BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AN/SM/2022-23/23239

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

In respect of:

Mansi Share & Stock Advisors Pvt. Ltd.

(PAN- AADCM6645D)
(SEBI Reg. No.: INZ000247433)

In the matter of Mansi Share & Stock Advisors Pvt. Ltd.

A. BRIEF BACKGROUND

1. Mansi Share & Stock Advisors Pvt. Ltd. (hereinafter also referred to as ***"Mansi" /"Stock Broker" /"Broker" /"Noticee" /"Trading Member" /"Member")*** is registered with Securities and Exchange Board of India (hereinafter also referred to as "**SEBI")** inter alia as a stock broker of, National Stock Exchange of India Ltd., (hereinafter also referred to as "NSE"), Bombay Stock Exchange Ltd., (hereinafter also referred to as "BSE").

2. SEBI had conducted inspection of the books of accounts and other records of the Noticee for the period of April 01, 2019 to February 28, 2021 (hereinafter also referred to as the "inspection period" / "IP") and found that Noticee had allegedly violated various provisions of Securities Contracts (Regulation) Act, 1956 {hereinafter also referred as "SC(R) Act, 1956" / "SC(R), Act" / "SCRA"}, SEBI Circulars and BSE Circular as detailed hereunder:

2.1 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 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to misusing clients' funds.

2.2 SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016, Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016 read with Exchange (BSE) Notice No. 20200116-44 dated January 16, 2020 with regard to delay in settlement of funds and securities.

2.3 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 and Clause 2.4 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016 with regard to failing to segregate clients' funds and securities from its own funds.

2.4 SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 (clause 2, 3 and 4) and clause 3 of SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 with regard to not keeping appropriate evidences in respect of the order placed by its clients and also not having order recording mechanism in place with regard to orders received through mobile number of the dealer and authorized persons.

2.5 Clause 6.1.1 (j) of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to wrong reporting of holding to stock exchange.

2.6 Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016 with regard to reporting of incorrect client's funds.

3. SEBI initiated adjudication proceedings against the Noticee under section 23D of SC(R) Act, 1956 and section 15HB of SEBI Act, 1992 (hereinafter also

referred as “SEBI Act”) for the alleged violations of the relevant provisions as stated above.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Maninder Cheema, Chief General Manager, SEBI was appointed as the Adjudicating Officer (“**AO**”) under section 15-I of the SEBI Act, 1992 and section 23-I of the SC(R) Act, 1956, read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred to as “**SEBI Adjudication Rules**”) and rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter also referred to as “**SCRA Adjudication Rules**”), to inquire into and adjudge upon the aforesaid alleged violations against the Noticee, vide communiqué dated February 21, 2022. Pursuant to transfer of Ms. Maninder Cheema, Dr. Anitha Anoop was appointed as the AO in the matter vide communiqué dated June 07, 2022. Pursuant to transfer of Dr. Anitha Anoop, undersigned was appointed as AO in the instant matter vide communique dated September 05, 2022.

C. SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. A Show Cause Notice No. SEBI/EAD-5/AA/NS/28220/2022 dated July 12, 2022 (hereinafter also referred to as **“SCN”**) was issued to Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, under Section 15HB of SEBI Act, 1992 and Section 23D of SC(R) Act, 1956 be not imposed on the Noticee for the alleged violations.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide its email dated August 16, 2022, the Noticee requested one weeks’ time for submitting reply to SCN, which was acceded to. Vide letter dated August 24, 2022, Noticee made written submissions along with supporting exhibits. Vide letter dated October 06, 2022 and email dated October 07, 2022, opportunity of personal hearing was provided to the Noticee, in the interest of natural justice, on October 18, 2022. Vide email dated October 12, 2022, Noticee requested

adjournment of the said hearing, which was acceded to. Accordingly, the hearing was rescheduled on October 20, 2022. However, vide email dated October 18, 2022, Noticee once again requested adjournment of the said hearing, which was acceded to.

7. Vide email dated October 18, 2022, Noticee was advised to appear before the undersigned on November 01, 2022. On the scheduled hearing date, the Noticee appeared through its authorized representative (hereinafter also referred as **"AR"**) through video conference and reiterated the written submissions made by Noticee, *vide* its letter dated August 24, 2022. The AR requested additional time to make further submission in the present matter. Noticee made additional submissions *vide* email dated December 02, 2022. The replies of Noticee have been dealt in subsequent paragraphs.

D. CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present matter are as following:

    Issue No. I - Whether the Noticee has violated the provisions of SC(R) Act, 1956, SEBI Circulars and BSE Circular, as given under Para 2 above?
    Issue No. II - Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act and Section 23D of SC(R) Act, 1956?
    Issue No. III - If so, what should be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and 23J of SC(R) Act, 1956?

Issue No. I
Whether the Noticee has violated the provisions of SC(R) Act, 1956, SEBI Circulars and BSE Circular, as given under Para 2 above?

9. I will now proceed with in respect of each of the alleged violations, as abovementioned, against the Noticee vide SCN dated July 12, 2022.

9.1. **Mis-utilization of Clients Funds:**

9.1.1. In this regard, to check whether the stock broker was misusing client funds, following data was sought from the stock broker for all trading days during two months September 2019 and March 2020, top days of highest pay-ins / highest turnover in the months during April 2019 to August 2019, October 2019 to February 2020, April 2020 to December 2020:

A: Total fund balance available in all Client and Settlement Bank Accounts maintained by the stock broker.

B: Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (FD, BG, etc.). Further, only funded portion of the BG was considered as part of the collateral deposited.

C: Aggregate value of Credit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients).

D: Aggregate value of Debit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, un-cleared cheques deposited by clients, un-cleared cheques issued to clients).

9.1.2. On comparing the aggregate of total ledger credit balances of all the clients of the Noticee with the total available funds (i.e. cash and cash equivalents as available in client bank accounts and collateral deposited with the clearing member /clearing corporation) in respect of all clients with the Noticee, it is observed that there were 43 instances out of the total 54 sample dates examined by SEBI, wherein the aggregate of total credit balances of the clients of the Noticee was higher than the funds available with the Noticee indicating the misuse of client funds by the Noticee for either its debit balance client or for its own purposes.

9.1.3. The detailed analysis of the abovementioned data provided by the Noticee is given below:

Table I

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account	Collateral deposited with CM/ CC In form of Cash and Cash Equivalents (FD, BG etc.)across all SEs	Total credit balances of all clients as obtained from trial balance across SEs	Total debit balances of all clients as obtained from trial balance across SEs	Value of proprietar y non-cash collateral s	Non-funded portion of Bank Guarantee across all the SEs	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporation s /or Clearing member	Difference between total available fund & ledger credit balance of clients (G=A+B-C)	Funds and Securities of clients which is possibly utilised towards proprietary margin obligations [I = P-(G+E+F)]	Clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations [J=B-(MC+MF)] or J=(C-A)-(MC+MF)]
		A	B	C	D	E	F	P	MC	MF	G	I	J
1	24/05/ 2019	34,69,636	15,61,90,845	28,19,09,310	4,84,627	0	7,50,00,000	111692964.08	0	13,15,25,107	-12,22,48,829	3,66,92,964	2,46,65,738
2	03/09/ 2019	2,31,93,492	12,80,17,300	30,42,49,769	46,85,746	17,76,000	7,50,00,000	10,42,16,013	63,24,661	10,28,38,962	-15,30,38,977	2,74,40,013	1,88,53,676
3	04/09/ 2019	48,27,201	12,70,17,300	29,67,04,985	48,01,576	17,64,000	7,50,00,000	10,86,52,296	41,10,930	9,65,49,779	-16,48,60,484	3,18,88,296	2,63,56,591
4	05/09/ 2019	70,71,116	12,70,17,300	29,57,19,753	46,08,882	17,88,000	7,50,00,000	11,43,79,387	29,56,927	9,19,62,467	-16,16,31,337	3,75,91,387	3,20,97,907
5	06/09/ 2019	57,12,571	14,05,17,300	29,81,92,199	24,00,946	18,66,000	7,50,00,000	11,13,63,096	73,16,700	9,07,10,105	-15,19,62,328	3,44,97,096	4,24,90,495
6	09/09/ 2019	13,75,500	12,70,17,300	30,10,84,188	22,79,227	18,96,000	7,50,00,000	10,69,37,528	1,41,94,766	7,73,24,829	-17,26,91,388	3,00,41,528	3,54,97,705
7	11/09/ 2019	34,16,539	12,70,17,300	29,54,67,648	9,61,485	20,28,000	7,50,00,000	10,84,39,396	3,00,05,583	6,57,71,524	-16,50,33,809	3,14,11,396	3,12,40,194
8	12/09/ 2019	23,72,674	12,70,17,300	29,32,82,897	1,51,55,347	20,04,000	7,50,00,000	11,47,32,053	3,15,23,981	5,87,80,423	-16,38,92,923	3,77,28,053	3,67,12,896
9	13/09/ 2019	19,32,725	14,05,17,300	26,87,21,406	1,18,64,613	20,46,000	7,50,00,000	11,90,35,998	2,34,74,826	6,00,55,098	-12,62,71,380	4,19,89,998	5,69,87,376
10	16/09/ 2019	4,66,92,891	12,70,17,300	28,67,48,784	72,97,818	20,10,000	7,50,00,000	11,32,67,171	2,96,12,978	6,99,86,662	-11,30,38,592	3,62,57,171	2,74,17,661
11	17/09/ 2019	1,38,76,886	11,45,17,300	26,87,09,196	23,71,944	19,20,000	7,50,00,000	11,73,53,206	2,89,84,091	5,87,13,499	-14,03,15,009	4,04,33,206	2,68,19,711
12	18/09/ 2019	13,41,414	10,95,17,300	22,92,36,274	23,17,289	19,80,000	7,50,00,000	8,37,29,627	1,20,21,424	9,60,77,126	-11,83,77,560	67,49,627	14,18,750
13	19/09/ 2019	99,65,463	13,50,00,000	27,24,51,011	7,03,703	19,08,000	7,50,00,000	10,44,46,671	1,15,14,290	8,10,26,983	-12,74,85,548	2,75,38,671	4,24,58,727
14	20/09/ 2019	3,17,93,032	13,05,17,300	26,92,34,579	11,79,171	19,92,000	7,50,00,000	8,05,99,189	1,96,81,062	9,84,65,462	-10,69,24,246	36,07,189	1,23,70,777
15	23/09/ 2019	14,68,244	11,70,17,300	26,26,28,639	10,18,376	19,98,000	7,50,00,000	11,40,93,308	0	5,08,44,921	-14,41,43,095	3,70,95,308	6,61,72,379
16	24/09/	5,22,33,904	11,70,17,300	25,29,89,447	9,10,495	20,64,000	7,50,00,000	11,51,53,100	2,78,12,598	5,53,12,280	-8,37,38,242	3,80,89,100	3,38,92,423

	2019											
17	25/09/ 2019	1,39,04,158	14,70,17,300	27,16,51,772	6,28,981	20,22,000	7,50,00,000	12,87,45,941	2,41,29,847	6,03,92,980	-11,07,30,314	5,17,23,941	6,24,94,473
18	26/09/ 2019	73,62,778	12,39,17,300	26,34,82,277	11,47,453	20,46,000	7,50,00,000	11,78,36,362	2,03,68,888	6,72,50,156	-13,22,02,199	4,07,90,362	3,62,98,257
19	27/09/ 2019	73,50,074	13,76,87,300	26,43,46,203	6,20,237	20,58,000	7,50,00,000	12,16,68,335	2,60,11,411	6,16,77,209	-11,93,08,829	4,46,10,335	4,99,98,680
20	30/09/ 2019	20,78,484	12,40,46,010	28,16,48,824	2,77,145	20,40,000	7,50,00,000	10,03,69,709	1,80,91,802	8,15,40,738	-15,55,24,329	2,33,29,709	2,44,13,470
21	02/03/ 2020	40,45,133	11,20,17,300	30,05,78,918	31,352	0	7,50,00,000	10,55,98,619	2,91,43,223	6,80,33,256	-18,45,16,486	3,05,98,619	1,48,40,821
22	03/03/ 2020	45,71,298	15,20,17,300	36,97,77,346	31,352	0	7,50,00,000	14,29,77,439	18,40,065	9,71,68,703	-21,31,88,748	6,79,77,439	5,30,08,532
23	04/03/ 2020	19,75,497	14,20,17,300	39,19,15,953	31,352	0	7,50,00,000	13,21,88,017	91,54,967	9,58,44,817	-24,79,23,155	5,71,88,017	3,70,17,516
24	05/03/ 2020	20,85,975	16,20,17,300	35,04,16,506	31,352	0	7,50,00,000	15,63,37,833	1,74,57,988	8,26,04,676	-18,63,13,231	8,13,37,833	6,19,54,636
25	06/03/ 2020	16,03,375	11,00,67,300	32,04,40,309	31,352	0	7,50,00,000	11,36,61,948	1,13,01,224	7,68,34,087	-20,87,69,634	3,86,61,948	2,19,31,989
26	09/03/ 2020	2,93,32,157	13,20,17,300	33,19,04,456	31,304	0	7,50,00,000	12,36,26,626	0	10,12,14,664	-17,05,54,999	4,86,26,626	3,08,02,636
27	11/03/ 2020	21,76,640	15,45,17,300	34,06,24,101	31,304	0	7,50,00,000	14,34,49,133	0	9,53,67,797	-18,39,30,161	6,84,49,133	5,91,49,503
28	12/03/ 2020	19,93,003	18,45,17,300	34,24,07,620	37,060	0	7,50,00,000	17,92,09,768	1,05,74,405	8,82,65,495	-15,58,97,317	10,42,09,768	8,56,77,400
29	13/03/ 2020	21,40,244	21,05,17,300	33,68,58,114	**37,307**	0	7,50,00,000	20,68,53,430	1,42,08,577	7,60,14,165	-12,42,00,570	13,18,53,430	12,02,94,558
30	16/03/ 2020	2,93,31,013	22,55,17,300	34,56,65,563	31,459	0	7,50,00,000	20,42,92,728	1,85,99,472	8,70,36,573	-9,08,17,250	12,92,92,728	11,98,81,256
31	17/03/ 2020	1,16,08,555	25,55,17,300	36,83,81,492	30,773	0	7,50,00,000	18,83,54,176	4,24,691	8,87,85,103	-10,12,55,637	11,33,54,176	16,63,07,506
32	18/03/ 2020	3,35,89,069	22,55,17,300	35,24,99,414	30,725	0	7,50,00,000	16,78,79,241	3,94,156	12,88,00,893	-9,33,93,045	9,28,79,241	9,63,22,251
33	19/03/ 2020	1,50,52,681	23,55,17,300	44,74,33,406	30,637	0	7,50,00,000	21,13,82,812	3,96,099	7,48,08,600	-19,68,63,424	13,63,82,812	16,03,12,601
34	20/03/ 2020	1,06,60,762	25,05,17,300	39,39,41,798	80,716	0	7,50,00,000	25,59,22,424	4,06,959	7,91,02,192	-13,27,63,736	18,09,22,424	17,10,08,150
35	23/03/ 2020	2,55,02,030	25,80,17,300	46,05,83,000	54,35,397	0	7,50,00,000	22,67,96,807	4,78,873	9,63,84,759	-17,70,63,670	15,17,96,807	16,11,53,668
36	24/03/ 2020	37,67,721	29,80,17,300	46,39,78,467	4,46,375	0	7,50,00,000	25,58,16,635	4,48,323	10,35,76,637	-16,21,93,446	18,08,16,635	19,39,92,339
37	25/03/ 2020	3,82,94,242	19,80,17,300	46,39,78,574	4,20,297	0	7,50,00,000	16,01,68,058	4,14,139	18,33,04,101	-22,76,67,032	8,51,68,058	1,42,99,060

38	26/03/2020	87,81,424	20,80,17,300	47,25,08,994	13,03,641	0	7,50,00,000	12,87,24,922	4,39,393	9,01,32,249	-25,57,10,270	5,37,24,922	11,74,45,659
39	27/03/2020	5,33,50,018	24,68,67,038	41,57,46,102	12,69,321	0	7,50,00,000	11,87,21,188	3,01,56,099	7,91,02,192	-11,55,29,046	4,37,21,188	13,76,08,748
40	30/03/2020	6,58,02,019	13,80,17,300	31,04,76,355	42,10,097	0	7,50,00,000	12,35,07,270	4,07,460	8,77,22,284	-10,66,57,036	4,85,07,270	4,98,87,557
41	31/03/2020	22,06,991	15,80,17,300	27,35,44,137	2,433	0	7,50,00,000	9,41,88,292	7,31,11,594	6,76,97,393	-11,33,19,846	1,91,88,292	1,72,08,314
42	08/05/2020	1,27,47,792	30,30,17,300	35,24,31,373	10,10,232	0	7,50,00,000	15,29,10,866	6,92,53,105	22,05,66,000	-3,66,66,280	7,79,10,866	1,31,98,195
43	10/11/2020	5,31,76,069	35,22,35,761	39,87,07,803	1,874	0	7,50,00,000	11,94,09,900	6,62,31,151	29,76,61,627	67,04,027	3,77,05,873	-1,83,61,044
44	20/11/2020	8,56,97,413	31,72,35,761	34,73,50,525	*31,530*	0	7,50,00,000	*13,38,27,069*	8,98,91,704	20,58,59,713	5,55,82,649	32,44,420	-3,40,98,305
45	03/12/2020	3,60,55,114	33,22,35,761	36,08,06,884	2,57,304	0	7,50,00,000	16,38,80,751	11,58,06,254	16,81,73,769	74,83,991	8,13,96,759	4,07,71,747
46	16/12/2020	4,37,81,540	51,22,35,761	43,76,20,782	1,94,693	0	7,50,00,000	18,84,86,793	20,20,90,318	21,37,88,489	11,83,96,519	-49,09,726	-2,20,39,565
47	12/01/2021	13,92,56,452	47,22,35,761	55,50,89,027	10,965	0	7,50,00,000	21,32,54,572	9,54,87,272	0	5,64,03,187	8,18,51,385	32,03,45,302
48	11/01/2021	1,06,51,465	47,22,35,761	55,43,21,168	2,617	0	7,50,00,000	13,97,27,891	9,41,81,352	39,02,84,817	-7,14,33,942	6,47,27,891	-1,22,30,407
49	25/02/2021	1,83,26,166	44,72,35,761	36,40,69,594	13,535	0	7,50,00,000	24,27,94,895	16,31,95,685	21,47,65,261	10,14,92,333	6,63,02,562	-3,22,17,518
50	22/02/2021	6,82,81,463	47,72,35,761	38,84,29,587	57,43,526	0	7,50,00,000	21,27,15,191	18,98,41,959	25,84,05,629	15,70,87,637	-1,93,72,446	-12,80,99,465
51	23/02/2021	22,99,94,400	47,72,35,761	61,37,51,468	57,49,239	0	7,50,00,000	17,17,92,768	15,88,16,431	30,97,74,537	9,34,78,693	33,14,075	-8,48,33,900
52	24/02/2021	12,24,36,823	50,72,35,761	51,43,58,593	12,580	0	7,50,00,000	21,24,54,312	18,75,53,360	35,23,41,325	11,53,13,991	2,21,40,321	-14,79,72,915
53	25/02/2021	1,83,26,201	44,72,35,761	36,40,69,595	*13,535*	0	7,50,00,000	*24,27,94,895*	16,31,95,685	21,47,65,261	10,14,92,367	6,63,02,528	-3,22,17,552
54	26/02/2021	34,82,67,124	36,72,35,761	58,84,56,153	5,034	0	7,50,00,000	12,08,07,969	18,08,63,477	29,95,12,128	12,70,46,733	-8,12,38,764	-24,01,86,577

9.1.4. In this regard, it was alleged that the value of G was negative on 43 out of the 54 sample dates, thereby indicating that the funds of credit balance clients have been misused by the Noticee for settlement obligations of debit balance clients and thereby Noticee has violated the Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which inter alia reads as follows, "*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) and if the difference between the above i.e., G=(A+B)-C 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".* In the instant matter, the value of 'G' was negative in 43 sample dates and the extent of mis-utilization of client funds ranges from Rs.3.66 crores on 08.05.2020 to Rs.25.57 crores on 26.03.2020.

9.1.5. It is observed from the Table I above that the value of 'I' was also positive on 51 sample dates thereby indicating that the client's funds had been utilized towards proprietary margin obligations and thereby Noticee has violated Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 which inter alia reads as, "The value of I indicates the extent of funds and securities of clients which is possibly utilized towards proprietary margin obligations." In the present matter the value of 'I' was positive on 51 sample dates.

9.1.6. It is observed from the Table I above that the value of 'J' was positive on 44 of the sample dates thereby indicating that the client's funds have been utilized towards margin obligations for proprietary obligations and for debit balance clients and thereby Noticee has violated clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which inter alia reads as, "The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations…". In the present matter the value of 'J' was positive on 44 sample dates.

9.1.7. In view thereof, it was alleged that 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 of SEBI

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

9.1.8. In this regard, the Noticee as part of its submissions inter alia submitted that:

9.1.8.1. we have majority of the transactions under the pro trade category, group companies, directors and shareholders and their relatives, who have authorised us do not to do pay-out of their funds and securities and authorised us to use the same either for our own business purposes or for the purpose of their relatives and their group companies. In other words, the Noticee contented that creditor's balance includes credit balances of group companies, directors and shareholders and their relatives who authorized the broker to use their funds for broker's own business purpose.

9.1.8.2. Besides, vide its letter dated August 24, 2022, it was inter alia submitted by the Noticee that most of its income is from proprietary trading and has relatively less number of clients. Further, many of its clients are connected to the Noticee by them being its directors, relatives or friends of the directors.

9.1.8.3. Further, vide its letter dated December 01, 2022, it was inter alia reiterated and submitted by the Noticee that at the outset, the Noticee denies these allegations and submits that the most of the trades executed by the Noticee are for its proprietary trading or the trades on behalf of its directors, shareholders and their relatives ("related entities"). Further, the Noticee submits that these related entities had expressly authorized the Noticee to use these funds for its own trades or for their relatives and their group companies.

9.1.8.4. Vide letter dated December 01, 2022, Noticee inter alia submitted modified calculation of G, I & J where Noticee did not consider the credit amount of related entities.

9.1.9. I note that the primary contention of the Noticee is that most of the trades executed by the Noticee were for its proprietary trading or the trades on behalf of its directors, shareholders and their relatives ("related entities") who had expressly authorized the Noticee to use these funds for its own trades or for their relatives and their group companies.

9.1.10. Further, the Noticee has contended that in the reconciled statement it has minus the directors and related entities credit from the total credit balance and in the revised table the value of G is positive. In this regard, I am of the view that there is no exception made in the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 for group companies, directors, shareholders and their relatives /related entities as far as computation of 'G' is concerned. Besides, Section 23D of SC (R) Act, 1956 inter alia reads, *"…any person, … registered … as a stock broker…….uses the securities or moneys of a client or clients for self or for any other client, he shall be [121][liable to a penalty…..".* Therefore, irrespective of the authorization, it cannot be ignored that all such related entities were the clients of the Noticee. I am of the view that any authorization or consent letter, contrary to the provisions of the extant applicable circular, from related entities who are the clients of the Noticee, cannot be considered a valid defense. Accordingly, the modified values of G, I and J as submitted by Noticee could not be accepted as Noticee did not consider the credit balance of directors and related entities being clients and the same is not in accordance with SEBI circular.

9.1.11. In this regard, I cannot ignore that in an organized market with a regulatory body, constituted by an Act of Parliament, in place, which in the instant matter is the Securities and Exchange Board of India for the securities market in India, circulars are issued by the regulator for inter alia orderly functioning of the market, to protect the interest of investors in securities etc., and the constituents /intermediary, like in instant case, the Noticee (registered as Stock Broker), is obligated to comply with and follow the same and in case an intermediary may have any genuine market wide concern, it is at liberty to represent it's concern and appropriately take it up with the regulator for review etc., but does not have the choice to simply not comply with the circulars issued by the regulator.

9.1.12. In this regard, I also find that with respect to the observations of SEBI in so far as calculation of G, I and J is concerned, the Noticee has otherwise not disputed the computation as such and has only contended regarding exclusion of credit balances of group companies, directors and shareholders and their relatives ("related entities"). I also find that the Noticee has not denied that the said related entities were the clients of the Noticee.

To summarize the above, the Noticee has otherwise neither disputed the computation of 'G', 'I' and 'J', nor denied that the so called related entities were its 'clients'.

9.1.13. In view thereof, I find that the contentions raised by the Noticee do not hold any merit and that 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 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016**.**

9.2. **Delay in settlement of funds and securities:**

In this regard, following was inter alia alleged in the SCN:

9.2.1. Noticee has not done actual settlement of client's funds and securities of active clients during inspection period (67 instances out of total 192 instances verified, and non-settled amount is Rs.49.80 crores). Further, it was alleged that the Noticee has not provided the retention statements sent to the clients during the inspection period.

9.2.2. Noticee has not done actual settlement of client's funds who has not traded in last 3 months (6 instances and non-settled amount is Rs.4.71 crores).

9.2.3. The Noticee has not sent statement of accounts along with retention of funds & securities within prescribed time limit from the date of settlement (123 instances out of total 192 instances verified).

9.2.4. It was alleged that, the Noticee has retained the value of funds & securities to the extent of value of turnover executed on the date of settlement in cash market segment after January 16, 2020 (19 instances out of total 144 instances verified and deemed non-settled amount is Rs.38.02 crores).

9.2.5. It was alleged that, there is a gap of more than 90 days between two running account settlement dates (10 instances out of total 192 instances verified).

In view of the above, it was alleged that the Noticee has violated the provisions of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange (BSE) Notice No. 20200116-44 dated January 16, 2020.

Relevant Provisions of SEBI Circulars:

Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 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.

…."

Clause 12(e) of Annexure-A of 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:

(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.

…."

9.2.6. In regard to para 9.2.1, I note that Noticee has contended that majority of clients are group companies, directors, shareholders and close relatives of their directors and shareholders who specifically authorised not to make payment of their credit balances. Thus, the primary contention of the Noticee in this regard has been that majority of the clients were related entities who had specifically authorised not to make payment of their credit balance. In this regard, I once again reiterate my position which is specifically dealt in paragraph 9.1.10 above viz., there is no exception made for related entities in the SEBI Circulars alleged to have been violated and that the Noticee has otherwise not denied that the said related entities were the clients of the

Noticee. Accordingly, any authorization or consent letter, contrary to the provisions of the extant applicable circular, from related entities who are the clients of the Noticee, cannot be considered a valid defense. Therefore, I find that the Noticee has violated *SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016*.

9.2.7. In regard to para 9.2.2, the Noticee vide its letter dated August 24, 2022 has submitted that, '*We have settled the accounts after the query was raised'*. In this regard, based on the submission dated August 24, 2022, I find that the Noticee has not disputed that there was delay in settlement and has instead submitted that after the query was raised, the accounts were settled. Accordingly, I find the submission of the Noticee is in the nature of implied acceptance of the alleged violation.

9.2.8. In regard to para 9.2.3, I find that Noticee has submitted that Noticee denies this allegation and states that out of 123 instances, 27 were in-house clients including the related entities and that these statements of accounts were hand delivered to these clients. The Noticee also submitted copies of 47 statement bearing signatures, claiming that the said statements had been hand delivered to the clients. In this regard, I find that the Noticee has not made any submissions with regard to 76 instances {(123 – 47) = 76}. Accordingly, I find that the violation stands established in so far as these 76 instances are concerned. As regards, 47 copies of statements bearing signatures submitted by the Noticee, it is observed that 46 out of the 47 statements did not bear date of receipt by the clients. Besides, even though the Noticee made submissions and submitted copies, however the Noticee did not indicate the respective dates of delivery of statement to respective clients. In my view, it cannot be a coincidence that 46 out of 47 clients do not put date of receipt and that such date is not indicated by the Noticee as part of submissions in his defense. Further, as regards the contention of the Noticee that the 47 statements were hand delivered to the clients, considering that no date as such for any of the instances has been provided by the Noticee and that the submission made by the Noticee does not bring out any explanation as to why evidence in this regard could not be provided earlier, the submissions of Noticee in this regard, cannot be accepted.

9.2.9. In regard to para 9.2.4 the Noticee submitted that, '*The Noticee denies this allegation and states that out of 19 instances mentioned in Annexure G, 15 are related entities and balance 4 are its non-related clients. The Noticee reiterates that the entities related to it had expressly authorized the Noticee to retain these funds and securities, to meet any future obligations'*. In this regard, I find that the Noticee has not made any submissions with regard to the four non-related clients. Accordingly, I find that the violation stands established in so far as these four non-related clients are concerned. As regards, remaining 15 instances claimed to be related entities I find that according to BSE Notice No. 20200116-44 dated January 16, 2020, *Stock Brokers shall not retain the value of funds & securities to the extent of the value of turnover (gross turnover) executed on date of settlement in cash market segment*. There is no exception for related entities being clients. Thus as per extant framework in place, Noticee was required to settle the value of funds and securities to the extent of turnover executed on the date of settlement. Also, the non-settled amount is observed to the tune of Rs.38.02 crores. In view of the same, Noticee's reply cannot be accepted.

9.2.10. In regard to para 9.2.5, in respect of 10 clients where gap of more than 90 days between two running account settlement dates was observed, the Noticee had submitted that 8 clients were either directors of the group company and/or relatives of directors and specifically authorized the Noticee to not to settle the accounts. In this regard, vide its letter dated August 24, 2022, the Noticee submitted that, *'out of 10 clients mentioned in Annexure H, only 2 clients are not related to the Noticee. Other 8 clients had expressly authorized the Noticee to retain the funds to meet future obligations. Thus, the Noticee had not settled these accounts'*. In this regard, I find that the Noticee has not made any submissions with regard to the two non-related clients. Accordingly, I find that the violation stands established in so far as these two non-related clients are concerned. As regards, remaining eight clients as per extant framework as mandated by SEBI vide circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, considering that there is no exception allowed for related entities being clients, as discussed in detail above at Para 9.1.10 any authorization or consent letter from a client cannot be considered valid as it is not part of the regulatory requirements and it was obligatory on part of broker to settle the accounts once in 90/30 days. Thus, the Noticee's reply cannot be accepted in this regard.

9.2.11. In view of the above, I find that, Noticee has violated the provisions of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016, Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016 read with Exchange (BSE) Notice No. 20200116-44 dated January 16, 2020.

9.3. **<u>Segregation of clients' funds and securities</u>**

9.3.1. In this regard, it was alleged in the SCN that, for the period April 2020 to February 2021, the transfer of funds from own accounts of Noticee to the client accounts amounted to Rs.393.04 crores, while vice versa transfer amounted to Rs.427.06 crores. The advisory charges levied by the Noticee on the client accounts for the said period amounted to Rs.5.03 lakhs. In view of these facts, it was alleged that funds amounting to Rs.33.97 crores in excess have been transferred from the client accounts to the own account, for which no explanation was provided by the Noticee. Therefore, in view of the above, it was alleged that the Noticee has violated the provisions of 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 and Clause 2.4 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

9.3.2. In this regard, *vide* letter dated August 24, 2022, Noticee inter alia submitted that:

a. It is submitted that when a Electronic Contract Note (ECN) is issued to the client, it includes Noticee's brokerage, stamp duty, SEBI Fees, Securities Transaction Tax, GST and so on. Thus, the amount mentioned in the ECN is the amount for exchange's pay-in obligation. When the client make a payment as per the ECN, the Noticee deducts the brokerage and other charges mentioned above and the same is transferred to its own account.

b. It is also submitted that the Noticee has to make payment to the exchanges on T+1 basis. However, there have been times when the cheques given by the clients are yet to be credited to the client's account. In that case, the Noticee will make payment from its own account to client's account to complete pay-in obligations. And subsequently when the funds are credited to client's account, it will be transferred back to Noticee's account.

9.3.3. With regard to transfer of Rs.427.06 crores from client account to own account, the Noticee submitted that it was entitled to withdraw an amount equal to their brokerage, stamp duty, SEBI fees, transaction charges and GST from the client's account to our account. However, it is noted from the calculation of charges to be withdrawn by stock broker from client account based on the Annexure 4 of broker reply submitted by the Noticee to SEBI, that the total of the above ledger accounts was Rs.2,55,57,131/- and accordingly Noticee was entitled to withdraw Rs.2.55 crores approx. Thus, as per the material available on record, the Noticee had transferred excess amount from client accounts (i.e., Rs. 31.42 crores approx. viz., 33.97 crores - 2.55 crores). In respect of transfer from Noticee's own account to client account (Rs. 393.04 crores), Noticee has submitted that he has transferred funds to complete the pay in obligation of exchange but he has not submitted any substantiating evidence regarding the same. In view of the same, Noticee's reply can't be accepted. In this regard, I note that while the allegations with regard to transfer of funds from Noticee to client accounts and vice versa is specific in nature viz., with specific amounts indicated, the submissions of the Noticee are without any specific details and/or working disputing the computation and generic in nature and accordingly Noticee's submissions in this regard cannot be accepted.

9.3.4. In view of the same, the contentions raised by the Noticee do not hold any merit and therefore I find that, Noticee has violated the provisions of 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 and Clause 2.4 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016**.**

9.4. **<u>Clients' order recording</u>:**

9.4.1. In this regard, it was inter alia alleged in the SCN that the Noticee has not kept appropriate evidences in respect of the order placed by its clients in 12 out of the 16 sample instances. Further, it was alleged that Noticee does not have order recording mechanism in place when orders are received through mobile number of the dealer and Authorized Person(s). Accordingly, in this regard, it was alleged that the Noticee has violated the provisions of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 (clause 2,3 and 4) and clause 3 of SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

9.4.2. In this regard, vide letter dated August 24, 2022, Noticee submitted that, *'in all the 16 instances referred in the SCN, either the client who is also acting as an AP had placed his/her order, or the directors and officers of the Noticee or the related entities were present in the office, thus there arises no case for recording their orders. With regards to orders received by APs on their mobile phone, the Noticee submits that these trades were confirmed by the SMS and ECN and there were pay-in and pay-out obligations of funds and securities'.*

I note that the alleged violations in this regard relate to two aspects viz., (i) appropriate evidences in respect of the order placed by its clients and (ii) not having order recording mechanism in place when orders are received through mobile number of the dealer and Authorized Person(s) (for sake of brevity also referred to as "AP"). As regards first aspect, the Noticee has contended that "*in all the 16 instances referred, there arises no case for recording their orders as either the client who is also acting as an AP had placed his/her order, or the directors and officers of the Noticee or the related entities were present in the office."* Considering that the said orders are related to clients. In this regard, I note that the Noticee has not disputed that the said entities were its clients and considering that the said entities were clients of the Noticee. In this regard, I find that as per clause 3 of SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P /2018/54 dated March 22, 2018, broker shall execute trades of clients only after keeping evidence of the client placing such order. Even if the clients were present in the office at the time of placing orders, it was obligatory for Noticee to keep the evidence of order placements, as keeping of evidence with respect to client order is mandatory requirement without any exception as per SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018. As regards the second aspect, the contention of the Noticee that the trades were confirmed by the SMS and ECN, I find that evidence of the client placing such order and trade confirmation are two distinct aspects, hence the contention raised by the Noticee is out of context and hence not acceptable.

In view of the same, the contentions raised by the Noticee do not hold any merit and therefore I find that, Noticee has violated the provisions of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 (clause 2, 3 and 4) and clause 3 of SEBI Circular SEBI /HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

9.5. **<u>Stock Mismatch</u>:**

9.5.1. In this regard, it was inter alia alleged in the SCN that while comparing end of the day securities' balance, as per holding statement data reported to the exchange by the stock broker with the balance calculated by considering opening balance, net trade quantity, direct payout, pay-in & pay out shortage, depository transaction quantity and auction quantity of that day, it was observed that the Noticee has wrongly reported holding of 3 clients (M00909, M00945, M00927) to exchange for 2 dates i.e., September 02, 2020 and September 28, 2020 for 4 ISINs on 5 instances out of 20 sample alerts. Accordingly, it was alleged that the Noticee has violated the provisions of Clause 6.1.1 (j) of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 dated September 26, 2016.

9.5.2. In this regard, *vide* letter dated August 24, 2022, Noticee inter alia submitted that, *'it is submitted that the pay-out of securities was delivered by National Clearing Limited (NCL) to their respective Clearing Member's dated 03-September- 2020. But in our back office system we have opened settlement number 2020167 as per settlement calendar received from NCL. Hence we have not changed our settlement date which was 02-September-2020 (actual date of pay-out) Therefore our payout towards client's has marked for the dated 02-September 2020. Due to that there was a mismatch between our back office holding reported and CDSL System. Hereto annexed and marked as "Exhibit D" which includes the Early Pay-in transaction statement from Nation Clearing Limited. (DP ID 11000011 00017520), Transaction statement of the three Client's Demat Account, Transaction Statement of Mansi Share & Stock Advisors Private Limited NSE Pool Account (DP ID: 1205970000000044), Screen shot of pay-out received date from CDSL (CDAS) live machine & Annexure M with revised Member Reply*'.

9.5.3. With regard to the instances of September 02, 2022, I note that the observation in this regard related to four instances involving three scrips viz., Scrip Code 102 (200002+175200=375202 shares), Scrip Code 36507 (150047 shares) and Scrip Code 93416901 (375202 shares). From the statement of pool account submitted by Noticee it is seen that in respect of all the said three Scrip Codes, there were not credit of shares on September 03, 2020 in respect of said settlement number and that it has received the shares in its pool account on September 02, 2020 itself. Accordingly, the contentions raised by the Noticee, in this regard, are not acceptable.

With regard to instance on September 28, 2020, it is noted that vide letter dated August 24, 2022 Noticee has inter alia submitted that the mismatch resulted due to some manual error as the same pay-in of 12122 shares was done twice for said symbol. In view of the admission by the Noticee that the said mismatch was owing to manual error at its end, the violation stands established.

In view of the above, I find that Noticee has violated the provisions of Clause 6.1.1 (j) of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

9.6. **<u>Verification of data submitted towards monthly monitoring of clients funds</u>:**

9.6.1. In this regard, it was inter alia alleged in the SCN that during inspection of data submitted by the Noticee towards monthly monitoring of clients, it was observed that the Noticee had reported incorrect client's funds and securities balances for the month of Dec 2020.

Instances:

a) Incorrect reporting of clients funds to the tune of Rs.-7,96,546.80

b) Incorrect reporting of securities balances to the tune Rs.21,43,01,598.80

Therefore, it was alleged that the Noticee has violated the provisions of Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD /MIRSD2/CIR/P/2016/95 dated September 26, 2016 which reads as under:

Relevant provisions of SEBI Circulars:

Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

7. Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system

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

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

In this regard, it is noted that the reply of the broker with regard to the incorrect reporting of securities balances that the same was on account of early pay-in of securities on behalf of the clients, as also reiterated in its submissions, were acceptable and accordingly the subject matter the subject matter of alleged violations in this regard in the instant proceedings restricts to incorrect reporting of client funds which is being dealt with as hereunder.

9.6.2. In this regard, vide letter dated August 24, 2022, Noticee submitted that with regards to incorrect reporting of the funds, the same is on account of the dividends received on client's securities lying with the Noticee.

9.6.3. I note that in case of fund mismatches, SEBI observed that mismatches are mainly on account of dividend posting, as it was also confirmed by the Noticee in his reply. On verification of dividend ledger, it was observed by SEBI that Noticee was posting backdated entries in the ledger due to which there was a mismatch. I also note that as per the submission of the broker to SEBI, in this regard, the broker had himself indicated that the difference of Rs.7,96,546.80 had occurred across twenty client instances. I also note that Noticee as part of his submissions dated August 24, 2020, has itself indicated that the entries of dividends were posted later. In view of the same, I note that the Noticee vide its submission had himself accepted that he incorrectly posted funds of clients.

In view of the same, as regards incorrect reporting of clients funds, I find that the Noticee has violated the provisions of Clause 7 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

10. In view of the above, I find that Noticee has violated the provisions of the following Act and Circulars:

10.1. 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 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to misusing clients funds.

10.2. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange (BSE) Notice No. 20200116-44 dated January 16, 2020 with regard to by delay in settlement of funds and securities.

10.3. 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 and Clause 2.4 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to failing to segregate clients' funds and securities from its own funds.

10.4. SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 (clause 2, 3 and 4) and clause 3 of SEBI circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 with regard to not keeping appropriate evidences in respect of the order placed by its clients and also not having order recording mechanism in place with regard to orders received through mobile number of the dealer and authorized persons.

10.5. Clause 6.1.1 (j) of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to wrong reporting holding to stock exchange.

10.6. Clause 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 with regard to reporting of incorrect client's funds.

Issue II

Do the violations, if any, attract monetary penalty under provisions of Section 15HB of SEBI Act, 1992 and Section 23D of SC(R) Act, 1956?

11. It has been established in the preceding paragraphs that Noticee has violated the stated provisions of Securities Contracts (Regulation) Act, 1956, SEBI Circulars and BSE Circular and therefore, the aforesaid violations committed by the Noticee attract monetary penalty under provisions of Section 15HB of SEBI Act, 1992 and Section 23D of SC(R) Act, 1956.

12. In this regard, reliance is placed upon the order of the **Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs Shriram Mutual Fund { [2006]5 SCC 361 } –** wherein the Hon'ble Supreme Court of India held that, "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………...".

13. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HB of SEBI Act, 1992 and Section 23D of SC(R) Act, 1956, which reads as under:

SEBI Act, 1992

"

……

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 [104][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

.....

"

SC(R) Act, 1956

"

……

[120][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 121[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

Issue III

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

14. While determining the quantum of penalty under Section 23D of SC(R) Act, 1956 and Section 15HB of SEBI Act, 1992 it is important to consider the factors as stipulated in Section 15J of the SEBI Act, 1992 and Section 23J of SC(R) Act, 1956 which reads as under-

"….

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under section 15-I, or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:-*

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

…."

"….

Factors to be taken into account while adjudging quantum of penalty

__23J.__ While adjudging the quantum of penalty under [138][section 12A or section 23-I], the [139][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

…."

15. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. However, I cannot ignore the fact that the Noticee has failed to comply with provisions of SC(R) Act 1956, SEBI circulars and BSE circular as detailed in preceding paragraphs. As regards repetitive nature of default, I also note that there is an Adjudication Order passed against the Noticee on July 30, 2020 (earlier order) whereby penalty of Rs.5,00,000/- under Section 23D of SCRA and Rs.8,00,000/- under Section 15HB of SEBI Act was imposed upon the Noticee inter alia for violations of various provisions as stated therein, four of which are repeat violations (viz., Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018). That violations observed in past (viz., during period April 2017 to February 2019) have been observed subsequently also (viz., during period April 2019 to February 2021 – and are subject matter of instant proceedings), which reflects upon the Noticee and demonstrates that the Noticee has not been careful enough or has not taken due corrective steps to ensure that the violations observed earlier do not repeat in future.

E. ORDER

16. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the SEBI Adjudication Rules, 1995, and under section 23-I of the Securities Contracts (Regulation) Act, 1956 read with rule 5 of the Securities Contracts (Regulation) (procedure for holding inquiry and imposing penalties) Rules, 2005, I hereby impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on the Noticee viz. Mansi Share & Stock Advisors Pvt. Ltd under the provisions of section 15HB of SEBI Act 1992 and section 23D of SC(R) Act, 1956, as per details in table below. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

Name of Noticee	Penalty Under Provisions	Penalty Amount (Rs.)
Mansi Share & Stock Advisors Pvt. Ltd	Section 15HB of SEBI Act, 1992	*6,00,000/-*
	Section 23D of SC(R) Act, 1956	*4,00,000/-*
TOTAL		*10,00,000/-*

17. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the 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; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

18. The Noticee shall forward said Demand Draft along with the details /confirmation of penalty so paid, in the format as given in table below to, ‘The Division Chief, Enforcement Department-I-DRA-3, Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051’ and also to e-mail id:- tad@sebi.gov.in :

1. NAME AND PAN OF ENTITY /NOTICEE	
2. NAMEOF THE CASE /MATTER	
3. DATE OF PAYMENT	
4. AMOUNT PAID	
5. TRANSACTION NUMBER	
6. BANK NAME AND ACCOUNT NUMBER	
7. PURPOSE OF PAYMENT – PAYMENT OF PENALTY UNDER AO PROCEEDINGS	

19. 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.

20. In terms of the provision of Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCRA Adjudication Rules, a copy of this order is being sent to the Noticee and also to SEBI.

PLACE: MUMBAI
DATE: JANUARY 30, 2023

AMAR NAVLANI
ADJUDICATING OFFICER