BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/VV/NK/2020-21/10223]

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

In respect of**:**
Master Capital Services Limited
(SEBI Registration No. : INZ000210539)

IN THE MATTER OF COMPLAINT OF MS. NEERJA AHLUWALIA AND ORS. AGAINST MASTER CAPITAL SERVICES Ltd.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI'') received a complaint from Ms. Neerja Ahluwalia and her 6 family members namely Mr Anmol Maria, Ms Arti Maria, Dr Jyoti Kiran Mahajan, Ms Poonam Verma, Ms Puneeta Mahajan and Mr Sanjeev Verma (collectively hereinafter referred to as "Complainants") against Master Capital Services Ltd. (hereinafter referred to as "Noticee/Broker/MCSL"), a SEBI registered stock broker, Mr. Rahul Raghav , Mr. Bhanu Pratap Singh and Mr. Milan Sharma.

2. The complainants (Ms. Neerja, Mr. Anmol Maria and Ms. Arti Maria) submitted that, they were earlier clients of Trustline Securities Limited (Trustline) and their accounts were managed by Trustline where the composition of their shareholding remained intact and they received a return/ payout. While Ms. Poonam Verma and Ms. Puneeta Mahajan had their trading and Demat account with Aditya Birla Capital Ltd. with minimal trading in their accounts. Mr. Bhanu Pratap Singh who was earlier working with Trustline approached complainants along with Mr. Milan Sharma and Rahul Raghav, the authorised person (AP) of MCSL, and persuaded Ms. Neerja to open her account with MCSL. Mr. Bhanu Pratap Singh had introduced himself as VP, HNI sales of Noticee and Mr. Milan Sharma as consultant with Noticee. Mr. Bhanu and Milan assured her that they would manage her account.

3. Therefore, Ms Neerja filled the form to open account with Noticee. Subsequently, other family members of Ms. Neerja (Mr. Anmol Maria, Ms. Arti Maria, Ms. Poonam Verma and Ms. Puneeta Mahajan) opened their account with Noticee. The complainant further stated that they got forms and papers signed in good faith and signed the documents leaving most of the columns blank in the form.

4. The complainants also submitted that they were under the impression that they are dealing with Noticee directly and did not know that Rahul Raghav is an AP. The

assumption was also strengthened as Rahul Raghav and Bhanu Pratap Singh had used email ids which are on the domain of mastertrust (the same domain is used by MCSL as well) to communicate with the complainants.

5. The complainants have alleged unauthorized trading in their account by the aforementioned entities which have resulted into huge losses in their account.

6. Further, the complainants *inter alia* also alleged the following against Noticee:-
   a) Incorrect format of contract note being used
   b) Transaction Matching
   c) Overcharging of brokerage
   d) Falsification of financial statements
   e) Violation of code of conduct by the broker

7. Upon receipt of the complaint, a meeting with the broker MCSL was held on May 07, 2018 and vide email dated May 07, 2018 MCSL was advised to file its submission along with supporting documents. MCSL vide letter dated May 10, 2018 made its submission with regard to the allegations made by the complainant. Subsequently, vide email dated June 19, 2018 and letter dated July 18, 2018 additional information was sought from MCSL. MCSL vide email dated July 02, 2018 and letter dated July 30, 2018 respectively submitted its response

8. The complaint was further examined u/s 11(2) (i) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**). Vide email dated February 16, 2018 NSE was advised by SEBI to conduct an examination in the matter including inspection of the broker with regard to issues raised by the Complainants. NSE vide email dated May 29, 2018 submitted a report on the findings of the limited purpose inspection of MCSL in the matter.

9. SEBI observed that the activities of the Broker were in violation of following SEBI Act, Circulars, rules and regulations. Thus, adjudication proceedings were initiated against the Noticee under section 15HA and 15HB of the SEBI Act, read with regulation 26(xi) and (xvi) of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**"):

   9.1. <u>**Failed to submit order placement/ call recording for the complainants / unauthorized trades which appears to be unauthorized trading and 9.2 Submission of wrong information by MCSL including information of email address of Bhanu Pratap:**</u> SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017,Section 11(2) (i) of SEBI Act and SEBI Clause A(1) A(2) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations.

9.3. **Trades carried out to earn brokerage:** Regulation 4(1) and 4(2)(o) of (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003 (PFUTP)., Clauses A(1) and B (4)(a) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations.

9.4. **Failed to perform due–diligence of its AP viz. Rahul Raghav/Nitus Solutions:** SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.

APPOINTMENT OF ADJUDICATING OFFICER

10. Subsequently vide communication order dated February 04, 2020, the undersigned has been appointed as the Adjudicating Officer, to inquire into and adjudicate the aforesaid violations alleged to have been committed by the Noticee, in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Adjudication Rules"**) read with Section 15-I of SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the SEBI Adjudication Rules read with Section under 15HA and 15HB of SEBI Act read with Regulation 26 (xi) and 26 (xvi) of Stock Broker Regulations on the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

11. Based on findings of SEBI, a Show Cause Notice (SCN) dated August 24, 2020, was issued to the Noticee, under Rule 4 of SEBI Adjudication Rules to show-cause as to why an inquiry should not be held against it and penalty should not be imposed upon it under 15HA and 15HB of SEBI Act read with Regulation 26 (xi) and 26 (xvi) of Stock Broker Regulations for the violations alleged to have been committed by the Noticee. The Noticee was given 14 days' time to make submissions in respect of the allegations made in the SCN. Certain documents relied upon in SCN were also provided to Noticee vide email dated September 18, 2020 as requested by Noticee vide email dated September 15, 2020.

12. Noticee vide email dated September 10, 2020 requested extension for submission of reply. Noticee's request was acceded to and was given one month's time. However, Noticee again vide email dated September 30, 2020 further requested four weeks' extension of time to file reply to SCN. Thereafter, Noticee was given 15 days extension of time to file reply to the SCN and In order to comply with the principles of natural justice, The Noticee was provided an opportunity of personal hearing through WebeX due to ongoing pandemic as well as for Hearing at SEBI Head Office on October 16, 2020. However, Noticee vide email dated October 12, 2020 asked for adjournment of hearing and also requested time to file reply to the SCN. Noticee was again granted extension of time to file reply to SCN by November 02, 2020 and was again granted an opportunity of personal hearing on November 10, 2020.

13. Noticee submitted its reply to the SCN on October 29, 2020.

14. Mr. Anurag Kumar Aggrawal, Mr. Gurmeet Singh Chawla and Mr. R.K. Singhania, the Authorised Representatives (ARs) of the Noticee appeared for hearing on the scheduled date and time through WebEx. AR reiterated the submissions made by Noticee vide email dated October 29, 2020 and also undertook to submit additional documents which were made vide email dated November 18, 2020.

ISSUES UNDER CONSIDERATION

15. I have carefully perused the charges levelled against the Noticee in the SCN, the oral and written submissions of the Noticee and the material / documents available on record. In the instant matter, The issues that arise for consideration and determination in the present case are:

    Issue – I:-. Whether the Noticee has violated alleged SEBI Acts, rules, regulations and circulars mentioned in point no. 9 above?

    Issue – II:-. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA & 15HB of SEBI Act read with Regulation 26 (xi) and 26 (xvi) of Stock Broker Regulations?

    Issue – III:-. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

FINDINGS

16. Before Proceeding further, it is pertinent to refer to the relevant provisions of aforesaid circulars and regulations which read as under:

    a. ***SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26,2017.***
    "Prevention of Unauthorised Trading by Stock Brokers

    I. *SEBI in the past has taken several steps to tackle the menace of "Unauthorized Trades" viz Periodic Running Account Settlement, Post transactions SMS/email by exchanges/Depositories, Ticker on broker/DP websites etc. It was observed that in spite of measures taken, a considerable proportion of investor complaints is of the nature of "Unauthorized Trades".*

    II. *The current regulatory requirements in commodity derivative markets require that "The members shall execute the trade of clients only after keeping evidence of the client placing such order; it could be, interalia, in the form of sound* *recording." There are no such requirements in Equity, Equity Derivative and Currency Derivative Market side.*

III. *To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of:*
a. Physical record written & signed by client,
b. Telephone recording,
c. Email from authorized email id,
d. Log for internet transactions,
e. Record of SMS messages,
f. Any other legally verifiable record.

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

IV. *Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records."*

b. *<u>Section 11(2) (i) of Securities and Exchange Board of India Act, 1992 ("SEBI Act")</u>*

"11(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;"

c. <u>SEBI Clause A(1), A(2) &B(4)(a) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations.</u>

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

A (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.

B (4) Business and Commission:
(a) A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission."

d. ***Regulation 4(1) and 4(2) (o) of PFUTP***

"4. Prohibition of manipulative , fraudulent and unfair trade practices

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

(2)Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves any of the following:-
……..
(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;"

e. ***Market Access through Authorised Persons- SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.***

"1. Pursuant to the recommendations made by the Secondary Market Advisory Committee of SEBI and discussions with major stock exchanges and with a view to expand the reach of the markets for exchange traded products, it has been decided to allow SEBI registered stock brokers (including trading members) of stock exchanges to provide access to clients through authorized persons. The framework governing the market access through authorized persons is enclosed at Annexure-1.This framework provides the minimum requirements and the stock exchanges and stock brokers may prescribe additional requirements, as they may deem appropriate, in the interest of investors and market.

2. The stock exchanges are advised to make necessary amendments to the bye-laws, rules and regulations to implement the framework for market access through authorized persons..

3……….

Annexure-I

Regulatory Framework for Market Access through Authorised Persons

1. ***Who is an "Authorised Person"?***
Any person - individual, partnership firm, LLP or body corporate – who is appointed as such by a stock broker (including trading member) and who provides access to trading platform of a stock exchange as an agent of the stock broker.

2. ***Appointment of Authorised Person***
A stock broker may appoint one or more authorised person(s) after obtaining specific prior approval from the stock exchange concerned for each such person.

The approval as well as the appointment shall be for specific segment of the exchange.

3. ***Procedure for Appointment***

a) Stock broker shall select a person in compliance with the criteria laid down by the Exchange and this framework for appointment as an authorized person and forward the application of the person to stock exchange for approval.

b) On receipt of the aforesaid application, the stock exchange

i. may accord approval on satisfying itself that the person is eligible for appointment as authorized person, or

ii. may refuse approval on satisfying itself that the person is not eligible for appointment as authorized person.

4. ***Eligibility Criteria***

4.*1 An individual is eligible to be appointed as authorised person if he:*

a) is a citizen of India;

b) is not less than 18 years of age;

c) has not been convicted of any offence involving fraud or dishonesty;

d) has good reputation and character;

e) has passed at least 10th standard or equivalent examination from an institution recognized by the Government; and

f) [Stands deleted vide SEBI circular SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010]

4.2 A partnership firm, LLP or a body corporate is eligible to be appointed as authorized person

a) If all the partners or directors, as the case may be, comply with the requirements contained in clause 4.1 above.

b) The object clause of the partnership deed or of the Memorandum of Association contains a clause permitting the person to deal in securities business.

4.3 The person shall have the necessary infrastructure like adequate office space, equipment and manpower to effectively discharge the activities on behalf of the stock broker.

4.4 The approved users and/or sales personnel of Authorised Persons shall have the necessary certification of the respective segments at all points of time. [inserted vide SEBI circular SEBI/Cir/MIRSD/AP/8/2010 dated July 23, 2010]

5. ***Conditions of Appointment***

The following are the conditions of appointment of an authorised person:

a) *The stock broker shall be responsible for all acts of omission and commission of the authorized person.*

b) *All acts of omission and commission of the authorized person shall be deemed to be those of the stock broker.*

c) *The authorized person shall not receive or pay any money or securities in its own name or account. All receipts and payments of securities and funds shall be in the name or account of stock broker.*

d) *The authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the stock broker and he shall not charge any amount from the clients.*

e) *A person shall not be appointed as authorized person by more than one stock broker on the same stock exchange.*

f) *A partner or director of an authorised person shall not be appointed as an authorised person on the same stock exchange.*

g) *The stock broker and authorised person shall enter into written agreement(s) in the form(s) specified by Exchange. The agreement shall inter-alia cover scope of the activities, responsibilities, confidentiality of information, commission sharing, termination clause, etc.*

6. Withdrawal of Approval

Approval given to an authorised person may be withdrawn by the stock exchange:
a) on receipt of a request to that effect from the stock broker concerned or the authorised person, subject to compliance with the requirements prescribed by the stock exchange, or
b) on being satisfied that the continuation of authorised person is detrimental to the interest of investors or securities market or the authorised person at a subsequent date becomes ineligible under clause 4 above.

7. Obligations of Stock Broker

a) *The stock broker shall be responsible for all acts of omission and commission of his authorised person(s) and/or their employees, including liabilities arising there from.*

b) *If any trading terminal is provided by the stock broker to an authorised person, the* *place where such trading terminal is located shall be treated as branch office of the stock broker.*

c) *Stock broker shall display at each branch office additional information such as particulars of authorised person in charge of that branch, time lines for dealing through authorised person, etc., as may be specified by the stock exchange.*

d) *Stock broker shall notify changes, if any, in the authorised person to all registered clients of that branch at least thirty days before the change.*

e) *Stock broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them.*

f) *The client shall be registered with stock broker only. The funds and securities of the clients shall be settled directly between stock broker and client and all documents like contract note, statement of funds and securities would be issued to client by stock broker. Authorised person may provide administrative assistance in procurement of documents and settlement, but shall not issue any document to client in its own name. No fund/securities of clients shall go to account of authorized person.*

g) *On noticing irregularities, if any, in the operations of authorised person, stock broker shall seek withdrawal of approval, withhold all moneys due to authorised person till resolution of investor problems, alert investors in the location where authorised person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market*

8. Obligations of Exchange

a) The stock exchange shall maintain a database of all the authorised persons which shall include the following:

- I. *PAN Number of authorised person and in case of partnership or body corporate, PAN Number of all the partners or directors as the case may be.*
- II. *Details of the broker with whom the authorised person is registered.*
- III. *Locations of branch assigned to authorised person(s).*
- IV. *Number of terminals and their details, given to each authorised person.*
- V. *Withdrawal of approval of authorised person.*
- VI. *Change in status or constitution of authorised person.*
- VII. *Disciplinary action taken by the Exchange against the authorised person.*

All the above details, except I above, shall be made available on web site of the stock exchange.

b) While conducting the inspection of the stock broker, the stock exchange shall also conduct inspection of branches where the terminals of authorised persons are located *and records of the operations carried out by them.*

c) Dispute between a client and an authorised person shall be treated as dispute between the client and the stock broker and the same shall be redressed by the stock exchange accordingly.

d) In case of withdrawal of approval of authorised person due to disciplinary action, the stock exchange shall issue a press release and disseminate the names of such authorised persons on its website citing the reason for cancellation.

Issue – I:-The first issue for consideration is whether the Noticee has violated alleged SEBI Act, rules, regulations and circulars mentioned in point no. 9 above?

17. In this regard, based on the material available on record and on the submissions made by Noticee vide email dated October 29, 2020 and November 18, 2020 against these allegations, I Proceed to discuss Allegations against Noticee, Noticee's replies and my observations thereon:

17.1. Failed to submit order placement/call recording for the complainants /unauthorized trades which appears to be unauthorized trading.

Allegation:

i. It was observed that Noticee and its Authorised person ("AP") viz Mr Rahul Raghav/ Nitus Solutions Pvt. Ltd. (hereinafter referred as "Nitus solutions" in which Rahul Raghav was director) failed to submit any evidence indicating that the trades in the account of clients were placed by the complainants themselves. Noticee and its AP did not provide any order placement/call recording by the complainants. Therefore, it appears that these were unauthorized trades. The call recording submitted by Noticee and Rahul Raghav are post trade confirmation calls.

ii. Thus, it is observed that, MCSL has failed to submit order placement/ call recording for the complainants / unauthorized trades which appears to be unauthorized trading.

iii. In view of the above points MCSL is alleged to have violated the provisions of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

Reply of Noticee:

- *The present SCN emanates from a complaint dt.16.02.2018 filed by a set of family members i.e. (i) Neerja Ahluwalia, (ii) Dr. Arti Maria, (iii) Dr. Anmol Maria,* *(iv) Ms. Poonam Verma (v.) Mr. Jyoti Kiran Mahajan, (vi.) Puneeta Mahajan and (vii) Sanjeev Verma. It is herein submitted that Neerja Ahluwalia, Dr. Arti Maria, Ms. Poonam Verma & Mrs. Puneeta Mahajan are real sisters whereas Dr. Anmol Maria is the husband of Dr. Arti Maria and Mr. Jyoti Kiran Mahajan is husband of Mrs. Puneeta Mahajan and Mr. Sanjeev Verma is the husband of Mrs. Poonam Verma. Thus, all of them are close relatives and all of them opened their trading accounts with MCSL and their mode and manner of executing the trades in their respective accounts was similar.*

- *MCSL is a one of the leading broking houses in India which provides trading platform to its clients for execution of trades in shares/securities under the rules, regulations and bye laws of the respective Exchanges and guidelines of the SEBI and caters to more than two lac clients. In addition, MCSL has more than 1600 Registered Authorized Persons spread over 25 States/UTs covering more than 350 cities. MCSL is a professionally managed company as both its founding directors are Chartered Accountants/ Company Secretary and other board members are also professionally qualified, having standing in the profession for more than 30 years.*

- *That the complainants had approached MCSL and opened their trading accounts during September, 2015 to December, 2016 by executing all necessary documents prescribed by SEBI. Copies of all such documents have already been submitted by MCSL vide letter dt.09.05.2018.*

- *Some of the complainants were already trading in the capital markets including in derivatives segment, with other leading brokers i.e. Aditya Birla Capital Ltd and Trustline Securities. All complainants are highly educated, professionally qualified, experienced individuals and prudent investors.*

- *That as per the norms, MCSL sent a Welcome letter to the complainants at their given addresses through speed post. The welcome letter reflects all the details including address of the client, mobile no., e-mail ID, exchanges and segments opted by the client and MCSL back office login id and password etc. It is clearly mentioned in the welcome letter sent to the complainant that if there is any discrepancy (ies), they may get in touch with MCSL immediately and inform about it for rectification. The details were also confirmed telephonically and the complainants were clearly advised that MCSL does not give any guarantee for a return/fixed return nor would it be responsible for any assurance given by any other person. The copies of relevant documents and voice recordings have already been submitted to SEBI vide letter dt.09.05.2018. Needless to mention that ever since opening of their respective accounts, no intimation regarding any discrepancy was communicated by the complainants to MCSL nor any objection of any nature whatsoever relating to trading in their accounts were* *made by any of them till Nov, 2017, when first complaint was filed by Ms. Neerja Ahluwalia at BSE/SEBI.*

- *The complainants, except Mr. Sanjeev Verma, deposited cheques &/or securities as margin etc. in their respective accounts after opening of their trading accounts. Entries of the same are reflecting in their respective statements for funds & securities. No trade has been executed by Mr. Sanjeev Verma in his account opened under UCC-6AAH030. Since opening of their account, these clients have been dealing through the office of our Registered Authorized Person namely Mr. Rahul Raghav(who later on changed his constitution from Sole Proprietorship to a Company i.e. Nitus Solutions Pvt Ltd.) at C-316A, Sector – 10, Gautam Buddha Nagar, Noida (U.P.)-201301. It is pertinent to mention that the complainants had also authorized Sh. Milan Sharma and Sh. Bhanu Pratap Singh to deal/transact/place orders/give instructions by any means of communication including oral, on their behalf in their respective trading accounts. Needless to mention that Ms. Neerja Ahluwalia in her claim to arbitration at BSE and NSE had duly acknowledged that she have also been visiting the office of AP during the course of trading.*

- *After opening of their trading account, the complainants/their authorized representatives had executed various transactions in the account of the complainants as per their wish and desire, without any demur or difference. The Complainants have opted to receive Electronic contract notes/bills etc. by Email and had duly executed the authorization letter in this regard. Please refer to the page no. 40 of the KYC documents enclosed along with our replies to IGRP submitted vide letter dt.09.05.2018 All the trades executed from time to time were also confirmed through various modes including electronic contract notes and bills, quarterly statement of account of funds /securities at the time of periodic settlement of their accounts, daily margin statement etc which were sent to them at their respective e-mail IDs registered with us. The transactions were also confirmed through SMSs sent on their respective mobile no. registered with MCSL on daily basis. Apart from the above; the trade confirmation calls made from AP office/service call from MCSL to Ms Neerja, along with transcripts were also submitted during the Arbitration proceedings at NSE.*

- *The copy of relevant documents/information/voice recordings/proof of dispatch including email logs etc pertaining to the complainants have already been submitted vide our letter dt.09.05.2018 to SEBI.*

- *Further, the concerned exchanges/depository also sent confirmation of trades through Emails/SMSs to all clients on regular basis. With effect from July, 2017 onwards, the Exchanges have even started sending the balances of funds & securities to clients who have traded in the last one year.*

- *Apart from above, all information pertaining to complainants account was available on website of MCSL which could be accessed by the complainants any time using their individual user ID & password issued to them.*

- *Further, MCSL has been sending statement of client's account for funds & securities of each quarter in the subsequent month in accordance with the rules, regulations of the exchange/SEBI on their respective registered email id.*

- *Further, there are many pay in /pay out of securities in the complainants' account.*

- *Further, there are many pay in /pay out of funds in the complainants' account.*

- *All the trades were executed in their unique client code which can also be verified from the exchange.*

- *The loss, if any, is a market loss and MCSL cannot be held liable for the same. Further the complainants had also signed the Risk Disclosure Document for Capital Market and Derivatives Segments which clearly mentions: -*

*"……**In case you trade on stock exchanges and suffer adverse consequences or loss, you shall be solely responsible for the same** and Stock exchanges/its Clearing Corporation and or/SEBI shall not responsible, in any manner whatsoever, for the same and it will not be open for you to take a plea that no adequate disclosure regarding the risks involved was made or that you were not explained the full risk involved by the concerned stock broker. **The constituent shall be solely responsible for the consequences and no contract can be rescinded on that account. You must acknowledge and accept that there can be no guarantee of profits or no exception from losses** while executing for purchase and/or sale of a derivatives contract being traded on Stock exchanges."*

- *It is pertinent to mention here that as per **clause 12**&**12.3** of contract between Member Broker & Client, a client is supposed to report any discrepancy in contract note, confirmations, statements, bills etc within 24 hours of its receipt. Needless to mention that no such discrepancy was pointed out by these complainants during their trading for more than 2 years of regular trading.*

- *As per **clause 18** of the Contract between Member Broker and the Client duly agreed upon & signed by the complainants at the time of opening of their account with us, the Company or its employees do not provide any portfolio management/advisory services to the clients however, if the client accepts any portfolio management services/advises/discretionary trading arrangements/*

facility from any person including but not limited to dealer, relationship manager, sub broker or authorized person then in that event Member Broker shall in no way be responsible for the outcome of such services/facilities accepted by client and client shall have no recourse/right against the Member Broker.

- *The complainants have filed their income tax returns and Ms. Neerja has even claimed losses in Income Tax Returns in 2015-16 & 2016-17 based on the trades with MCSL.*

- *To address investor grievances precisely of this kind, SEBI has put adequate system in place to handle the complaints of investors in securities market vide its amended circular CIR/MRD/ICC/30/2013 dated September 26th 2013 .As per **clause 24** of the Rights & Obligations of Stock Brokers, Sub-brokers and Clients as mandated by SEBI, the client shall refer any claims and/or disputes to arbitration as per the Rules, Byelaws and Regulations of the Exchanges.*

- *Further, as per NSE byelaw 1 of Chapter XI, All claims, differences or disputes between the Trading Members and constituent ……………………. shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations.*

- *All the aforesaid persons except Mr. Sanjeev Verma (who did not trade with MCSL), have preferred complaints before NSE as well as BSE on the same set of allegations on which their present complaint to SEBI is based.*

- *Copy of all these complaints and reply of the same by the Noticee to IGRP have been submitted by the Noticee alongwith its reply to SEBI.*

- *The said complaints were referred to Investor Grievance Redressal Panel (IGRP) of both the Exchanges which have passed 'Nil' 'admissible claims'. The copies of all such minutes of IGRP have been submitted by the Noticee alongwith its reply to SEBI.*

- *Thereafter, Neerja Ahluwalia preferred claims before Arbitral Tribunal at BSE & NSE. Both the claims preferred by her were dismissed vide awards dt.20.07.2018 (NSE) and dt17.10.2018 (BSE). The copies of both the awards have been submitted by the Noticee alongwith its reply to SEBI.*

- *While no appeal was preferred by Neerja against the award passed at BSE which became final, an appeal was preferred by her against the award passed at NSE, which was dismissed by the Appellate Tribunal. Needless to mention, MCSL had also preferred an appeal in relation to part award passed at NSE, under which part relief was granted to complainant, and MCSL appeal was also allowed by the Appellate Tribunal. That the copy of Appellate award dismissing* *the appeal of Neerja and allowing the appeal filed by Noticee has been filed by the Noticee alongwith its reply to SEBI.*

- *Neerja Ahluwalia has challenged the Appellate Tribunal award before the Hon'ble High Court of Delhi U/s.34 of the Arbitration and Conciliation Act, 1996 which is pending disposal.*

- *It is, therefore, submitted that the entire factual matrix upon which the present SCN is based has already been adjudicated upon by the aforesaid Arbitral Tribunal and the findings on facts given by the aforesaid Arbitral Tribunals are final and the said findings can't be reconsidered by any tribunal/court or authority for any purposes as they are the findings rendered by a competent authority under the law and are final as per Arbitration and Conciliation Act, 1996. The scope of enquiry under the present SCN, therefore, is limited to the issue – whether based upon findings given by the aforesaid Arbitral Tribunals, any infringement/violation of any Rules, Regulations, bye laws or circular of the Exchange or SEBI has been made out or not. It is, in this regard we would be citing relevant extracts of allegations, answered and decided during the course of aforesaid arbitral proceedings so as to make out a case for discharge of present SCN, on the ground that on the basis of facts established, MCSL had not violated any of the provisions mentioned in the SCN.*

- *As per 'Guidance to General Public about effective ways to redress their grievances' published by SEBI it has been specifically provided: -*

- ***What type of complaints are not handled by SEBI?***

Complaints that are sub-judice (relating to cases which are under consideration by court of law, quasi- judicial proceedings etc.)

What are the limitations in dealing with the complaint?

*Sometimes a complaint is successfully resolved and the entity is advised to send reply to complainant. But in certain cases, the entity or company denies wrongdoing, and it remains unclear as to who is wrong or whether any wrongdoing occurred at all**. If this happens, SEBI cannot act as a judge or an arbitrator and force the entity or company to resolve the complaint. Further, SEBI cannot act as personal representative or attorney of the complainant**. **Securities laws and other laws provide important legal rights and remedies if an investor has suffered wrongdoing.** On their own, investors can also seek to resolve their complaint through the courts, consumer courts, or arbitration.*

- *Thus, there is no occasion/justification on the part of SEBI to issue present SCN based upon the complaints in the present matter when such complaints were already preferred by them before Investor Grievances Redressal Panel of*

BSE/NSE followed by a reference to Arbitral Tribunal leading to passing of awards in favour of MCSL.

- *Apart from this, SEBI had independently conducted inspection of MCSL which included all the aspects in relation to the aforesaid complaints. Further NSE and BSE had also conducted regular inspections during the relevant period, the details of such inspections are provided herein as under: -*

S.No.	*Particulars*
1.	*NSE Letter of intimation dt.12-03-2018 regular inspection Jan2017 to Dec2017*
2.	*NSE Final Letter dt.10-08-2018 with no adverse observation*
3.	*BSE Letter of intimation dt.06-02-2019 for regular inspection F.Y. 2017-18*
4.	*BSE Letter of Observation dt. 15-04-2019*
5.	*Reply dt.05-05-2019 to BSE Letter of Observation*
6.	*BSE Final Letter dt.14-09-2020*
7.	*Letter of intimation dt.10.01.2018 issued by SEBI w.r.t. inspection to be carried out*
8.	*Letter of Observation dt. 12.06.2018 issued by SEBI w.r.t. inspection carried out including all the aspects in relation to the aforesaid complaints of these complainants*
9.	*Reply to SEBI by MCSL dt. 25.07.2018*
10.	*Final Letter by SEBI dt. 29.10.2018*
11.	*Compliance/Reply dt. 26.11.2018 to SEBI Final Letter by MCSL*

- *A conspectus of all the aforesaid inspections would further reveal that except minor breaches, no major violation was found by any of the aforesaid authorities, including SEBI during the aforesaid inspections and there is no violation with respect to compliances with respect to the trades information to the clients and no trades were found unauthorised.*

- ***The period of trading in the aforesaid seven accounts are as under: -***

S. No.	*Name*	*Period*
1.	*Neerja Ahluwalia*	*19.11.2015 To 14.02.2018*
2.	*Dr. Arti Maria*	*26.11.2015 To 01.12.2017*
3.	*Dr. Anmol Maria*	*26.11.2015 To 01.12.2017*
4.	*Dr. Poonam Verma*	*04.04.2016 To 01.12.2017*

5.	*Mr. Jyoti Kiran Mahajan*	*03.07.2017 To 25.10.2017*
6.	*Puneeta Mahajan*	*14.02.2017 To 25.10.2017*
7.	*Sanjeev Verma*	*No trade executed in his account*

- *Needless to mention during the aforesaid period, there was no mandatory mechanism for call recording for placing of orders. Such a requirement came into existence w.e.f.01.04.2018 vide Circulars dt.26.09.2017 & 11.01.2018 issued by SEBI. The relevant excerpts of Circular dt.26.09.2017 are reproduced herein as under: -*

'II. The current regulatory requirements in commodity derivative markets require that "The members shall execute the trade of clients only after keeping evidence of the client placing such order; it could be, inter alia, in the form of sound recording." There are no such requirements in Equity, Equity Derivative and Currency Derivative Market side.

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

a. Physical record written & signed by client,
b. Telephone recording,
c. Email from authorized email id,
d. Log for internet transactions,
e. Record of SMS messages,
f. Any other legally verifiable record.'

- *Regarding the placement of orders, Clause 13 of Rights & Obligations of Stock Brokers, Sub-brokers and Clients may be referred wherein it is mentioned:-*

"The client shall give any order for buy or sell of a security/derivatives contract in writing ***or in such form or manner****, as may be mutually agreed between the client and the stock broker***."***

- *The said clause as well as the SEBI circular dt.26.09.2017r/w Circular dt.11.01.2018 which made it mandatory for keeping record of order placing only* ***w.e.f. 01.04.2018*** *was duly considered by the Division Bench of Calcutta High Court in case titled as* ***'M/s Nirmal Bang Securities Pvt. Ltd. Vs Tilak Bachar ::2019 (5) Raj 217 (Cal) (DB)'****and it was held that the confirmation in writing was neither necessary nor mandatory under the applicable laws and the contract governing the parties at the appropriate stage when the impugned transactions had occurred. It was further held that it would also be evident from the transactions in the course of conduct and dealings between the parties, that the parties consistently followed a particular mechanism in their dealings.*

- *MCSL had also been sending them SMS, ECN, Statement of account, daily margin statements from time to time which were never disputed or objected to by any one of them. Rather, they have accepted to have received the same in their complaint before IGRP/Arbitration at NSE/BSE (e.g. Reference Neerja's Complaint to NSE,IGRP Para 13, 14 & 29(d)- Annexure-R-3Still further in the service call made to Ms. Neerja by the Service Department of MCSL on 06-04-2016, she has confirmed the receipt of contract notes & SMSs from MCSL (Voice recording of service call made to Ms. Neerja along with its transcription is also enclosed in a CD).There were several payouts of funds and securities to them during the trading period as detailed above. The final letters of the regular inspections conducted by NSE, BSE and SEBI do not contain any adverse observation with respect to any major violation which also establishes that MCSL has done all the compliances pertaining to its clients including the aforesaid complainants and there are no unauthorised trades.*

- *Moreover, it is, herein submitted that otherwise also all the aforesaid complainants were fully aware of all their trades/transactions in their respective accounts as in addition to receiving communication from MCSL, they have been in regular touch with their authorised representatives namely Mr. Bhanu Pratap Singh and Mr. Milan Sharma. , who were transacting/placing orders on the behalf of complainants while being physically present at the dealing office of their introducing AP.*

- *As stated above, the trade confirmation calls were made from AP office and service call from MCSL to Ms Neerja, call recordings along with transcripts were also submitted during the Arbitration at NSE.*

- *The aforesaid position was duly considered and adjudicated by IGRP of NSE & BSE and the arbitral tribunals at NSE & BSE (comprising of eminent panellists including Retired Judges of High Court/bureaucrats). The relevant excerpts as submitted by the Noticee are as under:*

In the case of Dr.Anmol Maria, it has been mentioned in the minutes of IGRC NSE dt. 30-.04.2018 that: -

"Further the TM has complied with the requirement as envisaged by the Exchange/SEBI by furnishing various statements with the complainant including contract notes, emails, SMS etc. It is also clear that the trades in the account of the complainant were known to Dr. Maria & family."

ORIGINAL AWARD DT.20.07.2018 (NSE)

(Para 6.1.2, page – 25 of award) *– ""After the opening of the trading account with the Respondent, the Applicant traded including in Future & Options (F&O) segment of the Exchange. The SMS dated 22nd December, 2015 & 23rd December, 2015, submitted by the Applicant herself show that the Applicant knew about her trades in*

*F&O segment also since December, 2015. The Applicant has herself admitted in her statement of case and emails that Mr. Milan Sharma and Mr. Bhanu Pratap Singh were trading in the Applicant's account all through the trading period………………***Applicant received SMS and emails regarding Contract Notes, Bills, Daily Margin Statements, Quarterly Statement of accounts etc. from the Respondent /NSE/CDSL.** *The Applicant has filed her Income Tax Returns for the Financial Year 2015-16 and 2016-17 and has even claimed losses in her Income Tax Returns sustained by her in the trading transactions executed for the respective financial years by her Authorised Persons Mr. Bhanu Pratap and Mr. Milan Sharma."*

(Para 6.1.5, page–27 of award)*– "It is noted that the Applicant was put to notice about possible risks through her executing various KYC documents. The Respondent, therefore, had no reason to suppress or hide any particular transaction which may have resulted in losses. -----------------****-With regard to the voice recording of the placement of orders, the same was not mandatory as per SEBI/NSE. --------------------Hence, as she has received on regular basis the SMS /emails, the trades in the Applicant's account were considered to be in her knowledge and with her consent .*** *----------------------****-In this case as well SMS and emails for the transactions were sent to her on her designated email address and mobile number, but the Applicant has not raised any grievance in this respect earlier. So, this assertion seems to be after thought and as such not sustainable.****----------Therefore, now to allege the same trades loss as unauthorized is not sustainable."*

The Applicant has filed her Income Tax Returns for the accounting years 2015-2016 and 2016-2017. As per Applicant's Chartered Accountant Certificate, there is minor difference in the figure of loss for FY 2015-16 and there is no difference in 2016-17 in the figure of loss before other incomes, expenses and charges. Therefore, it seems that all trades and losses were known to the Applicant as on 31.03.16 and also as on 31.03.2017. Therefore, now to allege the same trades loss as unauthorized is not sustainable."

(Para 6.1.8, page – 31 of award)*- "After considering the above facts of the present matter and the case laws cited------------,* ***we are of the opinion that there was no denial that the Applicant was in receipt of SMSs and emails regarding the Contract Notes, Bills, Quarterly Account Statement etc. from the Respondent/NSE/CDSL*** *The documents and materials on record lead to an inference that transactions taken place in the applicant's account, were in Applicant's knowledge and all the transactions were made by her authorized Persons.--------- Therefore, the issue regarding unauthorized transactions is decided against the Applicant and in favour of the Respondent."*

APPELLATE AWARD DT.20.05.2019 (NSE)

(Para 32, page – 22 of appellate award) :*" It has been admitted by the appellant constituent that she had signed an authorization letter in favour of Shri Bhanu and Shri Milan for carrying out trading in her trading account -----.* ***She never raised any***

objection to any information/discrepancy in contract note, statement or ledger, SMS, email communication or confirmation calls etc., etc., received by her from the respondent TM. She never contacted the respondent TM to seek clarification of any information supplied to her or to object to the authority of Shri Bhanu and Shri Milan to carry out trades in her account. She has not denied that she had been receiving by email all contract note, financial ledgers and other statements besides confirmation calls *but she never called in question the authority of Shri Bhanu and Shri Milan to carry out trading in the account on her behalf before she revoked their authority by email dated 12.11.2017-----------****''***

(Para 33, page – 24 of appellate award) :''*She had knowledge of all trades done in her account on daily basis as she had been receiving all trade related information on her designated email id and registered mobile phone from the respondent TM, Exchange and DP.''*

(Para 43, page – 33 of appellate award)*:''The appellant has also mentioned a large number of rules/regulation which have allegedly been violated by the respondent TM in her case. We have carefully given thought to the rule cited but do not find any such a violation/contravention of rules, regulation direction and circulars of the Exchange/SEBI which would render the trades carried out in her account illegal and not binding on the appellant constituent or that they were against fair trade practices expected from a broker. We do not find infirmity in the finding of the learned arbitral tribunal on this question so we affirm it.''*

ORIGINAL AWARD DT.17.10.2018 (BSE)

(Para 116, Page 29 of award)*: '' ------------.Merely because, the trades executed, ultimately resulted in losses, the said trades could not be termed as 'unauthorised' and the said losses could be shifted to the respondent****. We also notice that the applicant was getting contract notes and other trade related documents on a regular basis on her designated email ID and as such was aware of all trades executed in her account and she never objected to such trades at the relevant point of time. If a person after receiving contract notes did not raise any objection in this respect thereof, such person cannot be permitted to disown such trades.****"*

The Noticee has also referred to following various judgments of the High Court i.e. Keynote Capitals Ltd. vs. Eco Recycling Ltd.:: 2018 SCC Online Bom 1269 , Mahesh Daulatram Changran vs. Religare Securities Ltd. :: MANU/MH/0184/2012, Shilpa Stock Broker Pvt. Ltd. vs. Shravankumkar Banshraj Pandey :: MANU/MH/0795/2012 and the Order passed by the Adjudicating Officer, Mr. Nagendra Parakh vide A.O. No.NP/JS/AO/19/2017 dated 31-01-2017 in respect of Kaynet Capital Ltd.

<u>Keynote Capitals Ltd. vs. Eco Recycling Ltd.:: 2018 SCC Online Bom 1269</u>

"49. Though on one hand the second arbitral tribunal has held that the respondent was fully aware of trade taking place in their account and had full knowledge thereof, on the other hand, ***a finding is rendered that the said transactions were***

without understanding as to whether they were making profit or loss in Future and Option and thus the respondent kept mum as no money was demanded and had relied on some assurances given by the member that there will be return on investment and thus in this scenario, the trades would remain unauthorised. *In my view, this finding of the second arbitral tribunal is totally perverse.* ***Since the respondent was fully aware of the transactions carried out by the petitioner in their account and did not raise any objection at any point of time and at least within a reasonable period****, when such transactions were carried out,* ***the arbitral tribunals could not have considered such transactions as unauthorised on the premises that the transactions were without understanding of the respondent as to whether they were making profit or loss in Future and Option."***

"62. This Court in the case of Shilpa Stock Broker Pvt. Ltd. Vs. Shravankumar Banshraj Pandey (supra) has held that ***the client/constituent cannot be permitted to accept few transactions out of several transactions reflected in the statement of account and to reject the remaining transactions.*** *Though both the arbitral tribunals have rendered a finding that the respondent had received all the contract notes, bills and ledger account from the petitioner from time to time, the respondent had not raised any objection, the arbitral tribunals have illegally allowed the claim made by the respondent. The award is contrary to the law laid down by this Court in the case of Anand Rathi Share and Stock Brokers Ltd. Vs. Jayshree Sanjay Sonawane (supra)."*

"63. Division bench of this Court in the case of Maheshbhai Hirala lChampneira Vs. Kotak Securities Ltd. (supra) had considered the rules and regulations of the National Stock Exchange providing that the dispute, if any, regarding any contract has to be ***raised within a couple of days failing which the transaction is deemed to have been carried out.*** *Division Bench of this Court accepted the contention of the trading member and rejected the claim made by the constituent in view of the constituent not having raised objection within the time prescribed under the Rules and Regulations of the National Stock Exchange. The principles of law laid down by this Court in the case of Maheshbhai Hiralal Champneira Vs. Kotak Securities Ltd. (supra) would squarely apply to the facts of this case. I am respectfully bound by the said judgment."*

<u>Mahesh Daulatram Changran vs. Religare Securities Ltd. :: MANU/MH/0184/2012</u>

"7. The arbitrator after considering the rival contentions and material placed by the parties gave the reasons that the claim of Rs. 7,55,406/of the Applicant has worked out for the loss incurred due to transactions in nifty future between January 18,2008 and subsequently squared off up to January 21, 2008 by giving details. The petitioner admittedly not challenged the transaction of 17 & 18th January, 2008 because it were in profit. The challenge was only with regard to nifty future

transaction as suffered losses, therefore to say that there were no instruction sent to respondent to do the business on his behalf is rightly rejected. ***There are details provided on record which shows that from time to time contract notices were sent/forwarded by the Petitioner on the given email ID. The respondent thereby, in view of the Rules, completed their part of obligation by sending contract notice from time to time. There was no objection raised with regard to the same at the relevant time.*** *The transaction of January 18 & 21, 2008, executed under the instructions from the Applicant. The contentions* ***that it were without authority and/or instructions has rightly been rejected by the arbitrator****. The arbitrator has given detail reasons while passing the award as recorded above."*

*"8. ……………..****The Petitioner had admittedly received Email from the Respondent on the regular basis to clear his outstanding balance. All objections were afterthought and was just to create a false record."***
"10. ……………….Therefore, the National Stock Exchange of India which is governed by the rules and regulations of the National Stock Exchange of India Limited and Chapter XI deals with all claims and differences and disputes between the trading members and the constituents arising out of the transactions and ***as the Petitioner agreed to receive contract notes in electronic form which is permissible mode and accordingly the Respondent placed on record the supporting documents regarding forwarding of contract notes, the challenge now raised by the Petitioner in this regard is also without any substance. There is no dispute that the contract notes pertaining to his transactions were forwarded on Petitioner's email ID.*** *He was also provided to have on line access to his account details along with on line trading facility."*

<u>Shilpa Stock Broker Pvt. Ltd. vs. Shravankumkar Banshraj Pandey :: MANU/MH/0795/2012</u>
"15. ***It is well known that the contract notes goes to the details of the orders given by the Respondent, time of execution of the order, trade member, quantity of the shares and the rate of the shares****. Therefore, merely because the physical contract notes were not received, that itself cannot be the reason to deny the digital format of contract notes as forwarded with details on the email address provided by the Respondent.* ***As per the contract also it was sufficient compliance.*** *At least therefore, the rejection of the claim of the Petitioner for want of acknowledgement of delivery of physical contract notes, in no way sufficient to deny the recorded and accounted claim raised by the Petitioner based upon the ledger account.* ***The permissible practice of sending of contract notes is well governed and controlled by SEBI circulars issued from time to time. Such unsigned digital contract notes just cannot be overlooked."***

"16. Therefore, taking overall view of the matter, and in the present facts and circumstances, and as contended, in my view, the case is made out by the

Petitioner to interfere with the award of rejection of his claim in toto. ***The permissible mode of sending contract notes through email on a provided email address based upon the SEBI circulars and practice, in my view, goes to the root of the matter.*** *The physical format may be relevant but not delivered, the same, in the present facts and circumstances, just cannot be the reason to deny the total claim, therefore, in my view, the case is made out by the Petitioner for the remand of the matter for rehearing. The award so passed denying the total claim, in view of above, therefore, is* ***contrary to the settled practice and the permissible mode and the SEBI circulars issued from time to time permitting the parties to enter into transaction and rely upon the digital format contract notes and such practice."***

- *As such there were no un-authorised trades in the account of the complainants and they have all been in touch with their authorised representatives on a daily basis and monitoring their accounts and there was no violation of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September, 26, 2017.*

The Noticee has further submitted in its letter dated November 18, 2020 *inter-alia* that:

- *The findings of fact and law arrived at by the arbitral tribunals at NSE and BSE, could not be reconsidered in the present enquiry proceedings which are quasi-judicial in nature on account of principles akin to res judicata. The relevant judgment and paragraphs of Halsbury's Law of England, as cited during the course of hearing, are enclosed herewith.* ***(Para 1168, 1169, 1174, 1179 and 1188, Volume 12, Fifth Edition HLE; (Shiva Bassappa I. Kankanwadi; MANU/MH/0454/2016.***

- *The findings of fact and law arrived at by the arbitral tribunals are final and they could be challenged only on grounds specified in S.34 of Arbitration and Conciliation Act, 1996 and such challenge is not based upon merits. A judgment of the Supreme Court is enclosed herewith in this regard.* ***(Associate Builders; (2015) 3 SCC 705.***

- *The complainants are estopped to rake up their issues in the present proceedings again as they had already approached the aforesaid forums and invited their decisions with which they are bound. The relevant paragraphs of Halsbury's Law of England, as cited during the course of hearing, are enclosed herewith.* ***(Para 307, 308 and 357, Volume 47, Fifth Edition HLE; (Para 742, Volume 16, Fourth Edition HLE)***

- *Ms. Neerja has filed appeal under section 34 in High Court against the Appellate Arbitral Tribunal Award dt 20-05-2019. The complainants, Dr. Anmol Maria & Ms. Arti Maria and Ms. Poonam Verma have approached High Court to file suit of* *recovery against MCSL, the advance notice dated 07-11-2020 has been received by MCSL last week only.*

<u>Observation</u>*<u>:</u>*

i. I observe that the Complainants are family members and the facts and the issues of all the Complainants are same viz. The complainants have alleged unauthorized trading in their account. Further, the complainants *inter alia* also alleged the following:
   a. Incorrect format of contract note being used
   b. Transaction Matching
   c. Overcharging of brokerage
   d. Falsification of financial statements
   e. Violation of code of conduct by the broker

ii. I also note that, Ms. Neerja opened her account with MCSL on Sep 28, 2015. Thereafter, the other complainants- Dr. Anmol Maria, Ms. Arti Maria, Ms. Poonam Verma and Ms. Puneeta Mahajan opened their trading and Demat account with MCSL in the same sequence.

iii. From documents available on record, it is pertinent to mention that, the Complainants have executed all the required documents including KYC document and welcome letters was sent to the complainants reflecting the details of segment opted and activated including derivatives segment with the Noticee. Trades have been executed in the accounts of complainants for more than two years without any complaint. From the report on the findings of the limited purpose inspection of Noticee submitted by NSE vide email dated May 29, 2018, it is evident that, complainants were regularly receiving contract notes, bills, quarterly financial statements, sms regarding transactions in their account from MCSL. Further, the depositories have also confirmed that regular CAS statements were being sent to the complainants and the respective Exchanges were also sending the transaction related details through emails/sms to the Complainants and the same has been also confirmed in IGRP/Arbitration panels too. Further, I observe that there are telephone calls to one of the Complainants, Ms. Neerja, from the AP regarding post trade confirmations. The call recording indicates that Ms. Neerja was informed of trades executed in her accounts including trades in derivatives and on several occasions confirmed receipt of contract note. It is noted that no objection has been raised by the Complainants regarding the trades executed in their account for more than two years and that there have been several payouts and payins between the Complainants and the Noticee with respect to the trading accounts of the Complainants. Further, I note that, the Complainants have filed their income tax returns and claimed losses in this respect. In addition to this, I observe that the complainants have executed Letter of Authority in favour of Mr. Bhanu Pratap Singh and Mr. Milan Sharma to trade in the respective account of the Complainants which were further revoked by complainants vide their email dated November 12, 13 and 14, 2017. I further observe that all the Complainants except Mr. Sanjeev verma have preferred complaints before NSE /BSE IGRP as per SEBI Circular No. CIR/MRD/ICC/30/2013 Dated September 26, 2013, wherein NSE /BSE IGRP has passed 'Nil' 'admissible claims' that is rejected the claims of the Complainants. Thereafter, one of the Complainants, Ms. Neerja, preferred claim before Arbitral Tribunal at BSE & NSE. As per the aforesaid circular, I note that the arbitrators at NSE has held that they "*…..do not find any violation /contravention of rules, regulations, directions and circular of exchange /SEBI which would rendered the trades carried out in her account illegal and not binding on the appellant constituent or that they were against fair trade practices expected from a broker…………"* and her claims were dismissed in the arbitration proceedings at both BSE and NSE. Further, an appeal was preferred by her against the award passed at NSE, which was dismissed by the Appellate Tribunal. Neerja Ahluwalia has challenged the Appellate Tribunal award before the Hon'ble High Court of Delhi U/s.34 of the Arbitration and Conciliation Act, 1996 which is pending disposal. I note that, No restraining order has been produced before me in relation to instant adjudication proceedings in the matter by the Noticee. With regards to the allegation in SCN regarding failure to submit order placement/ call recording of the orders, I note that the period of trading in the accounts of the Complainants is upto February 2, 2018 and the date of applicability of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 and SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018 wherein the evidence of the client placing order was made applicable was made w.e.f. 1st April 2018.

iv. I would also like to place reliance on Adjudication Order. No. NP/JS/AO/19/2017 dated 31-01-2017 in respect of Kaynet Capital Ltd wherein Adjudicating officer has inter alia stated that "*Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the noticee, I find that Kaynet Capital Limited has not executed unauthorized trade while dealing and trading for its client M/s Kuvam Plast Private Limited (Kuvam). The trading member has submitted documents that show electronic contract note was delivered to Kuvam at its registered email id well within the stipulated time and there has not been any objection raised by Kuvam to Stock Exchange/SEBI. Also the recorded conversation clarifies that Kuvam was aware of the trading done by the Kaynet in its account. Further, Kuvam had made a payment of Rs 1 Crore on July 31, 2012 after the date of transaction on July 26, 2012 to clear its outstanding. There does not appear to be a case that stock broker had executed any unauthorized trade or trade without knowledge of its client Kuvam. In view of the same, I am inclined to accept the contention of the noticee*."

v. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also relying on various judgments of the High Court i.e. Keynote Capitals Ltd. vs. Eco Recycling Ltd.:: 2018 SCC Online Bom 1269 , Mahesh Daulatram Changran vs. Religare Securities Ltd. :: MANU/MH/0184/2012, Shilpa Stock Broker Pvt. Ltd. vs. Shravankumkar Banshraj Pandey :: MANU/MH/0795/2012 and the Adjudication Order No.NP/JS/AO/19/2017 dated 31-01-2017 in respect of Kaynet Capital Ltd.., I am of the view that the Noticee has not executed unauthorized trade while dealing and trading for the Complainants, since complainants were regularly receiving contract notes, bills, quarterly financial statements, sms regarding transactions in their account from Noticee and complainants did not raise any concern within stipulated time as mentioned in agreement or even after a longer period of time since the trades took place. Further, I am of the opinion that the allegation of violation in the SCN regarding failure to submit order placement/ call recording of the orders, as per SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017, is not applicable in this case.

17.2. <u>Submission of wrong information by Noticee including information of email address of Bhanu Pratap.</u>

<u>Allegation:</u>

i. It was observed that Noticee has denied any relation with Mr. Bhanu. However, from the visiting card of Mr. Bhanu provided by complainants and use of email id bhanu.pratap@mastertrust.co.in to communicate with Ms Neerja and Mr. Anmol Maria, it appears that Mr. Bhanu had introduced himself to the complainants as an employee of Noticee /associated with Noticee. Further, Mr. Bhanu is also closely associated with Mr. Rahul Raghav , AP of Noticee.

ii. Thus, it may be noted that, Noticee misguided the examining officers by informing that, it has no connection with Mr. Bhanu Pratap whereas the record shows the email ID of Mr. Bhanu Pratap which is on the domain of mastertrust and can be construed to be issued by Noticee.

iii. In view of the above Noticee is alleged to have violated the Section 11(2) (i) SEBI Act and SEBI Clause A(1) A(2) of the Code of Conduct read with Regulation 9 of Stock Broker Regulations.

<u>Reply of Noticee:</u>

- *We have not submitted any wrong information and have not violated any regulation of SEBI in this respect. Mr. Bhanu Pratap Singh had never been the employee/Authorized Person of MCSL. This is an admitted fact by the Complainants, that Mr. Bhanu Pratap Singh was known to Dr. Maria & family previously.*

- *Mr. Bhanu Pratap Singh and his family members were indebted patients of one of the complainant Dr.Anmol Maria for last more than 15 years(Kindly refer to complaint filed with Police dt.04.12.2017, a copy of the police complaint has been filed by the Noticee alongwith its reply to the SEBI). We further submit that besides that Mr. Bhanu Pratap Singh was having long term personal and professional relations with Dr.Anmol Maria & Family and was a trusted person of the family and this has been admitted by Dr. Anmol Maria and family.*

- *As per own admission of Dr Anmol Maria (reference email dated 20.11.2017 by Dr. Anmol Maria to SEBI, a copy of email has been filed by the Noticee alongwith its reply to the SEBI.)*
  "Mr. Bhanu himself pledged utmost loyalty to me, expressing his lifetime deep indebtedness to me. This was because I had successfully operated with utmost sincerity, not only Mr. Bhanu and his wife but a few more of his close family, after they had been harassed for long enough through medical misadventures and complications of their orthopaedic problems."

- *Mr. Bhanu Pratap Singh was relationship manager of the family for their trading account with other broker namely Trustline Securities before opening of their account with MCSL, as admitted by Mr. Anmol Maria(reference email dated 20.11.2017 to SEBI):*
  "Mr. Bhanu Pratap Singh and Mr. Rahul Raghav, who were earlier coming to me through Trustline as my relationship managers."

- *The account opening process commenced with MCSL before 28.08.2015 when one of the complainants signed part-I of KYC documents with MCSL at that time Ms. Neerja Ahluwalia was continuing her relationship with another broker Trustline as is clearly reflected in the CA Certificate filed by her in arbitral proceedings, a Copy of CA Certificate has been filed by the Noticee alongwith its reply to the SEBI. At that time, Mr. Bhanu Pratap Singh and Mr. Rahul Raghav were handling their trading accounts with their previous broker namely Trustline Securities. This clearly belies the allegation that Mr Bhanu Pratap introduced himself as Vice President of MCSL in August 2015 to the complainants.*

- *The allegation of Neerja that Bhanu Pratap Singh, Milan Sharma and Rahul visited her in September 2015 and presented their cards (whereas the KYC has been signed in August 2015) is exfacie wrong (reference SOC Para No.1; Para 4 (a), page 2 of NSE Award dt. 20.07.2018).*

- *In view of the above relationship of 15 years and trust in Mr. Bhanu Pratap Singh, and the fact that Mr. Bhanu Pratap Singh was their relationship manager in August 2015, there was no occasion for Mr. Bhanu to reintroduce himself to Dr. Anmol Maria and Family nor there was any necessity of presenting any alleged visiting cards for Dr. Anmol Maria and family.*

- *It is reiterated that Mr. Bhanu Pratap Singh was not an employee nor a sub broker/Authorized Person of MCSL. We have already submitted the details of our employees during the inspection for verification. In case of Ms. Neerja, the in-person verification on KYC form is done by MCSL's employee, Mr. Jitendra Rai Singhania as per SEBI Circular No MIRSD/Cir-26/2011 dated 23-12-2011. This in-person-verification by MCSL's employee Mr. J.R. Singhania fortifies that Mr. Bhanu Pratap Singh was not MCSL's employee/AP otherwise Mr. Bhanu would have signed the in-person-verification instead of Mr. J.R. Singhania. Moreover, neither there is any agreement executed with Bhanu Pratap Singh which is a mandatory requirement for the appointment of AP nor there is any registration of Bhanu as our AP in the records of the exchanges. In this respect, the findings of BSE Award (Para 118 page 30) passed on dated 18-10-2018 as referred herein below are relevant. The complainant had appointed Mr. Bhanu Pratap Singh along with Milan Sharma as her authorized person as per "Letter of Authorization to act through authorized person".*

- *Even otherwise the visiting card is not an authenticated document and it does not belong to MCSL and its veracity is denied.*

- *No email to Neerja from email ID of Bhanu with "mastertrust.co.in" domain has been produced before any forum and even the authenticity of the two alleged emails sent to Dr. Anmol Maria has not been proved. number of emails have been admittedly exchanged between the complainant Mr. Bhanu Pratap Singh through his personal mail id i.e. bhanusingh1983@gmail.com between 21.7.2016 to 02.10.2017. The copies of the emails as submitted by Ms. Neerja Ahluwalia during the arbitration proceedings has been filed by the Noticee alongwith its reply to the SEBI. It is also pertinent to mention that in one of the email sent by Mr. Bhanu to Ms. Neerja, he has sent some statements/reports of Ms. Neerja's account with Trustline& MCSL. In the said email dated 22.12.16 to Ms Neerja, Mr. Bhanu has mentioned the words "other Broker" for 'MCSL' which establishes that he was not an employee of MCSL & Complainants were fully aware of this fact.*

- *We have already informed to officials of SEBI, that we had submitted in our reply to the complaints of these complainants filed before IGRP at NSE & BSE in March, 2018 that "though it is not material, it is herein submitted that sometimes in the month of Sept, 2015, Mr. Bhanu Pratap Singh had discussions with MCSL, but after offer he did not join." The copies of our replies were submitted to SEBI vide our letter dt.09.05.2018.*

- *Regarding emails with "mastertrust.co.in" domain, MCSL submits that the domain name "mastertrust.co.in" is common for all the Mastertrust Group companies and a single outsourced mail server is used. Many non-employees (clients, sub brokers and their employees and persons with whom group companies intended to have* *regular interaction etc) of the Group were created on this server. The said email server is not under compliance department of broking arm of the Company (MCSL) and is more so a community server. There were no guidelines of SEBI/Stock Exchanges etc. for brokers and also no restriction on non-employees including clients using broker/their group mail servers. However, pursuant to the guidelines/circulars issued by Exchanges in August/September, 2014, the email IDs of the clients, created on broker/group servers, were stopped. In the year 2015 there was no SOP/protocol to open email ids. However, from 2018 onwards the formalities were introduced and as per the current process for creation of email Ids all the requests for creation of email Id are sent by the concerned department of Mastertrust Group companies to the HR department, which in turn forwards to central IT team at Corporate Office. The central IT team then creates email Id as requested & informs the HR department. Since, the matter is more than five years old we are not able to so far find out the exact reason for creating the email id in the name of Bhanu Pratap Singh on the domain of the Group.*

- *Thus, merely having email ID with mastertrust.co.in domain does not make anyone employee of the group/company. Mr. Bhanu has neither joined MCSL nor any payment was made to him by MCSL. We re-iterate that Mr. Bhanu was acting only as authorized representative of the complainant(s) and was working at their instructions as admitted by the complainant(s) at several places in their complaint/mails and mails of their family members. It is herein further submitted that MCSL was neither interested nor privy to any private understanding and/or conversations which might have taken place by and between the complainant and the said person as mentioned by her in her Complaint. As such MCSL was neither interested nor aware of anything which transpired by and between the complainant and the said person.*

- *It is trite law that the person who alleges any fact has to prove it. It is thus for the Complainant to establish all charges levied that Mr. Bhanu Pratap Singh was related to MCSL. Complainant has not proved the same and further the said person is not a party to the present proceedings.*

- *The aforesaid position was duly considered and adjudicated by IGRP of NSE & BSE and the arbitral tribunals at NSE & BSE, the relevant excerpts thereof are as under:*

Minutes of IGRP meeting on 30.04.2018 at NSE

In the case of Dr. Maria & family, it has been observed by the panel members in the minutes of IGRC –NSE that:

"a) This is also an admitted fact by the Complainant, that Mr. Bhanu Pratap Singh and Mr. Rahul Raghav (AP of the TM) were known to Dr. Maria & family previously through their relationship with some other Broker and Mr. Milan Sharma accompanied Mr. Bhanu Pratap Singh while approaching the complainant at the

time of opening the Trading/Demat account with the Trading Member.
b) The IGRC have further observed that the Respondent has produced the documents in the form of KYC and other related documents to substantiate Mr. Rahul Raghav was the AP of the trading member and Mr. Bhanu Pratap Singh & Mr. Milan Sharma were the authorized persons to trade in Dr Maria & family's account."

Reference Appellate Award dated 20.05.2019(NSE)
(Para 31, page 21 of award):"No evidence been produced on record which may show that Shri Bhanu ever represented from November, 2015, when the trading in the account of the appellant constituent commenced, onward that he was an employee of the respondent TM or that he had financial interest in AP Nitus Solution Pvt. Ltd. *Moreover the appellant is an educated lady. She is not a novice in stock market but had previous experience of working with Shri Bhanu, who was her RM/AP in Trustline Securities……………………..* ***She and her family members trusted Shri Bhanu since he was patient for the last 15 years of a close relative Dr. Anmol Maria and other members of family had also been dealing in stock market through him. Moreover Shri Bhanu could have befooled the appellant constituent by misrepresentation about his connection with the respondent TM for some time but he could not have hidden real position from her for two years specially when she was in constant personal touch with him, having regular exchange of communications by email or otherwise……………….On the facts and circumstances of the case it is difficult to believe that the appellant constituent started working through Shri Bhanu because she was wrongfully/fraudulently made to believe by him that he was holding some position in the office of the respondent TM."***

Reference Original Award dated 17.10.2018(BSE)
Para 117, Page 30 of award*:" …… As is clear from the aforesaid facts, the trading in the account of the applicant was conducted by Milan and Bhanu who were representative of the applicant…..That no material was brought on record which suggests that any brokerage was paid by the respondent to Milan and Bhanu in relation to the trades executed in the account of the applicant."*
(Para 118, Page 30 of award):*"………………...Per contra, the respondent states that in order to be AP an agreement is required to be signed and submitted to the Exchange and once approved by the Exchange, the Exchange allots a registration number to AP. That no such agreement was signed with Bhanu and no registration number was also allotted to him by the Exchange. As such Bhanu could not be considered as AP of the respondent. The said explanation furnished by the respondent seems to be plausible and hence accepted."*
Para 119 Page 30 of award: *"……………...A perusal of the emails placed on record by the applicant which were stated to be received and /or sent to the Bhanu, reveals that they were all received and/or sent to the Email ID:*

bhanusingh1983@gmail.com which is different from the aforesaid email appearing on the aforesaid visiting card. A reference in this regard may be made to page 84,248,277,323 and 363,364365A of SOC where name of Bhanu Pratap appeared and not his email ID………..."

- *Thus, the fact remains that no visiting card was issued to Bhanu Pratap Singh by MCSL and all trade related communications were sent to all the complainant from email ID backoffice@mastertrust.com. Therefore, there was no issue relating to any misrepresentation by MCSL in any manner whatsoever.*

- *Further, as per the SEBI circular Ref. No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009, as a Stock Broker, MCSL needs to check the eligibility criteria before appointment of any AP, as mentioned in this circular, and there is no requirement for checking any relationship, the AP has with other persons. Noticee may mention that even the exchanges check the eligibility criteria of AP before the registration of AP and no violation by any exchange has been pointed out in this respect.*

- *It has also been alleged that MCSL has violated the provisions of SEBI Clause A(1) & A(2) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations. In this respect, as stated above, MCSL has been providing broking services for more than 25 years and presently caters to more than two lac clients and has more than 1600 Registered Authorized Persons spread over 25 States/UTs covering more than 350 cities. MCSL has a proven track record of high standard of services to the satisfaction of its clients for the last more than 25 years. A perusal of the number of arbitration cases filed against MCSL during the period April 2016 to December, 2017 i.e. the period in which the complainants in question were trading also fortifies the above fact. The details, as submitted earlier during the SEBI hearing in August, 2018 of the same is given hereunder:*

No. of arbitration complaints filed against Noticee	***Decided in favour of Noticee***	***Decided against Noticee***	***Appeal* filed by the Client against Arbitration Award***
11	*11*	*-*	*1*

** Appeal filed by the client also dismissed*

- *The above figures itself speaks of high standards of services with integrity to more than two lacs clients. This cannot be possible without maintaining integrity promptitude and fairness in the business.*

- *Further, regarding clause A(2) in respect of exercising due skill & care, it is herein submitted that MCSL had done due diligence, whatever was required under the law and within its means. In addition to above, please also refer to our submissions* *given below in our reply to point no 6(d) of SCN.*

- *In view of the above, since there is no violation on the part of MCSL as alleged, therefore, there is no violation of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September, 26, 2017, SEBI Clause A(1) & A(2) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations and section 11(2) (i) of SEBI Act, 1992 as alleged in the SCN.*

Observation:

i. On the basis of documents on records and perusal of various Arbitral awards submitted by the Noticee in its reply, I have noted that the Complainants(Ms. Neerja, Mr. Anmol Maria and Ms. Arti Maria) have admitted that Mr. Bhanu Pratap Singh was known to them before opening the trading accounts of the Complainants with the Noticee as they were earlier clients of Trustline securities and Mr Bhanu Pratap Singh was also a relationship manager of the Complainants for their trading accounts with Trustline Securities Limited . This is clear from various admissions as well as the statement by the one of the Complainants, viz. Mr. Anmol Maria, that Mr. Bhanu Pratap was indebted to him as a patient for last fifteen years. I have further noted that at that time, one of the Complainant, Ms. Neerja, first executed documents with the Noticee to open an account with them on August 28, 2015. This is further clear from the CA certificate filed by Ms. Neerja in arbitration proceedings that at that time she was trading with Trustline Securities Limited. Therefore, I agree with the submission of the Noticee that there was no reason for Mr. Bhanu Pratap Singh to reintroduce himself to the Complainants.

ii. I further note that the authenticity of the visiting card submitted by the Complainants has not been established at various abovementioned forums. Even Bhanu Pratap Singh has said in his statement that he had not given any visiting card to Ms. Neerja. Further, neither any document has been produced before me which shows any agreement executed for appointment of AP between Bhanu Pratap Singh and Noticee nor any record as per the exchanges which substantiates that Bhanu Pratap Singh is related to Noticee.

iii. I find from the reply of the Noticee that it has submitted; *We have already informed to officials of SEBI, that we had submitted in our reply to the complaints of these complainants filed before IGRP at NSE & BSE in March, 2018 that "though it is not material, it is herein submitted that sometimes in the month of Sept, 2015, Mr. Bhanu Pratap Singh had discussions with MCSL, but after offer he did not join." The copies of our replies were submitted to SEBI vide our letter dt.09.05.2018."* Thus, I find, Noticee had provided information about nature of its association with Bhanu Pratap Singh in form of its discussions/interaction with him sometime in September 2015 in respect of job offer but he did not join. There is no evidence on record like salary slip etc proving that he was an employee on the Payroll of Noticee for any period of time. The Noticee has contended, that, "*Thus, merely having email ID with mastertrust.co.in domain does not make anyone employee of the group/company. Mr. Bhanu has neither joined MCSL nor any payment was made to him by MCSL."* I also note the Noticee mentioned in its reply during the hearing that existence (at that point of time) of such type of association of Noticee with Bhanu Pratap Singh does not render the trades under reference as unauthorized in view of facts and circumstances of the case. In absence of any substantive evidence proving it beyond doubt that MCSL had employer-employee relationship with Bhanu Pratap Singh for any period of time, I am inclined to accept the contention of Noticee. As for email id of Bhanu Pratap Singh with domain name of 'mastertrust.co.in', the Noticee has contended in its reply that; *No email to Neerja from email ID of Bhanu with "mastertrust.co.in" domain has been produced before any forum and even the authenticity of the two alleged emails sent to Dr. Anmol Maria has not been proved.* Further, in this regard, I find that Noticee, in its reply has furnished its submission as follows; *Regarding emails with "mastertrust.co.in" domain, MCSL submits that the domain name "mastertrust.co.in" is common for all the Mastertrust Group companies and a single outsourced mail server is used. Many non-employees (clients, sub brokers and their employees and persons with whom group companies intended to have regular interaction etc) of the Group were created on this server. The said email server is not under compliance department of broking arm of the Company (MCSL) and is more so a community server. There were no guidelines of SEBI/Stock Exchanges etc. for brokers and also no restriction on non-employees including clients using broker/their group mail servers. However, pursuant to the guidelines/circulars issued by Exchanges in August/September, 2014, the email IDs of the clients, created on broker/group servers, were stopped. In the year 2015 there was no SOP/protocol to open email ids. However, from 2018 onwards the formalities were introduced and as per the current process for creation of email Ids all the requests for creation of email Id are sent by the concerned department of Mastertrust Group companies to the HR department, which in turn forwards to central IT team at Corporate Office. The central IT team then creates email Id as requested & informs the HR department. Since, the matter is more than five years old we are not able to so far find out the exact reason for creating the email id in the name of Bhanu Pratap Singh on the domain of the Group.*

iv. From the reply, I note that Noticee has stated that; "*Since, the matter is more than five years old we are not able to so far find out the exact reason for creating the email id in the name of Bhanu Pratap Singh on the domain of the Group."* The same indicates inadequacy of internal control in this regard at that point of time. The Noticee cites that there was no guidelines of SEBI/Stock Exchanges etc. for brokers in this regard at that point of time. As per reply of the Noticee, the Noticee has stopped creation of the email IDs of the clients on broker/group servers to prevent recurrence of such type of issue. I note it has also introduced, subsequently, changes in the internal control processes towards ensuring email ids are issued after proper scrutiny and reason. Further, I note from the reply of Noticee that issues pertaining to the complaints under reference had been covered by other inspections conducted by Exchanges and SEBI without any adverse inference. I further note that, the inspections conducted by Exchanges and SEBI did not bring out any major compliance issues with the Noticee for the periods covered by these inspections which is same or overlapping with the period of association of complainants with the Noticee.

In view of the above, I am inclined to give benefit of doubt to Noticee with regard to allegation in the SCN that, Noticee has misguided the examining officers by informing that, it has no connection with Mr. Bhanu Pratap on the basis of alleged creation or existence of email id of Bhanu Pratap Singh on domain of 'mastertrust.co.in'.

v. With regard to the allegation that Mr. Bhanu Pratap Singh is also closely associated with Mr. Rahul Raghav , AP of Noticee, I note that, clause 4 and 5 of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 specifically mentions the eligibility criteria and conditions of appointment of AP respectively by stock broker. In view of the same, I accept the contention of Noticee that for registration of AP by stock broker, there is no requirement for checking any relationship, the AP has with other persons.

vi. In view of the above, I find that, violation of provisions of Section 11(2)(i) of SEBI Act and SEBI Clause A(1) A(2) of the Code of Conduct read with Regulation 9 of Stock Brokers Regulations against the Noticee in the matter, is not established.

17.3. <u>Trades carried out to earn brokerage</u>

<u>Allegation:</u>

i. It is observed that the complainants had significant losses in their account in the derivatives segment. Despite having significant losses in the derivative segment, trading in high volume continued in their account.

ii. As there is no evidence on record to suggest that the complainants were trading in their account, considering high trades despite continue loses in derivative and significant brokerage charged, it appears that Noticee or its AP viz. Rahul /Nitus Solution continued to place orders in the account of the complainants with the view of earning brokerage.

iii. This indicates that the trading in huge volumes was done by Noticee or its AP in the account of the complainants despite having significant losses in the derivative to earn significant brokerage which was shared between Noticee and Rahul Raghav in the ratio 20:80 and Noticee and Nitus Solution in the ratio 25:75 .The total brokerage and penal charges charged by Noticee from the complainants is placed below :

All figures are in Rs.)	Neerja	Arti	Anmol	Poonam	Puneeta
Brokerage charged					
Cash (NSE + SSE)	2664181	444662	378065	2350342	58365
FO & CD	1408722	2898491	1299791	5471335	78200
Penal Charges	1642406	327006	288956	192588	8837
Total charges Paid to Noticee	5715309	3670159	1966812	8014265	145402

iv. It has also been submitted by Noticee that, from the family of complainants. It charged a brokerage of Rs.1.75 cr. and from other clients of the AP (Rahul /Nitus Solutions) – Rs.40.98 lacs. Out of this total brokerage of Rs.2.16 Cr. It paid Rs.1.69 cr to the AP(Rahul/Nitus Solutions)

v. In view of the above Noticee is alleged to have violated the following provisions :-

a. Regulation 4(1) 4(2) o of PFUTP.

b. Clauses A (1) and B (4) (a) of the Code of Conduct read with Regulation 9 of Stock Broker Regulations.

<u>Reply of the Noticee:</u>

- *It is, herein submitted that the trades were executed by all the complainants and/or their authorised representatives as per their own assessment/perception of the market at the relevant point in time. MCSL had neither advised them to carry out any particular trade in any segment or to keep it open or square off at any particular point in time. The trading strategies were only known to the complainants and/or their authorised representatives to which MCSL was not a privy. Thus, merely because the trades ultimately resulted in losses, does not mean and imply that the said trades were either done by MCSL or for that matter to earn any brokerage in relation thereto. Brokerage charged by MCSL was only in accordance with tariff sheet duly signed by the complainants.*

- *The sharing of such brokerage has nothing to do with the choice of execution of trade or their quantum at any juncture. The choice of trades to be executed is done by the constituent/client and/or her authorised representatives and not the Authorised Person of the broker.*

- *It is emphasized here that since opening of the account, the trading in the account of the complainants was done by the complainants &/or their authorized representatives only and all the information in respect of their trades and account was sent to the complainants through SMS & emails on regular basis. Letter of Authority in favour of Bhanu Pratap and Milan has been executed by the Complainants and is a valid & legally binding document. It is pertinent to mention that the complainants themselves appointed Bhanu because he was a long time known acquaintance& trusted person of Dr. Anmol Maria& their relationship manager handling their account in Trustline Securities and Milan because of his credentials being a financial market expert, as their representatives to carry out trading. The trading has been carried out by the complainants &/or their authorized representatives for more than two years and no objection regarding the authority of Bhanu& Milan &/or the trades has been raised by the complainants anytime during the above period of trading. The authority given by the complainants was revoked by them in November, 2017.The copies of the emails dt 12.11.2017/13.11.2017/14.11.2017 of the complainants regarding the revocation of the authority are annexed by the complainants along with their complaints before NSE/BSE. In this respect, Ms. Neerja has stated in para 29 of SOC filed by her before Arbitration Panel at NSE & BSE as follows:*
  "At last, in utter desperation, on Sunday 12th November, 2017, Complainant revoked her PoA /letter of authorization which she was made to sign at the time of opening her account"

- *The copy of the aforesaid SOC filed by Ms. Neerja before Arbitration panel at NSE has been filed by the Noticee alongwith its reply to the SEBI.*

- *All trades have been held to be authorized trades during the IGRC/IGRP /arbitration proceeding at NSE & BSE as referred in our reply.*

- *MCSL, as a policy provides order routing server and support services to its AP's running fully equipped office as a broker. Further as a policy MCSL does not peek into the trades of any client or outcome of the same or monitor profits or losses of any client and there was no such obligation on the part of MCSL. There has never been margin shortage in case of any of the Complainants. The delayed payment has been charged, as per agreement, on ledger debits on some occasions. From the reading of the complaint to SEBI also it is clear that the Complainants were aware of all trades in their accounts and now have objected to certain option trades. Reading also reflects their knowledge of the derivatives market. By reading all their submissions at various forums, it is also clear that they expected profits only from trades and when losses occurred they started forming a strategy with Milan and Bhanu for recovery of their losses and when they did not succeed even after giving time to them, they revoked their authorisation to Milan and Bhanu and filed false complaints against MCSL to get the said loss recovered from it by classifying the* *trades as ‘un-authorised’.*

- *Therefore, all the allegation of high-volume trading despite continued losses in derivative segments to earn significant brokerage or any inducement in this regard are wrong and denied. Since there is no inducement to enhance brokerage on the part of MCSL, the question of any alleged fraudulent inducement does not arise As far as MCSL is concerned, the complaints executed the documentation required for trading in securities as stipulated by NSE and BSE. As stated earlier, all the complainants are highly educated persons and experienced investors having their trading &demat account with other brokers, namely Trustline Securities and Aditya Birla Capital Ltd, before opening of their account with MCSL. Ms. Neerja, who is an Advocate, has, admittedly, kept the KYC form with her for almost one month as is also evident from the fact that the date on KYC Part-1 of her account opening form is 28.08.2015 and rest of the pages of the KYC form are signed on dated 23.09.2015.Considering this fact, it can be, very well, ascertained that these documents were thoroughly studied by the complainants before the same were signed & executed by them. The complainants had neither approached nor MCSL has rendered or agreed to render any Portfolio Management Services for the complainants as is evident from documents executed with them and as stipulated in* ***clause 18*** *of the Contract between Member Broker & Client which is reproduced hereunder:*

  “It is clearly understood and agreed to by client that ***no service/facility in the nature of portfolio management/advisory services etc are contemplated under the agreement(s)*** *between the client and member broker.* ***No person working for or under member broker*** *whether dealer, relationship manager, sub-broker or authorised person is permitted to provide any services, facilities* ***except that of order placement*** *in trading system (subject to limitations stated above) upon directions of client. If the client accepts any portfolio management services/advises/ discretionary trading arrangements/ facility from any person including but not limited to dealer, relationship manager, sub-broker or authorised person then in that event* ***member broker shall in no way be responsible for*** *the outcome of such services/facilities accepted by client, and the relationship manager, sub-broker or authorised person shall be personal, mutual and private relationship between the client and such person(s) including dealer, relationship manager, sub-broker or authorised person and client shall have no recourse/ right against member broker either in law or equity.”*

- *Further the complainants had also signed the Risk Disclosure Document for Capital Market and Derivatives Segments which clearly mentions: -*

  *“……****In case you trade on stock exchanges and suffer adverse consequences or loss, you shall be solely responsible for the same*** *and Stock exchanges/its Clearing Corporation and or/SEBI shall not responsible, in any manner whatsoever, for the same and it will not be open for you to take a plea that no adequate disclosure regarding the risks involved was made or that you were not explained*

the full risk involved by the concerned stock broker. ***The constituent shall be solely responsible for the consequences and no contract can be rescinded on that account. You must acknowledge and accept that there can be no guarantee of profits or no exception from losses*** *while executing for purchase and/or sale of a derivatives contract being traded on Stock exchanges."*

- *Before activation of the trading account with us, a welcome call was made to the complainants wherein the details of the complainants were confirmed telephonically and the complainants were clearly advised that MCSL doesn't give any guarantee for a fixed return nor would it be responsible for any assurance given by any other person. One sample transcript of welcome call made to the complainant, Mr. Anmol Maria has been filed by the Noticee in its reply to SEBI.*

- *Guidance note given at the end of emails being sent by NSE to clients including the complainant provides as under: -*
  "…Beware of fixed/guaranteed returns scheme. Brokers or any of their representatives are not authorized to offer fixed/guaranteed returns."

- *A copy of the said sample mail by NSE to investors has been filed by the Noticee alongwith its reply to SEBI.*

- *Further the alleged agreement of any assured return is otherwise contrary to Risk Disclosure Document as mandated by SEBI and also CM Regulation 4.3.5(b) of NSE, hence illegal; under Sec 23 of the Indian Contract Act. NSE CM Regulation 4.3.5 (b) is reproduced hereunder: -*
  "No Trading Member or person associated with the Trading Member shall guarantee a constituent against a loss in any securities transactions effected by the Trading Member with or for such constituent."

- *There is no allegation that Noticee has ever violated this Regulation. There is no observation that Noticee have violated the above CM Regulation 4.3.5 (b) during the inspection carried out by NSE pursuant to the complaints of the aforesaid complainants to SEBI.*

- *No oral agreement pertaining to assured return could be set up against a SEBI mandated member client agreement which is in writing.*

- *It is pertinent to mention that no observation was made during its inspection carried out by SEBI including all aspects of the complaints filed by these complainants with respect to the violation of Regulation 4(1) and 4(2)(o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003 (PFUTP)and Clauses A(1) and B (4)(a) of the Code of Conduct read with Regulation9 of Stock Brokers Regulation. The final letter dt.29.10.2018 of SEBI has been enclosed by the Noticee in its reply to SEBI.*

- *In view of the above, it is established that MCSL had rather cautioned/warned the complainants regarding losses in the stock market and to refrain from any PMS services offered by anyone. Even otherwise, it is also important to note that no allegation of any fraudulent inducement by the complainants is made as per their complaint dated 16-02-2018 (Annexure-A to SCN) against MCSL and hence MCSL cannot be charged with fraudulent inducement. Since all trades are authorised and there has been no inducement/ portfolio management by MCSL, the question of any fraudulent inducement does not arise.*

- *The aforesaid position was duly considered and adjudicated by the arbitral tribunals at NSE & BSE and in addition to the relevant excerpts referred to in para 6a & 6b herein above, the following are relevant excerpts of findings by the arbitral tribunals at NSE/BSE: -*

Reference Original award dated 20.07.2018(NSE)

***Para – 6.1.5, page 27 of award** - 'It is noted that the Applicant was put to notice about possible risks through her executing various KYC documents. The Respondent, therefore, had no reason to suppress or hide any particular transaction which may have resulted in losses. If the Applicant had any doubt about any transaction, she should have taken corrective and remedial action, whereas the transactions were carried out for almost two years and there was no email or letter from the Applicant making grievances to the Respondent."*

***Para –6.1.5, page 27 of award**: "….The applicant has alleged rollover of options, total volume of trades etc. as reckless trading. However, as these have been made by her authorized Persons, hence the allegation has no merit and the respondent cannot be held liable for this."*

***Para – 6.1.6, page 30 of award**: "…Regarding assurance/guarantee, there is no evidence of the same. All the terms and conditions of trading are in the written set of documents. The allegation regarding verbal assurances, without any documentary proof are not sustainable."*

Reference Appellate Award dated 20.05.2019(NSE)

Para 25, Page 17 of award**: "However, she has not explained why had she opted for trading in F&O segment in the KYC in the first place and why had she not bought the shares which she had intended to buy with balance amount of Rs.33.22 lakh and allowed her representatives to utilize this funds in carrying out derivative trading. For two years F&O trading took place in her trading account which was in her knowledge but she did not try to restrict activities in her account to portfolio management/ adding good scrips in her core portfolio for long term retention. **In fact no agreement for portfolio management was entered into with the respondent TM and the same is also governed by another set of rules outside the scope of the present arbitration mechanism under NSE."

***(Para 33, Page 24 of award)**: "But we have not found evidence of fraud which* *could vitiate the trading carried out in her trading account with her knowledge."*

Reference Original Award DT.17.10.2018 (BSE)

***Para 112, Page 25 of award**: "Further so far as operation of trading account of the applicant is concerned, it is governed by a written contract in the form of KYC documents which were signed and executed by and between the parties hereto. Any verbal assurances even if assumed to be validly given, can't override the terms and conditions of the written contract between the parties."*

Para 116, Page 29 of award**: "'From the emails and SMSs exchanged by and between the applicant and Bhanu and Milan, as placed on record by the applicant, it becomes clear that the applicant was in regular conversation with the said persons relating to execution of trades. **The applicant, however, realized that the trades were leading in losses and she was protesting the same with the said persons and asked them to maintain her portfolio more effectively. As appears from the aforesaid emails, the applicant had allowed further time to the said persons to continue trading to recover the losses, however as per the case of the applicant, further trading by the said persons resulted in further losses compelling her to revoke her POA/authorization vide email dated 12.11.2017(Annexure C-18 at Page 277 of SOC). This arrangement of portfolio management cannot be attributed to the respondent as the respondent had no agreement to provide portfolio management services and as such cannot be held responsible for losses in her trading account'.Para 116, Page 29 of award**: " ………..**Merely because, the trades executed, ultimately resulted in losses, the said trades could not be termed as 'unauthorised' and the said losses could be shifted to the respondent.** We also notice that the applicant was getting contract notes and other trade related documents on a regular basis on her designated email ID and as such was aware of all trades executed in her account and she never objected to such trades at the relevant point of time. **If a person after receiving contract notes did not raise any objection in this respect thereof, such person cannot be permitted to disown such trades."

- *Please also refer to the judgements in respect of **Kaynet Capital Ltd** referred herein above in this respect.*

- *Further, there is no violation of Regulation 4(1) and 4(2)(o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003 (PFUTP) or Clauses A(1) and B(4) (a) of the Code of Conduct read with Regulations 9 of Stock Brokers Regulation as alleged in the SCN.*

- *MCSL had not signed and/or executed any agreement with the complainants for managing their portfolio in any manner whatsoever.*

- *Otherwise also, the activities pertaining to portfolio management are governed by SEBI Portfolio Managers Regulations, 1993 and the said activities are not governed nor regulated by the NSE/BSE where all the trades have been executed. Needless to mention the said Regulations provide for a separate written agreement between Portfolio Manager and its client as laid down in Regulation – 14. Any non-compliance of the said Regulations is visited by actions as provided in Chapter V of the SEBI (Intermediaries) Regulations, 2008.*

- *The Noticee has submitted in its submission dated November 18, 2020 that the Regulation 4(2) (o) of PFUTP Regulations 2002, as quoted in the SCN is not applicable to the present case as the same was amended w.e.f February 1, 2019 whereas the trading period in the present matter pertains to September 2015 to November 2017 and as such the aforesaid amendment would not apply to the facts of the present case.*

<u>Observation:</u>

i. I observe that the Complainants are family members and the facts and the issues of all the Complainants are same viz. The complainants have alleged unauthorized trading in their account. Further, the complainants *inter alia* also alleged the following:
   a. Incorrect format of contract note being used
   b. Transaction Matching
   c. Overcharging of brokerage
   d. Falsification of financial statements
   e. Violation of code of conduct by the broker

ii. I also note that, Ms. Neerja opened her account with MCSL on Sep 28, 2015. Thereafter, the other complainants- Dr. Anmol Maria, Ms. Arti Maria, Ms. Poonam Verma and Ms. Puneeta Mahajan opened their trading and Demat account with MCSL in the same sequence.

iii. From documents available on record, it is pertinent to mention that, the Complainants have executed all the required documents including KYC document and welcome letters was sent to the complainants reflecting the details of segment opted and activated including derivatives segment with the Noticee. Trades have been executed in the accounts of complainants by complainants/their authorized representatives for more than two years without any complaint. From the NSE inspection report it is evident that, complainants were regularly receiving contract notes, bills, quarterly financial statements, sms regarding transactions in their account from MCSL. Further, the depositories have also confirmed that regular CAS statements were being sent to the complainants and the respective exchanges were also sending the transaction related details through emails/sms to the Complainants and the same has been also confirmed in IGRP/Arbitration panels too. Further, I observe that there are telephone calls to one of the Complainants, Ms. Neerja, from the AP regarding post trade confirmations. The call recording indicates that Ms. Neerja was informed of trades executed in her accounts including trades in derivatives and on several occasions confirmed receipt of contract note. It is noted that no objection has been raised by the Complainants regarding the trades executed in their account for more than two years and that there have been several payouts and payins between the Complainants and the Noticee with respect to the trading accounts of the Complainants. Further, I note that, the Complainants have filed their income tax returns and claimed losses in this respect. In addition to this, I observe that the complainants have executed Letter of Authority in favour of Mr. Bhanu Pratap Singh and Mr. Milan Sharma to trade in the respective account of the Complainants which were further revoked by complainants vide their email dated November 12, 13 and 14, 2017. I further observe that all the Complainants except Mr. Sanjeev verma have preferred complaints before NSE /BSE IGRP as per SEBI Circular No. CIR/MRD/ICC/30/2013 Dated September 26, 2013, wherein NSE /BSE IGRP has passed 'Nil' 'admissible claims' that is rejected the claims of the Complainants. Thereafter, one of the Complainants, Ms. Neerja, preferred claim in arbitration proceedings as per the aforesaid circular. I note that the arbitrators held that they "*…..do not find any violation /contravention of rules , regulations, directions and circular of exchange /SEBI which would rendered the trades carried out in her account illegal and not binding on the appellant constituent or that they were against fair trade practices expected from a broker…………"* and her claims were dismissed in the arbitration proceedings at both BSE and NSE. Further, an appeal was preferred by her against the award passed at NSE, which was dismissed by the Appellate Tribunal. Neerja Ahluwalia has challenged the Appellate Tribunal award before the Hon'ble High Court of Delhi U/s.34 of the Arbitration and Conciliation Act, 1996 which is pending disposal. I note that, No restraining order has been produced before me in relation to instant adjudication proceedings in the matter by Noticee.

iv. I observe that the Complainants have executed letter of authority in favour of Mr. Bhanu Pratap Singh and Mr. Milan to trade in their accounts. In this regard, I have further noted that the authority given by the Complainants was revoked by them in November, 2017 as per the copies of the emails dated November 12, November 13 and November 14, 2017. Also one of the Complainants, Ms. Neerja, has stated in para 29 of SOC filed by her before Arbitration Panel at NSE & BSE that *"At last, in utter desperation, on Sunday 12th November, 2017, Complainant revoked her PoA /letter of authorization which she was made to sign at the time of opening her account."* Moreover, it has been held in the arbitration award dated July 20, 2018(NSE)and appellate arbitral award dated May 20, 2019 (NSE) as follows :

i. ''….The applicant has alleged rollover of options, total volume of trades etc. as reckless trading. However, as these have been made by her authorized Persons, hence the allegation has no merit and the respondent cannot be held liable for this.''

ii. *‘ The applicant, however, realized that the trades were leading in losses and she was protesting the same with the said persons and asked them to maintain her portfolio more effectively. As appears from the aforesaid emails, the applicant had allowed further time to the said persons to continue trading to recover the losses, however as per the case of the applicant, further trading by the said persons resulted in further losses compelling her to revoke her POA/authorization vide email dated 12.11.2017(Annexure C-18 at Page 277 of SOC).’’*

v. Further I note that the evidence indicates that the Complainant and, or, their authorised representatives (Mr. Milan and Mr. Bhanu Pratap Singh) have placed orders and the Complainants were aware of the trades and losses in their accounts as Complainants were regularly receiving contract notes by Noticee/depositories at designated email id which do contain information about the trades executed in their account.

vi. I have also noted that brokerage charged by Noticee was as per the tariff sheet duly signed by the Complainants and there is no objection raised in this respect.

vii. It is further observed that there is no evidence to establish that there was any fraudulent inducement of the Complainants by the Noticee or any inducement to trade. On the other hand, there is sufficient evidence on record to show that the Noticee had apprised the Complainants about the risk and losses in the stock market which is evident from the fact that there was telephone call made to the Complainants by Noticee wherein the Complainants were clearly advised that Noticee doesn’t give any guarantee for a fixed return nor would it be responsible for any assurance given by any other person. In this regards I note that the Clause 18 of the KYC provides that neither there was any Portfolio Management Services provided by the Noticee nor there was any guarantee of any return or capital. Further I observe that the Complainants have signed the Risk Disclosure Document for Capital Market and Derivatives Segments which states that: -

iii. *“……**In case you trade on stock exchanges and suffer adverse consequences or loss, you shall be solely responsible for the same** and Stock exchanges/its Clearing Corporation and or/SEBI shall not responsible, in any manner whatsoever, for the same and it will not be open for you to take a plea that no adequate disclosure regarding the risks involved was made or that you were not explained the full risk involved by the concerned stock broker. **The constituent shall be solely responsible for the consequences and no contract can be rescinded on that account. You must acknowledge and accept that there can be no guarantee of profits or no exception from losses** while executing for purchase and/or sale of a derivatives contract being traded on Stock exchanges.”*

viii. Therefore, the allegation of fraudulent inducement in the SCN does not get established against the Noticee.

ix. I would also like to place reliance on Adjudication Order. No. NP/JS/AO/19/2017 dated 31-01-2017 in respect of Kaynet Capital Ltd wherein Adjudicating officer has inter alia stated that "*Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the noticee, I find that Kaynet Capital Limited has not executed unauthorized trade while dealing and trading for its client M/s Kuvam Plast Private Limited(Kuvam). The trading member has submitted documents that show electronic contract note was delivered to Kuvam at its registered email id well within the stipulated time and there has not been any objection raised by Kuvam to Stock Exchange/SEBI. Also the recorded conversation clarifies that Kuvam was aware of the trading done by the Kaynet in its account. Further, Kuvam had made a payment of Rs 1 Crore on July 31, 2012 after the date of transaction on July 26, 2012 to clear its outstanding. There does not appear to be a case that stock broker had executed any unauthorized trade or trade without knowledge of its client Kuvam. In view of the same, I am inclined to accept the contention of the noticee."*

x. Having considered all the facts and circumstances of the case, the material available on record and the submissions made by the Noticee, I find that, trades were executed by complainants/their authorized representative and that, there was neither fraudulent inducement of the Complainants nor any inducement to trade by the Noticee, Further, the brokerage charged was as per the tariff sheet duly signed by the Complainants and corresponds to the trades executed by them Thus, I find that, Noticee has not violated the following provisions:-

   a. Regulation 4(1) 4(2) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating Securities Market Regulation, 2003.

   b. Clauses A(1) and B(4)(a) of the Code of Conduct read with Regulation 9 of Stock Broker Regulation

17.4. <u>The Noticee failed to perform due-diligence of its AP viz. Mr. Rahul Raghav/ Nitus solutions:</u>

Before proceeding further to discuss the following allegation, I would like to split following allegations into 3 parts, A-(i) & (ii), B-(iii) and C-(iv).

<u>Allegations:</u>

i. MCSL submitted that the authorized representative of the complainants-. Mr. Bhanu and Mr. Milan placed orders in the account of complainants. However, MCSL failed to provide letter of authorization in favour of Mr. Bhanu /Mr. Milan in case of Ms.

Poonam Verma. It is observed that Mr. Milan and Mr. Bhanu is associated with Mr. Rahul Raghav and Mr. Bhanu is associated with MCSL. MCSL failed to provide any intimation to the complainants regarding, 'authorization to trade' in favour of Mr. Bhanu/Milan who are not related to the complainants.

ii. Thus, MCSL accepted authorization to trade in favour of Mr. Milan and Mr. Bhanu who are not related to the complainants and are associated with Mr. Rahul Raghav , AP of MCSL.

iii. Further, MCSL has also submitted that, it has no specific guidelines to ensure that its AP are placing order only on specific instruction of clients. This indicates that MCSL has not established any mechanism to prevent unauthorized trading in its clients' accounts by its APs.

iv. MCSL has not conducted any inspection of the AP viz. Rahul Raghav/Nitus Solution, as observed by NSE in its inspection report.

v. In view of the above, MCSL is alleged to have violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.

A. <u>The Noticee failed to perform due-diligence of its AP Viz. Mr. Rahul Raghav/Nitus solutions</u>

<u>Allegation:</u>

i. MCSL submitted that the authorized representative of the complainants-. Mr. Bhanu and Mr. Milan placed orders in the account of complainants. However, MCSL failed to provide letter of authorization in favour of Mr. Bhanu /Mr. Milan in case of Ms. Poonam Verma. It is observed that Mr. Milan and Mr. Bhanu is associated with Mr. Rahul Raghav and Mr. Bhanu is associated with MCSL. MCSL failed to provide any intimation to the complainants regarding, 'authorization to trade' in favour of Mr. Bhanu/Milan who are not related to the complainants.

ii. Thus, MCSL accepted authorization to trade in favour of Mr. Milan and Mr. Bhanu who are not related to the complainants and are associated with Mr. Rahul Raghav, AP of MCSL.

In view of the above MCSL is alleged to have violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.

<u>Reply of the Noticee:</u>

- *Regarding 'due diligence' of AP, it is herein submitted that MCSL had done whatever was within its means to discover so far as status of Rahul Raghav and* *later the company floated by him i.e. Nitus Solution Pvt Ltd is concerned. As per information obtained by MCSL, Nitus Solution Pvt Ltd has only two directors namely Rahul Raghav and Uday Pratap Singh. Further neither Rahul nor Uday Pratap were found on any caution list of exchanges / SEBI.*

- *Clause A (2) of the Code of Conduct mandates that a stock broker shall act with due skill, care and diligence in the conduct of all its business. However, the words "due diligence" has not been defined in the Regulation. Therefore, such due skill, care and diligence can only mean that broker shall act in such a way that a person of ordinary prudence would act in the normal circumstances in carrying out activities and functions relating to its business.*

- *Further, one must not carry the concept of "due diligence" to ridiculous levels. "Due diligence" means what it simply means. According to Oxford Dictionary, the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. Thus, in our humble submission, "Due diligence" means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Needless to mention 'due diligence' under the law means doing everything reasonable, not everything possible. It means such diligence as a prudent man would exercise in the conduct of his own affairs. (para – 16 – **ChanderKanta Bansal Vs. Rajinder Singh Anand; (2008) 5 SCC 117**). MCSL did not find anything adverse relating to interest of the complainants and/or his authorised representatives vis a vis its AP nor any such thing had ever been brought to its knowledge by anyone.*

- *Regarding Letter of Authorisation executed by Ms. Poonam Verma in favour of Mr. Milan Sharma and Mr. Bhanu Pratap Singh it is submitted that the said document is misplaced and could not be traced out despite best efforts. However, there are enough evidences as explained in Para 3,4 & 5 of our reply to her complaint before IGRP at NSE/BSE, the copy of which is already submitted by us vide our letter dt.09.05.2018 to SEBI, that she had authorised Mr. Milan Sharma and Mr. Bhanu Pratap Singh for trading in her account with us. This is also fortified from her own admission vide email dated 13 November 2017 sent by her husband Mr. Sanjeev Verma whereby she has revoked the authority given to Bhanu and Milan for trading in her account. We may add that modus operandi /methodology and compliances in respect of all the family members is mutatis mutandis the same.*

- *In email dt.13.11.2017 at 06:11 PM sent by Mr. Sanjeev Verma(a copy of the said email has been filed by the Noticee along with its reply to SEBI* **)** *on behalf of his wife Ms. Poonam Verma & other family members with cc to Mr. Bhanu Pratap Singh and Mr. Milan Sharma, it has been asserted: -*
  "Since there is no reasonable justification of these happenings, I am with immediate effect

1. Revoking all types of POA issued for the accounts 6AAH028, 6AAH029, 6AAH038
2. Suspend Trading for the accounts 6AAH028, 6AAH029, 6AAH038
3. Depute a person to enable trading terminal software at my office location in A 72 Sector 64 Noida so that…"

- *In email dt. 20th Nov.2017 at 1:14 AM sent by Mr. Sanjeev Verma,(a copy of the said email has been filed by the Noticee along with its reply to SEBI) on behalf of Ms. Poonam Verma to SEBI, it has been asserted that:*
  "2. In Jan 2016 I entrusted them with 2.90 Cr (approx) worth of holdings in Blue Chip companies with explicit instructions that they will
  1.1. Not indulge in speculative trading since my wife in whose name these holdings exist was an active Govt. Servant"

- *In email dt. 22.11.2017 at 10:52 PM sent by Mr. Sanjeev Verma, (a copy of the said email has been filed by the Noticee along with its reply to SEBI) it has been alleged:*
  "My repeated queries about these trades were answered with baseless justifications of everything going well, while there was already a complex web of derivative positions, where a very big amount of money was already lost"

- *Ms. Neerja in her letter dated December 12, 2017 to IGRP, NSE in para no.28 on page no.11 alleged: -*
  "It was now DESPERATE TO GET OUT OF THE CLUTCHES OF MCSL. I along with my sister Dr. Poonam Verma, who along with four others have similarly suffered at the hands of MCSL, went to meet at his office in Sector 10, Noida

- *Further, Ms. Poonam Verma, in her complaint before IGRP at NSE/BSE, has admitted that upto November and December 2016 there were no grievances and this is fortified by the fact that the family members namely Mr. Jyoti Mahajan and Mrs. Puneeta Mahajan have opened their accounts in December 2016 which is more than one year after the trading in the accounts of other family members.*

- *As already submitted, Ms. Poonam Verma has filed her complainant before IGRP at NSE/BSE and her claim was found not admissible as per IGRP minutes of the meeting dated 25-04-2018 at BSE & dated 02-05-2018 at NSE after considering all the allegations by her and advised to file arbitration, if so desire. However, she has not filed any arbitration claim till date. The SEBI cannot adjudicate upon this issue as the same can be done only through arbitration route.*
- *It is humbly stated that we are unable to understand which specific provision of the SEBI Circular MIRSD/Dr-1/Cir-16/09 dated November 6, 2009, as referred and alleged to be violated by us, has been violated by us in this respect.*

- *There is no bye law, rule, regulation or circular to the effect that a constituent can only authorise a person who is related to him/her. It is also important to mention that the Letter of Authority to deal/transact/place orders/trade can be issued by the client in favour of anyone, related or unrelated. It is an industry practice and no objection from any exchange, during the inspection or otherwise, is ever raised in this regard.*

- *In any case, Bhanu Pratap Singh was a long time known acquaintance of Dr. Anmol Maria well before opening of trading accounts of Complainants with MCSL. Please refer to submissions with this respect in para 6b herein above. MCSL did not have any authority either to refuse to accept the letter of authorisation given by the said complainants or ask otherwise for any reason of authorising any particular person of their choice to deal/transaction/place orders on their behalf. It is the choice of the constituent/client who he/she chooses to appoint as his/her authorised representative and MSCL could not have any say in such a matter. There is no requirement under the law as laid down in S.184 of the India Contract Act, 1882 that an agent should be a related person. Letter of Authority in favour of Bhanu Pratap and Milan as executed by the Complainants is a valid and legally binding document. It is pertinent to mention that the complainants themselves appointed Bhanu and Milan as their representatives to carry out trading, The copies of all the documents executed by the complainants at the time of opening of his/her account with MCSL, have been provided to each of the complainant. The copies of the acknowledgement signed by the complainants are annexed with reply submitted by MCSL in each case before IGRP at NSE/BSE and the softcopies of which are enclosed in a CD.*

- *We may also point out that in addition to the relevant excerpts as referred above the following are the additional relevant excerpts of findings by the arbitral tribunals at NSE/BSE: -:*

  Reference Original Award dt. 18.07.2018 (NSE)

  ***Para 6.1.4, page – 27** : "It is also apparent from submission of both the parties and discussions made above, the applicant has accepted transactions of buying and selling in equity shares based on the same Authorisation Letter, but denying the transactions of exchange Arbitrage and F&O segments, which is not a correct position of the claimant."*

  Reference Appellate Award dt.20.05.2019(NSE)

  ***Para32, page - 22 of Award : "**It has been admitted by the appellant constituent that she had signed an authorization letter in favour of Shri Bhanu and Shri Milan for carrying out trading in her trading account"*

  ***Para34, page - 26 of Award : "**Having regard to the above discussion we are constrained to hold that the appellant had executed authorization to trade in her account in favour of Shri Bhanu and Shri Milan and that none of the cash or* *derivative/F&O trade carried out in her account can be said to be unauthorized and not binding on her."*

Reference Original Award dt. 17.10.2018(BSE)

Para 112, page – 24: "*A conspectus of facts as deduced from pleadings and documents reveals that the applicant had authorized Bhanu Pratap Singh and Milan Sharma as her Authoirsed Persons (Aps) to carry out trades in her trading account.****"***

Para 112, page – 25*: "We are therefore, of the opinion that the aforesaid documents are validly executed and are binding over both the parties. The Applicant had authorized Milan and Bhanu and are as her representative to trade in her account and communicated the same to the respondent."*

It is humbly stated that we are unable to understand which specific provision of the SEBI Circular MIRSD/Dr-1/Cir-16/09 dated November 6, 2009, as referred and alleged to be violated by us, has been violated by us in this respect.

Observation:

i. I observe that in case of letter of authorization executed by Ms Poonam Verma in favour of Mr Milan Sharma and Mr Bhanu Pratap Singh, the Noticee has submitted that the same has been misplaced. I observe that there is an email on record dated November 13, 2017 sent by Mr. Sanjeev Verma, husband of Ms. Poonam Verma with respect to revocation of the letter of authority stating that *"Since there is no reasonable justification of these happenings, I am with immediate effect 1. Revoking all types of POA issued for the accounts 6AAH028, 6AAH029, 6AAH038……."* Thus, this establishes that Ms. Poonam Verma had authorized Mr Milan Sharma and Mr Bhanu Pratap Singh to trade in her account.

Further, regarding sending any intimation to the complainants regarding 'authorization to trade' in favour of Mr. Bhanu/Milan who are not related to the complainants, I note that there is neither there is such requirement as per Section 184 of Indian Contract Act that an agent should be a related person nor there is any explicit SEBI regulation or circular in this respect. I have observed that in the arbitration awards it has been held that letter of authority in favour of Mr Bhanu Pratap Singh and Mr Milan Sharma by the Complainant is a valid and legally binding between the parties. Further I note from the copies of acknowledgement of receipt of the executed documents duly signed by the Complainants submitted by Noticee that, copies of all the documents executed at the time of opening trading account was given to Complainants and the said copies included the letter of authorization.

ii. Thus, In view of the above, I do not find any violation of any of the provisions of the Circular MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 in this respect.

B. <u>The Noticee failed to perform due-diligence of its AP Viz. Mr. Rahul Raghav/Nitus</u>

solutions

Allegation:

i. Noticee has submitted that, it has no specific guidelines to ensure that its AP are placing order only on specific instruction of clients this indicates that Noticee has not established any mechanism to prevent unauthorized trading in its clients' accounts by its APs.

ii. In view of the above, MCSL is alleged to have violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.

Reply of the Noticee:

- *Further, MCSL, as a responsible and compliant broker, has taken several steps to prevent unauthorized trading in the account of its clients. Some of these steps have been mentioned in our letter dated 30-07-2018 (in context of regulations as of that date) to SEBI which are as under:*
  - *i. The voice recording system is installed at all self managed branches of the company.*
  - *ii. Authorized Persons/Sub-brokers are urged to install voice recording system in their offices and keep order placement records of the clients.*
  - *iii. The identification of the client is done, wherever required, by the dealer before accepting the orders from the client.*
  - *iv. Apart from the mandatory requirement of sending contract notes within stipulated time, trade summary through SMS is sent to all the clients.*
  - *v. Post trade confirmations calls are made randomly to clients from our central back office.*
  - *vi. Various reports, contract notes, other records w.r.t. trading & demat account of the client are available 24 hours on Noticee website which can be accessed by the client by using individual login id & password sent to the client.*

  The above guidelines were applicable to all branches including our registered AP.
- *It is also pointed out here that neither there are any guidelines nor is there any requirement to issue specific guidelines to APs. The appointment & registration of Mr. Rahul Raghav/ Nitus Solution Pvt Ltd was done after execution of the necessary documents including exchange prescribed agreements between TM & Authorized Person wherein the scope of activities is clearly defined in accordance with the SEBI circular Ref. No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009. All the authorized persons appointed & registered are advised to follow rules, regulations & byelaws and the guidelines/circulars issued by the exchanges/SEBI from time to time.*
- *It is humbly stated that we are unable to understand which specific provision of the SEBI Circular MIRSD/Dr-1/Cir-16/09 dated November 6, 2009, as referred and*

alleged to be violated by us , has been violated by us in this respect.

OBSERVATION:

i. In this regard, I observe that the Noticee has submitted vide its letter dated July 30th, 2018, the various steps taken by Noticee to prevent unauthorised trading in the account of its client which are applicable to all, including the registered AP. I also note that the Noticee has sent the required SMS/e-mails regarding contract notes, bills, daily margin statement, quarterly statement of accounts etc. and the same has been also confirmed in IGRP/Arbitration panels. Thus I note from the documents on records that, Noticee ensures that all the statements are sent to the client by Noticee to inform them regarding the trades.

ii. Further I note that the said circular does not mention any requirement to establish specific mechanism to prevent unauthorized trading in clients' accounts by the APs. Therefore, I hold that there is no violation of any provisions of the SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 in this regard.

18. While establishing no violation of SEBI Circular No. MIRSD/DR-1/Cir-16/09 dated November 06, 2009 in respect of allegations of failure by the Noticee to perform due diligence of its AP as listed at **A** and **B** above, I have also taken into account my Observation noted earlier in the Order, i.e., *Further, I note from the reply of Noticee that issues pertaining to the complaints under reference had been covered by other inspections conducted by Exchanges and SEBI without any adverse inference. I further note that, the inspections conducted by Exchanges and SEBI did not bring out any major compliance issues with the Noticee for the periods covered by these inspections which is same or overlapping with the period of association of complainants with the Noticee.*

C. The Noticee failed to perform due-diligence of its AP Viz. Mr. Rahul Raghav/Nitus solutions

Allegation:

i. Noticee has not conducted any inspection of the AP- Rahul Raghav and Nitus solutions, as observed by NSE in its inspection report**.**

ii. In view of the above, Noticee is alleged to have violated the provisions of SEBI circular MIRSD/ DR-1/ Cir- 16 /09 dated November 6, 2009.

Reply of the Noticee:

- *Further, with regard to the inspection of our AP, Mr. Rahul Raghav M/s Nitus Solution Pvt. Ltd, we submit that as per NSE Circular NSE/ INSP/3685 dated 17-10-2002, it is clarified that every Trading Member is required to inspect every year* *at least 10% of its active sub-brokers and 10% of its active branches and also to ensure that each active sub-broker / branch is inspected at least once in every five years. It is further submitted that Mr. Rahul Raghav has been registered as AP in September, 2015 who got his registration as AP cancelled in January, 2017 and M/s Nitus Solution Pvt. Ltd was registered at the same time. Kindly note that, at present, the said AP is not active as the said AP was terminated after sending the notice dated 19-02-2018, copy of the said notice has been filed by the Noticee along with its reply to SEBI and the trading terminals allotted to AP office were de-activated on 22-03-2018 & 23-03-2018.The registration of the said AP is, however, was not got cancelled in view of the pending complaints pertaining to the clients of the said AP. The above AP did not fall in 10% entities inspected in respective years and now his/its status is of inactive/ pending cancellation before completing five years, hence there has been no violation by not conducting his/its inspection.*

- *In view of the above, there is no violation on the part of MCSL with respect to SEBI Circular MIRSD/Dr-1/Cir-16/09 dated November 6, 2009.*

Observation:

i. I observe that, in view of the SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 read with NSE Circular NSE/ INSP/3685 dated October 17, 2002, the trading member is required to inspect every year at least 10% of its active sub brokers /branches and each sub broker /branch is to be inspected at least once in every five year. I note that the AP- Rahul Raghav/Nitus solutions, of the Noticee has not completed five years from the date of registration till the date of cancellation for AP-Rahul Raghav and till the date of termination for AP-Nitus solutions and further such AP- Rahul Raghav/Nitus solutions, may not necessarily fall in the sample of 10% each year as required in the said circulars. However, it appears that the Noticee does not have a criteria of selection of AP for periodic inspection whereas the Noticee should have a selection criteria in place which could be based on number of factors for eg. Volume of business, brokerage income, client concentration of volume etc. transacted through a particular AP's office. It is evident from list of clients submitted by Noticee that during the period SEP-2015 to Feb-2018, AP has total 36 clients including complainants and substantial business of AP viz. Rahul Raghav/Nitus solutions was from the family of Complainants.

ii. Hence, in view of the above, the Noticee has violated the SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 in respect of this allegation, i.e., "Noticee has not conducted any inspection of the AP- Rahul Raghav/Nitus solutions, as observed by NSE in its inspection report."

Issue No. II: Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA and 15HB of SEBI Act read with Regulation 26(xi) and 26(xvi) of Stock Broker Regulation?

19. I would like to mention as under the provisions of section 15HA & 15HB of SEBI Act, Regulation 26(xi) and 26(xvi) of Stock Broker Regulations:

Section 15HA of SEBI Act.

Penalty for fraudulent and unfair trade practices

"15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

Section 15HB of SEBI Act.

Penalty for contravention where no separate penalty has been provided .

"15HB. Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

Regulation 26 of Stock Broker Regulation

Liability for monetary penalty.

"26. A stock broker shall be liable for monetary penalty in respect of the following violations, namely:

………

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

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

20. Since alleged violations of indulging in fraudulent and unfair trade practices relating to securities market is not established against Noticee, thus, no monetary penalty is warranted under section 15HA of SEBI Act against Noticee.

21. As regards to the imposition of monetary penalty for violation established in respect of SEBI Circular No. MIRSD/DR-1/CIR-16/09 dated November 6, 2009 regarding inspection of AP viz. Rahul Raghav/Nitus Solution, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein it was held that *"…..the penalty is attracted*

as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, ………….once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary." Hence, the Noticee is liable for monetary penalty under section 15HB of SEBI Act.

ISSUE NO. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

22. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act which read as under:-

***Section 15J** - Factors to be taken into account by the adjudicating officer 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.

23. There is no material available on record to assess the amount of loss caused to investor(s) or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of violation in respect of SEBI Circular No. MIRSD/DR-1/CIR-16/09 dated November 6, 2009 regarding inspection of AP viz. Rahul Raghav/Nitus Solution, neither it has been so alleged by SEBI. As for repetitive factor, I find no facts brought out in this regard from the material available on record.

ORDER

24. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs. 2,00,000/-(Rupees Two Lakhs only) on the Noticee under section 15HB of the SEBI Act. In my view, the said penalty is commensurate with the violation of SEBI Circular No. MIRSD/DR-1/CIR-16/09 dated November 6, 2009 as committed by the Noticee in this case.

25. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or The amount of penalty can also be made by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

26. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to “The Division Chief (Enforcement Department - DRA- II), Securities and Exchange Board of India, SEBI Bhavan II, Plot no. 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No	
6	Bank Details in which payment is made:	
7	Payment is made for: (like penalties/ disgorgement/ recovery/Settlement amount and legal charges along with order details)	

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

28. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : January 29, 2020 **Vijayant Kumar Verma**
Place : Mumbai **Adjudicating Officer**