BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2022-23/18104]

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

IN THE MATTER OF

ELITE WEALTH LIMITED
[FORMERLY KNOWN AS ELITE WEALTH ADVISORS LIMITED]
[PAN No.: AAACE0759K]

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted inspection of M/s Elite Wealth Limited (formerly known as Elite Wealth Advisors Limited (hereinafter referred to as "**Noticee/ Elite/ the Company**") with respect to its portfolio management activities from September 28, 2020 to October 05, 2020. The period covered in inspection was from April 01, 2019 to July 31, 2020 (hereinafter referred to as "**inspection period**"). Noticee is registered as portfolio manager with SEBI registration no. INZ000186539.

2. The findings/ observations made during the course of inspection were communicated to the Noticee by SEBI vide mail dated January 05, 2021. After examining the reply submitted by the Noticee vide letter dated February 10, 2021,

it has been alleged that the Noticee violated various provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R) Act, 1956**"), SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations, 1992**") and applicable SEBI Circulars. The extracts of violations alleged to have been committed by the Noticee and the corresponding provisions of Stock Brokers Regulations, 1992 and SEBI Circulars are given in the tabulation below:

Sr. No.	Alleged Violations	Regulatory Provisions
1	Non segregation of clients' securities	Section 23D of SC(R) Act, 1956 read with Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
2	Non segregation of clients' funds	Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993
3	Wrong naming/ tagging of demat accounts	Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1.(f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016
4	Non settlement of clients' accounts	Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12

Sr. No.	Alleged Violations	Regulatory Provisions
		of Annexure to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.
5	Periodic stock reconciliation not done	Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
6	Single email ID/ mobile number assigned to multiple clients	Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
7	Incorrect submission of data to exchange	Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 dated September 26, 2016 read with Clause A(2) of the code of conduct, read with Regulation 9(f) of the Stock Brokers Regulations, 1992
8	Client funding beyond T+2+5 days	Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
9	Client's Order recording	Clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017

Sr. No.	Alleged Violations	Regulatory Provisions
10	Non-maintenance of books of account	Rule 15 of SC(R) Rules, 1957 and Regulation 17 of Stock Brokers Regulations, 1992

3) SEBI initiated adjudication proceedings against the Noticee under Section 23D of SC(R) Act, 1956, section 15HB and section 15A(c) of SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4) The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated October 27, 2021 under Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and 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 section 23D of SC(R) Act, 1956, section 15HB and section 15A(c) of SEBI Act, 1992 the violations of aforesaid provisions alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5) Show Cause Notice No. SEBI/EAD/BM/DS/12193/2022 dated March 23, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, rule 4 of SEBI Adjudication Rules and rule 4 of SCRA Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section

23D of SC(R) Act, 1956, section 15HB and section 15A(c) of SEBI Act, 1992 be not imposed on the Noticee.

6) The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide mail and letter dated April 11, 2022, the Noticee requested for 2-3 weeks' time for submitting reply to the SCN, which was acceded to. Vide mail dated May 02, 2022, hearing notice was issued to Noticee to provide opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear before the undersigned on May 10, 2022. Vide mail dated May 09, 2022, Noticee requested for adjournment of hearing as the employees of Noticee who were preparing reply to the SCN were suffering from covid. Its request was considered by the undersigned and vide mail dated May 10, 2022, Noticee was advised to appear before the undersigned on May 23, 2022. Vide mail dated May 18, 2022, Noticee was also advised to submit its reply by May 20, 2022. Vide mail dated May 20, 2022, Noticee submitted its reply to the SCN.

7) The submissions made by the Noticee are as summarized below:

   i) *Due to COVID circumstances, Inspection in the present matter was also conducted virtually where during this period, people were not well equipped with the resources to work virtually and also not even well- versed with the manner of the virtual conduct. The Noticee did not a chance to appear in person to clarify or have any discussion to the queries, which would have been beneficial for the Inspection team as well.*

   ii) *Noticee further places on record that it has been in this business and have been serving the society since last 32 years, with an impeccable track record and envious reputation of operations/ conduct in the relevant circles.*

   iii) *Noticee has not contravened any of the provisions of the securities laws or directions, instructions or circulars issued the board which would invite the* *initiation of the present enquiry proceedings against it and definitely does not warrant levying of any penalty on the Noticee. It is further submitted that no violations / irregularities have been committed by it in the course of conduct of its business except those which have occurred inadvertently as procedural lapse and which have been specifically stated herein, and that it has a system in place to take due care in order to ensure that the business activities are carried on in compliance with applicable Rules and Regulations.*

iv) With regard to the observations raised in the SCN, comments and the explanations on the alleged observations/ findings are as under.

v) <u>Non segregation/ misutilisation of clients' funds and securities</u>

(1) Noticee has never mis-utilized the securities of clients and as per the regulations, Noticee has only kept with it the securities either to meet the obligation to the stock exchanges or when there is a debit balance in Client's account and it has lien over such securities.

(2) Noticee transferred some scrips to/from the demat accounts of clients collateral account and its own proprietary account and further pledged, the extract of movement of impugned transactions on sample basis is attached herewith as "Annexure B (colly)".

(3) It is submitted that a mere transfer of securities by the Noticee from the demat account of client collateral account to proprietary account cannot imply any misutilization of securities by the Noticee. It is further submitted that the alleged securities as mentioned in Table-I of the SCN were shares owned by the Noticee. The fact that the alleged shares belonged to the Noticee can be verified from the Contract Note for the said securities attached herewith as "Annexure C (colly)". It must be noted here that from the aforesaid annexure, it can easily be concluded that the said securities were in fact purchased by the Noticee and prior to their transfer to the Client Collateral Account, these securities were held by the Noticee in its own proprietary account. The scrip

wise Net position for the alleged securities is attached herewith as "Annexure D (colly).

(4) It is further submitted that the alleged securities were earlier transferred to the Client Collateral Account and were subsequently pledged with the HDFC Bank for proprietary's own use. The transfer of securities from Client Collateral Account to Proprietary Account can be verified from the Transaction Statement attached herewith as "Annexure E (colly)"

(5) The securities pledged by the Noticee with HDFC Bank can be verified from the Pledge Master Report and summary of transactions in Loan Against Shares (LAS) demat account attached herewith as " Annexure F(colly)".

(6) In this regard, the Noticee would like to draw attention to the SEBI Circular bearing no. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 pursuant to stock brokers were restricted from pledging client's securities lying in the Client Collateral Account to Bank/ NBFCs for raising funds. It is pertinent to note that prior to September 01, 2019 i.e., before implementation of the Client Unpaid Securities Account (CUSA) and Client Collateral Account System, the Noticee followed the practice of pledging the shares as margin to exchange(s) through a common collateral account for both proprietary and client's shares for ease of doing business like any other stock broker. Due to this practice prior to the implementation of the abovementioned circular, the Noticee transferred shares to/ from between the demat account of client collateral account and its own proprietary account for pledging. It is to be noted that this was the practice followed by other stock brokers too before the implementation of the circular and the same cannot be treated as any non-compliance on the part of the Noticee as no wrong doing has been done by the Noticee. It may please be noted that the circular dated September 26, 2016 mentions restriction only on transfer of client's securities. It is to be noted that these are not client(s) securities which were transferred but the Noticee's

own securities which were transferred to/ from proprietary account to client collateral account. Thus, it was only pursuant to the Circular SEBI dated June 20, 2019 and implementation of the same from October, 2019, the Noticee started maintaining the Client Unpaid Securities Account and Client Collateral Account System.

(7) *It is pertinent to note that the transactions mentioned in Table-I of the SCN were executed prior to the implementation of the SEBI Circular dated June 20, 2019 and that no transactions were executed after the implementation of the above-mentioned SEBI Circular and rightly so inspection team has also not observed any transaction executed pursuant to the implementation of the SEBI Circular restricting the pledging of client's securities lying in the Client collateral account.*

(8) *I t has further been alleged in Para 4.3 of the SCN, that securities were transferred between Noticee's proprietary account and two clients' beneficiary account in 62 instances. Further. it has been alleged that value of securities which moved from client beneficiary account to Noticee's proprietary account was IRS. 20,43,927/- and value of securities which moved from Noticee's proprietary account to client beneficiary account was Rs.13,745/-. With regard to the said allegation, it is submitted out of 62 instances, majority of the securities were received in Corporate Action such as demerger, merger and some securities received in Right issue which were applied from the Noticee's own funds itself and some of the securities were purchased in the Proprietary account and further some of the securities in the client beneficiary account/client collateral account in subject are very old accounts.*

(9) *In reference to the above, it is to noted that there was no instance where the Noticee received any grievances from the client either stating that the Noticee has defaulted in giving the delivery of shares or that the Noticee has not settled*

the account in time. There has been no queries or questions raised against the Noticee anytime.

(10) At the time of implementation of CUSA/ Collateral Account System, it was observed that certain proprietary shares were lying in the aforesaid accounts since a long period of time and in order to reconcile the holdings, the said shares were transferred to the Noticee's Proprietary beneficiary account, similarly, two scrips were short in client beneficiary account on account of excess delivery given to clients in past and since these shares were also available in the Noticee account, the Noticee fulfilled the shortage by transferring from its own proprietary account to client beneficiary account. The fact that the securities which were transferred from Client beneficiary to Noticee's proprietary account were in fact the shares of the Noticee which can be verified from the Depository Participant Statement attached herewith as "Annexure G (colly)"

(11) It is pertinent to mention here that prior to the implementation of CUSA and Client Collateral Account system, the Noticee had transferred the securities to the said accounts only for the sake of convenience to pledge its own shares in order to fulfill the Client's obligations.

(12) It has been alleged that Noticee has violated Clause 2 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. In this regard, it is submitted that the Noticee has diligently kept separate accounts for client's securities and have maintained proper books of accounts as per the abovementioned Circular, so as to distinguish such securities from Noticee's own securities. It is be noted that out of many number of active clients there were only 2 clients' accounts where these instances of error in the prnress of reconciliation occurred and therefore the Noticee humbly request that these instances may be ignored by your goodself. There can be no negative inference drawn against the Noticee.

vi) Non-segregation of clients' funds

(1) With regard to the allegation that the Noticee used clients' accounts for purposes other than those specified in the SEBI Circular Ref:SMD/SED/CIR/93/23321 dated November 18, 1993, it is submitted that the Noticee never utilized client(s) funds for any purpose other than the specified purpose.

(2) It has been alleged in the SCN that during verification of Bank Accounts, it is formed that the stock broker has taken overdraft facility in client account no. 00030140000152. The said overdraft has further been secured by FDRs created from Client's funds. With regards to the aforesaid allegation, it is submitted that the FDRs were always created from the funds available in the designated client account. This Account had funds from both clients as well as own funds. Since in an ongoing business there are various instances wherein funds are required to be infused by a broker to meet the clients pay in obligations. Thus the statement recorded in the Notice that the said overdraft was secured by the FDRs created from own funds is not correct. The most important point to be understood that the overdraft availed out of these FDRs was:

(a) to meet client's pay in obligation

(b) always secured by the amount available in the fixed deposit.

(c) not utilized for any other purpose

(3) This is a general market practice followed by all efficient brokers that any float lying in the client account is used to create FD so that interest can be earned in the account, while keeping the funds of clients safe and secure. Hence, the Noticee would like to further subrnit that the total available funds i.e., cash and cash equivalents with the Noticee and with the clearing

corporation/clearing member (A + B) was always equal to or greater than Clients' funds as per ledger balance (C). Hence, the value of G, as per the enhance supervision report was always positive and had never turned negative during any point of time. It is to be noted that the Noticee had filed 70 reports and maximum reports showed the G value more than the Fixed Deposit amount, which shows that G value have always been positive and the same can be verified frorn the sample report which is allached and annexed as Annexure "H". It IS ftxrther submitted that there has been no misutilization of client(s) funds by the Noticee and the client(s) funds have always been used to fulfill the obligations of the clients only.

(4) It is further submitted that, the balance of the said FDRs is considered as a part of balances available in client Bank accounts at the time of reporting of weekly enhanced supervision-details of clients assets in accordance with Annexure to the NSE circular bearing no. NSE/ INSP/44459 dated May 26, 2020 wherein it is stated that "Any FDR that has been created out of the client bank account without any corresponding entry in the client ledgers and not placed with CC, the same is to be added in the client bank account balance". It is further submitted that the records were reconciled on daily basis to ensure proper segregation of funds of clients from own funds and on daily basis the Noticee used to reconcile the client's funds available in client Bank account and the amount of own funds available in client bank account in order to ensure no shortage of funds or no misutilization of funds of credit balance clients.

(5) It is submitted that client funds were not utilized for any purpose other than the specified purpose. The SEBI Circular dated November 18, 1993 which is alleged to have been violated by the Noticee requires a stock broker to withdraw money from clients' accounts only when money is required for payment to or on behalf of clients or towards payment of debt due to the broker

from the clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the member, provide money so drawn shall not in any case exceed the total of the money so held for the time being for each such client. The SEBI circular dated November 18, 1993 further mandates the broker to have separate and distinct accounts for fund and securities of the clients.

(6) *It is submitted that the Noticee has only used the funds raised through OD facility for fulfilling the client's obligations and not for its own purpose. The fact that the funds from the OD facility have been utilized for fulfilling client's obligations can be verified from the statements attached herewith as " Annexure I "Colly". The statements attached herewith show some instances in which the Noticee has utilized the said funds for fulfilling client's obligations and the Interest statements show the Interest charged on the utilization of the OD facility. The Noticee has complied with the said requirements by keeping separate client accounts for funds from Noücee's own proprietary account. The Noticee has withdrawn money from clients' accounts only when money was required for payment to or on behalf of clients and it has never used clients' money for its own purpose or for proprietary trading.*

(7) *Further, the Noticee took overdraft facilities only in those accounts in which there was a shortage to meet the pay in obligations. It must be noted here that the said overdraft in its clients' accounts was secured by the FDRs created out of Client's own funds. Therefore, there was no mis-utilization of clients' funds. Hence, no negative inference can be drawn against the Noticee.*

vii) <u>Wrong naming / tagging of demat accounts</u>

(1) *It has been alleged in the captioned SCN that during verification of demat account details uploaded on the exchange portal, it was observed that proper tagging of 5 demat accounts had not been done as per Clause 1.2 of*

Annexure to SEBI Circular SEB1/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(2) *With regard to the said allegation, it is submitted that out of 5 demat accounts as alleged in the SCN, only four Demat Accounts were active and the remaining one account was inactive and had been closed. It is to be noted that the above stated account was inactive from 07.12.2019 and had been subsequently closed on 0603.2020. It is to be noted that tagging is done on portal of NSE e-nit where the sub-category only showed the option of "Client Account", "Pool Account" and "Own/ Proprietary Account" and "Any other Account" and the same can be verified from the screenshot of the portal attached herewith as Annexure" J". Thus, the Noticee have no option but to choose the option of "Any Other Account" in cases where the account did not fit in the first three categories.*

(3) *The instances as provided in Table 2 of the SCN where different reasons were used (being termed as Improper tagging) with reasons are as under:*

DP ID	DP Account No.	Account Purpose	Status	Real reason
IN30160	00012918		Active	TM/CM CMPA (CDSL) (Margin pledge account as per new system
IN30160	10274587	Any Other	Active	PMS Growth (Account of PMS and did not fit in the existing category)
IN30160	10363231	Any other	Active	PMS (Account of PMS and did not fit in the existing category)
IN30160	10363725	Any other	Active	Account wrongly opened and hence account was closed without carrying out any transactions

IN30160	10369816		Active	TM/ CM Client Securities Pledge account (NSDL)there was no category available for such account and therefore it was tagged as any other account.

(4) It is further submitted that the category other than the options available on the website was put under best option available i.e., any other, if it does not set the criteria with the options shown in the portal. It is to be noted that there is a limitation on the portal of Exchange which restricts the options to bifurcate on the purpose of accounts. Therefore, this does not mean that there was wrong naming/ tagging of demat accounts done by the Noticee and nor there are any observations which states that there was any misutilization of funds from the client's account. It is further submitted that the wrong naming/ tagging of demat accounts as alleged in the Notice is due to the practical difficulty faced while tagging the accounts on the portal.

(5) Thus, the violation with respect to wrong naming/ tagging of demat accounts as alleged in the SCN cannot be established must be set aside. Hence, no inference can be drawn against the Noticee.

viii)<u>Non-settlement of clients' accounts</u>

(1) It has been alleged in the captioned SCN that the Noticee failed to carry out actual settlement of clients' funds and securities for clients who have not traded in the past 90 days. It has further been alleged that the Noticee has followed a practice of issuing retention statement without ensuring actual transfer of funds and securities to the client while settling the client account which was marked as settled in the back-office software. With regard to the said allegation, it is submitted that that the Noticee have been following the

process of quarterly settlement of the clients' funds and securities after withholding funds & securities to the extent of 225% of margin obligations and other obligations as provided by SEBI/Exchanges, rules and regulations. Therefore, in this manner the Noticee has not flouted any SEBI regulation.

(2) Further, the SCN under Table 03 summarizes the instances Quarters of the alleged violation. On perusal of the Annexure-3 to the SCN, it is submitted that the aforementioned table has been drawn erroneously and figures with respect to the said table i.e. "No. of UCC" is inflated.

(3) It is further submitted that as conclusive inference has been drawn from the data in the said table to deduce the status of compliance of settlement of the client's account, the inference so drawn is also prejudicial. The said inference has prompted your goodself to issue the aforementioned SCN, accordingly the SCN itself should be quashed on this ground alone.

(4) It is pertinent to note here that there have been instances where the client which has not been settled in the first Quarter, the UCC of the said client has been considered and repeated in the calculation of every quarter till it has been settled. One such instance is the account of Client bearing UCC AG205, which has been recorded and considered in the calculation for every quarter and consequently has inflated the figures in the aforesaid table.

(5) On of the Annexure 3 of SCN, it can he inferred that in actuality there were 164 Clients in total, instead of 204 whose accounts have been alleged to be unsettled.

(6) With respect to observations of non-settlement, the Noticee has reproduced below in brief the actual status of settlement us per its books:

Reason	No. of Client
Invalid Bank Details	23
Invalid DP Client ID	20

Settled late or in the following quarter due to imposition of lockdown	70
Sellled ill the following quarLe1	34
Clients with PMS Account	2
Clients Debarred and thus settled in the following quarter	2
CDSL Scrip and thus not transferable interdepository	1
Miscellaneous	12
TOTAL	164

(7) *Accordingly, from the above-mentioned table, it can be seen that, in toto, the no. of clients whose accounts have been alleged to be unsettled were just 164 and not 204. Further, the Noticee would like to present the actual status as per its books, the no. of clients settled with it and the status of settlement of their running account. The below table shows the number of clients accounts settled along with the value of client settled during the five quarters period from July, 2020 to September, 2021:*

S. No.	*Quarter*	*No. of clients settled*	*Value of client settled*
1	*Q1 (01.07.20-30.09.20)*	*5106*	*500939232.50*
2	*Q2 (01.10.20-31.12.20)*	*4978*	*397544856*
3	*Q1 (01.01.21-31.03.21)*	*5016*	*300995581*
4	*(01.04.21-30.06.21)*	*4461*	*324256924*

5	*Q5* *(01.07.21-30.09.21)*	*4214*	*705142809*

(8) Accordingly, from the above-mentioned table, it can be seen that the no. of clients who were settled by the Noticee who had availed the facility to settle their running account quarterly and the actual status of the running account settlement of the various active and inactive clients for funds and/or securities are largely different from the picture presented in the inspection report and also in the SCN.

(9) It is further submitted that the Noticee is unaware on what basis was the status of the running account settlement provided in the inspection report has been arrived at.

Total Client registered	*35900*
Total Clients unsettled	*164*
Percentage of unsettled to registered clients	*0.45%*

(10) From the data provided in the Annexure K, it is apparent that no. of clients whose accounts had remained unsettled during the inspection period were 0.45% of the total clients registered with the Noticee who had availed for the settlement of their running account because the clients unsettled were subsequently settled in the following quarter.

(11) Further, with regards to the no. of accounts which had remained unsettled, the Noticee would like to highlight the practical difficulties faced by it while settling the various running accounts which has resulted in alleged noncompliance are as follows:

(a) Out of 164 clients of the Noticee, 23 accounts which have been reported as not settled in the Inspection Report, it must be noted that the Noticee had executed the NEFT transfer instructions for crediting the balances to respective clients and thus settling the respective accounts, but the same didn't get successful due to "Invalid IFSC Code" and "Account does not exist". However, the Noticee had subsequently contacted the clients and settled their respective accounts after getting bank details of such clients modified.

(b) The remaining clients, accounts of 20 clients could not get settled, even though security delivery instructions were given by the Noticee. The delivery instructions got failed and the same were returned with the error message of "Invalid DP Client ID".

(c) It must be noted here that out of the total number of accounts which have been alleged as unsettled, accounts of 70 clients and of 34 clients were settled subsequently in the following quarter because of the reason that the accounts could not get settled due to the imposition of Lockdown on account of Covid-19 pandemic. It is submitted that of these 70 clients most of the instances were from Quarter 5 i.e., April, 2020 to June, 2020 and the quarterly settlement of the said clients was to be done before June 30, 2020, however, due to lockdown, concerned staff could not come to office after March 21, 2020. It must be noted here that the lockdown was imposed by the Government very abruptly and without any prior intimation from the authorities.

(d) Thus, it took time for the employees of the Noticee to start work from home as before the Noticee could get the proper infrastructure in place for work from home, the lockdown was imposed by the Government. The concerned person who was in charge of running

the settlement process and who had understanding of this process, could not travel due to restriction of movement from one place to another and since the inter-state travel was totally restricted, it became very difficult for the concerned person to reach to the system from where the settlement process could be processed. Due to compulsory settlement of the client's account, the concerned person had to remotely handle the process which is an automated system process where the algorithm is made in such a way that the accounts which are to be settled gets automatically settled for every client. It is to be noted that the concerned person who is running the system has to be well-versed to complete the process. In present scenario, the concerned person had to explain the other person, available in the office to run the system. It is to be noted that the Noticee had settled huge number of clients account during that period. It is for the aforesaid reason, the actual settlement which is run by the Noticee on regular basis got skipped and the accounts could not get settled in the due time. However, it must be noted that aforesaid clients were subsequently settled by the Noticee and their respective dates of settlement were also provided by the Noticee along with its reply to the Inspection Report. The status of settlement for the aforesaid clients can be verified from the Annexure K which is attached hereinabove.

(e) It must be noted that 2 clients reported in the Inspection report were PMS clients and did not require settlement on the quarterly basis. Further, two clients as reported in the Inspection Report were debarred from accessing the Securities market and thus the said accounts were settled when their debarment was lifted. It must be noted that for the remaining, settlement of client could not be

executed as the pending security was a CDSL scrip and inter depository transfers in that particular scrip was not permitted for NSDL.

(f) Miscellaneous: The reasons for miscellaneous accounts being unsettled were due to lockdown, there were debit account in the client's account for which securities were held. New KYC were being registered etc., which clearly show that there was no intention of the Noticee to not to settle the account but there were genuine reasons for not settling the accounts.

(12) With respect to each of the 164 clients, Noticee provided quarter wise details of the reasons for not being able to settle their accounts within time.

(13) It is further submitted that of the reported instances, the Noticees have carried out settlement of funds and securities in all the eligible cases, except in the cases where the settlement process got disrupted on account of lockdown and even in such cases too, the Noticee had settled them subsequently.

(14) With regards to the subsequent quarters post inspection, we have thoroughly verified our systems to avoid any default and we have a 100 percent rate of settlement in subsequent quarters.

(15) It is further submitted that out of 3652 active clients only 164 instances of non-settled clients have been pointed by the Inspection Team the instances of non-settled clients only amount to nearly 5% of the clients which were required to be settled by the Noticee during the period under investigation which minuscule read along with the fact that have settled clients to the tune of Rs. 218.91crore .

(16) Therefore, upon the perusal of the aforesaid facts it can be said that the same is a technical violation if any committed by the Noticee and

the same has been duly rectified by it. The Noticee states that it had in best pursuit settled most of the accounts and some stray instances of nonsettlement owing to practical difficulties as cited above should not be considered as violations.

ix) <u>Stock Reconciliation</u>

(1) It has been alleged in the SCN that on verification of reconciliation of securities reflected in register of securities (hereinafter referred to as "ROS") of Noticee and available in DP statement as on June 30, 2020, it was observed that both were not reconciled, and difference was observed.

(2) It is submitted that the allegation levied by your goodself is erroneous and baseless. It is further submitted that the Noticee have been doing regular reconciliation of the register of securities maintained by it along with the position as actual in the demat accounts. However, any instance of mismatch is duly reconciled. In this regard, it is submitted that Noticee have never misutilized any of the clients' securities. It is important to note that no observation to that accord has been made by the Inspection Team.

(3) Further, in reference to the discrepancies observed by your goodself in the reconciliation of securities, it is submitted that Noticee have been reconciling its records on regular basis, however at the time of closing of all the client beneficiary accounts and client collateral accounts, the holdings in said accounts were required to be transferred to the respective clients who were the beneficial owners and it was observed that there were certain shares of the clients which were falling short as at any time in the past, shares were delivered in excess/ wrongly delivered to some other clients. Further, the said difference was not

appearing to the Noticee at the time of daily reconciliation as the said reconciliation is done on net basis based upon the total quantity of the shares.

(4) It is further submitted that as soon as the Noticee identified the said discrepancy, it purchased the said shares from the market and credited the same to the respective clients. Further, as the said client beneficiary account and client collateral accounts were very old accounts, the Noticee observed that there were also certain shares of proprietary account which were lying in the above accounts from a long period of time and the same were transferred by the Noticee to its proprietary account.

(5) It is further submitted that out of the aforesaid proprietary shares, certain shares were reported twice by the Inspection officials. In this regard, it must be noted that the following shares appearing in Reconciliation difference sheets belong to the Noticee's Pro account and are lying in its client beneficiary account bearing no. 10362257.

Scrip Name	*Back Office Holding*	*Total Quantity*	*Difference*	*Difference Quantity Value*	*Remarks*
Tata Motors Ltd. DVR	*0*	*16*	*16*	*640.8*	*16 shares are lying in client ID 10362257*
Indian Hotels	*1500*	*1525*	*25*	*19975*	*25 shares arc lying in client 10362257*
Tata Steel Ltd.	*989*	*1015*	*26*	*494.2*	*26 shares are lying in Client ID 10362257*

Intellect Design Arena Ltd.		*88*	*88*	*9825.2*	*88 shares are lying in client ID 1036257*
Sintex Industries Ltd,	*5*	*4211*	*4206*	*11356.2*	*3506 shares are lying in client ID 1036257. 5 own scrip lying in 10002129*
VIP Clothing Limited		*254*	*254*	*2362.2*	*254 shares are lying in client ID 10362257*
Canara Bank	*5700*	*6069*	*369*	*37102.95*	*261 shares are lying in Client ID 10362257*

(6) It has further been alleged in Para 8.3 of the SCN that during the verification of the clients' securities extract from the back-office of the Noticee vis-a-vis Statement of Holding of Noticee with Depository participant as on March 31, it was observed that Clients' securities (total 30 ISIN) worth Rs.11.33 lakhs were not available in the beneficiary account of the Noticee (stock broker). Further, it has also been alleged that Noticee has not recorded the securities of clients (total 39 ISIN) in its Back-office worth Rs.9.77 lakhs.

(7) With regards to the said allegation, it is submitted that Noticee had pointed out during the Inspection as well as is in its Reply to the Inspection Report that there was no actual mismatch however due to

some technical issue in the Noticee's back-office software, the holding generated from the Back Office was not matching with the DP holding.

(8) It is further submitted that the Noticee had also informed in its reply to the Inspection Report that the Noticee got the aforesaid technical issue rectified by the software vendor as soon as the technical issue came to the knowledge of the Noticee. It must be noted here that the Noticee had also informed in its reply to the Inspection Report that subsequent to the rectification of the technical issue, the holding generated from back office is exactly same as per the holding in DP Accounts from the Current Register of Securities.

x) <u>Same e-mail ID/ Mobile Number assigned to multiple clients</u>

(1) It has been alleged in the SCN that on verification of the UCC data of Noticee, it was observed that Noticee uploaded single email id against multiple clients. Further, this discrepancy was allegedly found in 24 clients for mobile number and 12 clients for email id respectively. It was observed that these clients were not having family relations with each other.

(2) With regard to the said allegation, it is submitted that out of 24 instances of Mobile No. discrepancy, the mobile number of 6 clients have been changed and remaining 18 clients have already been disabled and in respect of 12 instances for Email ID discrepancy, 11 clients have been disabled and for 1 client i.e., MA1445, the said Email ID belongs to the spouse of the said client.

(3) Further, it has been alleged that no documents have been submitted by Noticee in support of its explanation. With regards to the same, the disablement of clients having same mobile and email ids, has been attached as Annexure W.

(4) Thus, the instant allegation was only levied against the Noticee for the non-submission of aforesaid document and on submission of the same, the present observation should be dropped against the Noticee.

xi) <u>Incorrect submission of data to stock exchanges</u>

(1) It has been alleged in the SCN that on verification of monthly data submitted towards upload balances of client funds and securities for the month of September 2019 and its comparison with holding statement and trial balance provided by trading member for dated September 30, 2020, it was observed that details of securities submitted by Noticee to the exchange does not match with the back-office books and records maintained by the Noticee. Further, the said mismatch in quantity was observed in 22 instances pertaining to 18 clients amounting to Rs. 0.005 crore.

(2) With regard to the aforesaid allegation, it is reiterated here that there was no actual mismatch in holdings as pointed out during the inspection however due to some technical issue in the back-office software of Noticee, the holding generated from the back office was not matching with the data submitted to the exchange. It is further reiterated here that the Noticee got the aforesaid technical issue rectified by the software vendor as soon as the technical issue came to the knowledge of the Noticee.

(3) It has further been alleged that securities worth Rs. 2.42 crore belonging to 18 clients were not reported by Noticee to Stock Exchange in its monthly submission for September 2019. With respect to the said allegation, it must be noted that the alleged shares appearing in Reconciliation difference sheets belongs to the Proprietary Account of the Noticee and Authorized Person security deposit.

(4) In reference to the above, it is further submitted that it was not the Client's securities worth Rs. 2.42 crore but the securities belonging to the proprietary account and for the same reason, it was not reported by the Noticee to the Stock Exchange in monthly submission for September, 2019. It is further submitted that the above mentioned cannot be treated as misstatement and no negative inference can be drawn against the Noticee.

xii) <u>Client Funding</u>

(1) It has bccn allcgcd in thc SCN that during verification of client ledger, it was observed that thc Noticcc has given further cxposurc to onc client in spite of debit in client ledger. It was further observed that the Noticcc did not reporl clienL funding on exchange portal as well. Consequently, it has been alleged that Noticee has violated Clause 2.6 of Annexure of SEBI Circular SEB1/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI CircularCIR/ HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

(2) It is submitted that the date of bill was May 10, 2019 on which the Settlement posting was done. It is pertinent to note that settlement posting was completed onlv when sufficient stock/ securities was available in the Client's account which was considered as margm and on the basis of the stock/ securities available with the Noticee the exposure was given, considering the risk appetite.

(3) It is further submitted that uncleared cheque given by the client shall be considered while calculating the fund balance of the client. In this regard, it is pertinent to note that the cheque was received from client on May 08, 2019 but it could not be deposited because the cheque was overwritten and the same would have been bounced and become not valid. Due to the error in cheque received by the client, the Noticee had

asked the client to issue a fresh cheque. Subsequently, the Noticee had received the cheque on May 10, 2019 dated May 13, 2019 and the same was deposited on May 13, 2019. The two days delay on the part of the Noticee was due to bank holiday and also, when the cheque was given by the client it was the last working day of the week and due to this reason, the cheque could not be deposited.

(4) It is further submitted that the SCN has failed to consider the whole picture. It was not only the securities/ stock available with the Noticee, that the Noticee had granted the exposure to client, but also the uncleared cheque dated May 13, 2019 which was lying with the Noticee on the date of bill. In any event the cheque dated May 13, 2019 was cleared subsequently and the client had duly cleared his debit balance.

xiii) Clients' Order Recording

(1) It has been alleged in the SCN that the Noticee failed to maintain evidence of placement of order by client for trades which it is mandated to keep as per Clause III of SEBI Circular No.CIR/ HO/ MIRSD/ MIRSD2/ P/ 2017/ 108 dated September 26, 2017. Thus, it has been alleged that the Noticee has violated the aforesaid circular.

(2) It has further been alleged that out of the call recordings sought from the Noticee at the time of Inspection, it was noticed that the call recordings for following clients were not available:

S. No.	UCC	Name
1.	DC243	Girish Kumar Tyagi
2.	MA4559	Arvind Baghel
3.	CQY83	A V & Sons HUF
4.	GN145	Ved Prakash Sharma
5.	G01266	Sudha Sharma

(3) It must be noted that the Noticee in its Reply to the Inspection Report had informed that the aforementioned clients were the regular clients of the Noticee and they did trading from the office premises itself. It was further informed by the Noticee in its Reply that Walk-in Register of the clients is kept at the reception and the client was asked to do the entry, however as the regularly visiting clients sometimes do skip the entry in the said register and as the Noticee obtains the Trade Confirmation Letter from each and every walk-in client, the Noticee did not force the client to make entry in the Register. The Noticee in support of its submissions had provided the Trade Confirmation Letter for the aforesaid clients along with the Reply and the same are attached herewith as Annexure X.

(4) Further, it must be noted here that Para III of the SEBI Circular bearing No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 provides that the Noticee must keep the record of client placing the order in "Any other legally verifiable record".

(5) It is submitted that since the Noticee had provided the Trade Confirmation Letter and placement of order can be verified from the same, the present allegation cannot stand against the Noticee and must be quashed.

xiv) <u>Non-maintenance of Books of Account</u>

(1) It has been alleged in the SCN that on verification of Holding Statement, Bank Book, Client Ledger and Register of Securities provided by the Noticee, it was observed that Noticee did not maintain the aforesaid documents and books in the format prescribed by the NSE.

(2) With regard to the said allegaüon, it is submitted that the said observation is incorrect and is strongly denied. It is further subrnitted that the Noticee's system was operated remotely and data was accessed by

the Inspection Officers by using other options or path. Further, the Noticee had already shared the data in prescribed format along with the Reply to the Inspection Report. When the data's access was called for by the inspection team, the access was duly provided, however since the data was accessed from remote location the data may have been presented distortedly. At the time of submission of reply to the inspection team the details were once again provided, however, the same were not surprisingly considered by the Ld. Inspection team. The same defies our reason of intelligence as the same allegation has been sought to be retained.

(3) Thus, it is submitted that the instant allegation against the Noticee is liable to be quashed or set aside and does not warrant any action against the Noticee.

xv) From the aforesaid explanations it is clear that the Noticee have not violated any law / circular issued by SEBI as alleged in the inspection report. However, it must be noted that the lapses, if any pointed out in the Inspection Report are merely miscalculations or some human error and they have been duly rectified by the Noticee, wherever required.

xvi) The Noticee is committed to comply with the law and request that the procedural lapses, if any, be seen in the context of its overall volume, the number of transactions executed by it and the various compliance measures adopted by it.

xvii) Noticee relied upon and quoted from judgements of Hon'ble SAT in UPSE Securities Ltd. V SEBI in Appeal No.109 of 2011dated July25, 2011 and DSE Financial Services Ltd. v SEBI in Appeal No. 153 of 2012, order dated September 11, 2012.

xviii) Noticee stated that the non-compliance of the said SEBI Circulars is a technical or venial breach and relied upon the various judgements including

Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v. State of Orissa (AIR 1970 SC 253).

8) Vide mail dated May 23, 2022, Noticee requested for adjournment by one or two days due to its counsel's unavailability. The request was acceded to by the undersigned and the Noticee, vide mail dated May 23, 2022, was advised to appear on May 25, 2022. On the scheduled day, Noticee appeared for hearing through its authorized representative (**AR**). The AR reiterated submission made vide letter dated May 20, 2022made additional submissions during the course of hearing. The same were submitted as written submissions by the Noticee, vide mails dated June 07, 2022.

9) The additional submissions made by the Noticee are as summarized below:
   a) *The following submissions are to be read in furtherance and in continuation to the Reply dated May 20, 2022 of the Noticee and submissions made by the authorized representatives of the Noticee during the course of the hearings dated May 25, 2022. In this regard, the Noticee further submits that if the submission made herein are found to be contradictory to the reply, the submission made herein will prevail. No adverse inference in this regard should be drawn against the Noticee.*
   b) *<u>Non segregation of clients' securities</u>*
      i) *Noticee submitted that before the implementation of SEBI Circular bearing no. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019, there was no other system which enable the Noticee to place its own shares as collateral with the exchange. Therefore, the Noticee use to transfer shares in the common collateral account to be kept as collateral with the exchanges. No fault of the Noticee can be found in regard to the aforesaid transfer of shares to the common collateral account to be pledged with the*

exchanges when there was no system prevailing otherwise. In such a peculiar situation the Noticee cannot be said to have violated the provisions of the SEBI circulars bearing no. SMD/SEO/CIR/93/23321 dated and November 18, 1993 and bearing no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. In this regard the aforementioned peculiar situation was not contemplated by SEBI while issuing these circulars.

ii) The Noticee submits that this peculiar situation was subsequently identified by SEBI and accordingly there was a need felt that the stock brokers should be allowed to maintain separate collateral accounts with the exchanges and this situation was rectified vide the SEBI circular dated June 20, 2019. The Noticee submit that the instances which have been identified by the Inspection Team are all pertaining to the period prior to the implementation of the aforesaid SEBI Circular and the Noticee has duly maintained separated collateral account from the implementation of the aforementioned SEBI Circular.

iii) As stated in its Reply, the Noticee once again submits that the shares in the impugned transactions are the shares which were purchased by the Noticee from its own funds and rightly so no allegation of mis-utilization of the client securities have been alleged on the Noticee in regard to the aforementioned transaction.

iv) In regard the aforementioned transaction, the Noticee provided detailed trail of the movement of securities along with the supporting documentary evidence, as given below:

(1) Asian Hotels Limited – 2000 shares –

(a) On March 26, 2019 the said shares were purchased by the Noticee through its proprietary account bearing code CT000 (UCC - 08051) and accordingly the delivery of the said shares was received by the

Noticee in the pool account bearing no. 10000172 on March 28, 2019. The copy of the settlement obligation towards the purchase of shares on March 26, 2019 is attached herewith as Annexure 1. The transaction in regard to pool account can be verified from the demat transaction statement of the said account for the relevant period which is attached herewith as Annexure 2.

(b) On the same day the shares were transferred from the pool account bearing no. 10000172 to the common collateral account bearing no. 10098706. The receipt in the common collateral account can be verified from the demat transaction statement of the aforesaid account of the relevant period which is attached herewith Annexure 3.

(c) Subsequently, the aforesaid shares were transferred from the common collateral account to the Loan against shares account bearing id 10119296 on May 16, 2019. Pursuant to the aforesaid transfer the shares were pledged with HDFC and the shares were subsequently unpledged on the very next day i.e. May 17, 2019. The aforesaid transaction through the Loan against shares account bearing id 10119296 can be verified from the demat transaction statement of the relevant period of the said account attached herewith as Annexure 4.

(d) Subsequently, the said shares were transferred from the Loan against shares account bearing ID 10119296 to the client proprietary account bearing ID 10002129 on August 12, 2019.

(e) From thereon, the shares were once again pledged with HDFC on August 20, 2019. The aforesaid transaction can be verified from the demat transaction statement of the proprietary demat account

bearing id 10002129 for the relevant period attached herewith as Annexure 5.

(2) Similarly, trails were provided for below mentioned securities:

(a) Biocon limited – 4000 shares –

(b) Cyient Limited – 1000 shares –

(c) Fortis Healthcare Limited – 20000 shares –

(d) Gujarat Industries Power Company Limited – 5000 / 10000 shares –

(i) On January 15, 2019, 5000 shares were purchased by the Noticee through its proprietary account bearing client code CT000 (UCC - 08051) and accordingly the delivery of the said shares was received by the Noticee in the pool account bearing no. 10000172 on January 17, 2019. The copy of the settlement obligation towards the purchase of shares on January 15, 2019 is already attached hereinabove as Annexure 22.

(ii) On the same day the shares were transferred from the pool account bearing no. 10000172 to the proprietary account bearing no. 10002129. The receipt in the proprietary account can be verified from the demat transaction statement of the aforesaid account of the relevant period which is attached herewith as Annexure 23.

(iii) On March 26, 2019, further 5000 shares were purchased by the Noticee through its proprietary account bearing client code CT000 (UCC - 08051) and accordingly the delivery of the said shares was received by the Noticee in the pool account bearing no. 10000172 on March 28, 2019. The copy of the settlement obligation towards the purchase of shares on March 26, 2019 is already attached herein above as Annexure 1.

(iv) On the same day the shares were transferred from the pool account bearing no. 10000172 to the common collateral account bearing no. 10098706. The receipt in the common collateral account can be verified from the demat transaction statement of the aforesaid account of the relevant period which is attached herewith as Annexure 24.

(v) Subsequently, the aforesaid shares were transferred from the common collateral account to the Loan against shares account bearing id 10119296 on May 16, 2019. Similarly, shares were also transferred from the proprietary account bearing id 10002129 to the Loan against shares account bearing id 10119296 on May 16, 2019.

(vi) Pursuant to the aforesaid transfer the shares were pledged with HDFC and the said shares were subsequently unpledged on August 06, 2019. The aforesaid transaction through the Loan against shares account bearing id 10119296 can be verified from the demat transaction statement of the relevant period of the said account which is attached herewith as Annexure 25.

(vii) Subsequently, the said shares were transferred from the Loan against shares account bearing id 10119296 to the client proprietary account bearing id 10002129 on August 12, 2019.

(viii) From thereon, the shares were once again pledged with HDFC on August 20, 2019. The aforesaid transaction can be verified from the demat transaction statement of the proprietary demat account bearing id 10002129 for the relevant period which is attached herewith as Annexure 26.

(3) Similarly in para 4.3 of the SCN, it has been alleged that during the period under investigation, the Noticee has transferred shares from the

client beneficiary account to the proprietary account. In this regard your goodself has recorded 62 instances totalling to the value of Rs. 20,43,927. Further 2 instances have also been identified totalling to the meagre value of Rs. 13,745/- where the shares were transferred from the proprietary account to the client beneficiary account. The preliminary response to the aforesaid allegation has been dealt with in para A(xi) in its Reply.

(4) In regard to the transfer of shares by the Noticee from the proprietary account to the client beneficiary account, the Noticee submits that the said shares were transferred as there was some previous erroneous excess transfer of shares noted for ICICI Prudential Mutual Fund Bharat 22 ETF and Tech Mahindra Limited accordingly to rectify the same, the required quantity of shares were transferred from proprietary account to the client beneficiary account.

(5) As regard the transfer from the client beneficiary account to the proprietary account of the Noticee, the same were done for various reasons. Upon the perusal of the aforesaid transfer of shares, it can be noted that the shares have been transferred from three client accounts bearing ids. 10098706, 10362835 or 10362072. These different accounts were mapped with the exchanges for different segment traded through the exchange.

(6) In this regard it is submitted that all these three accounts were client collateral account which were mapped with the exchanges to gain margin limits. The shares which were originally transferred from these accounts were shares belonging the Noticee itself and were transferred by the Noticee to gain from the exchanges for its trading. A detailed explanation in this regard has also been given by the Noticee in its response to the observation made in para 4.2 of the SCN and to avoid

repetition the same is not reiterated herewith. The transfer from the aforementioned three accounts were done to two proprietary accounts of the Noticee bearing id 10362249 or 10362257.

(7) The aforesaid transfer of shares from client accounts to proprietary accounts were carried out while the Noticee was reconciling its accounts and holdings and rearranging its accounts in line with the implementation of the SEBI circular dated June 20, 2019. The as mentioned earlier the last date for the implementation of the SEBI circular dated June 20, 2019 was January 16, 2020 and accordingly it can be observed that no instances of aforementioned transfer of shares were noted post January 16, 2020.

(8) The Noticee submits that while some scrips belonging to the Noticee were lying in the clint account, the Noticee had applied for the rights issue of the said shares. Accordingly, the Noticee was allotted shares pursuant to the right issue of the said shares. Subsequently, at the time of reconciliation, the said shares were transferred from the client account to the proprietary account.

(9) Similarly, while the shares were lying in the client account, due to the corporate action additional shares were received in the client account. Here in all such instances, the original shares belonging to the client account were lying in the client account, the accordingly the implementation of the corporate account was also done in the client account. While at some point the original quantity of shares were transferred back to the proprietary account the shares received subsequent to the corporate account were still in the client accounts. The scrip wise explanation of the aforesaid transfer of shares subsequent to corporate action along with their necessary documentary proof is given as under –

(a) <u>Canara Bank – 261 and 108 shares -</u> The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on March 31, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account. The said transaction is coming twice because different quantity of original shares were lying in different client account bearing ids. 10098706 and 10362072. The aforesaid transaction can be verified from the transaction statements of the respective accounts attached herewith as Annexure 27 and Annexure 28

(b) Intellect Design Arena Limited – 88 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on August 28, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account No. 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 29.

(c) IP Rings Limited – 32 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on February 02, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account No. 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 30.

(d) Mahindra Lifespace Developers Ltd – 15 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on May 11, 2017. As the original shares were lying in the client account, the rights issue shares also

got credited in the client account no. 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 31.

(e) Sintex Industries Limited – 3506 and 700 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on September 29, 2016. As the original shares were lying in the client account, the rights issue shares also got credited in the client account. The said transaction is coming twice because different quantity of original shares were lying in different client accounts bearing ids. 10098706 and 10362072. The aforesaid transaction can be verified from the transaction statements of the respective accounts attached herewith as Annexure 32 and Annexure 33.

(f) Sintex Plastics Technology Limited – 3506 and 700 shares - The Noticee received the aforesaid shares pursuant to the demerger of Sintex Industries Limited on June 07, 2017. Different quantity shares were received in two different accounts bearing ids. 10098706 and 10362072. The said transaction is coming twice because different quantity of original shares of Sintex Industries Limited were shares lying in different client account bearing ids. 10098706 and 10362072. The aforesaid transaction can be verified from the transaction statements of the respective accounts attached herewith as Annexure 34 and Annexure 35.

(g) Tata Steel Limited – 26 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on March 19, 2018. As the original shares were lying in the client account, the rights issue shares also got credited in the client account no. 10098706. The aforesaid transaction can be

verified from the transaction statement of the account attached herewith as Annexure 36.

(h) The Indian Hotels Company Limited – 25 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on November 14, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account no. 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 37.

(i) The Karnataka Bank Limited – 1330 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on December 14, 2016. As the original shares were lying in the client account, the rights issue shares also got credited in the client account 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 38.

(j) The South Indian Bank Ltd. – 5073 and 977 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the client account as on March 31, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account. The said transaction is coming twice because different quantity of original shares were lying in different client accounts bearing ids. 10098706 and 10362072. The aforesaid transaction can be verified from the transaction statements of the respective accounts attached herewith as Annexure 39 and Annexure 40.

(k) VIP Clothing Limited – 254 shares - The Noticee had applied for the Rights issue of the said shares and the shares was credited in the

client account as on December 28, 2017. As the original shares were lying in the client account, the rights issue shares also got credited in the client account no. 10098706. The aforesaid transaction can be verified from the transaction statement of the account attached herewith as Annexure 41.

(l) With regard to the shares of GMR infrastructure limited and State bank of India limited amounting to total value of Rs. 12,79,783,85, the proof of purchase of these shares is attached herewith as Annexure 42 and Annexure 43 respectively. IN this regard, it is once again reiterated aforementioned shares were transferred to these accounts to avail margin limits from exchanges. No allegation of misutilization of client securities can lie against the Noticee in regard to the aforementioned transaction.

c) <u>Non-segregation of Clients' funds</u>

i) It is submitted that the money received from the client includes the obligation of the client to the Noticee for brokerage and other charges which the client owes to the Noticee. The money which the Noticee owes from the client is kept in the Client account itself and as and when the Noticee wants to withdraw the amount towards its obligation, the Noticee can withdraw from the client account which is permissible from the Client account by the Noticee and there is no violation in this regard. It is further submitted that when all the clients owed certain amount towards the brokerage to the Noticee, the Noticee can withdraw the whole or the partial amount. The remaining amount which the Noticee does not withdraw belongs to the Noticee only which is lying in the client account. The Noticee's funds which are lying in the client account is to meet the eventuality when the clients' funds are insufficient and also to maintain liquidity in the clients' account so that regular pay outs are issued to the clients.

ii) Before dealing with the allegation, the Noticee would like to explain the process in which the aforesaid overdraft facility was taken by the Noticee.

(1) 00030140000152 is a client account opened to receive funds from the clients towards their pay in obligation to the Noticee.

(2) The funds from these accounts are utilized to meet the clients' obligation to the exchanges for the trades executed by them.

(3) The funds are also utilized to create FDRs to be placed as margins with the clearing house.

(4) The broker also withdraws funds from this account towards brokerage. Here it is important to note that presently the Noticee has been withdrawing the complete amount of brokerage for itself regularly, but previously the Noticee either did not withdraw at all had withdrawn less than the amount due to it.

(5) The aforementioned transactions are the transactions which is executed by the Noticee are also acceptable transactions which are contemplated under the aforementioned SEBI Circular of November 18, 1993.

iii) Therefore, no wrong in this regard towards the utilization has been observed qua the Noticee.

iv) Upon the perusal of the bank statement of the bank account bearing no. 00030140000152, it can be noted that there was list of bank accounts of the Noticee from which the transactions have been executed with the client account no. 00030140000152 and the same can be verified from the list attached and annexed as "Annexure 44".

v) The funds which were not withdrawn by the Noticee accumulated to Rs. 2.05 crores. The Noticee created FDRs out of these accumulated funds which also timely renewed. The Noticee created FDRs using these excess funds and the interest earned from the FDRs so created was credited in 00030140000152 client account and the same was utilized to meet the *clients' obligation to the exchanges. However, since it is difficult and time-consuming process, the Noticee decided to take overdraft facility from the bank which was secured by these FDRs so created from the own funds and which were not placed with the clearing house as margin. It is important to note that deposit and withdrawal of funds of funds due to it as brokerage is an acceptance transaction under SEBI circular dated November 19, 1993.*

vi) *Therefore, upon the perusal of the aforementioned explanations, it can be noted that the Noticee has not executed any transaction leading to misutilization of clients; funds. In this regard, Noticee submits that no proprietary funds were transferred in the 00030140000152, client bank account and similarly no funds other than towards the brokerage of the Noticee was withdrawn by the Noticee. The aforesaid submission of the Noticee can be independently verified from the Bank statement of the 00030140000152, client bank account for the inspection. Hereto marked and attached as "Annexure 45" is the copy of the bank statement for investigation period. The Noticee has market the purpose of the withdrawal transactions undertaken during the inspection period. These transactions are permitted transactions as contemplated under SEBI circular dated November 18, 1993.*

vii) *In this regard to the aforesaid, the Noticee submits that it had in its previous replies submitted that funds of the Noticee were transferred in 00030140000152, client account or were utilized to create FDRs through which the overdraft facility was secured. The same was submitted due to some internal misunderstanding. Therefore, no negative inference should be drawn qua the Noticee in this regard.*

viii) *It is pertinent to note that during the time of the Inspection period, Rs.2.05 crore of FDRs was created from the own funds and thereafter the overdraft facility was taken by the Noticee by securing it through the said FDRs. The* *list of FDRs through which the overdraft facility was secured as issued by HDFC Bank as it prevailed during the investigation period is attached herewith as "Annexure 46".*

ix) *It is important to note that the FDRs created out of the own funds were not kept with the Exchange or the Clearing Corporations but was kept separately with the stock broker only for the purposes to fulfil the clients' obligation. In this regard, it is submitted that these funds which were kept in FDRs were in majority of the cases over and above our obligation towards the credit balance clients. This can be noted from the weekly disclosures on availability of funds made to the exchange as per compliance under SEBI circular dated September 26, 2016. The weekly calculated of fund availability during the course of inspection period is attached herewith as "Annexure 47". Upon perusal of the aforesaid data it can be noted that the value of 'G' has always been positive with approximately Rs. 2 crores available in excess with the Noticee in majority of the cases.*

x) *It is also to be noted that no lien other than the Overdraft facility were marked on the FDRs created from the clients' funds and separate set of FDRs was created and pledged for margin with Exchanges and Clearing corporations.*

xi) *Pursuant to April 01, 2022, the Noticee had diligently stopped the practise of taking overdraft facility in client account. Hereto marked and annexed as "Annexure 48 colly" are the NSE circular dated October 19, 2021 and January 04, 2022. Therefore, the Noticee has not violated any clauses of the SEBI circular as mentioned in the SCN and no inference can be drawn against the Noticee in this regard.*

d) *Wrong naming and tagging of the demat accounts*

i) *With regard to the observation that demat account bearing no. 10369816 and account no. 00012918 were not tagged in any sub-type on the portal of*

NSE, it is submitted that these accounts were opened on July 24, 2020 and July 21, 2020 respectively. Further, account bearing no. 10369816 and account no. 00012918 were Trading Member/ Client Member (hereinafter referred to as "TM/CM") Client Securities Pledge account which was a NSDL account and CDSL account respectively and no category was available at that point of time on NSE enit to tag such accounts.

ii) *The abovementioned accounts were opened by the Noticee in compliance with the directions issued by SEBI vide circular bearing no. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020 initially effective from June 01, 2020.*

iii) *It is pertinent to note that SEBI vide this circular directed that, depositories shall provide a separate pledge type for pledging client's securities as margin to TM/CM and the TM/CM shall open a separate demat account for accepting such margin pledge, which shall be tagged as "Client Securities Margin Pledge Account".*

iv) *The implementation of the said circular was subsequently extended and the same was made effective from August 01, 2020 vide SEBI Circular bearing no. SEBI/HO/MIRSD/DOP/CIR/P/2020/88 dated May 25, 2020.*

v) *It is to be noted that the delay in implementation of the directions issued vide SEBI circular dated February 25, 2020 was due to onslaught Covid-19 pandemic and various restrictions imposed by the Government during that period leading the Depositories and the Clearing Corporations unable to update the changes to the systems and software, as required to meet the necessary directives. Further, the portal of NSE ENIT was also not updated to meet the necessary requirements. Hereto attached and marked as "Annexure 49 colly" are the SEBI Circulars dated February 25, 2020 and May 25, 2020 and NSDL Circular dated July 28, 2020.*

vi) It is pertinent to note that even after the extended date of implementation was looming on August 01, 2020, there was no clarity on the part of the exchanges, depositories and clearing corporations as to when the systems will be fully updated and also on the utilization of the partially updated systems. It is to be noted that though the Noticee was able to open the account in compliance with the SEBI circular with both NSDL and CDSL with correct nomenclature i.e., "Client Securities Margin Pledge Account", the correct tagging of the account was not possible on the portal of NSE during that particular time.

vii) It is submitted that account no. 10369816 and account no. 00012918 was opened on July 24, 2020 and July 21, 2020 respectively when the new system was not updated. The same was observed by the Noticee at the end of July while these accounts were added on the NSE portal and upon realizing the aforesaid systemic issue, the concerned officer of the Noticee contacted the NSE team telephonically. There are no call records available between the NSE and the Noticee since both, the Noticee and the NSE officials were working remotely.

viii) Due to the aforesaid reason, the tagging of the accounts was left blank at that point of time rather than tagging incorrectly. It is also to be noted that since the inspection was conducted while the issue persisted, the inspection team recorded these two accounts as not tagged by the Noticee. In this regard, it is also important to note that when the NSE systems were updated, the Noticee immediately tagged the accounts adequately. Hereto attached and marked as "Annexure 5" are the screenshots of the tagging done for both the accounts pursuant to the development in the software.

ix) In regard to the account no. 10363725, it is submitted that this account was opened for settlement, pursuant to the implementation of Client Unpaid Securities Account (CUSA), but the said account was never utilized for any *purpose and was subsequently closed by the Noticee. Therefore, no violation can be drawn against the Noticee. Hereto attached and annexed as "Annexure 51" is the screenshot of account no. 10363725 showing that the same is been closed.*

x) *Therefore, the interim non tagging of the aforesaid accounts were due to technical deficiencies on part of NSE and no negative inference can be drawn qua the Noticee in this regard. It is also to be noted that the Notice does not levy any violation against the Noticee but merely observes that tagging of the demat accounts had not been done.*

e) *Non – settlement of clients' accounts*

i) *With respect to Invalid DP Client ID, it is submitted that the Noticee had contacted the clients to update their bank details and other necessary information in order to settle their balances. It is to be noted that majority of the clients did not update the required details even after sending letters in writing which can be verified from the sample letter sent by Noticee to their clients, hereto attached and marked as Annexure 52.*

ii) *In furtherance to the above, it is submitted that out of 20 clients, 11 clients have not yet updated the necessary required details which is required to settle the accounts of the clients. The securities lying in the demat account of the above-mentioned clients was kept in the client account no. 10098706 which is currently frozen for debits and credits pursuant to the implementation of the SEBI Circular dated June 20, 2019. Further, 08 clients out of 20 clients are settled after the clients have updated the necessary details in their accounts and remaining one client with client account no. WBA008063 have not been updated with the required details but the securities lying in the demat account have been forfeited by the company. Therefore, this particular account does not require settlement.*

iii) In regards to the Invalid Bank details, all the clients have now updated the bank details including the other details which are required to settle the accounts. All the accounts have been subsequently settled either by issuing pay-out or through subsequent settlement cycle since they turned active and started trading regularly. Hereto marked and annexed as Annexure 53 is the excel sheet showing the present status of settlement and Annexure 54 colly, document in support of the aforesaid settlement status.

f) <u>Stock Reconciliation</u>

i) Noticee submitted that the ROS is maintained by the Noticee with the help of software provided by Shilpi Computers Pvt. Ltd. In this regard the Noticee submits that pursuant to the inspection, the Noticee observed that there were some systemic glitches observed in the said back-office software due to which there was some errors observed in the ROS so generated on any given date. It is due to these errors that there were differences observed in the Demat statement of the various accounts maintained by the Noticee and the ROS so generated by the Inspection Team. On subsequent generation of the clientwise ROS report from the system, the Noticee observed that there were some client securities were balances were shown on particular date whereas no such balances were there in the demat holding of such clients nor were there transaction executed by such clients which would result in such balances. It was further noted that there was some error in implementing the corporate action uniformly on various scrips held on behalf of various clients throughout the ROS and it is due to this error that the aforesaid mismatch was observed. It is only at the time of reconciliation by the Inspection Team and subsequently by the Noticee that the aforesaid systemic error was noted.

ii) In this regard it is important to note that the Noticee was duly maintain the record of securities available in the collateral account and has periodically reconciled it same. Accordingly, when the Noticee was previously doing the said reconciliation such no mismatch of the aforesaid nature was recorded by it. Therefore, it can neither be alleged that the Noticee has either mis-utilized the client securities nor can it be alleged that the Noticee did not conduct its business with the required case, skill and due diligence.

iii) The Noticee identified the systemic error upon the receipt of the letter of observation from the Inspection Team that the Noticee identified the aforesaid problem. However, immediately upon identification of the aforesaid systemic errors, that the Noticee approached the back-office software vendor and took all steps necessary to rectify the aforesaid issue. The necessary email communication with the back-office software provider and the subsequent confirmation of the back-office software vendor of the rectification of the systemic error is attached herewith as "Annexure 55".

iv) Subsequent to the rectification of the aforesaid systemic error, the Noticee has been successfully able to reconcile its ROS with the demat holding as on any particular days. For the sake of consideration, the Noticee has hereby attached the duly reconciled statements of ROS and demat holding as on March 31, 2022, May 13, 2022 and May 28, 2022 as "Annexure 56". There are no instances of mismatch observed as on May 13, 2022. However, as regard to the instances of mismatch observed as on March 31, 2022, the same is due to the change in the ISIN for the said scrips due to corporate action and the same can be duly verified from the information for change in ISIN issued by NSDL in this regard which has been attached herewith as "Annexure 57". Accordingly, there is no mismatch in holdings observed as on March 31, 2022 also.

v) Therefore, the Noticee submits that there was never a mismatch in the actual holding on behalf of the clients either in the ROS or in the demat holding however, there was temporarily some mismatch noted due to aforementioned systemic error that resulted in the illusion of mismatch in the holdings of the Noticee.

vi) Similarly with regard to the observation made in regard to the mismatch in holding of securities as on March 31, 2020, it is submitted that even at the relevant point in time the Noticee was successfully able to reconcile the holding in the ROS and the demat holdings.

vii) Accordingly, the inspection so conducted by the Inspection Team assisted the Noticee in identifying the error of its back-office system and this further ensured that no grave violation was executed at the hands of the Noticee. Therefore, the perusal of the aforesaid submissions, it can be verified that the Noticee was maintaining the client-wise records for the scrips transacted through the collateral account and was periodically reconciling it too. Therefore, the Noticee has not in any way violated the provision of SEBI Circular bearing no. SMD/SED/CIR/93/23321 dated April 17, 2008 and the Code of Conduct as specified in the Schedule II Clauses A(2) and A(5) of Stock Brokers Regulations.

viii) As regard the allegation that there was mismatch in holding on 22 different dates which resulted in the difference in value of securities to the tune of Rs. 50.96 Lakhs, the Noticee submits that, upon the perusal of Annexure 6 of the SCN it can be noted that the aforesaid difference in securities was due to the inappropriate mode of calculation adopted by the Inspection team to arrive at the reconciliation. In this regard, the Noticee would like to draw the attention of your goodself to the NSE Circular dated January 10, 2020 bearing Download Ref No: NSE/INSP/43180. Pursuant to this Circular, stock brokers were allowed time till January 16, 2020 to implement the SEBI

Circular bearing No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 and SEBI Circular dated SEBI/HO/MIRSD/DOP/CIR/P/2019/95 dated August 29, 2019 on "Handling of Client Securities" wherein it was stipulated that all the existing client securities accounts other than Pool account, Client Margin Trading Securities account and Client collateral account shall be wound up on or before September 30, 2019. The copy of the SEBI circulars dated June 20, 2019 and August 29, 2019 and the NSE circular dated January 10, 2020 is attached herewith as Annexure 58 Colly.

ix) In this regard the Noticee would like to submit that the though it had initiated the implementation of the aforementioned SEBI circulars, due to the various practical difficulties faced by the Noticee it was unable to fully implement the aforesaid circular with effect from October 01, 2019 and accordingly there were securities lying in various other demat account other than "Client Unpaid Securities Account" and "Client Margin Trading Securities Account". However, while reconciling the holding as on various dates the Inspection team has not considered the holding held by the Noticee in other accounts other than the accounts designated under the aforementioned SEBI circulars. The holding in demat accounts bearing ids. 10000172, 10358935, 10098706, 10358540 10362013 and 1206680000000013 were not considered by the Inspection team while reconciling the holdings. Upon adding the balances held by the Noticee as on the relevant 22 dates in these accounts to the holding of the relevant accounts as recorded by the Inspection Team, it can be noted that the securities mismatch as recorded by the Isnpection Team can be matched from the holding in the aforementioned demat accounts. The copy of the reworked Annexure 6 including the balance for the holding the in the aforementioned demat accounts bearing ids. 10000172, 10358935, 10098706, 10358540 10362013 and 1206680000000013 are attached herewith as Annexure 59.

The Noticee submits that the holding of the securities in the demat account bearing ids. 10000172, 10358935, 10098706, 10358540 10362013 and 1206680000000013 can be verified from the demat holding statements of the said accounts as on relevant dates which are attached herewith as Annexure 60 Colly.

x) *As regard the implementation of the aforementioned SEBI that the Noticee had already initiated the process of implementation of the aforementioned circulars and the same has been duly verified by the Noticee considering the holding the acceptable demat accounts including but not limited to Client Margin Trading Securities account and Client collateral account have been mapped by the Inspection Team while arriving at the aforesaid reconciliation. However, due to the various practical difficulties faced by the Noticee while implementing the aforesaid circular that the impact of the aforesaid circular could not be given with the prescribed time period. It is due to the similar difficulties faced by various other brokers that the extended time period till January 16, 2020 was provided by NSE for implementation the aforementioned SEBI circulars. No default in implementation of the aforesaid SEBI circulars can be noted qua the Noticee of the delay in implementing the aforesaid circular as this circular resulted in the change in the effective working of the broking systems. It is due to the same that difficulties were also faced by the exchanges while implementing the aforesaid new system even after October 01, 2019. The Noticee was also required to implement the changes as required by the SEBI circulars in its back-office systems. Furthermore, the Noticee also took considerable amount of time to align the previous transaction executed by the Noticee to ensure that it meet with the requirements of the various acceptable account as required by the aforementioned SEBI circular.*

xi) *Therefore, presuming that shares were not lying in any other demat accounts other than the acceptable accounts as on the relevant date when the timings for implementation was extended till January 16, 2020 does not mean the shares were not there in actual in other demat accounts.*

g) *Incorrect submission of data to stock exchanges*

i) *It has further been alleged that securities worth Rs. 2.42 crore belonging to 18 clients were not reported by Noticee to Stock Exchange in its monthly submission for September 2019. With respect to the said allegation, it must be noted that the alleged shares appearing in Reconciliation difference sheets belongs to the Proprietary Account of the Noticee and Authorized Person security deposit. Below table shows the instances of unique client code and Authorized representative to whom client code belongs:*

SR. NO.	UNIQUE CLIENT CODE	AUTHORIZED REPRESENTATIV WHOM CLIENT CODE BELONGS
1.	VA264	Client Margin Account
2.	AI014	Proprietary Account
3.	CT000	Proprietary Account
4.	CT002	Proprietary Account
5.	SAL043	AP security deposit Account
6.	SAL206	AP security deposit Account
7.	SAL222	AP security deposit Account
8.	SAL238	AP security deposit Account
9.	SAL299	AP security deposit Account
10.	SAL328	AP security deposit Account
11.	SAL363	AP security deposit Account
12.	SAL365	AP security deposit Account
13.	SAL388	AP security deposit Account
14.	SAL567	AP security deposit Account
15.	SAL627	AP security deposit Account
16.	SAL665	AP security deposit Account
17.	SAL681	AP security deposit Account
18.	MA2283	Client Margin Account

ii) *In reference to the above, it is further submitted that it was not the Client's securities worth Rs. 2.42 crore but the securities belonging to the proprietary* *account and for the same reason, it was not reported by the Noticee to the Stock Exchange in monthly submission for September, 2019. During the period in question, only the securities in client account was to be reported to the Stock Exchange and not the holdings in proprietary account. It is further submitted that proprietary securities were not required to be reported in that period and also it was not mandatory to upload proprietary shares in monthly data of Client funds and Securities which can also be verified from the NSE Circular NSE/INVG/33476 dated October 21, 2016 attached and marked as "Annexure 61". It is further submitted that the above mentioned cannot be treated as misstatement and no negative inference can be drawn against the Noticee.*

h) <u>Client Funding</u>

i) The abovementioned allegation has been dealt with at paragraph 11.2 of the Show Cause Notice, where a preliminary response to this allegation was provided by the Noticee at paragraph G(iii) of Page 32 of the Reply dated May 20, 2022.

ii) In this regard the Noticee would submit that while the inspection period was spanning 16 months when the Noticee was dealing with almost 40000 clients, only one instance of client funding to the tune of Rs. 5,25,592.91 has been noted against the Noticee.

iii) In this regard, the Noticee further submits that the aforesaid alleged client funding instance has only arisen due to peculiar set of events and circumstances with no fault of the Noticee. The aforesaid set of peculiar circumstances are explained herewith as under:

(1) As on the opening of May 08, 2019, the client had a debit balance of Rs. 1,23, 760.11/-.

(2) To check the aforesaid debit balance and also meet the margin obligations, the client had issued a cheque in favour of the Noticee.

(3) The said cheque was hand delivered by the client with Mrs. Preeti Goyal at our office situated at Bayanian Mohalla, Dahi wali gali , Bharatpur , Rajasthan-321001 during market hours.

(4) Since the cheque was delivered, the Noticee allowed the client to trade on that day considering the cheque would be deposited in the morning of May 09, 2019.

(5) However, while receiving the cheque Mrs. Preeti Goyal did not notice the overwriting in the cheque so issued by the client on May 08, 2019.

(6) When the concerned person looked over to the cheque, on the day of the deposit, noticed that the cheque was overwritten by the client and the same could not be deposited to the Bank

(7) Had the cheque been deposited, it would have bounced and lead to incurring of additional charges for the Noticee.

(8) Accordingly, the concerned person did not deposit the cheque in the bank on May 09, 2019.

(9) Pursuant to this, the client was asked to issue a fresh cheque to meet his outstanding obligation including obligation as incurred on May 08, 2019.

(10) The client was asked to either issue the cheque on May 09, 2019 or May 10, 2019 so that the same could not be deposited with the bank within banking hours on May 10, 2019.

(11) However, the client due to some difficulty, delayed in issuing the cheque and the Noticee received the cheque by late evening on May 10, 2019 and accordingly could not be deposited on May 10, 2019.

(12) Even when the client issued the fresh cheque to Noticee after banking hours on May 10, 2019, he had dated the cheque as May 13, 2019 as he was aware that the cheque could not be deposited before May 13, 2019.

(13) The Noticee could not have otherwise deposited the cheque as May 10, 2019 was a Friday and the next two days the bank was not functional.

iv) With regards to the allegation that the Noticee has given further exposure to one client in spite of debit in client ledger, it is submitted that it was not only the securities/ stock available with the Noticee, that the Noticee had granted the exposure to client, but also the uncleared cheque dated May 13, 2019 which was lying with the Noticee on the date of bill.

i) <u>Non-maintenance of books of account</u>

i) The abovementioned allegation has been dealt with at paragraph 13.2 of the Show Cause Notice, where a preliminary response to this allegation was provided by the Noticee at paragraph I of Page 134 of the Reply dated May 20, 2022.

ii) In regard to the aforesaid allegation that SCN records that the Noticee did not maintain Holding Statement, Bank Book, Client Ledger and Register of Securities.

iii) In furtherance to the Reply dated May 20, 2022, it is submitted that the Bank book and the Client ledger as generated by the Inspection team from the back-office system is in the same format as prescribed by the NSE. It is further submitted that upon the perusal of SCN, it can be noted that the copy of the extract of the bank book and the client ledger as provided by your goodself in the Annexure 10 to the SCN is in compliance with the Annexure A of the NSE Circular dated August 30, 2018. This can be independently verified from the Annexure 10 to the SCN with format as prescribed by NSE vide circular dated August 30, 2018.

iv) The Noticee is hereby providing the copy of bank book and client ledger as attached in Annexure 10 to the SCN as "Annexure 62" The copy of the NSE circular dated August 30, 2018 which prescribed the format of bank book *and client ledger is attached herewith as "Annexure 63" for your ready reference.*

v) *It is to be noted that there is no discrepancy in the data provided by your goodself in relation to the Bank Book and the client ledger and the same is in required format as per the NSE circular as mentioned above. The observation drawn is erroneous, even when the data provided by your goodself in Annexure 10 shows that these books and documents are in prescribed format by NSE.*

vi) *In regard to the holding statement, it is submitted that upon the perusal of Annexure 10 of the SCN, it can be noted that the statement attached as the holding statement therein is not in fact the holding statement but the Holding cum Financial Statement. It is submitted that the Holding cum financial statement which is erroneously attached by your goodself in Annexure 10 is duly in compliance with prescribed format by NSE.*

vii) *It is further submitted that the format prescribed by NSE for Holding statement is different from that of Holding cum Financial statement which was generated from the back-office system by the Inspection Team. It is pertinent to note that the holding statement as maintained by the Noticee is in the same format, as prescribed by NSE. The same can be verified from the Holding statement marked and attached as Annexure "64". It is also pertinent to note that vide the NSE Circular dated November 13, 2018 there was a revision in the formats for maintenance of standardized books and the same has been duly complied with by the Noticee while maintaining the holding statement.*

viii) *In regard to the Register of Securities as maintained by the Noticee it is submitted that the extract of the same was not provided by the Noticee but the Noticee's system was operated remotely and data was accessed and* *assimilated by the Inspection officers by choosing the other option from the two options available.*

ix) *It is further submitted that had the Inspection officer chosen the right option, it would have downloaded the correct Register of Securities which was maintained by the Noticee as per format prescribed by NSE which was also provided at the time of submission of reply to the Inspection team and the same can be verified from the Register of Securities marked and attached as "Annexure 65".*

x) *In this regard the Noticee further submits that it had pointed out the aforementioned error to the inspection team and had also provided them with correct Register of Securities vide reply to the Inspection report, which has been conveniently ignored by the Inspection team.*

xi) *Therefore, upon the perusal of the aforesaid explanation, it can be noted that the Noticee has been duly maintaining its books of accounts in the prescribed format and accordingly the said observation should be dropped qua the Noticee.*

CONSIDERATION OF ISSUES AND FINDINGS

10) Considering the findings of Investigation, the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:

ISSUE I - Whether the Noticee is in violation of the provisions of SC(R) Act, 1956, SEBI Brokers Regulations, 1992 and applicable SEBI Circulars, as given in Table 1 above?

ISSUE II - Do the violations, if any, attract penalty under Section 15A(c) and section 15HB of the SEBI Act, 1992 and section 23D of SC(R) Act, 1956?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

11) The said provisions under which violations have been alleged against the Noticee are reproduced below –

<u>Securities Contracts (Regulations) Rules, 1957</u>

Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.

15(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years :

(a)Register of transactions (Saudabook).

(b)Clients' ledger.

(c)General ledger.

(d)Journals.

(e)Cash book.

(f)Bank pass-book.

(g)Documents register showing full particulars of shares and securities received and delivered.

(2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:

(a)Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.

(b)Counterfoilsor duplicates of contract notes issued to clients.

(c)Written consent of clients in respect of contracts entered into as principals.

<u>Securities and Exchange Board of India (Stock Brokers) Regulations, 1992</u>

Conditions of registration.

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

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

To maintain proper books of account, records, etc.

17. (1) Every Stock Broker shall keep and maintain the following books of account,records and documents, namely:—

(a) Register of transactions (Sauda Book);

(b) Clients ledger;

(c) General ledger;

(d) Journals;

(e) Cash book;

(f) Bank pass book;

(g) Documents register containing, inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities;

(h) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members;

(i) Counterfoils or duplicates of contract notes issued to clients;

(j) Written consent of clients in respect of contracts entered into as principals;

(k) Margin deposit book;

(n) Client account opening form in the format as may be specified by the Board.

(2) Every stock broker shall intimate to the Board the place where the books of account, records and documents are maintained.

(3) Without prejudice to sub-regulation (1), every stock broker shall, after the close of each accounting period furnish to the Board if so required as soon as

possible but not later than six months from the close of the said period a copy of the audited balance sheet and profit and loss account as at the end of the said accounting period:

Provided that, if it is not possible to furnish the above documents within the timespecified, the Stock Broker shall keep the Board informed of the same together with the reasons for the delay and the period of time by which such documents would be furnished.

Schedule II – Code of Conduct for Stock Brokers

A. General.

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

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

SEBI Circular Ref.:SMD/SED/CIR/93/23321 dated November 18, 1993

Regulation of Transactions Between Clients and Brokers

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

i. Moneys received from or on account of each of his clients and, *ii. the moneys received and the moneys paid on Member's own account.*

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-

a. Securities received for sale or kept pending delivery in the market;

b. Securities fully paid for, pending delivery to clients;

c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);

d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;

e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;

f. Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same.

SEBI Circular Ref.:SMD/SED/CIR/93/23321 dated April 17, 2008

Collateral deposited by clients with brokers

2. In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that:

The records should be periodically reconciled with the actual collateral deposited with the broker

SEBI Circular No.: MIRSD/ SE /Cir-19/2009 dated December 03, 2009 read with SEBI Circular No. SEBI/ MIRSD/ Cir/ 01/ 2011 dated May 13, 2011

Dealings between a client and a stock broker - trading members included

Running Account Authorization

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.

c. The authorisation shall be dated and shall contain a clause that the clients may revoke the authorisation at any time. The stock brokers, while sending periodical statement of accounts to the clients, shall mention therein that their running account authorisation would continue until it is revoked by the clients]

d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.

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

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

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

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

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

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

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

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

SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011

SMS and E-mail alerts to investors by stock exchanges

2. As an additional measure, it has now been decided in consultation with the major stock exchanges and market participants that the stock exchanges shall send details of the transactions to the investors, by the end of trading day, through SMS and E-mail alerts. This would be subject to the following guidelines:

B. Uploading of mobile number and E-mail address by stock brokers *i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.*

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

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

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

<u>SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017</u>

Enhanced Supervision of Stock Brokers and Depository Participants

Annexure

1.2.The nomenclature for bank accounts and demat accounts to be followed is given as under:

1.2.1.Bank account(s) which hold clients funds shall be named as "Name of Stock Broker -Client Account".

1.2.3.Demat account(s)which hold clients' securities shall be named as "Name of Stock Broker-Client Account".

1.2.5.Demat account(s), maintained by the stock broker for depositing securities collateral with the clearing corporation, shall be named as "Name of Stock Broker-Collateral Account".

1.2.6.Demat account(s) held for the purpose of settlement would be named as " Name of Stock Broker -Pool account".

1.2.7.Bank account(s) held for the purpose of settlement would be named as " Name of Stock Broker -Settlement Account"

2.Reporting of Bank and Demat accounts maintained by Stock Broker:

2.4.In line with the prevalent regulatory requirement, it is reiterated that;

2.4.3.Transfer of securities between "Name of the Stock Broker -Client Account " and individual client's BO account, "Name of the Stock Broker –Pool Account" and "Name of the Stock Broker –Collateral Account" is permitted. Transfer of securities between "Name of the Stock Broker -Client Account" to "Name of the Stock Broker -Proprietary Account" is permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc. For such transfer of securities, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred.

2.6 Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time.

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

f. Failure to assign appropriate Bank and Demat nomenclature within the time specified and to report the same to the Stock Exchanges.

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

8. Running Account Settlement

8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;

8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017

Prevention of Unauthorised Trading by Stock Brokers

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

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of SMS messages,

f. Any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

12) I will now proceed with my findings in each of the alleged violations against the Noticee in the SCN dated March 23, 2022.

13) **Non-segregation of clients' securities** –

a) For the five scrips of Asian Hotels, Biocon Limited, Cyient Limited, Fortis Healthcare Limited and Gujarat Industries Power Company Limited (GIPCL), it was alleged that Noticee had transferred the shares from client collateral account to own proprietary account, and thereafter pledged with HDFC Bank.

b) It was also observed that securities were transferred between own proprietary account and two clients' beneficiary accounts in 64 instances. Value of securities which moved from client beneficiary account to own proprietary account was Rs. 20,43,927/- and value of securities which moved from own proprietary account to client beneficiary account was Rs.13,745/-.

c) In view of the above instances, wherein it was observed that Noticee has transferred securities from client account to own proprietary account, it was alleged that Noticee has violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016.

d) In regard to (a) above, it was submitted by the Noticee that the shares of Asian Hotels, Biocon Limited, Cyient Limited, Fortis Healthcare Limited and GIPCL were originally purchased by the Noticee out of its own funds and received the shares in pool account, and thereafter transferred to client collateral account for clients' margin requirements and were subsequently transferred to its own account for pledging of securities to HDFC bank. Noticee has also submitted copy of settlement obligation towards purchase of shares, demat transaction statements of pool account, client collateral account and own proprietary account showing purchase transaction and transfer of shares from pool to common collateral account and pledging and unpledging of shares.

e) Noticee submitted that SEBI Circular dated September 26, 2016 restricted transfer of clients' securities. However, Noticee has transferred his own securities and not clients' securities, hence the circular will not be applicable to the Noticee. Noticee further submitted that SEBI Circular dated June 20, 2019 restricted brokers from pledging client's securities lying in client collateral account for raising funds and introduced Client Unpaid Securities Account (CUSA) system. Before the introduction of this circular, it was a common practice to transfer securities between client collateral account and proprietary account for the purpose of pledging. Noticee contended that as all the transfers in aforesaid five scrips was done prior to implementation of circular dated June 20, 2019, no violation has been committed by it.

f) Noticee clarified regarding two instances (out of 64 instances as given in sub paragraph (b) above), where transfer of securities worth ₹13,745 was made from own proprietary account to client collateral account, securities of ICICI Prudential Mutual Fund and Bharat 22 ETF were previously erroneously transferred in excess to own proprietary account.

g) While explaining for remaining 62 instances where securities were transferred from client collateral account to own proprietary account, Noticee submitted explanations along with statements of client collateral account for 17 instances. For remaining 45 instances, no explanations and supporting documents were provided by the Noticee.

h) For 15 out of the above 17 instances, Noticee stated that these securities were originally owned by Noticee, which were then transferred to client collateral account. Due to corporate actions like rights issue and demerger, additional securities were received by the Noticee in the client collateral account, as the original shares at the time of corporate actions were present in client collateral account. Thereafter, the shares were transferred by the Noticee to own proprietary account for implementation of June 20, 2019 circular. Noticee submitted that no instances of such transfers were observed post January 16, 2020, as all these transfers were made for the implementation of June 20, 2019 circular for which deadline was January 16, 2020. For remaining 2 instances, Noticee submitted statements showing purchase of 2500 shares of SBI on May 19, 2017 and 25000 shares of GMR Infra on June 20, 2019.

i) Clause 2.4.3 of SEBI Circular dated September 26, 2016 clarifies that transfer of securities from client account to pool account or collateral account is permitted. However, transfer of securities from client account to proprietary account is permitted only for legitimate purposes such as implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc.

j) Clause 2.4.3 of 2016 circular further requires that for transfer of securities for legitimate purposes indicated therein, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred.

k) SEBI circular dated November 18, 1993 – Regulation of transactions between clients and brokers – specifies that brokers shall keep separate accounts for clients' securities and keep such books of accounts , as may be necessary, to distinguish such securities from its own securities. Thus, provision for segregation of clients' securities are not novel requirements brought out by the Circular dated June 20, 2019.

l) Upon perusal of the copies of settlement obligation towards purchase of shares, demat transaction statements of pool account, client collateral account and own proprietary account provided by the Noticee for the five scrips of Asian Hotels, Biocon Limited, Cyient Limited, Fortis Healthcare Limited and Gujarat Industries Power Company Limited (GIPCL), I note from the documents that for all the scrips except GIPCL, the shares were originally owned by the Noticee.

m) In case of GIPCL, Noticee has stated that 5000 shares were purchased out of own funds on March 26, 2019, and delivery was taken in pool account on March 28, 2019. The said 5000 shares were transferred from pool account to client collateral account on the same day. From the demat transaction statement, I note that 5000 shares of GIPCL were purchased on March 26, 2019, but 6000 shares of GIPCL were transferred from pool account to client collateral account. Thus, the proper trail of 5000 shares being purchased and delivery taken in pool account, then transferred from pool to client collateral account and then to proprietary account is not present. Thus, there are deviations between submissions made and supporting documents provided by the Noticee and its submission that GIPCL shares were originally owned by Noticee is not substantiated. Also, Noticee has not provided demat transaction statement for pool account for GIPCL, which would have completed the trail of transfer of shares.

n) I find that the shares in scrips of Asian Hotels, Biocon Limited, Cyient Limited, Fortis Healthcare Limited belonged to the Noticee. Also, the shares were bought by the Noticee through its proprietary account. However, own proprietary shares were kept by the Noticee in client collateral account for future margin requirements of its clients for more than four months, until they were transferred back to proprietary account for pledging to HDFC Bank in August, 2019.

o) As can be seen from sub-paragraph (j) above, the text of clause 2.4.3 of SEBI Circular dated September 26, 2016 is very clear in regard to the flow of securities among client, pool and collateral accounts maintained by the stock broker. It is not a new requirement to keep segregated securities, as claimed by the Noticee. I note that June 20, 2019 circular clarifies and devises a standard practice to keep the securities segregated. I also note that pledging the securities for own purpose is not covered as 'legitimate purpose' in terms of clause 2.4.3 of 2016 Circular. Even though the securities belonged to the Noticee, it was not allowed to transfer shares for its own purposes, from client account to collateral account in consideration of the clauses of 1993 circular and 2016 circular. Therefore, even though it was a general practice followed by all brokers, as claimed by the Noticee, the submission of the Noticee is devoid of any merit.

p) I also note that Noticee has not submitted copies and extracts of relevant stock register which is required to be maintained in terms of Clause 2.4.3 of the 2016 Circular.

q) Further it is noted that Noticee kept its own securities in client collateral account for period of four months for which no justification has been given. Margin requirements are part of routine activity of a broker, for which it may use its own securities to meet margin requirements as and when the need arises. Hence, reasons given by the Noticee for keeping its own shares in client account for more than four months for future margin requirements of clients is not tenable.

r) Noticee clarified that in 2 instances (out of 64 instances as stated in sub-paragraph (b) above) of ICICI Prudential Mutual Fund and Bharat 22 ETF, where securities were transferred from own proprietary account to client collateral account, it was done to rectify the previous erroneous transfer in excess to own proprietary account, which was now being reversed. Hence, they were transferred back to client account. I find this submission acceptable.

s) I note that there are discrepancies in the supporting documents provided by the Noticee for the 17 instances (out of the remaining 62 instances) for which explanations and client collateral demat statements were furnished by the Noticee. For example, for 32 shares in IP Rings Limited and 15 shares in Mahindra Lifespace Developers Limited, Noticee has stated that "as the original shares were lying in the client account, the rights issue shares also got credited in the client account no. 10098706." However, I note that in case of these two scrips, opening balance in client collateral account is zero at the time of credit of rights shares, i.e. no shares were already lying in the client collateral account 10098706 at the time of credit of rights shares. Thus, observations from demat statements are not matching with submissions made by the client in these two scrips. Similarly, in another scrip, Sintex Industries Limited with 3506 shares, it was submitted that "*The Noticee had applied for rights issue of the said shares and the shares was credited in the client account as on September 29, 2016*." However, on perusal of demat transaction statement of client account 10098706, I observe that opening balance was 7810 shares and 5000 shares were received from rights issue on September 29, 2016. I note that explanation given by the Noticee does not support the figures given in the demat transaction statement. Similar observations were made in the submissions relating to other 12 instances. Hence, Noticee's assertion that all these shares were originally owned by itself, is thus, not substantiated.

t) I note that Noticee, in its submission for two more instances in the scrip of GMR infrastructure Limited and State Bank of India Limited, stated that 2475 shares of SBI and 38736 shares of GMR Infra are originally owned by Noticee, whereas it has submitted proof of purchase of 2500 shares of SBI on May 19, 2017 (and not 2475 shares of SBI) and 25000 shares of GMR Infra on June 20, 2019 (and not 38736 shares of GMR Infra). This is different from the numbers of shares actually transferred from client account to own proprietary account. Thus, Noticee has not been able to substantiate in its submission.

u) I also note that Noticee has not given explanations and supporting documents for remaining 45 instances, neither at the time of inspection, nor during the present proceedings. I also note that Noticee's submission that such instances did not occur after January 16, 2020 is not acceptable as transfers in 16 out of 62 instances have been made after January 16, 2020 from client account to own proprietary account. I also note that Noticee had kept securities for a long period of time in client collateral account for future margin requirements, and not for specific margin requirements. For the same reasons as stated in sub-paragraph (p) above, I note that transfers made by Noticee from client collateral account to own proprietary account cannot be considered as legitimate purpose in terms of clause 2.4.3 of September 26, 2016 circular.

v) Also, the Noticee has failed to keep separate accounts for clients' securities and keep such books of accounts, to distinguish client securities from own securities, thus violating Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

w) In view of the aforesaid, I find that Noticee has violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of

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

14) **Non-segregation of clients' funds** –

a) It was observed from the Bank Book maintained by the Noticee for the inspection period that the Noticee took overdraft facility in client bank account no. 00030140000152. The said overdraft was secured by FDRs created from own fund. Hence, it was alleged that the Noticee has violated Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, for using clients' accounts for purposes other than those specified in the said circular.

b) Vide mail dated February 10, 2021, in its reply to the communication of findings of the Inspection, Noticee submitted that for the purpose of meeting clients' pay-in and margin obligations, Noticee keeps surplus funds in client bank account (over and above client clear funds), which are generally kept in the form of Fixed Deposit receipts (FDRs). These FDRs were considered to be a part of balances available in client bank accounts at the time of reporting of weekly enhanced supervision details.

c) Vide letter dated May 20, 2022, replying to the SCN, Noticee had submitted that FDRs were created with funds available in the designated client account. This account has funds both from clients and own funds. This is a general market practice followed by all efficient brokers that any float lying in the client account is used to create FD so that interest can be earned in the account. That the records were reconciled daily to ensure proper segregation of funds of clients from own funds.

d) Vide its mail dated June 07, 2022, Noticee made following submissions:

   i) *The money received from the client includes the obligation of the client to the Noticee for brokerage and other charges which the client owes to the Noticee. The money which the Noticee owes from the client is kept in the Client account itself and as and when the Noticee wants to withdraw the amount towards its obligation, the Noticee can withdraw from the client account which is permissible from the Client account by the Noticee and there is no violation in this regard.*

   ii) *Noticee had not withdrawn all the brokerage amounts due to it from the clients. Hence, the unwithdrawn funds lying in the client account belongs to the Noticee, and were being used to meet eventuality when the clients' funds are insufficient and also to maintain liquidity in the clients' account so that regular pay outs are issued to the clients.*

   iii) *00030140000152 is a client account opened to receive funds from the clients towards their pay in obligation to the Noticee. The funds which were not withdrawn by the Noticee accumulated to Rs. 2.05 crores. The Noticee created FDRs out of these accumulated funds which also timely renewed. The interest earned from the FDRs was credited in 00030140000152 client account and was utilized to meet the clients' obligation to the exchanges.*

   iv) *However, since it is difficult and time-consuming process, the Noticee decided to take overdraft facility from the bank which was secured by these FDRs so created from the own funds and which were not placed with the clearing house as margin.*

   v) *Noticee has not executed any transaction leading to misutilization of clients; funds. In this regard, Noticee submits that no proprietary funds were transferred in the 00030140000152, client bank account and similarly no funds other than towards the brokerage of the Noticee were withdrawn by the Noticee.*

vi) The Noticee submitted that it had in its previous replies submitted that funds of the Noticee were transferred in 00030140000152, client account or were utilized to create FDRs through which the overdraft facility was secured. The same was submitted due to some internal misunderstanding. Therefore, no negative inference should be drawn qua the Noticee in this regard.

vii) FDRs created out of the own funds were not kept with the Exchange or the Clearing Corporations but was kept separately with the stock broker only for the purposes to fulfil the clients' obligation. In this regard, it is submitted that these funds which were kept in FDRs were in majority of the cases over and above our obligation towards the credit balance clients. Weekly disclosures on availability of funds made to the exchange as per compliance under SEBI circular dated September 26, 2016 were submitted by the Noticee in support of this submission. Upon perusal of the aforesaid data it can be noted that the value of 'G' has always been positive with approximately Rs. 2 crores available in excess with the Noticee in majority of the cases.

viii) Practice of creating the FDRs and taking the overdraft facility in client account to meet the obligation of the clients' has been prevalent since beginning of time. However, pursuant to the NSE circular bearing no. NSE/INSP/50012 dated October 19, 2021 which specifically directed members that any FDRs created out of the client funds received by the members should be only for the purpose of placing with clearing corporation/clearing members and the same was effective from January 07, 2022 which was further extended to April 01, 2022. Pursuant to April 01, 2022, the Noticee had diligently stopped the practise of taking overdraft facility in client account.

ix) As stated earlier, there is still no specific restriction of creation of FDRs from clients' funds. The only restriction effective from April 01, 2021 is towards the utilization of such FDRs.

e) Clause 1 of SEBI Circular Ref.: SMD/SED/CIR/93/23321 dated November 18, 1993 clearly specifies the purposes for which money could be paid into or drawn from clients' accounts. The stock brokers are not allowed to use clients' accounts for purposes other than those specified in the aforesaid Circular.

f) I find that submissions made by Noticee vide the three mails and letters, summarized in sub paragraphs (b), (c) and (d) above, are contradictory in nature. Vide mail dated February 10, 2021, Noticee has submitted that surplus funds were kept in client account to meet margin requirement and the funds was shown as client bank balances for the purpose of weekly reporting for enhanced supervision. Thereafter, Noticee has provided an altogether different explanation in its reply dated June 07, 2022, that the source of funds from which FDRs were created is the unwithdrawn brokerage over several years, which has accumulated to rupees 2.05 crore. Firstly, through this statement, Noticee is seen to have admitting that it did not withdrew brokerage from the account. This implies that brokerage, which is Noticee's income, was not withdrawn from client account, for several years. Being its income, it formed part of Noticee's funds. Thus, Noticee's funds were kept in client account for several years, and then FDRs were created out of those funds and finally OD facility was taken using the FDRs. This indicates that the Noticee did not segregate clients' funds with its own funds'. Secondly, I note that atleast one of the two mutually exclusive submissions made by the Noticee is an afterthought, while both of them demonstrate that segregation of funds was not being done by the Noticee.

g) I note from Noticee's submission, that it was an efficient business practice to create FD of the float lying in the client account, is not justifiable. It is Noticee's responsibility to adhere to SEBI Brokers Regulations, 1992 and applicable SEBI

Circulars. It cannot escape from compliances by calling its own dealings as efficient business practice.

h) Noticee's submission that no proprietary funds were transferred to the client beneficiary account is not tenable because brokerage forms part of Noticee's income, which in turn forms part of Noticee's funds.

i) Noticee has submitted that it decided to take overdraft facility from the bank, which was secured by FDRs, as these were not placed with the clearing house as margin. The Noticee has not explained why instead of placing the FDRs from own funds with clearing house for margin purposes, it chose to take overdraft facility on FDRs created out of own funds in client account.

j) Further, as per clause 1 of the 1993 circular, Noticee is not permitted to take overdraft facility in client account. Also, Noticee has failed to segregate own funds from clients' funds by not withdrawing brokerage from the client account over a period of several years.

k) In view of the aforesaid, I find that Noticee has violated Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

15)**<u>Wrong naming / tagging of demat accounts</u>** –

a) It was alleged that Noticee had not made proper tagging of five demat accounts, and thus alleged to have violated provisions of Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1.(f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016.

b) Noticee, vide its submissions dated May 20, 2022 and June 07, 2022 stated that DP Account No. 10369816 and 00012918 were TM/ CM Client Securities Pledge Account, which were NSDL and CDSL Account respectively, opened by the Noticee in compliance with directions issued by SEBI vide circular no. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2020/ 28 dated February 25, 2020, which was made effective from August 01, 2020. Noticee submitted that it was able to open the account properly with correct nomenclature, i.e. “Client Securities Margin Pledge Account”, however, the correct tagging of the account was not possible on the portal of NSE during that particular time, as NSE portal was not updated during that time. Noticee has further submitted the account tagging was duly updated upon the updation of NSE systems. For another account no. 10363725, wherein purpose was mentioned as “Any other”, it was submitted that this account was opened for settlement, pursuant to implementation of Client Unpaid Securities Account (CUSA), but the said account was never utilised for any purpose, and subsequently closed by the Noticee.It was also provided that this account was wrongly opened. Screenshots of the tagging for the two accounts above and also of the “Account closed” status of 10363725 was submitted by the Noticee as supporting documents with the submissions. For remaining two accounts, i.e. 10274587 and 10363231, it was mentioned that these were PMS accounts, which did not fit in the existing category. Noticee has not made any other submissions or provided any supporting documents for the above two accounts, viz. 10274587 and 10363231.

c) Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 prescribes the nomenclature of bank accounts and demat accounts of clients and of self to be implemented and maintained by the stock brokers. Clause 6.1.1 (f) of Annexure to the aforesaid Circular requires Stock Exchanges to monitor their members for failure to assign appropriate bank and demat nomenclature within the time specified and to report the same to the Stock Exchanges.

d) It was observed from the details uploaded on exchange portal that proper tagging of following accounts had not been done. The account purpose was not properly specified therein.

DP_Id	DP Account No	Account Purpose	Status
IN30160	10274587	Any Other	Active
IN30160	10363231	Any Other	Active
IN30160	10363725	Any Other	Active
IN30160	10369816		Active
1206680	00012918		Active

e) I note from the screenshots of the accounts tagging that non-tagging of account numbers 10369816 and 0012918 are due to the reason that as the new system of Client Securities Margin pledge account was being implemented, it was not present on the NSE portal at the time of opening of account. Further, as submitted by the Noticee and observed from the screenshots of these two accounts, it was corrected afterwards. I find these two instances as minor deviations during the course of business, which were later rectified. Further, they had occurred due to the circumstances out of Noticee's control. Hence, the allegation of non-tagging of these two accounts cannot be established

f) With regard to account no. 10363725, I note that though the account was opened and closed after around three months of its opening, it was not tagged properly during the period when it was present. For the other two accounts, viz. 10274587 and 10363231, Noticee's assertion that these were PMS Growth and PMS accounts were tagged as 'any other' because these two accounts did not fit in the existing category is not supported by screenshots or any other evidence. Hence, the assertion is not acceptable. To sum up, Noticee has not tagged DP Account No.s 10274587, 10363231 and 10363725 correctly.

g) In view of the aforesaid, I find that Noticee was not in compliance of the provisions of Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1.(f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 at the time of inspection.

16) **<u>Non-settlement of clients' funds</u>** –

a) It was alleged that the Noticee did not carry out actual settlement of clients' funds and securities for clients who have not traded in the past 90 days. Further, it was alleged that the Noticee followed a practice of issuing retention statement without ensuring actual transfer of funds and securities (as stated in the retention statement) to the client while settling the client account which was marked as settled in the back office software. Such practice of settlement cannot be considered as periodic settlement compliance. The summary is as given below.

Quarter	No. of UCC	Total Unsettled (Rs.)
Q1	53	1483904.02
Q2	15	84797.52
Q3	19	142806.89
Q4	25	357014.32
Q5	92	1160182.48
Total	**204**	**3228705.23**

b) With respect to settlement of inactive clients' accounts, the Noticee had not provided any supporting documents regarding settlement of those clients.

c) Also, Noticee allegedly retained the amount worth Rs. 137137373.72 belonging to 419 active clients in excess of Rs.10,000**.** It was observed that the Noticee has settled the client account as per dates provided in the reply of the Noticee vide letter dated February 10, 2021. However, it is alleged that date of settlement is beyond maximum permissible time prescribed by SEBI, i.e. 90 days, which is not in accordance with the Exchange/ SEBI guidelines.

d) Out of of 419 instances of active clients,
   i) 323 instances - It was noted that Noticee settled accounts beyond 90 days.
   ii) 62 instances – Noticee provided dates of previous settlement and which were not settled on settlement date as mentioned in settlement log provided during inspection.
   iii) 34 instances – Settlement of funds/securities was not ensured on date communicated to exchange during inspection.

e) Hence, Noticee was alleged to have violated Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

<u>Noticee's submissions for inactive clients</u>

f) Noticee, vide mail dated May 20, 2022, inter alia submitted that in case of inactive clients, the total instances in which observations are made in five quarters are 164 and not 204.

g) Noticee further submitted the reasons of non-settlement of clients' accounts, as summarized below.

Reason	No. of Client

Invalid Bank Details	23
Invalid DP Client ID	20
Settled late or in the following quarter due to imposition of lockdown	70
Settled till the following quarter	34
Clients with PMS Account, not requiring settlement	2
Clients Debarred and thus settled in the following quarter	2
CDSL Scrip and thus not transferable interdepository	1
Miscellaneous	12
TOTAL	164

h) Noticee submitted that number of unsettled clients were a miniscule percentage, i.e. 0.45% of the total clients registered with the Noticee. It submitted that it had settled these clients subsequently and date of settlement was also provided by the Noticee along with its reply to the Inspection report vide mail dated February 10, 2021.

i) It was submitted that out of 20 clients, whose accounts were not settled due to invalid DP client ID, 11 clients have not yet updated necessary required details for settling their accounts.

<u>Noticee's submissions for active clients</u>

j) In regard to the allegation of non-settlement of 419 active clients accounts, it was submitted by the Noticee that 356 accounts were being settled on weekly basis, and hence, the allegation is not correct. Noticee also provided account statements of these clients in this regard.

k) For 56 clients, Noticee submitted that the clients' funds were credited during the quarter ended September 30, 2020, owing to lockdown imposed on account of covid-19. There were 2 PMS clients with 4 instances as per the SCN, whose settlement is not required. Remaining 3 client codes were settled on August 27, 2019 (1 client) and September 19, 2019 (2 clients).

l) Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016 specifies responsibility of stock brokers to settle accounts of their clients monthly or quarterly, as opted by the clients, and through electronic mode. Clause 12 of SEBI Circular No.: MIRSD/ SE /Cir-19/2009 dated December 03, 2009 requires stock brokers to retain requisite securities/ funds towards outstanding obligations of clients on settlement date and towards margin obligations for next 5 trading days. The stock broker is also required to send a 'statement of accounts', which shall also explain the retention of funds/ securities and details of pledge, if any.

<u>Observations in case of inactive clients</u>

m) Upon perusal of the details of non-settlement of inactive clients, I note that Noticee's submission is that in case of inactive clients, there were 164 clients for whom settlement was delayed, and not 204 clients as given in the SCN, though total number of instances in five quarters falling in the inspection period is 204.

n) During the course of hearing, Noticee was asked to provide details of settlement of aforesaid inactive clients, which was provided along with its submissions vide mail dated June 07, 2022.

o) I note that reasons given by the Noticee for non-settlement of inactive clients like invalid DP client ID or bank details for not complying with the mandatory obligation of settlement of balances of its clients, which have been prescribed in the aforementioned 2016 and 2019 circulars, are not acceptable. I am of the view that these are not valid reasons for not complying with the mandatory statutory requirement cast through the above mentioned circulars. It is further admitted by the Noticee that in respect of 104 inactive clients, the settlement was done by it in the subsequent quarters and not in the mandated quarter.

Observations in case of active clients

p) In regard to allegation of non-settlement of balances of 419 active clients in excess of Rs. 10,000, Noticee had submitted account statements for 356 clients, and upon perusal of the same, I note that Noticee has complied with the settlement requirements and has not retained amounts in excess of ₹10,000. Hence, the charges of non-settlement against the Noticee for these 356 active clients are not established.

q) I further note that two active client accounts, viz. CG125 and DZ557 with four instances are PMS clients, which do not require settlement of account on quarterly basis. Also, from the account statements submitted by the Noticee for client codes CL855, D2210 and DV217, I note that the settlement was made within the quarter. Hence, I find that charges of non-settlement against the Noticee for these 7 instances are also not established.

r) To sum up, I have found that Noticee has not settled inactive client accounts for 104 out of 164 clients and also not settled 56 active clients out of 419 clients within prescribed time, which clearly shows that Noticee has violated the provisions of SEBI Circular dated December 3, 2009 and also SEBI Circular ref. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

s) In this context, it is pertinent to mention that Hon'ble SAT in the matter of *Indira Securities Pvt Ltd vs SEBI, Appeal no 50 of 2014, decided on June 23, 2014*, had observed that ....."*The concept of monthly or quarterly running* *settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3,2009,with a view to instil greater transparency and discipline in the dealings between the clients and the broker. The circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advisory Committee (SMAC), Market Participants and major stock exchanges. Therefore, the circular dated December 3,2009, issued by SEBI is not a directive only but a mandatory one*"

t) It is clear from the above that the stock brokers are mandated to settle the client accounts in a timely manner as prescribed in the aforementioned circulars. In view of the above observations/finding, I conclude that the Noticee has failed to settle the client accounts in timely manner, and therefore, I hold that Noticee has violated the provisions of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI Circular ref. SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016.

17) **<u>Stock Reconciliation</u>** –

a) It was alleged that Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992 for not maintaining proper records of client collateral and not periodically reconciling the records with actual collateral deposited by client with the stock broker.

b) During inspection, on verification of reconciliation of securities reflected in register of securities (ROS) of Noticee and available in DP Statement as on June 30, 2020, it was observed that both were not reconciled, and difference was observed. Securities worth Rs. 0.14 crore were available in DP statement but the same were not recorded in Register of Securities (ROS). Similarly, securities worth Rs 0.14 crores were recorded in ROS but are not available in DP statement. The same is summarized as below

S No.	Availability of Client securities	Amount (In Rs.)
1	Value of securities as per ROS (A)	281,403,726
2	Value of securities as per Pool account (B)	40,299,287
3	Value of securities as per Own beneficiary account (C)	4,871,915
4	Value of securities as per Client beneficiary account (D)	116,460
5	Value of securities as per Client Collateral account (E)	462,746
6	Value of securities as per Collateral account (F)	214,902,493
7	Value of securities with CUSA (G)	20,713,513
8	Value of Securities Available in ROS but not in DP	1,439,273
9	Value of Securities Available in DP but not in ROS	1,401,962

c) Also, during the verification of the clients' securities extract from the back-office of the Noticee vis-à-vis Statement of Holding of Noticee with Depository Participant as on 31-03-2020, it was observed that Clients' securities (total 30 ISIN) worth Rs.11.33 lakhs were not available in the beneficiary account of the Noticee (stock broker). It was also observed that Noticee has not recorded the securities of clients (total 39 ISIN) in its Back-office worth Rs.9.77 lakhs.

d) It was also observed that there were 3099 instances on 22 sample days of mismatches in securities holding and DP accounts as summarized below. The aggregate value of client securities which were not reconciled was approximately rupees fifty one crore.

S. No	Date	Mismatch instances	Total Mismatch Value
1	07/10/2019	1472	251037237.6
2	09/10/2019	15	140434
3	10/10/2019	17	214699.99
4	11/10/2019	12	149652.65
5	14/10/2019	1272	249584945
6	15/10/2019	28	232013.55
7	16/10/2019	18	837434.8
8	17/10/2019	23	3353437
9	18/10/2019	18	3060343.8
10	09/12/2019	18	-961413.8
11	10/12/2019	1	849
12	11/12/2019	4	42818.55
13	12/12/2019	3	40297.3
14	13/12/2019	5	28704.25
15	16/12/2019	3	-15324.25
16	17/12/2019	5	9031.65
17	18/12/2019	3	8247.2
18	19/12/2019	4	-3716.2
19	20/12/2019	2	-10019.1
20	23/12/2019	161	892469.02
21	24/12/2019	8	22428
22	26/12/2019	7	985109.8
	TOTAL	3099	509649679.80

e) With respect to allegation in sub-paragraph (b) above, Noticee, vide its reply dated February 10, 2021, submitted that shares were delivered in excess/ wrongly delivered to other clients and certain proprietary account shares were lying in other accounts (viz. client beneficiary accounts and client collateral account) and same were transferred. Furthermore, it was submitted that mismatch in stocks happened due to technical issue and later rectified.

f) Noticee, in its submisisons vide letter dated May 20, 2022, stated that reconciliation was done regularly, however, at the time of closing of all client beneficiary accounts and client collateral accounts, the holdings in said accounts were required to be transferred to respective clients, and at that time, it was found out that certain shares were falling short, as some shares might have been erroneously credited to some other clients. Hence, the shortfall was met by purchasing the shares from market and crediting it to the respective clients. Also, some shares of proprietary account lying in client accounts for a long time were transferred to the proprietary accounts.

g) With respect to the allegation in sub-paragraph (c) above, that clients' securities worth Rs. 11.33 lakh were not available in the beneficiary account of the Noticee, and not recording of securities of clients in its back office worth Rs. 9.77 lakh, it was submitted that there was no actual mismatch, but it was due to some technical issue with back office software, that the holding generated from back office was not matching with DP holding. The software was not implementing corporate actions uniformly on various scrips held on behalf of various clients throughout the ROS. It was submitted that after the rectification in the software, holding statement generated from DP is exactly same as holding in DP accounts from the Register of Securities. Therefore, no allegation of misutilisation or non-conduct of business with skill, care and due diligence can be alleged against the Noticee.

h) With respect to the allegation in sub-paragraph (d) above, of mismatch in holding on 22 different dates, totalling to 3099 mismatch instances, Noticee submitted that the differences were due to inappropriate mode of calculation adopted by the inspection team to arrive at the reconciliation. Noticee referred to NSE Circular on "Handling off clients' securities" wherein it was stipulated that all the existing client securities accounts other than Pool account, Client Margin Trading Securities account and Client collateral account shall be wound up on or before September 30, 2019. Finally, stock brokers were allowed time to implement the circular by January 16, 2020. Noticee submitted that as it was not able to implement the circular as on October 01, 2019, securities were lying in various other demat accounts other than Client Unpaid Securities Account and Client Margin Trading Securities Account. However, while reconciling the holding as on various dates the Inspection team has not considered the holding held by the Noticee in other accounts other than the accounts designated under the aforementioned SEBI circulars. The holding in demat accounts bearing ids. 10000172, 10358935, 10098706, 10358540, 10362013 and 1206680000000013 were not considered by the Inspection team while reconciling the holdings. Upon adding the balances held by the Noticee as on the relevant 22 dates in these accounts to the holding of the relevant accounts as recorded by the Inspection Team, it can be noted that the securities mismatch as recorded by the Inspection Team can be matched from the holding in the aforementioned demat accounts.

i) Clause 2.3 of SEBI Circular Ref.: SMD/SED/CIR/93/23321 dated April 17, 2008 prescribes that proper records of client collateral should be maintained and periodically reconciled with actual collateral deposited by client with the stock broker. Regulation 9(f) of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 specifies one of the conditions of registration of stock brokers that brokers shall always abide by the Code of Conduct specified in Schedule II. Clauses A(2) and A(5) of the Code of Conduct prescribe that a stock broker shall exercise due skill, care and diligence in the conduct of business and comply with all applicable statutory requirements.

j) With respect to the allegation in sub-paragraph (b) above, I note that Noticee has submitted that proprietary shares were lying in clients' accounts for a long period. I also note that Noticee has admitted that previously, some shares had been erroneously credited to some other clients, due to which Noticee bought shares from the market to meet the shortfall in clients' securities balances. This indicates lack of skill, care and diligence, as expected from a share broker.

k) I note that it is very important for stock broker to maintain records with accuracy, completeness and presented in prescribed and appropriate formats. It was Noticee's responsibility to ensure that the records are accurate and complete, which it has failed to maintain.

l) With respect to the allegation in sub-paragraph (c) above, for which the Noticee has submitted that there was no actual mismatch, and it was due to some technical issue, which was rectified afterwards and the accounts were reconciling exactly. I am of the view that Noticee's explanation that the differences were due to technical issue and so the allegation cannot be levelled against the Noticee is not tenable.

m) With respect to the allegation in sub-paragraph (d) above, Noticee submitted reworked copy of client wise details of mismatches in securities holding and DP accounts, which is properly reconciled, after including the balances of aforementioned 6 demat accounts. As the last date of implementation of the said NSE circular was January 16, 2020, and there is no mismatch observed after this date. I note that Noticee was in the process of implementing the aforesaid NSE Circular, and it was not past the timeline prescribed by the NSE. Hence, the 6 demat accounts which are client accounts may be considered for the reconciliation of back office records and statement of holding with DP. Noticee has submitted the reworked reconciliation, which shows that both the records match when these six demat accounts are considered. Hence, Noticee's submissions in this regard are acceptable and charges of violation of provisions of SEBI Circular SMD/SED/CIR/93/23321 dated April 17, 2008 do not stand established.

n) In view of the aforesaid, Noticee is in violation of provisions of Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock

Brokers) Regulations, 1992 by not acting with due skill, care and diligence while dealing with securities, as the back office records were not reconciled with Holding statement with DP due to various reasons including erroneous transfer of shares to wrong clients, proprietary shares lying in client accounts and technical issues with back-office software.

18) **Same email id/ mobile number assigned to multiple clients** –

a) On verification of UCC data of Noticee, it was observed that Noticee uploaded single email id against multiple clients. Discrepancy was found in 24 clients for mobile number and 12 clients for email id respectively. It was observed that these clients were not having family relations with each other. Noticee, vide mail dated February 10, 2021, submitted that out of 24 clients for mobile number discrepancy, mobile numbers for 6 clients have been changed and remaining 18 clients have already been disabled, and in respect of 12 instances for email-id discrepancy, 11 have been disabled and for one client, the said email id belongs to the spouse of said client. However, no documents have been submitted by Noticee in support of his explanation. Hence, it was alleged that the Noticee has violated Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

b) Noticee, along with its submissions vide mail dated May 20, 2022, submitted screenshots of client profile on its portal for which mobile number and email discrepancy was found and requested for the observation to be dropped.

c) Clause 2(B) of SEBI Circular No. CIR/MIRSD/15/2011 dated August 02, 2011 requires stock exchanges to send details of transactions to the investors by the end of trading day. For this purpose, it is stock brokers' responsibility to upload proper details of clients such as name, mobile number, email address and correspondence address, over the platform provided by stock exchanges.

d) I note that discrepancies were there and Noticee has not submitted proper documents showing the disabled status of clients and rectification of mbile number discrepancy of 6 clients. I note that Noticee has submitted 14 screenshots of the client profile, out of which client code or name is not visible in 10 screenshots, and for remaining 4 screenshots, where client name can be seen, rectification of mobile number discrepancy cannot be observed, as there is no field of mobile number visible in the screenshot. Thus, Noticee's submissions cannot be substantiated from the screenshots submitted by it. Hence, the charge against the Noticee for mobile number and email id discrepancy wherein same mobile numbers or email ids were given for multiple clients who were not related to each other stands established. Hence, I find that Noticee has violated provisions of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

19) **Incorrect submission of data to stock exchanges** –

a) On verification of monthly data submitted towards upload of balances of client funds and securities for the month of September 2019 and its comparison with holding statement and trial balance provided by trading member for dated 30-Sep-2019 *(inadvertently mentioned as 30-Sep-2020 in the SCN)*, it was observed that details of securities submitted by Noticee to the exchange does not match with the back-office books and records maintained by Noticee. Following observations were made:

   i) Mismatches in quantity was observed in 22 instances pertaining to 18 clients amounting to Rs.0.005 crore.

   ii) Securities worth Rs.2.42 crore belonging to 18 clients were not reported by Noticee to Stock Exchange in its monthly submission for September 2019.

b) Hence, it was alleged that Noticee has violated Clause 6.1.1(j) of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

c) With respect to 22 instances pertaining to 18 clients amounting to Rs.0.005 crore, Noticee submitted that it was due to a technical issue in Noticee's software, and there was no actual mismatch. Hence, it cannot be alleged for incorrect disclosure of details to stock exchange.

d) With respect to non-reporting of securities worth Rs.2.42 crore belonging to 18 clients, it was submitted that the shares belonged to proprietary account of the Noticee and Authorized person security deposit, which was not required to be submitted to the exchanges on monthly basis. Following details were provided by the Noticee in this regard.

SR. NO.	**UNIQUE CLIENT CODE**	**AUTHORIZED REPRESENTATIVE TO WHOM CLIENT CODE BELONGS**
19.	VA264	Client Margin Account
20.	AI014	Proprietary Account
21.	CT000	Proprietary Account
22.	CT002	Proprietary Account
23.	SAL043	AP security deposit Account
24.	SAL206	AP security deposit Account
25.	SAL222	AP security deposit Account
26.	SAL238	AP security deposit Account
27.	SAL299	AP security deposit Account
28.	SAL328	AP security deposit Account
29.	SAL363	AP security deposit Account
30.	SAL365	AP security deposit Account
31.	SAL388	AP security deposit Account
32.	SAL567	AP security deposit Account
33.	SAL627	AP security deposit Account
34.	SAL665	AP security deposit Account

35.	SAL681	AP security deposit Account
36.	MA2283	Client Margin Account

e) Clause 6.1.1(j) of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 requires Stock Exchanges to monitor their members based on various criteria such as failure to submit data on time or share incomplete/ wrong data.

f) With regard to sub-paragraph (a)(i) above, Noticee submitted that details submitted to stock exchange was matching with back office records after resolution of the technical issue. I note that though the Noticee has maintained same response against this allegation, but it has not submitted details of the resolution of mismatch, and thereby demonstrating that details submitted to stock exchange were correct, in any of its replies.

g) With regard to sub-paragraph (a)(i) above, I note that Noticee has not submitted any evidences in support of its claim that non-reporting of securities worth Rs.2.42 crore belonging to 18 clients was done because these shares were lying in proprietary account and AP security deposit account. Noticee has not submitted details of shares held in these accounts while replying to the inspection findings vide mail dated February 10, 2021 or along with its replies dated May 20, 2022 and June 07, 2022. Hence, Noticee's submissions are unacceptable in the absence of proper supporting documents to substantiate its claims.

h) In view of the above, I find that violation of provisions of Clause 6.1.1(j) of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 against the Noticee stands established.

20) **Client Funding** –

a) During verification of client's ledger, it was observed that the Noticee has given further exposure to one client in spite of debit in client ledger. It was further observed that the Noticee has not reported client funding on exchange portal as well. The details are mentioned as below:

Date of Bill	Transaction Remarks	Fresh Purchase	Ageing Balance (Unpaid Balance)	Total Funding	UCC
		A	B	A+B	
10/05/2019	Settlement Posting-BR0026(Rolling)	401832.8	-122370	-524203	RJ583

b) Hence, it was alleged that Noticee has violated Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

c) Vide mail dated February 10, 2021, Noticee submitted in reply to the communication of findings that it had sufficient stock, lying in the demat account of client, and also submitted that cheque was already received from the client on May 10, 2019.

d) While making submissions to the SCN, Noticee submitted that uncleared cheque given by the client shall be considered while calculating the fund balance of the client. In this regard, it is pertinent to note that the cheque was received from client on May 08, 2019 but it could not be deposited because the cheque was overwritten and the same would have been bounced and become not valid. Due to the error in cheque received by the client, the Noticee had asked the client to issue a fresh cheque. Subsequently, the Noticee had received the cheque on May 10, 2019 dated May 13, 2019 and the same was deposited on May 13, 2019. The two days delay on the part of the Noticee was due to bank holiday and also, when the cheque was given by the client it was the last working day of the week and due to this reason, the cheque could not be deposited.

e) Noticee submitted that while the inspection period was spanning 16 months, and the Noticee was dealing with almost 40000 clients, only one instance of client funding to the tune of Rs. 5,25,592.91 has been noted against the Noticee.

f) Clause 2.6 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017 specifically states that stock brokers shall not grant further exposure to clients on their failure to pay the required amount, beyond T+2+5 days, except in accordance with the margin trading facility.

g) Noticee has submitted that it was a one-off incident during the inspection period of 16 months, and hence it should be viewed leniently. I find it irrelevant because inspection was done based on 50 samples for the instant allegation, and out of 50 samples selected for the purpose of inspection, one irregularity was found. Noticee’s contention could have been considered if only one such irregularity would have been found after inspection of all the samples. As claimed by Noticee that it is an isolated incident, Noticee should have maintained proper documentation of the same for future reference.

h) Noticee’s submission in reply dated February 10, 2021, that sufficient stock was lying in the client’s demat account, is also irrelevant, as the same is not allowed to be considered for calculating clients’ fund balance as per aforesaid circulars.

i) Uncleared cheques are allowed to be considered for calculating fund balance of the clients. Hence, it becomes even more important for the stock broker to take cheques from the clients before allowing them limits. Noticee has submitted that a cheque was accepted from a client on May 08, 2019, and discrepancy of overwriting in the cheque was observed on May 09, 2019, after which Noticee was asked to submit one more cheque, which it had given on May 10, 2019 after the bank hours, but the cheque date mentioned by the client was May 13, 2019, as May 10, 2019 was Friday and May 13, 2019 was next working day.

j) I find that Noticee’s submissions to the SCN are different from its reply to the communication of findings. I find Noticee’s submission as an afterthought, and hence, unacceptable. I note that provisions regarding clients’ fund balance in the aforesaid circulars have been made to protect the interests of both the parties in the broking transactions and also to facilitate transparent dealings. Further, Noticee has not reported client funding to the exchange portal.

k) Hence, I find that Noticee has violated Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

21) **<u>Client’s order recording</u>** –

a) Out of the call recordings of clients sought from Noticee at the time of inspection on sample basis, the following discrepancies were noted**:-**

S.no.	UCC	Name	Comments
1	DC243	Girish Kumar Tyagi	Call recording not available, the Noticee later on informed that the client did trading from office premises. However, name of the client is not appearing in the scan copy of the client walk-in register provided by the Noticee.
2	MA4559	Arvind Baghel	
3	CQ983	A V & Sons HUF	
4	GN145	Ved Prakash Sharma	
5	GO1266	Sudha Sharma	

b) Hence, the Noticee was alleged to have violated Clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

c) Noticee in its Reply to the Inspection Report vide mail dated February 10, 2021 had informed that the aforementioned clients were the regular clients of the Noticee and they did trading from the office premises itself. It was further informed by the Noticee in its Reply that Walk-in Register of the clients was kept at the reception and the client was asked to do the entry, however as the regularly visiting clients sometimes do skip the entry in the said register and as the Noticee obtains the Trade Confirmation Letter from each and every walk-in client, the Noticee did not force the client to make entry in the Register. The Noticee in support of its submissions had provided the Trade Confirmation Letter for the aforesaid clients.

d) Noticee also referred to paragraph III of SEBI Circular CIR/HO/MIRSD/MIRSD2/ CIR/P/ 2017/108 dated September 26, 2017, and submitted that it was required to keep the record of client placing the order in "Any other legally verifiable record". Since Trade confirmation letter adequately verifies the placement of orders, the allegation of non-recording of client's order cannot stand.

e) Clause III of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 makes it mandatory for stock brokers to execute trades of clients only after keeping evidence of the client placing such order, in form of physical record, telephone recording, email, SMS, etc.

f) I note that trade confirmation letter was not provided by the Noticee along with its reply to the inspection findings vide mail dated February 10, 2021. However, Noticee has now provided supporting document in the form of trade confirmation certificate as an evidence of placement of order by client for trades, as mandated in Clause III of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017. Hence, the alleged violations of aforesaid provision does not stand established.

22) **Non-maintenance of books of account** –

a) On verification of Holding Statement, Bank Book, Client Ledger and Register of Securities, provided by the Noticee, it was observed that Noticee did not maintain these books and documents in the format prescribed by the Exchange. Hence, it was alleged that the Noticee has violated Rule 15 of SC(R) Rules 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.

b) Noticee, vide its reply dated May 20, 2022, submitted that the inspection was carried online, and during the covid-19 lockdown situation, the Noticee was also working remotely, due to which some data may have been presented distortedly. It was also stated that it had submitted proper books of account and documents along with its reply to the inspection findings vide mail dated February 10, 2021, but it was not considered by the Inspection team.

c) Rule 15 of Securities Contracts (Regulations) Rules, 1957 and Regulation 17 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 prescribe the books of account and documents which are to be maintained and preserved by a stock broker for a period of five years.

d) I note that ROS, Bank Book and Holding Statement in the prescribed format was not provided by the Noticee along with its reply to the inspection findings vide mail dated February 10, 2021. However, Noticee has now provided these records in support of its claim that it has duly maintained these books of accounts as per the latest formats prescribed by the NSE. Hence, the alleged violations of provisions of Rule 15 of SC(R) Rules 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992 do not stand established.

23) Therefore, I find that Noticee has violated following provision:

a) Section 23D of SC(R) Act, 1956 read with Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.
b) Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993
c) Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1.(f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016
d) Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.
e) Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
f) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

g) Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause A(2) of the code of conduct, read with Regulation 9(f) of the Stock Brokers Regulations, 1992

h) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

ISSUE II - Do the violations, if any, attract penalty under section 15HB of the SEBI Act, 1992 and section 23D of SC(R) Act, 1956?

24) I note that the above violations make the Noticee liable for monetary penalty under section 15HB of the SEBI Act, 1992 and section 23D of SC(R) Act, 1956, the text of which is reproduced hereunder:

<u>SEBI Act</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.*

<u>SC(R) Act, 1956</u>

Penalty for failure to segregate securities or moneys of client or clients.

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

25) In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach ofcivil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and section 23J of SC(R) Act, 1956?

26) While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992 and section 23D of SC(R) Act, 1956, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 and section 23J of the SC(R) Act, 1956 respectively, which read as under:

SEBI Act, 1992

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.

SC(R) Act, 1956

<u>Factors to be taken into account while adjudging quantum of penalty</u>.

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the the Securities and Exchange Board of India 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 of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

27) In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has been penalised earlier for any of the aforesaid violations. Hence, violations is not repetitive in nature. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under statutory obligation to abide by the provisions of the SCRA & SEBI Act which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

28) Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act, Section 23-I of SC(R) Act, 1956 read with Rule 5 of the SEBI Adjudication Rules, 1995 and Rule 5 of SCRA Adjudication Rules, 2005, I hereby impose following penalty upon Noticee.

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
1	ELITE WEALTH LIMITED	1. Section 23D of SC(R) Act, 1956 read with Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016. 2. Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 3. Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1.(f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016 4. Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. 5. Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f)	Section 23D of SC(R) Act, 1956, Section 15HB of SEBI Act, 1992	₹ 10,00,000/- (Rupees Ten Lakhs only)

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
		of the SEBI (Stock Brokers) Regulations, 1992. 6. Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011. 7. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause A(2) of the code of conduct, read with Regulation 9(f) of the Stock Brokers Regulations, 1992 8. Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017		

29) The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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.

30) The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla

Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

31) In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

32) In terms of Rule 6 of the SEBI Adjudication Rules, 1995 and Rule 6 of SCRA Adjudication Rules, 2005, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: July 28, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**Adjudicating Officer**