BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/BM/LD/2022-23/ 16302]

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

In respect of

Maxgrowth Capital Pvt. Ltd.

(SEBI Registration No. : INZ000292335)

In the matter of **Maxgrowth Capital Pvt. Ltd.**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"*SEBI*"***), conducted a comprehensive inspection of M/s. Maxgrowth Capital Pvt. Ltd. (hereinafter referred to as ***"*Noticee/Maxgrowth*"***) w.r.t. its Stock Broking and Depository Participants, from July 29, 2019 to August 01, 2019. The period covered in the inspection was from April 01, 2018 to June 30, 2019 (hereinafter referred to as '**Inspection Period'**). Noticee is registered as Stock Broker with registration no. INZ000292335.

2. The findings/observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated February 20, 2020. After examining the reply submitted by the Noticee vide letter dated March 05, 2020, it has been alleged that the Noticee violated various provisions of Securities Laws and applicable SEBI circulars. The extracts of the violation alleged to have been committed by the Noticee and the corresponding provisions of securities laws are given in the tabulation below:

Sl No.	Alleged violations	Regulatory provisions
1.	***<u>Mis-use of clients funds</u>*** The value of "J" was positive on two days i.e. 05.04.2019 and 12.04.2019, indicating that clients' funds was alleged to have mis-utilized towards margin obligations of debit balance clients and proprietary margin obligations.	*Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*
2.	**<u>Non-segregation/ Misutilisation of Clients' Securities</u>:** a) **Non-segregation between transactions of own and client beneficiary accounts** : In 2 instances, securities valued at Rs. 0.36 Crores were transferred between Own and client beneficiary accounts and securities valued at Rs. 0.36Crores were received from Client beneficiary to Own beneficiary in 3 instances. b) **Misutilization of Clients' Securities**: In order	*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 to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 September 26, 2016.* *b) Section 23D of SC (R) Act, 1956 read with Clause 2 of Annexure to SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016*

	to nullify / avoid delivery payment obligations to the Exchange, as client securities were already short with the Noticee i.e those securities were not available with the Noticee, the Noticee had taken counter positions in PRO account against positions of its clients in case of 9 instances amounting to Rs. 0.84 Crores.	
3.	***<u>Pledging of Clients Securities :</u>*** a) **<u>Pledging of</u> Clients securities :** pledged securities of clients who had credit / NIL balance to the tune of Rs. 30.36 Crores during the 10 sample days taken towards utilization for his own purpose/debit balance clients**.** b) **<u>Unexplained use of funds raised by pledging of Client Securities with NBFC</u> :** Noticee had availed of	*a) Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.* *b) Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*

	Overdraft facility by pledging clients' securities with Aditya Birla Finance Ltd. (ABFL – NBFC). The pledging of clients' securities were verified on two dates – April 12, 2018 (date on which maximum OD was availed by Noticee) and February 28, 2019 (date on which securities lying with the NBFC as pledged were confiscated by the NBFC) . on April 12, 2018, the Noticee had availed a maximum overdraft amounting to Rs. 3.22 Crores on the total value of shares pledged on that date amounting to Rs. 6.44 Crores. No explanation provided by the Noticee with regard to the use of funds of Rs. 3. 16	

	Crores, by pledging the clients' securities.	
4.	**<u>Non settlement of Clients' funds and securities :</u>** In Q1-Q4 percentage wise accounts of active clients not settled was 54.5% for quarter 1, 58.2% for quarter 2, 67.9% for quarter 3 and 48% for quarter 4. Further, the total value of funds and securities unsettled is Rs. 4.60 Crores belonging to 253 clients. Inactive clients had the same credit balance at the end of two consecutive quarters. It was observed that the accounts of the clients were unsettled and the amount of non-settlement ranged between Rs. 1755.45 to Rs. 73,340.64	*Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016 and Clause 12 of Annexure to SEBI Circular SEBI//MIRSD/SE/Cir-19/2009 dated December 03, 2009.*

	2206 instances of non-settlement were identified wherein 1835 instances pertained to 662 unique inactive clients and 370 instances pertained to 229 unique active clients. Total non-settlement of Rs. 31.65 crores were observed for inactive clients.	
5.	**<u>Stock Reconciliation :</u>** the There was a difference in the Register of Securities (ROS) of the Noticee and the records available with DP as on April 30, 2019. It was observed that both did not reconcile and a difference was observed. Securities worth Rs. 0.84 Crores are short in DP as compared to value of total ROS worth Rs. 15.22 Crores and	*Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.*

	Securities worth Rs. 6.19 Crores was available in DP but not in ROS.	
6.	**<u>Investor Grievances Handling</u>** Noticee had not maintained an exclusive email id for redressal of investor complaints.	*Circular MRD/DoP/SE/Cir-22/06 dated December 18, 2006.10*
7.	**<u>Operation of trading terminal without valid NISM certificate :</u>** On verification of the date uploaded in CTCL dump and dealer IDs reported to the exchange by the Noticee, it was observed that terminals were operated without having valid certificates for Corporate Manager IDs in CM, FO & CD segments of the Exchange	*Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.*

8.	***Non-maintenance of register of securities, holding statement, bank book and client ledger in the prescribed standard format*** **:** Not maintained Register of Securities (ROS), holding statement, Bank books and client ledgers in the prescribed standard format.	*Rule 15 of SC(R) A 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.*
9.	**a) Incorrectly reported data wrt monthly & weekly submission to Exchange towards enhanced supervision** Net balance across the Exchanges submitted by the Noticee to the exchange did not match with the back office books and records maintained by the Noticee.	*a) Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.* *b) Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.* *c) Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

	Noticee had not provided correct details of email id and mobile numbers of few clients to the Exchange. Noticee had provided incorrect data to the Exchange for which mismatches were observed in 99 instances **b) <u>DP accounts details not reported to the exchange :</u>** Noticee did not declare the DP account. **c) <u>Analysis of enhanced supervision data and RBS data :</u>** The Noticee had uploaded wrong details to the Exchange. It was observed that the proprietary margin obligation of Rs. 2.24 Crore and 3.23 Crore (as on 03/05/2019 and 31/05/2019) were being funded from clients' funds.	

	Discrepancies were observed pertaining to Email, Mobile, fund balances and securities balance of the client. Noticee had failed to send pledge statement to clients and uploaded pledge quantity as zero in monthly submission to Exchange under enhanced supervision. Noticee had uploaded wrong details of debit balance in RBS submitted for FY 2018-19. The Noticee had reported "total debit balance of all clients" as 62,33,894/- instead of 78,57,922/- as per trial balance as on 31-03-2019.	

10.	***Margin collected from clients was not correctly reported to exchange in Future & Option segment*** Noticee had incorrectly reported margin collected from clients trading in F&O segment in 05 instances pertaining to 05 clients amounting to Rs. 6.95 lakhs	*Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.*
11.	***Client Funding*** **:** Noticee had provided further exposure after T+2+5 to 5 clients despite having debit balances. The total funding was Rs. 16.22 lakhs.	*Clause 2.6 of Annexure to 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.*
12.	***Control System over Sub Brokers / Authorised Persons (APs)*** **:** Noticee had failed to provide voice recording for the trades of 3 clients - (UCC - DJ032, Date : 2019-01-29), (UCC-DJ025, Date : 2019-06-11) and (UCC-PR120, Date : 2019-04-22).	*SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.*

3. SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of SCRA"), Section 15HB and Section 15A (c) SEBI Act for the alleged violations of provisions as summarised at paragraph 2.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated October 12, 2021 the undersigned was appointed as Adjudicating Officer (hereinafter referred to as **'AO'**) under Section 19 of the SEBI Act, read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, (hereinafter referred as the SEBI Rules) and under Section 23-I of the SC(R)A read Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred as the SC (R) Rules), to inquire into and adjudge under the provisions of Section 23 D of SCRA, Section 15HB and Section 15A (c) of the SEBI Act, 1992, the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated November 26, 2021 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 23D of SCRA, Section 15HB & Section 15A(c) of the SEBI Act, 1992 for the aforesaid violations alleged to have been committed by Noticee.

6. The SCN was sent to Noticee through Speed Post AD on November 26, 2021and email on November 29, 2021 and was duly served upon Noticee.

7. Vide letter dated March 03, 2022 Noticee sought an extension of time till March 31, 2022 for submitting its reply. The request of Noticee was acceded to and Noticee was requested to submit its reply on or before April 01, 2022.

8. The Noticee replied on March 29, 2022 which is as below:

> *" We received a communication dated 13th October 2021 from your good office where it brought to our notice about appointment of adjudicating officer and intimation of adjudicating proceeding approved under Section 23D of SCRA Act,*

1956 and Section 15HB/15A (c) of SEBI Act, 1992 about failure to segregate securities or moneys of client or clients and failure to maintain books of accounts and record.

With all due respect and humble gesture we undersigned hereby on behalf of company confirm and accept the above said allegation mentioned in received communication dated 13th October 2012 under Section 23D of SC (R) 1956 Act and Section 15HB/15 of SEBI Act, 1992.

We are not in denial of fact that there remained irregularities in compliance of section 23D of SC ®1956 Act and section 15HB/15 A9c) of SEBI Act 1992 in the past but before making any assumption and reaching to any conclusion we hereby request you to please consider some material facts produced below to better understand the causes and persons responsible for the approved non compliances.

As per available records the company Maxgrowth Capital Pvt. Ltd. is a registered stock broker under relevant section of SEBI Act and was incorporated on 18/11/2009 for running business activities under securities and financial market.

Maxgrowth Capital Pvt. Ltd. is a well known stock broking concern which ahs always worked for betterment of their clients and lived up to the market expectation for more than a decade. As per company records, there are lots of clients which are associated with company since a long time and still trusting and counting on the company for their stock trading and investment needs.

Further Late Mr. Manoj Sarna was its Managing Director and has managed the whole affairs of company along side with his team in management till the date of their untimely demise on 25/06/2020.

After the demise of Late Mr. Manoj Sarna management team was reconstrued with appointment of new directors and officer to efficiently manage affairs of the company. The irregularities and allegation mentioned in above said notice *mostly belongs to the tenure of management team lead by Late Mr. Manoj Sarna.*

As the matter is sub-judice and is still under investigation but there exist rumours in market that Late Mr. Manoj Sarna committed alleged suicide because of immense pressure of mismanagement of funds of clients and serve irregularities in compliance of law and regulations.

The new management team as soon as by taking the charge pointed out the irregularities in system and compliance processes and did its level best to mitigate irregularities and tied to control the damage cause to compliance system due to irregularities and flaw in decision making and compliance structure of previous management lead by Mr. Late Manoj Sarna.

As we undersigned managing the affairs of company has tried everything and didn't left any stone unturned to being compliance structure of the company in right path. Beside the adverse situation caused due to lock down restrictions imposed in pandemic times wer worked hared ot reconcile the clients account balance. The new management has tried its level best to infuse fund in company to clear the funds outstanding to clients. We are also doing our level best o crate new compliance structure as per latest rules and regulation applicable on company so that such kind of situation new ever arise in future again.

As per the penalty provisions mentioned under alleged section 23D of SCRA Act, 1956 and section 15HB/15A 9c) of SEBI Act, 1992 company may be held liable for penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

We being a responsible management has decided to accept the irregularities and non compliances which past management had committed on its tenure. We are committed to bring compliance structure of company in line with applicable rules and regulation. We have already infused lots of fund in to *company to mitigate losses create due to wrong decisions of the past management.*

If, in any case, a sizeable cash penalty is imposed on company for wrong doing of past then, in that case, we are afraid, company will not be able to run its operations smoothly and there may arise a non payment crisis of employee's salaries, client's balances and other statutory dues.

Even in most of bad scenario it may lead to closure of the company which may result in unemployment fo employees who are dependable on company for their living and also will put management efforts in vein wich we have done to clear and reconcile outstanding balances of clients because of shortage of funds we may not able to serve the client in way which is supposed and expected from us.

We hereby put our please in your humble consideration and request o to consider our acceptance of allegation. Please consider our honest approach and provide us a second chance so that we may able to bring company's compliance system in tract in line of laws and regulations applicable on the company.

Further, we also humbly pray from you to please impose penalty as low as possible or if any case no penalty which will help us to avoid any cash crunch which may arise if any sizeable penalty imposed on company and may create monetary hindrance in our hones approach for brining company in proper working condition.
We undersigned hereby request you to please take this matter inot your lenient consideration and please provide us with a second chance to run company as per applicable rules and regulations. "

9. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on April 11, 2022 vide hearing notice dated March 10, 2022. Noticee availed the opportunity of hearing granted to it on April 11, 2022, through WebEx platform. Authorised Representative (AR) appeared on behalf of the

Noticee. During the course of the hearing, the AR reiterated the submissions made vide letter dated March 29, 2021.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

I. Whether Noticee has violated the following provisions**:**

a) *Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to 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 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*

c) *Section 23D of SC (R) Act, 1956 read with Clause 2 of Annexure to SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016*

d) *Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*

e) *Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*

f) *Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016 and Clause 12 of Annexure to SEBI Circular SEBI//MIRSD/SE/Cir-19/2009 dated December 03, 2009.*

g) *Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.*

h) *Circular MRD/DoP/SE/Cir-22/06 dated December 18, 2006.*

i) *Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.*

j) *Rule 15 of SC(R) A 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.*

k) *Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

l) *Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.*

m) *Clause 2.6 of Annexure to 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.*

n) *SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.*

II. ***Does the violation, if any, attract monetary penalty under Section 23D of SCRA , Section 15HB & Section 15A (c)of SEBI Act, 1992 ?***

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

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

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

b. ***Clause 1 of Transactions Regulation Circular*** :

Clause 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.*

c. ***Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (herein after referred to as "Enhanced Supervision Circular")***

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

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

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

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

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

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

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

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

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

P- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

3.3. Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:

<u>Principl</u>e:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

Stock Exchanges shall calculate the difference i.e. G as follows -

$$G = (A+B)-C$$

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

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

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

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

$$H = |G| - |D|$$

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

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

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

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

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

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

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilized towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

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

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

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

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations.

This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

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

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

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

d) ***Clause 2.4.3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.***

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.*

e) ***Clause 2.5 of Annexure to SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016***

2.5. As per existing norms, a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants) Regulations,1996. To strengthen the existing mechanism, the stock brokers shall ensure the following:

2.5.1. Securities of only those clients can be pledged who have a debit balance in their ledger.

2.5.2.Funds raised against such pledged securities for a client shall not exceed the debit balance in the ledger of that particular client.

2.5.3. Funds raised against such pledged securities shall be credited only to the bank account named as "Name of the Stock Broker-Client Account".

2.5.4. The securities to be pledged shall be pledged from BO account tagged as "Name of the Stock Broker -Client Account".

2.5.5. Stock Brokers shall send a statement reflecting the pledge and funding to the clients as and when their securities are pledged/unpledged as given below:

A	B	C	D					E	F	G	H
Date	Client Code	Ledger debit at the end of trade day*	Collateral of client available with Broker					Pledged Quantity	Pledged Value	Borrowing	Details of Pledgee
			ISIN/ Security Name	Previous day's closing price	Total Quanti	Total Value (Total Quantity * Previous day closin price)	Total Value (Adjusted for applicable haircut)				

**Ledger debit would be after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients*

f) ***Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.***

*6.1.1. M**onitoring criteria for Stock Brokers***

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

g) ***Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016***

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.

h) ***Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2CIR/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*****.**

Clause 2.6 *of the above circular* : *Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.*

Clause 2(d) *of the above circular : Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except , in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time." This clause would be effective from August 1, 2017.*

i) ***<u>Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.</u>***

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

j) ***<u>Circular MRD/DoP/SE/Cir-22/06 dated December 18, 2006.</u>***

3. In order to address the aforesaid representations, it is felt desirable to designate an exclusive e-mail ID of the grievance redressel division / compliance officer in which the investors would be able to register their complaints and also take necessary follow-up actions as necessary. Such a process would not only expedite the redressal of the complaints of the investors but also enable several investors across the country to register *their complaints through a single, centralized, exclusive e-mail ID that is designated for the purpose.*

4. *Accordingly, all the stock exchanges/registered brokers/registered sub-brokers/listed companies/depositories/registered depository participants are advised to designate an e-mail ID of the grievance redressel division/compliance officer exclusively for the purpose of registering complaints by investors. The above entities are also advised to display the email ID and other relevant details prominently on their websites and in the various materials/pamphlets/advertisement campaigns initiated by them for creating investor awareness.*

k) ***Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.***

3.(2) An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.

l) ***Rule 15 of SC(R) A 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.***

Rule 15 of SCR A 1957

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 (Sauda book).

(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) Counterfoils or duplicates of contract notes issued to clients.

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

m) **<u>Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.</u>**

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;

(l) Registers of accounts of sub-brokers;

(m) An agreement with a sub-broker specifying the scope of authority, and responsibilities of the Stock Broker and such Sub-broker;

(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 time specified, 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.

n) ***Clause 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993***

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.*

o) ***Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.***

3. iii. The members shall report to the Exchange on T + 5 day the actual short collection/non-collection of all margins from clients.

p) ***Clause 12 of Annexure to SEBI Circular SEBI//MIRSD/SE/Cir-19/2009 dated December 03, 2009****.*

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:*

a. The authorization shall be renewed at least once a year and shall be dated.

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

c. The authorization shall contain a clause that the Client may revoke the authorization at any time.

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

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

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

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

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

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

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

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

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

q) ***SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.***

Prevention of Unauthorised Trading by Stock Brokers

II.SEBI in the past has taken several steps to tackle the issue of "Unauthorized Trades" viz Periodic Running Account Settlement, Post transactions SMS/email by exchanges/Depositories, Ticker on broker/DP websites etc. It was observed that in spite of measures taken, a considerable proportion of investor complaints is of the nature of "Unauthorized Trades".

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, which 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 messages through mobile phones,

f.Any other legally verifiable record.

When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc.shall also be considered.

IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

V. The Brokers are required to maintain the records specified at Para III above for a minimum period for which the arbitration accepts investors' complaints as notified from time to time currently three years. However in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.

VI. If SEBI desires that specific records be preserved then such records shall be kept till further intimation by SEBI

Issue I: Whether Noticee has violated the following provisions as enumerated under paragraph 2 :

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

(1) **Mis-use of Client's Fund :**

It is alleged that that the Noticee had mis-used its clients funds as it was observed that "J" was positive on 2 days, as seen in the table below :

Date	Total fund balance available in all client bank	Total credit balances of all clients as obtained from trial balance across stock exchanges		Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing member/	
	A	C	G	MC	MF	J=(C-A) - (MC+MF)
05.04.2019	**10,43,270**	**1404,91,444**	**319,32,055**	**1242,53,428**	**127,00,000**	**24,94,746**
12.04.2019	**5,31,720**	**1376,58,780**	**204,92,064**	**1200,60,441**	**127,00,000**	**43,66,619**
18.04.2019	18,96,241	1402,12,451	208,14,138	1287,88,056	127,00,000	-31,71,845
26.04.2019	22,68,698	1351,59,138	367,46,096	1324,72,537	127,00,000	-122,82,097
03.05.2019	17,31,310	1322,16,967	365,55,901	1287,99,484	127,00,000	-110,13,827
10.05.2019	7,51,267	1289,26,237	65,15,640	1223,93,469	127,00,000	-69,18,499
17.05.2019	14,88,013	1282,71,590	173,00,861	1175,22,922	127,00,000	-34,39,345
24.05.2019	4,50,311	1270,73,941	216,36,403	1249,50,499	127,00,000	-110,26,868
31.05.2019	10,05,293	1347,85,416	304,58,523	1269,27,760	127,00,000	-58,47,638
07.06.2019	2,96,821	1321,14,147	285,30,241	1249,79,026	127,00,000	-58,61,700
14.06.2019	7,93,935	1335,38,698	292,94,006	1307,99,259	127,00,000	-107,54,496
21.06.2019	21,23,413	1344,06,503	270,94,177	1277,10,153	127,00,000	-81,27,064
28.06.2019	3,03,705	1340,74,639	380,64,033	1258,63,698	127,00,000	-47,92,764

The Noticee is its preliminary reply had submitted that the value of "J" was negative due to margin & MTM obligation of Debit balance clients due to their positions and market fluctuation, the same is covered by receiving the payment from them or squaring off the position. However, there are no supporting documents submitted by the Noticee to substantiate the same.

I note that when "J" is positive, it indicates that the clients' funds were misutilised by the Noticee towards margin obligations of debit balance clients and proprietary margin obligations. In two instances I find that the value of "J" is positive. Noticee in its preliminary reply claimed that 'J' was negative but did not give any plausible explanation and no supporting documents in support of its claim. Further, in its reply to the SCN , Noticee has not denied the above allegation. Hence it can be concluded that the Noticee has misused its clients funds towards the margin obligations of its debit balance clients and is proprietary margin obligations.

In view of the above, the Noticee has violated Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(2) **Non-segregation / Misultiaitasion of Clients' securities** :

I find the following allegations were made against the Noticee with regard to non-segregation and misutlisaiton of clients securities.

a) In two instances, securities valued at Rs. 0.36 crores were transferred between the Noticee 's own account and client beneficiary accounts and securities of Rs. 0.36 crores were received from client beneficiary account to Noticee's beneficiary account in 3 instances as seen in the table below:

Details	Instances
Securities transferred from Own beneficiary to Client beneficiary (No. of Instances)	2
Value of Securities moved from own beneficiary to Client beneficiary	Rs. 36,75,890 /-
Securities transferred from Client beneficiary to Own beneficiary (No. of Instances)	3
Value of Securities moved from Client beneficiary to Own beneficiary	Rs. 36,90,963 /-

b) In order to nullify / avoid delivery payment obligations to the Exchange, as client securities were already short with the Noticee i.e. those securities were not available with the Noticee, the Noticee had taken counter positions in PRO account against positions of its clients in case of 9 instances amounting to Rs. 0.84 Crores.

In this regard, in its preliminary reply to the findings of the inspection team, the Noticee had submitted that netting of PRO was done due to the securities being blocked with Aditya Birla (NBFC) and they had not released the securities due to some dispute. Moreover, in its reply to the SCN, the Noticee has not denied the allegations mentioned above against it.

In view of the same, it is therefore established that the Noticee has violated 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 to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 September 26, 2016.

(3) **<u>Pledging of Clients Securities</u>** :

I note that the Noticee had pledged securities of clients who had credit / NIL balance to the tune of Rs. 30.36 Crores during the 10 sample days taken towards utilization for his own purpose/debit balance clients.

Securities pledged of clients with credit or nil balance :

Date	No of clients	Credit/NIL balance	Value of Securities Pledged
12-04-2018	138	49,17,723	5,71,16,400
03-05-2018	108	36,78,385	318,79,557
04-06-2018	90	30,07,326	257,49,254
02-07-2018	70	34,20,044	225,45,580
07-08-2018	100	77,36,636	407,61,949
03-09-2018	93	157,57,909	403,02,206
03-10-2018	92	122,61,564	239,94,246
30-11-2018	78	163,99,882	244,38,911
17-12-2018	47	59,25,259	141,75,282
11-01-2019	66	150,25,356	215,65,773
28-02-2019	80	28,95,114	11,55,097

Securities pledged of clients with debit balance :

Date	No of clients	Debit Balance	Value of Securities Pledged	Excess Pledging
12-04-2018	16	-3,76,546	74,96,680	71,20,134
03-05-2018	24	-4,13,312	76,55,248	72,41,936
04-06-2018	17	-44,799	64,40,686	63,95,887
02-07-2018	26	-11,58,174	124,25,598	112,67,424
07-08-2018	17	-45,193	57,35,612	56,90,419
03-09-2018	26	-3,38,180	76,31,357	72,93,177
03-10-2018	24	-3,90,982	24,66,187	20,75,205
30-11-2018	10	-2,06,152	12,83,395	10,77,243

17-12-2018	4	-82,022	4,10,926	3,28,904
11-01-2019	7	-93,647	8,79,724	7,86,077

From the above, I note that the Noticee raised funds by pledging shares of clients resulting in mis-utilisation of clients' securities. Furthermore, I note that the Noticee had not been able to produce records of intimation sent to clients regarding pledging / unpledging of their securities. Circular 2.5 states that "*a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants) Regulations,1996.*"

It has been alleged that Notice had not provided an explanation of the use of funds raised by it by pledging the clients securities with Aditya Birla Finance Ltd (NBFC) , details of which are provided below ;

Particulars	**Details (Highest OD Date)**	**Details (Date of Confiscation of securities)**
Date of Verification	12-Apr-2018	28-Feb-2019
Inspection Period	01-Apr-2018 to 30-Apr-2019	01-Apr-2018 to 30-Apr-2019
Sample Size	Total 168 Client's securities pledged as on date of verification	Total 28 Client's securities pledged as on date of verification
Irregularities observed	Yes	Yes
Instances of irregularities	153 out of 168 Clients	24 out of 28 Clients
Value of unexplained amount	Rs. 3,16,66,381 /-	Rs. 5,97,805 /-
Total Value of Securities Pledged	Rs. 6,44,07,013 /-	Rs. 12,89,426 /-
Value of Own Securities Pledged	Rs. 7,10,784 /-	Rs. 37,733 /-
Value of Client Securities Pledged	Rs. 6,36,96,229 /-	Rs. 12,51,693 /-
Value of Credit Client Securities Pledged	Rs. 5,64,05,616 /-	Rs. 11,55,097 /-

Value of Debit Client Securities Pledged	Rs. 72,90,613 /-	Rs. 96,596 /-
Total Value of Funds Raised on Securities Pledged / Maximum OD Availed	Rs. 3,22,03,507 /-	Rs. 6,44,713 /-

In its preliminary reply, the Noticee submitted that Aditya Birla had blocked its securities and due to ongoing dispute they were not releasing the same and imposed restriction to close their LAS/LAP A/c. Therefore in order to release its securities, it paid the outstanding amount. SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 states that

I note that the Noticee should have resolved the disputes with the NBFC. Moreover, it is the responsibility of the Noticee to keep its risk management robust. Therefore, the reply of the Noticee is not acceptable. SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 states that 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.

I also note that in its preliminary reply and also its reply to the SCN, the Noticee has not denied the above allegation.

It is therefore established that the Noticee has violated Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.

(4) Non settlement of Clients' funds and securities :

It has been alleged that the Noticee had not settled the accounts of active clients (54.5% for quarter 1, 58.2% for quarter 2, 67.9% for quarter 3 and 48% for quarter 4), nor did it settle the funds and securities of clients which were lying unpaid to clients for more than 90 days. Total value of funds and securities unsettled was Rs. 4.60 Crores belonging to 253 clients.

Quarter	Quarterly settlement	Total number of active clients during the period	Total number of clients during the period	No of clients required to be settled	No. of clients settled	No. of clients unsettled
1st	01-04-2018 to 30-06-2018	436	5230	1041	473	568
2nd	01-07-2018 to 30-09-2018	433	5290	1121	468	653
3rd	01-10-2018 to 31-12-2018	382	5333	1081	347	734
4th	01-01-2019 to 31-03-2019	397	5416	1089	566	523

Particulars	Instances/ Amount
No of clients not settled	253
Total value of securities settled as on April 30, 2019	Rs. 4,50,72,395 /-
Total Value of funds not settled as on 30-Apr-2019	Rs. 9,39,637 /-
Total Value of Securities & Funds not settled as on 30-Apr-2019	**Rs. 4,60,12,033/-**

It has been alleged that there were instances of inactive clients who had the same credit balance at the end of two consecutive quarters.

Sr. No.	BO ID	Status	Year	Period	Value of credit balance (Rs.)
1	IPO 79	Inactive client	2018-19	Q1,Q2,Q3,Q4	16515.85
	IPO 79	Inactive client	2019-20	Q1	16515.85
2	AF 011	Inactive client	2018-19	Q1,Q2	4991.92
3	AF534	Inactive client	2018-19	Q1,Q2,Q3,Q4	**73340.64**
	AF534	Inactive client	2019-20	Q1	73045.64
4	AF660	Inactive client	2018-19	Q1,Q2,Q3,Q4	55201.37
	AF660	Inactive client	2019-20	Q1	55201.37
5	AF036	Inactive client	2018-19	Q1,Q2,Q3,Q4	28208.96
	AF036	Inactive client	2019-20	Q1	27913.36
6	AF256	Inactive client	2018-19	Q1.,Q2,Q3,Q4	Q1-19624.1 Q2-Q4-19329.1
	AF256	Inactive client	2019-20	Q1	19329.1
7	RP091	Inactive client	2018-19	Q1,Q2,Q3,Q4	3005.76
	RP091	Inactive client	2019-20	Q1	3005.76
8	PR137	Inactive client	2018-19	Q1,Q2,Q3,Q4	3699.13
	PR137	Inactive client	2019-20	Q1	3699.13

9	BK050	Inactive client	2018-19	Q1,Q2,Q3,Q4	Q1-2182.31 Q2-2454.11 Q3-2319.11 Q4-**1755.45**
10	AF712	Inactive client	2018-19	Q1,Q2,Q3,Q4	14155.06
	AF712	Inactive client	2019-20	Q1	13860.06

From the above, I find that there were instances of inactive clients who had he same credit balance in two consecutive quarters. As per circular dated December 03, 2009 "*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."*

In its preliminary reply to the findings in the inspection report, I note that the Noticee has submitted that there was technical issue in the back office software and it could not capture any changes in the balances or any modifications. However the issue was redressed and the correct figures were captured by the software.

In view of the same, it is therefore established that the Noticee had not violated Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016 and Clause 12 of Annexure to SEBI Circular SEBI//MIRSD/SE/Cir-19/2009 dated December 03, 2009.

(4) **Stock Reconciliation :**

It has been alleged that there were differences in the securities reflected in the Register of Securities (ROS) of the Noticee and as available with DP as on April 30, 2019 (Securities worth Rs. 0.84 Crores are short in DP as compared to value of total ROS worth Rs. 15.22 Crores and Securities worth Rs. 6.19 Crores was available in DP but not in ROS.)

The Noticee in its preliminary reply to the findings in the inspection report, submitted that the difference that appeared in the reconciliation of securities is due to the error in the software. Noticee has thus accepted the violation as alleged. Also in its reply to the SCN, the Noticee has also not denied the allegation levelled against it .

I therefore note that the Noticee has violated Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.

(5) **Investor Grievances Handling mechanism :**

It is alleged that the Noticee did not maintain an exclusive email id for redressal of investor complaints. The Noticee in its preliminary reply to the findings in the inspection report, submitted that it had created an email id info@maxgrowthcap.com for redressing the complaints received from investors and that the id was shared by the Managing Director and compliance officer so that the client could call and get their complaints resolved. I note that the email Id provided was a general email and not a designated email id for redressal of their complaints. SEBI Circular dated December 18, 2006 clearly states that registered brokers are advised to designate an e-mail id for the grievance redressal of the investors. I further note that in its reply to the SCN, the Noticee has not denied the allegation.

Therefore, it is established that the Noticee has violated *Circular MRD/DoP/SE/Cir-22/06 dated December 18, 2006*

(6) **Operation of trading terminal without valid NISM certificate :**

It has been alleged that the Noticee's terminals were operated without having valid certificates for Corporate Manager IDs in CM, FO & CD segments of the Exchange. I note that Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 which mandates that an associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary.

The Noticee in its preminilary reply to the findings in the inspection report, submitted that the Corporate Manager ID was updated by uploading NISM certificate as on 06.08.2019. I note that the NISM certificate was thus uploaded post inspection. However in its reply to the SCN, the Noticee has also not denied that allegation levelled against it .

In view of the same, it stands established that the Noticee has violated the provision under Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

(7) **Non maintenance of register of securities , holding statement, bank book and client ledger in the prescribed standard format** :

It has been alleged that the Noticee had not maintained Register of Securities (ROS), holding statement, Bank books and client ledgers in the prescribed standard format. I note that Rule 15 of SCRA 1957 prescribes the books of account to maintained by all registered intermediary which includes the maintenance of above books.

Noticee in its reply to the preliminary findings had submitted that they had thoroughly checked the ROS, holding statement, bank books and client ledger and that they were required in the prescribed format. However the Noticee has not given any documentary evidence in this regard. Further, I note that the Noticee has not denied the allegation in this regard against it.

Hence, I find that the above allegation against the Noticee stands established in violation of Rule 15 of SCRA 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.

(8) **Incorrectly reported data wrt monthly & weekly submission to Exchange towards enhanced supervision**

It has been alleged that net balance across the Exchanges submitted by the Noticee to the exchange did not match with the back office books and records maintained by the Noticee and had not provided correct details of email Id and mobile numbers of few clients of the exchange. Further the Noticee did not declare the following DP account

DP_ID	DEPOSITORY	ACCOUNT_NO	DP_NAME	SUB_TYPE
12066200	CDSL	1831	MAXGROWTH CAPITAL PRIVATE LIMITED-12066200	Principal Account - BSE

Further, the Noticee had uploaded wrong details to the Exchange. After considering correct value of own securities, it was observed that the proprietary margin obligation of Rs. 2.24 Crore and 3.23 Crore (as on 03/05/2019 and 31/05/2019) were being funded from clients funds.

In its preliminary reply the Noticee submitted that there were more than 3000 clients with their balance to be uploaded in the Monthly Enhanced Supervision Portal report and there was difficulty to cross check each error of particular client that is the reason actual figure is adverse from the reported figure. It also submitted that email and mobile no. was uploaded in the back office but exchange did not update with immediate effect. Clients who had not traded for last 12 months have been categorized in inactive status. In its reply to the SCN, the Noticee has not denied the allegations. I also note that the Noticee has admitted the error in reporting the figures.

In view of the same, I find the allegations levelled against the Noticee stands established in violation of Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(9) **<u>Margin collected from clients was not correctly reported to exchange in Future & Option segment</u>**

It is alleged that the Noticee had incorrectly reported margin collected from clients trading in F&O segment in 05 instances pertaining to 05 clients amounting to Rs. 6.95 lakhs.

Particulars	**Details**
Instances of margin Incorrect reporting	05 instances (05 clients)
Amount of margin Incorrect reported	Rs 6,95,981 /-

The Noticee in its preliminary reply submitted that margin was collected from the clients. However, I note that no proof of document was submitted in support of its claim.

In view of the above, it is established that the Noticee has violated Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

(10) **<u>Client Funding</u> :**

It is alleged that the Noticee had provided further exposure after T+2+5 to 5 clients despite having debit balances. The total funding was Rs. 16.22 lakhs and the Noticee had mechanically submitted an excel sheet without any explanation and support to its claim.

As per the circular "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amountandsuch debit balances continues beyond the fifth trading day, a s 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."

I note that the allegation has not been denied by the Noticee in its preliminary reply and also in its reply to SCN.

It is therefore concluded the Noticee has violated Clause 2.6 of Annexure to 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.

(11) **<u>Control System over Sub Brokers / Authorised Persons (APs) :</u>**

It has been alleged that Noticee had failed to provide voice recording for the trades of 3 clients - (UCC - DJ032, Date : 2019-01-29), (UCC- DJ025, Date : 2019-06-11) and (UCC- PR120, Date : 2019-04-22).

As per the SEBI circular *" 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, which 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 messages through mobile phones,

f.Any other legally verifiable record.

Noticee in its preliminary reply to the finding in the inspection report, submitted that the voice recordings of these clients could not be traced at the time of inspection. In its reply to the SCN also, the Noticee has not denied its non-compliance.

In view of the above, I find that the Noticee is in violation of SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

Issue No. II: Does the violation, if any, attract monetary penalty under Section 23D of SCRA, Section 15HB & 15A (c)of SEBI Act , 1992

13. *It has been established in the foregoing paragraphs that Noticee has violated the following provisions:-*

1. *Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to 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 2 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*

3. *Section 23D of SC (R) Act, 1956 read with Clause 2 of Annexure to SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016*
4. *Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*
5. *Section 23D of SC (R) Act, 1956 read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016.*
6. *Clause 8.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 September 26, 2016 and Clause 12 of Annexure to SEBI Circular SEBI//MIRSD/SE/Cir-19/2009 dated December 03, 2009.*
7. *Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.*
8. *Circular MRD/DoP/SE/Cir-22/06 dated December 18, 2006.*
9. *Regulation 3(2) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.*
10. *Rule 15 of SC(R) A 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.*
11. *Clause 6.1.1.(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*
12. *Clause 3 (iii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.*
13. *Clause 2.6 of Annexure to 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.*
14. *SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.*

14. 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 of civil 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.''*

15. Therefore, the aforesaid violations committed by Noticee attract monetary penalty under Section 23D of SCRA , Section 15HB and Section 15A(c) of the SEBI Act which read as follows:

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

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

Section 15A (c) of SEBI Act : *If any person, who is required under this Act or any rules or regulations made thereunder, - to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

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

16. While determining the quantum of penalty under Section 23D of SCRA, Section 15HB & Section 15A (c) of the SEBI Act the following factors have to be given due regard:

Factors to be taken into account by adjudicating officer under SCRA

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

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

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

(c) the repetitive nature of the default.

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

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

***15J.** While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default

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

17. 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 has not been observed that the Noticee has not been penalised earlier for any securities law. The Noticee in its submissions to the SCN, while accepting the violations has stated as the mitigating factors that the irregularities and allegations made in the SCN mostly belonged to the tenure of management team laid by it Managing Director, Late Mr. Manoj Sarna. The new management team after taking charge has tried its level best to mitigate the irregularities, infuse fund in company to clear the funds outstanding to clients, creating new compliance structure so that such type of situation never arises in future again.

I find that the Noticee being a SEBI registered Intermediary is required to comply with the various regulations and circulars as laid down by the regulator. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. Noticee was under a 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.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15HB of SEBI Act I, in exercise of the powers conferred upon me under Section 23-I of the SCRA, Section 15-HB of the SEBI Act hereby impose the following penalty on Noticee viz. Maxgrowth Capital Private Limited

Sr. No.	Penalty	Under the provisions of
1	Rs. 10,00,000/-	Section 23D of SCRA
2	Rs. 4,00,000/-	Section 15HB of SEBI Act

3	Rs. 1,00,000/-	Section 15A (c) of SEBI Act
Total	**Rs. 15,00,000/- (Rupees Fifteen Lakhs only)**	

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

19. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

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

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

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

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

22. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Maxgrowth Capital Private Ltd.

Date: April 29, 2022
Place: Mumbai

BARNALI MUKHERJEE
Adjudicating Officer