BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. EAD-1/AO/SM/LD/2022-23/24838)

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995; UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND UNDER SECTION 19H OF DEPOSITOIRES ACT, 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of

SSJ Finance and Securities Private Limited

(SEBI Registration No.: INZ000178436 (**BSE**), INZ000101238 (**NSE**) & INDPCDSL01092015 (**CDSL**)**)**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI"), conducted a comprehensive inspection of M/s. SSJ Finance & Securities Private Limited (hereinafter referred to as "**Noticee/SSJ**") w.r.t. its Stock Broking and Depository Participant (hereinafter referred to as 'DP') activities during December 01, 2020 to March 15, 2021. The period covered in the inspection was from April 2019 to October 2020 (hereinafter referred to as '**Inspection Period/IP**").

2. Noticee is registered as Stock Broker with registration no INZ000178436 (BSE), INZ000101238 (NSE) and a registered Depository Participant having SEBI registration number as INDPCDSL01092015.

3. The findings/observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated March 31, 2021. After examining the reply submitted by the Noticee vide letter dated June 18, 2021, it has been alleged that the Noticee violated various provisions of Securities Laws and applicable SEBI circulars. The extracts of the violation alleged to have been committed by the Noticee and the corresponding provisions of securities laws are given in the tabulation below:

Sl. No.	Alleged Violations	Regulatory provisions
Stock Broking Activities		
1.	**Misuse of Clients' funds:** The value of "G" was negative on 22 days thus indicating that the funds of the Credit balance clients have been utilized either for settlement obligations of Debit balance clients or for the Noticee's own purposes.	Section 23D of SC (R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/2016/95 dated September 26, 2016.
2.	**Non-Settlement of Clients' funds and securities:** Not settled accounts of 1076 inactive clients amounting to Rs. 39.44 lakhs and kept a gap between two settlement dates of more than 90 days.	Clause 12 of Annexure 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.
3.	**Client funding:** Funded 9 clients in 131 instance, beyond T+2+5 days. The day wise amount of funding was observed to be in the range of Rs. 0.01 Crore to Rs. 4.51 Crore. Total amount of funding is Rs. 69.37 Crores.	Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/

		P/2017/64 dated June 22, 2017.
4.	**UCC Verification:** A single email id was mapped to multiple clients i.e. 309 emails ids were mapped to multiple clients i.e. 802 clients.	Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 read with Clause A(1), A(2) & A(5) of the Code of Conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
5.	**Delay in uploading KYC details of clients to the KRA System:** KYC details of 36 clients was uploaded on the KRA System with a delay.	SEBI Circular no. MIRSD/Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/Cir-23/2011 dated December 02, 2011 and SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012.
6.	**Incorrect / Non submission of data to exchange:** There were discrepancies in the client ledger (funds) balances to the tune of Rs. 22,47,599/- that was uploaded on the exchange, in the case of 8 clients. **Non-reporting of Clients**: 285 Clients who traded in the last 12 months were not reported in the Monthly Enhanced Supervision. **Discrepancies in the reporting of Clients Securities balances**: In 6 ISINs there were discrepancies in the Clients' securities balances reported to the exchange as per Monthly Enhanced Supervision and the Weekly holding reported to the exchange.	Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

	Wrong reporting of the holding quantity of securities: In 14 instances, there was wrong reporting about the holding quantity of securities to the tune of Rs. 2,60,05,349.40 **Networth Verification**: - Not submitted networth certificates as per the prescribed format to BSE for the half yearly submission. - Submitted two different networth certificates to NSE and BSE for the same period which were signed by same Chartered Accountant and on the same day.	
Depository Participant Activities		
7.	**Client registration process**: **Account opening and KYC:** PANs were not verified on the KRA site, in the case of 39 accounting opening. **Account Modification:** In 15 case of account modification, PANs were not verified on KRA site.	SEBI Circular MIRSD/Cir-26/2011 dated December 23, 2011 (CDSL Communique no. 2774 dated December 27, 2011)
8.	**DIS Issuance / Executions**: Income details of 14 beneficiary owners were not updated in the Central Depository Accounting System (CDAS).	CDSL Communique no. 4130 dated December 20, 2013 and 4690 dated September 08, 2014
9.	**Procedure in operating instructions not followed**: The procedure given in the operating instructions in case of transactions of dormant accounts, was not followed whereby the authorized official of the Noticee verifying such transaction with the account holders need to record details of the process, date, time etc. of the verification on the instruction slip under his / her signature. DIS	CDSL Operating Instruction 6.5.4.6 & 6.5.4.9

	needs to be checked and countersigned by another employee (two step verification) .	
10.	**NISM Certification:** Compliance Officer's NISM certificate expired on August 07, 2020 and the same was not renewed.	SEBI (Certification of Associated Persons in the Securities Markets) Regulation, 2007 read with CDSL Communique no. 2427 dated April 30, 2011 and CDSL Communique no. 2558 dated July 15, 2011.

4. Based on the above inspection observations, SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of the Securities Contracts Regulation Act (hereinafter referred to as "**SCRA**") and Section 15HB of the Securities and Exchange Board of India Act, 1922 (hereinafter referred to as "**SEBI Act**") & Section 19G of Depositories Act, 1996.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

5. SEBI, vide communiqué dated February 14, 2022 appointed Ms. Geetha G., Chief General Manager as an Adjudicating Officer (AO) to inquire into and adjudge under the provisions of Section 23D of SC(R)A,1956, Section 15HB of the SEBI Act, 1992 and Section 19G of Depositories Act, 1996 for the violations alleged to have been committed by the Noticee. Thereafter, vide communique dated September 19, 2022, Shri Amit Kapoor, General Manager was appointed the AO. Subsequently the undersigned vide order dated October 06, 2022 was appointed AO in the matter.

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

6. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated November 15, 2022 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 23D of SCRA, Section 15HB of the SEBI Act, 1992 & Section 19G of Depositories Act, 1996 for the aforesaid

violations alleged to have been committed by Noticee as enumerated under paragraph 3.

7. The SCN was sent to Noticee through Speed Post AD and email on November 15, 2022 and was duly served upon Noticee.
8. Vide letter dated November 29, 2021, Noticee sought an extension of 4 weeks' time from the date of their letter for submitting its reply i.e. December 28, 2021. The request of Noticee was acceded to and Noticee was requested to submit its reply on or before December 28, 2021. The Noticee replied on December 14, 2022.
9. The reply submitted the Noticee is as under:

a) Misuse of Clients' Funds:

- *That it had in its reply dated 18th June 2021, given details of funds available i.e. Value of collaterals with CC and CM which were not considered in the LO and the Value of Fixed Deposits (after considering the OD amount etc. and Investment in HDFC Overnight Fund. SEBI has not considered the value of the Fixed Deposit with HDFC Bank and the investment made in HDFC Overnight Fund.*
- *That the Fixed Deposit was marked as Lien for the purpose of availing Bank Guarantee and O/D facility is not factually correct because it had considered the value of Fixed Deposit after reducing the amount of any O/D obtained against the FDs from time to time.*
- *The FD was made from its own bank account but the said funds were transferred from the clients' bank account to its account due to some operational reasons and cannot be said that the said amount of FD is ineligible for consideration while calculating "G' value.*
- *That it had sufficient funds at all point of time for payments to the clients and also at no point of time, there was a delay in completing the pay-out of a single client and/or used the credit balance clients' funds for debit balance clients' obligations.*
- *That during the relevant period, it had invested an amount between Rs. 5.75 to 12.00 crores in HDFC Overnight Fund. The funds were transferred from the clients' bank account to its own bank account and the same was invested in HDFC Overnight Mutual Fund. The HDFC Overnight Fund daily balance, being cash equivalent was eligible to be added to the bank balances considered at Column A of the G table. The pay-outs*

of the clients were made without any delay and the credit balance clients' funds were not utilized for the benefit of debit balance clients' as alleged.

- *That in view of the above, the daily balances in Overnight Fund and FDs were always segregated and available with it and not utilized for any other purpose at any point of time. The G value was positive on all days and there is no misuse of funds.*
- *That these amounts (FDs and Overnight Fund Balances) were routed at that time from its own bank account only for the operational purposes as it Bank/Fund would accept funds for this purpose from the Member's designated bank account alone.*
- *That it did not carry out any proprietary transactions and did not have any proprietary transactions and did not have any proprietary obligation during the entire audit period. All its capital and earnings over the years are deployed for working capital purposes in its broking operations for its clients.*
- *That the total funds available with it as a TM which includes the net value of the Fixed Deposit and the value of HDFC Overnight Fund, were always much higher than its obligations to the creditors.*
- *That while the value of "G" is positive on any given date, it had conservatively always kept excess of its own funds in earmarked client accounts. Balances maintained by it exceeded by over 32% on an average, the total credit balances of its clients which was done to ensure that there was no misuse of one client's funds with another clients' obligation and to ensure full compliance of norms.*

b) Non-settlement of Clients' funds and securities:

Not settled accounts of 1076 clients:

- *That in respect of the said 1,076 clients, it followed settlements on a rolling data basis for each client and such settlement is not done on a quarter end date therefore SCN is erroneously showing these as not-settled instances.*
- *That its system initiates the settlement process for a client within 90 days from its previous settlement date (as a conservative approach settlement anytime between 60 days and 90 days from the previous settlement date of a given client was initiated). This process is in conformity with SEBI Circular which provides 90 days' gap as the maximum permissible and not quarter–end date.*
- *That its back office system evaluates if the client has traded in the previous 90 days from the settlement date. If so, the client is flagged s "Active" otherwise it is flagged as "Inactive".*

- *That out of the said 1, 076 clients, 1,018 clients were 'Active' at the time of their settlement in the given quarter and therefore as per norms, it retained upto Rs. 10,000/- and made payment or the balance amount and complied with the conditions of SEBI Circular.*
- *That out of the 1,076 clients,1018 clients were active at the time of their settlement in the given quarter and therefore as per norms, it retained upto Rs. 10,000/- and complied with the condition 8.1.1 of SEBI Circular dated September 26, 2016. The relevant transactions in the said funds ledger statements shows that the client was active/traded client and payout was made after retaining upto Rs. 10,000/-.*
- *That in the case of the balance 58 clients who were "Inactive", it had issued online NEFT funds payout instruction for settlement, on settlement date, but payout could not be completed as the clients' bank returned such payout (due to the client's bank account is closed or similar technical reasons. These accounts were settled subsequently vide fund payouts when the client updated its bank details.*

***Gap between two settlement dates is more than 90 days**:*

- *That is had completed settlement for all given clients in Annexure 3 of the SCN with gap between two settlement dates of not more than 90 days from its previous settlement date. There has never been a delay between settlements.*
- *That it had carried out quarterly settlement of client accounts on rolling date basis for each client. Further its system initiates settlement process for a client within 90 days from its previous settlement date. As a conservative approach, it initiates the next sentiment anytime between 60 days and 90 days from the previous settlement date for a given client.*

***c) Client funding**:*

- *That a client is entitled to provide margin in the form of eligible securities and in all the 131 instances of 9 clients, they had provided margin in the form of securities. Due to their respective ledgers were showing debit balances beyond T+2+5 days' basis but there was compliance in respect of margin. Client had surplus margin in each instance before taking any additional exposure.*
- *That the names of same clients were considered separately for BSE and NSE which resulted into double counting to 131 instances.*
- *That all client accounts are subjected to periodic ageing review as per norms and new exposure is given subsequent to the clearance of ageing debit.*

- *Out of over 15,000 only 9 unique clients have been identified and this count is extremely marginal. Whenever a client availed any additional exposure, it was only based on his/her/their commitment to meet his/her/their obligation and clear his/her/their prevailing debit, if any,*

d) UCC Verification*:*

Single email ID mapped to multiple clients:

- *That is updates the Email Id of client as given by the client in its KYC. The client provides a declaration whether e-email ID belongs to 'self' or permitted category of persons (relationship). It further verifies email id given by the client with its existing client records since the introduction of these rules.*
- *That out of 802 clients, in 666 cases, same email id is used based on the permitted relationship and there is no error. 8 clients had closed their account and 23 clients were inactive /dormant accounts. Out of the remaining, 4 clients have modified their email id and remaining 101 clients were in-process of re-verification for providing new email id and have been marked as inactive.*
- *That clause 2B(iv) of SEBI Circular No. CIR.MIRSD/15/2011 dated August 02, 2011 permits to update the same email ids and mobile numbers amongst the permitted members of a family i.e. relatives such as self, spouse, dependent children and dependent parents. In case of non-individual client, email id and mobile numbers of the person so authorized by the entity is to be updated. This aspect was not considered in SCN.*

Single mobile number mapped to multiple clients:

- *That it updates mobile number of clients as given by client in its KYC. Client provides declaration whether mobile number belongs to 'self' or permitted category of persons (relationship). This updated in records as per declaration given by client.*
- *That out of 677 clients, in 557 cases same mobile number is used based on the permitted relationship and there is not error. 5 clients had closed their account and 20 clients were inactive/dormant accounts. From remaining clients, 1 has modified its mobile number and 94 cases were in-process or re-verification and are marked as inactive in UCC*

e) Delay in uploading KYC details of clients to the KRA System*:*

- *That the observation is incorrect for the majority of cases as there was some delay in the case of only 6 clients.*

- *During the inspection period, it had activated over 3,200 new UCCs and complied with their KRA norms. Further, modifications request for existing clients are constantly received and carried out, which is updated in KRA as well.*
- *That there was marginal delay in only 6 cases which establishes that it is complaint with the norms. Although the actual number of instances (i.e. 6) with delay is marginal, it is ensuring better operational controls so that there is no delay in updating KRA.*

***f) Incorrect / Non-submission of data to exchange**:*

Discrepancies in the reporting of client's' ledger (funds) balances:

- *That it had done reconciliation of the ledger balance for the given 8 clients and found that in 6 instances, the NSE-Currency segment ledger balance for these clients was not considered in the total ledger balance and therefore there were discrepancies observed.*
- *That in the remaining 2 instances, the ledger balance varied marginally due to accounting entries posed in the ledger post upload to the exchange, so some difference.*

***g) Non-reporting of clients**:*

- *That the error is technical in nature, because in all the 285 non reported clients, their ledger balance on the given date was 'zero'.*
- *That a review of the 285 clients listed in the SCN reflects that list consists of 254 unique client's codes while 31 client codes are repeated. Of these, 4 client codes were reported successfully to exchange in its monthly ES file and 12 clients have been listed where last trade date is post reporting date.*
- *That under revised prevailing norms, reporting of ledger and securities balances to the exchanges under monthly ES reporting has been discontinued since it was duplication of data reported under weekly reporting.*

***h) Discrepancies in the reporting of Clients' Securities balances**:*

- *That there is no mismatch between client-wise ISIN-wise actual holdings and securities held in the demat account. This error in the monthly reporting file is accordingly technical in nature.*
- *That though the error is marginal, the same has been noted and it will ensure that the data being uploaded to the Exchange is further reconciled and is accurate.*
- *That under revised prevailing norms, reporting of securities balances to the exchanges under monthly reporting has been discontinued since it was duplication of data reported under weekly reporting.*

i) ***Wrong reporting of the holding quantity of securities:***

- *That the error is technical in nature. The observation is distinguished from the fact that there is admittedly no 'missing' client securities in the Member's demat accounts.*
- *That the observation accordingly pertains to error in file/data uploaded to the Exchange, which was due to technical reasons.*
- *That they as Member had 11 demat accounts as per prevailing regulatory norms. Daily client-wise ISIN-wise holdings for each demat account was uploaded to the Exchange vide file generated from the Back-office system. A typical weekly file uploaded to the Exchange had over 10,000 data rows. Inadvertently, there was some error in the file generated for the given date from its back-office system though there is no actual mis-match.*
- *That they had made a note of the observation and that they have built better controls in their back-office system and added a manual reconciliation process as well to ensure that such data is free of any discrepancy at the time of its submission.*

j) ***Networth Verification****:*

- *That the reason for the difference in the NW computations submitted previously to BSE and NSE was the inclusion of the written down value of properties /fixed assets of the Company in BSE NW computation, while the same was deducted in the NW computation submitted to NSE.*
- *That at all points in time its net worth has always been above the minimum prescribed norms by the SEBI/Exchanges.*
- *That when BSE Membership Department communicated to it to submit the provisional NW computation certificates for the periods ended 31st March 2020, 30th September 2020 and 30th September 2019 by reducing the value of Fixed Assets from the computation as on given dates, it had complied immediately,*
- *That a review of these certificates submitted to BSE reflects that the net worth computation is identical to the respective certificates submitted to NSE and there is no difference.*

Depository Participant Activities*:*

Client registration process*:*

a) Account opening and KYC:

- *That the allegation that it has not verified the PAN of 39 clients on the KRA site is factually not correct.*

- *That the KRA status of 'Under Process'/'Incomplete' etc. is due to technical issues at the KRA site such as file size, image quality etc. and many times need to be resolved offline with the KRA. All these instances are now verified on the KRA portal.*

b) ***Account modification****:*

- *That PAN of 15 cases is now verified by KRA and it has complied with the requirement.*

c) ***DIS Issuance / Executions****:*

- *That the income details of all the 14 BOs have been updated in CDAS as per its back-office records and it has complied with the same.*

d) ***Procedure in operating instructions not followed****:*

- *That in the LO, SEBI has mentioned details of 14 instances and that in its reply to the LO, it had submitted evidence for 1 case as a sample and same is deleted from the list in the captioned SCN. That it has followed the similar process in the other 13 cases as mentioned in the Para 36 of the captioned SCN.*

e) ***NISM Certificate:***

- *That the observation is incorrect as Mr. Ranjeet R. More was the CO of the company till 31st December 2020 and was having a valid NISM-IIIA certificate as per norms and same was provided to the Inspection Team. Thereafter Mr. Ritesh Tiwari was appointed as the new CO, with effect from 1st January 2021 (post-audit period)*
- *That Regulation 3(2) of SEBI (Certification of Associate Persons in the Securities Markets) Regulation, 2007 provides one year's time for the new appointee to obtain the said certificate. Since Mr. Ritesh Tiwari was appointed as CO w.e.f 1st January 2021 and as per the said regulation, he is required to obtain the certificate within one year from appointment i.e. by 31st December 2021. Nevertheless, Mr. Ritesh Tiwari has renewed his NISM-IIIA certificate on 22nd April, 2021. He has additionally also renewed his NISM-VI certification.*

10. In the interest of natural justice, an opportunity of personal hearing was granted to the Noticee on December 19, 2022 vide hearing notice dated December 08, 2022. The Noticee vide email dated December 12, 2022 requested for adjournment of the hearing after January 03, 2023. Vide email dated December 13, 2022, the AO acceded to the request and a personal hearing was fixed for January 04, 2023. Vide

email dated December 26, 2022, SEBI's Settlement Division informed that they were in receipt of a Settlement Application from the Noticee. Thereafter on February 20, 2023 Settlement Division informed that the Settlement application was withdrawn by the Noticee. In view of the same, the Noticee was given an opportunity of personal hearing on February 28, 2023. Noticee along with its Authorised Representative (AR) appeared for the personal hearing. During the hearing, the Noticee reiterated the submissions made vide letter dated December 16, 2022. The AO advised the AR to demonstrate that excess funds of clients (Clients with credit balance) is duly invested same day in bank FDs or in MF and provide copy of the KYC of clients who have opted for 30/90 days' settlement cycle and that the same was to be submitted latest by March 03, 2023.

11. The Noticee made additional submission vide letter dated March 06, 2023 wherein an excel sheet working for the following were provided:
    a) *Exhibit-1 showing that funds from the client's bank account were transferred to pro bank account and invested instantly into Overnight Mutual Fund.*
    b) *Exhibit-2 Copy of the pro bank account statement (i.e. account #6236) showing receipt of credit from the client's bank account (i.e. account #6246) (including redemption of the Overnight Mutual Fund) and investment of said fund immediately into Overnight Mutual Fund. Further, the said investment in the Overnight Mutual fund is eligible to be considered as funds available with it and thereby there was no negative G value as demonstrated in annexure -5 of its reply dated 14th December, 2022 to SCN.*
    c) *Exhibit-3 Statement of Overnight Mutual Fund investment showing the said investment*

Date	***Particulars***	***Amount***	***Remark***
18-03-2020	***As per SCN:***		
A	*Balance in client bank account*	*18,15,00,351.00*	
B	*Balance with CC and CM*	*8,82,09,900.00*	
C	*Creditors outstanding*	*33,35,55,861.00*	
	G Value (A+B+C) as per SCN	- ***6,38,45,610.00***	
	As per SSJ's records :		

A	Opening Balance in the client's bank account	*7,63,69,410.16*	
	Net Funds received in client bank accounts from clients against debit balance or other obligations during the day	*18,29,00,439.95*	
	Total funds available in the client's bank account during the day on 18.03.2020	25,92,69,850.11	*This shows that on 18.03.2020, the funds in the client's bank account were more than G-Value as per SCN and hence no violation.*
B	*Balance with CC and CM*	*8,82,09,900.00*	
C	*Creditors outstanding*	*33,35,55,861.00*	
	G Value (A+B+C) as per SSJ	*1,39,23,889.11*	*There was surplus G-value.*
	Fund transferred from client bank account to pro account during 18.03.2020 for investment in mutual fund	*5,00,00,000.00*	
		2,21,00,000.00	
		56,69,499.11	
	Total funds transferred to pro account for investment in Overnight Fund	***7,77,69,499.11***	

	Invested into an Overnight Fund	-7,25,00,000.00	Credit balance client's fund invested into mutual fund and same is eligible to be considered under SEBI circular dated 26.09.2016.
24-09-2020	**As per SCN** :		
A	Balance in client bank account	79,59,958.00	
B	*Balance with CC and CM*	*7,73,11,370.00*	
C	*Creditors outstanding*	*18,10,47,783.00*	
	G Value (A+B+C)	***-9,57,76,455.00***	
	As per SSJ's record :		
A	*Opening Balance in the client account*	*72,64,416.57*	
	Net Funds received in client bank accounts from clients against debit balance or other obligation during the day.	*4,29,95,541.43*	
	Redemption of the overnight fund in pro account	*7,25,10,483.35*	
	Total funds available in the client's bank account during the day on 24.09.2020	***12,27,70,4441.35***	***This shows that on 24.09.2020, the funds in the client's bank***

			account were more than G-Value as per SCN and hence no violation.
B	*Balance with CC and CM*	*7,73,11,370.00*	
C	*Creditors outstanding*	*18,10,47,783.00*	
	G Value (A+B+C)	***1,90,34,028.35***	***There was surplus G-value.***
	Less : fund transferred to pro account	*2,00,00,000.00*	
	fund transferred to pro account	*2,23,00,000.00*	
	Total funds transferred to a pro account for investment	***4,23,00,000.00***	
	Redemption of the overnight fund in the pro account	*7,25,10,483.35*	
	Invested into the overnight fund	*11,50,00,000.00*	

CONSIDERTION OF ISSUES, EVIDENCE AND FINDINGS:

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

    I. **Whether the Noticee has violated the provisions mentioned above at para 3. ?**

    II. **Does the violation, if any, attract monetary penalty under Section 23D of SCRA, Section 15HB of SEBI Act, 1992** and **Section 19G of Depositories Act, 1996?**

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

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

<u>Section 23D of SC (R) Act, 1956</u>

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

<u>Clause 1 of the Annexure to SEBI Circular no. 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.

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

<u>Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges</u>

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, uncleaned cheques deposited by clients and uncleaned 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, uncleaned cheques deposited by clients, uncleaned cheques issued to clients and the margin obligations)

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

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

P - Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

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

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

***Principle**:*

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

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

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

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

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

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

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

<u>Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/Se/Cir-19/2009 dated December 03, 2009</u>

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 playout. 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 reference 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>Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</u>.

*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.

<u>Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</u>

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

<u>Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.</u>

2.SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

(a)…

(b)….

(c)…

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

<u>Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011</u>

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

A. (….)

B. Uploading of mobile number and E-mail address by stock brokers

i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updating module.

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

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

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

Clause A (1), A (2) & A (5) of the Code of Conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992

General.

(1) ***Integrity****:*
A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

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

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

Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992

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

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

Clause 6.1. 1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
6.1.1. Monitoring criteria for Stock Brokers

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

SEBI Circular no. MIRSD/Cir-26/2011 dated December 23, 2011

https://www.sebi.gov.in/legal/circulars/dec-2011/guidelines-in-pursuance-of-the-sebi-kyc-registration-agency-kra-regulations-2011-and-for-in-person-verification-ipv-_21803.html

SEBI Circular no. MIRSD/Cir-23/2011 dated December 2, 2011

https://www.sebi.gov.in/legal/circulars/dec-2011/the-securities-and-exchange-board-of-india-kyc-registration-agency-regulations-2011_21544.html

SEBI Circular no. MIRSD/Cir-5/2012 dated April 13, 2012

https://www.sebi.gov.in/legal/circulars/apr-2012/uploading-of-the-existing-clients-kyc-details-in-the-kyc-registration-agency-kra-system-by-the-intermediaries_22562.html

Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007
https://www.sebi.gov.in/legal/regulations/oct-2007/sebi-certification-of-associated-persons-in-the-securities-markets-regulations-2007-last-amended-on-february-07-2014-_34629.html

Issue I: Whether the Noticee has violated the provisions as enumerated under para 3

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

i) **Mis-use of Clients' funds**:

14. It has been alleged in the SCN that during the inspection, out of the sample size of 40 days, the Noticee had a negative balance of "G" in 22 instances in the range of Rs. 72.98 lacs to Rs. 10.08 Crores. The negative value of "G" shows that the total available fund is less than the ledger credit balance of clients. The negative 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.

15. I note that Noticee in its reply has stated that the G Value has reduced substantially because the value of FD with HDFC bank and the investment made in HDFC Overnight Fund were not considered by SEBI. Noticee has submitted that the value of the FD was considered by them after reducing the amount of any O/D obtained against the FDs from time to time. The FD was made from own bank account but the said funds were transferred from the clients' bank account to their own account due to some operational reasons. The Noticee has submitted that these amounts (FDs and overnight fund balances) were routed at that time as their bank/fund would accept funds for this purpose from the member's designed bank account alone. The Noticee has also submitted that they did not carry out any proprietary transactions and did not have any proprietary obligation during the entire audit period and that all their capital and earning s over the years are deployed for working capital purposes in their broking operations for their clients. That the total funds available with them as a TM which includes the net value of the FD and the value of the HDFC Overnight Fund were always much higher than their obligations to the creditors and at the most it can be construed only as a technical violation.

16. However, I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C). Stock Exchanges shall calculate the difference i.e. G as follows:

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

17. If value of "G" is negative, then the total available fund is less than the ledger credit balance of clients which indicates 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.

18. From the table below, I note that in 22 instances out of the 40 sample days, the "G' value was negative wherein A+B was less than C indicating that the Noticee had misused the clients' funds.

		A	B	C	G=(A+B)-C
S.N	**Date**	As per SEBI LO - ***excluding FD & HDFC Overnight Fund balance***	Correct value of Collaterals with CC and CM - As per Annexure 2	As per SEBI LO	Revised G-value after considering correct value of Total Collaterals but without considering value of FDs and Overnight Fund Balances
1	03-09-2019	89,55,407	7,96,61,370	14,35,85,600	**- (5,49,68,822)**
2	04-09-2019	1,36,55,583	7,71,61,370	14,03,52,125	**- (4,95,35,172)**
3	05-09-2019	75,27,369	7,86,61,370	13,80,92,095	**- (5,19,03,356)**
4	09-09-2019	82,18,301	8,96,61,370	14,74,74,117	**- (4,95,94,446)**
5	11-09-2019	70,01,645	7,96,61,370	13,69,63,227	**- (5,03,00,212)**
6	12-09-2019	1,67,07,778	7,96,61,370	14,73,44,910	**- (5,09,75,762)**

7	16-09-2019	1,00,43,170	7,71,61,370	15,88,05,292	**- (7,16,00,752)**
8	17-09-2019	1,59,02,086	7,71,61,370	15,73,40,783	**- (6,42,77,327)**
9	18-09-2019	1,27,45,087	7,71,61,370	14,53,93,217	**- (5,54,86,760)**
10	19-09-2019	84,01,186	7,71,61,370	15,57,38,101	**- (7,01,75,545)**
11	23-09-2019	72,64,417	7,73,11,370	15,46,78,051	**- (7,01,02,264)**
12	24-09-2019	79,59,958	7,73,11,370	18,10,47,783	**- (9,57,76,455)**
13	25-09-2019	70,73,977	7,71,61,370	18,50,55,639	**-(10,08,20,292)**
14	26-09-2019	89,19,631	7,71,61,370	16,38,03,406	**- (7,77,22,405)**
15	30-09-2019	89,85,753	7,71,46,300	16,26,72,099	**- (7,65,40,046)**
16	05-03-2020	1,22,38,287	10,65,00,000	13,48,59,093	**- (1,61,20,806)**
17	09-03-2020	1,21,46,332	10,26,22,625	13,16,34,053	**- (1,68,65,096)**
18	11-03-2020	1,84,51,376	9,01,22,625	12,34,62,392	**- (1,48,88,391)**
19	12-03-2020	2,41,66,595	10,76,22,625	13,90,87,380	**- (72,98,160)**
20	16-03-2020	3,96,56,571	11,05,19,625	16,33,37,900	**- (1,31,61,704)**
21	18-03-2020	18,15,00,351	8,82,09,900	33,35,55,861	**- (6,38,45,610)**
22	19-03-2020	3,93,02,540	8,47,29,651	19,06,29,343	**- (6,65,97,152)**
				Total	**- (1,18,85,56,536)**

***A** - *T**otal fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across the stock exchanges.*

B* - Collateral deposited with clearing corporation / clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank Guarantee (BG) etc.) across all 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.*
C** - Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)*

D*-** The value of g may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.*

19. I note that the Noticee in its reply to the allegation has submitted that the value of "G" was negative as the inspection team had not considered its HDFC Fixed Deposits and investment in HDFC Overnight Fund and I have perused the documents provided by the Noticee in this regard.

20. With regard to investment in HDFC FDs, I note that the Noticee has submitted that it has utilized the client's funds for the investment by transferring the funds from the clients' account to its own account. I also note that the Noticee vide its email dated March 30, 2021 has submitted that the FD with HDFC Bank was marked as "Lien" for the purpose of availing bank guarantee and overdraft facility. Therefore, I note the said FDs were not freely available. Noticee has further submitted that it had considered the value of the FD after reducing the amount of any O/D against the said FDs from time to time.

21. With regard to the investment of the HDFC Overnight Fund, I note that the Noticee has submitted that it had transferred funds from the clients bank account to its own bank account to make the said investment and that the HDFC overnight fund daily balance being cash equivalent was eligible to be added to the bank balances considered in column A of the G table. I note that SEBI has clearly mandated that Members shall segregate its own funds from that of the clients to provide transparency of its utilization of the clients funds. Events as to when members can draw money from its clients' accounts is clearly specified in the SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 which states that 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 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 client 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 iii) money which may by mistake or accident have been paid into such account. In view of the same, the Noticee is therefore allowed to transfer funds from the clients bank account only for the reasons enumerated in the circular.

22. However, here I note that the Noticee has not transferred the funds for any of the events mentioned in the circular and thus failed to abide by the requirements of the circular. Here again the funds invested in HDFC Overnight Fund were, as admitted by the Noticee, taken from the clients' account to its own account and from its own account invested in the fund which clearly proves that the Noticee has failed to segregate his own funds from that of its clients. The funds invested in the Mutual funds by the Noticee was thus not available in the clients' funds on the 22 days for which the "G' value was calculated, whereby the total available funds i.e. cash and cash equivalents with the Noticee and with the clearing corporation/clearing member (A + B) was not equal to or greater than the funds in the Clients ledger balance (C). This therefore implies that the Noticee would have misused clients' funds for settling obligations of debit balance clients.

23. I also note that the Noticee does not have any proprietary trading of its own hence likelihood of misusing client's funds for proprietary trading is ruled out. I also note that Noticee had claimed during personal hearing that all money transferred from clients account to Bank overdraft account and Mutual Fund overnight fund was the brokerage earned by it over the years and money deployed by it, however Noticee has not given any details of amount withdrawn as brokerage. Further there are no investor's complaints on the records before me to suggest any non-payment of dues by the broker to its clients or any instance suggesting settlement default by the Noticee on any Stock Exchange. However, I would like to refer to the judgement of Hon'ble SAT in the matter of Premchand Shah and Others vs. SEBI (Appeal No.192 of 2010 order dated February 21, 2011), where Hon'ble SAT observed that "When law prescribes a manner in which a thing is to be done, it must be done only in that manner".

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24. Also it is pertinent to mention the following judgement of the Hon'ble Securities Appellate Tribunal (Hon'ble 'SAT'): "*In Samco Securities Ltd. vs SEBI (Appeal No. 493 of 2021 decided on March 30, 2022) the Hon'ble SAT held as under: -We find that miss-utilization of the clients' credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients' accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016*."

25. In view of the above I note that the Noticee have violated Section 23D of SCRA, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/2016/95 dated September 26, 2016.

ii) <u>Non-settlement of funds & securities</u>:

26. I note that it is alleged that the Noticee has not settled accounts of 1076 clients amounting to Rs.39,44,950/-. The same credit balance of the clients remained outstanding for atleast two quarters. Further, it is alleged that the gap between settlement dates by the Noticee was more than 90 days. I note that the Noticee has submitted that out of 1076 inactive clients, 1,018 clients were 'active' (if the client has traded in the previous 90 days from the settlement date, the client is considered to be active) and therefore as per norms, the Noticee has retained upto Rs. 10,000/- and made payment for the balance amount. The Noticee has submitted an excel sheet showing the client-wise details (Settlement date in the given quarter, Trade date prior to settlement) of the 1,076 instances. I note that the Noticee has also with its reply provided copy of quarterly Retention Statements along with Ledger of Funds and Securities for certain clients as sample to demonstrate that the said 1,018 clients were active client and settled. I note that the Noticee has submitted that for the remaining 58 clients who were inactive, it had issued online NEFT funds payout instruction for settlement but the payout could not be completed as the

clients' bank returned such payout, which were however subsequently settled when the client updated its bank details. I also note that the Noticee has provided as evidence quarterly retention statements for certain clients out of the 58 inactive clients. The Noticee has submitted that with regard to the 50 instances wherein the gap between two settlement days is more than 90 days brought out in the SCN, there was no delay between settlements and that it had carried out quarterly settlement of client accounts on rolling date basis for each client and its system initiates settlement process for a client within 90 days from its previous settlement date.

iii) <u>Client Funding</u>:

27. It is alleged that the Noticee had funded 9 clients in 131 instances, beyond T + 2 +5 days inspite of non-recovery of debit balances (after considering free collaterals). The day wise amount of funding was observed to be in the range of Rs. 0.01 Crore to Rs. 4.51 Crore and the total amount of funding is Rs. 69.37 Crores. I note that the Noticee has submitted that in all the 131 instances of 9 clients, the clients had provided margin in the form of securities so the clients had surplus margin in each instance before taking any additional exposure. I also note that the Noticee has stated that out of over 15,000 active clients during the IP, only 9 unique clients had been identified and this count is extremely marginal and by this statement, I note that the Noticee has admitted that they had granted further exposure to the 9 debit balance clients beyond T+2+5. Therefore, the fact that the said clients had an exposure is not denied by the Noticee. I am of the opinion that the extent of non-compliance of any SEBI Circular cannot be termed as minimal, as SEBI through its circular endeavours to maintain the sanctity and integrity of the securities market at all times.

28. I take into account the contention of the noticee that same client is added twice separately for BSE and NSE which resulted into double counting to 131 instances.

29. The Noticee has also contended that the clients to whom exposures were granted, had sufficient margin in each instance before taking any additional exposure in the

form of securities collateral. However, SEBI Circular clearly states that “Stock *brokers shall not grant further exposure to the clients when debit balances arise out of client’s failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in”*. Therefore, I understand that client’s debt balances if any, has to be settled before letting the client any further exposure. The contention of the Noticee that clients to whom exposure was granted had sufficient collateral is not tenable as the circular nowhere makes any provision to fund the clients by taking such collaterals. Further, I note that the day wise amount of funding was in the range of Rs. 0.01 Crore to Rs. 4.51 Crore and the total amount of funding was Rs. 69.37 Crores. As the clients had a debit balance, Noticee should have ensured the debit balance was first cleared before giving the client further exposure. Noticee has contended that out of its 15000+ clients, inspection report has only brought 9 such instances which is negligible compared to its size.

30. In view of the same, I find that Noticee by granting further exposures to clients beyond the stipulated date, the Noticee has not abided by the statutory requirements and has violated the provisions of Clause 2.6 of Annexure Enhanced Supervision Circular read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017. The allegation against the Noticee therefore stands established.

iv) UCC Verification:

31. It is alleged that the Noticee has mapped a single email id to multiple clients i.e. 309 email ids were mapped to 802 clients. Single mobile number was mapped to multiple clients i.e. 273 mobile numbers were mapped with multiple clients i.e. 677 clients. I note that the Noticee has submitted that client provides declaration whether the said mobile number belongs to ‘self’ or permitted category of persons and the same is updated as per the declaration given by the client. Further with regard to mapping a single mobile number to multiple clients, the Noticee has submitted that out of 677 clients, in 557 cases the same mobile number is used based on the permitted relationship, 5 clients had closed their account and 20 clients were

inactive/dormant accounts. 1 had modified its mobile number and 94 cases were in-process of re-verification and are marked as inactive in UCC. However, from the material available before me, I note that the Noticee has made post inspection modifications in the database. In view of the same, the Noticee had failed to comply with the circular at the time of inspection and did not exercise due skill and care with regard to maintenance of clients records. The Code of Conduct specifically states that a stock broker shall maintain highs standards of integrity, exercise due skill and care and comply with statutory requirements, which was not followed by the Noticee and therefore the allegation against the Noticee that it has violated Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 read with Clause A (1), A (2) & A (5) of the Code of Conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992, stands established.

v) <u>Delay in uploading KYC details of clients to the KRA System:</u>

32. It is alleged that in 36 cases, the Noticee had delayed in uploading KYC details on the system of KRA by not uploading the same within the stipulated date i.e. within 10 working days. I note that the Noticee has submitted that out of the 36 cases, in 30 cases, the clients were permitted to trade through them only after their KYC was uploaded on KRA System (17 remained inactive since registration) and that the Noticee ensured that client trade only after their KRA record was updated. Further, in the remaining 6 cases, the Noticee has admitted that there was a delay. I note that the Noticee has submitted that in 30 instances, the clients were permitted to trade only after their KYC was uploaded on the KRA System. However, SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 states that an intermediary shall upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days. However, the Noticee failed to do so. I note that the Noticee as per norms is required to upload the KYC to the KRA System within the stipulated time irrespective of when the client starts trading. Further, the Noticee in the remaining 6 cases, has admitted that there was a delay on their part in uploading the KYC.

33. In view of the above, I am not inclined to accept the submission of the Noticee in the case of the 30 instances and find that the Noticee has therefore violated SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/Cir-26/2011 dated December 23, 2011 read with SEBI Circular no. MIRSD/Cir-23/2011 dated December 02, 2011 and SEBI Circular MIRSD/Cir-5/2012 dated April 13, 2012.

vi) <u>Incorrect / non-submission of data to exchange:</u>

i) Discrepancies in the reporting of client's ledger (funds) balances:

34. It is alleged that there were discrepancies in 8 instances in the monthly submission by the Noticee of the Clients' funds balances for Enhanced Supervision uploaded on the exchange, on verification with the supporting back office trial balance and DP holdings statements, to the tune of Rs. 22,47,599/-. I note that the Noticee has contended that in 6 instances out of the 8, the NSE Currency segment ledger balance for the clients were not considered in the total ledger balance which was due to technical issue. Further, in 2 instance, the ledger balance varied marginally due to accounting entries post in the ledger post upload to the Exchange and therefore the difference. The error is due to the reasons that a typical data file for a single date consisted of over 22,000 data rows along with multiple columnar data for each row and that it has noted the observation and have ensured that the data being uploaded to Exchange is further reconciled and is accurate.

35. The Noticee has admitted to the error in reporting to the exchange. However, members at all times are required to make correct disclosures/reporting's to the exchange in order to maintain transparency in their operations and therefore it is for the Noticee to ensure that correct data reaches the exchange. Therefore, mere admission to the errors committed by it while uploading the data does not absolve the Noticee from violating regulatory requirements and therefore the contention of the Noticee cannot be accepted.

ii) <u>Non-reporting of clients</u>:

36. It is alleged that the Noticee had not reported 285 clients who traded in the last 12 months, in the Monthly enhanced supervision. I note that the Noticee has submitted that the error was technical in nature because, in all the non-reported clients, their ledger balance on the given date was "Zero'. Further, the list of 285 clients consists of 254 unique client codes while 31 client's codes are repeated and that out of those, 4 client codes were reported successfully to Exchange in their monthly ES file and 12 clients were listed where last trade date is post reporting date. I note that the Noticee has admitted that there was a technical error while reporting data of the number of clients to the exchange. However, by simply making this admission, the Noticee cannot absolve itself from having committed the violation. It is for the Member to ensure that proper and correct data is provided to the exchange so that the Member is monitored properly by the exchange.

iii) <u>Discrepancies in the reporting of Client's Securities Balances</u>:

37. It is alleged that in 13 ISINs there were discrepancies in the Clients securities balances reported by the Noticee to the exchange as per the Monthly Enhanced Supervision and the DP holdings statements. Further in 8 ISINs, there were discrepancies in the Clients' securities balances reported by the Noticee to the exchange as per Monthly Enhanced Supervision and the weekly holdings reported to the exchange. I note that the Noticee has submitted that the mismatch between client-wise ISIN-wise actual holding and securities held in the demat account was technical in nature. I note that technical error cannot be accepted as a reason for default in providing the correct information to the exchange. Further, ways to device that accurate and correct data is reached to the exchange should be ensured by members, so that a clear picture of the securities market is visible to all investors. The Noticee has thus failed in doing so by not adhering to regulatory requirement of proper reporting to exchange.

iv) <u>Wrong reporting of the holding quantity of securities</u>:

38. It has been alleged that there was wrong reporting by the Noticee with regard to the holding quantity of securities to the tune of Rs. 2,60,05,349.40 in 14 instances. The Noticee has submitted that all client-wise ISIN-wise securities were reconciled with Member's demat holding statements and that the observation pertains to an error

in file/data uploaded to the exchange which was due to technical reasons and that it has subsequently built better controls and added a manual reconciliation process to ensure that such data is free of any discrepancy at the time of its submission. From the reply of the Noticee, I note that the Noticee has admitted there was wrong reporting but the same was due to technical reasons. However, I am of the view that the Noticee’s responsibility does not lie in mere uploading of the data to the exchange but is to ensure that correct and accurate data free of any discrepancies, is loaded and ultimately received by the exchange. It is for the Noticee to always ensure better controls are in place, much in advance. In view of the same, I am not inclined to accept the reply of the Noticee.

v) <u>Networth Verification</u>:

39. It is alleged that the Noticee had not submitted networth certificate as per the prescribed format to BSE for the half year submission during the inspection period and that two different networth certificates to BSE and NSE was submitted by the Noticee for the same period i.e. 31st March 2020 and 30th September, 2020 which were signed by the same Chartered Accountant on the same day. I note that the Noticee has submitted that the difference in the networth computations submitted to BSE and NSE as per the different format of Networth calculation and thus it had included written down value of properties /fixed assets of the company in networth certificate submitted to BSE and had excluded the same in the certificate submitted to NSE. I have perused the certificate and have noted the difference in the networth computations. I have also noted that only after questioning the Noticee on the same, the Noticee has informed that it has submitted the revised networth certificate to NSE after reducing the value of Fixed Assets from the computation as on given dates and hence now both certificate shows same networth. I am of the opinion that if the format of the Net worth certificate different for both the Exchange, Noticee was not required to rectify it. I am of the view that the Noticee ought to be careful and maintain high standards of integrity while carrying out compliances with the rules and regulations of regulatory authorities.

40. Therefore, I conclude that the allegations mentioned above against the Noticee for violation of Clause 6.1.1. (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stands established.

II: **Depository Participant Activities**:

Client registration process:

<u>Account opening and KYC</u>:

41. It has been alleged that in 39 account opening cases, the Noticee had not verified the PANs on the KRA site. I note that the Noticee has submitted that the KRA status of 'Under Process' / 'Incomplete' etc. is due to technical issues at the KRA site such as file size, image quality etc. and many times need to be resolved offline with the KRA. However, all these instances are now verified on the KRA portal. I note that it is claimed by the Noticee that it has implemented the circular post facto by verifying PANs of the 39 clients on the KRA site. The Noticee should have taken measures to comply with the PAN verification requirement immediately after the opening of the demat account. The Noticee had failed to comply with SEBI Circular. The reply of the Noticee that it has now verified the PANs on the KRA portal cannot absolve the carelessness on its part and hence the contention of the Noticee cannot be accepted.

<u>Account modification</u>:

42. It has been alleged that in 15 cases of account modification, client PANs were not verified on the KRA site. I note that the Noticee has submitted that PAN in the 15 cases are now verified by KRA and that they have complied with the requirement. I note that though the Noticee has submitted that the PAN in the 15 cases are verified after the non-compliance was pointed out during the inspection, the regulatory requirement was not complied with at the time of inspection. It is for the Noticee to be more alert and responsible while carrying out its duties and responsibilities. The Noticee failed to do so and so the allegation against the Noticee stands established.

<u>DIS Issuance / Executions</u>:

43. It has been alleged that income details of 14 Beneficiary Owners (BOs) were not updated in the Central Depository Accounting System (CDAS) wherein transactions were executed in the said demat accounts. I note that the Noticee has submitted that all the 14 BOs have been updated in CDAS as per their back-office records. However, I note that the Noticee had failed to update the income details of the 14 BOs CDAS system during the IP. Moreover, in its reply to the SCN, the Noticee has provided an excel sheet showing income details updated for each of the 14 BOs. Hence I conclude Noticee has undertaken the remedial steps to update the details as required albeit post Inspection observations hence I conclude that the allegation that Noticee has violated CDSL Communique No. 4130 dated 20th December 2013 and 4690 dated 8th September 2014 does not stand established.

Procedure in operating instructions not followed:

44. It has been alleged that in 13 instances the Noticee had not followed the procedure in case of transactions in dormant accounts, whereby the authorized official of the Noticee verifying such transactions with the account holders needs to record the details of the process, date, time etc. of the verification on the instruction slip under his/her signature. Further, such DIS needs to be checked and countersigned by another employee of the Noticee. I note that the Noticee in its reply has provided a log report of 13 cases as an evidence to following the said procedure of two step verification. However, in case of dormant DIS No. 496379 the name of the second checker does not appear.

45. Noticee has provided evidence for 1 case wherein the two step verification done electronically during procedure was followed by it and which it has followed similarly for the remaining cases. I have perused the details of the electronic audit Log Report showing log of 2-step authorization obtained for all the said 13 cases. Hence allegation does not stand established.

NISM Certificate:

46. It has been alleged that the Noticee's Compliance Officer's NISM VI Certificate had already expired on August 07, 2020 and the NISM-III-A was expired on March 07, 2020 and the certificates were not renewed till the date of inspection. I note that the Noticee has submitted that Mr. Ranjeet R. More was the CO of its company till 31st December 2020 and was having a valid NISM-IIIA certificate as per norms and the same had been provided to the Inspection Team. Further the Noticee has submitted that one Mr. Ritesh Tiwari was appointed as the new CO, with effect from January 01, 2021 (post-audit period). I have perused the certificates provided by the Noticee along with its reply to the SCN and note that though the Noticee has provided the NISM III A renewed certificate of its current CO, however It did not provide the renewed certificate of the CO who was in service during inspection.

47. In view of the same, I conclude that the Noticee has failed to ensure that its CO had renewed his NISM VI certificate as was made mandatory by SEBI. Therefore, the allegation that the Noticee has violated SEBI (Certification of Associated Persons in the Securities Markets) Regulation, 2007 read with CDSL Communique no. 2427 dated April 30, 2011 and CDSL Communique no. 2558 dated July 15, 2011, stands established.

48. I note violations observed in the Depositories operations were of operational nature and procedural and further I observe Noticee has taken corrective already. Hence I am not inclined to levy any penalty on the Noticee for the procedural lapses observed by the inspection team and for which corrective measures already undertaken by the Noticee.

Issue No. II**: Does the violation, if any, attract monetary penalty under Section 23D of SCRA, 1956, Section 15HB of SEBI Act, 1992 & and Section 19G of Depositories Act, 1996**?

49. It has been established in the foregoing paragraphs that Noticee has violated the provisions mentioned above:

In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriam Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed:

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

50. Therefore, the aforesaid violations committed by Noticee shall attract monetary penalty under Section 23D of SCRA, 1956 and Section 15HB of the SEBI Act, 1992 which read as follows:

Section 23 D of SCRA, 1956 *- Penalty for failure to segregate securities or moneys of client or clients:*

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

Section 15HB of SEBI Act, 1992 *- Penalty for contravention where no separate penalty has been provided:*

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

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

51. While determining the quantum of penalty under Section 23D of SCRA, Section 15HB of the SEBI Act, 1992 & Section 19G of the Depositories Act, 1996 have to be given due regard:

Factors to be taken into account by adjudicating officer under SCRA, 1956

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

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

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

(c) the repetitive nature of the default.

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

Factors to be taken into account by Adjudicating Officer under SEBI Act, 1992

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

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

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

(c) the repetitive nature of the default.

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

52. In view of the charges established, the facts and circumstances of the case, the quantum of penalty would depend on the factors mentioned above. In the instant case, I find that, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, I note that the material available before me, does not indicate the amount of specific loss caused to an investor or investor group.

53. However, I note that in recent past, there have been an order passed by SEBI against the Noticee for violations as mentioned below:

Date of Order	Violation	Penalty
	Orders passed by SEBI AOs	
December 15, 2017	For violations of Clause A (2) of code of conduct for Stock Brokers specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers – Sub-brokers) Regulations, 1992.	One lakh only

54. I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SCRA & SEBI Act & Depositories Act which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

55. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of Securities and Exchange Board of India Act, 1992 read with Rule 5 OF SEBI (Procedure for holding Inquiry and imposing penalties) Rules, 1995; under Section 23-I OF Securities Contracts (Regulation) Act, 1956 Read with Rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties) Rules, 2005 , I hereby impose the of monetary penalty of **Rs.5,00,000/- (Rupees Five Lakhs only).** In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

56. 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

57. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

58. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e. SSJ Finance and Securities Private Ltd. and also to the Securities and Exchange Board of India.

Date: March 23, 2023	**Sahil Malik**
Place: Mumbai	**Adjudicating Officer**