BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2023-24/30034]

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

IN THE MATTER OF

Bullion Fox Commodity Private Limited
PAN No.: AAFCB8548L
SEBI Regn No.: INZ000076836

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted off-site inspection of M/s Bullion Fox Commodity Private Limited (hereinafter referred to as "**Noticee**" / "**BFCPL**" / "**the Company**") between November, 2022 and March, 2023 to look into various compliance requirements adhered by BFCPL, with respect to provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R) Act, 1956**") and applicable Circulars issued thereunder. The inspection was conducted for the period beginning April 01, 2021 to January 31, 2023 (hereinafter referred to as "**inspection period**").Noticee is registered as stock broker with SEBI registration no. INZ000076836.

2. The findings/ observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated March 31, 2023. After examining the reply submitted by the Noticee vide letter dated March 31, 2023, it has been alleged that the Noticee violated various provisions of SC(R) Act, 1956 and applicable SEBI Circulars. The extracts of violations alleged to have been committed by the Noticee and the corresponding regulatory provisions are given in the table below:

Table 1

Sr. No.	**Alleged Violations**	**Regulatory Provisions**
1	Misuse of Clients' funds	• Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. • Clause 3 and Clause 6.1.1.j. of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.
2	Settlement of Client funds and securities	• Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. • Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016. • Clause 5.4 of Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/57 dated June 16, 2021.
3	Nomenclature of Bank accounts maintained by the Broker	Clause 1.2 and Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 dated September 26, 2016
4	Non-maintenance of evidence for client order placement	Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017
5	Mobile number of client not matching with UCC	Clause 10 of Annexure-4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011

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

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated December 28, 2023 under Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCRA Adjudication Rules**"), to inquire into and adjudge under section 23D of SC(R) Act, 1956 and section 15HB of SEBI Act, 1992, the violations of aforesaid provisions alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. Show Cause Notice No. SEBI/EAD/BM/DS/2632/1/2024 dated January 17, 2024 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, rule 4 of SEBI Adjudication Rules and rule 4 of SCRA Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 23D of SC(R) Act, 1956 and section 15HB of SEBI Act, 1992 be not imposed on the Noticee.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Noticee submitted its reply to the SCN vide its letter dated February 06, 2024. Vide letter dated February 07, 2024, hearing notice was issued to Noticee to provide opportunity of personal hearing in the interest of natural justice.

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

   7.1. Misuse of clients' funds – Noticee has not used margin money for to settle the debit balance clients or had used for its own purpose. Erroneously there were pop on misutilisation of client fund and the same it had recouped the entire amount on the same day from our settlement account to our Clearing Member (Globe). In this regard, the Noticee submitted a screenshot of the mail which the Noticee has sent to MCX explaining about the pop-up regarding misuse of clients funds for the week ended January 14, 2022.

   7.2. Settlement of clients' funds and securities – it was due to error in back office software, due to which the pop-ups were not generated in time, and this caused delay in settlement of funds. Noticee had raised complaints with its vendor, and it has submitted a screenshot of the email sent to its vendor.

   7.3. Nomenclature of bank accounts – all its bank accounts have proper nomenclature, except the general account.

   7.4. Non maintenance of evidence for client order placement – due to some issues with the software, some of the files of pre-confirmation order got corrupted. Out of the 14 samples sought during the inspection, the Noticee was able to submit three.

   7.5. Mobile number of client not matching with UCC – Noticee has modified the client's mobile number upon receiving request mail from the client.

   7.6. The minor irregularities were not intended to misuse clients' funds or non-compliance of applicable regulations.

   7.7. Noticee further submitted that it has stopped the business operation on April 15, 2022 and settled the balances of all its clients by June 21, 2022. There are no creditors and no investor grievance against the Noticee. All the clients were provided 15 days of notice regarding the business closure. It was further submitted that the Noticee has surrendered its membership with MCX on

August 09, 2023. Noticee has also requested to condone the minor irregularities.

8. The Noticee appeared for the scheduled hearing through its authorized representative (**AR**). The AR reiterated submission made vide letter dated February 06, 2024 and confirmed that the same may considered as final.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

9. Considering the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:
   ISSUE I - Whether the Noticee is in violation of the provisions of SC(R) Act, 1956, and applicable SEBI Circulars, as given in Table 1 above?
   ISSUE II - Do the violations, if any, attract penalty under section 23D of SC(R) Act, 1956 and section 15HB of the SEBI Act, 1992?
   ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and section 23J of SC(R) Act, 1956?

10. The said provisions under which violations have been alleged against the Noticee are reproduced below –
    <u>SC(R) Act, 1956</u>
    Penalty for failure to segregate securities or moneys of client or clients.
    23D. *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.*

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

Regulation of transactions between clients and brokers

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

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

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

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

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

i. money held or received on account of clients;

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

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

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

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

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

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

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

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

SEBI Circular No. MIRSD/ SE /Cir-19/2009 dated December 03, 2009

ANNEXURE - A

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.

<u>SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011</u>

Simplification and Rationalization of Trading Account Opening Process

Annexure – 4 - Rights And Obligations Of Stock Brokers, Sub-Brokers And Clients

10. The stock broker and sub-broker shall maintain all the details of the client as mentioned in the account opening form or any other information pertaining to the client, confidentially and that they shall not disclose the same to any person/authority except as required under any law/regulatory requirements. Provided however that the stock broker may so disclose information about his client to any person or authority with the express permission of the client.

<u>SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</u>

Enhanced Supervision of Stock Brokers/Depository Participants

Annexure

1. Naming/Tagging of Bank and Demat Accounts by Stock Broker

1.1 ..

1.2 The nomenclature for bank accounts and demat accounts to be followedis given as under:

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

1.2.2.Bank account(s) which hold own funds of the stock broker shall be named as "Name of Stock Broker -Proprietary Account".

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

1.2.4.Demat account(s), which hold own securities of the stock broker, shall be named as "Name of Stock Broker-Proprietary Account".

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

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

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

3. 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

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

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

6.1.1. Monitoring criteria for Stock Brokers

a.

b.

..

..

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

..

..

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

8.Running Account Settlement

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

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

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

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

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

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

Prevention of Unauthorised Trading by Stock Brokers

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

a.Physical record written & signed by client,

b.Telephone recording,

c.Email from authorized email id,

d. Log for internet transactions,

e. Record of SMS messages,

f. Any other legally verifiable record.

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

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.

SEBI Circular No.: SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021

Settlement of Running Account of Client's Funds lying with Trading Member (TM)

5. In partial modification of the aforementioned circulars dated December 03, 2009 and September 26, 2016 on settlement of running account, following has been decided:

5.1...

5.2...

5.3…

5.4. For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

11. I will now proceed with my findings in each of the alleged violations against the Noticee in the SCN dated January 17, 2024.

12. **<u>Misuse of clients' funds</u>** –

12.1. It was observed that the Noticee has not correctly uploaded the details of all clients' funds lying with them on stock exchange system for the weeks ended 23-April-2021, 30-July-2021, 24-Dec-2021, 18-February-2022, 08-April-2022 and 29-April-2022. The details are provided in the table below.

<u>Table 2</u>

Sr No.	Particulars		As on 23-April-2021		As on 30-July-2021		As on 24-Dec-2021		As on 18-Feb-2022		As on 08-April-2022		As on 29-April-2022	
			Values to be Reported	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*
1	Aggregate of fund balances available in all Client Bank Accounts.	A	19,25,688.00	19,25,688.00	16,38,777.00	16,38,777.00	3,58,043.00	3,58,043.00	2,61,123.00	2,60,943.00	1,80,880.00	1,80,700.00	48,425.00	48,425.00
2	Aggregate value of collateral deposited with Exchange in form of Cash and Cash Equivalents	B	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00	5,00,000.00
3	Aggregate value of collateral deposited with clearing member in form of Cash and Cash Equivalents	B	1,13,81,018.92	1,13,81,019.00	96,52,212.29	96,52,212.00	46,08,931.62	46,08,932.00	66,85,969.05	66,85,969.00	27,18,902.80	27,18,903.00	1,47,655.57	1,47,656.00

Sr No.	Particulars		As on 23-April-2021		As on 30-July-2021		As on 24-Dec-2021		As on 18-Feb-2022		As on 08-April-2022		As on 29-April-2022	
			Values to be Reported	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*	*Values to be Reported*	*Actual Submission by Member*
4	Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges	C	1,93,28,806.00	1,45,09,897.00	1,74,57,496.95	1,20,32,331.00	1,03,04,707.96	66,07,935.00	1,37,06,938.7	83,19,762.00	59,64,875.60	25,44,205.00	61,950.54	17,261.00
	Difference G=(A+B)-C		**-55,22,099.08**	**-7,03,190.00**	**-56,66,507.66**	**-2,41,342.00**	**-48,37,733.34**	**-11,40,960.00**	**-62,59,846.65**	**-8,72,850.00**	**-25,65,092.80**	**8,55,398.00**	**6,34,130.03**	**6,78,820.00**

12.2. It was also observed from the Enhanced supervision filings made by the Noticee that 'G' value was negative for the weeks ended on 23-April-2021, 30-July-2021, 24-Dec-2021, 18-February-2022, 08-April-2022. Details have been provided in the table - 2 above. It was alleged that funds of credit balance clients were misutilized for meeting the obligations of debit balance clients and for its own purpose. It was further alleged that average misutilized amount is ₹ 49,70,255.91. The amount of misutilization ranges from ₹ 25,65,092.80 to ₹ 62,59,846.65.

12.3. In view of the aforesaid, it was alleged that the Noticee has violated the provisions of 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 and Clause 6.1.1.j. of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

12.4. As per Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, brokers shall mandatorily keep clients' money in a separate account and their own money in a separate account. No payment shall be made from the client's account for transactions in which a broker takes a position as a principal. As per Clause 3 and Clause 6.1.1.j. of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stock brokers shall submit certain data, as prescribed in this clause, as on the last trading day of every week, to the stock exchanges.

12.5. Noticee has submitted that there were erroneous pop-ups on misutilization of clients' funds. Noticee has provided screenshot of a mail which it had sent to MCX for the week ended January 14, 2022.

12.6. I note that the allegations of negative value of 'G' value are for the weeks ended 23-April-2021, 30-July-2021, 24-Dec-2021, 18-February-2022, 08-April-2022. However, Noticee has provided the screenshot of its mail pertaining to week ended January 14, 2022, for which no allegation has been made. Noticee has not provided any explanations or contentions with regard to the alleged violations. From the details available on record, I note that Noticee had wrongly reported the details of clients' funds lying with it, in five of the weekly enhanced supervision data submissions. Further, in each of these five instances, the value of 'G' was negative, and the values range from ₹ 25,65,092.80 to ₹ 62,59,846.65. Therefore, I find that Noticee has violated the provisions of 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 and Clause 6.1.1.j. of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

13. **<u>Non-settlement of Clients' funds</u>**

13.1. Out of a sample of 100 clients, it was observed that the Noticee has not settled client funds for 19 clients amounting to ₹ 38,89,711.63. A summary of quarter-wise non-settlement of clients' funds has been provided below.

Table 3

Sr. no.	Quarter (FY 2021-22)	No. of non-settled clients	Aggregate Value of non-settlement (₹)
1.	Q1	9	21,23,819.15
2.	Q2	2	3,83,830.76
3.	Q3	1	82,707.13
4.	Q4	7	12,99,354.59
	TOTAL	19	38,89,711.63

13.2. It was also observed that the Noticee has not done settlement of 125 clients' funds in 274 instances, wherein the clients had credit balance and had not traded in the preceding 90 days. A summary of quarter-wise non-settlement of clients' funds has been provided below.

Table 4

Sr. no.	Quarter (FY 2021-22)	No. of non-settled clients	Aggregate Value of non-settlement (₹)
1.	Q2	114	24,959.36
2.	Q3	67	27,362.72
3.	Q4	93	24,580.47
	TOTAL	274	76,902.55

13.3. In view of the aforesaid, it was alleged that the Noticee has violated the provisions of Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 ; Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016 ; and Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.

13.4. Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 states responsibilities of a stock broker in respect of running account settlement. As per Clause 8.1 of Annexure of SEBI Circular

SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016, a broker shall ensure that there is a gap of maximum 90 / 30 days between two running account settlements. As per Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, a trading member shall return the credit balance of clients who have not traded in 30 calendar days since the last transaction, within three working days of the passage of aforesaid 30 calendar days.

13.5. In this regard, Noticee has submitted that there were errors in the back office software, due to which alerts for settlement of clients' funds were not generated in the system, which caused delays. Noticee has also submitted that it was in the process of closure of its business due to unforeseen adverse personal circumstances, but it has settled all the clients' funds by June 21, 2022 and it has not received any complaints or grievances from the clients. In support of its submissions, the Noticee has also submitted details of the emails which it had forwarded to all its clients informing them about closure of its business and Noticee has also submitted a copy of its HDFC Client Account in which the last date on which clients' balances were settled was June 21, 2022.

13.6. I note that Noticee has attributed the delay to errors in software and adverse personal circumstances. From the material available on record, I note that out of the 100 samples inspected, Noticee has not settled client funds for 19 clients amounting to ₹ 38,89,711.63 and there were 274 instances wherein the Noticee had not settled the credit balances of 125 clients who had not traded in 90 days since their last transaction. I also note from the documents submitted that the Noticee has settled all the clients' balances by June 21, 2022 and informed the clients regarding closure of its business. However, in view of non-settlement of all clients' funds as detailed above, Noticee is in violation of provisions of Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 ; Clause 8.1 of

Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016 ; and Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/57 dated June 16, 2021.

14. **<u>Nomenclature of Bank accounts maintained by the Broker</u>**

14.1. It was observed that there were 5 instances wherein uniform nomenclature was not followed for client bank accounts, own bank accounts and settlement bank account. The details of the accounts in respect of which the nomenclature was not followed are provided below.

<u>Table 5</u>

Sr. No.	Bank Account Number	Account Name as per Bank Statemen
1	HDFC Bank - 01780340000355	Bullion Fox Commodity Private Limited
2	HDFC Bank - 01780340000348	Bullion Fox Commodity Private Limited
3	HDFC Bank - 00600340073832	Bullion Fox Commodity Private Limited
4	ICICI Bank - 611905051478	Bullion Fox Commodity Private Limited
5	RBL Bank - 408148299624	Bullion Fox Commodity Private Limited

14.2. It was alleged that the broker did not suffix the above five bank accounts with the account type, namely ‘Client Account’, ‘Settlement Account’, ;’Proprietary Account’, ‘Collateral Account’ and ‘Pool Account’.

14.3. In view of the aforesaid, it was alleged that the Noticee has violated the provisions of Clause 1.2 and Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

14.4. Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016, prescribes the naming / tagging of bank and demat accounts by stock brokers. It is mandatory for the brokers to assign appropriate bank and demat nomenclature and report the same to the stock exchanges.

14.5. Noticee has submitted that all its bank accounts are uniformly named, except the general account.

14.6. From the submissions of the Noticee, I note that it has subsequently modified the account names of two bank accounts, viz. HDFC client account (ending with 355) and HDFC Settlement Account (ending with 832). However, from the bank statements of the five bank accounts in the aforesaid table, I find that these accounts were not uniformly and correctly named by the Noticee. Thus, I find that the Noticee has violated the provisions of Clause 1.2 and Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

15. **<u>Non-maintenance of evidence for client order placement</u>**

15.1. It was observed that out of a sample of 14 call records sought from the Noticee during inspection, the Noticee had not provided the call records for six sample trades. Out of the six call recordings submitted by the Noticee, one call recording was not pertaining to order placement by the client. Thus, only five call recordings of order placement were made available by the Noticee out of 14 samples selected for inspection. Thus, the Noticee was alleged to have violated the provisions of Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/108 dated September 26, 2017.

15.2. As per Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/108 dated September 26, 2017, brokers shall execute trades of clients only after keeping evidence of the client placing such order, in the forms mentioned therein, including telephone recording.

15.3. Noticee has submitted that it could find only three call recordings out of the 14 samples of call recordings sought by the inspection team. It further submitted that due to problems with the call recording software, some of the pre-confirmation order files were corrupted. I note that Noticee has admitted the non-availability of call logs. Thus, I find that the Noticee has violated the provisions of Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/ CIR/P/2017/108 dated September 26, 2017.

16. **<u>Mobile number of client not matching with UCC</u>**

16.1. While examining whether data uploaded in UCC is as per KYC in the Account Opening form, it was observed that in one sample, pertaining to UCC TNSSN01, the mobile number provided in KYC section of account opening form (80729XX854) was not matching with the mobile number provided in UCC (93615XX478). Thus, the Noticee was alleged to have violated the provisions of Clause 10 of Annexure-4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011.

16.2. As per Clause 10 of Annexure-4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011, a stock broker shall maintain all details of client as mentioned in the account opening form.

16.3. Noticee has submitted that it had updated the client's mobile number after receiving a request from the client. In this regard, Noticee has also submitted screenshots of the client's UCC from the MCX website and client's details in the Noticee's software.

16.4. I note that in support of its submissions that the client has requested for change in mobile number, the Noticee has not submitted any communication with the client TNSSN01, wherein the client had requested for change in its mobile number. Thus, Noticee's submissions in this regard cannot be accepted. I find that mobile number in the client's account opening form is different from the mobile number stated in the UCC and thus, Noticee has violated the provisions of Clause 10 of Annexure-4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011.

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

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

SC(R) Act, 1956

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

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

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

18. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach ofcivil obligation which attracts penalty in the nature of fine under the provisions of the Act and the*

Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."

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

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

SEBI Act, 1992

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

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

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

(c) the repetitive nature of the default.

SC(R) Act, 1956

Factors to be taken into account while adjudging quantum of penalty.

23J. *While adjudging the quantum of penalty under section 12A or section 23-I, the the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

(c) the repetitive nature of the default.

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

20. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has not been penalised earlier for any of the aforesaid violations. Thus, violations are not repetitive in nature. I observe that the Noticee has surrendered its certificate to the MCX and closed down its operations from April 15, 2022. It has also settled all clients' accounts by June 21, 2022 and it has not received any investor complaints for non-settling their accounts. However, as a SEBI registered intermediary, Noticee was under statutory obligation to abide by the provisions of the SC(R) Act, 1956 and SEBI Act, 1992 which it failed to do and thus, calls for penalty.

ORDER

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

Name of Noticee	**Violation provisions**	**Penal Provisions**	**Penalty**
BULLION FOX COMMODITY	• Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/	Section 23D of SC(R) Act, 1956	₹ 2,00,000/- (Rupees Two Lakh) under

Name of Noticee	Violation provisions	Penal Provisions	Penalty
PRIVATE LIMITED	23321 dated November 18, 1993. • Clause 1.2, clause 3, clause 6.1.1 (f), clause 6.1.1 (j), clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016. • Clause 12 of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. • Clause 5.4 of Circular SEBI/HO/MIRSD/ DOP/P/CIR/2021/57 dated June 16, 2021. • Clause III and IV of SEBI Circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/108 dated September 26, 2017 • Clause 10 of Annexure-4 of SEBI Circular CIR/MIRSD/ 16/2011 dated August 22, 2011	Section 15HB of SEBI Act, 1992	Section 23D of SC(R) Act, 1956; ₹ 1,00,000/- (Rupees One Lakh) under Section 15HB of SEBI Act, 1992 **TOTAL PENALTY AMOUNT - ₹3,00,000 (Rupees Three Lakh)**

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

23. 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.

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

DATE: FEBRUARY 20, 2024	**BARNALI MUKHERJEE**
PLACE: MUMBAI	**ADJUDICATING OFFICER**