BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/VC/2024-25/30562)

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

In respect of

Ventura Securities Limited

(PAN: AAACV1361J)

(SEBI Registration No.: INZ000194736)

In the matter of Ventura Securities Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted inspection in respect of Ventura Securities Limited (hereinafter referred to as the **'Ventura / Noticee'**). Noticee is registered with SEBI as a Stock Broker (Registration No.**:** INZ000194736) having its registered address as 'I-Think Techno Campus, "B" Wing, 8th Floor, Pokhran Road No. 2, Off Eastern Express Highway, Thane West, Thane, Maharashtra – 400607'. A comprehensive joint inspection of the Noticee with respect to its stock broking activities was conducted by SEBI along with the Exchanges from November 24, 2022 to December 05, 2022, for the period of April 01, 2021 to October 31, 2022 (hereinafter referred to as **'Inspection Period'**).

2. The findings / observations made during the course of inspection were recorded as Inspection Report and the inspection findings / observations were communicated to the Noticee vide SEBI letter / e-mail dated January 17, 2023. Noticee had submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its letter dated February 07, 2023.

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

Table No. 1

Sr. No.	**Alleged violations**	**Regulatory provisions violated**
A	Stock Mismatch	Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
B	Non-reporting of shortfall in collection of EOD margin	Clause (iii) of Annexure of SEBI Circular SEBI/HO/MRD2/DCAP/CIR/P/2020/127 dated July 20, 2020.
C	Passing of penalty to clients on short collection of upfront margins	Clause A(5) of Schedule II (Code of Conduct) of SEBI (Stock Broker) Regulation, 1992 read with Question no. 15 in Annexure A of the NSE Circular NSE/INSP/45191 dated July 31, 2020.
D	Incorrect reporting of data under Enhanced supervision data (Weekly)	Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
E	Violation of PMLA / AML provisions	Clause 2.2.2.1.b. read with Clause 2.2.4.e. of SEBI Master Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019.

Sr. No.	Alleged violations	Regulatory provisions violated
F	Incorrect reporting of data under Risk Based Supervision	Clause 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
G	Discrepancies in Margin Trading Funding	Clause 3 and Clause 18 of SEBI Circular CIR/MRD/DP/54/2017 dated June 13, 2017.
H	Non-compliance with Cyber-security requirements	Clause 36 of Annexure-1 of SEBI Circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018.
I	Non-adherence to rules of membership	Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Santosh Kumar Sharma as the Adjudicating Officer, vide order dated October 09, 2023, under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) and under Section 23-I of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **'SC(R) Act, 1956'**) read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules'**), to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1956 for the violations alleged to have been committed by the Noticee. Further, pursuant to transfer of the erstwhile Adjudicating Officer, the instant matter was re-assigned to the undersigned *vide* order dated December 07, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/09785/2024 dated March 07, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, 1992; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SC(R) Act, 1956, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1996 for the alleged violations. I note that the SCN issued to Noticee was duly served upon the Noticee.

6. Vide e-mail/letter dated March 28, 2024, Noticee requested for inspection of the documents in the matter, which was granted to Noticee on April 08, 2024. On April 08, 2024, Noticee conducted inspection of the documents and during inspection, Noticee also requested for providing the contents available in the CDs in the file of the matter and copy of e-mail dated November 04, 2022, which were provided to the Noticee along with Hearing Notice dated April 29, 2024. Vide the said e-mail dated April 29, 2024, other documents / e-mail correspondences with the exchanges as requested by Noticee vide its letter dated March 28, 2024 were also provided to the Noticee. Thereafter, vide email / letter dated May 10, 2024, Noticee submitted reply to the SCN.

7. In the interest of natural justice, an opportunity of hearing on May 14, 2024 was granted to the Noticee vide Hearing Notice dated April 29, 2024. Authorized Representatives viz. Mr. Sumit Agrawal, Advocate a/w Mr. Kavish Garach and Ms. Srushti Kekre i/b Regstreet Law Advisors & Mr. D. P. Singh, Compliance Officer, Ms. Neela Wakchaure, Senior Manager - Compliance, Ventura Securities Limited (hereinafter referred to as **"ARs"**) attended the hearing in person at SEBI on May 14, 2024 and reiterated the submissions made by the Noticee vide letter dated May 10, 2024. Further, ARs stated to make the additional submissions in the matter, which were made by the Noticee vide letter dated May 22, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated the provisions of the Rules, Regulations and Circulars as indicated in table no. 1?

   II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1956?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

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

SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

Annexure

3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

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 by the 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 issued 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*

6. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

6.1. *As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:*

6.1.1. Monitoring criteria for Stock Brokers

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

SEBI Circular SEBI/HO/MRD2/DCAP/CIR/P/2020/127 dated July 20, 2020:

Annexure

(iii)*The member shall have to report the margin collected from each client, as at EOD and peak margin collected during the day, in the following manner:*

a) EOD margin obligation of the client shall be compared with the respective client margin available with the TM/CM at EOD.

AND

b) Peak margin obligation of the client, across the snapshots, shall be compared with respective client peak margin available with the TM/CM during the day.

Higher of the shortfall in collection of the margin obligations at (a) and (b) above, shall be considered for levying of penalty as per the extant framework.

SCHEDULE II

Code of Conduct for Stock Brokers

[Regulation 9]

A. General.

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

NSE Circular NSE/INSP/45191 dated July 31, 2020:

Annexure A

***15**. In case of short reporting of margin/margin on consolidated crystallized obligation/MTM, Can member pass on the penalty to the clients?*

In case of failure (cheque not cleared or margin requirement not met by the client) on part of the client resulting which penalty is levied by the Clearing Corporation on the member for short reporting of client upfront margins/ margin on consolidated crystallized obligation/MTM losses, member may pass on the actual penalty to the client, provided he has evidences to demonstrate the failure on part of the client .Wherever penalty for short reporting of upfront margin/ margin on consolidated crystallized obligation/ MTM losses is being passed on to the client relevant supporting documents for the same should be provided to the client.*

**Member cannot pass on the penalty w.r.t. short collection of upfront margin to client.*

SEBI Master Circular SEBI/HO/MIRSD/ DOP/CIR/P/2019/113 dated October 15, 2019:

2.2.2 Policy for acceptance of clients:

2.2.2.1 *All registered intermediaries shall develop client acceptance policies and procedures that aim to identify the types of clients that are likely to pose a higher than average risk of ML or TF. By establishing such policies and procedures, they will be in a better position to apply client due diligence on a risk sensitive basis depending on the type of client business relationship or transaction. In a nutshell, the following safeguards are to be followed while accepting the clients:*

b) *Factors of risk perception (in terms of monitoring suspicious transactions) of the client are clearly defined having regard to clients' location (registered office address, correspondence addresses and other addresses if applicable), nature of business activity, trading turnover etc. and manner of making payment for transactions undertaken. The parameters shall enable classification of clients into low, medium and high risk. Clients of special category (as given below) may, if necessary, be classified even higher. Such clients require higher degree of due diligence and regular update of Know Your Client (KYC) profile.*

2.2.4 Clients of special category (CSC): *Such clients shall include the following:*

e) *Politically Exposed Persons (PEP) are individuals who are or have been entrusted with prominent public functions in a foreign country, e.g., Heads of States or of Governments, senior politicians, senior government/judicial/military officers, senior executives of state-owned corporations, important political party officials, etc. The additional norms applicable to PEP as contained in the subsequent para 2.2.5 of this circular shall also be applied to the accounts of the family members or close relatives of PEPs.*

SEBI Circular CIR/MRD/DP/54/2017 dated June 13, 2017:

Securities Eligible for Margin Trading

3. *Equity Shares that are classified as 'Group I security' as per SEBI Master circular No. SEBI/HO/MRD/DP/CIR/P/2016/135 dated December 16, 2016, shall be eligible for margin trading facility.*

Leverage and Exposure Limits

18. *While providing the margin trading facility, the broker shall ensure that:*

a) exposure to any single client at any point of time shall not exceed 10% of the broker's maximum allowable exposure, as specified in para 17 above.

b) exposure towards stocks purchased under margin trading facility and collateral kept in the form of stocks are well diversified. Stock brokers shall have appropriate Board approved policy in this regard.

SEBI Circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018:

Annexure-1

Certification of off-the-shelf products

***36**. Stock Brokers / Depository Participants should ensure that off the shelf products being used for core business functionality (such as Back office applications) should bear Indian Common criteria certification of Evaluation Assurance Level 4. The Common criteria certification in India is being provided by (STQC) Standardisation Testing and Quality Certification (Ministry of Electronics and Information Technology). Custom developed / in-house software and components need not obtain the certification, but have to undergo intensive regression testing, configuration testing etc. The scope of tests should include business logic and security controls.*

<u>Securities Contracts (Regulation) Rules, 1957:</u>

Qualifications for membership of a recognised stock exchange.

***8.** The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:*

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

(f) he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n) of sub-rule (8)].

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

Issue I. Whether the Noticee has violated the provisions of the Rules, Regulations and Circulars as indicated in table no. 1?

11. Before I proceed to deal with the matter on merits, I would like to address preliminary issue raised by the Noticee that Principles of Natural Justice have been violated during the instant adjudication proceedings. Noticee had furnished a list of documents vide inspection letter dated March 28, 2024 and requested for providing the said documents for inspection. In this regard, Noticee submitted that complete documents and information held by / in possession of SEBI were not provided to Noticee to adequately defend itself against the allegations in the SCN and no explanation for the 'selective disclosure' of documents was offered to Noticee. To substantiate the said claim, the Noticee has relied upon various judgments of Hon'ble Supreme Court, High Courts and Hon'ble SAT, like:

    - *T. Takano and Anr. v. SEBI*
    - *Reliance Industries v. SEBI*
    - *Mukesh D. Ambani v. SEBI*
    - *National Stock Exchange of India Ltd. v. SEBI*
    - *Sunita Agarwal v. SEBI and Another*

12. In respect of the above contention of the Noticee that the complete set of documents were not provided to it, I note that the Noticee was already provided with the relevant and relied upon documents for issuance of SCN viz. Copy of *communiqué* dated October 10, 2023 and dated January 24, 2024, Copy of the Inspection Report, Copy of the SEBI letter dated January 17, 2023, Copy of the

Noticee's letter dated February 07, 2023, Details of wrong reporting of holdings, Details of non-reporting of shortfall in collection of EOD margin, Details of passing of penalty to Noticee's clients w.r.t. short collection of upfront margins, Details of incorrect data reported towards weekly monitoring of clients funds, Details of PEP client wise Risk category, Details of exposure given on non-eligible securities for MTF, Details of non-eligible securities pledged for MTF, Details of exposure given to a client exceeded 10% of the broker's maximum allowable exposure and Noticee's reply dated January 12, 2023 etc., as annexures to the SCN. Further, considering the Noticee's request for providing additional documents, Noticee was provided with a copy of e-mail dated November 04, 2022, e-mail correspondences with the exchanges, content as available in the CDs in the file of the matter etc. vide e-mail dated April 29, 2024.

13. With regard to Noticee's submission that certain documents sought for inspection were not provided to it, I note the following item-wise comments:

Table No. 2

Sr. No.	**Document required**	**Reference**	**Noticee's submission**	**Comments**
1.	Copy of the opinion of the Whole-Time Member / Executive Director (ED) and copy of pre-inspection notice	Regulation 20 of SEBI (Stock-Brokers) Regulations, 1992 r/w SEBI (Delegation of Statutory and Financial Powers) Order, 2019.	Not provided	Opinion is an internal document, hence not provided to Noticee. Copy of Pre-inspection notice was available in file of the matter given to Noticee for inspection.
2.	Copy of the order appointing inspecting authority	Regulation 19 of SEBI (Stock-Brokers) Regulations, 1992 r/w SEBI	Not provided	Order appointing inspecting authority was provided for inspection.

		(Delegation of Statutory and Financial Powers) Order, 2019		
3.	Copy of the action matrix recommended by the inspecting authority and approval of Whole-Time Member / ED	Regulation 23 of SEBI (Stock-Brokers) Regulations, 1992	Not provided	Internal document, hence not provided. However, *communiqué* was provided to Noticee.
4.	Copy of the order of the Competent Authority dated October 09, 2023 appointing the Ld. Adjudicating Officer.	Paragraph 3 of Annexure A to the Show Cause Notice	Not provided	*Communiqué* was provided to Noticee.
5.	Copy of the order no. 130/2023 of the HRO Office dated November 15, 2023 transferring erstwhile the Ld. Adjudicating Officer.	Paragraph 4 of Annexure B to the Show Cause Notice	Not provided	Internal document, not relevant to the case, hence not provided.
6.	Copy of the order of the Competent Authority dated December 07, 2023 appointing / re-assigning the Ld. Adjudicating Officer.	Paragraph 5 of Annexure B to the Show Cause Notice	Not provided	*Communiqué* was provided to Noticee.
7.	Copy of final observation report received by SEBI from NSE dated December 29, 2022	Page 18 of Annexure C of the Show Cause Notice	An unsigned and undated word file of the report has been provided. No Exhibits have been provided.	Observation report as received by SEBI from the exchanges was provided along with the e-mails of the exchanges.
8.	Copy of final observation report received by SEBI from BSE dated January 10, 2023	Page 18 of Annexure C of the Show Cause Notice	An unsigned and undated word file of the report has been provided. No Exhibits have been provided.	
9.	Copy of final observation report received by SEBI from NCDEX dated January 10, 2023	Page 18 of Annexure C of the Show Cause Notice	An unsigned and undated word file of the report has been	

			provided. No Exhibits have been provided.	
10.	Copy of final observation report received by SEBI from MCX dated December 29, 2022	Page 18 of Annexure C of the Show Cause Notice	An unsigned and undated word file of the report has been provided. No Exhibits have been provided.	
11.	Copy of final communications from Exchanges dated January 13, 2023	Page 18 of Annexure C of the Show Cause Notice	Not provided	Referred e-mail dated January 13, 2023 named *“RE Inspection Notice and PIQ - Ventura Securities Limited”* was provided to Noticee vide e-mail dated April 29, 2024.
12.	Copy of information / email received to SEBI that three clients of the Noticee are Politically Exposed Persons.	Paragraph 24 & 25 of the Show Cause Notice	Not provided	No such information / email is mentioned at Para 24 & 25 of the SCN.
13.	Copy of all communications with NSE with respect to the inspection proceedings	Principles of natural justice and fairness	Only few emails have been provided. We are unable to ascertain, in absence confirmation from SEBI, if all communications have been provided.	All relevant and relied upon communications with the exchanges was provided to Noticee.
14.	Copy of all communications with BSE with respect to the inspection proceedings	Principles of natural justice and fairness	Only few emails have been provided. We are unable to ascertain, in absence confirmation	

			from SEBI, if all communications have been provided.	
15.	Copy of all communications with NCDEX with respect to the inspection proceedings	Principles of natural justice and fairness	Only few emails have been provided. We are unable to ascertain, in absence confirmation from SEBI, if all communications have been provided.	
16.	Copy of all communications with MCX with respect to the inspection proceedings	Principles of natural justice and fairness	Only few emails have been provided. We are unable to ascertain, in absence confirmation from SEBI, if all communications have been provided.	
17.	Copy of the opinion formed by the Competent Authority for initiation of adjudication proceedings.	Rule 3 and 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 in compliance with *Sunita Agarwal v. SEBI and Another (2022 SCC On Line Gau 2325)* #	Not provided	Internal documents, hence not provided to Noticee.
18.	Copy of opinion formed by the Competent Authority, SEBI that an inquiry should be held against the Noticee.		Not provided	
19.	Copy of Case Management System (CMS) screenshot in the present proceedings.	Principles of natural justice and fairness	Not provided	
20.	Copy of Annexure 7(2) "Format for handing over	Principles of natural justice	Not provided	

	Fresh Cases" in the present proceedings.	and fairness		
21.	All the documents received, communications made by SEBI with any person in respect of the present proceedings, not provided along with the SCN, if any	Principles of natural justice and fairness	Not provided	No other communications / statement of any person is on record in the matter.
22.	Any statement recorded by SEBI during the investigation / inspection.	Principles of natural justice and fairness	Not provided	
23.	Any adverse material available on record or any documents with SEBI evidencing anything in relation to the allegations against the Noticee.	Principles of natural justice and fairness	Not provided	All relevant and relied upon documents was provided to Noticee.

14. In view of the above, I note that all the relevant and relied upon documents in the present proceedings were provided as Annexures to the SCN and subsequent requests made by the Noticee. Hence, I note that the principle laid by Hon'ble Supreme Court of India in **T. Takano and Anr. v. SEBI** (2022) i.e. *"all information that is relevant to the proceedings must be disclosed in adjudication proceedings"* was duly followed.

15. Further, with regard to Noticee's request for providing file noting(s) / opinion of SEBI, I rely on the judgement of Hon'ble Supreme Court of India in the matter of **Kavi Arora vs. SEBI** (Decided on September 14, 2022), wherein it was held that:

    "50. ……. There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the noticee in its entirety. The documents relied upon for formation of opinion under Rule 3, are not required to be disclosed to the noticee unless relied upon in the inquiry....."

16. Further, I note that the Noticee in his reply has merely made a bald statement that 'selective disclosure' of documents was offered to it. However, in this regard, nothing tenable has been brought out by it in support of the said claim and Noticee has also not sufficiently demonstrated that how this ground of non-availability of

such documents has caused prejudice to it. Hence, in my view, Noticee had sufficient material to defend its case and no prejudice was caused upon the Noticee.

17. In view of the above, the preliminary objections made by the Noticee regarding the non-providing the aforesaid documents hold no merit. Having dealt with the preliminary contentions, I shall now proceed to address the key issues that arise for consideration, in light of the facts of the case and the submissions made by the Noticee.

18. I find that there are 9 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

    A. Stock Mismatch,
    B. Non-reporting of shortfall in collection of EOD margin,
    C. Passing of penalty to clients on short collection of upfront margins,
    D. Incorrect reporting of data under Enhanced supervision data (Weekly),
    E. Violation of PMLA / AML provisions,
    F. Incorrect reporting of data under Risk Based Supervision,
    G. Discrepancies in Margin Trading Funding,
    H. Non-compliance with Cyber-security requirements,
    I. Non-adherence to rules of membership.

A. Stock Mismatch:

19. It was alleged in SCN that reconciliation of clients' securities lying with Noticee ISIN wise and client wise was examined during inspection and it was observed that in 1 instance out of 20 sample instances, Noticee had reported wrong holdings amounting to ₹11,37,250 to the exchange.

20. Noticee, in its reply to inspection findings, had submitted that the said reporting was done based on actual trades carried out in the account of the client. However, during payout there were 5000 shares short-delivered by the seller, therefore, the said 5000 shares were closed out. However, Noticee had not submitted any

supporting documents / evidence to substantiate its claim that closed out proceeds were transferred to the client.

Reply of Noticee

21. With respect to above allegations, Noticee *inter alia* submitted that SEBI has singled out and disproportionately focused on the alleged violation. Among the 20 samples examined, SEBI has only identified the supposed discrepancy in one instance.

22. Noticee has not wrongly reported to the Exchange. As indicated during the inspection, it is evident that as of January 03, 2022, Ventura reported 14,000 shares of Tata Teleservices Ltd. The Annexure J to the SCN itself illustrates a "Net Traded quantity" of 7,000 shares and a remaining balance of 7,000 shares. Thus, there was no erroneous reporting; it was based on the actual trades executed in the client's account. However, during the payout process, the seller failed to deliver 5,000 shares, resulting in the closure of these 5,000 shares. SEBI was duly informed of this during the joint inspection.

23. The SCN states that Ventura failed to provide documents or evidence proving the transfer of close-out proceeds to the client, an allegation / observation also reflected in SEBI's post-inspection analysis. However, this allegation / observation is contradicted by the available records itself.

24. Noticee further submitted that Clearing Corporation concluded the transaction on January 3, 2022. Noticee furnished a copy the file C_07604_ASQR_A2021246_R_03012022 received from the Clearing Corporation, serving as evidence of the closure of trades involving 5,000 shares of Tata Tele Services, which indicates that close-out proceeds were duly credited to the client.

25. The proceeds under scrutiny were credited to the client's ledger account on January 3, 2022. Ventura has furnished a bill to the client, outlining the closeout of

5,000 shares of Tata Tele Services. Further, Noticee also produced the contract note issued to the client and the ledger account details for the relevant period.

Findings

26. Considering the above submissions of the Noticee that it had correctly reported 14000 shares of Tata Teleservices Ltd, however, during payout there were 5000 shares short-delivered by the seller, therefore, the said 5000 shares were closed out and closed-out proceeds were transferred to the client. In this regard, Noticee has furnished supporting documents / evidences viz. copy of file received from the Clearing Corporation, bill issued to the client, contract note issued to the client and ledger account details for the relevant period to substantiate its claim that said closed out proceeds were transferred to the client.

27. In view of the above, I hold that the allegation that Noticee violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, does not stand established.

B. Non-reporting of shortfall in collection of EOD margin:

28. It was alleged in the SCN that Noticee had not reported shortfall in collection of EOD margin to the exchange amounting to ₹4.38 lacs in 1 instance out of 75 sample instances.

Reply of Noticee

29. With regard to above allegations, Noticee *inter alia* submitted that it explicitly stated in its letter dated February 07, 2022, that it had duly reported the shortfall in 'Peak Margin', which exceeded the 'EOD margin'. The shortfall in Peak Margin requirement amounted to INR 4,43,007.90, while the shortfall in EOD margin requirement was INR 4.38 lakhs.

30. Ventura had reported the shortfall in collection of Peak Margin since the shortfall in 'Peak Margin' was higher than the 'EOD Margin'. Nevertheless, SEBI alleges that

the shortfall for EOD margin for the same client was not reported, despite acknowledging that the Noticee had reported the higher shortfall, i.e., the deficit in ‘Peak Margin’.

31. Noticee further submitted that the penalty is levied on the ‘higher of the shortfall’ observed in EOD and peak margin as per SEBI’s circular dated July 20, 2020 which provides as follows:

“(iii) The member shall have to report the margin collected from each client, as at EOD and peak margin collected during the day, in the following manner:

a) EOD margin obligation of the client shall be compared with the respective client margin available with the TM/CM at EOD.

AND

b) Peak margin obligation of the client, across the snapshots, shall be compared with respective client peak margin available with the TM/CM during the day.

Higher of the shortfall in collection of the margin obligations at (a) and (b) above, shall be considered for levying of penalty as per the extant framework.”

32. Noticee further submitted that SEBI has evidently overlooked the intent behind the clause mentioned in the SEBI Circular dated July 20, 2020, which specifies that penalties for the shortfall in meeting margin obligations are applicable only on either the Peak margin or EOD margin, whichever is higher. Hence, it was not obligatory to report a shortfall in margin collection if it was lower than the other, and penalties are imposed solely for the shortfall in the margin collection that exceeds the other.

33. Further, it is not a scenario where the Peak Margin (INR 4,43,007.90), which was higher than the EOD margin (INR 4,38,432.87), was not collected. It was collected at the relevant time immediately. Consequently, the non-reporting of the shortfall in the collection of EOD margin cannot harm clients’ interests or bring any risk to the system. Such an allegation has not been made in the SCN.

34. Noticee further submitted that the term ‘And’ utilized in the aforementioned provision should be interpreted as ‘or’ in the current context, given that the circular's intention is evident, which is to impose penalties solely on the ‘higher’ of the two shortfall margins.

35. In this context, Noticee relied on the observations of the Hon’ble Supreme Court of India in the matter of Bhavnagar University v. Palitana Sugar Mill Private Limited and in the matter of Mobilox Innovations Private Limited v. Kirusa Software Private Limited.

36. In view of the above, Ventura reported the deficiency in Peak Margin collection, which exceeded the shortfall in EOD margin collection, as penalties are to be imposed solely based on the Peak Margin shortfall. This reporting by Ventura to the exchange unequivocally upholds the principle and objective behind margin reporting, ensuring that penalties are charged on the higher of the shortfall.

Findings

37. I note that aforesaid SEBI circular dated July 20, 2020 was issued with an intent of regular monitoring of and penalty for short-collection/ non-collection of margins from clients’ in Cash and Derivatives segments. It provides that the member shall have to report the margin collected from each client, as at EOD and peak margin collected during the day. However, Noticee failed to report the shortfall in collection of EOD margin to the exchange amounting to ₹4.38 lacs in 1 instance.

38. In this regard, Noticee’s submission that it has reported a shortfall of ₹4.43 lakhs in collection of ‘Peak Margin’ from said client on January 24, 2022, which exceeded the shortfall of ₹4.38 in ‘EOD margin’ and contention that it was not obligatory to report a shortfall in margin collection if it was lower than the other cannot be accepted as the aforesaid SEBI circular clearly mandates Noticee to report both EOD and peak margin collected during the day. Higher of the shortfall in collection of the margin obligations i.e. ‘Peak Margin’ and ‘EOD margin’ is to be considered for levying of penalty, however, for the purpose of monitoring and reporting, the

Noticee is under obligation to report the margin collected from each client, as at EOD and peak margin collected during the day.

39. Further, Noticee's submission that term 'And' utilized in the aforementioned provision should be interpreted as 'or' in the current context, given that the circular's intention is evident, which is to impose penalties solely on the 'higher' of the two shortfall margins is not tenable as the circulars title itself is *'Framework to Enable Verification of Upfront Collection of Margins from Clients in Cash and Derivatives segments'* and main intention of the circulars is monitoring of short-collection/ non-collection of margins from clients and not only to levying of the penalty as contended by the Noticee. Further, interpretation of 'and/or', as contended by Noticee, will not make any difference for the purpose of reporting of margin as the circular stipulates that the member shall have to report the margin collected from each client, as at EOD and peak margin collected during the day, in the following manner: i.e. 'Peak Margin' and 'EOD margin'. Hence, Noticee should have reported both 'Peak Margin' and 'EOD margin' as per circular. However, Noticee failed to report the shortfall in collection of EOD margin to the exchange amounting to ₹4.38 lacs in the aforesaid instance.

40. In view of the above, I hold that the allegation that Noticee violated the provisions of Clause (iii) of Annexure of SEBI Circular no. SEBI/HO/MRD2/DCAP/CIR/P/2020/127 dated July 20, 2020, stands established.

C. Passing of penalty to clients on short collection of upfront margins:

41. It was alleged in the SCN that Noticee had passed on the penalty levied by CC on account of 'short collection of upfront margins' to its clients. Penalty of ₹1,26,083.50 was passed on to 14 clients on 14 instances out of 30 sample instances in CM segment and Penalty of ₹23,08,205.46 was passed on to 15 clients on 15 instances out of 30 sample instances in F&O segment.

Reply of Noticee

42. With regard to above observations, Noticee *inter alia* submitted that it has not violated any provisions of Clause A(5) of Schedule II (Code of Conduct) of Stock Brokers Regulations and Question no. 15 in Annexure A of the Exchange Circular NSE/INSP/45191 dated July 31, 2020. Further, Noticee submitted that the margin shortfall penalty imposed by the Exchange/Clearing Corporation is solely attributable to the respective clients. The inspection team of SEBI has not duly considered the facts nor the tabular statement elucidating the instances outlined in Annexure 3 in the Noticee's response to the inspection findings.

43. This is an industry-wide challenge, making it difficult for brokers to achieve perfect compliance in such scenarios where the imposition of penalties is being considered.

44. Noticee further submitted that it is concerning that a questionnaire issued in furtherance of a circular of an Exchange is being considered as an instrument of law, within the remit of Section 15HB of the SEBI Act, 1992 which is completely perverse. It is not a case of non-compliance with 'any provision of the SEBI Act, 1992 or the rules or the regulations made or any directions issued by SEBI'.

45. Ld. Adjudicating Officer, lacks the authority to enforce the circular of NSE, particularly NSE circular no. NSE/INSP/45191 dated July 31, 2020. NSE Circular has been issued under NSE Bye-Laws which are with the previous approval of SEBI under Section 9 of the SCRA, 1956 and respectfully, parliament has not vested SEBI with the power to enforce circulars of a stock exchange. Any attempt by the Ld. Adjudicating Officer, SEBI to enforce NSE circular no. NSE/INSP/45191 dated July 31, 2020 would undermine the processes and authority vested in the Competent Authority as outlined in NSE Rules and Regulations. This includes the NSE committee, whose decisions can be separately and independently appealed to the Hon'ble SAT or the Hon'ble Supreme Court.

46. Noticee furnished a detailed statement on 29 instances on passing of penalty on short collection of upfront margin. The tabular statement provided in Annexure C

of Noticee’s response illustrates substantial compliance. Out of the 29 instances alleged (with SEBI examining a total of 60 instances and alleging aberrations in 29 instances), 23 instances demonstrate compliance. The remaining six instances are attributed to human error resulting from oversight. Noticee further submitted that it has promptly taken corrective actions to prevent similar instances from occurring in the future.

Findings

47. I note that the guidelines/clarifications provided in Question no. 15 of Annexure A of the aforesaid NSE circular regarding passing of the penalty to the clients is as under:

‘In case of failure (cheque not cleared or margin requirement not met by the client) on part of the client resulting which penalty is levied by the Clearing Corporation on the member for short reporting of client upfront margins/ margin on consolidated crystallized obligation/MTM losses, member may pass on the actual penalty to the client, provided he has evidences to demonstrate the failure on part of the client’.*

………….

*‘*Member cannot pass on the penalty w.r.t. short collection of upfront margin to client’.*

48. Noticee submitted that a questionnaire issued in furtherance of a circular of an Exchange is being considered as an instrument of law, within the remit of Section 15HB of the SEBI Act, 1992 which is completely perverse and Adjudicating Officer lacks the authority to enforce the circular of NSE, particularly NSE circular no. NSE/INSP/45191 dated July 31, 2020. I note that Noticee is alleged to has violated the provisions of Clause A(5) of Schedule II (Code of Conduct) of SEBI (Stock Broker) Regulation, 1992 read with Question no. 15 in Annexure A of the NSE Circular NSE/INSP/45191 dated July 31, 2020. Clause A(5) of Schedule II (Code of Conduct) of SEBI (Stock Broker) Regulation, 1992 provides that “*A stock - broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the <u>Stock Exchange</u> from time to time as may be applicable to him.”* Hence, Noticee is under obligation to comply with the provisions

of the rules and regulations made by a Stock Exchange. Further, Section 15HB of the SEBI Act, 1992 provides for penalties for not complying with any provision of the Act, the Rules or the Regulations made or Directions issued by the Board. Therefore, violation of Rules, Regulations and Circulars of a Stock Exchange is in violation of Clause A(5) of Schedule II (Code of Conduct) of SEBI (Stock Broker) Regulation, 1992 and for violation of SEBI (Stock Broker) Regulation, 1992, the adjudication proceedings under Section 15HB of the SEBI Act, 1992 is tenable. Thus, Noticees aforesaid contentions are not acceptable.

49. Further, Noticee furnished a detailed statement, along with the supporting evidences, on alleged 29 instances of passing of penalty to clients on short collection of upfront margin and submitted that out of the 29 instances alleged, 23 instances demonstrate compliance. In consideration of the response and supporting evidences produced by the Noticee, I am inclined to accept the submissions of the Noticee and hold that Noticee has not violated the alleged provisions of law w.r.t. 23 instances.

50. In response to violation of passing of penalty in remaining 6 instances out of the alleged 29 instances, Noticee submitted the remaining 6 instances are attributed to human error resulting from oversight. Thus, I note that Noticee has admitted that it passed on the penalty w.r.t. short collection of upfront margin to clients. The said Clause of NSE circular clearly states that *'Member cannot pass on the penalty w.r.t. short collection of upfront margin to client'.* However, Noticee has passed on the penalty levied by CC/exchange for short collection of upfront margin to its client.

51. In view of the above, I hold that the allegation that Noticee has violated the provisions of Clause A(5) of Schedule II (Code of Conduct) of SEBI (Stock Broker) Regulation, 1992 read with Question no. 15 in Annexure A of the NSE Circular NSE/INSP/45191 dated July 31, 2020, stands established.

D. Incorrect reporting of data under Enhanced supervision data (Weekly):

52. It was alleged in the SCN that Noticee had reported incorrect data towards weekly monitoring of clients funds on following 4 dates:

Table No. 3

Date	Incorrect Reporting made by Noticee under the following heads
16-Jul-21	C, D, MC, MF
08-April-22	C, MC,MF
21-Oct-22	C, MC
28-Oct-22	C, MC,MF

<u>C, D, MC and MF above is referred to as the following:</u>

C - Total Credit Balance of all clients

D - Total debit balance of all clients

MC - Margin utilized for positions of Credit Balance Clients

MF - Free/unblocked Collateral deposited with Clearing corporation

Reply of Noticee

53. With respect to above allegations, Noticee reiterated its submissions made in response to the inspection findings. Further, Noticee *inter alia* submitted that the requirement is to report aggregate of the debtors and creditors balances to the Stock Exchanges. The Noticee has carried out MTF and Non MTF trades under the single UCC and thereafter segregated MTF balances and non MTF balances. Hence, the balances were reported based on UCC whereby the credit in normal account got adjusted debit in MTF. Noticee have also changed the process post issuance of a clarification provided by NSE through a circular no. NSE/INSP/50012 dated October 19, 2021. The reporting done by Noticee was accurate as UCC wise aggregate balance of clients was required to be reported. Hence, Noticee had rightly adjusted credit in one normal segment against debit in MTF segment.

54. As a standard practice, when the Noticee receives funds from unidentifiable accounts, these funds are temporarily recorded under suspense. They are only transferred to the actual clients' accounts once the remitter of funds is identified. It is plausible that the remitter of funds may be a third party who cannot be regarded as its client. Therefore, the Noticee's procedure of not considering the balance in

the suspense account is justified as the identity of the remitter in such cases remains undetermined. It is a matter of undertaking due diligence rather than any kind of non-compliance.

55. Therefore, as soon as the clarificatory circular of NSE was issued, correction was duly made in Noticee's systems. It defies logic that if the systems at the operational level were clear, why would NSE, under the supervision of SEBI, issue a clarification guiding the industry.

56. It is on record, through Ventura's letter dated February 07, 2023, that any deficiencies in the systems were promptly rectified upon the clarification issued by NSE. Therefore, there is no basis for any violation regarding any incorrect data towards weekly monitoring of clients' fund.

Findings

57. With regard to alleged incorrect reporting under the head "C" and "D" on July 16, 2021, Noticee submitted that the difference is on account of adjustment of debit balances of clients in MTF against credit balance of same client in non-MTF. The said issue has been clarified by the Exchange vide its circular no. NSE/INSP/50012 dated October 19, 2021. After issuance of the said circular, Noticee has corrected its system with effected from January 7, 2022. I note that the said submission of the Noticee is acceptable as the alleged violation of incorrect reporting under the head "C" (Total Credit Balance of all clients) and "D" (Total debit balance of all clients) pertains to the period before the clarifications in this regard were made by NSE through the said circular dated October 19, 2021.

58. With regard to alleged incorrect reporting under the head "C" on April 8, 2022, October 21, 2022 and October 28, 2022, Noticee submitted that the same is arising as it did not consider the amounts credited to the suspense account while arriving at "Credit Balances". In cases where the credits are received in its Clients' Bank account, which are not traceable by Ventura, the same are credited to a suspense account, and as and when source is revealed to Noticee, it credits the same to the

respective account. In consideration of the submission of the Noticee, I note that the said difference in reporting under the head "C" (Total Credit Balance of all clients) is procedural in nature as stated by the Noticee and the amount of alleged incorrect reporting on April 8, 2022, October 21, 2022 and October 28, 2022 is very minuscule. Thus, I am inclined to accept the submission of the Noticee in this regard. Therefore, I hold that Noticee has correctly reported the data under the heads "C" and "D" under Enhanced supervision data (Weekly).

59. With regard to alleged incorrect reporting under the head “MC” (Margin utilized for positions of Credit Balance Clients) and “MF” (Free/unblocked Collateral deposited with Clearing corporation) on July 16, 2021, April 8, 2022, October 21, 2022 and October 28, 2022, Noticee submitted that it updates details in the file downloaded from the Exchange. The difference in reporting is arising on account of details pertaining to “CC02 securities pledge file” under the column head “Net Value” to be reported in the said file. The Exchange has been forwarding a file pertaining to “CC02 securities pledge file”, which consists of various fields. However, there is no clarity as to data from which field is to be uploaded in the said “CC02 securities pledge file” column. In this regard, I note that such submissions made by the Noticee is not acceptable as if there is no clarity to the Noticee that data from which field is to be uploaded in the said “CC02 securities pledge file” column, the same needs to be get clarified from the exchange and correct data should have been furnished by the Noticee for “MC” - Margin utilized for positions of Credit Balance Clients and “MF” - Free/unblocked Collateral deposited with Clearing corporation. Such justifications for incorrect reporting cannot be accepted from the Noticee who is a registered stock broker. Therefore, I hold that Noticee made the incorrect reporting of data under the head “MC” and “MF” under Enhanced supervision data (Weekly).

60. In view of the above, I hold that the allegation that Noticee has violated the provisions of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stands established.

E. Violation of PMLA / AML provisions:

61. It was alleged in the SCN that 3 clients were marked as Politically Exposed Persons (**'PEP'**) and related to PEP in UCC, however, these 3 clients were considered under Low Risk Category by the Noticee and not under High Risk Category.

Reply of Noticee

62. With respect to above allegations, Noticee *inter alia* submitted that vide letter dated February 07, 2023, it explicitly stated that it does not register any PEPs as clients at all. Additionally, the KYC documents contain no declaration of being a PEP by any of the mentioned clients at the time of execution or at any point thereafter. Therefore, the Noticee registered these three clients without knowledge of their association with any PEP. This information was only revealed to the Noticee during the inspection, upon which it promptly marked the clients as PEPs and suspended their accounts.

63. The said clients do not get covered under the definition of PEP as enumerated in the KYC circular of SEBI. Despite the same, SEBI under the SCN has alleged that the Noticee has violated Clause 2.2.2.1.b. read with Clause 2.2.4.e. of SEBI Master Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019. This is plainly perverse. Violation of Clause 2.2.2.1.b of SEBI Master Circular dated October 15, 2019 is not applicable in the present case as it is not SEBI's case that there was no *'policies and procedures that aim to identify the types of clients that are likely to pose a higher than average risk of ML or TF'* by the Noticee.

64. Noticee further submitted that SEBI has failed to consider that the question of categorization / classification of a PEP under the low-risk category or high risk category arises only when there could be identification of a client as PEP. Noticee submitted that:

(a) The Noticee as a matter of practice does not register any PEP as its client. This policy is in line with regulatory guidelines aimed at preventing money laundering and terrorist financing including SEBI circulars.

(b) KYC documents provided by clients do not include any declaration indicating that they are PEPs. Neither at the time of initial execution of the KYC documents nor at any subsequent point did any of these clients disclose their association with any PEP.

(c) The three clients in question were registered by the Noticee without any knowledge of their status as PEPs. It was only during the inspection conducted by regulatory authorities that this information came to light. Upon discovering this, the Noticee promptly marked these clients as PEPs and suspended their accounts to comply with regulatory requirements and ensure the integrity of its client base; and the clients in question do not meet the criteria outlined in SEBI's aforesaid circular for classification as PEPs.

(d) Despite the aforementioned position, the SCN persistently alleges non-compliance by the Noticee, which is legally impermissible.

65. The SCN overlooks the following crucial points:

(a) Despite the Noticee's assertion that the mentioned clients do not meet the definition of a PEP as outlined in SEBI's KYC circular, the SCN fails to provide the rationale for categorizing these clients as PEPs.

(b) It remains unclear on which date or by what means the aforementioned clients, identified by their client codes (11R240, 31M067, 92303515), were designated as PEPs and when the Noticee became aware of this information.

(c) The absence of any trading activity or inactive status of these clients has been overlooked entirely. These clients did not engage in any trading during the inspection period, thus there was no impact on the monitoring mechanism which is the intent of SEBI circular dated October 15, 2019.

(d) It was impossible for the Noticee to know that these clients were PEPs since at the time of KYC there was no such disclosure made by them. Further, it is SEBI's own case in the inspection report at page 31 of Annexure C to the SCN that *'clients are categorized as Low Risk, Medium Risk and High Risk. Factors for risk perception at the time of client on-boarding include Nature of entity and geographical location; Occupation; Income; PEP Status'.* Therefore, since these clients did not disclose their association with any PEP during onboarding, they could not have been categorized as High Risk Category. This fact is further substantiated by the KYC documents provided to them during onboarding and the same were annexed with the reply of the Noticee. A review of these documents reveals that none of these three clients (out of total 4,91,387 clients during the inspection period) had disclosed themselves as PEPs.

(e) Furthermore, as a matter of due diligence and adherence to the guidelines, the Noticee did not have clients from Targeted Financial Sanctions and the list was updated with the list of banned individuals / entities pursuant to UNSC Resolutions, UAPA Orders, FCRA Orders, grey list, list of high-risk jurisdictions, SEBI debarred entities, etc. This itself has been noted by SEBI in the inspection report at page 31 of Annexure C to the SCN demonstrating the bona-fides and due diligence undertaken by the Noticee.

66. It is not the case of SEBI that there was any loss occurred to either any investors and in any manner affected the interest of the securities market. It needs to be appreciated that the Noticee had a total of 4,91,387 clients during the inspection period. Aberration, if any, already stood rectified and therefore the same is merely a venial breach and punitive for which no penalty ought to be imposed by SEBI.

Findings

67. I note that SEBI Master Circular SEBI/HO/MIRSD/ DOP/CIR/P/2019/113 dated October 15, 2019 provide that all registered intermediaries shall develop client acceptance policies and procedures that aim to identify the types of clients that are likely to pose a higher than average risk of ML or TF. Further, the suggested parameters shall enable classification of clients into low, medium and high risk. Clients of special category (which include PEP and related to PEP) may, if necessary, be classified even higher. Such clients require higher degree of due diligence and regular update of Know Your Client (KYC) profile.

68. Considering the reply of the Noticee that as a matter of due diligence and adherence to the guidelines, the Noticee checks and did not have clients from

Targeted Financial Sanctions and the list was updated with the list of banned individuals / entities pursuant to UNSC Resolutions, UAPA Orders, FCRA Orders, grey list, list of high-risk jurisdictions, SEBI debarred entities, etc. Noticee does not register any PEPs as clients and KYC documents provided by the said 3 clients did not include any declaration indicating that they were PEPs, neither at the time of initial execution of the KYC documents nor at any subsequent point none of these clients disclosed their association with any PEP. I don’t find anything in the material on record that identifies and establishes that clients were indeed PEPs. Also, I note the submission that the said 3 clients were inactive and had not traded. Hence, I hold that the allegation that Noticee violated the provisions of Clause 2.2.2.1.b. read with Clause 2.2.4.e. of SEBI Master Circular SEBI/HO/MIRSD/ DOP/CIR/P/2019/113 dated October 15, 2019, does not stand established.

F. Incorrect reporting of data under Risk Based Supervision (‘RBS’):

69. It was alleged in the SCN that Noticee has not correctly reported the following data in RBS:

Table No. 4

Particulars	Brokerage income (₹)	Value of collaterals from the debit balance clients (₹)
Data Reported by Trading Member	1,31,82,48,626.00	13,37,29,46,088.00
As per Exchange working	1,51,70,16,000.00	1,87,21,33,736.58 (*)
Difference	-19,87,67,374.00	11,50,08,12,351.42 (*)

(*) Revised as per exchange email dated 31/08/2023.

70. In addition to above, it was also observed that the count of PEP clients reported by Noticee in RBS was Nil, whereas total 3 clients were marked as PEP in UCC.

Reply of Noticee

71. With respect to above allegations, Noticee *inter alia* submitted that it had already given an explanation vide its letter dated February 07, 2023 wherein it was mentioned that the Noticee had correctly reported the details of Brokerage Income

as during the year 2021-22, the Noticee had earned a brokerage income of Rs.131,82,48,625.98 with respect to its transactions on the Stock Exchanges and Rs.19,87,57,331.84 from other securities related services and therefore, the books of accounts reflected a total income of Rs. 151,70,15,957.82.

72. Further, with respect to the value of collaterals, the Noticee had arrived at the value of collaterals from debit balance clients after considering the across segment balances (i.e., after netting off the debits and credits across MTF and Non-MTF segments). Whereas the Exchange has arrived at the calculations based on CACE reports submitted by Noticee (which considers only the debit balances on MTF and Non-MTF segments). Further, the Exchange, at places has considered the same securities on MTF as well as non-MTF segments. In view thereof there is a difference in value of collaterals from the debit balance clients.

73. Despite this, the SCN alleges that the Noticee was obligated to report the entire gross brokerage amount to the exchange, thus violating Clause 6.1.16 of the Annexure of the SEBI circular dated September 26, 2016. Such an accusation is entirely unfounded. The Noticee has stated that the amount of Rs. 19,87,57,331.84 was earned from other securities-related services, which cannot be classified as 'gross brokerage amount.' This income comprised clearing member fees, demat charges, internet access charges, and auction settlement fees.

74. Further, the Noticee has rightly reported the gross brokerage under RBS. Reliance is placed on the Bye law number 30 under Chapter VIII of NSE bye laws provides the following:

“Trading members are entitled to charge brokerage upon all orders in respect of purchase or sale of securities at rate not exceeding the official scale prescribed by the relevant authority from time to time.”

75. Therefore, it is evident from the aforementioned analysis that brokerage constitutes the income derived from trades, as reflected in the contract note issued to the client. Consequently, the Noticee has rightfully treated the brokerage indicated in the

contract note as gross brokerage. SEBI is urged to take note of item number 25 of the balance sheet, where it is explicitly stated that an amount of Rs. 1,51,70,16,000/- is categorized as Brokerage Income and Other Income. It appears that the exchange official may have overlooked these balance sheet figures. Noticee furnished a copy of the Balance Sheet for the year ending March 31, 2022.

76. It is a matter of record that the annual accounts including Balance Sheet, Profit and loss accounts inclusive of Notes are submitted annually on the Exchange portal and is available to NSE / BSE / MCX / NCDEX and SEBI.

77. Even in the most recent circular from NSE, No: NSE/INSP/61572 dated April 12, 2024, titled 'Risk Based Supervision - Submission of information for the period April 01, 2023 – March 31, 2024 (Financial Year ended March - 2024)', the reporting requirement for Brokerage income is specified as 'Gross brokerage revenue from broking operations across all segments and exchanges.' This clearly indicates that gross brokerage comprises income solely from broking operations and not from any other source. Therefore, SEBI's interpretation that income earned from sources other than brokerage should be categorized under 'gross brokerage' contradicts its own stance outlined in the latest circular.

78. Further, with respect to the allegation of 3 clients not being reported as PEP, Noticee submitted that its response to the same has already been provided hereinabove.

Findings

79. With regard to allegation of incorrect reporting of the brokerage income in RBS, Noticee submitted that it had earned a brokerage income of Rs.131,82,48,625.98 with respect to its transactions on the Stock Exchanges and Rs.19,87,57,331.84 from other securities related services and therefore, the books of accounts reflected a total income of Rs. 151,70,15,957.82. Further, Noticee submitted that item number 25 of the balance sheet, where it is stated that an amount of Rs. 1,51,70,16,000/- is categorized as 'Brokerage Income and Other Income'.

Considering the material produced before me and submission made by the Noticee that the sub-head ‘Brokerage Income and Other Income’ also include incomes other than the brokerage income, I hold that Noticee has not reported incorrect data w.r.t. brokerage income in RBS.

80. With regard to allegation of incorrect reporting of value of collaterals from the debit balance clients in RBS, Noticee submitted that it had arrived at the value of collaterals from debit balance clients after considering the across segment balances (i.e., after netting off the debits and credits across MTF and Non-MTF segments). Whereas the Exchange has arrived at the calculations based on CACE reports submitted by Noticee (which considers only the debit balances on MTF and Non-MTF segments). Further, the Exchange, at places has considered the same securities on MTF as well as non-MTF segments. I find that NSE circulars alleged to be violated as mentioned in inspection report do not provide the method of calculation of value of collaterals from the debit balance clients to be reported in RBS. Further, considering the submission of the Noticee that it had arrived at the value of collaterals from debit balance clients after considering the across segment balances, whereas the Exchange has arrived at the calculations based on CACE reports submitted by Noticee and Exchange at places has considered the same securities on MTF as well as non-MTF segments, I am inclined to give benefit of doubt to the Noticee. Hence, I hold that the Noticee has not reported incorrect data w.r.t. value of collaterals from the debit balance clients in RBS.

81. With regard to allegation of incorrect reporting of the count of PEP clients in RBS, Noticee submitted that its response is same as provided hereinabove in respect of alleged violation of PMLA / AML provisions. In view of the findings made hereinabove, I hold that Noticee has not reported incorrect data w.r.t. count of PEP clients in RBS.

82. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, does not stand established.

G. Discrepancies in Margin Trading Funding:

83. It was alleged in the SCN that Noticee made the following discrepancies in Margin Trading Funding (‘MTF’):

    (a) Exposure given on non-eligible securities for MTF to 2 clients in 2 scrips amounting to ₹38.85 lakhs.

    (b) Non eligible securities pledged for MTF by 1 client (1 scrip) amounting to ₹3,588.84.

    (c) Exposure given to a client exceeded 10% of the broker’s maximum allowable exposure. Excess exposure amounting to ₹14.51 crores in 2 instances (2 clients).

Reply of Noticee

84. With regard to alleged discrepancies in margin trading funding, Noticee *inter alia* submitted that the said alleged violations had occurred due to errors in the software being used for MTF accounting. However, as submitted vide letter dated February 07, 2023, the said errors were rectified and no such error was ever observed thereafter. The software was checked on the test basis and it was found to be working fine. However, Noticee’s own system detected the deficiency and corrected it leaving no occasion either for the SEBI or NSE to point out any deficiency. Consequently, there are presently no errors or discrepancies in MTF operations. Noticee further submitted that the Inspecting Officials have not appreciated the unassailable fact that Noticee have adequate checks and balances in place which throws up the discrepancies, if any, and these discrepancies are cured at its initial stage only.

85. For an event to be deemed a violation warranting penalties, it must be evident on the face of the record, conspicuous, or substantial. It should not be a minor error that needs to be actively sought out / fished to be considered a violation worth penalizing. The law should address significant breaches rather than trivial matters. It is therefore submitted that since these errors have been rectified, they no longer exist, rendering any penalty redundant and serving no meaningful purpose.

Findings

86. With regards to alleged discrepancies in margin trading funding, I find that Noticee has accepted the violations as mentioned at para 83 above.

87. Therefore, I hold that the allegation that Noticee violated the provisions of Clause 3 and Clause 18 of SEBI Circular CIR/MRD/DP/54/2017 dated June 13, 2017, stand established.

H. Non-compliance with Cyber-security requirements:

88. SCN alleged that the off-the-shelf products used by the Noticee did not have Standard Testing and Quality Certification (STQC) during the inspection period.

Reply of Noticee

89. With respect to above allegations, Noticee *inter alia* submitted that It is pertinent to note that the observation mentioned under the SCN as well as the findings of the inspection dated January 17, 2023 herein clearly states that there is no major adverse observation pointed out in the audit report. Noticee is using third party software's as procured from the market, however, after making enquiries in the market it is revealed that in respect to identical applications / software's, none of the vendors have obtained such a certificate from the authority.

90. In addition to the above, the Noticee has made a request to the software vendor to obtain the said certificate. The Noticee found itself with no viable alternative but to continue using the software, as discontinuing its use solely to await the STQC certificate would have halted the operations of the Noticee. Additionally, the Noticee has established its own in-house team to develop the back office software. This strategic step ensures that the Noticee is not solely dependent on the software vendor to secure the STQC certificate, thereby demonstrating a proactive approach to achieve compliance in this matter. Any adverse action in this regard could have been the suspension of usage of the software. Any such suspension of the software would have demolished the business operations of the Noticee and thereby jeopardized the interest of clients as well as the Noticee.

91. The said breach (without admitting) is merely a technical breach for which no penalty ought to be imposed in terms of the settled law of land laid down by the Hon'ble Securities Appellate Tribunal (SAT) in catena of cases as mentioned hereinabove.

Findings

92. With regards to allegations of not having STQC Certification for off the shelf products used for core business functionality, I note that Noticee has accepted the violation.

93. Noticee further submitted that it faced operational challenges i.e. none of the vendors have obtained such a certificate from the authority. However, I note that Noticee has neither produced any evidence in support of its claim nor it has furnished any evidence that it had taken up the matter with SEBI that it was facing such an operational challenge in implementation of the SEBI circular dated December 03, 2018. Thus, the submission of the Noticee cannot be accepted.

94. In view of the above, I hold that Noticee has violated the provisions of Clause 36 of Annexure-1 of SEBI Circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018, stand established.

I. Non-adherence to rules of membership:

95. It was alleged in the SCN that Noticee was engaged as a principal in a business other than that of securities involving personal financial liability: -

Table No. 5

Sister concern name	**Opening balance as on 01 Apr 2021**	**Closing balance as on 31 Oct 2022**
Ventura Allied Services Private Limited (VASPL)	₹1 Crore	₹1 Crore
Kashmira Investment and leasing Private Limited (KILPL)	₹6 Crore	₹6 Crore

Reply of Noticee

96. With respect to above allegations, Noticee denied that it is engaged as a principal or employee in a business other than that of securities involving personal financial liability. Noticee *inter alia* submitted that it made investments of Rs.10,00,000/- on May 08, 2012, and Rs.1,00,00,000/- on May 25, 2015, in VASPL. Additionally, Ventura invested Rs.6,00,00,014/- on May 22, 2018, in KILPL. All these investments made in VASPL and KILPL were carried out using its surplus funds. No funds were ever invested, whether from clients' bank accounts or from clients' funds.

97. SEBI merely asserts a violation of Rule 8(3)(f), where the rule does not specify that investing in associate companies would constitute an activity involving 'personal financial liability.' Moreover, such investments could not adversely affect Ventura's balance sheet or compromise the integrity of the securities trading ecosystem.

98. Additionally, a purposeful interpretation of Rule 8(3)(f) reveals that it was introduced to mitigate risks to the interests of trading members' clients. In the present scenario, SEBI has not even alleged that Ventura's clients would be exposed to any risk, nor has any such occurrence transpired, given that the loan was extended from surplus funds.

99. Investing in shares cannot reasonably be categorized as ‘business’ according to Rule 8(3)(f) of the SCR Rules. Ventura has held shares in VASPL and KILPL for an extended period, with infrequent trading activity. These shares are accounted for as investments, not stock-in-trade, in Ventura's books.

100. In the matter of Anugrah Stock Broking Pvt. Ltd, SEBI vide order dated March 28, 2023 interpreted Rule 8(3)(f) of SCR Rules to mean that the same can only attract upon satisfaction of the following three conditions:
    (a) The other business in question should not be the primary dominant activity of the intermediary i.e. it cannot be securities business.

(b) The other business in question should not be in connection with or incidental to or consequential upon the securities business.
(c) The other business in question should incur financial liability for the intermediary.

101. The impugned SCN failed to consider that in the present case, there is a clear demarcation of the clients' fund and the Noticee's own fund. Further, Trading Members are permitted to invest in securities, and such investments cannot be considered 'business' as there are no SEBI restrictions on investing one's own money, which does not entail personal liability for a Trading Member.

102. Circular number NSE/COMP/47555 dated March 08, 2021, elucidates the method for computing Net Worth, as outlined by the Dr. L.C. Gupta Committee Report, a practice upheld by Stock Exchanges for over two decades. This circular allows investments in unlisted securities of associate/subsidiary/group companies, with the value of such investments subtracted from the net worth. Thus, NSE's circular authorizes investments in securities of associate/subsidiary/group companies, as Trading Members submit net worth certificates semi-annually.

103. According to the SCR Rules, engagement in business as either a 'principal or employee' is prohibited. Ventura does not meet the criteria for an employee, nor does it act as a 'principal' in any business operations related to its investments. As per the Cambridge Dictionary, a 'Principal' is defined as "a person who has legal responsibility for what a business or organization does". Similarly, Black's Law Dictionary defines a 'principal officer' as "an officer with the most authority of the officers being considered for some purpose". Ventura does not exercise control over decisions made by these companies, including day-to-day management, nor does it possess the authority to nominate directors to their boards. Therefore, Ventura cannot be categorized as a 'principal' involved in business solely due to its investment holdings. Ventura is exclusively focused on stockbroking and does not pursue any other business ventures. Additionally, the term 'engaged in' lacks specific definition within the SCR Rules. However, based on various legal

interpretations, it signifies continuous occupation or employment, involving the concept of continuity of action as well as physical participation with full dedication of time, attention, and effort. This does not apply to Ventura.

104. SEBI asserts that Ventura violates Rule 8(3)(f) of the SCR Rules, by engaging as a principal in a business other than securities, involving personal financial liability. However, SEBI fails to provide any reasoning as to how Ventura qualifies as engaged in a business, whether as a principal or otherwise, regarding its investments.

105. Ventura has already disinvested its entire shareholding in KILPL and initiated the process of disinvestment of shares in VASPL long back. The process of disinvestment of shares of VASPL is solely dependent on NSE as the permission to merge VASPL with Ventura is pending at NSE. Therefore, even assuming for the sake of argument and without admitting any violation on the part of Ventura, Noticee submit that even if a violation occurred, remedial measures have been undertaken, which do not warrant any penalty. Further, it is well settled that penalizing a person who rectifies a mistake upon discovering new information is unjustified.

106. In this regard, Noticee relied upon the observations of SEBI Adjudicating Officers / WTM in the matters of Geojit BNP Paribas Financial Services Limited, Evermore Share Broking Private Limited and Inventure Growth and Securities Ltd and observations of Hon’ble SAT in the matters of Magnum Equity Broking Limited v. National Stock Exchange of India Limited and Hon’ble Bombay High Court in the matters of Kotak Securities Limited v. National Stock Exchange of India Limited & Ors in Writ Petition No. 25 of 2024 etc.

Findings

107. As per the Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 member shall not engage either as principal or employee in any business other than that of

securities or commodity derivatives except as a broker or agent not involving any personal financial liability.

108. With regard to violation of Rule 8(3)(f), Noticee submitted that all investments made in VASPL and KILPL were carried out using its surplus funds, no funds were ever invested, whether from clients' bank accounts or from clients' funds. Noticee has also relied on the judgement of Hon'ble SAT in the matter of **Magnum Equity Broking Limited vs. National Stock Exchange of India Limited** dated November 29, 2023 (Appeal No 461 of 2022), where it was *inter-alia* observed that: *"10. In our view, investment of surplus funds, generated as a consequence of securities business, with an NBFC registered with RBI cannot lead to an inference that the Appellant is engaged as a principal in business other than that of securities involving personal financial liability. The Respondent Committee given a clear finding that the funds were advanced Adjudication Order in the matter of Evermore Share Broking Private Limited from the account of the Appellant therefore there is no dispute that the funds were their own moneys ...."*

109. I note that Noticee has invested its surplus funds in its associate companies viz. VASPL and KILPL. Further, I also note the above submissions made by the Noticee and also the submission that it has already disinvested its entire shareholding in KILPL and initiated the process of disinvestment of shares in VASPL long back, which is solely dependent on NSE as the permission to merge VASPL with Ventura is pending at NSE.

110. In view of the above, I hold that the allegation that the Noticee violated the provisions of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957, does not stand established.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1956?

111. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions on account of Non-reporting of shortfall in collection of EOD margin, Passing of penalty to clients on short collection of upfront margins, Incorrect reporting of data under Enhanced supervision data (Weekly), Discrepancies in Margin Trading Funding, and Non-compliance with Cyber-security requirements.

112. Noticee submitted that violations are technical, venial and procedural in nature and purpose of inspection is not punitive. In this regard, Noticee relied upon the observations of Hon'ble SAT in the matter of DSE Financial Services Limited v. SEBI, Religare Securities Limited v. SEBI, State Bank of India vs SEBI, UPSE Securities Limited v. SEBI, ACML Capital Markets Limited v. SEBI, Karvy Consultants Ltd. v SEBI etc.

113. In this regard, I note that the object of inspection of the books of accounts and records of any intermediary is to monitor the compliances and identify non-compliances, if any, with respect to process, procedure and systems prescribed through various provisions of the SC(R) Act, 1956, SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions as mentioned at Sr. No. B, C, D, G and H in Table No. 1 at Page No. 2 to 3 of this order.

114. Further, I find that the allegation of violations that were established in the cases relied upon by Noticee are different from the violations that have been established in the present case of the Noticee. Hence, I note that the said cases do not stand on the same footing as the given case of the Noticee. I find from the observations made in the inspection report and other material available on record that the Noticee has failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients. Accordingly, such submissions of the Noticee are untenable. The aforesaid violations are serious in

nature and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act, 1992.

115. Noticee further submitted that no penalty can be justified against the Noticee for any alleged violation, as the foundational aspects of the charging provisions outlined in the SCN have not been met. Further, violations highlighted in the SCN are neither recurrent nor have they resulted in any personal gain or avoidance of loss on the part of the Noticee, hence, no penalty need to be imposed in the matter.

116. In this regard, I note that Hon'ble SAT in the matter of ***Komal Nahata v. SEBI*** *(Appeal No. 5 of 2014 dated January 27, 2014)* has observed that:- *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure"*.

117. I also note that in Appeal No. 78 of 2014 in the case of ***Akriti Global Traders Ltd. Vs. SEBI***, the Hon'ble SAT vide order dated September 30, 2014 has observed that: *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

118. Further, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) wherein it was *inter-alia* observed 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...".*

119. Noticee further contended that no penalty can be imposed under Section 15 HB of the SEBI Act, 1992 for violation of a circular.

120. In this regard, I note that SEBI circular which have been violated by the Noticee were issued in exercise of the powers conferred under Section 11 (1) of the SEBI Act, 1992. The provisions of Section 11 (1) of the SEBI Act, 1992 provides that: *"Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit."*

121. Further, Section 15HB of the SEBI Act, 1992 provides that "*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."*

122. As Section 11 (1) of the SEBI Act, 1992 gives power to Board to regulate the securities market, by such measures as it thinks fit and Section 15HB of the SEBI Act, 1992 provides penalties for failure to comply with any provision of the Act, the rules or the regulations made or directions issued by the Board thereunder, thus, I note that the interpretation of the Noticee that penalty cannot be imposed under Section 15HB of the SEBI Act, 1992 for violation of a circular is not correct. I hold that the Noticee was under obligation to comply with the provisions of said SEBI circulars and penalty for failure comply with the SEBI circulars can be imposed on the Noticee under Section 15HB of the SEBI Act, 1992.

123. In this context, I place my reliance on the observations of Hon'ble SAT in the matter of **Annaswamy Venkatramani vs. SEBI**, decided on June 28, 2023, wherein it was held that:

"12. The word 'directions' issued by the Board under Section 15HB is different and distinct from the directions issued under Section 11B after due enquiry and adjudication. There are many directions issued under the Regulations and the

Circulars requiring a person to do an act in a certain manner. For example, a person is required to comply with a certain provision within a stipulated period. Failure to comply with such directions issued by the Board under the Act, Regulations, Rules or Circulars if not complied with may invite penalty. If penalty is not specified under Chapter-VIA from Section 15-A to Section 15-HAA for failure to comply with such type of directions then penalty can be imposed after adjudication under the residuary clause Section 15HB."

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

<u>Relevant provisions of SEBI Act, 1992:</u>

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

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

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

<u>SEBI Act, 1992</u>

Factors to be taken into account while adjudging quantum of penalty
15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

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

126. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SEBI (Stock Broker) Regulation, 1992 read with NSE Circular and SEBI Circulars is not available. With respect to the repetitive nature of the default, I do not find anything on record. The inspection findings bring out a number of instances where the Noticee has not been complying with the requirements of the SEBI (Stock Broker) Regulation, 1992, NSE Circular and SEBI Circulars as mentioned hereinabove. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Regulations and Circulars / Directions issued thereunder, which it failed to do during the inspection period. The conduct of the Noticee in not complying with the provisions of SEBI Regulations and SEBI Circulars cannot be taken lightly. The violations by the Noticee are serious, therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence.

ORDER

127. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15J of the SEBI Act, 1992 and exercising the powers conferred upon me under section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty of ₹ 5,00,000/- (Rupees Five Lakhs Only) under section 15HB of the SEBI Act, 1992 on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

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

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: June 28, 2024	**ADJUDICATING OFFICER**