BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/14520]

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

In respect of

M/s. Ambalal Multi Commodities Private Limited

(**SEBI Registration No.: INZ000038332**),

In the matter of M/s. Ambalal Multi Commodities Private Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) and Multi Commodity Exchange of India Ltd. (herein after referred to as "**MCX**"), conducted a comprehensive joint inspection of M/s Ambalal Multi Commodities Private Limited (hereinafter referred to as ***"Noticee/Broker"***) from February 04, 2019 to February 05, 2019. The aforesaid inspection was carried out at Noticee's registered office at No.2, Kewalchand Plaza, Brindavan Street, Ambalal Green City, Old Bye Pass Road, Vellore-632 004. The period of inspection was from April 01, 2017 to January 31, 2019 (hereinafter referred to as ***"IP/Inspection Period"***). Noticee is registered with SEBI in the capacity of a commodity broker having registration no. INZ000038332.

2. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee under Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**) and Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**), for the alleged violations of the following provisions by Noticee:

    i. Section 23D of SCRA read with Clause 1 of SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as "**Transactions Regulation Circular')** and Clause 3 of Annexure to SEBI

Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter referred to as "**Enhanced Supervision Circular**");

ii. Clause 12 of Annexure to SEBI Circular no. SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009;

iii. Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX Circular no, MCX/MEM/210/2016 dated July 22, 2016

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated January 28,2020, Ms. Sangeeta Rathod was appointed as the Adjudicating Officer (hereinafter referred to as **'AO'**) under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995(herein after referred to as "**SEBI Adjudication Rules**") and Section 23-I of the SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005(herein after referred to as "**SCRA Adjudication Rules**") (both Rules together are hereinafter referred to as **"Adjudication Rules")** to inquire into and adjudge under the provisions of Section 23 D of SCRA and Section 15 HB of the SEBI Act, the aforesaid alleged violations by Noticee. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide order dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated July 20, 2021(hereinafter being referred to as the "**SCN**") was issued to Noticee in terms 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 and Section 15HB of SEBI Act, for the violations alleged to have been committed by Noticee.

5. The following charges were levelled against Noticee in the SCN:

A. **Misuse of the clients' funds**

i. *During the inspection, the total available funds of Noticee i.e. cash and cash equivalents across all stock exchanges and with the clearing corporation/clearing member was compared with total credit balances of all clients for the calculation of G for sample 35 days to detect any mis-utilization of clients fund in accordance with the principle laid down in Clause 3 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, (hereinafter referred to as '**Enhanced supervision circular'**). Further, it was verified whether funds of credit balance clients was utilized for the meeting the margin obligation of the debit balance clients. It was observed that out of 35 sample days, there were 31 instances where broker had utilized the funds of credit balance clients to meet the obligations of debit balance clients. The summary of the same is given in Table-1 below:*

Table-1 Instances of misutilization of funds of credit balance clients for Debit balance clients and for broker's own purpose

Sr. No.	Date	Total End of the day credit balance in all Client Accounts (Client bank balance + Settlement a/c balance)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents	Total funds available (Client bank a/c (A) and Collateral (B)	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills and uncleared cheques)	Difference G = (A+ B) - C	Total debit balances of all clients (after adjusting for open bills of clients and uncleared cheques)
		A	B	(A+B)	C	G	D
1	24.1.18	804,453.07	9,391,197.82	10,195,650.89	14,006,499.10	-3,810,848.21	47,157,755.24
2	14.2.18	589,351.96	10,316,197.82	10,905,549.78	15,090,091.70	-4,184,541.92	47,145,863.14
3	7.2.18	894,199.27	9,316,197.82	10,210,397.09	14,686,461.36	-4,476,064.27	47,141,540.01
4	14.3.18	504,302.98	10,516,197.82	11,020,500.80	14,593,585.95	-3,573,085.15	47,157,223.48
5	1.3.18	436,250.93	11,016,197.82	11,452,448.75	14,931,893.12	-3,479,444.37	47,157,148.02
6	30.11.17	423,614.98	7,378,197.82	7,801,812.80	11,159,858.13	-3,358,045.33	47,123,253.36
7	21.9.17	947,229.92	5,370,197.82	6,317,427.74	10,324,555.07	-4,007,127.33	47,114,959.68
8	1.2.18	653,925.09	9,841,197.82	10,495,122.91	14,282,080.50	-3,786,957.59	47,130,095.22
9	28.2.18	523,221.96	11,016,197.82	11,539,419.78	14,790,252.04	-3,250,832.26	47,147,084.85

Sr. No.	Date	Total End of the day credit balance in all Client Accounts (Client bank balance + Settlement a/c balance)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents	Total funds available (Client bank a/c (A) and Collateral (B)	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills and uncleared cheques)	Difference G = (A+ B) - C	Total debit balances of all clients (after adjusting for open bills of clients and uncleared cheques)
		A	B	(A+B)	C	G	D
10	9.3.18	628,298.93	9,516,197.82	10,144,496.75	13,767,307.26	-3,622,810.51	47,158,190.80
11	19.4.18	350,047.12	8,066,197.82	8,416,244.94	10,527,783.82	-2,111,538.88	25,474,341.79
12	18.9.218	33,248.45	6,514,457.42	6,547,705.87	7,886,509.54	-1,338,803.67	25,491,922.27
13	15.6.18	386,074.71	11,620,654.56	12,006,729.27	12,327,814.53	-321,085.26	25,477,785.25
14	17.9.218	56,535.91	6,691,692.06	6,748,227.97	8,123,452.59	-1,375,224.62	25,491,692.54
15	24.9.18	322,001.86	5,513,933.30	5,835,935.16	8,277,173.25	-2,441,238.09	25,491,940.97
16	5.2.18	613,359.26	10,341,197.82	10,954,557.08	15,084,944.11	-4,130,387.03	47,130,453.99
17	30.1.18	672,724.28	8,841,197.82	9,513,922.10	13,306,908.96	-3,792,986.86	47,130,558.68
18	10.1.18	246,971.83	9,641,197.82	9,888,169.65	13,583,695.07	-3,695,525.42	47,128,347.87
19	18.1.18	899,688.79	8,991,197.82	9,890,886.61	13,564,484.13	-3,673,597.52	47,128,548.90
20	2.2.18	194,445.78	9,841,197.82	10,035,643.60	14,185,347.16	-4,149,703.56	47,129,993.04
21	15.2.18	364,635.42	10,316,197.82	10,680,833.24	14,855,253.17	-4,174,419.93	47,145,686.14
22	4.1.18	806,771.46	10,528,197.82	11,334,969.28	14,617,093.45	-3,282,124.17	47,128,280.22
23	8.3.18	485,426.47	10,516,197.82	11,001,624.29	14,688,052.84	-3,686,428.55	47,158,011.00
24	27.2.18	138,595.02	11,316,197.82	11,454,792.84	14,905,360.45	-3,450,567.61	47,146,620.80
25	19.1.18	436,923.28	8,991,197.82	9,428,121.10	13,239,328.49	-3,811,207.39	47,128,977.06
26	12.1.18	218,317.37	8,991,197.82	9,209,515.19	12,967,107.42	-3,757,592.23	47,128,524.87
27	22.2.18	910,009.57	11,316,197.82	12,226,207.39	15,715,154.78	-3,488,947.39	47,147,026.37
28	23.2.18	160,299.68	11,316,197.82	11,476,497.50	14,992,355.78	-3,515,858.28	47,146,672.37
29	12.2.18	1,113,753.41	10,316,197.82	11,429,951.23	15,565,928.52	-4,135,977.29	47,144,447.14

Sr. No.	Date	Total End of the day credit balance in all Client Accounts (Client bank balance + Settlement a/c balance)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents	Total funds available (Client bank a/c (A) and Collateral (B)	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills and uncleared cheques)	Difference G = (A+ B) - C	Total debit balances of all clients (after adjusting for open bills of clients and uncleared cheques)
		A	B	(A+B)	C	G	D
30	16.3.18	291,318.58	10,516,197.82	10,807,516.40	14,616,182.16	-3,808,665.76	47,157,400.48
31	6.3.18	911,838.12	10,516,197.82	11,428,035.94	14,870,137.51	-3,442,101.57	47,157,761.35

ii. *Based on the findings of inspection and analysis given in the Table-1 above, it was observed that on 31 instances, the value of G was negative. Therefore, it is alleged that on 31 instances, Noticee had mis-utilized credit balance client funds for the purpose of debit balance clients in the range of Rs. 3.2 lacs to Rs.44.76 lacs.*

iii. *During the inspection it was further observed that on 3 days out of 35 sample dates the value of J was found to be positive i.e. Noticee had utilized credit balance clients' fund for meeting the margin obligation of debit balance clients on these 3 days. The instances are given in Table -2.*

Table-2 Instances of misutilization of fund of credit balance clients for Margin obligation of debit balance clients (when value of "G" is positive)

Sl. No.	Date	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques)	Total End of the day balance in all Client Accounts (Client bank balance + Settlement a/c balance)		Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing member	Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading J= J=(C-A)-(MC+MF)
		(C)	(A)	(C-A)	(MC)	(MF)	J = C - A - (MC + MF)
1	11.4.18	12367559.7	840022.43	11,527,537.29	3679370.13	7036827.69	811,339.47
2	18.4.18	11053704.2	2973659.54	8,080,044.66	3624296.61	3941901.21	513,846.84
3	12.4.18	11253213.3	319934.31	10,933,278.96	3185765.33	7030432.49	717,081.14

iv. From the above table, it was observed that Noticee had utilized the funds of credit balance clients for margin obligation of debit balance clients.

v. In view of the foregoing, it is alleged that Noticee has violated the following provisions for the paragraphs 7 to10 :

a. Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/ SED/CIR/ 93/ 23321 dated November 18, 1993 (herein after referred to as '**Transactions Regulation Circular'**)

b. Clause 3 of Annexure to Enhanced supervision circular*.*

B. **<u>Segregation of Clients' funds</u>**

vi. During the inspection, bank books obtained from Noticee were verified with the bank statements and active client list to ascertain, *inter- alia,* pay in and pay-out of funds, whether client funds and Noticee's own funds were maintained in separate bank accounts, whether clients funds were routed through the client bank accounts, whether funds received or paid were from or to respective clients' accounts only, etc. It was observed that during the period i.e. April 01, 2017 to December 31, 2018, the actual brokerage with interest and clearing charges put together was Rs. 1,77, 30,924/- during the inspection period and, Noticee had withdrawn a sum of Rs. 1,92,24,535/- from clients account. Thus, Noticee had withdrawn an excess of Rs. 14,93,600/- from clients account.

vii. Therefore, it is alleged that Noticee has violated the following provisions:

a. Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular

b. Clause 3 of Annexure to Enhanced supervision circular

C. **<u>Monthly/Quarterly settlement of funds and securities</u>**

<u>Settlement of inactive clients</u>

viii. During the inspection, clients' accounts were inspected to ascertain whether these accounts were settled on monthly/quarterly basis as per the preference given by the clients. During the inspection, it was observed that Noticee had not done the quarterly settlement of inactive clients for the different quarters during the inspection period, as per details given below:-

Quarters	Number of inactive clients not settled	Amount of non-settlement
April 2017 to June 2017	1972	1567930
July 2017 to September 2017	1925	1853446
October 2017 to December 2017	1874	1606570
January 2018 to March 2018	1831	1631629
April 2018 to June 2018	1761	1453200
July 2018 to September 2018	1666	1519876
Total		

ix. Further, it was observed that out of the above, the following inactive clients having more than Rs. 50,000/- ledger balances were not settled even in subsequent quarters as per details given hereunder:

Sr. No.	Quarter	Client code	Ledger Balances	Remarks
1	April-June 2017	1310099	79384.03	The same ledger balance was appearing from 01.04.2017 to 31.12.2018(21 months)
2		1220097	58906.17	
3	July-September 2017	1290184	66025.09	The same ledger balance was appearing from 01.04.2017 to 31.07.2017(4 months)
4	January-March 2018	1000053	100925.95	The same ledger balance was appearing from 01.01.2018 to 30.06.2018(6 months)
5	April-June 2018	1010117	61580.15	The same ledger balance is appearing from 07.03.2018 to 31.12.2018 (9.5 months)
6		1000843	155090.97	The same ledger balance was appearing from 15.02.2018 to 06.09.2018(6 months0
7	July-September 2018	1000905	99714.00	The same ledger balance was appearing from 01.07.2018 to 31.12.2018(6 months0

Therefore, on account of such non-settlement of clients' funds, it is alleged that Noticee has violated Clause 12 of Annexure to SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

Settlement preference:

x. As per Clause 12 of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, for the clients who had given Running Account Authorization, there must be a gap of maximum 90/30 days (as per the choice of the client viz. Quarterly/Monthly) between two running account settlements. It was observed that the Running Account Authorization document which is a part of KYC documents, the option for either, "monthly settlement or quarterly settlement" was not provided to clients and the said document had only one pre-printed option i.e. "Quarterly settlement." Thus, the option of having monthly settlement was not given to the clients who had given Running Account Authorization. Therefore, it is alleged that Noticee has violated Clause 12 of Annexure to SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

D. **Net worth verification**:

xi. During the course of inspection, the Net worth certificate submitted by Noticee to MCX as on March 2017 and March 2018 were verified to ascertain whether the Net worth certificate submitted by Noticee was calculated as per L.C. Gupta Method. The Net worth of Noticee as submitted to MCX for the inspection period is given below:

Table: 3 Net worth of Noticee

S. No	Networth as on	Amount (in Rs.)
1	31/03/2017	69,66,026.00
2	31/03/2018	25,12,979.00

xii. During the inspection it was observed that balances of 2 debit clients (which were overdue for more than 3 months) were not deducted from the Net worth computation for March 2018 which was not in accordance with the calculation provided in L.C. Gupta Method. The details of the client and their balances are given below:

Table:-4:- Summary of the balance of 2 debit balance clients adjusted in Net worth by Noticee

Date of transfer	Particulars	Amount
31/03/2018	1000022- Sumithra	93,81,812
31/03/2018	1000050-K Navarathanmal	1,22,73,271
Total		**2,16,55,083**

xiii. It was observed that if aforesaid amount had been deducted from Networth, net worth of Noticee would be Rs. (1,79,87,768.99) which would not meet the Net worth criteria stipulated by MCX. In view of the same, it is alleged that Noticee has violated clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX circular no. MCX/MEM/210/2016 dated July 22, 2016.

6. The SCN was sent to Noticee through Speed Post AD and digitally signed Email on July 22, 2021 and was served upon Noticee. Noticee was granted fifteen (15) days' time to submit its reply. Noticee vide email dated August 03, 2021, requested for opportunity of personal hearing. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on October 01, 2021, vide hearing notice dated September 09, 2021. The said hearing notice was sent to Noticee through SPAD and through email dated and was duly served upon Noticee. Noticee also availed of the opportunity of hearing granted to it on October 01, 2021, through WebEx platform where Shri. K. Jawarilal Jain, Chairman, Shri S.Gopal, Managing Director, S. karthick, CEO and Mr. Saravanan. R. AGM, of Noticee attended the hearing and reiterated the submissions made vide its letter dated October 01, 2021.

7. The reply submitted by Noticee vide its letter dated October 01, 2021 is summarized as under:-

"With reference to the hearing no. EAD-10/SM/23275/1/2021 and dated 01/10/2021 for the following will clarified.

First we do accept the client shortfalls but we would like to clarified that there is no misuse of client funds we had utilized that credit balance client to meet the obligation of debit balance clients but it was not used intentionally. Though we know that it is not a valid reason to state only that records our intention here. Moreover with reference to our email dated on 06.0.20219 there is no excess fund withdrawn from client bank accounts to own bank (enclosed operational Annexure).Further we hereby confirmed as per our reply there is no active segments in Ambalal Multiple Commodities Private limited now we transferred the MCX membership to Ambalal Shares and Stocks Private limited and there is no shortfall in client funds.

We started the business in Small town Vellore and our main focus to create the awareness of the Security Market in our surrounding villages but we have faced many challenges in this regards, unfortunately the debit will occurred during the course of business even we done on ethically. Once again we thanks to you and inspection team to educate norms and shown the direction to comply the rules and regulation."

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against Noticee in the SCN and the material /documents available on record. I have also perused the submission made by Noticee in this regard.

9. The issues that arise for consideration in the present case are:-

   Issue No. I: Whether Noticee has violated the provisions as mentioned in para 2 of the order?

   Issue No II: Do the violations, if any, attract monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act?

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

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

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

    b. ***Clause 1 of Transactions Regulation Circular:*** *It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account.*

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

d. ***Enhanced Supervision Circular****:*

Clause 3 of Annexure to Enhanced Supervision Circular: Monitoring of clients funds lying with the Stock Broker by the Stock Exchanges:

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

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

A -Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained bythe 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 issues 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 utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

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

H= |G| -|D|

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

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

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)
If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

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

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

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.
The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.3.3.3.Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

3.3.3.Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:
Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilized towards margin obligations of debit balance clients and proprietary margin obligations.
Principle: The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)
If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free

deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

J = B - (MC + MF)

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

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

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

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

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

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

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

Clause 6 of Annexure to Enhanced Supervision Circular: Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

…..

6.1.1 Monitoring criteria for Stock Brokers

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

e. ***MCX Circular no. MCX/MEM/210/2016 dated July 22, 2016****:*

Regulatory Compliance Requirements for Members: This is further to our circular no. MCX/MEM/268/2015 dated September 29, 2015 wherein at point no. 2, it was informed to all Members that they shall be required to meet the eligibility criteria as specified under Rule 8 of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as SCRR), within a period of one year from the date of transfer and vesting of rights and assets of the Forward Markets Commission (FMC) with SEBI, i.e., by September 28, 2016. Accordingly, Members of the Exchange are required to comply with the following requirements:

1. **NETWORTH**:

a. In terms of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Stock Broker Regulations), amended upto 2015 Schedule VI Table 2 and Exchange circular no. MCX/MEM/247/2008 dated July 22, 2008, the revised networth norms for the Members of the Exchange are provided hereunder:

Sr. No.	**Membership type**	**Minimum Networth Required**
1	Stock Broker / Trading Member (TM)	Corporate – Rs.25.00 Lakhs Non-Corporates – Rs.10.00 Lakhs
2	Stock Broker and Self Clearing Member / Trading cum-Clearing Member (TCM) - Non deposit based	Rs.100.00 Lakhs
3	Stock Broker and Self Clearing Member / Trading cum-Clearing Member (TCM) - Deposit based	Rs.100.00 Lakhs
4	Stock Broker and Clearing Member / Institutional Trading-cum-Clearing Member (ITCM)	Rs.300.00 Lakhs
5	Clearing Member / Professional Clearing Member(PCM)	Rs.500.00 Lakhs

The minimum net worth specified for the Members of Commodity Derivative Exchanges, shall have to be necessarily computed as per the LC Gupta format (format attached at Annexure 1 for ready reference). Members are required to submit networth certificate duly certified by a practicing Chartered Accountant latest by August 31, 2016 meeting the requirements as mentioned above.

Issue No. I: Whether Noticee has violated the following provisions:

i. Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular

ii. Clause 12 of Annexure to SEBI Circular no. SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009

iii. Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX Circular no, MCX/MEM/210/2016 dated July 22, 2016

Mis-use of clients funds

11. It is alleged in the SCN that on 31 days out of 35 sample dates, the value of G was negative. Therefore, it is alleged in the SCN that on 31 days, Noticee had misutilized the credit balance client funds for meeting the purpose of debit balance clients. The amount of misutilization ranges from Rs. 3.2 lacs to Rs.44.76 lacs. Further, it is observed that on 3 days out of 35 sample dates, the value of J was found positive. Therefore, it is alleged that Noticee had utilized credit balance clients' fund for meeting the margin obligation of debit balance clients on these 3 days. In this regard, Noticee in its reply, admitted that there was shortfalls in clients' account, due to which they had utilized credit balance clients to meet the obligation of debit balance clients.

12. In view of Noticee's own acceptance regarding lapse on his part in this regard, I find that the allegation that Noticee has violated Section23D of SCRA read with Clause 1 of Transaction Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular stands established.

Non-Segregation of Client's fund

13. It is alleged in the SCN that Noticee had withdrawn an excess amount of Rs. 14,93, 600/- from its clients' bank account. In this regard, Noticee, in its reply has submitted that they had transferred Rs. 21,00,340.20 and Rs. 13,78,613.80 as service tax for the year 2017-18 and 2018-19(till date of inspection period). Accordingly, there was no excess fund withdrawn from client bank accounts to own bank accounts. Noticee has also provided one document to demonstrate that there was no excess withdrawal. However, I note that the documents provided by Noticee is not backed by any supporting documents/ evidence to substantiate its claim. In absence of any documentary, I do not find the contention of Noticee to be tenable. Therefore, I am inclined to accept the observation in the SCN which has been substantiated by corresponding bank account statements. In view of the same, I find that the allegation levelled against Noticee that it has violated Section23D of SCRA read with Clause 1 of Transaction Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular stands established.

Monthly/ Quarterly Settlement of funds and securities

i. Settlement of inactive clients

14. It is alleged in the SCN that Noticee had not done quarterly settlement of inactive clients. It is also alleged in the SCN that in case of 7 inactive clients who were having ledger balance of more than Rs. 50,000/- ,Noticee has not settled their accounts in subsequent quarters. I note that Noticee has not submitted any reply w.r.t. aforesaid allegation. Since Noticee has not disputed the allegation, I find that allegation levelled against Noticee that it has violated Clause 12 of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 stands established.

ii. Settlement preference

15. It is alleged in the SCN that Noticee has not provided the opinion of "Monthly/Quarterly settlement" to its clients in the Running Account authorization document and the said document had only preprinted option i.e. "Quarterly Settlement". I note that Noticee has not submitted any reply w.r.t. aforesaid allegation. Since Noticee has not disputed the allegation, I find that the allegation levelled against Noticee that it has violated Clause

12 of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 stands established.

Net worth verification

16. During the course of inspection, the Net worth certificate submitted by Noticee to MCX as on March 2017 and March 2018 were verified to ascertain whether the Net worth certificate submitted by Noticee was calculated as per L.C. Gupta Method. It was observed that balances of 2 debit clients (which were overdue for more than 3 months) amounting to Rs. 2,16,55,083 were not deducted from the Net worth computation for March 2018 which was not in accordance with the calculation provided in L.C. Gupta Method. If aforesaid amount had been deducted from Networth, net worth of Noticee would be Rs. (1,79,87,768.99) which would not meet the Net worth criteria stipulated by MCX. Therefore, it is alleged in SCN that Noticee has violated Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX circular no.MCX/MEM/210/2016 dated July 22, 2016.I note that Noticee has not submitted any reply w.r.t. aforesaid allegation. Since Noticee has not disputed the allegation, I find that the allegation levelled against Noticee that it has violated Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX circular no. MCX/MEM/210/2016 dated July 22, 2016 stands established.

Issue No. II: Do the violations, if any, attract monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act?

17. It has been established in the foregoing paragraphs that Noticee has violated the provisions of Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular and Clause 3 of Enhanced Supervision Circular; Clause 6.1.1(j) of Annexure to Enhanced Supervision Circular read with MCX Circular no, MCX/MEM/210/2016 dated July 22, 2016
18. In context of the above, I place reliance on the judgement of Hon’ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon’ble Supreme Court had opined: *“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 ……....”*

19. Therefore, in view of the aforesaid judgement and considering the aforesaid violations committed by Noticee, monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act would be attracted. The text of the aforesaid provisions are as under:

SCRA

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.*

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

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

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

20. While determining the quantum of penalty under Section 23D of SCRA and Section 15HB of SEBI Act**,** factors stipulated in Section 23J of SCRA and Section 15J of SEBI Act have to be given due regard. The text of the aforesaid provision of Section 23J and Section 15HB of SEBI Act is as under:

Factors to be taken into account by adjudicating officer

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 aresult of the default;

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

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

Factors to be taken into account by the adjudicating officer

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

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

21. 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. As regards the repetitive nature of the default, I do not find the Inspection having brought on record any regulatory action taken by SEBI in the past against Noticee for same violations as those observed in the instant inspection. I also observe that there are no investor complaints on record, arising out of failure on the part of Noticee. However, 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, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Such

disregard for the provisions of law governing the functioning of intermediaries calls for an appropriate penalty which should act as a deterrent

ORDER

22. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act, as enumerated above I, in exercise of the powers conferred upon me under Section 23-I of SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on Noticee, viz. M/s. Ambalal Multi Commodities Private Limited

Sr. No.	**Penalty**	**Under the provisions of**
1	Rs. 2,00,000/-(Rupees Two Lakh only)	Section 23D of SCRA
2	Rs. 2,00,000/-(Rupees Two Lakh only)	Section 15HB of SEBI Act
Total	**Rs. 4,00,000 (Rupees Four Lakh only)**	

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

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

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

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

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

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

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

26. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Ambalal Multi Commodities Private Limited and also to SEBI.

Date: December 17, 2021
Place: Mumbai

SOMA MAJUMDER
Adjudicating Officer