BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2020-21/10940]

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 –

Concept Securities Limited

(SEBI Registration No. INZ000296939)

(Now merged with M/s. R. Wadiwala Securities Private Limited)

(**SEBI Registration No: INZ000187332**)

(PAN: AACCR7642A)

In the matter of Concept Securities Limited (now merged with R. Wadiwala Securities Private Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), the National Stock Exchange (hereinafter referred to as "**NSE**") and the Bombay Stock Exchange (hereinafter referred to as "**BSE**") conducted a comprehensive joint inspection of the broking and depository operations of the erstwhile SEBI registered broker, Concept Securities Pvt. Ltd. (hereinafter referred to as '**Concept**') to examine its compliance with various regulatory norms prescribed by SEBI. The inspection covered the period from April 2017 to September 2018 (hereinafter referred to as "**IP**").

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

i. Section 23D of SCRA read with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3.3.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016,

ii. Clause 12 of SEBI circular no. SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 and clause 8.1.1 of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016,

iii. Clause 2.6 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017,

iv. Clause 2 (B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011 and

v. Clause 6.1.1(e) of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange Notice Nos. 20160927-41, dated September 27, 2016.

3. During the course of current proceedings, a letter dated December 31, 2020 was received from R. Wadiwala Securities Pvt. Ltd. stating that Concept has been merged with R. Wadiwala Securities Pvt. Ltd., as per the order dated November 10, 2020 of the Regional Director, Ministry of Corporate Affairs, with respect to the scheme of amalgamation filed with them. As per the scheme of amalgamation, approved by the Ministry of Corporate Affairs vide the aforesaid order, all legal proceedings may be continued against R. Wadiwala Securities Pvt. Ltd. and on the scheme becoming effective, Concept has been dissolved. Therefore, for the purpose of these proceedings, R. Wadiwala Securities Pvt. Ltd. is being referred to as **Noticee** (hereinafter also called '**Transferee Company'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Sangeeta Rathod was appointed as Adjudicating Officer (hereinafter referred to as **'AO'**) vide order dated December 10, 2019 under Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Section 23-I of the SCRA and Rule 3 of Securities Contracts (Regulation)

(Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (both Rules together are hereinafter referred to as **"Adjudication Rules")** to inquire into and adjudge under Section 23D of the SCRA and Section 15HB of the SEBI Act, the alleged violations by Concept. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide Communiqué dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice having reference no. SEBI/HO/EAD/E&AO/SR/AS/OW/11708/1/2020 dated July 14, 2020 (hereinafter referred to as '**SCN**'), was issued to Concept in terms of Adjudication Rules to show cause as to why an inquiry should not be initiated against Concept and why penalty, if any, should not be imposed upon Concept under Section 23D of SCRA and Section 15HB of SEBI Act, for the violations alleged to have been committed by Concept.

6. The allegations that were levelled against Concept in the SCN are as under:

Failure to segregate securities and monies of client(s)

(i.) *During the inspection, a sample comprising of all 19 trading days in the month of February 2018, was selected to detect possible misutilization of clients' funds. At the time of inspection, reconciliation of clients' funds lying with the Noticee with total available funds i.e. cash and cash equivalents with Noticee and with the Clearing Corporation, based on principles and guidelines stipulated in clause 3 of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, was carried out. It was noted that on all sample dates, total fund balance in all client bank accounts and collaterals deposited Noticee with Clearing Corporation/Clearing Member were less than the total credit balance of clients, by an amount ranging from Rs 20.93 lakhs to Rs 4.07 crore.*

(ii.) *Thus, it is alleged that by utilizing funds of clients' having credit balance for settlement obligations of clients' having debit balance, Noticee has violated Section 23D of the SCRA, 1956 read with SEBI circular SMD/SED/CIR/93/23321 dated*

November 18, 1993 and clause 3.3.1 of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Non-settlement of funds and securities of clients

(iii.) During the inspection, it was verified whether the clients' accounts were settled on monthly/quarterly basis as per the preference obtained from the clients, by considering the ledger balances of clients across Exchanges/Segments and collaterals, cash maintained as margin against retention of clients' obligation, cash market turnover and margin requirement. It was noted that for a sample of 10 inactive clients who had not traded but funds/security was available with the Noticee, monthly/quarterly settlement for one client for an amount of Rs 41.74 lakhs had not been done.

(iv.) Thus, it was observed that by not carrying out monthly/quarterly settlement for one client, Noticee has allegedly violated clause 12 of SEBI circular SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 and clause 8.1.1 of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Client Funding

(v.) Client ledgers of 50 clients for the IP, selected based on highest delay payment charges levied on the clients were studied and it was observed that in 2 instances out of 100 instances checked, Noticee provided further exposure to clients after five days i.e. starting with 6th working day from pay-in date of securities, in spite of non-recovery of debit balances (after considering free collaterals).

(vi.) Thus, it was observed that Noticee has allegedly violated 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.

Verification of Email ID and Mobile numbers

*(vii.) Further, a sample comprising of all active clients who had traded in the IP was studied and verified email IDs and mobile numbers uploaded with in Unique Client Code (in short **UCC**) database of BSE with the records available with Noticee's back office were verified. Further, it was also verified whether single email ID and mobile number was mapped to multiple clients and whether email IDs and mobile numbers of all active clients were uploaded to the Exchange. It was noted that mobile numbers of 2330 clients and email IDs of 445 clients were not uploaded in the UCC database and there were instances of multiple IDs being used for 2144 clients and multiple mobile numbers being used for 3680 clients.*

(viii.) Thus, it was observed that Noticee has allegedly violated clause 2(b) of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011.

Enhanced Supervision data

*(ix.) During the course of inspection, Enhanced Supervision Data submitted by Noticee to BSE was studied and verification was carried out with respect to (i) details of bank account and demat accounts submitted to BSE, (ii) number of clients whose ledger balance was required to be reported to BSE for the month of April 2018, (iii) name tagging of demat account and (iv) timely reporting of data done by Noticee. A sample comprising of the number of clients whose balances were required to be reported to BSE for the month of April 2018 and the number of bank accounts and demat accounts to be reported to BSE, was selected and it was observed that in 72 instances for email IDs and in 114 instances for mobile numbers (details enclosed as **Annexure F**), data uploaded in "client fund and securities module" under Enhanced Supervision for December 2018 did not match with UCC database.*

(x.) Thus, it was noted that Noticee has allegedly violated clause 6.1.1(e) SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 to be read with Exchange Notice Nos. 20160927-41, dated September 27, 2016.

7. The SCN issued to Concept was digitally signed and sent through email dated July 15, 2020 and Concept was given fifteen days' time from the date of the receipt of the SCN to file its reply. As no reply to the SCN was received, vide email dated August 11, 2020, Concept was requested to submit the reply to the SCN at the earliest. Later on it was gathered that the SCN, issued to Concept vide email dated July 15, 2020, could not be delivered to due to some technical issue. Subsequently, the aforesaid SCN was sent through Speed Post AD at the last known address of Concept on August 28, 2020. From the material available on record, I note that SCN was duly delivered to Concept on August 31, 2020. Vide its letter as well as email dated September 11, 2020, Concept submitted its reply to the SCN.

8. An opportunity of personal hearing on January 28, 2021 was granted to Concept vide hearing notice EAD-10/SM/22792/1/2020 dated December 24, 2020, which was duly served upon Concept. Vide email dated December 31, 2020, the Noticee i.e. R. Wadiwala Securities Pvt. Ltd., submitted that they had entered into an agreement with the shareholders of Concept in March 2019 for acquisition of 100% of its shares followed by merger. Subsequent to receipt of prior approval of SEBI, they acquired all the shares in November 2019 and filed Scheme of Amalgamation with the Regional Director, Ministry of Corporate Affairs, Ahmedabad. The Regional Director, Ministry of Corporate Affairs, approved the Scheme of Amalgamation by its order dated November 10, 2020. Thereafter, the Noticee completed the process of transition on December 25, 2020. Vide the aforesaid email, the Noticee submitted that they were replying to the SCN since they had acquired the company to whom the SCN was issued. Vide letter dated January 12, 2021, the Noticee submitted certain clarification to the earlier reply dated September 11, 2020 submitted by Concept in the matter.

9. The personal hearing was availed by the Noticee on January 28, 2021, through its Authorized Representative (hereinafter referred to as '**AR**'). During the hearing, the AR reiterated the contents of the earlier replies submitted in the matter. The Noticee also sought one week's time to file additional reply. Thereafter, the Noticee filed its reply vide email dated February 11, 2021, wherein it provided additional details and also requested that the order be *qua* Concept (and not Noticee) since at the time of inspection and during the period of inspection, Concept was in full operation and the merger happened post inspection.

10. Concept and the Noticee, vide their letters/emails dated September 11, 2020, January 12, 2021 and February 11, 2021, *inter-alia*, submitted as under:

I. **Letter dated September 11, 2020**

1. Failure to segregate securities and monies of client(s):

a. "We had sufficient fund available to meet with all the obligations to all the clients throughout the month. On two points, we were slightly non-compliant; one considered fund available in our overdraft account and BMC (Base Minimum Capital) in calculating. This overdraft and BMC part was soon rectified on better understanding norms. During February 2019, we were maintaining required balances on monthly basis and were considering BMC (Base Minimum Capital) as an available fund. We had sufficient balances in our overdraft account to meet the clients' obligation.

b. Basic purpose of this SEBI norm is to ensure that payments to clients are not delayed due to non-availability of fund we had sufficient fund with us to meet with complete obligation at a stretch, with some part in Overdraft limit.

c. We have ensured right fund in our bank accounts thereafter. So this was only for a small period. From 18 March 2019 onwards we are maintaining these balances on daily basis. In the reply to the preliminary observations we had submitted data for April -19. We are submitting data of latest 3 months in Annexure-1. <u>We request your authority to pardon this since this was not deliberate and have been corrected and complied after March 2019 till date."</u>

2. Non-settlement of funds and securities of clients:

a. "Because of some back-office issue, client No. 113017 was not shown in pending retention list during regular process. So we could not settle. We have resolved it and account has been settled.

b. It may be noted that client code 113017 is of our associate company Concept Commodities Private Limited which has been subsequently merged with this company with retrospective effect 1st April 2017. NCLT order No. CP (CAA)49-5/NCLT/AHM/2019 was issued on 4th July 2019. Order was issued in July 2019 *however date of merger is 1st April 2017. So technically, if we can consider this merger with the effective date (01/04/2017), this amount of Rs. 41.74 lakhs not settled is a part of this company as on date. Please given us benefit of this merger and consider this as compliant."*

3. ***Client Funding***

   "It was operational error. We have made necessary changes in our system, so that such error does not occur in future".

4. ***Verification of email id and mobile number***

   a. *"Our first comment is that figures look high because of data of inactive clients also considered in the observations made.*

   b. *It seems that BSE UCC was verified with Enhanced Supervision Data (ESD). At that time, we were required to report only active clients in Enhanced Supervision Data. However, we were reporting both active and inactive clients in ESD. According to our internal policy,* we *collect latest data at the time of reactivation. So obviously data of inactive clients were not updated. If we consider only the data of active clients that we should have reported in ESD, analysis of actual data is given here below:*

b. *Analysis of actual data is as per below:*

   a. *Without mobile numbers: Out of 2330 (without mobile numbers) clients referred in your letter, only 11 clients had traded during the inspection period. Out of 11, one client had given declaration for not having mobile number.*

   b. *Without Email Id: These 445 (Without email IDs) clients have not traded during the inspection period. So there is no violation.*

   c. *(Multiple Email Ids) Out of 2144 clients, only 1220 clients had traded during the inspection period. 608 email ids are used against these clients. We have taken* *family declaration of 346 email ids. If we remove inactive clients, numbers of instances of multiple email ids would go down.*

d. *(Multiple Mobile Numbers) Out of 3680 clients, only 1560 clients had traded during the inspection period. 829 mobile numbers are used against these clients. We have taken family declaration of 390 clients. If we remove inactive clients, numbers of instances of multiple mobile numbers would go down.*

e. *We have tabulated details of c) and d) here above in a table for better/clear idea. This table is given here below:*

Narration	*Multiple Mobile Numbers*	*Multiple Email IDs*
No. Of Clients	*3680*	*2141*
Active Clients (Turnover during IP)	*1560*	*1220*
Unique Mobile Numbers/Email IDs	*829*	*608*
Family Declaration Received	*391*	*346*
No. of Active Clients with Single Mobile Number/Email ID Corresponding Mobile Number/Email ID belongs to inactive clients	*267*	*144*
HUF Clients	*35*	*26*
PMS Category Clients	*11*	*9*
Pending	*125*	*83*

5. *Enhanced Supervision data*

a. *"Enhanced Supervision Data for the month of December 2018 was compared with latest BSE UCC (February 2019). Some mismatch is on account of comparing data of different point of time. Ideally, team should have compared the date of the same date both stock exchange and UCC. Out of 72 instances for email IDs, 14 clients had not traded during the inspection period. Out of remaining 58 clients, 4 clients are not registered in BSE (Registered only in NSE or MCX). Out of remaining 54 clients, 39 had applied for modification between December 2018 - February 2019. So numbers are much less for these observations.*

b. *Out of 114 instances for mobile numbers, 88 clients had not traded during the inspection period. Out of remaining 26 clients, 04 clients are not registered in BSE (Registered only in NSE or MCX). 05 clients are NRI and their mobile* *numbers are not in standard format of 10 digits. Exchanges doesn't allow less than or greater than 10 digits mobile numbers. Out of 17 clients, 10 clients had applied for modification between December 2018 - February 2019.*

Narration	***Multiple Mobile Numbers***	***Multiple Email IDs***
Instances Observed by OD	*114*	*72*
Active Clients (Turnover during IP)	*26*	*58*
No. of Clients not Registered in BSE	*4*	*4*
Applied for Modification between Dec-18 to Feb-19	*10*	*39*
NRI Clients	*5*	*0*

c. *Further we would like to make a point that all above observations are operational errors and not intentional wrongdoing."*

II. **Reply dated January 12, 2021**

1. ***Non-settlement* of funds and securities of client**

"*we have cited back-office issue in client code 113017 Concept Commodities Private Limited for not settling account. We had done email communication with the back-office vendor Tech-Excel citing this problem. We are attaching copy of this communication to substantiate. Incidentally, this client code is of the associate company which was merged with this company with retrospective effect."*

III. Reply dated February 11,2021

1. ***Non-settlement* of funds and securities of client**

"The client wise steps had been taken by us for settlement of inactive clients. We have *described* the efforts taken and also placed evidence of efforts made to connect with inactive clients. Numbers of clients were pretty old and untraceable. But we did not appropriate their credit amount or adjust stock in any other way. So, we have maintained our ethics in this.

As regards *to the amount of Fixed Deposit, it is more than the obligations. We would like to make a point that in case of quarterly settlements of funds/securities, we have been carrying forward obligations of clients as it was. Some of the clients are pretty old, older than our membership. We have been honest with our clients*."

2. Verification of email id and mobile number

"As per the *exchange circular number NSE/INSP/27368 and BSE notice number 2014081917 guidelines for inactive clients, we have uploaded common mobile number as well as common email ids as per the circulars of respective exchanges. Simultaneously, all the accounts had been marked inactive means no further trade allowed. At the time of reactivation, after completion of KYC requirements only, client would allowed for further trading"*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled replies filed in the matter and other documents/ material available on record. I note from the email dated December 31, 2020 filed by the Noticee that Concept, whose inspection was carried out and against whom charges were levelled in the SCN, merged with the Noticee as per the order of Regional Director of Ministry of Corporate Affairs dated November 10, 2020. The scheduled hearing in the matter was also attended by the Noticee through its AR.

12. The Noticee, vide its email dated February 12,2020, submitted a copy of the scheme of arrangement (hereinafter referred to as '**Scheme**') in the nature of amalgamation between *"R. WADIWALA SECURITIES PRIVATE LIMITED AND CONCEPT SECURIITES PRIVATE LIMITED AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS UNDER SECTION 233 OF THE COMPANIES ACT,2013."* On perusal of the scheme, I note that the Noticee was a holding company of the erstwhile Concept. As specified in para 10.1 of the Scheme, all the legal proceedings may be continued against the Transferee Company. The said para is reproduced below:-

10.1 Legal Proceedings*:*

"*All suits, actions, and other proceedings including legal and taxation proceedings (including before any statutory or quasi-judicial authority or tribunal) of whatsoever nature by or against the Transferor Company is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against Transferor Company, as if this Scheme had not been made*."

13. Further, I note from para 17 of the scheme that "*on the scheme becoming effective, the transferor company has been dissolved without following the process of winding up as per provision of section 233(8) of Companies Act, 2013, and the name of the transferor company shall be struck off from the records of Registrar of Companies, Gujarat".* I note from records that scheme came into effect from April 1, 2019.

14. In this regard, I observe that Sections 233(9) (a) to (d) of Companies Act, 2013 list out the provisions in respect of transfer of property/liabilities of Transferor Company to Transferee Company, in the event of such scheme getting registered. In these provisions, it is held that the liabilities, charges on the property, legal proceedings etc. in respect of/against transferor company shall continue in respect of/against the transferee company. The provisions of Section 233(9)(a) to (d) of Companies Act, 2013 are reproduced as under:-

Section 233(9): The registration of the scheme shall have the following effects, namely:

(a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;

(b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

15. In view of the above, since as on date Concept is dissolved, the present Adjudication proceedings will continue against the Noticee i.e. R. Wadiwala Securities Pvt. Ltd. (Transferee Company) instead of Concept. Thus, hereinafter the matter would be dealt with in respect of the Noticee.

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

Issue No. I: Whether the Noticee has violated the following provisions of SCRA/ Regulations/ Circulars:

(i) Section 23D of SCRA read with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3.3.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

(ii) Clause 12 of SEBI circular no. SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 and clause 8.1.1 of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

(iii) Clause 2.6 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

(iv) Clause 2 (B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011

(v) Clause 6.1.1(e) of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange Notice Nos. 20160927-41, dated September 27, 2016

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

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 23J of the SCRA and Section 15J of the SEBI Act?

17. The text of the aforesaid provisions of Circulars /SCRA is reproduced hereunder:

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.*

Annexure to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993

REGULATION OF TRANSACTIONS BETWEEN CLIENTS AND BROKERS

1. *It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.*

   A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member –

   i.. Moneys received from or on account of each of his clients and, *ii. the moneys received and the moneys paid on Member's own account*

B] Obligation to pay money into "clients' accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than –

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below; iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". 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.

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

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. Such accounts for client's securities shall, inter-alia provide for the following:-*

   a. *Securities received for sale or kept pending delivery in the market;*
   b. *Securities fully paid for, pending delivery to clients;*
   c. *Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);*
   d. *Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;*
   e. *Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;*
   f. *Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same.*

3. *Member Brokers shall make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise. Stock Exchange shall issue a Press Release immediately after the pay-out.*

4. *Member Brokers shall buy securities on behalf of client only on receipt of margin of minimum 20 percent on the price of the securities proposed to be purchased, unless the client already has an equivalent credit with the broker. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.*

5. *Member brokers shall sell securities on behalf of client only on receipt of a minimum margin of 20 percent on the price of securities proposed to be sold, unless the member has received the securities to be sold with valid transfer documents to his satisfaction prior to such sale. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.*

6. *Member brokers shall issue the contract note for purchase/sale of securities to a client within 24 hours of the execution of the contract.*

7. *In case of purchases on behalf of clients, Member brokers shall be a liberty to close out the transactions by selling the securities, in case the client fails to make the full payment to the Member Broker for the execution of the contract within two days of contract note having been delivered for cash shares and seven days for specified shares or before pay-in day (as fixed by Stock Exchange for the concerned settlement period), whichever is earlier; unless the client already has an equivalent credit with the Member. The loss incurred in this regard, if any, will be met from the margin money of that client.*

8. *In case of sales on behalf of clients, Member broker shall be at liberty to close out the contract by effecting purchases if the client fails to deliver the securities sold with valid transfer documents within 48 hours of the contract note having been delivered or before delivery day (as fixed by Stock Exchange authorities for the concerned settlement period), whichever is earlier. Loss on the transaction, if any, will be deductible from the margin money of that client.*

SEBI Circular no. MIRSD/ SE/Cir-19/2009 dated December 03, 2009

Annexure A: Requirements relating to dealings between a Client and Stock Broker

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 no. CIR/MIRSD/15/2011 dated August 02, 2011**

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

1. Applicability

These guidelines are applicable to equity - cash and derivative - segments of the stock exchanges

2. ***Uploading of mobile number and E-mail address by stock brokers****:-*

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

Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

Clause 2.6

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.

Clause 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 below.

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

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

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

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

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

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

P- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

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

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

Principle:

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

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

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

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

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

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

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

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

3.3.2. Funds of clients used for Margin obligation of proprietary trading: Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

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

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

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

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

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.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

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

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

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

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

3.4. ……….

3.5…….

3.6…..

***Clause* 6. Standard Operating Procedures for Stock Brokers/Depository Participants -Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies**

*6.1 As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias aregiven below***:**

6.1.1 ***Monitoring criteria for Stock Brokers***

a. *Failure to furnish Networth certificate to Stock Exchange within 60 days for half year ending September 30thand half year ending March 31st.*

b. *…..*

c. *….*

d. *….*

e. Failure to submit data for the half yearly Risk Based Supervision within the time specified by Stock Exchange

Clause 8. Running Account Settlement

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

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

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.6.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

Clause 2(d) of SEBI circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

SEBI has received further representations from the market participants regarding certain provisionsoftheaforesaidcircular.Basedonthediscussionswithdifferentstakeholders, following clarifications are made:

a. *Clause1.2.2 and1.2.4 stands deleted; accordingly naming proprietary bank/demat accountsofthestockbrokeras'StockBroker-ProprietaryAccount'isvoluntary. It is however clarified that bank/demat account which do not fall under the Clauses 1.2.1,1.2.3, 1.2.5 , 1.2.6 and 1.2.7 would be deemed to be proprietary*

b. *After Clause2.1, Clause2.1.1is inserted as, "Stock Broker which is also Bank, may be required to report to the Stock Exchanges only those bank accounts that are used for their stock broking activities".*

c. *Clause2.5 stand modified as follows: "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. 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:"*

d. *Clause2.6standsmodifiedas,"Stockbrokersshallnotgrantfurtherexposuretothe 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.*

Exchange Notice Nos. 20160927-41, dated September 27, 2016

SEBI has issued circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 including the guidelines covering the following board areas:-

1. *Uniform nomenclature to be followed by stock brokers for Naming/Tagging of Bank and Demat Accounts and the reporting of such accounts to the Stock Exchanges/Depositories.*

2. *Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges, through a sophisticated alerting and reconciliation mechanism, to detect any misutilisation of client's fund.*

3. *Changes in the existing system of internal audit for stock brokers/depository participant's viz. appointment, rotation of Internal Auditors, formulation of objective sample criteria, monitoring of quality of Internal Audit Reports, timeline for submissions of Internal Audit Reports, etc.*

4. *Monitoring of Financial Strength of Stock Brokers by Stock Exchanges so as to detect any signs of deteriorating financial health of stock brokers and serve as an early warning system to take preemptive and remedial measures.*

5. *Imposition of uniform penal action on stock brokers/depository participants by the Stock Exchanges/Depositories in the event of non-compliance with specified requirements.*

6. *Other Requirements:*

    a. *Uploading client's funds and securities balances by Stock Brokers to Stock Exchange System and onwards transmission of the same to the clients for better transparency.*

    b. *Clarification on Running Account Settlement*

c. *Providing PAN details of Directors, Key Management Personnel and Dealers, to Stock Exchanges and any change thereof*.

18. Now, I deal with each of the issues in the matter on merit:

Issue No. I: Whether the Noticee has violated the following provisions of SCRA/ Regulations/ Circulars:

i. Section 23D of SCRA read with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3.3.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

ii. Clause 12 of SEBI circular no. SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 and clause 8.1.1 of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

iii. Clause 2.6 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

iv. Clause 2 (B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011

v. Clause 6.1.1(e) of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange Notice Nos. 20160927-41, dated September 27, 2016

19. It is alleged in the SCN that the Noticee had misused credit client's funds to meet the obligations of debit balance clients and/or for its own purposes in 19 sample instances and the amount of misutilisation ranged from Rs 20.93 lakhs to Rs 4.07 crore.

20. The Noticee replied that they had sufficient balances in their overdraft account to meet the clients' obligations but admitted that they were non-compliant since they were considering Base Minimum Capital and fund available in their overdraft accounts as an available fund, I note from their submissions that the Noticee has not refuted the specific instances pointed

out in the SCN nor have they supported their contention with specific documentary evidences. W.r.t. the Noticee's contention regarding funds as Base Minimum Capital, I am of the view that BMC should come from broker's own funds and not from clients' funds. Therefore, this contention of the Noticee cannot be accepted.

21. In this regard, I note that the provisions of Clause 1 of Annexure to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 as well as Clause 3.3.1 of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 lay down comprehensive guidelines w.r.t. client's funds lying with stock brokers. I note that the Noticee has admitted that the aforesaid default was not deliberate and has been corrected after March 2019. The Noticee has further submitted that from March 18, 2019 onwards, they were maintaining these balances in their bank accounts on daily basis.

22. In view of the same, I find the allegation against the Noticee that it has violated Section 23D of SCRA read with Clause 1 of Annexure to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3.3.1 of Annexure to SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016 stands established.

23. It is alleged in the SCN that the Noticee had not made quarterly settlements in respect of one client having the code 113017 and the amount of non-settlement was Rs. 41.74 lakhs. The Noticee submitted that the client code 113017 pertains to its associate company namely, Concept Commodities Private Limited, which later merged with Concept Securities Ltd with retrospective effect from April1, 2017, as per the order dated July 04, 2019 No. CP (CAA) 49-5-/NCLT/AHM/2019, issued by NCLT. Further, the Noticee submitted that they had taken up the back office problem with its software development and the error was now rectified. The Noticee also mentioned the steps taken by it w.r.t. settlement of inactive clients.

24. I note that although their client, Concept Commodities Private Limited, was merged with Concept, Concept Commodities Private Limited was a separate client of the Noticee during the IP and in terms of the aforesaid SEBI circular, the Noticee was required to settle the accounts of all the clients. I further note that in its submissions, the Noticee has accepted the above fact.

25. Thus, I find the allegation that the Noticee has violated the provisions of Clause 12 of Annexure to SEBI circular no. SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 read with Clause 8.1.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stands established.

26. It is alleged in the SCN that on two instances, the Noticee had provided further exposure to its clients after five days i.e. starting with 6th working day from pay-in date of securities, in spite of non-recovery of debit balances (after considering free collaterals). The Noticee, while accepting the lapse, stated that it was operational error and necessary changes were carried out in their system, for preventing such types of errors in future. Since the Noticee has admitted to the default on its part, I conclude that the Noticee has violated Clause 2.6 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

27. It is alleged in the SCN that mobile numbers of 2330 clients and email IDs of 445 clients were not uploaded in UCC database and there were instances of multiple email IDs being used for 2144 clients and multiple mobile numbers being used for 3680 clients. The Noticee in its reply submitted that out of 2330 clients without mobile number, only eleven clients had traded during the IP and one client had given declaration for not having mobile number. The Noticee further adds that all the 445 clients, whose email IDs were not uploaded, had not traded during the inspection period and so there is no violation.

28. As per clause 2(B)(iv) SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011, a stock broker has to ensure that separate mobile number/ email address is uploaded for each client. Although the said circular specifies certain exceptional circumstances under which the stock broker may, at the written request of a client, upload the same mobile number/ email- address for more than one client provided such clients belong to one family, the said circular does not differentiate between inactive or active clients.

29. I have also gone through BSE Notice no. 20140819-17 dated August 14, 2014 and NSE Notice no NSE/INSP/27368 dated August 18, 2014. On perusal of the same, I note that the said notices emphasize on efforts to be taken by Members for obtaining email id and mobile number of all other existing clients, who have not traded during the current financial year

and for any clients who would be newly registered and uploading the same in UCC database, before executing any transactions for such clients.

30. From the reply of the Noticee, I note that it has accepted that they had not uploaded the mobile numbers of active as well as inactive clients and email IDs of inactive clients in the UCC database. Thus, I note that the Noticee has accepted that out of eleven active clients, it has not uploaded the mobile number of ten active clients.

31. W.r.t. non-updation of email IDs of 445 clients, the Noticee has submitted that they were inactive clients, and had not traded during the IP. In its submissions, the Noticee has detailed out the steps taken by it for obtaining the details of the inactive clients. However, since these clients had not traded, I am inclined to take a lenient view of the charge levelled against the Noticee in respect of 445 inactive clients whose email IDs were not uploaded, on account of the aforementioned notices of BSE and NSE.

32. In addition to above, it is alleged in the SCN that multiple email IDs were being used for 2144 clients and multiple mobile numbers were being used for 3680 clients. The Noticee, in its reply, submitted that out of 2144 clients, only 1220 clients had traded during the inspection period and 608 email IDs are used against these clients and family declaration had been obtained in respect of 346 email IDs. Similarly w.r.t. multiple mobile number, the Noticee has submitted that only 1560 clients had traded during the inspection period and 829 mobile numbers were taken against these clients and they had obtained family declaration for 390 clients. The Noticee further added that if the inactive clients were removed, the number of instances of multiple email IDs and mobile numbers would go down.

33. From the aforesaid submissions, I note that even after considering the breakup provided by the Noticee as mentioned at pre-page 9, it has still uploaded multiple email IDs of 83 clients and multiple mobile number of 125 clients. Thus, it is established that Noticee was still mapping single email IDs/ mobile nos. to multiple clients in respect of many of its clients, which has also been accepted by the Noticee.

34. In view of the foregoing, I am of the view that the allegation that the Noticee is in violation of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011 stands established.

35. It is alleged in the SCN that in 72 instances for email IDs and in 114 instances for mobile numbers, data uploaded in “client fund and securities module” (hereinafter referred to as ‘**CFS**’) for December, 2018, as required under SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, did not match with UCC database for December, 2018. The Noticee in its reply submitted that, during inspection, the Enhanced Supervision data was compared with latest BSE UCC i.e. February 2019, due to which there was mismatch in figure.

36. The Noticee, in its reply, has contended that SEBI has verified the Enhanced Supervision data for the month of February 2019. However from the material available on record, I observe that SEBI has verified the Enhanced Supervision data for the month of December 2018 only. Thus, the contention of the Noticee that SEBI has verified the data during December 2018 to February 2019 is not justifiable.

37. The Noticee has further submitted that out of 72 instances of email IDs, 14 clients had not traded during the inspection period and 4 clients were not registered with BSE. Also, there were 39 clients who had applied for modification during December 2018- February 2019. From the records, I note that out of these 39 clients, 27 clients had applied for modifications during the months of January and February 2019, i.e., after the IP. I find that the Noticee has not provided valid reasons for instances of data mismatch in email IDs, in respect of 41 clients. Therefore, justification provided by the Noticee does not have merit.

38. Similarly, the Noticee submitted that out of 114 instances of mobile numbers, 88 clients had not traded during the inspection period and 4 clients were not registered with BSE. There were 5 clients who were NRI and their mobile numbers are not in standard format of 10 digits. 10 clients had applied for modification during December 2018 to February 2019. From the records, I note that out of 10 clients, 5 clients had applied for modification during the month of January 2019 and 2 clients had applied for modification way before December 2018. Therefore, I find that the Noticee has not provided valid reasons for instances of data mismatch in mobile numbers as alleged in the SCN in respect of 93 clients.

39. Further, from the submissions of the Noticee, I note that it has accepted that these defaults were operational errors and not intentional.

40. In view of the foregoing, the allegation that the Noticee has violated Clause 6.1.1(e) of Circular no SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange Notice Nos. 20160927-41, dated September 27, 2016 stands established.

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

41. It has been established in the foregoing paragraphs that the Noticee has violated the provisions of Section 23D of SCRA read with Clause 1 of Annexure to SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3.3.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 12 of Annexure to SEBI circular no. SEBI/MIRSD/Cir-19/2009 dated December 03, 2009 read with clause 8.1.1 of Annexure to SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 2.6 of Annexure to SEBI circular no. 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; Clause 2 (B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011 and Clause 6.1.1(e) of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Exchange Notice Nos. 20160927-41, dated September 27, 2016.

42. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

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

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 may extend to one crore rupees._

<u>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 23J of the SCRA and Section 15J of the SEBI Act</u>?

44. While determining the quantum of penalty, the factors stipulated in section 23J of SCRA and section 15J of the SEBI Act, as reproduced hereunder, have to be given due regard:

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 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 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.

45. 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 is not possible to ascertain the exact monetary loss to the investors /clients on account of default by the Noticee. As regards the repetitive nature of the default, I do not find the inspection having brought on record any regulatory action taken by SEBI in the past against the Noticee for same violations as observed in the instant inspection. I observe that there are no investor complaints on record arising out of failure on the part of the Noticee. However, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the extant provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder, which it failed to do during the inspection period.

ORDER

46. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act, I, in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act r/w Rule 5 of the Adjudication Rules, hereby impose the following penalty on the Noticee viz M/s. R. Wadiwala Securities Private Limited:-

Sr. No.	**Penalty**	**Under the provisions of**
1	Rs. 2,50,000(Rupees Two Lakh Fifty Thousand Only)	Section 23D of SCRA
2	Rs. 1,50,000(Rupees One Lakh Fifty Thousand Only)	Section 15HB of SEBI Act
Total	**Rs. 4,00,000(Rupees Four Lakh only)**	

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

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

48. 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:

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

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

50. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to the Noticee viz. M/s. R. Wadiwala Securities Private Limited and also to SEBI.

Date: March 18, 2021
Place: Mumbai

SOMA MAJUMDER
Adjudicating Officer