BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/HP/2022-23/18081]

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

In respect of -

Sunflower Broking Private Limited (PAN: AAACN5165E) having address at "Sunflower House", 5th Floor, 80 Feet Road, Nr. Bhakti Nagar Circle, Rajkot – 360 002, Gujarat**.**

In the matter of Sunflower Broking Private Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "**SEBI**"), initiated adjudication proceedings under Section 23D of the Securities Contracts (Regulation) Act, 1956 ('**SCRA**') and Section 15HB of SEBI Act, 1992, ('**SEBI Act**') against Sunflower Broking Private Limited - SEBI registered broker having SEBI Registration No. INZ000195131 and INZ000074733 (hereinafter be referred to as, the '**Noticee/Broker/You'**) for the alleged violations mentioned as under:

   a) Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2, 2.5, 2.5.3 and 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

b) Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

d) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012.

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

f) Clause 1.2 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCRA Adjudication Rules**") *vide* order dated January 29, 2021 to inquire into and adjudge under Section 15HB of SEBI Act and under Section 23D of SCRA, the aforesaid alleged violations against the Noticee. The appointment of the undersigned as AO was communicated vide Communique dated February 02, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/12470/2021 dated June 15, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee, in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, and Rule 4

(1) of the SCRA Adjudication Rules read with Section 23-I of the SCRA, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 23D of the SCRA and Section 15HB of the SEBI Act, as applicable, for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized in the following paragraphs

5. SEBI carried out an inspection of the broking operations of the Noticee during November 04, 2019 to November 08, 2019 for the period from April 01, 2018 to October 31, 2019 (hereinafter be referred to as, the "**Inspection Period**").

6. After scrutiny of the inspection report and comments of the Noticee in respect of irregularities as mentioned in the inspection report, following alleged irregularities / violations by the Noticee were observed:

<u>Non - segregation of clients' funds and securities</u>

7. In terms of SEBI circular dated September 26, 2016, the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation / clearing broker, i.e. (A + B) should always be equal to or greater than clients' funds as per ledger balance (C). The difference 'G' shall be calculated as, [G = (A+B)-C] and if value of 'G' is negative, then it indicates that the credit balance clients' fund may have been utilized by the broker for other purposes such as funding the debit balance clients, proprietary purpose etc.

8. During inspection it was observed that on 41 instances out of 50 sample instances during February 01, 2018 to February 28, 2018, the total cash and cash equivalents lying in the client and settlement bank accounts and with the clearing corporation / clearing broker at the end of the day (i.e. A+B) were less than gross creditors, indicating misutilization of such funds i.e. the value of 'G' was negative. This indicates that Noticee has misutilized funds of credit balance clients for debit balance clients or own purpose on 41 instances and the extent

of misuse was in the range of Rs. 2.43 lacs to Rs. 12.19 crore. Details of such instances are placed as **Annexure 2**.

9. Further, in terms of SEBI circular dated September 26, 2016, if value of ‘G’ is negative (i.e. A+B<C), then fund lying with the clearing corporation/clearing member (B) is entirely clients' fund. Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:
If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G. If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for its own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

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

10. It was observed that on 19 instances out of 50 sample instances, the value of ‘H’ was positive in the range of Rs. 4,18,297/- and Rs. 3,19,02,734/-. This indicates that Noticee has misutilized funds of credit balance clients towards settlement obligation of own purpose. Details of such instances were placed as Annexure 3 of SCN.

11. In view of the above, it was alleged that Noticee is in violation of provisions of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

12. It was observed that money received from pledging clients’ securities was routed through own bank account of the Noticee (HDFC 06610340000044). Details of such instances were placed as Annexure 4 of SCN.

13. In view of the above, it was alleged that Noticee is in violation of provisions of Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated

November 18, 1993 and Clause 2.5.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

14. As per Enhanced supervision, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred between client and own bank account. However, it was observed that Noticee was not maintaining the same. Therefore, it was alleged that Noticee is in violation of clause 2.4.2 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Pledging of clients' securities

15. It was observed that the Noticee had pledged client securities. Shares in excess of client's obligation being pledged and/or client's obligation being more than the proportionate amount of funds raised against respective clients pledged shares were observed. Such instances were observed on 2 sample dates. Summary of such instances is given in the table below: Details of such instances were placed as Annexure 5 of SCN

Date	Total OD / LAS Availed (In lakhs)	Value of Securities Pledged (In lakhs)	Improper use (In lakhs)	Total no of clients whose securities have been mis-utilized	Total no of clients whose Securities were pledged
28-Feb-19	438.98	933.91	357.90	18	29
23-Jul-19	374.02	765.94	323.03	16	26

16. Further, it was observed that the Noticee had pledged securities of clients having credit balance on the aforementioned sample dates. The summary of the same is given in the table below: Details of such instances were placed as Annexure 6 of SCN

Date	No. of clients with credit balance	Value of securities pledged (in crore)
23-Jul-19	8	3.94
28-Feb-19	13	6.40

17. In view of the above, it was alleged that Noticee is in violation of provisions of Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Stock Reconciliation:

18. It was observed that there was mismatch in ISINs between data provided by the Noticee as per Enhanced supervision for the month of September 2018, March 2019 and September 2019 and as per Depository Participant details. Details of such instances were placed as Annexure 7 of SCN.

19. In view of the above, it was alleged that Noticee is in violation of clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008.

Monthly/quarterly settlement of funds and securities

20. It was observed that Noticee has not settled accounts of 18 inactive clients. Details of such instances are given in the table below: Details of such instances were placed as Annexure 8 of SCN.

Quarters	Number of clients not settled	Amount of non-settlement (in Rs.)
July to September 2019	18	16,67,984

21. It was observed that the balances of clients continued over the quarter end and the Noticee has not done quarterly settlement of funds of the clients. Analysis of credit balance clients with more than Rs. 500/- as balance was done and the details are given in the table below:

Quarter End	No of clients	Amount not settled
June 2018	292	7,20,529.14
September 2018	396	18,45,012.65
December 2018	479	45,86,324.96
March 2019	527	44,97,772.82
June 2019	408	18,44,753.27
September 2019	467	14,76,516.63

22. It was further observed that funds balance of 166 clients were not settled during the entire inspection period since April 2018 to September 2019 amounting to Rs. 1,65,934.12. Details of such instances were placed as Annexure 9 of SCN.

23. In view of the above, it was alleged that Noticee is in violation of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Client Funding

24. It was observed that in 2 instances of 2 clients, the Noticee has allowed further exposure to debit balance clients beyond T+2+5 days. Aggregate amount of funding was Rs. 25.69 lacs. Details of such instances were placed as Annexure 10 of SCN. Further, clients mentioned in the annexure have not availed margin trading facility.

25. In view of the above, it was alleged that Noticee is in violation of Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012.

Verification of Email ID & Mobile numbers

26. It was observed that single Email ID was mapped to multiple clients. In case of 40 accounts the Noticee stated that, these accounts are closed. As per Exchange UCC database, these 40 accounts are having active status. However, considering the last trading date of these clients, only 3 clients qualify as active clients, for which the Noticee has also uploaded Funds and Securities Balances under Enhanced Supervision. Therefore, the Noticee was alleged to be non-compliant in 3 instances of mapping single email-ID.

27. Further, single mobile number was mapped to multiple clients. In case of 37 accounts where the Noticee stated that these accounts are closed, it was observed that, as per Exchange UCC database, these 37 accounts are having active status. However, considering the last trading date of these clients, only 7 clients qualify as active clients for which the Noticee has also uploaded Funds and Securities Balances under Enhanced Supervision. Therefore, the Noticee was alleged to be non-compliant in 7 instances of mapping single mobile number.

28. It was further observed that Email IDs were not uploaded for 886 clients. The Noticee in its reply stated that, out of 886 clients, 879 clients are closed and rest 7 are active. On further verification with the Exchange UCC database, it was observed that, 289 out of the 886 clients are inactive and 586 clients are active. However, considering the last trading date and submission made under enhanced supervision for funds & securities, 23 clients qualify as active clients for which the Noticee has not uploaded the e-mail ids. Therefore, the Noticee was alleged to be non-compliant in 23 instances for uploading email-ids.

29. Hence, it was alleged that Noticee is in violation of clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

<u>Analysis of Enhanced Supervision data</u>

30. It was observed that the Noticee has not designated client and settlement bank accounts required as per Enhanced Supervision. Details of such instances were placed as Annexure 11 of SCN.

31. In view of the above, it was alleged that Noticee is in violation of Clause 1.2 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

32. The relevant provisions of the various SEBI Circulars/Regulations alleged to be violated by Noticee are given below:

SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

1. D)"No money shall be drawn from clients account other than –

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

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

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

2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities.

SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated Sep 26, 2016

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

1.1. Bank accounts and Demat accounts maintained by all stock brokers shall have appropriate nomenclature to reflect the purpose for which those bank/demat accounts are being maintained.

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

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

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

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

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

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

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

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

2.4.1.Stock Broker shall not use client funds and securities for proprietary purposes including settlement of proprietary obligations.

2.4.2.Transfer of funds between "Name of Stock Broker -Client Account" and "Name of Stock Broker -Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

2.5.As per existing norms, a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants) Regulations,1996. To strengthen the existing mechanism, the stock brokers shall ensure the following:

2.5.1.Securities of only those clients can be pledged who have a debit balance in their ledger.

2.5.2.Funds raised against such pledged securities for a client shall not exceed the debit balance in the ledger of that particular client.

2.5.3.Funds raised against such pledged securities shall be credited only to the bank account named as "Name of the Stock Broker -Client Account".

2.5.4.The securities to be pledged shall be pledged from BO account tagged as "Name of the Stock Broker -Client Account".

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

Client Fund Monitoring

3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges –

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

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

A - Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B - Aggregate value of collateral deposited with clearing corporations and/or clearing member

C - Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D - Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, *uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)*

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

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

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

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

> *Principle: The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)*
>
> *Stock Exchanges shall calculate the difference i.e. G as follows –*
>
> $G = (A+B)-C$

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

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

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

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

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

$H = |G| - |D|$

6.1.1. Monitoring criteria for Stock Brokers

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

8. Running Account Settlement

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

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

SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

Running Account Authorization

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

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

SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011

***2.B.** <u>Uploading of mobile number and E-mail address by stock brokers</u>*

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

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

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

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

SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

2. In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that :-

2.3 The records should be periodically reconciled with the actual collateral deposited with the broker.

SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

2.d. Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time. This clause would be effective from August 1, 2017.

33. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 23D of SCRA and under Section 15HB of SEBI Act.

34. The SCN was delivered to the Noticee vide e-mail dated 17.06.2021, which was acknowledged by the Noticee on 02.07.2021 when they sought Annexures to the SCN which were sent again on the same day. Noticee submitted reply to the SCN on 19.07.2022. The submissions made by the Noticee in their reply are as follows:

35. Noticee denied the adverse observations in the Inspection Report. Noticee submitted that the observations in the Inspection Report pertain only to certain technical or procedural issues. Admittedly, the observations do not pertain to any kind of fraud or manipulation or unfair trade practices indulged in by them or by their clients. Noticee have not compromised or adversely affected the interests of the clients or the investors in any manner.

36. Noticee is a Stock Broker registered with SEBI, for the past 12 years and since then has been dealing in the securities market on behalf of its clients in various scrips. As on date, it have around 11058 registered client's out of which 11,662 are active who deal in several scrips.

37. Noticee’s turnover in Capital Market Segment and Future & Options Segment of NSE for the past three years has been as follows. Amount is in crore:

Year	**Cash Segment**	**Future & Options Segment**	**Total**
FY 2021-22	27,896.01	6,727.23	34,623.24
FY 2020-21	24,416.42	3,743.13	28,159.55
FY 2019-20	10,653.25	2,820.17	13,473.42

38. Noticee has been carrying on the broking activities as market intermediaries with due diligence, fairness and in accordance with the provision of the law. It has never defaulted in meeting its payment or delivery obligations to the Clients or

the Exchange. Noticee is a law – abiding company and has an absolutely clean track record in terms of functioning and compliance.

Allegation of mis-utilization of funds of credit balance clients' for debit balance clients

39. It has been alleged in the SEBI inspection report that from the 50 dates mentioned in the SCN, there has been mis-utilisation of funds of 41 dates. Noticee prayed that irregularities, if any, may be viewed leniently since they were venial, technical and administrative lapse and not to evade compliance or in defiance of law, and offered following comments to the SCN.

40. "Misuse of funds" is a very strong allegation with connotation that Noticee has misappropriated client funds. Clients' funds have never been misappropriated and none of the clients have ever made any allegations of non-payment of dues.

41. Creditor balance also includes amount due to Group Company, Associates, Subsidiaries, Directors and their family members etc. Credit balance of such internal creditors cannot be rightly termed as mis-utililsation. In order to arrive at prudent, real, correct and judicious conclusion on misuse of client funds, only external creditor's balances should be considered and compared.

42. After deducting the said balances (i.e., credit balance of internal creditors),the funds available are far in excess of the alleged shortage in case of 16 instances out of the 41 instances, which is evident from the table attached as Annexure 1.

43. BGs issued by the Bank are against the Fixed Deposits kept with the Bank. The fixed deposits are created from Own Funds and cannot be used for any other purpose till the continuation of BG. During 25 days when there is alleged misuse due to shortfall there were fixed deposits of around Rs. 85,00,000 as against the shortfalls ranging from 0.16 to 6.53 crores. Thus, by this measure also there is no mis-utilisation of client funds.

44. List of Internal credit balance clients':

Client Code	Client Name	Relationship
AHM159	KOMALAY TECHTRONICS PRIVATE LIMITED	Related Entity (Common Director)
ROS030	ROOF ONE SECURITIES PRIVATE LIMITED	Related Entity (Associate Company)
ROS036	SUNFLOWER COMBROKING PVT.LIMITED	Related Entity (Associate Company)
M10023	MALAYBHOW	Director
V10008	VIRAL BHOW	Director's wife
N10019	NEELABEN BHOW	Director's mother
R10027	ROHITKUMAR BHOW	Director's father
D10001	DHAVAL DAVE	Director
USS073	VILPA VORA	Director's sister-in-law

45. There has been no malafide intention to use client funds. Notice gave assurance that it will take every effort and care to be compliant in future.

Allegation of mis-utilization of funds of credit balance clients' towards settlement obligations of own purpose:

46. Noticee denied the alleged violations and stated that it has not executed single proprietary trade nor utilized clients' funds to mitigate any proprietary obligations during the inspection period.

47. During each day of trade date Exchange provides trade files and margin files and referring to it Noticee confirms that there were no proprietary trade executed and therefore the value H=G-D arises completely an application error for calculation of client's asset under enhance reporting criteria.

Allegation of pledging clients securities are routed through own bank account:

48. The said instance has occurred due to unawareness among the staff of the NBFC firm as they have mapped own bank account instead of client bank Account and have disbursed the funds in Own Bank Account. However, all the

funds received in Own Bank Account by pledging Client's securities have been moved to Client Bank Account either on the very same day or on next day. However, Noticee has stopped pledging client's securities and therefore such instance will not occur in future.

Allegation pertaining to daily reconciliation statement:

49. While calculating the fund transfer between Own to Client account & client to Own account, Inspecting Official has excluded or not considered the following amounts which the Broker has to collect from the Client. Table relating to the same is given below.

Particulars
Brokerage
Clearing Charges
Daily Interest
GST
ODIN Charges
SEBI Charges
Stamp Duty Charges
Transaction Charges
Weekly Interest

50. Noticee has maintained proper daily reconciliation statement clearly indicating the amount of funds transferred between client and own bank account and hence strongly deny the allegation of violation of clause 2.4.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Allegation pertaining to pledging of clients securities:

51. Pledging of client's securities was undertaken for a very short span of time. Further, the pledging undertaken was done for selected clients only (i.e. Director's, Director's relative and Clients having Debit since long).
52. Referring the date 28·02·2019, Noticee pledged securities of only 18 clients out of 11,662 active clients as on 30-09-2019. Of these 18 clients, 10 client codes, belong to Director's and his relatives (i.e. Director's wife, Director's mother,

Director's father and Director's sister). Another three clients were HNI clients and the said pledging was done with the consent of the client. Also till date none of the client has complained to regulator on pledging clients' securities without their consent. Further, referring the date 23-07-2019, Noticee pledged securities of only 16 clients out of 11,662 active clients as on 30-09-2019. Out of these 16 clients, 09 client codes belong to Director's and his relatives (i.e. Director's wife, Director's mother and Director's father)

53. There were four clients having their ledger debit, inspite of continuous follow up to settle their account, clients insisted to settle their debit by way of raising funds on behalf of them (i.e. by pledging their securities). However, said securities are now unpledged as clients have cleared their debit.

54. Another three clients were HNI clients and the said pledging was done with the consent of the client. Also, till date none of the client has complained to regulator on pledging clients' securities without their consent.

55. Pledging was done without any wrong intention. Being corrective action, Noticee unpledged clients' securities and by December 19, 2019 securities of all the clients were unpledged. As on date Noticee does not undertake any pledging activity. Said activity to pledge client's securities was done for the very first time and the pledging period was for very short span of time, therefore requesting SEBI to consider the above explanation and drop the allegation.

Allegation pertaining to stock reconciliation:

56. It is alleged that there is mismatch in ISINs between data provided as per Enhanced Supervision for the month of Sep. 2018, Mar. 2019 and Sep. 2019. This is denied as mentioned below:

28-Sep-2018

Sr. No.	ISIN	Quantity as per Enhanced Supervision CFS	Total DP	Diff. in qty	Remarks
1	INE178C01020	700	0	700	Stock is lying with the Clearing Member and the same was given for Margin purpose. Inspecting Official has not considered the same at the time of working
2	INE919I01024	85	0	85	
3	INE087A01019	50	150	100	This is Back Office error. We have a system to generate files from Back Office, download and upload the same to the Exchange. With respect to the difference in quantity which has come to the notice, we would like to clarify that some of the quantities were not taken into consideration by the back office system. On consulting about the query with the Back Office Vendor, they are of the opinion that it is not possible to check back dated entries
4	INE121E01018	5250	5690	440	
5	INE155A01022	17715	17718	3	
6	INE918B01013	1234	1734	500	

29-Mar-2019

Sr. No.	ISIN	Qty as per Enhanced Supervision CFS	Total DP	Diff. in qty		Remarks
1	INE002A01018	10126	10246	120	M10032 *(77-ILFS NSE FNO)* M10032 *(43-SBPLBEN)*	This is Back Office error. We have a system to generate files from Back Office, download and upload the same to the Exchange. With respect to the difference in quantity which has come to the notice, we would like to
2	INE087A01019	14	114	100	HVM002 *(SBPLBEN)*	
3	INE121E01018	3325	3725	400	HVM002 *(SBPLBEN)*	

4	INE155A01022	19009	19012	3	PS002 *(SBPLBEN)*	clarify that some of the quantities were not taken into consideration by the back office system. On consulting about the query with the Back Office Vendor, they are of the opinion that it is not possible to check back dated entries
5	INE123W01016	58	79	21	M10032 *(ILFSNSE FNO)*	Stock is lying with the Clearing Member and the same was given for Margin purpose. Inspecting Official has not considered the same at the time of working
6	INE399L01023	458	558	100	RDC001 *(ILFSNSE FNO)*	
7	INE614G01033	70054	70554	500	M10032 *(ILFSNSE FNO)*	

30-Sep-2018

Sr. No.	**ISIN**	**Qty as per Enhanced Supervision CFS**	**Total DP**	**Diff. in qty**		**Remarks**
1	INE123W01016	49	70	21	M10032 (MARGIN)	This is Back Office error. We have a system to generate files from Back Office, download and upload the same to the Exchange. With respect to the difference in quantity which has come to the notice, we would like to clarify that some of the quantities were not taken into consideration by the back office system. On consulting about the query with the Back Office Vendor, they are of the opinion that it is not possible to check back dated entries
2	INE155A01022	4479	4482	3	PS002 (MARGIN)	
3	INE306L01010	74	474	400	AMA063 (MARGIN)	

57. As mentioned above, with respect to observation of 'Stock Reconciliation' Noticee was facing "Technical Error" in its Back Office Software. On receiving observation from SEBI regarding Stock Reconciliation, Notice analyzed and worked on the same and noticed that data of few Clients were not fetched by the

Back Office Software while generating the report. Because of this "Technical Error" of the Back Office Software, some of the quantities could not be reported to the Exchange.

58. Noticee does stock reconciliation on dally basis. At the time of Demat Holding submission to the Exchange, it generates files from the Back Office Software and upload the same to the Exchange.

59. Noticee did not get support on the "Technical Error” from the Back Office Vendor Tech Excel after not being associated with them from March 2020, when it shifted to Shilpi (its new Back Office Vendor).

60. Noticee requested SEBI to calibrate an authentic list of certified vendors for all the broking firms making it obligatory for all the broking firms to select its Back Office Vendor from the approved list and made submissions to the effect that Back Office Vendors exploit the Brokers by 'Price Differentiation’.

Allegation pertaining to monthly / quarterly settlement of funds and securities:

61. There are 18 cases (as per Annexure 7 of SCN) where settlement was not done and out of these 18 instances, 16 instances were such where credit balance of client was less than Rs.10,000/- and retention upto value of Rs.10,000/- done is in accordance with Exchange Circulars.

62. In case of AHM216, quarterly settlement was done on 17-05-2019; 09-08-2019; 01-11-2019 and 24-01-2020. Retention Statements were attached as Annexure 2.

63. In case of ROS009, quarterly settlement was done on 15-04-2019; 09-07-2019; 03-10-2019 and 26-12-2019. Retention statements were attached as Annexure 2.

64. Retention up to value of Rs.10,000/- done is in accordance with Exchange Circulars. Following data was submitted in this regard:

Quarter Ending	No. of clients	Amount	No. of clients having balance less than Rs.10,000/-	Amount	Balance Clients remains	Amount
Jun-18	292	720,529.14	282	345,790.88	10	374,738.26
Sep-18	396	1,845,012.65	365	476,737.29	31	1,368,275.36
Dec-18	479	4,586,324.96	441	534,568.32	38	4,051,756.64
Mar-19	527	4,497,772.82	490	622,774.03	37	3,874,998.79
Jun-19	408	1,844,753.27	387	462,922.55	21	1,381,830.72
Sep-19	467	1,476,516.63	447	541,919.21	20	934,597.42

65. Quarterly settlement of balance client remains has been done and retention statement was attached herewith as Annexure 3

66. The process of settlement of funds and securities is managed through dedicated module in our back office software. The back office module of the back office system has features like calculating settlement, generating retention reports and statements of funds and securities, emailing reports to clients, marking settlement preference etc.

67. As per the current process of settlement, the Client accounts are settled at any day of the quarter which may not necessarily be the last day of the quarter. Hence, concluding non-settlement on the basis of single day balance is logically incorrect and not in sync with the process of settlement followed.

68. Noticee has average 3000 clients every quarter who are required to be settled. Settling all the clients on a single day considering the resource and other constraints is not possible based on logical and practical grounds. Hence, settlement of clients is done on different days of the quarter.

69. Further, as policy Noticee keeps minimum Rs.1000/- in Client's account in order to collect DP charges, AMC charges, Mobile application charges, etc. and does not give full pay out to the Client to avoid late payment charges to the Client and unnecessary debit in its books.

70. However, as a corrective measure Noticee gave full pay-out to 164 Clients (out of 166 Clients mentioned in Annexure 9 of SCN) amounting to Rs. 1,50,012.76/-. Pay out to the Clients is given via NEFT and DD (in case NEFT has returned). Detailed working of all 164 Clients was attached herewith as Annexure 4. Two Clients (YC001 Y YC002) to whom pay-out was not given have purchased liquid bees amounting to Rs.8001/- and Rs.7001/- respectively in their account and therefore Noticee was not liable to pay anything to them.

71. Copy of Bank statement (i.e. BSE Cash Client Account, BSE FO Client Account, NSE FO Client Account and NSE CD Client Account) and Demand Draft was attached as Annexure 4.

Allegation pertaining to Client Funding:

72. Noticee did not have practice to give funding to the Clients. There are11,662/- active clients as on 30-09-2019 and out of all those active Clients, funding to only two clients were given. In the given two instances, Noticee might have missed the criteria of T+2+5. Therefore, the ratio of client funding is only 0.017% which is very negligible and also the funding amount is not that huge. Further, Noticee assured that such instance will not occur in future and it will be in full compliance with respect to funding criteria.

Allegation pertaining to verification of Email ID & Mobile:

73. No Annexure pertaining to the instances of alleged violations have been received with SCN.

Allegation pertaining to analysis of enhanced supervision data (i.e. Non-designated Client and Settlement Bank Accounts):

74. Noticee has designated all Client and Settlement Bank Accounts as per Enhance Supervision requirement.

75. Opportunity of hearing was provided to the Noticee on July 19, 2022 through videoconferencing. Mr. Malay Bhow, Director of the Noticee appeared for the

hearing as its authorised representative and reiterated the submissions made by the Noticee in its reply.

76. As the inquiry in the matter is complete, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

77. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee has violated the following Act and SEBI Circulars:

a) Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2, 2.5, 2.5.3 and 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016.

b) Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

d) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012.

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

f) Clause 1.2 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA.

And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA?

Issue No. I Whether the Noticee has violated the aforesaid Acts and SEBI Circulars:

(a) Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2, 2.5, 2.5.3 and 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

78. The first allegation against the Noticee relates to misutilisation of client funds as indicated by negative value of G on 41 instances out of 50 sample instances during February 01, 2018 to February 28, 2018. In this regard, Noticee submitted that Creditor balance also includes amount due to Group Company, Associates, Subsidiaries, Directors and their family members etc. Credit balance of such internal creditors cannot be rightly termed as mis-utililsation. In order to arrive at prudent, real, correct and judicious conclusion on misuse of client funds, only external creditor's balances should be considered and compared. After deducting the said balances (i.e., credit balance of internal creditors),the funds available are far in excess of the alleged shortage in case of 16 instances out of the 41 instances.

79. I note from the submissions of the Noticee that credit balances of its related entities, directors and their and family members were not being treated in a segregated manner, resulting in negative G on 41 out of 50 sample dates. After excluding the credit balances of such creditors, admittedly, there were still 16 instances of negative G. I also take note of the Noticee submission that had not executed single proprietary trade during the inspection period. While taking note of the submission that there were no investor complaints of misutilisation of funds, I find that Noticee was not complying with the requirement to keep client funds in a segregated manner and was using funds of credit balance clients to meet obligations of debit balance clients.

80. Hence I find that violation of provisions of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 by the Noticee is established.

81. As per Clause 2.5.3 of the aforementioned circular, *funds raised against such pledged securities shall be credited only to the bank account named as "Name of the Stock Broker -Client Account".* It was observed during inspection that money received from pledging clients' securities are routed through own bank account of the Noticee. Noticee has responded that the said instance has occurred due to unawareness among the staff of the NBFC firm as they have mapped own bank account instead of client bank Account and have disbursed the funds in Own Bank Account. Hence, it is established that the Noticee was in violation of Clause 2.5.3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

82. Noticee was not maintaining daily reconciliation statement clearly indicating the amount of funds transferred between client and own bank account, I take note of the Noticee's submission that Inspecting Official has excluded or not considered the amounts which the Broker has to collect from the Client such as Brokerage, Clearing Charges, GST, ODIN Charges, SEBI Charges, Stamp duty, etc. Hence, I accept the contention of the Noticee that Noticee has

maintained proper daily reconciliation statement clearly indicating the amount of funds transferred between client and own bank account.

83. With regard to allegation of pledging of client securities in excess of client's obligation and pledging securities of clients having credit balance on 2 sample dates, Noticee submitted that this was undertaken for a very short span of time, for selected clients only (i.e. Director's, Director's relative and Clients having Debit since long). Noticee submitted that it pledged securities of only 16 clients out of 11,662 active clients as on 30-09-2019. Out of these 16 clients, 09 client codes belong to Director's and his relatives, four clients had ledger debit, inspite of continuous follow up to settle their account, and three clients were HNI clients and the said pledging was done with the consent of these clients. Noticee also stated that as corrective action, Noticee unpledged clients' securities and by December 19, 2019 securities of all the clients were unpledged. I have taken note of the explanation given by Noticee of the client securities pledged and the fact that pledging of securities is now discontinued. However, considering the fact that Noticee has pledged client securities in excess of client's obligation and has pledged securities of clients having credit balance, I find that violation of provisions of Section 23D of SCRA read with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 is established.

(b) Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

84. It is alleged in the SCN that there is mismatch in ISINs between data provided by the Noticee as per Enhanced supervision for the month of September 2018, March 2019 and September 2019 and as per Depository Participant details. Noticee has denied the allegation and has explained the differences as being due to stock lying with clearing member for margin purpose in 2 instances, and due to back office error in 14 instances. I note that the quantity of difference is small in most instances, ranging from 3 shares to 500 shares amongst the instances where Noticee has referred to software error.

85. Clause 2. 3 of aforesaid circular requires that *The records should be periodically reconciled with the actual collateral deposited with the broker.* I find that the Noticee was complying with this requirement by carrying out daily reconciliation.

(c) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

86. It is alleged in the SCN that Noticee has not settled accounts of 18 inactive clients, balances of clients continued over the quarter end and the Noticee has not done quarterly settlement of funds of the clients and that funds balance of 166 clients were not settled during the entire inspection period since April 2018 to September 2019 amounting to Rs. 1,65,934.12.

87. Noticee has submitted that of these 18 instances, 16 instances were such where credit balance of client was less than Rs.10,000/- and retention upto value of Rs.10,000/- done is in accordance with Exchange Circulars. I note that as per NSE Circular NSE/INSP/24849 dated October 29, 2013, Members may retain an amount of up to Rs 10,000/- (net amount across segment and across stock exchanges) after taking a one-time written consent of the client. For remaining 2 clients, Noticee has provided dates of settlement and retention statements. After considering a threshold of 10,000/- for quarterly settlement, as per reply of Noticee balance amounts were retained in respect of between 10 to 38 clients for the quarters of June 2018 to September 2019 and amounts retained are in the range of Rs.3.74 lakh to Rs.40.51 lakhs. Noticee has submitted that quarterly settlement of these clients has subsequently been done.

88. As admittedly, quarterly settlement was not done in respect of between 10 to 38 clients for the quarters of June 2018 to September 2019 and amounts retained are in the range of Rs.3.74 lakh to Rs.40.51 lakhs, which was done subsequently, it is established that Noticee violated SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of

Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 in respect of these clients.

(d) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012

89. It is alleged in the SCN that in 2 instances of 2 clients, the Noticee has allowed further exposure to debit balance clients beyond T+2+5 days. Aggregate amount of funding was Rs. 25.69 lakhs. Noticee has submitted that it did not have a practice of giving funding to clients. In the given two instances, Noticee might have missed the criteria of T+2+5. Therefore, the ratio of client funding is only 0.017% which is very negligible and also the funding amount is not that huge. I take note of the submissions on there being only 2 instances and the amount of funding being only Rs.25.69 lakhs. In respect of these two instances, the violation of Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012 is established.

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

90. It is alleged in the SCN that Noticee was non-compliant in 3 instances of mapping single email-ID, 7 instances of mapping single mobile number and 23 instances for uploading email-ids. Noticee in its reply has submitted that no Annexure pertaining to the instances of alleged violations was received with SCN. On perusal of material on record, I note that Noticee had given a detailed post-inspection analysis of observations on mail Ids and mobile mismatch between UCC & backoffice made during inspection. While most of the reply by Noticee had been accepted, in the aforesaid 3, 7 and 23 instances, mismatch had been concluded. However, I note that the specific instances of mis-match are not

available on record. Hence, the allegation of violation of clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 is not established.

(f) Clause 1.2 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016

91. It is alleged in the SCN that Noticee has not designated client and settlement bank accounts required as per Enhanced Supervision. Noticee denied the allegation and stated that it has designated all Client and Settlement Bank Accounts as per Enhance Supervision requirement. Noticee has submitted bank account statements in support of their reply wherein the bank accounts are designated as client accounts or exchange dues account in respect of 15 of the 29 accounts mentioned in the SCN. Noticee has also submitted letters showing closure of 14 of the remaining accounts which were not designated. Hence, I accept the contention of the Noticee and find that violation of Clause 1.2 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 is not established.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA.**

And

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA?**

92. It has been established that the Noticee violated following provisions of

a) Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.5, 2.5.3 and 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

b) SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95

c) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and NSE circular NSE/INSP/20638 dated April 26, 2012

93. Hence, the Noticee is liable for penalty under Section 23D of SCRA and Section 15HB of SEBI Act which are reproduced below.

SCRA:

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

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

SEBI Act:

Penalty for contravention where no separate penalty has been provided.

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

94. While determining the quantum of penalty under Section 15HB of SEBI Act and Section 23D of SCRA the following factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA have to be given due regard:

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

Factors to be taken into account by adjudicating officer

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

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

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

(c) the repetitive nature of the default.

95. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by the Noticee. I have taken into consideration the number of instances of violation as well as corrective action taken by the Noticee as submitted in their reply. In view of the same, I find that a penalty of Rs.7 lakhs under Section 23D of SCRA and Rs.3 lakhs under Section 15HB of SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

96. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and Section 23J of SCRA and in exercise of the powers conferred upon me under

Section 15-I of the SEBI Act and Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee viz. Sunflower Broking Private Limited:

S. No.	Penalty Amount	Under the provisions of
1	Rs. 3,00,000/- (Rupees Three Lakhs only)	Section 15HB of SEBI Act
2	Rs. 7,00,000/- (Rupees Seven Lakhs only)	Section 23D of SCRA
Total	**Rs. 10,00,000/- (Rupees Ten Lakhs only)**	

97. 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 favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

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

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

99. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: 28 July 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER