your observation in para 12 of the SCN that your findings are in accordance with provisions of Section 23D of the SCRA read with Circular no.*

SMD/SED/Cir/93/23321 dated 181h November 1993 and SEBI Circular no. SEBIIHO/MIRSD/Cir/P /2016/95 dated 26th September 2016.

r) *We state that your allegation of violation of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated 3rd December 2009 is not correct as there is no allegation of any of the contents of the said circular in the SCN.*

s) *We state that there is no violation of Section 23D of SCRA, 1956 as there is no allegation in the SCN that we have not kept the securities and monies of the clients separately. However, there is an allegation under para 9 of the SCN based on the table 1 produced under para 10 that the funds available with us (pls refer Column A and B of Table 1) were less than the credit balance of the clients (pls refer Column C of Table 1). In view of the information given in Annexure 10 and 13 and also the information given in table no. 1, 2 and 3, it is clear that the funds available with us were more than the credit balance of clients and the information given in Column G of Table 1 under para 10 of SCN is not correct. When there is no shortage of available funds, there cannot be any violation of Section 23D of SCRA and therefore no penalty can be imposed.*

t) *Your allegation that we have violated SEBI circular no. SMD/SED/Cir/93/23321 dated 18th November 1993 is also erroneous as there is no allegation that money received from clients were not deposited in bank account opened as client account, there is no allegation of any securities received for sale but kept pending for delivery. When there is no allegation in the SCN, there cannot be any violation of the said circular.*

u) *Your allegation that we have violated SEBI circular no. MRD/DoP/SE/Cir-11/2008 dated 17th April 2008 is also erroneous as there is neither any allegation that be collected any collateral from the clients which has been misused either for the benefit of other clients or for our own benefit and/or for meeting our obligations. We have explained in the preceding paragraphs that the information given in Table 1 under para 10 of the SCN is incorrect in view of the correct and factual information given in Annexure 10 and 13 read with the information given in Table No. 1, 2 and 3 it is clear that there is no misutilization of funds.*

6. Subsequently, in the interest of natural justice, an opportunity of hearing was provided to the Noticee on February 17, 2020 at SEBI Bhavan 2, PN-C/7, G Block BKC, BKC complex, Banda East, Mumbai, 400051. During the course of personal hearing, the Authorized Representatives of the Noticee reiterated the submissions made by the Noticee in its replies dated January 23, 2020 and January 27, 2020 to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the SCN, submissions made by the Noticee and all the documents/ evidence available on record. The issues that arise for consideration in the present case are:
    A. Whether the Noticee failed to settle the accounts of its active and inactive clients, thereby violating the relevant provisions of SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009?
    B. Whether the Noticee failed to segregate its clients' funds thereby violating the provisions of Section 23D of the SCRA and the relevant provisions of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008?
    C. Does the violation, if any, attract monetary penalty in terms of Section 15HB and Section 23 D of the SCRA?
    D. If yes, what should be the quantum of penalty?

8. In this regard, it is pertinent to refer to the relevant provisions of the SEBI Circulars and the Section 23D of the SCRA which read as under:

A. Whether the Noticee failed to settle the accounts of its active and inactive clients, thereby violating the relevant provisions of SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009?

9. In order to ascertain the alleged violations of the Noticee in respect of Settlement of Running Accounts of its inactive Clients, the trial balances of all clients registered with the stock broker as on the last day of every quarter were extracted from the back office database of the stock broker during the inspection. The details of the UCC (Unique Client Code) that were not settled over the quarters during the inspection period were provided to the Noticee. All the credit balances less than Rs. 100 are not considered relevant for the analysis. The observations in this regard are summarized in the table below:

Table-1

Quarter Ended	No. of UCCs whose balances have remained same on last dates of successive quarters	Amounts Not Settled (in Rs.)			
		Minimum Amount	Maximum Amount	Average Amount	Aggregate Credit Balance not settled
Jun 16-Sep16	187	100	34,99,000	73,533	1,37,50,714
Sep 16-Dec16	207	100	34,99,000	88,054	1,82,27,209
Dec 16-Mar17	176	100	34,99,000	55,227	97,19,872
Mar 17-Jun 17	181	100	61,47,538	57,044	1,03,24,976
Jun 17-Sep 17	192	100	61,47,538	80,431	1,54,42,834
Sep 17-Dec17	217	100	61,47,538	99,413	2,15,72,594
Dec 17-Mar-18	131	138	61,47,538	1,52,078	1,99,22,311
Jun-16 to Mar-18	46	138	1,96,118	14,275	6,56,656

10. It is observed from the table above that during the quarter June, 2016 to September, 2016, there are 187 credit balance clients who had identical amount of funds at the end of the previous as well as the said quarters. The total amount of funds not settled during the quarter amounts to Rs.1.37 crores. This indicates that 187 credit balance clients were inactive during the quarter June, 2016 to September, 2016 with total unsettled funds amounting to Rs.1.37 crores. It is observed that during the Inspection period, the Noticee has not settled funds on the inactive clients ranging from Rs. 97.19 lakhs to Rs. 2.15 crores.

11. Further, in order to ascertain the alleged violations of the Noticee in respect of Settlement of Running Accounts of its active clients, the settlement data of top ten clients based on turnover during the respective 7 quarters of the inspection period was examined and out of these clients, certain clients' data of each quarter (mostly based on high ledger balance, securities balance availability etc.) was examined on random basis. Further, the broker was also advised by SEBI to submit past

retention calculations/workings done for the purpose of settlement for sample quarters and such information was verified from the relevant ledgers and other documents. From the perusal of the aforesaid information, it was observed that out of the 135 randomly selected instances, the settlement was not done in 93 instances amounting to Rs.26.97 crores.

12. In this regard, the Noticee has submitted various reasons for non- settlement of accounts of its active and inactive clients, which have been given on paragraph 5(a) to 5(g) above and are not repeated here for the sake of brevity. From the perusal of the same, I note that the submission of the Noticee regarding few of the unsettled accounts viz. ZEAL, OPD IFF, KAR MALCO and DIFF SD, is that the aforesaid accounts are not client accounts and therefore, there is no requirement to settle these accounts. In this regard, I am in agreement with the submissions of the Noticee as I observe that the aforesaid codes are not client codes and therefore the issue of settlement of such accounts does not arise. Further, the Noticee has made a submission that the unsettled account bearing client code D280 belongs to Mr. Jayant Dave, who had expired on May 28, 2018. The legal heirs of Mr. Jayant Dave did not submit legal heirship certificate with the Noticee. I am in agreement with the aforesaid submissions of the Noticee regarding the account D280 of Mr. Jayant Dave.

13. Briefly, the reasons given by the Noticee for not settling other accounts are given below:
    a) Such accounts belonged to the promoter or family members of the promoters
    b) There were charges such as, account opening charge, annual maintenance charge, demat charge etc, due from such accounts.
    c) Few accounts were remisiers deposit accounts.
    d) The whereabouts of the clients to which a few unsettled accounts belonged, were not known to the Noticee.
    e) The client had made deposit in such unsettled accounts.

f) The amount outstanding in case of several unsettled accounts was deliberately retained to meet obligation in the next 5-6 days of the next quarter, as these clients were cutting transactions on regular basis.

14. I have perused the provisions of SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009 which stipulates the manner of dealings between a client and a stock broker. The paragraph 12 of the Annexure A of the said circular stipulates the guidelines for Running Account authorization. I observe that it is clearly mentioned in the Paragraph (e) of the same that the actual settlement of funds and securities shall be done by the stock broker, at least once in a calendar quarter or month, depending on the preference of the client. However, the aforesaid circular does not provide any exemption for the specific issues that have been mentioned by the Noticee as the reason for non-settlement of its clients account, mentioned at Paragraph 13, above. There is no provision which allows non-settlement of accounts of the promoters or family members of the promoters. Similarly, a stock broker cannot absolve itself from the liability of settling its clients' accounts by merely stating that the whereabouts of the clients are unknown. I do not find any record placed before me which shows that the Noticee made an attempt to transfer the amount in the account of its clients despite the fact that the bank account details of such clients were available with the Noticee. Further, for the accounts where amounts were due from the clients as account opening charge, annual maintenance charge, demat charge etc, the Noticee has not produced records to show that it made attempts to settle such account after deducting the due amounts. Therefore, I find that the submissions of the Noticees in respect of the clients' accounts that were not settled are not in consonance with the provisions of the SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009. Therefore, I conclude that the Noticee has violated the provisions of SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009 by not settling the accounts of its clients in the manner specified in the aforesaid circular.

B. <u>Whether the Noticee failed to segregate its clients' funds thereby violating the provisions of Section 23D of the SCRA and the relevant provisions of</u>

<u>SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008?</u>

15. In order to ascertain the instances of misuse of clients' funds by the Noticee, SEBI advised the Noticee to provide following information/data during the course of inspection:
    a. Total fund balance available in all Client and Settlement Bank Accounts maintained by the stock broker
    b. Aggregate value of collateral deposited with clearing corporations and/or clearing broker (in cases where the trades are settled through clearing broker) in the form of Cash and Cash Equivalents (Fixed Deposits (FD), Bank Guarantee (BG), etc.). Further, only funded portion of the BG was considered to be part of the deposited collateral.
    c. Aggregate value of Credit Balances of all its 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)
    d. Aggregate value of Debit Balances of all its clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients)
    G. (A+B)-C; Negative value depicts extent of misuse of client funds by broker for debit balance client or for own purpose.
16. On comparing the aggregate of total credit balances of the clients of the Noticee with the total funds available with the Noticee i.e. cash and cash equivalents with the Noticee and with the clearing corporation/ clearing broker, it is observed that there were 16 instances out of the total 19 instances examined by SEBI, wherein the aggregate of total credit balances of the clients of the Noticee was higher than the funds available with the Noticee indicating the misuse of client funds by the Noticee for either its debit balance client or for its own purposes.
17. The detailed analysis of the abovementioned data provided by the Noticee is given below:

Table-2

Date	Funds available as per bank statement(Client a/c & settlement a/c) A	Collateral deposited with the SEs/CCs/CMs (Cash, FDR and funded portion of BG value taken for calculation) B	Total Credit balance(adjuste d for open bills and un-cleared cheques) C	G = (A+B)-C	Misuse of funds in %	Funds Misused for Debit Balance Clients
01/03/2018	5,35,158.07	3,46,20,000.00	20,94,87,572.20	-17,43,32,414.20	83%	17,43,32,414.20
05/03/2018	10,26,753.59	3,46,20,000.00	21,34,05,730.00	-17,77,58,976.40	83%	17,77,58,976.40
06/03/2018	9,53,103.79	4,71,20,000.00	21,08,23,506.60	-16,27,50,402.80	77%	16,27,50,402.80
07/03/2018	13,66,601.00	5,46,20,000.00	20,90,14,608.30	-15,30,28,007.30	73%	15,30,28,007.30
08/03/2018	5,55,519.48	3,96,20,000.00	19,01,79,541.70	-15,00,04,022.20	79%	15,00,04,022.20
09/03/2018	12,47,686.54	3,46,20,000.00	19,66,87,312.20	-16,08,19,625.70	82%	16,08,19,625.70
12/03/2018	6,37,026.55	3,46,20,000.00	20,61,41,391.40	-17,08,84,364.90	83%	17,08,84,364.90
13/03/2018	4,10,174.32	3,46,20,000.00	20,80,17,463.30	-17,29,87,289.00	83%	17,29,87,289.00
14/03/2018	15,94,402.63	3,46,20,000.00	21,71,94,832.90	-18,09,80,430.20	83%	18,09,80,430.20
15/03/2018	8,73,811.52	3,96,20,000.00	21,63,24,920.20	-17,58,31,108.60	81%	17,58,31,108.60
16/03/2018	6,91,426.23	16,46,20,000.00	20,89,38,851.10	-4,36,27,424.82	21%	4,36,27,424.80
19/03/2018	9,47,419.12	23,96,20,000.00	21,18,48,834.60	2,87,18,584.55	-	-
20/03/2018	11,63,693.93	31,46,20,000.00	19,04,65,661.30	12,53,18,032.60	-	-
21/03/2018	15,44,715.32	16,46,20,000.00	20,00,44,520.30	-3,38,79,804.94	17%	3,38,79,804.90
22/03/2018	3,82,534.18	4,26,20,000.00	18,12,24,000.60	-13,82,21,466.40	76%	13,82,21,466.40
23/03/2018	6,18,188.49	4,26,20,000.00	19,39,04,528.10	-15,06,66,339.60	78%	15,06,66,339.60
26/03/2018	37,94,237.61	4,26,20,000.00	20,06,16,762.40	-15,42,02,524.80	77%	15,42,02,524.80
27/03/2018	10,61,580.37	16,46,20,000.00	15,80,79,739.80	76,01,840.56	-	-
28/03/2018	91,40,547.14	3,46,20,000.00	12,17,06,528.90	-7,79,45,981.73	64%	7,79,45,981.70

18. It is observed from the above table that out of the total sample of 19 days, there were 16 days where the mis-utilisation of the clients' funds by the Noticee is seen.

The same is evidenced by the fact that the aggregate of total credit balances of the clients of the Noticee was higher than the funds available with the Noticee. The mis-utilisation of the clients' funds by the Noticee is in the range of Rs. 3.38 crore on March 21, 2018 to Rs. 18.09 crore on March 14, 2018. The mis-utilisation of the clients' funds by the Noticee as a percentage of the total credit balance of its clients is in the range of 17% on March 21, 2018 to 83% on March 14, 2018.

19. I note that the primary submission of the Noticee in this regard is that while calculating the obligation of the Noticee, the credit balance shown under the other categories like promoters' fund, sub-broker / remisier's deposit, fees deposit by a client towards market making assignment, amount withheld due to High court case etc. are required to be deleted. Further, the Noticee has also submitted that while calculating the availability of the funds and/or shortage of funds, it is necessary to consider the debit balance lying in the account of family members of a creditor client. In this regard, the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 has clarified on the utilization of Funds of credit balance clients for settlement obligation of debit clients or for own purpose. It is observed from the same that the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (Column A + Column B in Table 2 above) should always be equal to or greater than Clients' funds as per ledger balance (Column C in Table 2 above). I observe that the aforesaid circular clearly mentions accounts that are to be considered for calculating the total obligation of the Noticee. Therefore, I cannot accept the aforesaid submission of the Noticee that while calculating obligation of the Noticee, the credit balance of various accounts mentioned by it shall not be considered, as the calculation has been done according to the aforementioned circular dated September 26, 2016. For the same reasons, the other submission of the Noticee that while calculating the availability of the funds and/or shortage of funds, it is necessary to consider the debit balance lying in the account of family members of a creditor client is not valid. I am of the view that the SEBI Circular dated September 26, 2016 is clear that there can be no adjustments of funds from one client to another. There is no exception carved out in the SEBI Circular for the family

adjustments as far as settling the balances of such family members is concerned. A broker has to treat each of its client as a separate and independent entity and ensure that each client's accounts are settled separately and individually. Therefore, I am unable to accept the submission of the Noticee that the adjustment between family members of creditor clients shall also be considered by SEBI while calculating the mis-utilisation of the clients' funds.

20. Further, the Noticee has also submitted that while calculating the funds available with the Noticee, as mentioned under column A of the Table – 2 above, SEBI has erroneously not considered the funds available in all of the bank accounts viz. Bank of India, ICICI bank and HDFC Bank of the Noticee. Similarly, while calculating the collaterals deposited with the Clearing House and the Clearing member, mentioned at Column B of table 2 above, SEBI has not considered the Noticee's deposits with the Clearing member. The contention of the Noticee is that the deposits available in aforesaid bank accounts should also be considered by SEBI while calculating the mismatch of credit balance clients with the cash and cash equivalents available with the Noticee. On perusal of the records available, it is it is not clear that the said bank accounts were presented either before the clearing corporation or the clearing member by the Noticee. Section 23D of the SCRA and SEBI Circular in this regard mandates that the brokers have to segregate the funds which are to be used for the utilization of each client and only such funds can be considered as part of the cash or cash equivalent available with the broker. Nevertheless, even if we accept the submissions of the Noticee that the deposits in the aforesaid bank accounts of the Noticee and the collateral deposited with the Clearing member have not been considered by SEBI while arriving at the amount of funds misused by the Noticee for its debit balance clients, and include these accounts to recalculate the value of Column A and Column B in Table 2 above, I find that the total deposit in such bank accounts and the amount of collateral with the Clearing Member is still much lesser than the total amount of funds misutilised by the Noticee for its debit balance clients. Therefore, the fact remains that the Noticee did misuse the funds of its credit balance clients as the total cash and cash equivalents available with it was less than the aggregate balance of its credit balance clients.

21. Therefore, I conclude that the Noticee has misutilised the funds of its credit balance clients for the purpose of debit balance clients and has thereby violated the provisions of Section 23D of the SCRA read with SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

C. <u>Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA?</u>

22. Therefore, I conclude that the Noticee has violated the provisions of SEBI Circular MIRSD/SE/Cir-19, 2009 dated December 03, 2009 by not settling the accounts of its clients in the manner specified in the aforesaid circular and has misutilised the funds of its credit balance clients for the purpose of debit balance clients and has thereby violated the provisions of Section 23D of the SCRA read with SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.

23. In this regard, I note that the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*. Accordingly, the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA.

D. <u>If yes, what should be the quantum of penalty?</u>

24. While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA, which are read as 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

SCRA

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

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
b) the amount of loss caused to an investor or group of investors as a result of the default;
c) the repetitive nature of the default.

25. In view of the facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred to under Section 15J of the SEBI Act and Section 23J of the SCRA, stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. However, I note that out of the sample dates during the inspection period, the Noticee is found to have mis-utilized the funds of its credit balance clients and also failed to settle funds of inactive and active clients during the inspection period.

ORDER

26. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA and in exercise of the powers conferred upon me under Section 15HB of the SEBI Act and under the Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 7,00,000/- (Rupees Seven Lakh only) on

the Noticee viz. NNM Securities Pvt. Ltd under the provisions of Sections 23D of the SCRA. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

27. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT >Orders >Orders of AO >PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

28. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

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

30. In terms of the provisions of Rule 6 of the AO Rules, a copy of this order is being sent to the Noticee viz NNM Securities Pvt Ltd and also to the Securities and Exchange Board of India.

Date: February 28, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER