BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/18919-18926]

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.

In respect of

Noticee Name	PAN
Unickon Securities Private Limited	AAPFS5325P
Gajendra Nagpal	AADPN5511A
Ram Mohan Gupta	AGDPG7175M
Neeraj Grover	AFDPG2918P
Sonia Nagpal	AAGPN2936G
Unickon Fincap Pvt. Ltd.	AAACU8424F
i360 Staffing and Training Solutions Pvt. Ltd	AAACI8851P
Kaushal Kumari Nagpal	ABUPN7936P

In the matter of Unickon Securities Private Limited.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) conducted inspection of the stock broking and depository participant operations of Unickon Securities Private Limited on March 19-20, 2014.

2. It was observed during the inspection that Unickon Securities Private Limited – Broker("**USPL**"), Unickon Securities Private Limited - Depository Participant (hereinafter referred to as "**USPL-DP**"), Gajendra Nagpal (hereinafter referred to as "**Noticee 1**"), Ram Mohan Gupta (hereinafter referred to as "**Noticee 2**"), Neeraj Grover (hereinafter referred to as "**Noticee 3**"), Sonia Nagpal (hereinafter referred to as "**Noticee 4**"), Unickon Fincap Pvt. Ltd. (hereinafter referred to as "**Noticee 5/ UFPL**"), i360 Staffing and Training Solutions Pvt. Ltd (hereinafter referred to as "**Noticee 6/ i360**") and Kaushal Kumari Nagpal (hereinafter

referred to as "**Noticee 7**") (hereinafter collectively refreed to as "**Noticees**") had not complied with the various provisions of SEBI regulations and circulars; and by doing so it was alleged that they had violated the following provisions as follows:-

Noticee / Entity	Allegation	Alleged Violations
USPL	Non-segregation of own and clients funds and securities	• Circular no. SMD/SED/CI/93/23321 dated 18 November, 1993, • Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008, • Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.
	Indulging in activities other than stock broking business/diverting funds to group companies /utilization of funds for own purposes.	• Section 12(1) and 12A(b) & (c) of the SEBI Act • Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957 • Clauses A (3) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992 • Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (Stock

Noticee / Entity	Allegation	Alleged Violations
		Brokers and Sub Brokers) Regulations, 1992 • Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
	Mis-utilisation of clients funds/securities unauthorized use/misuse of clients shares kept as margin for pledging and No prior Permission from the exchanges for offering margin trading facility	• Clauses A (1), A (2), A (3) and A (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992 • Conditions of registration as specified under Regulations 9(b), and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 • Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17,2008 • Circular No. CIR/MRD/DMS/13/2010 dated April 23,2010 • Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated march 19, 2004

Noticee / Entity	Allegation	Alleged Violations
	Non-redressal of grievances of investors within one month of the date of receipt of the complaint	• Conditions of registration as specified under Regulations 9(b), 9(e) and 9(f) of the SEBI (stock Brokers and Sub Brokers) Regulations, 1992
	Non-compliance of the requirement of periodical settlement of client accounts (Failure to deliver the securities/make payment of the amount to the investor, not providing statement of accounts for funds to investors)	• Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (stock Brokers and Sub Brokers) Regulations, 1992 • Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009 • Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011
	Failure to conduct internal audits since September 2013	• Circular no. MIRSD/ DPSIII/ Cir-26/ 08 August 22, 2008 • Circular no MRD/DMS/Cir-29/2008 dated October 21, 2008

Noticee / Entity	Allegation	Alleged Violations
	No prior approval of SEBI obtained at the time of change in control of the broker for continuing to act as such after the change	• Regulation 12(1) of SEBI Act, 1992 • Conditions of registration as specified under Regulations 9(b) and 9(c) of the SEBI (stock Brokers and Sub Brokers) regulations, 1992

Noticee / Entity	Allegation	Alleged Violations
USPL-DP	Not providing statement of account for securities	• Regulation 20(2)(b) of SEBI (depositories and participants) Regulations, 1996 • Clauses 1 and 3 of code of conduct under regulation 20AA of SEBI (depositories and participants) Regulations, 1996 • Regulation 43 of SEBI (Depositories and Participants) Regulations, 1996 • Circular No. CIR/MRD/DP/37/2010 dated December 14, 2010
	Non-redressal of grievances of investors within one month of the date of receipt of the complaint	• Regulation 53B of SEBI (depositories and participants) Regulations, 1996 • Clauses 1, 2(d), 3 and 5 of code of conduct under Regulation 20AA of SEBI (depositories and participants) Regulations, 1996 • Conditions of Grants of certificate of registration under Regulation 20(2)(b) and 20(2)(e) of SEBI (Depositories and Participants) Regulations, 1996

Noticee / Entity	Allegation	Alleged Violations
	No prior approval of SEBI obtained at the time of change in control of DP for continuing to act as such after the change.	• Conditions of grant of certificate of registration under Regulation 20(2)(b) and 20(2)(ca) of SEBI (Depositories and Participant) Regulations, 1996.
Noticee 1 **Noticee 2**	For nature of charges as mentioned against USPL and USPL (DP)	• Section 12A(b) & (c) of the SEBI Act • Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities market) Regulations, 2003
Noticee 3	Failure in delivering his responsibilities as the compliance officer of a registered intermediary	• Regulation 18A (2) of the SEBI (stock-brokers and sub-brokers) Regulations, 1992 • Regulation 58(B) (2) of the SEBI (Depositories and Participants) Regulations, 1996

Noticee / Entity	Allegation	Alleged Violations
	For colluding with USPL for fraudulent transfer of clients funds and securities	• Regulation 3(d) and Regulation 4(1) of the SEBI (prohibition of Fraudulent and unfair trade practices relating to securities market) Regulations, 2003
Noticee 4	For colluding with USPL for fraudulent transfer of clients funds and securities	• Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (prohibition of Fraudulent and Unfair Trade practices Relating to Securities Market) regulations, 2003
Noticee 5		
Noticee 6		
Noticee 7		

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

3. Vide order dated July 04, 2016, SEBI appointed Mr. Suresh Gupta, Chief General Manager as the Adjudicating Officer in exercise of powers conferred under **(a)**

Section 19 read with Section 15-I(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"); **(b)** Section 23-I of the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adj Rules**"), and **(c)** Section 19-H of the Depositories Act, 1996 (hereinafter referred to as "**DP Act**") read with Rule 3 of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**DP Adj Rules**"). Further, vide communique dated June 29, 2018, SEBI appointed Mr. Jeevan Sonparote, Chief General Manager as the Adjudicating Officer. Subsequently Mr. V S Sundaresan was appointed as an Adjudication Officer. Pursuant to it the matter was re-assigned to Mr. K. Saravanan, Chief General Manager vide communique dated December 26, 2019. Subsequent to transfer of Mr. K. Saravanan, Mr. Parag Basu, Chief General Manager vide communique dated July 14, 2021, was appointed as an Adjudicating Officer in the matter. On transfer of Shri Parag Basu vide communique dated March 11, 2022, SEBI appointed the undersigned as the Adjudicating Officer in exercise of aforementioned powers and if satisfied that if liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and 15 A(b), 15C, 15HA and 15HB of SEBI act, 23A, 23C, 23D and 23H of SCRA, 19C and 19G of DP act.

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

4. A common Show Cause Notice dated May 14, 2022 (hereinafter referred to as '**SCN**') bearing reference no. SEBI/EAD-3/BM/UR/20728, 20730, 20731, 20733-35, 20739-40/2022 was issued to the Noticees under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('**Adjudication Rules'**) to show cause as to why an inquiry should not be initiated against them and penalty if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them.

5. The allegation levelled against the Noticees in the SCN are summarized as follows:

i. Mis- utilization of client's funds/securities, unauthorized use/misuse of clients' shares kept as margin for pledging and no prior permission from the exchanges for offering margin trading facility.

Transfer and Pledging of Client's Securities/ Funds by USPL & Noticee 5:

a. USPL allegedly transferred securities from its Client Beneficiary Account/Client Margin Account No. 12053500–00023193 to the demat account of Noticee 5 [(Account No. IN30096610526254) held with Globe Capital Market (Depository Participant–NSDL)] and also to USPL demat account [(Account No. IN30096610486219) held with Globe Capital Market (Depository Participant–NSDL)]. From the demat account statements of Client Beneficiary Account/Client Margin Account No. 12053500–00023193 of USPL, it was observed that the clients' securities were being pledged either through ICICI Bank or were moved to the demat accounts of Noticee 5 account for the purpose of pledging by third party financiers.

b. For the purpose of pledging the shares, an agreement for granting enhanced exposure was entered into at the time of account opening between Noticee 5 and the desirous clients of USPL. As per the said agreement, the shares of clients were to be pledged with Noticee 5 for grant of enhanced exposure. The agreement was for loan against shares. Initially share pledging was done only for those clients who wanted to avail the financing facility and the pledging facility was started under the banner of Noticee 5. Clients used to pay 25% of the total consideration of the stocks that they had purchased and the remaining portion was jointly funded by Noticee 5 and the third party financier who used to give 40-60% loan against the shares depending upon the liquidity and the impact cost of those particular shares. However, subsequently (around june 2012) due to the cash crunch, the shares of even those clients who had not entered into the agreement were pledged through Noticee 5 with third party financiers. Shares were pledged without the knowledge and consent of clients. No consent was obtained from clients who had not entered into the agreement and whose shares were pledged through Noticee 5 with third party financiers. There was no pre-defined period for pledge. The clients' were neither informed that their shares were being pledged nor were they aware when the same got released.

c. USPL thus pledged its clients' securities –

- With third party financiers (through Noticee 5) i.e. Edelweiss Financial Services Private Limited, DSP Merrill Lynch, Infrastructure Leasing & Financial Services Limited, Citicorp Finance (India) Limited and Morgan Stanley India Private Limited, and
- With ICICI Bank (directly by USPL).

d. It was observed that under the Power of Attorney signed by the clients of USPL, the shares were moved from the beneficial owner accounts of clients to Noticee 5 for clients who had loan agreement with Noticee 5. For those who did not have any loan agreement, shares were directly moved from margin account of USPL to Noticee 5.

e. It was observed the funds raised by USPL through the alleged unauthorized transfer and pledging of clients' securities with ICICI Bank and with third party financiers, were subsequently transferred to Group Companies/Associate Companies/Subsidiaries of Noticee 5. Apart from the funds raised by way of pledging of shares with ICICI Bank by USPL and by way of pledging of shares done by Noticee 5 with third party financiers, the funds lying in the client bank accounts were also transferred to the business account of USPL. Further it was also observed that the funds received from the exchanges as payout done by the exchanges for the trades done by the clients were also transferred to the business accounts of the USPL. It was also observed that funds transferred by USPL were also utilised by its group company UREPL for its business operations i.e. purchase of property, etc. Further it was alleged that USPL had not maintained segregation of client and own bank accounts.

f. From the balance sheets of USPL for the Financial Years 2011–12 and 2012–13, it was observed that USPL had created Fixed Deposits, which was either held as margin by Stock Exchanges or security against borrowings and guarantees with the banks.

g. USPL was extending margin trading facility to the clients and did not take membership of any Exchange for extending margin trading facility. It was observed that USPL was able to meet its pay-in obligations after the debits on account of the trading in the account of Noticee 6 without the same being recovered from Noticee 6. It was alleged that this can only happen in a scenario when funds lying in the client bank accounts of USPL have been utilised for the settlement of the trades done by Noticee 6. Thus it was observed that funds lying in the client bank accounts of USPL have been utilised for the settlement of the trades done by Noticee 6.

h. Noticee 1 and Noticee 2 being the promoters-directors gave the consent and had the knowledge regarding the operations of USPL. Post resignation of Noticee 1 and during intervening period to his resignation, Noticee 2 was in control of the operations of USPL.

i. Funds available with USPL were being used for its own and not for the clients i.e. funds were being used for own system of USPL. Also, post resignation of Noticee 1, the practice of pledging continued as it used to be during the tenure of Noticee 1 as the director, i.e., the shares continued to be pledged without the consent of clients who had not entered into the agreement after the change in control into the hands of Noticee 2. Further it was observed that there was a mismatch between USPL client's financial ledger account and client's available bank account balance.

j. Thus it was alleged that USPL in connivance with Noticee 5 and its directors had carried out fraudulent market practices by mis-utilisation of clients' funds and funds raised by pledging the clients' shares.

k. In view of observation made in preceding paragraphs it was alleged that USPL – Broker was in violation of following Sections, rules, regulations and circulars:
   - Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008,
   - Clauses A (1), (2), (3) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992
   - Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992
   - Circular No. CIR/MRD/DMS/13/2010 dated April 23, 2010
   - Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated march 19, 2004

ii. Indulging in activities other than stock broking business, diverting funds to group companies/ utilization of funds for own purpose.

Revenue earned by USPL

a. From the annual reports it was observed that revenue of USPL comprised of revenue from operations, other operating income and other income. It was observed that other operating incomes comprised of interest on Inter Corporate Deposits (hereinafter referred to as "**ICDs**") and interest on fixed deposits. It was observed that for the Financial Year 2011–12, the income from interest on ICDs and interest on Fixed Deposits was Rs. 14.32 Crores, which constituted 55% of the total operating income of USPL. Further, for the Financial Year 2012–13, the income from interest on ICDs and interest on Fixed Deposits was Rs. 14.72 Crores, which constituted 87% of the total operating income of USPL. However, for the Financial Year 2013–14, the income from interest on ICDs and interest on Fixed Deposits constituted 95% of the total operating income of USPL. It is therefore alleged that the major portion of the other operating income of USPL comprised of ICDs and interest on Fixed Deposits.

b. As noted in the preceding paragraphs, USPL allegedly provided clients' funds to Group Entities/Associate Companies/Subsidiaries of UFIPL, by way of ICDs. The aforesaid entities were not related to the securities market. As a result of the aforesaid, USPL also earned interest income from ICDs, which constituted more than 50% of its total operating income for the Financial Years 2011–12, 2012–13 and 2013-14

c. USPL allegedly indulged in providing funds to group companies not related to the securities market by way of ICDs. USPL also earned interest income from ICDs which constituted more than 50% of its total operating income for each of the FY 2011-12, FY 2012-13 and FY 2013-14. Therefore, USPL on account of deriving economic benefits from the group companies is alleged to be indirectly involved in activities not related to the securities market

d. Hence in view of above it was alleged that USPL violated Section 12(1) of SEBI Act, 12A (b) & (c) of the SEBI Act, Rule 8 (1) (f) of Securities Contracts (Regulation) Rules,1957, Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

iii. Non segregation of own funds and clients' funds

a. It was observed there were large number of complaints against USPL for failure to deliver the securities/ make payment of the amount to the investor which were not redressed by USPL. From the failure of USPL to resolve the complaints of the nature "Delay in payment of Funds & Securities" within twenty four hours of the demand made by the clients, it was alleged that there was no segregation of funds in USPL. Non- segregation of client and own bank accounts, since transfer of funds entries between client bank and own bank, were allegedly observed on regular basis during investigation and funds transfer entries between group companies were also observed.

b. Hence it was alleged that USPL-broker violated Circular no. SMD/SED/Cl/93/23321 dated 18 November, 1993, Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008 and Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

iv. Role of Directors i.e Noticee 1 and Noticee 2:

e. It was observed that Noticee 1 was final authority for all operational and business decisions. Further it was observed that Noticee 2 was aware about the working and operations of the group including USPL. All matters related to group including USPL were consulted with / reported to Noticee 2 on daily basis. Both of them were allegedly aware about the operations and transactions of the company and clients accounts. Ultimate decision of funds was taken by Noticee 1 and/or Noticee 2. All the business decisions were taken by Noticee 1 and Noticee 2 jointly during the board meetings which used to happen every quarter in New Delhi and attended by all the board members.

f. As observed during investigation Noticee 1 was in control of the day to day operations of USPL till last of week of May 2013. From there on Noticee 2 was in control of the day to day operation and decision making of USPL. However, Noticee 1 was aware about overall working of the group till his last working day.

g. Noticee 1 had accepted the movement of funds of clients to group companies as a loan. Therefore, it was alleged that Noticee 1 was in knowledge of the nature of transactions happening between USPL and UREPL.

h. It was observed that post the resignation of Noticee 1, Noticee 2 took complete control of the working of all the business aspects and operations of Unickon group including USPL. The practice of pledging allegedly continued as earlier.

i. Investigation observed that Noticee 1 was also made aware and updated about the crisis in the operations in USPL. Post the resignation of Noticee 1, Noticee 2 was in control of the operations of USPL and the practice of pledging of shares of the clients through Nolticee 5 (UFPL) and the movement of funds to the group companies continued as earlier.

j. In view of the same, both Noticee 1 and Noticee 2 being directors of USPL were alleged to be equally responsible for the decisions w.r.t the operations of USPL during their respective tenures and also during the intervening period. Noticee 1 and Noticee 2 were also alleged to be equally responsible for non-receipt/delay in payment of funds and securities, and alleged misutilization of clients' funds from USPL to other related entities.

k. Therefore it was alleged that Noticee 1 and Noticee 2 dealt in securities in a fraudulent and unfair manner and defrauded investors in securities, in violation of Sections 12A(b) and (c) of the SEBI Act; Regulations 3(a) and (d) and Regulations 4(1) of the PFUTP Regulations.

v. Role of Ex - Compliance Officer i.e Noticee 3:

a. Noticee 3 joined USPL as an employee in April 2005. He was made the compliance officer of USPL and Unickon Commodities Private Limited since middle of 2010 subsequent to the resignation of the then compliance officer. He continued to be the compliance officer of USPL till the time of his resignation in February 2014. He further admitted that there was no running account settlements on a quarterly basis and it was a regular feature. The problem started in middle of 2012 after which there was no settlement. This non-settlement of accounts (funds and/ or securities) was a result of the shortage of cash in the Unickon group. As admitted by Noticee 3 prior to

June 2013, there were no complaints regarding 'non-receipt of pay-out pursuant to sale'. However, complaints in the nature of 'non-receipt of funds' were received and those were being redressed regularly. However, post June 2013, complaints in the nature of 'non-receipt of funds' were being redressed with a considerable delay and later ceased to be addressed for bigger requests. Post June 2013, the number of such complaints received increased a lot and the pay-outs could not be made to the clients at all. Shares received pursuant to pay-ins were lying in the margin account of USPL. Complaints regarding non-receipt of funds also were ceased to be redressed. Noticee 3 was also allegedly aware of the pledging of the shares with and without the consent of the clients if USPL.

b. Noticee 3 did not ensure recovery of the debit amount from Noticee 6 which as per his estimate was approximately around Rs.17-18 cr.

c. No prior approval of the exchanges was taken upon Noticee 1's demitting the office. The resignation of Noticee 1, who was the shareholder and director of USPL, resulted in the change in shareholding pattern of the registered intermediary resulting in the change in the management control. In response to an email from NSE enquiring whether there has been a change in the management control (share holding pattern) of USPL consequent upon the intimation from Noticee 1 about his resignation from Unickon, NSE was informed that management was under change and the same would be intimated to the exchange and adequate permission would be sought from the exchange but no intimation was sent to NSE or permission was sought from the exchange.

d. Thus it was alleged that Noticee 3 failed in his responsibilities as the Compliance Officer of a registered intermediary. It was further alleged that Noticee 3 was in the knowledge of the fraud being done upon the clients of USPL. He remained a silent witness to the wrongdoings being done by USPL which makes him equally liable to the frauds being done and thus is a party to the same.

e. Thus Noticee 3 violated Regulation 18A (2) of the SEBI (Stockbrokers and Subbrokers) Regulations, 1992, Regulation 58(B) (2) of the SEBI (Depositories and Participants) Regulations, 1996 and Regulation 3(d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003

vi. Role of Noticee 6 and its directors i.e. Noticee 4 and Noticee 7

a. Noticee 6, as has been stated above was the group company of USPL and was one of the 4 companies which otherwise not a part of the Unickon group but were still under Executive, Financial, Operational and Administrative control of the parent company and the group had economic and / or other material benefits from them.

b. The Directors of Noticee 6 were Noticee 4 and Noticee 7. Noticee 4 is wife of Noticee 1 and Noticee 7 is the mother of Noticee 1. In view same, it was alleged that Noticee 6 was a corporate entity related to Noticee 1.

c. Further as observed from the audited balance sheets for FY 2011-12 and FY 2012-13 of USPL, the name of Noticee 4 also appears as the Key Managerial Personnel of USPL. Therefore it was alleged that Noticee 4 was in a position to be privy to the information of operations of USPL. Hence, by virtue of her being the director of Noticee 6 and Key Managerial Personnel of USPL, it was alleged that she was also in a position to be able to get economic benefits from USPL.

d. Noticee 6, a Private Limited Company, was a client of USPL and had also entered into the Agreement for Pledging Facility with Noticee 5 for the purpose of availing enhanced exposure in trading and financing.

e. Investigation observed that during Financial year 2009-10, FY 2010-11 and FY 2011-12, Noticee 6 owed amount of approx Rs. 19.5 crores to USPL. No bill payments were made to Noticee 6 and the payments made to Noticee 6 were not getting reflected in the balance sheets. Further there was a loss of around Rs.17-18 cr. on account of trading by Noticee 6. It was observed that an amount of Rs. 35 cr. has been transferred to the bank accounts of Noticee 6. Also there were financial transactions between Noticee 5 and Noticee 6 and also USPL and Noticee 6 during the Financial Years from 2008–09 and 2012–13. Investigation observed that Noticee 6 was allegedly a participant of the fraud of diversion of clients' funds for its trades in the scrip of Core Projects. Noticee 4 and Noticee 7 being related to Noticee 1 and being the director of Noticee 6 (which was a related party) were in a position to be privy to the information of operations of USPL.

f. Thus in view of above it is alleged that Noticee 6 and its directors Noticee 4 and Noticee 7 violated Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

vii. Other Non- Compliances by USPL:

a. No actual settlement of funds & securities.

- USPL had not done clients settlement for funds and stocks for approximately 05-06 qtrs. Further, shares were not transferred in to the clients' accounts within one working day and prior to September, 2013, there was no running account settlement on a quarterly basis and it was a regular feature. USPL has not done actual settlement of funds & securities (on monthly / quarterly basis) since 2012.

- Thus it was alleged USPL violated Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009 and Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011

b. Not providing statement of accounts for funds by USPL-DP.

- Initially the clients were being provided with the information related to their bank ledger and statement of accounts. Subsequently, post June 2013, the same was also allegedly stopped.

- In view of above it was alleged that USPL-DP violated Regulation 20 (2) (b) of SEBI (Depositories and Participants) Regulations,1996, Clauses 1 and 3 of Code of Conduct under Regulation 20AA of SEBI (Depositories and Participants) Regulations,1996, Regulation 43 of SEBI (Depositories And Participants) Regulations, 1996 and Circular No. CIR/MRD/DP/ 37/2010 dated December 14, 2010.

c. No internal audit

- It was alleged that USPL had not carried out internal audit of its operations on a half yearly basis since September 2013 and no internal audit report has been submitted to the exchanges. The last internal audit report submitted to NSE was for the half year ending March 2013.

- Thus it was alleged that USPL violated Circular no. MIRSD/ DPSIII/ Cir-26/ 08 August 22, 2008 and Circular no MRD/DMS/Cir29/2008 dated October 21, 2008.

d. No regulatory approvals taken prior to change in management control:

- USPL was registered as a Stock Broker and Depository Participant with SEBI. Noticee 1 decided to exit from Unickon group after entering into settlement and share purchase agreement with Noticee 2 consequent to which Noticee 1 was to exit by selling his shares in the companies to Noticee 2 or his representatives. By entering into a share purchase agreement with Noticee 2, Noticee 1 intended to sell his stake in the UFIPL and consequentially its subsidiaries including USPL. It was alleged that the execution of share purchase agreement resulted in a change in the shareholding pattern and thus management control of USPL and USPL-DP. It was observed that no approval from SEBI for the change in management and control and share holding pattern was taken by USPL and USPL-DP and no intimation to exchange was sent by USPL and USPL-DP.

- In view of above it is alleged that USPL and USPL-DP violated Section 12 (I) of SEBI Act, 1992, Conditions of registration as specified under Regulations 9(b) and 9(c) of the SEBI(Stock Brokers and Sub Brokers) Regulations, 1992 and Conditions of grant of certificate of registration under Regulation 20(2)(b) and 20(2)(ca) of SEBI (Depositories and Participant) Regulations, 1996.

e. Non-redressal of Investor Complaints by USPL and USPL-DP:

- It was alleged that there had been a large number of complaints of the nature "non-receipt of funds/ securities" pending for redressal against USPL and USPL-DP for a long time. It is alleged that USPL and USPL-DP were unable to redress investors' grievances within the stipulated time period of 30 days from the date of receipt of the complaints.

- Hence it was alleged USPL-DP and USPL-broker violated Conditions of registration as specified under Regulations 9(b), 9(e) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, Regulation 53B of SEBI (depositories and participants) Regulations, 1996, Clauses 1, 2(d), 3 and 5 of code of conduct under Regulation 20AA of SEBI (depositories and participants) Regulations, 1996 and Conditions of Grants of certificate of registration under Regulation 20(2)(b) and 20(2)(e) of SEBI (Depositories and Participants) Regulations, 1996

6. The details of the delivery of the SCN dated May 14, 2022 and the mode of delivery are given below:

Sr. No.	Name of Entity	SCN Delivery status Y/N	Mode of the delivery
1.	USPL	Yes	E-mail*
2.	Noticee 1	Yes	SPAD/E-mail

Sr. No.	Name of Entity	SCN Delivery status Y/N	Mode of the delivery
3.	Noticee 2	Yes	E-mail
4.	Noticee 3	Yes	E-mail
5.	Noticee 4	Yes	SPAD**/E-mail
6.	Noticee 5	Yes	E-mail
7.	Noticee 6	No	N/a
8.	Noticee 7	Yes	SPAD/E-mail

* Digitally Signed E-mail hereinafter referred to as E-mail.

** Speed post Acknowledgement Due hereinafter referred to as SPAD.

7. During the course of service of the SCN it was observed that the delivery of SCN to USPL, Noticee 2, 3, 5 & 6 was not completed via SPAD. In view of which information regarding address and E-mail of the Noticees was sought from the depositories. Further Noticee 3 vide E-mail dated June 01, 2022 submitted that he did not receive the SCN. In this regard service of the SCN to Noticee 3 was completed through email on June 01, 2022. Further, I note that delivery of SCN to Noticee 2 & 5 was completed through Digitally signed Email. In regard to Noticee 6, as the delivery could not be made either by SPAD or Digitally signed E-mail, the service of the SCN was attempted through affixture in terms of Rule 7 (2) of Adjudication rules. However Noticee 4 vide letter dated June 07, 2022 in her reply to SCN informed that she will be representing Noticee 6. Therefore I note that the service of SCN to all the Noticees was completed and sufficient notice to them was given.

8. Thereafter, Noticees were given with an opportunity of personal hearing vide hearing Notice dated June 02, 2022. The status of delivery of hearing notice/s are as under:

Entity	Hearing Notice dated June 02, 2022	Additional hearing, if any
USPL	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022

Entity	Hearing Notice dated June 02, 2022	Additional hearing, if any
Noticee 1	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022
Noticee 2	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022
Noticee 3	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022. Hearing further rescheduled to July 08, 2022.
Noticee 4	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022
Noticee 5	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022
Noticee 6	Hearing notice sent vide email dated June 10, 2022 (Delivered)	Hearing scheduled on July 01, 2022
Noticee 7	Delivered	Hearing rescheduled from June 02, 2022 to July 01, 2022

9. The details of their appearance is as under:

S. No.	Entity	Appeared before the undersigned (Y/N)
1.	USPL	No
2.	Noticee 1	Yes
3.	Noticee 2	No
4.	Noticee 3	Yes
5.	Noticee 4	Yes
6.	Noticee 5	No
7.	Noticee 6	Yes
8.	Noticee 7	No

10. The Noticee 1, 3, 4, 6 & 7 submitted their reply to the SCN vide letter dated which are summarized below –

- **Noticee 1**

- Noticee 1 submitted that from May 23, 2013 he had relinquished all his responsibilities in Unickon group of companies including Unickon Securities Pvt Ltd and Unickon Fincap Pvt Ltd in favour of other director of the company Mr. Ram Mohan Gupta. So legally he is not responsible for any happening whatsoever in the company after May 23, 2013.
- He submitted that after relinquishing his responsibilities from May 23, 2013 he formally was relieved from the post of director of all group companies of Unickon group of companies including Unickon Securities Pvt Ltd and Unickon Fincap Pvt Ltd on September 6, 2013 by selling all his stakes to the other director and shareholder of the company on 'as is where is basis' under a legal settlement agreement.
- Noticee 1 submitted that till May 23, 2013 i.e. before relinquishing his responsibilities in Unickon group of companies including Unickon Securities Pvt Ltd and Unickon Fincap Pvt Ltd in favour of other director of the company Mr. Ram Mohan Gupta, there was no non-compliance what so ever in the company. There were regular statutory audits (internal as well as external) being conducted and till that time no non-compliance / nonconformity was brought to Noticee 1s' notice. All the statutory audits were regularly conducted by National Stock Exchange (NSE) and SEBI as per their own guidelines. Noticee 1 further submitted that the report of the internal auditors was submitted to the NSE and Bombay Stock Exchange (BSE). NSE and BSE also conducted an independent audit of the Unickon Securities Pvt Ltd. as per their own bye laws and till the time he was with the Unickon group of companies i.e. 6-9-2013, neither the NSE nor the BSE had pointed out any irregularities / illegalities committed by Unickon Securities Pvt Ltd. as alleged in show cause notice. Noticee 1 also submitted that Unickon Securities Pvt Ltd had not violated any of the rules, regulation and bye-laws of SEBI otherwise the NSE and BSE would have definitely pointed out the same in the audit conducted by them. After the

completion of audit by NSE, NSE publishes the results of audit on its official website for the information of public at large and this information always remains on the official website of NSE. In this regards Noticee 1 submitted extracts of information of Unickon Securities Pvt Ltd. that had been obtained from the official website of NSE for the period 2011-12, 2012-13 and 2013-14, which is the period when the alleged irregularities took place as per the show cause notice. Noticee 1 submitted that as per the own audit report of NSE, there were no significant violations except few minor deviations on which a compoundable penalty was imposed by NSE.

- Noticee 1 submitted that the audit of Unickon Securities Pvt Ltd. was conducted by SEBI on March 19-20, 2014 on his back and he had come to know about this audit when he received the interim order of SEBI bearing no WTM/RKA/NRO/42/ 2014 dated 26-05-2014 of whole time member Sh. Rajeev Kumar Aggarwal. Noticee 1 further submitted that whatever information he is providing is based on the documents supplied to him by SEBI, as from 6-9-2013 and till date he has no access to any of the document of any group company of Unickon including Unickon Securities Pvt Ltd and Unickon Fincap Pvt Ltd. Bare perusal of the interim order bearing no WTM/RKA/NRO/42/ 2014 dated 26-05-2014 of whole time member Sh. Rajeev Kumar Aggarwal, clearly establishes that there was no customer complaint till the time he was in Unickon group of companies i.e. till 6-9-2013. In this regards he submitted that there were zero customer complaint for a period prior to more than 90 to 120 days from May 04, 2014. This table clearly establishes that till his last date in the company there was no customer complaint.
- Noticee 1 submitted that from perusal of para no 47 of show cause notice dated 14-05- 2022 in which it has been alleged that an amount of Rs. 175,09,00,515/- has been transferred from USPL to other related entities / the group companies / associates companies / subsidiaries of noticee no 5, out of which Rs. 1,01,72,58,547/- has been given to UREPL which constitutes 58 % of the fund transfer by USPL to its group companies. The assertion made in show cause notice dated 14-05-2022 about other related entities / the group companies / associates companies / subsidiaries of

noticee no 5 is incorrect as noticee no 5 as per the show cause notice dated 14-05-2022 is Unickon Fincap Pvt Ltd, which itself is a subsidiary of Unickon group of companies. Noticee 1 further submitted that for period starting April 1, 2012 to October 31, 2014 a surplus of Rs. 29,27,73,350/- (Rupees Twenty nine crores twenty seven lacs seventy three thousand and three hundred fifty only) has been received back in USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies. The reason of excess money received in USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies is the interest income which USPL has earned from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies because of inter corporate deposits. Noticee further submitted that the said inter corporate deposits were made by USPL from Rs. 120 crores which were received by Unickon group of companies from PE investors namely Sequoia Capital India Growth Investment and Nexus India Venture Investment in year 2008.

- Further Noticee 1 stated that as mentioned in para no 47 of show cause notice dated 14- 05-2022, if the same logic as stated above is applied on the funds transferred from USPL to UREPL from April 1, 2012 to October 31, 2014 and fund received back from UREPL in USPL, an excess amount of Rs. 2,32,11,533/- (Rupees Two Crores thirty two lacs eleven thousand five hundred and thirty three) has come in USPL from UREPL. This excess amount is again the interest income of inter corporate deposits which USPL has earned from UREPL. The above stated factual position clearly establishes that excess amount has come back to USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies on account of interest income of inter corporate deposits given by USPL. The entire above stated transactions with regard to inter corporate deposits made by various group companies of Unickon were from the own money of Unickon group. This money was received by Unickon group of companies from PE investors namely Sequoia Capital India Growth Investment and Nexus India Venture

Investment in year 2008 and no client money at all was used by USPL in the above stated transactions.

- Noticee 1 submitted that an affidavit dated 14- 09-2018 filed by NSE before the Hon'ble Patiala House Court in which it has been stated that all the claims of the investors of USPL has been settled from the own funds of USPL available with NSE and there is still excess money of USPL available with NSE. Noticee 1 reproduced relevant portion of above stated affidavit: *"…….15. Thereafter the securities to the tune of Rs. 9,38,75,598.49/- (Nine Crores Thirty Eight Lacs Seventy Five Thousand Five Hundred and Ninety Eight Rupees and Forty Nine Paisa), lying in BOID 1205350000023193 of Unicon Securities Pvt. Ltd. were transferred by CDSL to the demat account of National Securities Clearing Corporation Ltd………… ……23. It is submitted that the available deposits/assets of Unicon Securities Pvt. Ltd. have been exhausted in meeting the claims of the investors in the sequence of IGRP Orders. The total admitted amount of the IGRP Order holders is Rs. 84,987,653.45/- (Eight Crores Forty Nine Lacs Eighty Seven Thousand Six Hundred and Fifty Three Rupees and Forty Five Paisa) and the total amount paid is Rs. 78,474,671.42/- (Seven Crores Eighty Four Lacs Seventy Four Thousand Six Hundred and Seventy One Rupees and Forty Two Paisa). However, there are certain investors whose claims have been admitted but not paid for the want of documents. The amounts to be paid to those investors are still lying with NSE, which will be paid to them once the requisite documents are provided."*

  The above stated factual submission of NSE by way of an affidavit filed before the Hon'ble Patiala House Court clearly states all the claims of the clients of USPL have been settled from own funds of USPL, therefore USPL should not be held liable on the allegations levied in the show cause notice dated 14-05-2022.
- Further Noticee 1 submitted that another affidavit dated 10-01-2019 filed by the SMC Global Securities Ltd in the same execution petition bearing no 121/2014 (5351 OF 2016), before Hon'ble Patiala House Court, New Delhi in which it has been further stated that a surplus of Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand and six

hundred sixteen only) of Unickon Securities Pvt Ltd is presently lying with the SMC Global Securities Ltd. In this affidavit at para no 3 it had been stated that the total valuation of the securities of the Unickon Securities Pvt Ltd. (DP ID - 1201910102301686) lying with the depository of SMC Global Securities Ltd as on 29.12.2018 is Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only). In this regards relevant extract of the said affidavit dated 10-01-2019 filed by the SMC Global Securities Ltd was reproduced by Noticee 1:

"3. That deponent further states before this Hon'ble Court that as per the DP statement / account maintained during the routine process of business, the total valuation of the securities of the Judgment Debtor i.e. Unicorn Securities Pvt Ltd. (DP ID - 1201910102301686) is lying with the depository of SMC Global Securities Ltd as on 29.12.2018 is Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only) and same may be revealed from the statement of DP Account, which is being maintained by the SMC Global Securities Ltd." .

The above stated factual submission of SMC by way of an affidavit filed before the Hon'ble Patiala House Court clearly states that an amount of Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only) of USPL is still lying with SMC Global Securities Ltd. demonstrates that there was no client money whatsoever which was used by USPL, hence the alleged allegations in the show cause notice dated 14-05-2022 should be dropped.

- Noticee 1 further submitted that two RTI applications dated 28-07-2017 and 7-9-2017 filed by one Sh. Bhupender Chaudhary requesting SEBI to provide the details of the clients / investors of Unickon Securities Pvt Ltd whose claims are still pending before the NSE and BSE. SEBI vide its replies dated 07-08- 2017 and 18-09-2017 failed to provide the requisitioned information sought by Sh. Bhupender Chaudhary. Aggrieved with the response of SEBI, Sh. Bhupender Chaudhary filed an appeal before the Central Information Commissioner for direction to SEBI to provide the information sought. The Central Information Commissioner vide its order dated 5-4-2019 directed SEBI to provide the relevant information sought by Sh. Bhupender Chaudhary within a period of 15 days from the receipt of the order. Despite the order dated 5-4-2019 passed by the Central Information Commissioner, SEBI failed to provide the specific information sought by Sh. Bhupender Chaudhary. Sh. Bhupender Chaudhary further sent two reminders dated 8-5-2019 and 28-06-2019 to Central Information Commissioner but SEBI never responded to specific information as requisitioned by Sh. Bhupender Chaudhary regarding the details of the clients / investors whose claims are still pending before the NSE and BSE. The inability of SEBI to provide specific details of the clients / investors of Unickon Securities Pvt Ltd whose claims are pending before the NSE and BSE further evidently establishes that the allegation levied are not specific and are only on the basis of surmises and conjunctures and hence are liable to be dropped.

- Noticee 1 submitted that certificates issued by CA Rakesh Gupta, Partner of M/s STRG and associates clearly establishes that Unickon Securities Pvt Ltd was adequately capitalized from its own funds till 2012-13.
- Another certificate dated 16-12-2015 was also issued by CA Rakesh Gupta, partner of STRG and associates, statutory auditor of Unickon group of companies which clearly states that no client money was used by USPL, thus the alleged allegations of SEBI with regard to usage of client money by USPL are absolutely wrong.
- Noticee 1 submitted that SEBI vide its order dated 15-03-2016 bearing no WTM/SR/EFD/17/03/2016 well acknowledges that prior to September, 2013 periodic settlement of funds, delivery of securities to the clients, payment to the clients, periodic statement of the accounts to the clients and other related activities were being carried as per the norms of SEBI and he was involved into the affairs of the company only till May 23, 2013.
- Noticee 1 submitted that he has been suffering for last 8 years professionally, economically and emotionally pursuant to WTM order. Now another show cause notice under chapter VI A of the Sebi Act has come to him as a body blow. This is against the Principles of Natural Justice and is in violation with well settled Law and Principles of Double Jeopardy along with Principles of Res Judicata. There are numerous Judgments of Hon'ble

Supreme Court of India in which it has been clearly quantified that nobody can get punishment twice for the same offence. Noticee 1 further stated that the Show Cause Notice dated May 14, 2022 vide no SEBI / EAD-3 / BM/ UR/ 20730/ 2022 is nonest in the eyes of law and same should be withdrawn.

- **Noticee 3**

- Noticee 3 submitted that he was working with Unicon Securities Private Limited in the capacity of an employee and he was designated as the compliance officer of the company in the mid of 2010 after Mrs. Anjali Makhija, who was the Chief Compliance Officer left the organization. It was discussed and agreed by the management that it will be a stop gap agreement till the time new compliance officer is appointed and in spite of his several requests, the company never appointed a permanent compliance officer. He further stated that he had left the company in January-February 2014.
- Noticee 3 further stated that he possessed no formal knowledge/experience of working as a compliance officer as most of his career has been into back end operations and he was never exposed to the compliance side of business.
- Noticee 3 submitted that he was never part of management core team which was driving the decision making process of the company and was reporting to his reporting head n absence of chief compliance officer who had left the company in year 2010.
- He further submitted that he already had been penalized by an order bearing no. WTM/SR/EFD/17/03/2016 dated 15-03-2016 by which he was prohibited from buying, selling or dealing n securities for a period of two years.
- Noticee 3 contended that company has submitted many incriminating evidences with SEBI wherein there is no claim of any investors pending with Unicon Securities Pvt. Ltd. lying with National Stock Exchange of India and SMC Global Securities Ltd. after the settlement of all the claims of the

investors. Moreover as per SEBI order bearng no. WTM/SR/EFD/17/03/2016 dated 15-03-2016, for the period 1-4-2012 to 31-10-2014, an excess amount of around Rs. 30 crores has come from various other group companies of Unicon to Unicon Securities Pvt. Ltd.

- Noticee submitted that he already has been penalized by SEBI and the show cause notice be dropped.

➢ **Noticee 4 & Noticee 6**

- Noticee 4 & Noticee 6 submitted that in May 2008, Noticee 6 was incorporated as a private limited company under the Companies Act, 1956. The directors of Noticee 6 at all relevant times was Noticee 4 and initially, the other director was one Mr. Vikas Mallan, the Chief Financial Officer of Unickon group of companies. The shareholders of Noticee 6 were Noticee 4 and Mr. Vikas Mallan. Subsequently, on 01-02-2010, Noticee 7 became a shareholder and held the shares previously held by Mr. Vikas Mallan. Noticee 7 subsequently became a director on the Board of i360 STS on 01-02-2010.
- The objective of Noticee 6 was to meet the growing demand of trained manpower for Unickon group of companies so all the expenses of Noticee 6 used to be borne by Unickon group of companies in lieu of providing and training the manpower to various group companies of Unickon. Noticee 4 further submitted that she had no direct connection whatsoever with Unickon group of companies except her husband was a shareholder and director in Unickon group of companies till 06-09-2013. She neither had any position nor had she attended any board meeting of Unickon group of companies including Unickon Securities Pvt Ltd.
- Noticee 4 submitted that the basic premise of all the alleged allegations on her in the show cause notice dated 14-05-2022 vide no SEBI / EAD-3 / BM/ UR/ 20739/ 2022 is a ‘wrong mention’ of her name as a Key Managerial Person in the balance sheet of Unickon Securities Pvt Ltd for the year 2011-12 and 2012- 13 by the statutory auditor of Unickon Securities Pvt Ltd. The said error was acknowledged by the statutory auditor and to set at rest any doubt, the statutory auditors of Unickon Securities who audited the balance

sheets for the financial years 2011-12 and 2012-13 where her name appeared, have vide a certificate dated 01-08-2017 clarified that her name was mentioned as she was a relative of Noticee 1 and because of a statutory requirement. The certificate also clarified that she was never a KMP of Unickon Securities.

- Noticee 4 submitted that since she was never a KMP or a director of Unickon Securities and admittedly did not hold any office in Unickon Fincap, the entire basis of allegations that she were party to any dealing of Unickon Securities and Unickon Fincap is untenable and liable to be set aside and she cannot be held responsible for the conduct of affairs of Unickon Securities and Unickon Fincap, assuming if there has been default by these entities, when she had no involvement in the same at all. Noticee 4 further submitted that as far as the transactions of year 2008 between Core Projects Ltd and i360 STS is concerned, the allegation in show cause notice dated 14-05-2022 wrongly records that there was a write-off by Unickon Securities. There was no write-off by Unickon Securities which did not fund the said transaction. The write-off was by Unickon Fincap out of its own funds. Therefore, there is no basis for SEBI to be concerned with a loan transaction between a RBI registered NBFC and a borrower. In this regards she submitted that Ram Mohan Gupta (noticee no 2) in a statement to SEBI has himself stated that she and Noticee 6 does not have any financial liability towards the broking company i.e. Unickon Securities but has a liability to Unickon Fincap.
- In continuation to above submission she stated that to resolve the matter of the transactions of year 2008 between Core Projects Ltd and Noticee 6, the statutory auditor who audited the balance sheets of Unickon Securities for the financial year 2011-12, had vide a certificate dated 16-12-2015 confirmed that the loss as a result of the trades in Core Projects was suffered and borne by Unickon Fincap out of its own funds and no money of any client was involved. This certificate was also provided to SEBI but SEBI has not addressed the issue at all.
- Noticee 4 submitted that in the show cause notice dated 14- 05-2022 at para no 63 there is a mention of transfer of Rs. 35 crore in the bank account

of notice no 6 and summarized table of the funds transfer from UFPL to noticee no 6 is placed at Annexure 38, wherein the perusal of annexure 38 is a mail dated 03-04-2015 which Noticee no 4 has written to Sh. Amit Pradhan, Regional Director, SEBI and a mail dated 08-04- 2015 which noticee no 4 has written to Smt. Anupama Chadha of SEBI and further there is a bank account statement consisting of 35 pages bearing account no 000705024991 of ICICI Bank in which there are routine deposits and withdrawals of i360 STS. The assertion of Rs. 35 crores in the bank account of Noticee no 6 has no connection or relation whatsoever in the said statement.

- Noticee 4 also submitted that the proceedings against her are the result of a fall out between her husband Mr. Gajendra Nagpal and Mr. Ram Mohan Gupta, the noticee no 2. The entire foundation of the proceedings rests on a factually erroneous premise – that she was a key managerial person (“KMP”) of Unickon Securities Private Limited. Noticee 4 further stated that SEBI has been swayed by false statements made by Mr. Ram Mohan Gupta, the noticee no 2 who has dragged her, for the alleged defaults committed by Unickon Securities and other Unickon Group companies and SEBI has not independently investigated whether those statements are factually correct or not.
- Noticee 4 further submitted that she had filed a Special Leave Petition (Civil) before the Hon’ble Supreme Court of India in which she had challenged the order of Securities Appellate Tribunal, Mumbai which has upheld the order of SEBI bearing no WTM/SR/EFD/17/03/2016 dated 15-03-2016 against her. The diary number of this Special Leave Petition (Civil) is 10640 / 2022 dated 5-4-2022. The said case is under defect list which will be cleared from defects and will be listed before the Hon’ble Supreme Court of India after summer vacations. In this regards she requested to take a note that the order of SEBI bearing no WTM/SR/EFD/ 17/03/2016 dated 15-03-2016 and also submitted that the said order dated 15-03-2016 has not yet attained its finality as the same is subjudice before Hon’ble Supreme Court of India. Hence she requested to consider her above stated submissions and drop the proceedings against her as stated in the show

cause notice dated May 14, 2022 vide no SEBI / EAD-3 / BM/ UR/ 20739 / 2022 in the interest of justice.

- **Noticee 7**

- Vide letter dated June 06, 2022, the son of Noticee 6 replied that he lost his mother Smt.Kaushal Kumari Nagpal on 14-6-2020 due to Covid and hence all the proceedings against her may kindly be dropped.
- In this regards he submitted the death certificate of Noticee 7 issued by the South Delhi Municipal Corporation dated July 12, 2020.

11. I note that sufficient opportunities have been given to USPL, Noticee 2 and Noticee 5 to represent themselves and the principles of natural justice have been complied with. However, despite service of the SCN and hearing notices through emails as provided by depositories, USPL, Noticee 2 and Noticee 5 did not avail the opportunity of personal appearance. The Hon'ble Securities Appellate Tribunal (SAT)in the matter of **Classic Credit Ltd. v. SEBI** [2007] 76 SCL 51 (SAT -MUM), inter alia, held that –"*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". Similarly, the Hon'ble SAT also, in the case of **Sanjay Kumar Tayal & Ors. v. SEBI** (in appeal No. 68/2013) decided on February 11, 2014, held that *"...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*". Since no replies to the SCN was filed by USPL, Noticee 2 and Noticee 5 it can be reasonably presumed that the allegations have been admitted to by USPL, Noticee 2 and Noticee 5 in this case.

12. In view of the above, I am compelled to proceed ex-parte in the matter against USPL, Noticee 2 and Noticee 5. I am of the view that USPL, Noticee 2 and Noticee 5 have nothing to submit and in terms of Rule 4(7) of SEBI Adjudication Rules, the matter can thus be proceeded ex-parte on the basis of material

available on record. Therefore, the present proceedings against USPL, Noticee 2 and Noticee 5 is undertaken ex-parte on the basis of available documents and information.

13. Further in regards to Noticee 1, 3, 4, 6 & 7, I shall now proceed to decide the matter on the basis of SCN issued, replies made by the Noticee 1, 3, 4, 6 & 7 and material available on record.

Consideration of Issues

14. I have carefully perused the allegations levelled against the Noticees in the SCN, the replies of the Noticees and also the material / documents available on record. The issues that arise for consideration in the present case are:

Issue no. 1:

- Whether USPL misutilised clients' funds and securities and diverted funds for utilization by itself and its Group Companies/Associate Companies in violation of Regulations 9(b) and (f) of the Stock Brokers Regulations; SEBI Circulars No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 and No. CIR/MRD/DMS/13/2010 dated April 23, 2010, respectively; Clauses A(1),(2),(3) and A(5) of the Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 9 of Stock Brokers Regulations and whether the margin trading facility extended by USPL was in violation of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004??

- Whether the non–segregation of clients' funds by USPL, was in violation of SEBI Circular No. SMD/SED/CI/93/23321 dated November 18, 1993; Circular No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 and Clause 15 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011?

- Whether USPL indulged in funding activities in violation of Rule 8(1)(f) of the SCR Rules; Section 12(1) and 12A(b)&(c) of the SEBI Act; Regulations 9(b) and (f) of the Stock Brokers Regulations; Conditions of registration as specified under Regulations 9(b) and 9(f) of Stock Brokers Regulations?

- Whether USPL, its Directors, Noticee 1 & Noticee 2, its Ex–Compliance Officer, Noticee 3; Noticee 5, Noticee 6 and its Directors, Noticee 4 and Noticee 7, dealt in securities in a fraudulent and unfair manner and defrauded investors in securities, in violation of Sections 12A(b) and (c) of the SEBI Act; Regulations 3(a) and (d) and Regulations 4(1) of the PFUTP Regulations?

Issue no. 2: Whether the failure to carry out settlement of clients' funds and securities by USPL, was in violation of Clause 12 of the SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 3, 2009, Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011; Conditions of registration as specified under Regulations 9(b) and 9(f) of Stock Brokers Regulations?

Issue no. 3: Whether the failure to provide periodic statement of transactions in securities and resultant shareholding to the beneficial owners of such securities by USPL–DP, was in violation of Regulation 20(2)(b) of the Depository and Participants Regulations; Clause 1 and 3 of Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations; Regulation 43 of the Depository and Participants Regulations and SEBI Circular No. CIR/MRD/DP/37/2010 dated December 14, 2010?

Issue no. 4: Whether the failure by USPL to have periodic Internal Audit conducted, was in violation of SEBI Circular No. MIRSD/DPSIII/Cir-26/08 dated August 22, 2008 and Circular No. MRD/DMS/Cir-29/2008 dated October 21, 2008?

Issue no. 5: Whether the failure by USPL and USPL-DP to obtain regulatory approval prior to change in management and control, was in violation of Section 12(1) of the SEBI Act; Regulations 9(b) and (c) of the Stock Brokers Regulations;

Regulations 20(2)(b) and 20(2)(ca) of the Depository and Participants Regulations?

Issue no. 6: Whether the non–redressal of investor complaints by USPL and USPL-DP was in violation of Regulations 9(b), (e) and (f) of the Stock Brokers Regulations; Regulations 20(2)(b), 20(2)(e) and 53B of the Depository and Participants Regulations and Clauses 1, 2(d), 3 and 5 of the Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations?

Issue no. 7: Whether Noticee 3 was in violation of Regulation 18A(2) of the Stock Brokers Regulations and Regulation 58(B)(2) of the Depositories and Participants Regulations?

Issue no. 8: Does the violations, if any, on the part of the Noticees attract monetary penalty under 15 A(b), 15C, 15HA and 15HB of SEBI act, 23A, 23C, 23D and 23H of SCRA, 19C and 19G of DP act?

Issue no. 9: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, Section 23J of SCRA and Section 19I of DP act?

15. Before moving forward it is pertinent to mention the relevant provisions as under:

SEBI (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003

3. *No person shall directly or indirectly—*

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.Schedule III

__4.__ (1)Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:—

(a)indulging in an act which creates false or misleading appearance of trading in the securities market;

(e)any act or omission amounting to manipulation of the price of a security

Circular no. SMD/SED/CI/93/23321 dated 18 November, 1993

The aforementioned circular can be found at the link below:

https://www.sebi.gov.in/legal/circulars/nov-1993/regulation-of-transactions-between-clients-and-brokers_19445.html

Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008

The aforementioned circular can be found at the link below:

https://www.sebi.gov.in/legal/circulars/apr-2008/collateral-deposited-by-clients-with-brokers_6922.html

Clause 15 and Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011

__15__. The stock broker shall ensure that the money/securities deposited by the client shall be kept in a separate account, distinct from his/its own account or account of any other client and shall not be used by the stock broker for himself/itself or for any other client or for any purpose other than the purposes mentioned in Rules, Regulations, circulars, notices, guidelines of SEBI and/or Rules, Regulations, Bye-laws, circulars and notices of Exchange.

__33__. The stock broker shall make pay out of funds or delivery of securities, as the case may be, to the Client within one working day of receipt of the payout from the relevant Exchange where the trade is executed unless otherwise specified *by the client and subject to such terms and conditions as may be prescribed by the relevant Exchange from time to time where the trade is executed.*

Section 12(1) of the SEBI Act

12. (1) *No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the [regulations] made under this Act:*

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

[Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

Section 12A(b) & (c) of the SEBI Act

12A. No person shall directly or indirectly—

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised* *stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957

8. *The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that :*

(1) *No person shall be eligible to be elected as a member if—*

(f) *he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business*

Provided that no member may conduct business in commodity derivatives, except by setting up a separate company which shall comply with the regulatory requirements, such as, net worth, capital adequacy, margins and exposure norms as may be specified by the Forward Market Commission, from time to time;

Provided further that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in items (a) to (n) of the proviso to sub-rule (4).

Clauses A (1), (2), (3) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992

A. 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.*

(3) *Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

(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.*

Conditions of registration as specified under Regulations 9(b), 9(c), 9(e) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992

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

***(b)** he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;*

***(c)** where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;*

***(e)** he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;*

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

Circular No. CIR/MRD/DMS/13/2010 dated April 23, 2010

The aforementioned circular can be found at the link below:

https://www.sebi.gov.in/legal/circulars/apr-2010/execution-of-power-of-attorney-poa-by-the-client-in-favour-of-the-stock-broker-stock-broker-and-depository-participant_1709.html

Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009

***12**.Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*

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

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

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

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

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

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

g. *Such periodic settlement of running account may not be necessary: i.for clients availing margin trading facility as per SEBI circular ii.for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).*

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

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

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

Circular no. MIRSD/ DPSIII/ Cir-26/ 08 August 22, 2008

The aforementioned circular can be found at the link below:

https://www.sebi.gov.in/legal/circulars/aug-2008/internal-audit-for-stock-brokers-clearing-members_6722.html

Circular no MRD/DMS/Cir-29/2008 dated October 21, 2008

The aforementioned circular can be found at the link below:
https://www.sebi.gov.in/legal/circulars/oct-2008/internal-audit-for-stock-brokers-trading-members-clearing-members_7217.html

Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004

The aforementioned circular can be found at the link below:
https://www.sebi.gov.in/legal/circulars/mar-2004/margin-trading-and-securities-lending-and-borrowing_9601.html

Regulation 26 of the SEBI (Stock Brokers and Sub Brokers) Regulations,

26. *A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—*

(i) Failure to file any return or report with the Board.

(ii) Failure to furnish any information, books or other documents within 15 days of issue of notice by the Board.

(iii) Failure to maintain books of account or records as per the Act, rules or regulations framed thereunder.

(iv) Failure to redress the grievances of investors within 30 days of receipts of notice from the Board.

(v) Failure to issue contract notes in the form and manner specified by the Stock Exchange of which such broker is a member.

(vi) Failure to deliver any security or make payment of the amount due to the investor within 48 hours of the settlement of trade unless the client has agreedin writing otherwise.

(vii) Charging of brokerage which is in excess of brokerage specified in the regulations or the bye-laws of the stock exchange.

(viii) Dealing in securities of a body corporate listed on any stock exchange on his own behalf or on behalf of any other person on the basis of any unpublished price sensitive information.

(ix) Procuring or communicating any unpublished price sensitive information except as required in the ordinary course of business or under any law

(x) Counselling any person to deal in securities of anybody corporate on the basis of unpublished price sensitive information.

(xi) Indulging in fraudulent and unfair trade practices relating to securities.

(xii) Execution of trade without entering into agreement with the client under the Act, rules or regulations framed there under or failure to maintain client registration form or commission of any irregularities in maintaining the client agreement

(xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

(xv) Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.

(xvi) Failure to exercise due skill, care and diligence.

[(xvii) Failure to obtain prior approval of the Board in case of change in control of the stock broker.]

(xviii) Failure to satisfy the net worth or capital adequacy norms, if any, specified by the Board.

(xix) Extending use of trading terminal to any unauthorized person or place.

(xx) Violations for which no separate penalty has been provided under these regulations.

Conditions of Grant of certificate of registration under Regulation 20 (2)(b), 20(2) (ca) and 20 (2)(e) of SEBI (Depositories and Participants) Regulations, 1996

20(2) *The grant of certificate of initial registration in Form F shall be subject to the following, namely :—*

(b) *the participant shall comply with the provisions of the Act, Depositories Act, the bye-laws, agreements and these regulations*

(ca) *where the participant proposes change in control, it shall obtain prior approval of the Board for continuing to act as such after the change;*
(e) *the participant shall redress the grievances of beneficial owners within thirty days of the date of the receipt of the complaint and keep the depository informed about the number and the nature of redressals;*

Regulation 18A (2) of the SEBI (Stockbrokers and Subbrokers) Regulations, 1992

18A. (2) *The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.*

Regulation 53B of SEBI (Depositories and Participants) Regulations, 1996

53B. *Every issuer or its agent or any person who is registered as an intermediary under this Act, shall redress the grievances of beneficial owners within thirty days of the date of receipt of the complaint and keep the depository informed about the number and nature of grievances redressed by it and the number of grievances pending before it.*

Clauses 1, 2(d), 3 and 5 of Code of of Conduct under Regulation 20AA of SEBI (Depositories and Participants) Regulations, 1996

1. *A participant shall make all efforts to protect the interests of investors.*

2. *A participant shall always endeavour to—*

(d)*grievances of investors are redressed without any delay.*

3. *A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business****.***

5. *A participant shall endeavour to resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible, and not later than one month of receipt*

Regulation 43 of SEBI (Depositories and Participants) Regulations, 1996

Every participant shall provide statements of account to the beneficial owner in such form and in such manner and at such time as provided in the agreement with the beneficial owner.

Circular No. CIR/MRD/DP/ 37 /2010 dated December 14, 2010

The aforementioned circular can be found at the link below:
https://www.sebi.gov.in/legal/circulars/dec-2010/acceptance-of-third-party-address-as-correspondence-address_14069.html

16. Before moving forward, it is pertinent to summarize the background of the matter as observed during the investigation, which transpire the issues as aforementioned:

16.1 USPL acted as a stock broker of National Stock Exchange (hereinafter referred to as "**NSE**") & Bombay Stock Exchange (hereinafter referred to as "**BSE")** in cash & derivatives segment, a broker of NSE in currency derivative segment, a broker of Multi Commodity Exchange Stock Exchange (hereinafter referred to as "**MCX-SX**") and United Stock Exchange of India Ltd., and a Depository participant of Central Depository Services (India) Limited (hereinafter referred to as "**CDSL"**).

16.2 USPL forms a part of the Unickon group of companies and the parent company of USPL is UFIPL. Apart from USPL, 14 other group companies/ associate companies/ subsidiaries of UFIPL formed part of Unickon group including Noticee 5, which are as follows:

(i) USPL
(ii) Unickon Commodities Private Limited
(iii) Unickon Media and Marketing Services Private Limited
(iv) Noticee 5/ UFPL
(v) Unickon Capital Services Pvt. Ltd.
(vi) Unickon Asset Reconstruction Company Private Limited

(vii) Unickon Finserve Private Limited

(viii) Unickon Properties Com Pvt. ltd.

(ix) Unickon Financial Consultants Pvt. Ltd.

(x) Uniwealth Insurance Brokers Pvt. Ltd.

(xi) Unickon Asset Reconstruction Company Private Limited

(xii) Unickon Finserve Private Limited

(xiii) Unickon Properties Com Pvt. ltd.

(xiv) Unickon Financial Consultants Pvt. Ltd.

(xv) Uniwealth Insurance Brokers Pvt. Ltd.

16.3 Noticee 1 and Noticee 2 were the directors of USPL since its inception in 2005.

Sr. No.	Name of Shareholder	Period of Directorship	
		From	To
1.	Shri Gajendra Nagpal (Promoter)	20.07.2004	06.09.2013
2.	Shri Ram Mohan Gupta (Promoter)	20.07.2004	Till Date

16.4 As on March 31, 2013 the shareholding pattern of USPL was as follows:

Share holding Pattern of USPL as on March 31, 2013			
Sr. No.	**Name**	**No. of shares**	**% shareholding**
1	Unickon Financial Intermediaries Pvt.	16249980	99.99988
2	Mr. Gajendra Nagpal (Director)	10	0.00006
3	Mr. Ram Mohan Gupta (Director)	10	0.00006
	Grand Total	**16250000**	**100.00000**

16.5 They were also directors of 13 other group companies/ associate companies/ subsidiaries of UFIPL. The shareholding pattern in UFIPL and its other group companies/ associate companies/ subsidiaries are as follows:

- The shareholding pattern of UFIPL as on March 31, 2013 was as under:

Share holding Pattern of UFIPL as on March 31, 2013			
Sr. No.	**Name**	**No. of shares**	**% shareholding**
1	Mr. Gajendra Nagpal	6980000	27.50
2	Mr. Ram Mohan Gupta	3930000	15.48
3	Jamuna Consultants Pvt. Ltd.	2620000	10.32
4	Ms. Sameera Aga Zaidi	1500000	5.91
5	Mr. Umesh R Doshi	460000	1.81
6	Sequoia Capital India Growth Investment	4000	0.02
7	Ms. Vandana Manchanda	545600	2.15
8	Subhkam Ventures India Ltd.	7049000	27.77
9	Nexus India Ventures Investments	2000	0.01
10	Mr. Girish R Doshi	460000	1.81
11	Mr. Sanjay R Doshi	467600	1.84
12	Others	1364400	5.38
	Grand Total	25382600	100.00

- The shareholding pattern in Unickon Commodities as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON COMMODITIES AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	99.9900000
2.	Shri Gajendra Nagpal	0.0003372
3.	Shri Ram Mohan Gupta	0.0003372
Total		**100.0000000**

- The shareholding pattern in Unickon Media and Marketing as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON MEDIA AND MARKETING AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	99.80
2.	Shri Gajendra Nagpal	0.10
3.	Shri Ram Mohan Gupta	0.10
Total		**100.00**

- The shareholding pattern in UFPL as on March 31, 2013, was as follows-

SHAREHOLDING PATTERN IN UNICKON FINCAP AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	99.9900000
2.	Shri Gajendra Nagpal	0.0002671

3.	Shri Ram Mohan Gupta	0.0001335
Total		**100.0000000**

- The shareholding pattern in Unickon Capital Services as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON CAPITAL SERVICES AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	98.0582
2.	Shri Gajendra Nagpal	1.2621
3.	Shri Ram Mohan Gupta	0.6796
Total		**100.0000**

- The shareholding pattern in Unickon Asset Reconstruction Company as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON ASSET RECONSTRUCTION COMPANY AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	99.80
2.	Shri Gajendra Nagpal	0.10
3.	Shri Ram Mohan Gupta	0.10
	Total	**100.00**

- The shareholding pattern in Unickon Finserve as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON FINSERVE AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	99.80
2.	Shri Gajendra Nagpal	0.10
3.	Shri Ram Mohan Gupta	0.10
Total		**100.00**

- The shareholding pattern in Unickon Properties as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON PROPERTIES AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Shri Gajendra Nagpal	65
2.	Shri Ram Mohan Gupta	35
Total		**100**

- The shareholding pattern in Uniwealth Insurance Brokers as on March 31, 2013, was as follows –

SHAREHOLDING PATTERN IN UNICKON INSURANCE BROKERS AS ON 31.03.2013		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Unicon Financial Intermediaries Private Limited	90
2.	Smt Kaushal Nagpal	9
3.	Shri Sandeep Arora	1
Total		**100**

16.6 UFIPL held 99.99 % of the share capital of USPL and Noticee 1 & Noticee 2 by virtue of their holding 42.98% of the share capital of UFIPL jointly, were indirectly holding 42.98 % of the share capital of USPL and thus constituted part of the promoter group of USPL. They also held held 10 equity shares each constituting 0.00006% of the total share capital of USPL. Further 4 more companies which though not being a part of the Unickon group, but were still under Executive, Financial, Operational and Administrative control of the parent company, UFIPL and the group had economic and / or other material benefits from them, which are as follows:

a. UREPL

b. Vighnaharta Direct Insurance Broking Private Limited

c. Tripace Marketing Sevices Pvt. Ltd.

d. Noticee 6 - a company conceived with an objective of supplying trained manpower to the Unickon group for its growing need in selling insurance, real estate, equity and other related ventures.

16.7 Noticee 4 is wife of Noticee 1 and was observed to be a Key Managerial Personnel of USPL and she along with Noticee 7 (mother of Noticee 1), were the directors of Noticee 6. Noticee 3 was the compliance officer of USPL (stock broking and depository participant operations) during the period of investigation. The details of shareholding pattern of Noticee 6/ i360 is provided below:

SHAREHOLDING PATTERN IN Noticee 6		
Sr. No.	**Name of Shareholder**	**% of Shareholding**
1.	Smt Sonia Nagpal	80
2.	Smt Kaushal Nagpal (Earlier held by Vikas Mallan)	20
Total		**100**

16.8 Noticee 1 was supervising the working of the group and was final authority for all operational and business decisions and Noticee 2 was aware about the working of the group and operations. Both were the director's in-charge of daily operations of USPL. All matters related to group including USPL were consulted with / reported to Noticee 2 on daily basis and his decision was final in all the matters. It was observed that all decisions in all the matters were finalized with the knowledge, information and consent of Noticee 1 and Noticee 2 and they were aware about the operations and workings of the group and financial transactions. During September 2013, Noticee 1 resigned from the group and on resignation of Noticee 1, Noticee 2 was the final authority for all financial decisions.

16.9 USPL did not have any proprietary trading, therefore, the securities maintained by USPL in the Client Beneficiary Account/Client Margin Account No. 12053500–00023193, were only of its clients. USPL transferred securities from its Client Beneficiary Account/Client Margin Account No. 12053500–00023193 to the demat account of Noticee 5 (Account No. IN30096610526254) and also to its (USPLs') other demat account (Account No. IN30096610486219).

16.10 USPL pledged its clients' securities (transferred from the Client Beneficiary Account/Client Margin Account No. 12053500–00023193) –

i. With ICICI Bank (directly by USPL) and
ii. With third party financiers (through Noticee 5) i.e. Edelweiss, DSPML, IL&FS, CitiFinancial and Morgan Stanley.

16.11 Noticee 2 vide his statement dated October 31, 2014 admitted that, initially share pledging was done only for those clients who wanted to avail the financing facility and the pledging facility was started under the banner of Noticee 5. The clients used to pay 25% of the total consideration of the stocks that they had purchased and the remaining portion was jointly funded by Noticee 5 and the third party financier who used to give 40-60% loan against the shares depending upon the liquidity and the impact cost of those particular shares. For the purpose of pledging the shares, an agreement for granting enhanced exposure was entered into at the time of account opening between Noticee 5 and the desirous clients of USPL. Subsequently (around june 2012) due to the cash crunch, the shares of even those clients who had not entered into the agreement were pledged through Noticee 5 with third party financiers. Shares were pledged without the knowledge and consent of clients. No consent was obtained from clients who had not entered into the agreement and whose shares were pledged through Noticee 5 with third party financiers. There was no pre-defined period for pledge. The clients' were neither informed that their shares were being pledged nor were they aware when the same got released. Shares were pledged with ICICI Bank by USPL (shares lying in margin account) and with third party financiers by Noticee 5 (shares transferred from Client Beneficiary Account of USPL along with shares of the clients who had signed agreement with Noticee 5).

16.12 There was a transfer of securities (amounting to a total value of ₹60.09 Crores) from the Client Beneficiary Account/Client Margin Account No. 12053500–00023193 to USPLs' demat account (Account No. IN30096610486219) and also to Noticee 5's demat account. Since Noticee 5 was never a client of USPL–Stock Broker but rather, was a client of USPL–DP, the aforesaid alleged unauthorised transfer of clients' securities resulted in a transfer of beneficial ownership in such securities from the clients of USPL to Noticee 5.

16.13 It was observed from the bank statements that the funds lying in the client bank accounts were transferred to the business account of USPL and for the period April 1, 2012 to October 31, 2014, an amount of Rs. 175,09,00,515 had been transferred from USPL to other related entities /the Group Companies/Associate Companies/Subsidiaries of USPL, out of which approximately Rs.102 Crores was transferred to UREPL. The said Rs. 175 crores also included the funds raised by way of pledging of shares. Further it was also observed that the funds received from the exchanges as payout done by the exchanges for the trades done by the clients were also transferred to the business accounts of the USPL.

16.14 From the Client Ledger Balance dated March 05, 2014 it was observed that the there was a shortfall of Rs. 13.54 Crores, which was the net amount payable by USPL to its Clients.

16.15 It was thus observed that the funds raised by USPL through the alleged unauthorised transfer and pledging of clients' securities with ICICI Bank and with third party financiers (through Noticee 5) alongwith funds lying in the Clients' Bank Accounts were subsequently transferred to Group Companies/Associate Companies/Subsidiaries of UFIPL.

16.16 The funds that had been transferred from the designated clients' accounts to the business bank accounts of USPL were also used to create Fixed Deposits, which were either held as margin by Stock Exchanges or as collateral for obtaining overdraft credit limit facility from its Bankers. It was observed that there was a shortfall of Rs. 13.99 Crores, which was the net amount payable by USPL to its Bankers.

16.17 Funds were transferred from its Business Bank Accounts of USPL to its Group Companies/Associate Companies/Subsidiaries, on a regular basis, in the nature of loans, which were also in the form of ICDs, were used by the aforesaid Group Companies/Associate Companies/Subsidiaries, for inter alia meeting their working capital requirement.

16.18 USPL earned interest from ICDs, and FDs, which constituted more than 50% of its total operating income for the Financial Years 2011–12, 2012-13 and 2013–14.

16.19 During the period between 2008 and 2012, USPL admittedly transferred ₹35 Crores to Noticee 6. The source of the aforesaid funds also included funds raised by Noticee 5 by pledging securities of USPLs' clients with third party financiers.

16.20 Investors' complaints were received against USPL pertaining to 'non-receipt of funds and securities', which it failed to redress within 30 days from the date of receipt of such complaints.

Issue no. 1:

- **Whether USPL misutilised clients' funds and securities and diverted funds for utilization by itself and its Group Companies/Associate Companies in violation of Regulations 9(b) and (f) of the Stock Brokers Regulations; SEBI Circulars No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 and No. CIR/MRD/DMS/13/2010 dated April 23, 2010, respectively; Clauses A(1)–(3) and A(5) of the Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 9 of Stock Brokers Regulations and whether the margin trading facility extended by USPL was in violation of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004?**

17 **Transfer and Pledging of Client's Securities by USPL:**

It was observed that from February 12, 2008 to January 9, 2015 securities amounting to a total value of Rs. 60.09 Crores were transferred from the Client Beneficiary Account/Client Margin Account No. 12053500–00023193, for pledging by USPL with ICICI Bank and with third party financiers.

17.1 Before 2012, share pledging was done only for those clients who wanted to avail the financing facility and the pledging facility was started under the banner of Noticee 5 (as admitted by Noticee 2 in its statement dated October 31, 2014). It was observed that for the purpose of pledging the shares, an agreement for granting enhanced exposure was entered into at the time of account opening between Noticee 5 and the desirous clients of USPL. As per the said agreement, the shares of clients were to be pledged with Noticee 5 for grant of enhanced exposure. Further Noticee 1 vide his statement dated October 31, 2014 submitted that the clients used to pay 25% of the total consideration of the stocks that they had purchased and the remaining portion was jointly funded by Noticee 5 and the third party financier who used to give 40-60% loan against the shares depending upon the liquidity and the impact cost of those particular shares. In effect the aforesaid agreement provided for the facility of a loan against shares.

Therefore it was observed that there arose need to pledge the shares of the clients with the third party financier through USPL.

17.2 However, subsequently (around june 2012), a cash crunch faced by USPL resulted in the mismatch between its client's financial ledger account and such client's available bank account balance. On account of the aforesaid, the fianancial gap further resulted in the non-availablity of funds for meeting the standing pay-in obligations of USPL clients Therefore the securities of the clients of USPL who had not even entered into the Agreement for Pledging Facility were pledged with third party finanaciers (through Noticee 5). The secirities so pledged were done without the explicit knowledge and consent of clientsof USPL. Further, USPL admittedly carried out the aforesaid pledge without any pre-defined period for pledge. The clients' were neither informed that their shares were being pledged nor were they aware when the same got released. Also, post resignation of Noticee 1, the practice of pledging continued as it used to be during the tenure of Noticee 1 as the director, i.e., the shares continued to be pledged without the consent of clients who had not entered into the agreement after the change in control into the hands of Noticee 2.

17.3 Pledging of securities was also carried out through USPL and that resulted in securirities from its Client beneficiary account/ Client Margin account No. 12053500–00023193, being pledged with ICICI Bank.

17.4 From the analysis of the account statement of the Client beneficiary account/ Client Margin account No. 12053500–00023193 of USPL for the period from February 12, 2008 to January 09, 2015, I note that, USPL transferred securities from its Client Beneficiary Account/Client Margin Account No. 12053500–00023193 to the demat account of Noticee 5 [(Account No. IN30096610526254) and also to USPL demat account [(Account No. IN30096610486219). Further it was observed from the statements recorded on oath dated October 31, 2014, March 31, 2015 and December 08, 2014 of Noticee 1, Noticee 2 and Noticee 3 respectively that USPL did not have any proprietary trading and thus the shares available in the Client Beneficiary Account/Client Margin Account No. 12053500–00023193 of USPL were the shares of the clients only.

17.5 Following was observed from the transaction statement of Client beneficiary account/ Client Margin account No. 12053500 00023193 of USPL Broker held with CDSL, which is the main Client Beneficiary Account/Client Margin Account of USPL:

a) From the Client Beneficiary Account/Client Margin Account no. 12053500 00023193 held with CDSL, the securities were transferred to the demat account IN30096610486219 of USPL with Globe Capital Market Ltd, which was DP of NSDL. The securities received in the demat account with Globe Capital Market Ltd, were regularly being pledged with ICICI Bank.

b) The securities held in the Client Beneficiary Account/Client Margin Account no. 12053500 00023193 were also transferred to the demat account IN30096610526254 of Noticee 5 which was also with Globe Capital Market Ltd. Subsequently, these securities were further transferred to another demat account IN30096610263202 which was also in the name of Noticee 5 and was held with Globe Capital Market Ltd (DP).

17.6 It was observed from the statement of the Demat Account IN30096610263202 held in the name of Noticee 5 that securities were being transferred to and from various demat accounts which are as follows:

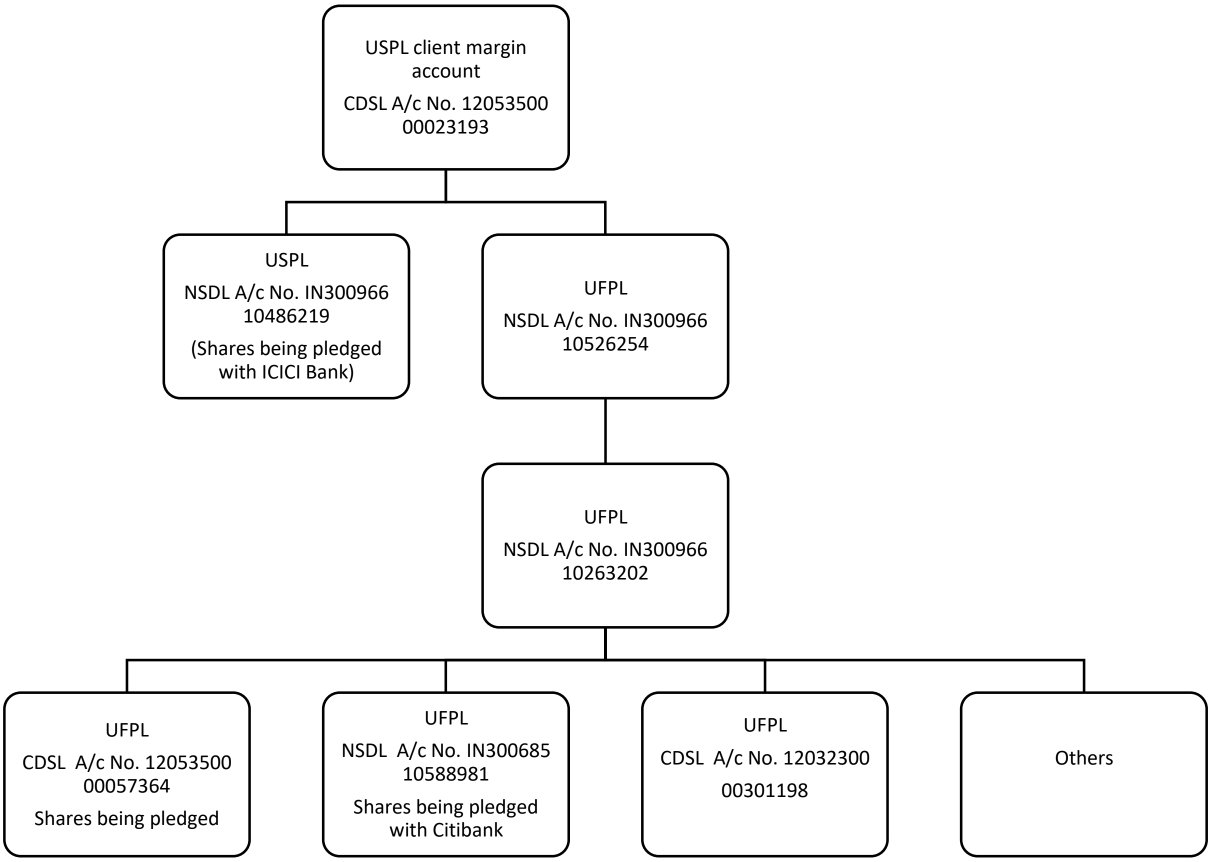
a) 12053500 00057364 – The said account is held in the name of Noticee 5 in CDSL. Various to and fro off-market transactions were observed with the aforesaid UFPL account no. IN300966 10263202 (held with NSDL). The shares so received were being pledged.

b) IN300685 10588981- The said account is held in the name of Noticee 5 in NSDL. Various to and fro off-market transactions were observed with the aforesaid Noticee 5's account no. IN300966 10263202 (held with NSDL). The shares so received were being pledged with Citibank.

c) 12032300 00301198- The said account is held in the name of Noticee 5 in CDSL. Various to and fro off-market transactions were observed with the aforesaid Noticee 5's account no. IN300966 10263202 (held with NSDL). The shares so received were being pledged.

d) Other demat accounts - It was noticed that shares were being transferred to/ received from various other accounts also. In various cases it was observed that the accounts were held in the name of Individuals. In some of these accounts, shares were also being received from/ transferred to the client beneficiary account / margin account of USPL (A/c no. 12053500 00023193).

17.7 Pictorial representation of Movement of securities from USPL's client margin account to accounts of USPL and Noticee 5 as has been aforementioned is given below:



17.8 From the demat account statements of Client Beneficiary Account/Client Margin Account No. 12053500–00023193 of USPL, I note that the clients' securities were being pledged either through ICICI Bank or were moved to the demat accounts of Noticee 5 account for the purpose of pledging with third party financiers.

17.9 USPL pledged its clients' securities as admitted by Noticee 1 vide his statement dated October 31, 2014 as follows :–

a. With third party financiers (through Noticee 5) i.e. Edelweiss Financial Services Private Limited , DSP Merrill Lynch , Infrastructure Leasing & Financial Services Limited , Citicorp Finance (India) Limited and Morgan Stanley India Private Limited, and

b. With ICICI Bank (directly by USPL).

17.10 For the period February 12, 2008 to January 9, 2015, USPL transferred clients' securities from Client Beneficiary Account/Client Margin Account No. 12053500–00023193 amounting to Rs. 36.67 Crores (Valuation based on the market price of the scrips as on January 9, 2015) to the demat account of Noticee 5 (Account No. IN30096610526254). These securities were transferred to the aforesaid demat account of Noticee 5 for pledging with third party financiers. In addition to the aforesaid, it is also observed that ICICI Bank vide e–mail dated January 21, 2015 provided with a list of securities pledged by USPL with that Bank, which amounted to Rs. 23.42 Crores (Valuation based on the market price of the scrips as on January 9, 2015). From the aforementioned, it was observed that securities amounting to a total value of Rs. 60.09 Crores (36.67+23.42) were transferred from the Client Beneficiary Account/Client Margin Account No. 12053500–00023193, for pledging by USPL with ICICI Bank and with third party financiers.

17.11 ICICI Bank vide e–mail dated January 21, 2015 informed that it had invoked the pledge and sold off pledged securities amounting to Rs. 10,22,46,987 (approx Rs.10.22 cr.) to recover dues. Noticee 2 vide his statements dated

October 31, 2014 and March 31, 2015, submitted that one third party financier i.e. IL&FS, had invoked the pledge and sold off pledged securities before May 26, 2014. Further, it was observed from the aforesaid statements of Noticee 2 that two of the financiers i.e. Edelweiss Capital and CitiBank, had also invoked the pledge and sold off pledged securities amounting to Rs.10 Crores to recover dues. Citibank invoked the shares valuing around Rs. 6 cr. and Edelweiss Capital invoked the capital valuing around 4 cr. From the aforementioned, it was observed that pledge was invoked by ICICI Bank and third party financiers and securities amounting to at least Rs. 20.22 Crores were sold off.

17.12 It was observed that the pledged shares were sold by the Citibank on July 16, 2014, August 01, 2014 and August 04, 2014. Edelweiss sold the shares on August 11, 2014 and IL& FS sold the shares on June 18, 2014. Further it stated that there were shares which were lying free in the demat accounts of Noticee 5 (demat account no. 1205350000057364 lying with CDSL and demat account number IN30096610263202 with NSDL). Further it was observed that the shares in demat account no. 1205350000057364 had been transferred to demat account no. 1201910102301686 which was in the name of Noticee 5 and was maintained with SMC Global Securities Ltd (DP).

17.13 Further Noticee 2 submitted, not all clients whose shares had been pledged had margin requirement. Funds available with USPL were being used for its own and not for the clients i.e. funds were being used for own system of USPL. Further Noticee 1 stated, the shares used to move to Noticee 5’s account from the Client Beneficiary Account of USPL and this was the practice till his tenure as the director. He also submitted that some of the clients whose shares had been pledged did not have any obligation towards USPL.

17.14 Further he stated that in case those clients whose shares were pledged raised a demand for their shares, the company used to arrange funds to pay to the pledgee to get the same released and then credit the client's demat account. However, post June 2012 when the cash crunch aggravated, the same could not be done and so shares were not credited to the demat accounts of the clients when the request was raised by them.

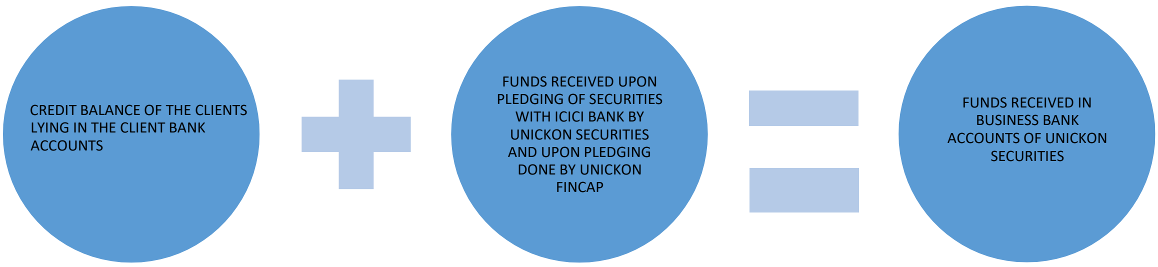
17.15 The transfer of securities from the Client Beneficiary Account/Client Margin Account No. 12053500–00023193 to USPLs' other demat account (Account No. IN30096610486219) and also to Noticee 5's demat account, without the knowledge and consent of its clients clearly indicate that USPL failed to act as per the instructions of the beneficial owners of such securities i.e. its clients. As stated in the preceding paragraphs, the aforesaid securities were further used by USPL for pledging with ICICI Bank (by USPL) and by Noticee 5 for pledging with third party financiers. The original beneficial owners i.e. clients of USPL including those who had no margin requirement, were never informed by USPL of the fact that their securities had been pledged with third party financiers (through Noticee 5) and with ICICI Bank (by USPL itself). Further, USPL never obtained the requisite approval from any of the recognised Stock Exchanges where it had its operations, for extending Margin Trading Facility to its clients. Further, since Noticee 5 was never a client of USPL but rather, was a client of USPL–DP, the aforesaid unauthorised transfer of clients' securities resulted in a transfer of beneficial ownership in such securities from the clients of USPL to Noticee 5.

18 **Transfer of Client's Funds by USPL:**

18.1 I note that USPL admittedly operated two types of Bank Accounts–Clients' Bank Accounts and Business Bank Accounts and the final authority for the aforesaid Accounts were its Directors, Noticee 1 and Noticee 2. The aforesaid fact is also borne out from the Settlement Agreement executed on September 6, 2013, whereby Noticee 1 "has agreed and consented to Ram Mohan to withdraw all his authority for bank account signature for and on behalf of all entities herein mentioned in (that) agreement in the capacity of Director, CEO or otherwise." Further, in his statement dated December 08, 2014, Noticee 3 submitted that Noticee 1 and Noticee 2 were the authorised signatories for the bank accounts of USPL.

18.2 The funds raised by USPL through the unauthorised transfer and pledging of clients' securities with ICICI Bank (by USPL itself) and with third party financiers (through Noticee 5), were subsequently transferred to Group Companies/Associate Companies/Subsidiaries of UFIPL (USPLs' Parent Company). Further, funds lying in the clients' accounts (other than those raised through the unauthorised transfer and pledging of securities), which included funds received from the Stock Exchanges as pay–out for trades executed by clients of USPL, were also transferred from USPLs' Clients' Bank Accounts to its Business Bank Accounts and thereafter, were subsequently transferred to the aforementioned Group Companies/Associate Companies/Subsidiaries.

18.3 A pictorial representation of the manner of funds received in the business bank accounts of USPL is as given below:–



18.4 I note that from the Client Ledger Balance dated March 05, 2014 that the net credit balance payable to the clients of USPL was Rs.15.47 Crores. [(Total Credit balance (Rs. 19.92cr.) - Total Debit balance (Rs.4.45cr.) = 15.47cr].

Particulars	Payable to Clients	Receivable from Clients	Net Payable to Clients
Client Ledger Balance	Rs.19.92 Crores	Rs. 4.45 Crores	Rs. 15.47 Crores

18.5 However it was observed that the corresponding bank balance available in all bank accounts (clients and business)* of USPL was a negative Rs.13.99 Crores i.e. Overdraft – Actual available Balance.

Particulars	Available Balance	Overdraft (Net Payable to Clients)	Overdraft (Net Payable To Bank)
Unickon Securities Business Bank Accounts	Rs.1.93 Crores	Rs. 15.92 Crores	Rs. 13.99 Crores (Approximate)

* As the funds lying in the business bank accounts of USPL have been transferred/ moved from the client accounts of USPL, the funds lying in the business bank accounts of USPL have been considered to arrive at the funds available with USPL.

18.6 I note that USPL did not have the requisite funds for making payments to its clients. There was a shortfall of Rs. 13.54 Crores, which was the net amount payable by USPL to its Clients (as per the Client Ledger Balance). Further I observe that there was a shortfall of Rs. 13.99 Crores, which was the net amount payable by USPL to its Bankers. Accordingly, there was a total shortfall of Rs. 27.53 Crores [13.54 (Net Payable to Clients) + 13.99(Net Payable to Bankers), which was money owed by USPL to its clients and Bankers.

18.7 From the balance sheets of USPL for the Financial Years 2011–12 and 2012–13, it was observed that USPL had created Fixed Deposits, which was either held as margin by Stock Exchanges or security against borrowings and guarantees with the banks. Noticee 2 vide his submissions dated October 31, 2014 and March 31, 2015, stated that funds were transferred from the designated clients' accounts to the business bank accounts of USPL and part of those funds were used to create FDRs’ with the banks and the FDRs was placed as margin with the exchanges and or/ as collateral for obtaining overdraft credit limit from the banks.

18.8 I observe that USPL vide its reply dated November 07, 2014 during inspection, submitted following information on the funds transferred from USPL to related entities /the Group Companies/Associate Companies/Subsidiaries of UFIPL during the period from April 1, 2012 to October 31, 2014.

Table – Funds Transferred During The Period April 1, 2012 To March 31, 2013

Entity To Whom Funds Were Transferred/Received Funds From Unickon Securities	Amount Transferred (Rs) (A)	Amount Received (Rs.) (B)	Difference (Rs.) [(A)-(B)]
Unickon Commodities	27514973	19022813	8492160
Unickon Media and Marketing	12117235	12112263	4972
Unickon Fincap	494646841	596822897	– 102176056
Unickon Capital Services	5346387	100000	5246387
Uniwealth Insurance Brokers	9050000	9108000	– 58000
Unickon Real Estate	624476895	242424171	382052724
Unickon Financial Intermediaries	312850	869103	– 556253
Vighnaharta	14024	47707	– 33683
Universal Insurance Consultants	16800	17585	– 785
Total	**1173496005**	**880524539**	**292971466**

Table – Funds Transferred During The Period April 1, 2013 To March 31, 2014

Entity To Whom Funds Were Transferred/Received Funds From Unickon Securities	Amount Transferred (Rs.) (A)	Amount Received (Rs.) (B)	Difference (Rs.) [(A)-(B)]
Unickon Commodities	2896340	2672440	223900
Unickon Media and Marketing	15000	583479	– 568479
Unickon Fincap	165160112	154590061	10570051
Unickon Capital Services	311796	0	311796
Uniwealth Insurance Brokers	74405	72592	1813
Unickon Real Estate	225331652	256907729	– 31576077
Unickon Financial Intermediaries	8615226	159525000	– 150909774
Vighnaharta	1602399	1604945	– 2546
Prithvi Insurance Consultant*	105000	105000	0
Universal Insurance Consultants	4550	0	4550
Tripace	1004550	10000000	– 8995450
Total	**405121030**	**586061246**	**– 180940216**

Table– Funds Transferred During The Period April 1, 2014 To October 31, 2014

ENTITY TO WHOM FUNDS WERE TRANSFERRED/RECEIVED FUNDS FROM UNICKON SECURITIES	AMOUNT TRANSFERRED (Rs) (A)	AMOUNT RECEIVED (Rs) (B)	DIFFERENCE (Rs.) [(A)-(B)]
Unickon Commodities	15000	0	15000
Unickon Media and Marketing	112500	0	112500
Unickon Fincap	2318000	29179500	– 26861500
Unickon Capital Services	200000	990000	– 790000
Uniwealth Insurance Brokers	125300	12100	113200
Universal Insurance Consultants	39000	0	39000
Unickon Real Estate	167450000	541138180	– 373688180

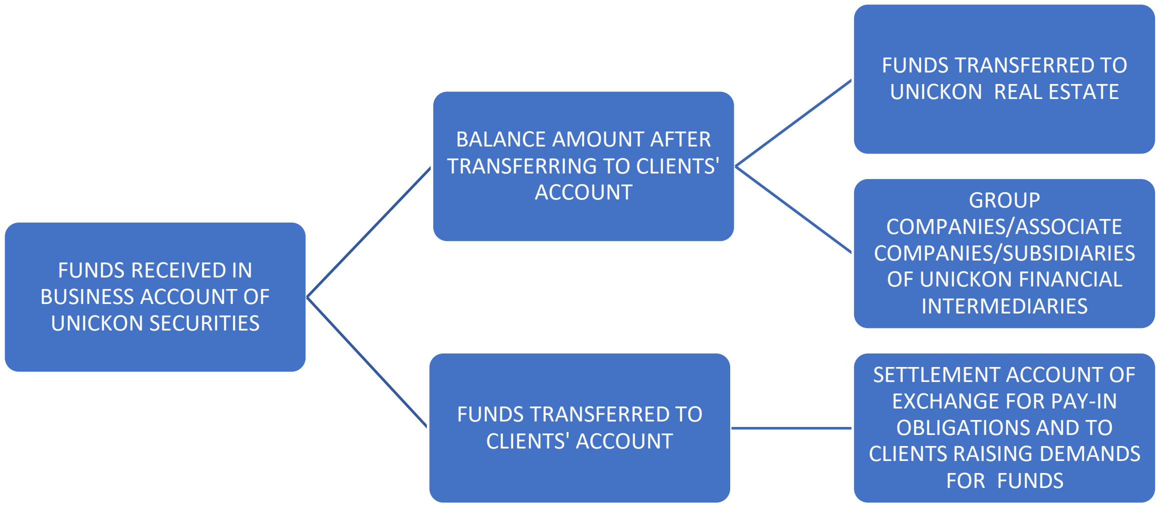
Unickon Financial Intermediaries	2023680	5489300	– 3465620
Prithvi Insurance Consultant*	0	279000	– 279000
Total	**172283480**	**577088080**	**– 404804600**

18.9 From the above, it was observed that an amount of Rs. 175,09,00,515 had been transferred from USPL to other related entities /the Group Companies/Associate Companies/Subsidiaries of Noticee 5 out of which Rs.1,01,72,58,547 has been given to UREPL which constitutes 58.09 % of funds transferred by USPL to its group companies.

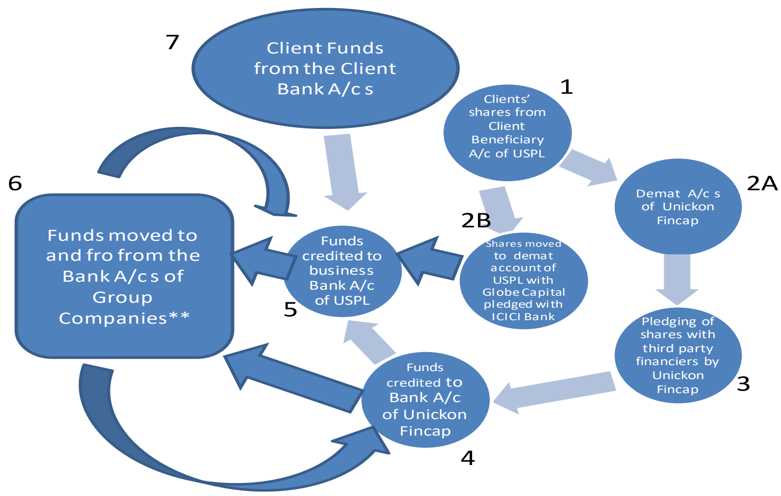
18.10 USPL vide its submission dated November 07, 2014 stated that upon transfer of funds to the following related entities, related entities further transferred the funds received from USPL and Noticee 5 amongst themselves also:

i. Unickon Commodities Private Limited
ii. Unickon Media and Marketing Services Private Limited
iii. Unickon Capital Services Pvt. Ltd
iv. Uniwealth Insurance Brokers Pvt. Ltd.
v. Unickon Finserve Private Limited
vi. Unickon Asset Reconstruction Company Private Limited
vii. Unickon Properties Com Pvt. ltd.
viii. Unickon Financial Consultants Pvt. Ltd.
ix. UREPL
x. UFIPL
xi. Universal Insurance Consultants
xii. Tripace Marketing Services Private Limited
xiii. Prithvi Insurance Consultants
xiv. Vighanharta Direct Insurance Broking Private Limited

A pictorial representation of the manner of utilization of funds received in the business bank account of USPL is as given below:



Following is the pictorial representation of the modus operandi of USPL:



18.11 As has been observed, USPL transferred approximately Rs.175.10 Crores from its Business Bank Accounts to the Group Companies/Associate Companies/Subsidiaries of UFIPL (USPL's Parent Company) during the period from April 1, 2012 to October 31, 2014, out of which approximately Rs.102 Crores was transferred to UREPL.

18.12 Bank statements of UREPL in HDFC Bank Limited, Axis Bank and ICICI Bank Ltd submitted by USPL vide letter dated November 05, 2014 were analyzed and it was observed that.

- HDFC Bank Limited Bank Account No. 00030340029574

  Funds by way of ICDs were majorly received in this bank account of UREPL. Subsequently, major portion of the funds received have been utilised to repay the funds taken by way of ICDs by UREPL to the other group companies of USPL and some portion has also been transferred to the other bank accounts of UREPL. It has also been noted that funds have been disbursed in the name of individuals and real estate companies also. The movement of funds to and from UREPL as funds received by way of ICD's and repayment of ICDs by UREPL was happening on a daily basis and at times on a single date thereby indicating that funds of other group companies of USPL along with the funds received from USPL were also being received by UREPL which were subsequently utilised to make repayment to other group companies.

- ICICI Bank A/c 000705019212

  Funds were being credited into this account from other bank accounts of UREPL and also the group companies of USPL. There were several transactions by the description 'Trfr from Unickon' from which it was not clear as to from which entity of Unickon the funds have been received. The funds have been utilised for making salary payments. There were several debit transactions with the description 'Various A/c' from which it is not clear as to which accounts are being referred here. Also there were certain transactions where funds have been debited by way of RTGS transfer to a bank account which appears to be in ICICI bank which was in the name of UREPL whose information has not been given by USPL. Funds from ICICI Bank A/c have also found their way back into the other group companies of USPL including Noticee 5 and also to USPL

- Axis Bank A/c 909020042692980

This account was debited with payments to individuals, payments as salary transfers and also to some accounts of UREPL. Payments of large amounts been made to group entities of Unickon Group which included USPL and Noticee 5.

18.13 Summarily the funds which were in the form of ICDs were used by the Group Compnaies etc. for meeting the working capital requirement, Noticee 2 vide his statement dated October 31, 2014 admitted during investigation that the funds were transferred from its Business Bank Acconts to its Group Companies etc. on a regular basis, as running account and the same were in the nature of loans with varying interest rates mutually agreed to between the parties to such transfer. In addition to the above, I note that that funds transferred by USPL were also utilised by UREPL for its business operations i.e. purchase of property, etc. USPL vide letter dated November 05, 2014, provided details of payments made for purchase of assets during the period from April 1, 2012 to May 26, 2014. From the same, it was observed that UREPL paid an amount of ₹1.22 Crores towards the purchase of 15 Units of 'DLF Corporate Green'. As per information received from Delhi Land and Finance ("**DLF**") vide its letter dated April 1, 2015, UREPL had made bookings for 48 Units of 'DLF Corporate Green' and an amount of ₹4.93 Crores was paid towards the aforesaid bookings. DLF further informed that UREPL subsequently sold off 20 of the aforesaid 48 Units by way of nomination/transfer to third party while allotment of 27 Units were cancelled on account of default by UREPL, in payment of overdue installments. As on April 1, 2015, DLF informed SEBI that UREPL held only one Unit of 'DLF Corporate Green'. Further vide email dated August 06, 2012 Noticee 1 informed that Noticee 2 was made CEO of UREPL.

18.14 It was observed from the perusal of the Annual Report of USPL for the Financial Years 2012–13 and 2013–14 that, income of USPL consisted of income generated from operations (income from Stock Broking and delayed payment charges and marketing support fee), operating incomes (interest on ICDs and interest on Fixed Deposits) and other income (interest income on Fixed Deposits constituted other income).

18.15 For the Financial Year 2011–12, the income from interest on ICDs and interest on Fixed Deposits was ₹14.32 Crores which constituted 55% of the total operating income of USPL. Further, for the Financial Year 2012–13, the income from interest on ICDs and interest on Fixed Deposits was ₹14.72 Crores, which constituted 87% of the total operating income of USPL. For the Financial Year 2013–14, the income from interest on ICDs and interest on Fixed Deposits constituted 95% of the total operating income of USPL. It was therefore, observed that the major portion of the other operating income of USPL comprised of ICDs and interest on Fixed Deposits.

19 Transactions between USPL and its Group/Related Party Company i.e. Noticee 6:

19.1 Noticee 6, as has been stated above was the group company/ related party company of USPL and was one of the 4 companies which otherwise not a part of the Unickon group but were still under Executive, Financial, Operational and Administrative control of the parent company and the group had economic and / or other material benefits from them. Noticee 6, a Private Limited Company, was a client of USPL and had also entered into the Agreement for Pledging Facility with Noticee 5 for the purpose of availing enhanced exposure in trading and financing.

19.2 Vikas Mallan ex-CFO of Unickon group vide his submission dated December 08, 2014 stated that a client of Noticee 6, viz. Bermaco, had traded through its demat account, in the scrip of Core Projects. The aforesaid trade was done through USPL. As per information submitted by Vikas Mallan, Core Projects was a client of Noticee 2 and the aforesaid trade was known to both Noticee 1 and Noticee 2.

19.3 The Directors of Noticee 6 are Noticee 4 and Noticee 6. As stated earlier, Noticee 4 is the wife of Noticee 1 while Noticee 7 is Noticee 1’s mother.

19.4 Noticee 2 vide his statement dated October 31, 2014 stated that during Financial year 2009-10, FY 2010-11 and FY 2011-12, Noticee 6 owed amount of approx Rs. 19.5 crores to USPL. He further submitted that no bill payments were made to Noticee 6 and that the payments made to Noticee 6 were not getting reflected in the balance sheets. Further Noticee 3 submitted about the loss of around Rs.17-18 cr. on account of trading by Noticee 6 in Core Projects.

19.5 The aforesaid submission of Noticee 2 on behalf of USPL was based on the Audit Report dated August 9, 2012, submitted by BSSR & Co. (Auditors) on the amended Financial Statements of USPL and UFPL as on March 31, 2011.

> *"Subsequent to the issuance of our earlier Audit Report dated 27 September 2011 on the original financial statements, we were informed that certain incorrect debits amounting to ₹15,69,05,000 had been made in the records of the company during the years 2008-2011 whereby instead of debiting the account of a private limited company which was a related party, debits were made in the accounts of certain other customers through management override of controls on the basis of unauthentic documents/confirmations. This resulted in non-recognition by another group company of a provision against the amount recoverable from the related party, in which a director of the Company had interest through his relatives.*
>
> *Attention is invited to note 3 of Schedule 16 to the financial statements, regarding modifications made in the records of the company during the years 2008-2011 as a result of which the Company did not recognize provisions in respect of bad/doubtful loan of ₹15,69,05,000 during the financial year ended 31 March 2009 on account of the inability of the private limited company (whose Promoters are related to a director of the company - a fact which had not been disclosed to the Company as a part of the statutory declarations required under the Companies Act,1956) to repay the amount. The loan had been given to purchase certain shares whose market prices subsequently experienced a sharp decline. Further, the Company has recognized interest income of ₹12,784,023 and ₹32,483,588 of the aforementioned loan during the financial years ended 31 March 2009 and 31 March 2010 respectively. Based on the detailed investigations of the matter, an amount of ₹19,48,87,688 on account of the loss due to non-recoverability of the loan and the interest accrued thereon during the financial years ended 31 March 2009 and 31 March 2010, has been recognized as a provision for bad and doubtful loan in the current year and has been disclosed as a prior period item in the financial statements. The Company has not yet fixed the responsibility for this loss and therefore, the steps to recover the same have not yet been taken ..."*

19.6 The shareholders of USPL, Sequoia Capital, M/S Nexus India and M/S Shubhkam ventures vide their legal notices dated May 30,2012 (submitted by USPL vide its letter dated November 07, 2014) to the directors of USPL and

Notice 5, Noticee 1 and Noticee 2, , Noticee 6, Noticee 4 and Noticee 7 have made similar allegations of collusion of Noticee 6, Noticee 4 and Noticee 7 with the management of USPL and Noticee 5.

19.7 Noticee 2, vide letter dated April 3, 2015, informed SEBI that an amount of ₹35 Crores was transferred to Noticee 6. The source of the aforesaid funds also included funds raised by Noticee 5 by pledging securities of USPL's clients with third party financiers. Transfer of funds to Noticee 6, raised through the pledging of securities by Noticee 5, occurred regularly during the period between 2008 and 2012.

19.8 There were financial transactions between Noticee 5 and Noticee 6 and also USPL and Noticee 6 during the Financial Years from 2008–09 and 2012–13. Noticee 1, vide an e–mail dated May 07, 2012, addressed to KPMG and Noticee 2, informed them that –

i. *"I360 STS had approached Unickon Securities for one of its client/acquaintance to have business with Unickon. Unickon was not careful to know more about this investor /acquaintance of I360 STS.*

ii. *Such facility arrangements should have been shared as to the relationship of director of I360 STS with one of the director and functionaries of Unickon as well as with the entire Board.*

iii. *Two of the board members and management was in know of the transaction.*

iv. *The transaction was done in the scrip of Core Projects and the same was executed in August 2008 when the price of scrip was ₹290.*

v. *A cash margin of ₹3 Crores was given by I360 STS as margin and an additional margin of ₹3 Crores came in the month of September 2008. Against this Unickon Fincap had funded an amount of ₹25.71 Crores.*

vi. *In October 2008, the price of Core Projects fell to ₹60. Unickon managed to sell the stock at an average price of ₹80 and hence suffered a huge loss on this account.*

vii. *Regarding debits, on information received from I360 STS of its client as shared, without doubting and in haste, transfer entries were made as the same were towards adequate margins."*

20 I note that USPL has not submitted any reply to the SCN dated May 14, 2022.

21 Noticee 1 submitted that till May 23, 2013 i.e. before relinquishing his responsibilities in Unickon group of companies including Unickon Securities Pvt Ltd and Unickon Fincap Pvt Ltd in favour of other director of the company Mr. Ram Mohan Gupta, there was no non-compliance what so ever in the company. There were regular statutory audits (internal as well as external) being conducted and till that time no non-compliance / nonconformity was brought to Noticee 1s' notice. All the statutory audits were regularly conducted by National Stock Exchange (NSE) and SEBI as per their own guidelines. Noticee 1 further submitted that the report of the internal auditors was submitted to the NSE and Bombay Stock Exchange (BSE). NSE and BSE also conducted an independent audit of the Unickon Securities Pvt Ltd. as per their own bye laws and till the time he was with the Unickon group of companies i.e. 6-9-2013, neither the NSE nor the BSE had pointed out any irregularities / illegalities committed by Unickon Securities Pvt Ltd. as alleged in show cause notice. Noticee 1 also submitted that Unickon Securities Pvt Ltd had not violated any of the rules, regulation and bye-laws of SEBI otherwise the NSE and BSE would have definitely pointed out the same in the audit conducted by them. After the completion of audit by NSE, NSE publishes the results of audit on its official website for the information of public at large and this information always remains on the official website of NSE. Noticee 1 submitted that as per the own audit report of NSE, there were no significant violations except few minor deviations on which a compoundable penalty was imposed by NSE. In regard to above contention of Noticee 1, I note that USPL had raised funds by pledging the securities belonging to their clients/investors. The funds thus raised unauthorisedly were subsequently diverted to other businesses of USPL. As observed during investigation , in view of which USPL was declared defaulter and was expelled by NSE on September 5, 2014. As observed during the investigation, USPL did not take membership of any Exchange for extending 'Margin Trading' facility and further it did not take consent/entered into agreement with clients and pledged the securities of the clients on its own. I also note that no prior approval of exchanges was taken upon Noticee 1 demitting the office. There were several other non-compliances/

violation which were observed during the period when Noticee 1 was still in the management of USPL which were also communicated by exchanges to USPL and thus monetary penalty was imposed by NSE. Thus I note that the contention raised by Noticee 1 that it had not violated any of the rules, regulation and bye-laws of SEBI is not tenable.

22 Noticee 1 submitted that from perusal of para no 47 of show cause notice dated 14-05- 2022 in which it has been alleged that an amount of Rs. 175,09,00,515/- has been transferred from USPL to other related entities / the group companies / associates companies / subsidiaries of noticee no 5, out of which Rs. 1,01,72,58,547/- has been given to UREPL which constitutes 58 % of the fund transfer by USPL to its group companies. The assertion made in show cause notice dated 14-05-2022 about other related entities / the group companies / associates companies / subsidiaries of noticee no 5 is incorrect as noticee no 5 as per the show cause notice dated 14-05-2022 is Unickon Fincap Pvt Ltd, which itself is a subsidiary of Unickon group of companies. Noticee 1 further submitted that for period starting April 1, 2012 to October 31, 2014 a surplus of Rs. 29,27,73,350/- (Rupees Twenty nine crores twenty seven lacs seventy three thousand and three hundred fifty only) has been received back in USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies. The reason of excess money received in USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies is the interest income which USPL has earned from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies because of inter corporate deposits. Noticee further submitted that the said inter corporate deposits were made by USPL from Rs. 120 crores which were received by Unickon group of companies from PE investors namely Sequoia Capital India Growth Investment and Nexus India Venture Investment in year 2008. Further Noticee 1 stated that as mentioned in para no 47 of show cause notice dated 14-05-2022, if the same logic as stated above is applied on the funds transferred from USPL to UREPL from April 1, 2012 to October 31, 2014 and fund received back from UREPL in USPL, an excess amount of Rs. 2,32,11,533/- (Rupees Two

Crores thirty two lacs eleven thousand five hundred and thirty three) has come in USPL from UREPL. This excess amount is again the interest income of inter corporate deposits which USPL has earned from UREPL. The above stated factual position clearly establishes that excess amount has come back to USPL from other related entities / the group companies / associates companies / subsidiaries of Unickon group of companies on account of interest income of inter corporate deposits given by USPL. The entire above stated transactions with regard to inter corporate deposits made by various group companies of Unickon were from the own money of Unickon group. This money was received by Unickon group of companies from PE investors namely Sequoia Capital India Growth Investment and Nexus India Venture Investment in year 2008 and no client money at all was used by USPL in the above stated transactions.

I note that the funds admittedly received by USPL from client beneficiary account/client margin account were transferred to the other related entities / the group companies / associates companies / subsidiaries of USPL. Further USPL transferred and pledged clients securities through Noticee 5. The diversion of clients funds and pledging of shares by USPL and thus realizing the monies so raised by USPL for its other related entities / the group companies / associates companies / subsidiaries of USPL has been clearly spelt out is the foregoing paragraphs. Further the same has been admitted by Noticee 1, Noticee 2 & Noticee 3 vide their statement recording under Section 11C before the SEBI. Noticee 1 had also accepted the movement of funds of clients to group companies as a loan vide email dated December 09, 2012. Thus, contention raised by Noticee 1 that money was received by Unickon group of companies from PE investors namely Sequoia Capital India Growth Investment and Nexus India Venture Investment in year 2008 and no client money at all was used by USPL is devoid of any merits. I note that no cogent and documentary evidence has been submitted by Noticee 1 in support of his claim. Further I note that Sequoia Capital, M/S Nexus India and M/S Shubhkam ventures vide their legal notices dated May 30, 2012 to the directors of USPL and Noticee 1, Noticee 2, Noticee 5, Noticee 4, Noticee 6 and Noticee 7 have made allegation of collusion by Noticee 4, Noticee 6 and Noticee 7 with management of USPL and Noticee 5. Thus the aforesaid contention of Noticee 1 is not tenable.

23 Noticee 1 contended that another affidavit dated 10-01-2019 filed by the SMC Global Securities Ltd in the same execution petition bearing no 121/2014 (5351 OF 2016), before Hon'ble Patiala House Court, New Delhi in which it has been further stated that a surplus of Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand and six hundred sixteen only) of Unickon Securities Pvt Ltd is presently lying with the SMC Global Securities Ltd. In this affidavit at para no 3 it had been stated that the total valuation of the securities of the Unickon Securities Pvt Ltd. (DP ID - 1201910102301686) lying with the depository of SMC Global Securities Ltd as on 29.12.2018 is Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only). In this regards relevant extract of the said affidavit dated 10-01-2019 filed by the SMC Global Securities Ltd was reproduced by Noticee 1:

> *"3. That deponent further states before this Hon'ble Court that as per the DP statement / account maintained during the routine process of business, the total valuation of the securities of the Judgment Debtor i.e. Unicorn Securities Pvt Ltd. (DP ID - 1201910102301686) is lying with the depository of SMC Global Securities Ltd as on 29.12.2018 is Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only) and same may be revealed from the statement of DP Account, which is being maintained by the SMC Global Securities Ltd."* .

The above stated factual submission of SMC by way of an affidavit filed before the Hon'ble Patiala House Court clearly states that an amount of Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only) of USPL is still lying with SMC Global Securities Ltd. demonstrates that there was no client money whatsoever which was used by USPL, hence the alleged allegations in the show cause notice dated 14-05-2022 should be dropped. In this regard I note that as has been observed before, USPL did not have proprietory trading and hence the shares transferred to Noticee 5 were of the clients of USPL. The said securities were transferred for the purposes of pledging with third party financiers. Initially pledging was done of clients who wanted to avail financing facility however subsequently due to the cash crunch the shares of even those clients who had not consented for such enhanced exposure were pledged. Therefore I note that it is clear that shares / securities lying in the demat account of Noticee 5 i.e. 1201910102301686 belongs to the clients of USPL only. The claim by Noticee 1 that as an amount of Rs. 13,94,47,616/- (Rupees thirteen crores ninety four lacs forty seven thousand six hundred and sixteen only) of USPL is still lying with SMC Global Securities Ltd. demonstrates that there was no client money whatsoever which was used by USPL is not maintainable as from the demat account statement of client beneficiary account/ client margin account it is clear that securities were transferred to Noticee 5 by USPL for the purposes of pledging which has been clearly demonstrated in foregoing paragraphs. Further Noticee 1, in its statement on Oath dated October 31, 2014, has accepted that funds were transferred from USPL clients accounts to to Noticee 5 for pledging. He has also accepted that due to cash crunch subsequently funds of clients who did nit have agreement for pledging were also transferred to Noticee 5 for pledging and also directly pledged by USPL.

24 From the observations made at paragraph 17 to paragraph 19, I find that:

a) USPL admittedly transferred securities from its Client Beneficiary Account/ Client margin account no No. 12053500–0002319300023193 to the demat account of Noticee 5 [(Account No. IN30096610526254) and also to USPL demat account [(Account No. IN30096610486219).

b) There has been transfer of securities worth Rs. 36.67 Crores from Client Beneficiary Account/ Client Margin Account of USPL to the demat account of Noticee 5 and to its own other demat account. I note that initially the pledging of shares with Noticee 5 was done with the consent of clients, however as is admitted by Noticee 2 and Noticee 3 in their statement on oath, from June 2012 onwards after the cash crunch, the pledging was started for clients who did not have margin requirement and who did not give explicit authorization for such pledging. It is to be noted that a Client Beneficiary Account is maintained by a broker to retain securities of its client for various purpose and the movement of securities should take place among the client demat account (beneficial owner account), the client beneficiary account (pool), client margin account, maintained with broker, clearing member account and the settlement pool account. There arises no circumstance / need for movement of securities from one beneficial owner to another beneficial owner other than for off market transaction between clients trading in the market. It is important to note that Noticee 5 was not a client of the broking entity i.e. USPL but a client of the USPL- DP. It may be stated that client Beneficiary account and client margin account is maintained by broker to retain securities of its client for various purpose. As Noticee 5 was not a client of USPL-DP, transfer of securities from USPL to the Noticee 5 from the client beneficiary account / margin account of USPL has not been justified. Further I note that USPL not only transferred securities to Noticee 5's account, it also transferred securities to its own account as has been seen from the account statement of the client beneficiary account from February 8, 2008 to January, 2015. In this regard I note that, USPL had no proprietary trading and, therefore, there could not have any occasion for it to transfer client's securities to its own account. Pursuant to transfer by USPL of securities to its own other account, I note that USPL pledged the securities and thus raised the funds which was further transferred to its own Group Company/AssociateGompanies/Subsidiaries. The valuation of securities which were transferred to USPL's other account and which was as a result pledged with ICICI bank amounted to Rs. 23.42 Crores. Further it was observed that the securities pledged were later on invoked by the institutions wherein they were pledged. Further there had been a large number of complaints of the nature "non·receipt of funds/ securities" amounting to Rs. 88.84 cr. from 4356 claims.

c) From the bank statements of Client Bank Account of USPL, it was observed that Client funds were transferred from designated client accounts to business account of USPL and from business accounts to Group Companies/Associate Companies/Subsidiaries of USPL. Further I note that client funds were transferred to business accounts of USPL and thereafter created FDR and used the same to avail overdraft facility. The funds raised by USPL through the unauthorised transfer and pledging of clients' securities with ICICI Bank and with third party financiers (through Noticee 5) alongwith funds lying in the Clients' Bank Accounts (other than those raised through the unauthorised transfer and pledging of securities), were subsequently transferred to Group Companies/Associate Companies/Subsidiaries of UFIPL (USPLs' Parent Company). The funds received from the Stock Exchanges as pay-out for trades executed by clients of USPL were also transferred to USPLs' Business Bank Accounts, the same has been illustrated as below:

Date	Amount	Account No.
07/03/2014	41,00,000	000405029202
	↓	
07/03/2014	41,00,000	000705035490 (Client pool account)
	↓	
07/03/2014	41,00,000	000705009868 (Client Account)
	↓	
07/03/2014	42,00,000	000705009867 (Own account)

During the period from April 1, 2012 to October 31, 2014, USPL admittedly transferred approximately 175.10 Crores from its Business Bank Accounts to the bank accounts of abovementioned Group Companies/Associate Companies/Subsidiaries. It was also observed that the aforementioned Group Companies/Associate Companies/Subsidiaries, further transferred the funds amongst each other during the period April 1, 2014 to October 31, 2014. Noticee 2 admitted on Oath that funds were transferred from USPL Business Bank Accounts to Group Companies/Associate Companies/Subsidiaries, on a regular basis, as running account and the same were in the nature of loans with varying interest rates mutually agreed to between the parties to such transfer. The aforesaid funds, which were also in the form of ICDs, were used by the aforesaid Group/ Companies/Associate Companies/Subsidiaries, for inter alia meeting their working capital requirement.

25 From the above, I note that, USPL had failed to act with due skill, care and diligence and had also indulged in manipulative and fraudulent activities through the unauthorised misutilisation of clients' securities and funds and subsequent diversion to its Group Companies/Associate Companies.

26 In regard to aforesaid it is pertinent to note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") vide its order dated April 26, 2021 has upheld the observation made by Hon'ble WTM vide its order dated March 15, 2016 against USPL and 19 other entities. The SAT vide its order dated April 26, 2021 held that:

"……18. The main allegation against the appellant so also with other noticees was misuse of clients' securities by Unickon Securities itself or through its NBFC arm Unickon Fincap. Both these entities were held by Unickon Financial Intermediaries P. Ltd. Appellant Mr. Gajendra Nagpal as well as Mr. Ram Mohan Gupta were the promoter and had majority shareholding in the parent entity Unickon Financial Intermediaries P. Ltd. Both were controlling all the subsidiaries. Only from September, 2013 Mr. Ram Mohan Gupta became the controlling authority in view of the resignation and selling of shares by appellant Mr. Gajendra Nagpal. In these circumstances, a detailed analysis of the fund transfer and the transfer of the securities of the client has been made in the impugned order vide paragraph no.6. For the purposes of analysing the fund transfer the learned WTM relied not only on the statements of the Unickon Securities or other personnel but also on the annual reports, bank statements and the then auditors' report. All these documents would show that since the year 2008 till the crunch of finance ultimately opened the lid these activities were continuing.

…..20. The learned WTM has relied on the balance sheet of Unickon Securities for the financial year 2011-12 and 2012-13 to hold that Unickon Securities had got transferred funds from its clients' bank account to it's business bank accounts."

27 I note that as per the SEBI Circular SEBI Circular No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008, *"2.1 Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements/pay-ins. Brokers should also maintain records to ensure proper audit trail of use of client collateral."* Further, I note that the SEBI Circular No. CIR/MRD/DMS/13/2010 dated April 23, 2010, which pertains to the '*Execution of Power of Attorney (POA) by the Client in favour of the Stock Broker/Depository Participant*', while standardizing the norms for POA, limits the conditions for its execution in favour of the Stock Broker and Depository Participant.

28 Further, Section 12(1) of the SEBI Act mandates a registered intermediary to ensure compliance with the conditions of the Certificate of Registration granted by SEBI, which inter alia includes the conditions contained in the Code of Conduct specified under Schedule II read with Regulation 9 of the Stock Brokers Regulations. As per the aforesaid Code of Conduct, a stock broker shall maintain high standards of integrity, act with due skill, care and diligence and shall also not indulge in manipulative, fraudulent or deceptive transactions with a view to disturbing market equilibrium or making personal gains.

29 From the above I note that, USPL had misutilised clients' funds and securities and diverted funds for utilization by itself and its Group Companies/Associate Companies without the clients' knowledge and consent and without any agreements in place for allowing such utilisation. In view of the aforementioned, I conclude that USPL has violated Regulations 9(b) and (f) of the Stock Brokers Regulations; SEBI Circular No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008, SEBI Circular No. CIR/MRD/DMS/13/2010 dated April 23, 2010 and Clauses A(1)–(3) and A(5) of the Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 9 of Stock Brokers Regulations.

30 I also note that Noticee 1 had vide his statement on oath dated October 31, 2014 had admitted that the transactions were funded, which implies that USPL was engaged in margin funding facility to its clients through Noticee 5. Further BSE in its inspection report has also made an observation that financing facility is being

provided to the clients and the group companies of USPL by Noticee 5 and USPL has not obtained approval of the exchange to offer margin trading facility.

31 As per the SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004, *“The brokers wishing to extend the facility of margin trading to their clients would be required to obtain prior permission from the exchange/s where the margin trading facility is proposed to be provided. The exchange shall have the right to withdraw this permission at a later date, after giving reasons for the same.”*

As noted in the preceding paragraph, USPL never obtained the requisite approval from any of the recognised Stock Exchanges where it had its operations, for extending Margin Trading Facility to its clients.

32 Thus in view of the above I find that the margin trading facility extended by USPL was in violation of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004.

- **Whether the non–segregation of clients’ funds by USPL, was in violation of SEBI Circular No. SMD/SED/CI/93/23321 dated November 18, 1993; Circular No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 and Clause 15 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011?**

33 I note that SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, mandates distinguisment of Stock Brokers’ money and securities account and the clients' money and securities account. The Circular also obligates the stock brokers to forthwith pay in the clients' account, all the monies received on account of clients.

34 As detailed in the preceeding paragraphs, USPL transferred securities from its Client Beneficiary Account/Client Margin Account to the demat account of Noticee 5 and also to USPLs’ other demat account. USPL did not have any proprietary trading. Therefore, the securities maintained by USPL in the aforesaid Client Beneficiary Account/Client Margin Account No. 12053500–

00023193, were only of its clients. The transfer of securities (amounting to a total value of ₹60.09 Crores) from the Client Beneficiary Account/Client Margin Account to USPLs' demat account and also to Noticee 5's demat account, was without the knowledge and consent of USPLs' clients. USPL admittedly pledged its clients' securities (transferred from the Client Beneficiary Account/Client Margin Account with third party financiers (through Noticee 5) and with ICICI Bank (through USPL itself).

35 The funds raised by USPL through the unauthorised transfer and pledging of clients' securities with ICICI Bank and with third party financiers (through Unickon Fincap) alongwith funds lying in the Clients' Bank Accounts (other than those raised through the unauthorised transfer and pledging of securities, which included funds received from the Stock Exchanges as pay–out for trades executed by clients of USPL and which were transferred to USPLs' Business Bank Accounts), were subsequently transferred to Group Companies/Associate Companies/Subsidiaries of UFIPL. Further, USPL admittedly transferred funds from its Clients' Bank Accounts to its Business Bank Accounts, part of which were subsequently used for creating Fixed Deposits. USPL as a broker is obligated to keep the funds of its clients in a separate accounts and own money in a separate accounts which USPL failed to do as has been described above.

36 I therefore, find that USPL failed to segregate funds in its own Bank Accounts from that of its clients' despite having separate Business Bank Accounts and Clients' Bank Accounts.

37 In view of the above, I find that the non–segregation of clients' funds by USPL, was in violation of SEBI Circular No. SMD/SED/CI/93/23321 dated November 18, 1993; Circular No. MRD/DoP/SE/CIR-11/2008 dated April 17, 2008 and Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

- **Whether USPL indulged in funding activities in violation of Rule 8(1)(f) of the SCR Rules; Section 12(1) of the SEBI Act; Regulations 9(b) and (f) of the Stock Brokers Regulations; Clauses A(3) and A(5) of the Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 9 of Stock Brokers Regulations?**

38. Rule 8(1)(f) of the SCR Rules prohibits a stock broker from undertaking any business involving personal financial liability. However as noted in preceding paragraphs and as has been found from the annual reports of USPL, USPL provided clients' funds to Group Entities/Associate Companies/Subsidiaries of UFIPL, by way of ICDs. The aforesaid entities were not related to the securities market. As a result of the aforesaid, USPL also earned interest income from ICDs, which constituted more than 50% of its total operating income for the Financial Years 2011–12 and 2012–13. I find that USPL was able to derive economic benefits from the aforesaid transactions with Group Entities/Associate Companies/Subsidiaries of UFIPL.

39. Further, Section 12(1) of the SEBI Act mandates a registered intermediary to ensure compliance with the conditions of the Certificate of Registration granted by SEBI, which *inter alia* includes the conditions contained in the Code of Conduct specified under Schedule II read with Regulation 9 of the Stock Brokers Regulations. As per the aforesaid Code of Conduct, a stock broker shall maintain high standards of integrity, act with due skill, care and diligence and shall also not indulge in manipulative, fraudulent or deceptive transactions with a view to disturbing market equilibrium or making personal gains. I note that, USPL failed to exercise due skill, care and diligence and by misutilizing the fund of clients entered into manipulative activity and thus did not maintain high standard of integrity.

40. Thus, I conclude that USPL indulged in fund based activities in violation of Rule 8(1)(f) of the SCR Rules; Section 12(1) of the SEBI Act; Regulations 9(b) and (f) of the Stock Brokers Regulations; Clauses A(3) and A(5) of the Code of Conduct

for Stock Brokers specified under Schedule II read with Regulation 9 of Stock Brokers Regulations.

- **Whether USPL, its Directors, Noticee 1 & Noticee 2, its Ex–Compliance Officer, Noticee 3; Noticee 5, Noticee 6 and its Directors, Noticee 4 and Noticee 7, dealt in securities in a fraudulent and unfair manner and defrauded investors in securities, in violation of Sections 12A(b) and (c) of the SEBI Act; Regulations 3(a) and (d) and Regulations 4(1) of the PFUTP Regulations?**

I note that Section 12A(b) and (c) of the SEBI Act provides that

12A. No person shall directly or indirectly—

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Further Regulations 3(a) and (d) and Regulation 4(1) of the PFUTP regulations provides that:

3. *No person shall directly or indirectly—*

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.Schedule III

4. *(1)Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

41. **USPL & Noticee 5:** As has been already established, USPL fraudulently transferred clients' securities to the Noticee 5 for pledging with third party financiers and to its other demat account also. I note that USPL did not have proprietary trading so the transfer of clients' securities to its own account was patently wrong and further the pledging of shares post 2012 by Noticee 5 were also done without clients' consent. Further, funds raised by way of the aforesaid pledging and also funds lying in its clients' accounts, were transferred by USPL to the Group Entities/Associate Companies of UFIPL inter alia for meeting their working capital requirement and also for funding trades executed by Noticee 6. The original beneficial owners i.e. clients of USPL including those who had no margin requirement, were never informed by USPL of the fact that their securities had been pledged with third party financiers (through Noticee 5) and with ICICI Bank (by USPL itself). Further, since Noticee 5 was never a client of USPL but rather, was a client of USPL–DP, the aforesaid unauthorised transfer of clients' securities resulted in a transfer of beneficial ownership in such securities from the clients of USPL to Noticee 5. Thus, as established USPL in connivance with Noticee 5, fraudulently diverted funds to the Group Entities/Associate Companies of UFIPL.

42. **Directors of USPL i.e. Noticee 1 & Noticee 2:** Noticee 1 & Noticee 2 were directors of USPL since its inception in 2005. Noticee 1 & Noticee 2 by virtue of their holding in UFIPL, also constituted part of promoter group of USPL. Noticee 1 was final authority for all operational and business decisions and Noticee 2 was aware about the working and operations and transactions of the company and clients accounts

43. All matters related to group including USPL were consulted with / reported to Noticee 2 on daily basis. Both of them were allegedly aware about the operations and transactions of the company and clients accounts. Ultimate decision of funds was taken by Noticee 1 and/or Noticee 2. All the business decisions were taken by Noticee 1 and Noticee 2 jointly during the board meetings which used to

happen every quarter in New Delhi and attended by all the board members. Pursuant to that Noticee 1 and Noticee 2 during their meetings arrived at a decision where Noticee 1 decided to exit from Unickon group after entering into settlement and share purchase with Noticee 2. Post the resignation of Noticee 1, Noticee 2 took complete control of the working of all the business aspects and operations of Unickon group including USPL. Noticee 2 was the final decision maker on all the matters and all activities were supervised by and reported to him by all the operational personnel and team and his decisions were acted upon by the team. Further it was observed that there was no change in the operational handling of USPL after Noticee 1 left the office. The practice of pledging continued as earlier.

44. Thus I note that**,** that Noticee 1 and Noticee 2 both were responsible for the operations of USPL. Although Noticee 1 was directing and overseeing the day to day business of USPL, Noticee 2 was also aware of the happenings w.r.t the business decisions and fund and securities movement in USPL. Noticee 1 resigned in September 2013 and till the time he was there, USPL had already carried out the fraudulent activities as has been described and established in the preceeding paragraphs.

45. **Compliance officer of USPL i.e. Noticee 3:** I note that Noticee 3 failed in his responsibilities as the compliance officer of USPL as admittedly he did not immediately and independently report to the board of non-compliance observed by him and was in the knowledge of the fraud being done upon the clients of USPL. Further he failed to redress the grievances of the clients within 30 days of receipt and admittedly, he was aware of the wrongdoings by USPL but remained a silent witness to the wrongdoings being done by USPL which makes him equally liable to the frauds being done and thus was a party to the same. Thus I find that Noticee 3 colluded with USPL for fraudulent transfer of clients funds and securities.

46. **Noticee 6 and its directors Noticee 4 and Noticee 7:** As observed Noticee 6 was a client of USPL. Further Noticee 6 was also related company of USPL as it

was under Executive, Financial, Operational and Administrative control of UFIPL. The directors of Noticee 6 were Noticee 4 and Noticee 7, who were related with Noticee 1 as his wife and mother respectively. During the period between 2008 and 2012, USPL admittedly transferred ₹35 Crores to Noticee 6. The source of the aforesaid funds also included funds raised by Noticee 5 by pledging securities of its' clients with third party financiers. Noticee 6 traded in the scrip of Core Projects to the extent of ₹25.71 Crores, which was effectively funded by Noticee 5 through the Pledging Facility. The aforementioned trade resulted in a substantial loss, which was then set–off by debiting the accounts of USPL and Noticee 5. Email dated May 07, 2012, sent to KPMG acknowledges the fact that both the directors i.e. Noticee 1 and Noticee 2 were in knowledge of the transaction. The said email dated May 07, 2012 was sent by Noticee 1 with a copy to Noticee 2. Also, in another mail dated May 05.2012 sent by Noticee 1, a copy of which has also been marked to Noticee 2, has been signed as 'Gajendra Nagpal and Ram Mohan Gupta'. On perusal of the said mail it was observed that both the directors 'admit the slip -up with regard to the matter of i360 and Core Projects in USPL and Noticee 5.'

47. Further, as observed from audit report dated August 09, 2012, submitted by BSSR & Co. (auditors) the interest income on loans granted to Noticee 6, which were not recovered, were incorrectly recognised as revenue by USPL and Noticee 5. The Auditors' Reports while clearly indicating that outstanding dues amounting to ₹19.50 Crores was recoverable from I360 STS, stated that USPL and Noticee 5 *"has not yet fixed the responsibility for this loss and therefore, the steps to recover the same have not yet been taken."* This clearly indicates that the management of USPL and Noticee 5 granted monetary benefits to Noticee 6 through usage of clients' funds. Thus I note that Noticee 6 was also a Related Party Company since the Promoter of Noticee 5 i.e. Noticee 1, was related to its Directors, viz. Noticee 4 and Noticee 7. Further, as the Director of Noticee 6 and being the wife of Noticee 1, Noticee 4 was aware of the Stock Broking and Depository Participant Operations of USPL and clients' funds were used for funding Noticee 6. Therefore I find that, Noticee 6 was a participant of the fraud of diversion of clients' funds for its trades in the scrip of Core Projects. Therefore,

Noticee 6 through its directors Noticee 4 and Noticee 7 were in a position to be privy to the information of operations of USPL.

48. Noticee 4 contended that she had no direct connection whatsoever with Unickon group of companies except her husband was a shareholder and director in Unickon group of companies till 06-09-2013. Noticee 4 submitted that the basic premise of all the alleged allegations on me in the show cause notice is a ‘wrong mention’ of her name as a Key Managerial Person in the balance sheet of USPL for the year 2011-12 and 2012- 13 by the statutory auditor of USPL. The said error was acknowledged by the statutory auditor and to set at rest any doubt, the statutory auditors of USPL who audited the balance sheets for the financial years 2011-12 and 2012-13 where her name appeared, have vide a certificate dated 01-08-2017 clarified that her name was mentioned as she was a relative of Noticee 1 and because of a statutory requirement. The certificate also clarified that she was never a KMP of USPL. Noticee 4 further submitted that as far as the transactions of year 2008 between Core Projects Ltd and Noticee 6 is concerned, the allegation in show cause notice wrongly records that there was a write-off by USPL. There was no write-off by USPL which did not fund the said transaction. The write-off was by Noticee 5 out of its own funds. In continuation to above submission she stated that to resolve the matter of the transactions of year 2008 between Core Projects Ltd and Noticee 6, the statutory auditor who audited the balance sheets of Unickon Securities for the financial year 2011-12, had vide a certificate dated 16-12-2015 confirmed that the loss as a result of the trades in Core Projects was suffered and borne by Unickon Fincap out of its own funds and no money of any client was involved.

49. In this regard I note that Noticee 6, a Private Limited Company, was a client of USPL and had also entered into the Agreement for Pledging Facility with Noticee 5 for the purpose of availing enhanced exposure in trading and financing.

50. USPL vide its admission through Noticee 2 dated October 31, 2014 stated that during Financial year 2009-10, FY 2010-11 and FY 2011-12, Noticee 6 owed amount of approx Rs. 19.5 crores to Unickon. He further submitted that no bill

payments were made to Noticee 6 and that the payments made to Noticee 6 were not getting reflected in the balance sheets. Further Noticee 3 submitted about the loss of around Rs.17-18 cr. on account of trading by Noticee 6.

51. Hon'ble SAT vide its order dated April 26, 2021 (Supra) has held that,

"…..23. As regards the transaction with I360STS of which appellant Ms. Sonia Nagpal and her mother were the only shareholders, the same would show that I360STS 28 owed an amount of approximately 19.50 crores to Unickon group of companies. However, the payments made to it were not reflected in the relevant balance sheet. The learned WTM, therefore, quoted the extract from the audit report submitted by DSFR & Co. in this regard. This extract would show that the modification in the record of the company were made during the year 2008-2011 as a result the company did not recognise provision in respect of bad and doubtful loan in this respect. The auditors had also highlighted that though the director of this company are related to the promoter this fact was not disclosed to the company as a part of the statutory declaration as required under the Companies Act. The loan was given for purchase of certain shares by I360STS. The amount however was not repaid and ultimately the same was written off. In this respect, the appellant Ms. Sonia Nagpal filed a bank statement to strengthen her case that Unickon Securities had nothing to do with these transactions. The learned WTM however observed that the bank statements were incomplete and, therefore, vide summons dated 31st March, 2015 he directed her to provide complete details of the bank account of I360STS. However, the same information was never submitted. The learned WTM had observed that Ms. Sonia Nagpal was also key managerial person of Unickon Securities which fact is denied by her. The above record however clearly shows that I360STS was related party company of Unickon Securities. Therefore, in view of the said relationship the company was also under executive and financial control of the parent company i.e. Unickon Financial Intermediaries P. Ltd. The auditors' report revealed that the said relationship however was not disclosed either by appellant Mr. Gajendra Nagpal and/or by Mr. Ram Mohan Gupta. More particularly the loss in the trade was set off by

debiting the accounts of Unickon Securities itself as well as Unickon Fincap though they had no connection to the said trade. Additionally, the books entries of interest income earned through I360STS which were not recovered recognised as revenue by Unickon Securities itself as well as Unickon Fincap. The said outstanding dues were Rs.1950 as per the audit report."

52. I observe from the auditors' report that Noticee 4 was not the Key Managerial Person of USPL, however the contention of Noticee 4 with regard to the transaction by Noticee in Core projects cannot be accepted as admittedly clients' money was used for funding Noticee 6.

53. In view of the preceding paragraphs, I find that USPL, its Directors, Noticee 1 and Noticee 2 dealt in securities in a fraudulent and unfair manner and defrauded investors in securities, in violation of Sections 12A(b) and (c) of the SEBI Act; Regulations 3(a) and (d) and Regulations 4(1) of the PFUTP Regulations. I further find that Noticee 5, Noticee 6 and its Directors, Noticee 4 and Noticee 7 have violated Regulations 3(a) and (d) and Regulations 4(1) of the PFUTP Regulations and Noticee 3 has violated Regulations 3(d) and Regulations 4(1) of the PFUTP Regulations.

Issue no. 2: Whether the failure to carry out settlement of clients' funds and securities by USPL, was in violation of Clause 12 of the SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 3, 2009, Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011; Conditions of registration as specified under Regulations 9(b) and 9(f) of Stock Brokers Regulations?

54. From September 2013 onwards, I note that, USPL failed to carry out actual periodic settlement of funds and securities of its clients and also failed in ensuring delivery of securities and making payment of amounts due to its clients.

55. Noticee 3 admitted that there was no running account settlements on a quarterly basis and it was a regular feature. The problem started in middle of 2012 after which there was no settlement. This non-settlement of accounts (funds and/ or securities) was a result of the shortage of cash in the Unickon group. Further, shares were not transferred in to the clients' accounts within one working day prior to September, 2013. In Feb. 2014 there was correspondence with NSE regarding non settlement of clients account during the inspection. Further, Noticee 3 admitted that initially the clients were being provided with the information related to their bank ledger and statement of accounts. Subsequently, post June 2013, the same was also allegedly stopped.

56. Thus I find that USPL violated Conditions of registration as specified under Regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009 and Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MlRSD/16/2011 dated August 22, 2011.

57. Noticee 1 submitted that SEBI vide its order dated 15-03-2016 bearing no WTM/SR/EFD/17/03/2016 well acknowledges that prior to September, 2013 periodic settlement of funds, delivery of securities to the clients, payment to the clients, periodic statement of the accounts to the clients and other related activities were being carried as per the norms of SEBI and he was involved into the affairs of the company only till May 23, 2013. In this regard I note that though the order dated 15-03-2016 bearing no WTM/SR/EFD/17/03/2016, mentions that from September 2013, USPL failed to settle the funds and securities of clients and further USPL-DP failed to provide the statement of account, I note that failure to carry out periodic settlement of account was a consequence of transferring, pledging and misutilising the clients' securities and funds which was happening before September 2013. Thus I do not find any merits in the contention raised by the Noticee 1. In this regrad, Hon'ble in the same matter vide its' order dated April 26, 2021 has held that:

"…..26. As regards the other aspect that on September, 2013 Unickon Securities failed to carry actual periodic settlement of funds and securities of its client though technically would pertain to the period subsequent to the resignation of appellant Mr. Gajendra Nagpal, it is to be noted that it was an ultimate effect of the earlier transactions as detailed supra. As regard the failure tohave periodic audit from September, 2013 onward appellant Mr. Gajendra Nagpal cannot be blamed for the same and the learned WTM also did not categorically held him guilty on this count."

Issue no. 4: Whether the failure to provide periodic statement of transactions in securities and resultant shareholding to the beneficial owners of such securities by USPL–Depository Participant, was in violation of Regulation 20(2)(b) of the Depository and Participants Regulations; Clause 1 and 3 of Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations; Regulation 43 of the Depository and Participants Regulations and SEBI Circular No. CIR/MRD/DP/37/2010 dated December 14, 2010?

58. I note that, USPL–Depository Participant failed to provide periodic statement of transactions in securities and resultant shareholding to the beneficial owners of such securities. Further, Noticee 3 vide his statement dated December 08, 2015, submitted that initially clients were being provided with the information related to their bank ledger and statement of accounts however subsequently, post June 2013, the same was also stopped.

59. Thus, I find that USPL–DP also violated Regulation 20(2)(b) of the Depository and Participants Regulations; Clause 1 and 3 of Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations; Regulation 43 of the Depository and Participants Regulations and SEBI Circular No. CIR/MRD/DP/37/2010 dated December 14, 2010.

Issue no. 5: Whether the failure by USPL to have periodic Internal Audit conducted, was in violation of SEBI Circular No. MIRSD/DPSIII/Cir-26/08 dated August 22, 2008 and Circular No. MRD/DMS/Cir-29/2008 dated October 21, 2008?

60. I note that USPL failed to carry out internal audit of its operations on a half yearly basis since September 2013 and no internal audit report has been submitted to the exchanges. The last internal audit report submitted to NSE was for the half year ending March 2013.

61. In view of the aforesaid, I find that the failure by USPL to have periodic Internal Audit conducted, was in violation of SEBI Circular No. MIRSD/DPSIII/Cir–26/08 dated August 22, 2008 and Circular No. MRD/DMS/Cir-29/2008 dated October 21, 2008.

Issue no. 6: **Whether the failure by USPL and USPL-DP to obtain regulatory approval prior to change in management and control, was in violation of Section 12(1) of the SEBI Act; Regulations 9(b) and (c) of the Stock Brokers Regulations and Regulations 20(2)(b) and 20(2)(ca) of the Depository and Participants Regulations?**

62. As has been mentioned in preceeding paragraphs, USPL was registered as a Stock Broker and Depository Participant with SEBI. Further, as already mentioned, Noticee 1 decided to exit from Unickon group after entering into settlement and share purchase agreement with Noticee 2 consequent to which Noticee 1 was to exit by selling his shares in the companies to Noticee 2 or his representatives. By entering into a share purchase agreement with Noticee 2, Noticee 1 intended to sell his stake in the UFIPL and consequentially its subsidiaries including USPL.

63. I note that the execution of share purchase agreement resulted in a change in the shareholding pattern and thus management control of USPL and USPL-DP. This fact is also substantiated from the admissions of Noticee 3 and Pawan

Dhanuka wherein both of them have stated that the post the intimation of decision of Noticee 1 leaving Unickon group, Noticee 2 took the control of all the activities and operations of Unickon group as whole and USPL in particular and it was also intimated that Noticee 2 need to be kept posted for all the developments and involve him in all the decisions and approvals. It was observed that no approval from SEBI for the change in management and control and share holding pattern was taken by USPL and USPL-DP and no intimation to exchange was sent by USP and USPL-DPL. Additionally, it has been admitted by Noticee 3 that subsequent to Noticee 1’s demitting the office, a mail was received from NSE enquiring whether there has been a change in the management control (share holding pattern) of USPL. The said mail was sent by NSE consequent to the intimation from Noticee 1 about his resignation from Unickon group. NSE was informed that management was under change and the same would be intimated to the exchange and adequate permission would be sought form the exchange. Thus I observe that NSE was never intimated about the same.

64. As per the Stock Broker Regulations and Depository and Participant Regulations, *‘where the Stock Broker/Depository Participant proposed change in control, he shall obtain prior approval of the Board for continuing to act as such after the change’*. Further, any non–compliance with the aforesaid Regulations i.e. non–compliance with the conditions of registration, will attract the provisions of Section 12(1) of the SEBI Act.

65. In view of above I find that USPL and USPL-DP have violated Section 12 (I) of SEBI Act, 1992 and Conditions of registration as specified under Regulations 9(b) and 9(c) of the SEBI(Stock Brokers and Sub Brokers) Regulations, 1992 and Regulations20(2)(b) and 20(2)(ca) of the Depository and Participants Regulations.

Issue no. 7: **Whether the non–redressal of investor complaints by USPL and USPL-DP was in violation of Regulations 9(b), (e) and (f) of the Stock Brokers Regulations; Regulations 20(2)(b), 20(2)(e) and 53B**

of the Depository and Participants Regulations and Clauses 1, 2(d), 3 and 5 of the Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations?

66. I note that Regulation 9(e) of the Stock Broker Regulations and Regulation 20(2)(e) and clause 5 of the Code of Conduct under Regulation 20AA of DP Regulations, provides that stock broker shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of complaint.

67. It was observed that there had been a large number of complaints of the nature "non-receipt of funds/ securities" pending for redressal against USPL and USPL-DP for a long time. I note that USPL and USPL-DP were unable to redress investors' grievances within the stipulated time period of 30 days from the date of receipt of the complaints. The complaints against USPL and USPL-DP pertained to period prior to the share purchase agreement and settlement agreement and also to the period post the share purchase agreement and settlement agreement. The value of claims registered with both the exchanges is substantially high. It is alleged that out of 3700 claims filed with NSE, only 3100 claims have been quantified. It is alleged that the amount of funds and the valuation of shares which have not been credited to the respective clients stands at Rs. 88.84 cr. from 4356 claims.

68. I further note that the Hon'ble SAT in **S. S. Forgings & Engineering Limited & Others vs. SEBI (Appeal No. 176 of 2014–Order dated August 28, 2014)** inter alia observed: *"2. …Undoubtedly, an obligation is cast upon every listed company to redress investors' grievances in a time bound manner as may be prescribed by SEBI from time to time … 5. This Tribunal has consistently held that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed within a time bound framework, it leads to frustration among the investors' who may not be motivated to further invest in the capital market. Hence the importance of*

complaints redressal system initiated by SEBI in June, 2011 cannot be undermined and its sanctity has to be maintained by all the listed companies …"

69. As has been observed, USPL and USPL-DP failed to redress the investor grievances as stipulated by SEBI regulations. Therefore, I find that the non–redressal of investor complaints by USPL and USPL-DP was in violation of Regulations 9(b), (e) and (f) of the Stock Brokers Regulations; Regulations 20(2)(b), 20(2)(e) and 53B of the Depository and Participants Regulations and Clauses 1, 2(d), 3 and 5 of the Code of Conduct for Depository Participants under Regulation 20AA of the Depository and Participants Regulations.

Issue no. 8: **Whether Noticee 3 was in violation of Regulation 18A(2) of the Stock Brokers Regulations and Regulation 58(B)(2) of the Depositories and Participants Regulations?**

70. Noticee 3 admitted that he was made the compliance officer of USPL and Unickon Commodities Private Limited since middle of 2010 subsequent to the resignation of the then compliance officer. He continued to be the compliance officer of USPL till the time of his resignation in February 2014. Further Noticee 3 admitted as follows:

    i. Prior to June 2013, there were no complaints regarding 'non-receipt of pay-out pursuant to sale'. However, complaints in the nature of 'non-receipt of funds' were received and those were being redressed regularly. However, post June 2013, complaints in the nature of 'non-receipt of funds' were being redressed with a considerable delay and later ceased to be addressed for bigger requests. Post June 2013, the number of such complaints received increased a lot and the pay-outs could not be made to the clients at all. Shares received pursuant to pay-ins were lying in the margin account of USPL. Complaints regarding non-receipt of funds also were ceased to be redressed.

iii. The shares of the clients were pledged to meet the pay-in obligations. Such pledging was done on a regular and frequent basis to meet the excess of pay-in obligation over the pay-outs for the day. In 2011 also pledging was done, but was not of the same scale as done subsequently. Initially the pledging was done on a demand basis when need for funds arose, the frequency was probably once a month. Later on as the cash crunch got worse, the pledging was done on requirement, regular and frequent basis.

iv. USPL did not take membership of any Exchange for extending 'Margin Trading' facility. Exposure in excess of the funds available with the clients was granted by pledging the shares of the clients with UFPL. An agreement for granting enhanced exposure was entered into at the time of account opening between UFPL and the desirous clients of USPL. Initially, the shares of only those clients who had entered into the aforesaid agreement were pledged with UFPL. However, subsequently (around June 2012) due to the cash crunch the shares of even those clients who had not entered into the agreement were pledged with UFPL.

v. Shares were pledged without the knowledge and consent of clients. No consent was obtained from clients who had not entered into the agreement and whose shares were pledged with UFPL.

vi. The clients' were not informed that their shares were being pledged nor were they aware when the same get released. However, the clients were being provided with the information related to their bank ledger and statement of accounts initially. Subsequently post June 2013, the same were being also stopped.

vii. In case those clients whose shares were pledged raised a demand for their shares, the company used to arrange funds to pay to the pledgee to get the same released and then credit the client's demat account. However, post June 2013 when the cash crunch aggravated, the same could not be done and so shares were not credited to the demat accounts of the clients when the request was raised by them.

viii. Recovery of the debit amount from Noticee 6 was not ensured which as per his estimate was approximately around Rs.17-18 cr.

ix. No prior approval of the exchanges was taken upon Noticee 1's demitting the office. The resignation of Noticee 1, who was the shareholder and director of USPL, resulted in the change in shareholding pattern of the registered intermediary resulting in the change in the management control. In response to an email from NSE enquiring whether there has been a change in the management control (share holding pattern) of USPL consequent upon the intimation from Noticee 1 about his resignation from Unickon, NSE was informed that management was under change and the same would be intimated to the exchange and adequate permission would be sought from the exchange but no intimation was sent to NSE or permission was sought from the exchange.

71. The provisions of Regulation 18A(2) of the Stock Brokers Regulations and Regulation 58(B)(2) of the Depositories and Participants Regulations mandates that *"the compliance officer shall immediately and independently report to the Board any non–compliance observed by him."* As the Compliance Officer for USPL, Noticee 3 was aware of the aforesaid non-compliances by USPL, which continued till the time USPL was declared a defaulter and was expelled from NSE and BSE in September 2014.

72. In view of the above, I find that Noticee 3 was in violation of Regulation 18A(2) of the Stock Brokers Regulations and Regulation 58(B)(2) of the Depositories and Participants Regulations.

73. The son to the Noticee 7 vide letter dated June 06, 2022 stated that he has lost his mother Noticee 7 to the captioned SCN on 14-6-2020 due to Covid and hence all the proceedings against her may kindly be dropped.

74. The Death Certificate provided by the Son of the Noticee 7 issued by the South Delhi Municipal Corporation dated July 12, 2020, shows that the Noticee 7 had passed away on June 14, 2020. Thus, the proceedings are against the acts of omission and commission of a person who is no more to face the charges. In this regard, it is worth mentioning that in *Girijanandini Vs Bijendra Narain* (AIR 1967 SC 2110), the Hon'ble Supreme Court held that in case of personal actions, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the *maxim actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in *Chandravadan J. Dalal vs. SEBI* (Appeal No. 35/2004 decided on June 15, 2005) wherein it was held that: *"The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."*

75. In view of the foregoing, I am of the view that the instant adjudication proceedings against the Noticee 7 are liable to be abated and the SCN dated May 14, 2022 issued against her is disposed of accordingly.

Issue no. 9: Does the violations, if any, on the part of the Noticee attract monetary penalty under 15 A(b), 15C, 15HA and 15HB of SEBI act, 23A, 23C, 23D and 23H of SCRA, 19C and 19G of DP act?

76. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees, I find that the Noticees have violated the provisions of :

a) **USPL** under the provisions of Section 15 A(b), Section 15C, Section 15 HA and Section 15HB of SEBI Act, Section 23A, Section 23C, Section 23D and Section 23H of SCRA for the violations of:

- Circular no. SMD/SED/Cl/93/23321 dated 18 November, 1993.
- Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008,
- Clause 15 and Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011
- Section 12(1) and 12A(b) & (c) of the SEBI Act
- Rule 8 (1) (f) of Securities Contracts (Regulation) Rules,1957
- Clauses A (1), (2), (3) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992
- Conditions of registration as specified under Regulations 9(b), 9(c), 9(e) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992
- Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
- Circular No. CIR/MRD/DMS/13/2010 dated April 23,2010
- Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009
- Circular no. MIRSD/ DPSIII/ Cir-26/ 08 August 22, 2008
- Circular no MRD/DMS/Cir-29/2008 dated October 21, 2008
- Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004

b) **USPL – DP** under the provisions of Section 15C, and Section 15HB of SEBI Act, Section 19C and 19G of DP Act for the violations of:

- Conditions of Grant of certificate of registration under Regulation 20 (2)(b), 20(2) (ca) and 20 (2)(e) of SEBI (Depositories and Participants) Regulations, 1996
- Regulation 53B of SEBI (Depositories and Participants) Regulations, 1996

- Clauses 1, 2(d), 3 and 5 of Code of of Conduct under Regulation 20AA of SEBI (Depositories and Participants) Regulations, 1996
- Regulation 43 of SEBI (Depositories and Participants) Regulations, 1996
- Circular No. CIR/MRD/DP/ 37 /2010 dated December 14, 2010

c) **Directors of USPL i.e Noticee 1** and **Noticee 2** under the provisions of Section 15HA of SEBI Act for the violations of:

- Section 12A(b) & (c) of the SEBI Act
- Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

d) **Ex-Compliance Officer of USPL i.e Noticee 3** under the provisions of Section 15HA and Section 15HB of SEBI Act for the violations of:

- Regulation 18A (2) of the SEBI (Stockbrokers and Subbrokers) Regulations, 1992
- Regulation 58(B) (2) of the SEBI (Depositories and Participants) Regulations, 1996
- Regulation 3(d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003

e) **Related parties and Group company of USPL i.e Noticee 4, Noticee 5, Noticee 6 and Noticee 7** under the provisions of Section 15HA and Section 15HB of SEBI Act for the violations of:

- Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

77. In terms of the judgement of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri RAM Mutual Fund**[2006] 68 SCL 216(SC) decided on May 23, 2006 held that:

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*"

78. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of Section 15A(b), 15C, 15HA and 15 HB of the SEBI Act, 1992, Section 23A, 23C, 23D and 23H of SCRA Section 19C and 19G of DP Act.

SEBI Act, 1992

15A: *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b): *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

15C. *If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

15HA.*If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher*

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

SCRA

***23A**. Any person, who is required under this Act or any rules made thereunder,— (a)to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who furnishes, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure; (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

***23C**. If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

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

***23H**. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees*

DP Act

***19C.** If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

***19G**. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

Issue no. 10: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, Section 23J of SCRA and Section 19 I of DP act?

79. While determining the quantum of penalty under Section 15A(b), 15C, 15HA and 15 HB of the SEBI Act, 1992, Section 23A, 23C, 23D and 23H of SCRA and Section 19C and 19G of DP Act, it is important to consider the factors relevantly as stipulated in section 15J, Section 23J of SCRA and Section 19 I of DP act of the SEBI Act which reads as under:-

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.

Factors to be taken into account by adjudicating officer.

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

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

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

(c) the repetitive nature of the default.]

Factors to be taken into account by adjudicating officer.

19-I. While adjudging the quantum of penalty under section 19H, 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.

80. I note that material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made as a result of the defaults by the Noticees. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors/clients on the account of defaults made by the Noticees.

81. I find that the USPL being a registered intermediary is required to comply with the various Circulars and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. Further a basic premise that underlies the integrity of securities market is that persons connected with securities market conform to standards of transparency, food governance and ethical behavior prescribed in secutities laws and do not resort to fraudulent activities. The fraudulent activites such as what have been observed in the instgant case pose a treat to the integrity of the securiries market.

82. I also note that among others USPL, Noticee 1, Noticee 2, Noticee 4, Noticee 5, Noticee 6 have been vide Order bearing ref. no. WTM/SR/EFD/17/03/2016 dated March 15, 2016 been prohibited from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of ten years from the date of the Order. Further Noticee 3 also vide the aforementioned order has been prohibited from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of two years from the date of the Order.

ORDER

83. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, Section 23J of SCRA and Section 19-I of the DP Act, taking into account the period of debarment undergone by the Noticees, judgement of the Hon'ble Supreme Court

in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992, Section 23-I of the SCRA and Section 19-H of the DP Act read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section Section 15 A(b), Section 15C, Section 15 HA and Section 15HB of SEBI Act, Section 23A, Section 23C, Section 23D and Section 23H of SCRA, Section 19C and 19G od DP Act on the Noticees:

Name of the Noticee	Violated Provisions	Penalty (Rs.)
USPL	• Circular no. SMD/SED/CI/93/23321 dated 18 November, 1993, • Circular no. MRD/D0P/SE/Cir-11/2008 dated April 17, 2008, • Clause 15 and Clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients specified in SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 • Section 12(1) and 12A(b) & (c) of the SEBI Act • Rule 8 (1) (f) of Securities Contracts (Regulation) Rules,1957 • Clauses A (1), (2), (3) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992 • Conditions of registration as specified under Regulations 9(b), 9(c), 9(e) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 • Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade	Rs. 15,00,000 (Rupees Fifteen lakhs only)

	Practices Relating to Securities Market) Regulations, 2003 • Circular No. CIR/MRD/DMS/13/2010 dated April 23,2010 • Clause 12 of SEBI Circular no. MIRSD/SE/Cir19/2009 dated December 03, 2009 • Circular no. MIRSD/ DPSIII/ Cir-26/ 08 August 22, 2008 • Circular no MRD/DMS/Cir-29/2008 dated October 21, 2008 • Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004 • Regulation 26 of the SEBI (Stock Brokers and Sub Brokers) Regulations, [26 (iv), (vi), (xi), (xiii), (w), , (xvii), (xx)]	
USPL-DP	• Conditions of Grant of certificate of registration under Regulation 20 (2)(b), 20(2) (ca) and 20 (2)(e) of SEBI (Depositories and Participants) Regulations, 1996 • Regulation 53B of SEBI (Depositories and Participants) Regulations, 1996 • Clauses 1, 2(d), 3 and 5 of Code of of Conduct under Regulation 20AA of SEBI (Depositories and Participants) Regulations, 1996 • Regulation 43 of SEBI (Depositories and Participants) Regulations, 1996 • Circular No. CIR/MRD/DP/ 37 /2010 dated December 14, 2010	Rs.5,00,000(Rupees Five lakhs only)
Noticee 1	• Section 12A(b) & (c) of the SEBI Act • Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003	Rs.15,00,000 (Rupees Fifteen lakhs only)

Noticee 2	• Section 12A(b) & (c) of the SEBI Act • Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003	Rs. 15, 00,000 (Rupees Fifteen lakhs only) (jointly and severally with Noticee 4 and 6)
Noticee 3	• Regulation 18A (2) of the SEBI (Stockbrokers and Subbrokers) Regulations, 1992 • Regulation 58(B) (2) of the SEBI (Depositories and Participants) Regulations, 1996 • Regulation 3(d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003	Rs. 10, 00, 000 (Rupees Ten lakhs only)
Noticee 4	Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003	Rs. 15, 00, 000 (Rupees Fifteen lakhs only) (jointly and severally with Noticee 2 and 6)
Noticee 5	Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003	Rs. 15, 00, 000 (Rupees Fifteen lakhs only)
Noticee 6	Regulation 3(a) and (d) and Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003	Rs. 15, 00, 000 (Rupees Fifteen lakhs only) jointly and severally with Noticee 2 and 4)

84. The Noticees 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 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

85. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

86. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

87. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 30, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**