BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/AN/RG/2024-25/30857

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

In respect of:

Choice Equity Broking Private Limited

PAN: AADCC8390B

In the matter of Choice Equity Broking Private Limited

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as '**SEBI**') conducted thematic inspection of books of accounts of Choice Equity Broking Private Limited (hereinafter also referred to as 'Noticee/ Entity/ Choice/ Stock Broker/ SB/ Broker/ Member/ TM'), along with Stock Exchanges (NSE and MCX), with respect to control over Authorized Persons (APs) on September 26, October 12-13, 2023, inter alia for the period of April 01, 2022 to May 31, 2023.

2. Pursuant to the inspection, the findings were communicated to the Noticee by SEBI vide its letter dated December 21, 2023. The entity submitted its reply to the observations vide its letter dated January 05, 2024. With respect to the reply of the entity, SEBI sought further clarification and the final submissions were received vide email dated February 26, 2024 from the entity. Thereafter, post inspection analysis was carried out by SEBI.

3. Based on the findings arising out of its inspection, analysis of replies received and examination in the matter by SEBI, briefly stated, it was inter alia observed by SEBI that Noticee had allegedly violated various provisions of Securities and

Exchange Board of India (Stock Brokers) Regulations, 1992 ("SEBI Stock Broker Regulations" / "SEBI Stock Broker Regulations, 1992") viz.,

3.1. Regulation 26(xix) and Clause A(1) & A(2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

3.2. Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/48536 dated June 09, 2021; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

3.3. Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with Clause 16 and 19 of Annexure A to NSE circular NSE/INSP/42448 dated October 18, 2019; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

3.4. Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/49509 dated September 03, 2021; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of SEBI Act, 1992 read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as 'SEBI Rules'), the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") vide order dated April 04, 2024 to inquire into and adjudicate under Section 15HB of the SEBI Act, 1992, for the

aforesaid alleged violations of the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated April 05, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice no. SEBI/EAD-5/AN/RG/16010/1/2024 dated May 06, 2024 ("SCN"), was served upon the Noticee under Rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of the SEBI Act, 1992, for the violations alleged to have been committed by the Noticee.

6. The following was inter alia observed and alleged in respect of the Noticee:

"…

4.1. Trading terminals verification:

A) Stockology Securities Private Limited: 1 trading terminal (2 segments) allocated to the AP was operated by other than approved user/person (Annexure A).

In this regard, SB has submitted that the dealer was busy handling certain operational queries with the clients and requested Mr. Vikas Bundela only to check the tracking of the scrips and there was no trade executed by Vikas Bundela from the said terminal.

However, it was observed that one trading terminal (2 segments) was operated by Vikas Bundela and the same has been accepted by SB as above. It is flawed argument that Mr. Vikas was on the terminal to track the market. Since Mr. Vikas was present on the terminal on the day of inspection, it is concluded that Mr. Vikas had operated the terminals on the day of inspection. Hence, reply of the SB was not accepted.

B) Maloo Commodities and Stock Trading Private Ltd: 2 trading terminals situated at the place of inspection has been operated by other than approved users/persons (Annexure A).

SB has submitted that one dealer was not present due to medical reasons and other one (who is the owner of franchisee) was on religious tour. On instruction of AP, the terminal was operated by his staff and other dealer who is also NISM certified. However, the reply of the SB cannot be accepted as the terminals were operated by other than approved users/persons.

Further, the broker's submission that broker terminals at AP were operated by unapproved users in order to provide trading access to clients is not acceptable as clients always have the option to place their orders directly with the stockbroker by calling the stockbroker directly.

In view thereof, the Noticee is alleged to have violated Regulation 26(xix) and Clause A(1) & A(2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

4.2. Verification of bank statement:

A) The Grow Capital Finance Services (Proprietor -Reena Pathak): In 03 instances, movement of funds between client & AP was observed (Annexure B).

• For 03 instances, SB has submitted that excess brokerage was refunded to the client by AP and it was part of commercial negotiation with the client by AP. Further, there is no movement of funds and securities between the client and AP's for settlement of trades as prescribed under the regulations. Further we have reprimanded the AP to avoid such transfer of funds directly to the client in future. The reply of the broker was not accepted as APs are not allowed to collect or receive any funds from the clients and earlier SB had forwarded comments of AP wherein it was stated that the said transfer was made for refund of excess brokerage.

B) Maloo Commodities and Stock Trading Private Ltd: In 10 instances, movement of funds between client & AP was observed (Annexure B).

On verification of Bank statement of Ravindra Maloo HUF (Bank account no. 50100116922888), it is seen that payment to parties with similar names as that of client: 17 instances, 07 clients (transactions aggregating to Rs. 62.36 Lakhs).

In response to the observation wrt movement of funds between AP & clients, the following are observed:

• For 07 instances, it is observed that the transfer was made on the account of fees to CA. Hence, the reply of the SB was accepted.

• Further, for 10 instances amounting to Rs. 60,96,025, SB has submitted that payment was made to the clients on account of refund of loan amount/interest on loan and has provided the copy of ledger. However, the reply of the broker was not accepted as APs are not allowed to collect or receive any funds from the clients.

Hence, the Stock Broker was found to be non-compliant during the inspection period and alleged to have violated:

• Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/48536 dated June 09, 2021

• Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992

4.3. Office Management of AP:

A) Teena Bansiya: Upon visit, it was observed that the AP-Ms. Teena Bansiya is not working from the address provided to the Exchange.

Upon visit, it was observed that the AP-Ms. Teena Bansiya was not available at the said location and interior work was going on. So, the NSE inspection team called the AP on the contact number updated with Exchange-7987919797. The call was attended by the brother of AP-Mr. Shubham Jain who informed that they are not in business due to health condition of his sister-Teena Bansiya (AP). Further, it was observed from the bank statement that the AP has made a payment of Rs.4.78 Lakhs to workie i.e. co-working space, from which it can be construed that the AP is not working from the address provided to the Exchange.

In response to observation with respect to non-availability of AP at registered location, SB has submitted that there is no terminal allotted to AP and all clients are doing online trading. Therefore, there are no walk in clients. Further, AP was suffering from health issues and was handling the clients through phone and some interior changes was being done in AP's office.

It may be noted that no supporting documents was provided by SB in respect of its submissions. Further, during the inspection, it was observed that the AP-Ms. Teena Bansiya was not available at the said location and upon contacting, it was informed that AP is not in business due to health condition. However, it was observed from the bank statement that the AP has made a payment of Rs.4.78 Lakhs to workie i.e. co-working space, from which it can be construed that the AP is not working from the address provided to the Exchange. In view of the above, the reply of SB was not accepted.

B) Stockology Securities Private Limited: Complaint register not maintained properly.

In response to non-maintenance of register, SB has submitted that the register has been maintained by APs and instruction has been provided to APs to follow the suggestive format. However, SB has not provided the copy of communication with APs or any documentary evidence to support its submissions. Further, it may be noted that since the APs are allotted with trading terminals, the AP locations are deemed to be branches of the stock broker and should maintain requisite records viz. visitor register and investor grievance register. Stock broker's explanation that the dedicated email id for grievance have been adequately disseminated to clients does not exempt them from maintaining them physical record of investor grievance.

In view of the above, the reply of SB was not accepted.

C) The Grow Capital Finance Services (Proprietor -Reena Pathak): Complaint register not maintained properly.

In response to non-maintenance of register, SB has submitted that the register has been maintained by APs and instruction has been provided to APs to follow the suggestive format. However, SB has not provided the copy of communication with APs or any documentary evidence to support its submissions. Further, it may be noted that since the APs are allotted with trading terminals, the AP locations are deemed to be branches of the stock broker and should maintain requisite records viz. visitor register and investor grievance register. Stock broker's explanation that the dedicated email id for grievance have been adequately disseminated to clients does not exempt them from maintaining them physical record of investor grievance.

In view of the above, the reply of SB was not accepted.

D) Maloo Commodities and Stock Trading Private Ltd:-Terminal of other trading Member was also there at the AP place and no proper demarcation was maintained with AP of other Member.

Documents were maintained jointly with other AP's documents and documents were not segregated properly (Annexure C).

With respect to observation wherein it was noted that terminals of other SB was also there at location and documents were maintained jointly, SB has submitted that AP has maintained the business separately and has improvised the demarcation. However, the said violation was persisted during the inspection period. In view of the above, the reply of the SB was not accepted.

In view of above, the Stock Broker was found to be non-compliant during the inspection period and alleged to have violated

• Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with Clause 16 and 19 of Annexure A to NSE circulars NSE/INSP/42448 dated October 18, 2019.

• Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

4.4. Non-Reporting of clients mapped to Authorised Persons (AP):

A) Teena Bansiya

As per submission to exchange - 1470 clients
As per data provided by member - 1477 clients
No. of clients not reported to exchange - 7 clients

B) Stockology Securities Private Limited
As per submission to exchange - 8015 clients
As per data provided by member - 8133 clients
No. of clients not reported to exchange - 118 clients

C) The Grow Capital Finance Services (Proprietor -Reena Pathak)
As per submission to exchange - 6741 clients
As per data provided by member - 6967 clients
No. of clients not reported to exchange - 226 clients

With respect to observation of non-reporting of clients to exchanges, SB has submitted that initially the codes which were under regional main office was later shifted under AP and in certain cases, account was opened in the subsequent period. However, it was observed that clients mapped to APs were not reported to the Exchange (as on November 17, 2023). Hence, the reply of the SB was not accepted.

In view of the above, the Stock Broker was found to be non-compliant during the inspection period and violated
• Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/49509 dated September 03, 2021.
• Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

…"

7. Vide letter dated May 18, 2024, the Noticee sought 10 days' time to submit the reply to the SCN from the date of the letter.

8. Having regard to principles of natural justice, an opportunity of hearing was afforded to the Noticee on June 05, 2024, vide Hearing Notice dated May 28, 2024. Subsequently, vide letter dated June 03, 2024, the Noticee sought adjournment of hearing and requested for additional 7 days to submit the reply to the SCN. Having

regard to the request made by the Noticee, the hearing was rescheduled to June 12, 2024.

9. Vide letter dated June 10, 2024, the Noticee submitted its reply to the SCN which is interalia as reproduced below:

"…

6. Pursuant to the joint inspection so conducted by the Inspection Team, detailed observations were shared with the Noticee through an Inspection Report vide letter dated December 21, 2023. In response to the various allegations and observations noted in the said Inspection Report, the Noticee had provided its detailed response to the said allegations and observations along with necessary supporting documents vide its reply dated January 05, 2024. Thereafter SEBI had sought further clarifications which were submitted vide email dated February 26, 2024. However, without appropriately considering the responses as given by the Noticee, the present SCN has been provided by your goodself. The allegations as levied against the Noticee have been dealt in detail in the following paragraphs.

A. Reply to allegation 4.1

7. Vide Point No. 4.1 (A) your goodself has observed that one of the two terminals allocated to Stockology were operated by a person other than the approved user and accordingly, the Noticee has violated the provisions of Regulation 26(xix) of the Stock Brokers Regulations and Clause A (1) & A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations.

8. In this regard the Noticee, submits that the said terminal was designated to one Mr. Aniket Shukla and it is denied that the impugned terminal was used by any person other than the approved user. It is positively affirmed that Mr. Aniket Shukla used to operate from the said terminal at all times to place orders on behalf of the clients and accordingly, the observation made by the Inspection Team is incorrect and accordingly, neither has the Noticee violated the aforementioned provisions nor does it attract any penalty thereon.

9. It is submitted that the observation of the Inspection Team pertains to a specified period during the day on which the physical inspection was conducted by them at the premises of the AP i.e. October 12, 2023 between the period 10:00 AM to 11:00 AM. On the basis of this limited period observation, it cannot be concluded that the said terminal was operated by unauthorized person for the entire duration for the existence of the said terminal especially when such observation is based on a brief period on the day of inspection. It is further submitted that the submissions of the Noticee to the observation raised in the Inspection Report in this regard has not been disputed by SEBI, however, the said submissions have been disregarded while coming at the conclusion of violations against the Noticee without providing any reasons for the same.

10. It is submitted that Mr. Aniket Shukla being the promoter and main point of contact from Stockology was co-ordinating with the Inspection Team for their smooth process of inspection and also handling the client requirements as and when required. Therefore, he was not available at his system when the inspection team made the aforesaid observation. Furthermore, it is put forth to the Noticee by Mr. Aniket that one of his clients had instructed him to track a particular stock and that he would issue necessary instructions upon reaching the limits as instructed. However, since he was not available to track the movement of the stock as requested by the client, he had instructed one of his staff to keep watch on the said stock. Therefore, when the specific observation was made by the Inspection Team, such staff member was sitting on the terminal keeping track of the stock as instructed and this led to the incorrect observation.

11. In this regard it is further submitted that at the time when the staff of the authorized person was sitting at the terminal monitoring the movement of the stock, he did not place any order on behalf the clients therefore it cannot be said that such staff member was operating the terminal. Further, it is humbly submitted that mere stock watching cannot constitute trading and/or operating the said terminal. It is submitted that from the perusal of the trades executed during the period of inspection, only one trade was executed from the said terminal and in this regard, it is confirmed that the order for such trade was placed by Mr. Aniket himself. This fact can be noted from the trade log of the said terminal during the relevant period which is attached herewith and marked as "Annexure A".

12. In this regard, it is further submitted that had the Inspection Team enquired about the unauthorized person sitting at the terminal, the aforesaid explanation would have been provided to them so as to avoid this allegation altogether. Furthermore, it submitted that the person authorized to operate the impugned terminal was present during such period and was assisting the Inspection Team. This fact can be substantiated from the fact that it was Mr. Aniket Shukla who signed the Inspection Visit Report of the Inspection on behalf of Stockology. The copy of the Inspection Visit Report is attached herewith and marked as "Annexure B".

13. Therefore, in light of the aforesaid submission, it can be said that the terminal was in fact operated by the approved user and no trades on behalf of any clients were executed by any unauthorised user and therefore the violation of Regulation 26(xix) cannot be alleged against the Noticee.

14. Vide Point No. 4.1 (B), your goodself has made similar observation of using two of its terminals by unauthorized user for Maloo Commodities for whom the inspection was carried out on September 26, 2023. It is submitted that operation of the terminal by the person not being the approved user is not a regular course of action for Maloo Commodities. It is affirmed that in ordinary course only the approved user operates the terminals designated to him. However, it is submitted that, September 26, 2023 was an exceptional day when suddenly two of the three approved users were not available in office to execute trades on behalf of the clients and therefore, it created undue pressure on the one approved user who was available in the office. Further this pressure was augmented by the joint inspection being carried out and this resulted in some lapses by the staff of Maloo Commodities in their efforts to ensure that no loss is caused to their clients when met with the aforementioned unprecedented circumstances.

15. In this regard the Noticee submits that Mr. Ravindra Ramesh Maloo is the owner of Maloo Commodities and also approved user for one of the impugned terminals. It is further submitted that on the day of the inspection being, September 26, 2023he was on a short religious trip with his family which could not be avoided and accordingly he was not available to operate the terminal allocated to him. Similarly, the second approved user Mr. Bhushan G. Kottipalliwar was suddenly on leave due to health reasons.

16. As regards the trades executed from the terminal of Mr. Ravindra Maloo on September 26, 2023, it can be noted that only three trades on behalf of one client has been executed from the said terminal. Upon perusal of details of the client, it can be noted that the client was the wife of Mr. Ravindra. Upon enquiry, it has been submitted to us that while Mr. Ravindra and his family were on the religious trip, Mrs. Maloo was keeping track of the securities to invest and hence, decided to invest in the options of Gold Mini on MCX having expiry of October 25, 2023 with the strike price of Rs. 58000 considering the movement. However, since, Mr. Ravindra was on a religious trip along with his family, and that too at an outdoor location, they were struggling with connectivity issues and accordingly were unable to executed trades from their mobile phones. Accordingly, the connectivity issues led to Mr. Maloo issuing instructions to his staff to execute such trades in his wife's account from the terminal at his office. While the intention of Mr. Maloo when issuing instructions to his staff, Mr. Vipin was for him to pass on the instructions to the authorized dealer who was present at the office to place the trades from his terminal. However, Mr. Vipin misunderstood the instructions of Mr. Maloo and accordingly executed the trades from the terminal where Mr. Ravindra himself was the approved dealer.

17. It is reiterated that Mr. Ravindra had not issued any instructions to any of his staff to operate the system designated to himself in his absence. It is further submitted that in the ordinary course of business, Mr. Ravindra Maloo, who is *authorized to operate the impugned terminal, himself operates the terminal. However, due to the unavailability of Mr. Ravindra Maloo, Mr. Vipin operated his terminal without his knowledge for the best interest of Mr. Ravindra Maloo and his family member i.e. his wife. In this regard it is submitted that this is a one-off event and on the impugned day i.e. September 26, 2023 trades in the account of Mrs. Maloo were the only trades which were executed from the terminal of Mr. Ravindra Maloo. This fact can be substantiated from the logs of the terminal of Mr. Ravindra Maloo for September 26, 2023 which is attached herewith and marked as "Annexure C". These trades were executed only because of the inappropriate understanding of the instructions by Mr. Vipin which resulted in such a lapse. No trades were executed for any other client. The Noticee submits that the aforesaid activity is restricted to this singular occurrence that too due to inappropriate understanding of the instructions issued to him and is not a constant process. Mr. Ravindra Maloo himself controls all the trades at the terminal allocated to him and makes sure all the regulations are complied with. The trade executed by Mr. Vipin needed some immediate action to gain the benefits of the market movement and hence Mr. Maloo had asked Mr. Vipin to execute trades for his wife.*

18. As regards the trades executed from the terminal where Mr. Bhushan G. Kottipalliwar was the approved user, it is submitted that the trades were executed by one Mr. Tileshwar Barapatre. It is further submitted that the Mr. Tileshwar is a dealer with necessary certificates issued by NiSM to enable him to be appointed as an approved dealer. The copy of the duly valid NiSM certificates of Mr. Tileshwar is attached herewith and marked as "Annexure D". It is further submitted that after Mr. Bhushan resigned from Maloo Commodities, Mr. Tileshwar was appointed as the approved dealer to operate the terminal in his place. This process is completed in a phased out manner. The log of placement of request for making Mr. Tileshwar as the approved user of the terminal is attached herewith and marked as "Annexure E".

19. As regards the reason for Mr. Tileshwar operating the terminal of Mr. Bhushan, it has been submitted to us that clients of Mr. Bhushan were contacting the office as Mr. Bhushan was unreachable due to medical issues. Since, Mr. Ravindra Maloo was out on the religious trip and Mr. Bhushan was not available the only present authorized user of the third terminal was under tremendous pressure to execute the trades from both of their clientele, therefore looking at this Mr. Tileshwar who also had the necessary NiSM Certification to be appointed as an authorized user for the terminal, executed certain trades on the behalf of the client so as to avoid loss of business to the AP and also to avoid loss to the clients, if any. The terminal operated during this period is a momentary issue and not a constant practice at Maloo Commodities. In the usual course at Maloo Commodities only the approved user operates the terminal and no other person operates the terminal.

20. In this regard it is submitted that, once the Noticee came to know about this lapse at Maloo Commodities, a surprise inspection was carried out at the premises of Maloo commodities to ensure that the impugned incident was just a situation lapse and such violation is neither continued nor frequently adopted practice at Maloo Commodities. Further, after receipt of the said observations from the surprise visit, the Noticee also gave a refresher course on the necessary compliances which are required to be complied by them as the authorized person of a broker. Furthermore, a strict letter of reprimand has been issued to Mr. Ravindra for this incidence. The copy of the letter of reprimand is attached herewith and marked as "Annexure F".

21. As regards, the allegation that the Noticee failed to exercise necessary due diligence, it is submitted that the Noticee carries out the timely inspection of the premises of its APs to inspect the compliance of the applicable provisions. However, till date it has not noted any instances where any terminal was operated by any person other than the approved user. Therefore, temporary non-compliances, if any, is noted by the Inspection Team it cannot be said that there were any lacunae in the due diligence process of the Noticee.

22. In this regard, it is further highlighted that the Noticee has 1317 APs PAN India and accordingly, the Noticee has a robust system to track compliances for each of such APs and even with such a huge number of APs, the Noticee has been carrying out timely inspection of all such APs to ensure their compliance of applicable laws in compliance with the terms as given under provisions of the NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, *2019. In view of the aforesaid submissions, it can be noted that the Noticee had duly exercised due skill and care and therefore, ensure that the integrity of its affairs is not compromised and therefore the violations of provisions of Clause A (1) & A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations cannot be alleged against the Noticee.*

23. Without prejudice to the aforesaid it is submitted that, the Noticee has now increased the frequency of its inspection, made it more stringent and also started doing surprise inspections of its APs so as to ensure that it can identify any issues of non-compliance of applicable laws and therefore implement them without any delay as required. This will also ensure that the integrity of the Noticee is not compromised at all.

B. Reply to allegation 4.2

24. Vide Point No. 4.2 your goodself has alleged violation of provisions of NSE Circular bearing reference no. NSE/COMP/48536 dated June 09, 2021 read with provisions of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations and also violation of Clause A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations.

25. In this regard, it is submitted that as per the provisions of the aforementioned NSE Circular dated June 09, 2021, an AP is debarred from accepting any receipt or payment/delivery of funds and securities of the clients. Vide this NSE Circular it is clarified that an AP is restrained from collecting or receiving any funds or securities from the clients and further, he is restrained from charging any amount from the clients, directly or indirectly, for the services rendered on behalf of the broker as an agent. The relevant extract of the provision of the NSE Circular bearing reference no. NSE/COMP/48536 dated June 09, 2021 is reiterated herewith for your ready reference:

> *"An Authorised Person is a person/entity who, as an agent of a Member, provides access to the clients of the Member to trading platform of a stock exchange. While doing so, the Authorised Person is prohibited from:*
> *1. Accepting any receipt or payment/delivery of funds & securities of the clients. Authorised Person shall not collect or receive any funds or securities from the clients and shall not charge any amount from the clients, directly or indirectly, for the services rendered on behalf of the Member as an agent."*

26. However, upon perusing the allegations which has been levied in the present case, it can be noted that the allegation against Grow Capital is in respect to the payment of certain funds made by the AP to the clients. It is further observed that no allegation of receipt of funds and/or securities has been levied against the Noticee therefore it cannot be alleged that the AP being the agent of the Noticee has violated the provisions of the NSE Circular dated June 09, 2021. It is further submitted that there is no allegation of settlement of the clients in regard to their dealings through the Noticee in terms of funds and/or securities was done through the accounts of the APs. Therefore, without there being any observation that the settlement of the accounts of the clients of the Noticee registered with the AP were done through the Grow Capital's accounts, the violation of provisions of the aforementioned NSE Circular cannot be alleged against the Noticee. It is further submitted that since the violation of the violation of the NSE Circular dated June 09, 2021 cannot be alleged against the Noticee, the violation of provisions of Clauses A (2) and (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations also cannot be alleged against the Noticee.

27. It is further reiterated that the timely due diligence of the books of accounts of the APs registered with it is done by the Noticee however, till date no instances of collection of funds and/or securities on behalf of the clients have been noted by the Noticee therefore, it cannot be alleged that there was any lacuna in the due diligence skills of the Noticee and furthermore, it cannot be said that there are any instances of lapses of the statutory requirement by the Noticee or its APs.

28. Without prejudice to the submissions made herein that no violation of the NSE Circular dated June 09, 2021 can be alleged against the Noticee, it is further submitted that, upon enquiry with Grow it was represented to us by Grow Capital that the due to some internal arrangement between the client and Grow Capital, a portion of the brokerage earned by the AP from the trades of such clients were returned to such client. The decision to repay part of the *brokerage earned by the AP from the trades of the client was not in furtherance to the Grow Capital being the agent of the Noticee but was in its personal capacity and therefore no allegation of violation of the provisions of the NSE Circular dated June 09, 2021 can be alleged against the Noticee. It is further submitted that no reason has been given in the SCN as to why the aforesaid explanation as already provided to SEBI in response to the Inspection Report has been rejected by SEBI when there has been no receipt of funds from the clients when Grow Capital is acting as an agent of the Noticee in violation of the NSE Circular dated June 09, 2021.*

29. Furthermore, since no lapses in the acts of the Noticee as the principal of the APs have been found in the present case no violation of the provision of the Clauses A (2) and (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations also can be alleged against the Noticee.

30. As regards the violation of the provision of the NSE Circular dated June 09, 2021 is alleged against the Noticee, it is submitted that the same is based on incorrect appreciation of the facts. Upon perusal of the SCN it can be noted that the allegation of transacting with the clients has been alleged on the basis of the transaction executed from the bank statement of Ravindra Maloo HUF. In this regard it is submitted that the AP registered with the Noticee is Maloo Commodities and Stock Trading Private Limited which is a company incorporated under the provisions of the Companies Act, 2013 on November 30, 2021 having its Shop F7, Shradha House, Kingsway, Nagpur Maharashtra – 440 001. The copy of the Company Master Data of Maloo Commodities is attached herewith and marked as "Annexure G". Ravindra Maloo HUF is a Hindu Undivided Firm of the promoter director and shareholder of Maloo commodities. Therefore, it can be said that the Ravindra Maloo HUF is not an entity who comes within the purview of either the Noticee or SEBI. Accordingly, it is submitted that the books of accounts of Ravindra Maloo HUF were never required to be inspected by the Noticee nor were the bank statements of Ravindra Maloo HUF required to be inspected by the Inspection Team of SEBI. Therefore, it can be said that the allegations which are arising from the inspection of the bank statement of Ravindra Maloo HUF also does not fall within the purview of SEBI and accordingly no violation in regard to the said transactions can be alleged by SEBI against the Noticee for the same.

31. The Noticee submits that it is a fundamental principle in law that once a company is incorporated , it obtains a legal existence separate or different from its promoters, directors, and officers and therefore the acts of the directors and shareholders or any officers of the company not in the capacity as the agent of the company cannot be imputed to the company and they are to be treated as separate acts of such individuals and no action in regard to such acts can be taken against the company. It is further submitted that only when its promoters, directors, and officers abusing the principles of separate legal entity that the authority has the power to lift the corporate veil of the company. In this regard it is further submitted that the power to lift the corporate veil has to be used sparingly and that too after providing a thorough reason for doing the same. However, in the present case without providing any reason for the same, the Inspection Team has lifted the corporate veil of Maloo commodities to inspect the books of Ravindra Maloo HUF who is neither the promoter nor shareholder of the Company. Ravindra Maloo HUF does not share any relationship with Maloo commodities other than it being the HUF of the promoter, director and shareholder of Mr. Ravindra Maloo. Therefore, it is submitted that the act of inspecting the books of accounts of Ravindra Maloo HUF in itself were not warranted for as the same would be extrapolating the jurisdiction of SEBI over an authorised person.

32. Without prejudice to the aforesaid submissions of the Noticee, it is submitted that the transactions pertained to the repayment of the loan taken by the Ravindra Maloo HUF from the entities which also happen to be the clients of the Noticee. Furthermore, NSE Circular dated June 09, 2021 states that an AP is prohibited from accepting funds directly from the client with respect to the services rendered by an AP. However, in the present case the transaction strictly pertained to that of Ravindra Maloo HUF wherein no funds or security were ever received by the Maloo Commodities. This is an undisputed fact that can be well established from the Inspection Report since an examination was conducted of the books of Maloo Commodities. It is further submitted that the SCN fails to attribute any rationale as to why the aforesaid explanation as already provided to SEBI was disregarded. The alleged violation is infructuous on the simple basis that Maloo Commodities merely acted as an agent of the Noticee without any receipts of funds or securities from its client and without violating any provisions of the NSE Circular dated June 09, 2021.

33. It is further reiterated that the timely due diligence of the books of accounts of the APs registered with it is done by the Noticee however, till date no instances of collection of funds and/or securities on behalf of the clients have been noted by the Noticee therefore it cannot be alleged that there was any lacuna in the due diligence skills of the Noticee and furthermore, it cannot be said that there is any instances of lapses of the statutory requirement by the Noticee or its APs. Accordingly, no violation of the provision of the Clauses A (2) and (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations also can be alleged against the Noticee.

34. It is further submitted that the observation that the AP is doing any work other than the permitted work as an agent of the broker is also incorrect in light of the fact that the lending transactions were undertaken by Ravindra Maloo HUF and not by the AP of the Noticee Maloo commodities and therefore it cannot be alleged that there was any lacuna in the due diligence process of the Noticee.

C. Reply to allegation 4.3

35. Vide Point No. 4.3 your goodself has alleged violation of provisions of Clauses 16 and 19 of Annexure A of NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019 read with provisions of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations and also violation of Clause A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations.

36. Vide Point No. 4.3 (A) your goodself has observed that the AP of the Noticee, Ms. Teena Bansiya was not operating her business as an AP from the address provided to the Exchange. Your goodself also observed that Ms. Teena Bansiya was not available at the said location and interior work was going on. Thus, according to the aforesaid observation, it is alleged that the Noticee has violated Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of Stock Brokers Regulations read with Clauses 16 and 19 of Annexure A to NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019 and Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of Stock Brokers Regulations.

37. In regard to the aforesaid it was submitted to us that Ms. Teena Bansiya at the time of the inspection conducted at her premises, she was expecting a baby and accordingly was not attending office. Since, she does not have any terminal assigned to her all the trades of the clients mapped with her were placing their trades through the online trading mechanism and therefore never visited her office for placement of any others and such other things connected to it and therefore these clients also raised their issues and objections with Ms. Bansiya virtually i.e. telephonically or through other electronic means of communications. The trade logs of the clients mapped with Ms. Teena during the inspection period showing that all such trades were executed through online portals by the clients themselves is attached herewith and marked as "Annexure H". Therefore, there was no need for Ms. Teena to be physically present in the designated office space to attend to the clients mapped to her. Therefore, when Ms. Teena was nearing her term, she was not going to office and preferred resting at her residence. Accordingly, she was not available at her office when the Inspection Team visited her. Ms. Teena delivered a healthy baby boy for which she was admitted to the hospital between the brief period of November 09, 2023 to November 12, 2023. The copy of the discharge summary in support if the aforesaid facts is attached herewith and marked as "Annexure I".

38. It is further submitted that the premises where her office was set up is a rented premises. The copy of the rent agreement for the said premises in favour of Ms. Teena is attached herewith and marked as "Annexure J". It was submitted to us that since Ms. Teena was not frequenting her office premises, the landlord of the said premises decided that it was an ideal time to renovate the said premises so as to cause least bit of trouble to the occupier viz. Ms. Teena. However, it is submitted that since Ms. Teena had not intimated the Noticee about the then ongoing renovation work at the said premises hence we had no knowledge whatsoever about the same. In this regard it is reiterated that the Noticee as per the provisions as specified in the NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019, does timely inspection of all its APs including Ms. Teena and till date no allegation as reported herein has *been observed by the Noticee. It is submitted that the renovation work only made the office of Ms. Teena temporarily unavailable and did not cause any inconvenience to the clients of the Noticee mapped with Ms. Teena and therefore, no negative observation in this regard should be taken by your goodself against the Noticee. It is further submitted that the office premises of Ms. Teena meets all the statutory requirements as required to be maintained by an AP being the agent of the Noticee therefore no violation neither of the provisions of the NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019 nor the violation of the Clause A (2) and (5) of Schedule II for Code of Conduct read with Regulation 9 of Stock Brokers Regulations.*

39. As regards to the observation that Ms. Teena was operating from another premise for which she had paid an amount of Rs. 4.78 Lakhs to Workie, a co-working space. In this regard it denied that Ms. Teena was operating from some other premises other than the one registered in the records. It is submitted that the payment to Workie was to enable Ms. Teena to shift the premises from the present address to the new premises at Workie, however, the same did not work out and the payment was forfeited by Workie. It is further submitted that Ms. Teena is still operating from the already registered premises after she resumed going to office therefore the observation that she was operating from some other premises is incorrect.

40. It is further submitted that the observation that Ms. Teena operated from premises other than registered premises is based only on the bank transaction without any other support of the same and hence it is submitted that the allegation is baseless. Furthermore, all the APs are duly intimated by the Noticee to inform them about the change in their premises along with necessary proofs so that the appropriate systems can be updated. It is further submitted that the Noticee has not yet noted any lapse in regards to updating the information of the new place of office of its APs and hence in this regard no lapses in the systems of the Noticee can be said to be observed. However, in the present case before any intimation could be sent to the Noticee, the transaction was cancelled and accordingly there was no intimation sent to the Noticee regarding the same and in such a scenario no violation can be alleged to the Noticee.

41. Further as regard the observation that when contacted Ms. Teena, her brother answered the call from the Inspection Team and said that Ms. Teena was no longer in the business. In this regard it is submitted that the same is either due to an in appropriate understanding of the question by the brother of Ms. Teena or due to the inappropriate understanding of the response of the brother of Ms. Teena. It is hereby affirmed that Ms. Teena continues to be the AP of the Noticee and continues doing her business from the same location as registered. In this regard, the Noticee submits that it has also ready conducted a surprise inspection of the APs office and found all things in order as per the statutory requirement and also offers that a surprise inspection can be independently conducted by your goodself to appease your goodself's doubt.

42. Further the observation that no documents in this regard were provided, it is submitted that had the Inspection Team asked for additional clarification along with necessary documents, the same would have been provided by the Noticee, however, since no such queries were raised by the Inspection Team, the Noticee thought that the explanation provided by it was sufficient and no additional details or documents required to be provided by it.

43. As regard the allegation that Stokology and Grow Capital did not maintain requisite records viz. visitor register and investor grievance register, it is submitted that the same is a baseless allegation and the same is not substantiated by any proof to that accord. It is submitted that the Noticee is well aware about the requirement of documents and details to be maintained by the Noticee in its office including its branches/ APs.

44. At the preliminary point, SCN has been issued pursuant to the inspection being conducted by the Inspection Team, the observation and allegation in the SCN should be arrived on the basis of the observation in the Inspection Report, the submissions provided by Noticee and conclusions drawn thereon. However, in the present case, while the inspection Report notes that allegedly the APs have not properly maintained the Investor Grievance Register/ Complaints Register the SCN has alleged that the APs have not maintained the Visitor Registers and the Investor Grievance Register. Therefore, it can be said that the allegation levied in the SCN does not find basis in the observation *made out in the Inspection Report and accordingly, it is submitted that this baseless allegation against the Noticee cannot survive and must be struck down.*

45. Without prejudice to the aforesaid submission, it is submitted that the APs of the Noticee have maintained the Complaint Register. It is further submitted that there is no specific format which has been prescribed to be followed for maintenance of these registers. Therefore, in the event that there exists no prerequisite format for maintaining the registers in as well as whether such registers are required to be maintained physically or electronically, it cannot now be alleged to have not met the specified requirements without specifically alleging the laches in the said formats maintained by the APs. In furtherance it is submitted that the allegation of non-maintaining of the registers in the appropriate formats cannot be alleged against the APs of the Noticee.

46. It is further submitted that while the Noticee has prescribed a standard format of the registers which are required to be maintained at their offices whether branch or otherwise. The Noticee has re-communicated the need for maintenance of the registers and documents in a specific format and accordingly have also shared these formats with its APs. The copy of the standard format of the Investor Grievance register is attached herewith and marked as "Annexure K".

47. It is further submitted that while there were no lapses in the formats as maintained we have reinforced the need for maintenance of the registers in the formats as prescribed by the Noticee and hence the said format is being used by the APs. It is further submitted that it has been confirmed by the Noticee that the APs did not receive an complaints which are required to be entered in to in the Investor Grievance register and therefore through these registers were maintained by these APs, it was not kept in best of the shapes having no use for such registers in recent times.

48. However, upon the perusal of the aforesaid submission and the fact that the registers were maintained by the APs of the Noticee, accordingly there can be no allegation of violation of provision of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations which requires that the statutory requirements to be met, including the maintenance of the statutory registers. Since these registers were maintained, it cannot be further alleged that the there was any deficiency in the skill of the Noticee and neither in the care taken by the Noticee in ensuring with meeting the statutory requirements. It is once again in this context reiterated that the Noticee ensures the compliances of the applicable requirements by conducting timely inspections and thereafter taking necessary corrective steps as and when required. Therefore, no fault can be found with the compliances done by the Noticee in regard to NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019.

49. As regard the allegation that there was no demarcation in the premises maintained at the office of Maloo Commodities since APs of another person was also operating from the same premises. The allegation becomes further grave where it is alleged that documents were maintained jointly for the different APs and in reference to this allegation, reliance is placed on Annexure C to the SCN. In this regard it is submitted that the allegation of blurred lines of office space has not been provided sufficient evidence to enable the Noticee to provide a necessary and sufficient response to the said allegation. The only observation in regard to this observation is that there was a terminal of another broker found at the premises of the AP.

50. As regard to the observation that a terminal of another broker was found at the premises of the Maloo commodities, it is further submitted that the APs of both the broker had entered into an office sharing agreement to enable them to function from the same premises and that while the address for both APs was common, the books and records of both these APs were maintained independently and separately by them. It is further submitted that till date in the various inspections carried out by the Noticee of the premises of Maloo commodities, it has never found any issue with the clear demarcation of the office spaces of both the APs.

51. It is submitted that while the visible lines may not have been used to demarcate the distinction between the spaces of the different broker's APs, clear distinctions were maintained in the premises where the APs for more than one *broker including that of the Noticee were working simultaneously. This has been done so as to maintain the utmost confidence and privacy of the clients when working with close counters with another broker. It is further submitted that there is no restriction on APs of different brokers sharing the same office space and rightly so no objection in this regard has been raised by your goodself in this regard.*

52. It is further submitted that the fact that the APs were sharing the same premises were a known fact with NSE considering that the details of the registered address of the offices of both the APs with different broker were always available with NSE. However, till the date the observation in this regard to the office sharing with another broker's APs was never raised and therefore the said observation came as shock to the Noticee. Since no objection was raised to this, and even in the present case the observation is best described as vague and baseless considering that no other evidence in this regard have been provided in the SCN, the Noticee is handicapped to provide with a suitable explanation.

53. As regard the observation that the APs were maintaining joint records with the AP of another broker, it is submitted that the aforesaid observation is made on the basis of a file found at the office premises during the course of the inspection. Upon enquiry and examination of the contents of the file, it was noted that the file was maintained by the office peon of the AP and the file contained counter foils of the pay-in-slip of the cheques deposited by him. It is submitted that since the office is a shared premises the services of peon are sometimes offered for the assistance of the other broker's AP and accordingly for deposit of cheques which are received by the APs from their clients to be deposited in their respective broker's client accounts. It is submitted that as a record of the cheques deposited by the peon on behalf of the APs, he maintained the counter foils of the pay-in-slip used by him to deposit such cheques. This is maintained by him for his personal record and not at the insistence of either of the broker's AP. It is further submitted that this file does not form part of the books and records maintained by the AP but was the personal record of the peon of the AP and therefore was not required to be under inspection. It is further submitted while the same peon may deposit cheques for the APs of various broker, there has never been any instance noted where there has been any discrepancy in the deposit of the cheques or that in the ledgers and accounts maintained by the Noticee on behalf of these clients therefore no negative inference in this regard is required to be taken against the Noticee.

54. Furthermore, upon the perusal of the aforesaid submission, it can be noted that the Noticee has not neglected its duty as a broker as well as a principal to its APs and therefore, no allegation of violation of provisions of Clauses 16 and 19 of Annexure A of NSE Circular bearing reference no. NSE/INSP/42448 dated October 18, 2019 read with provisions of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations and also no violation of Clause A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations can be alleged against the Noticee.

D. Reply to allegation 4.4

55. Vide Point No. 4.4 your goodself has alleged violation of provisions of NSE Circular bearing reference no. NSE/COMP/49509 dated September 03, 2021 read with provisions of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations and also violation of Clause A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations. The aforesaid allegation has been levelled against the Noticee due to the fact there was a mismatch found in the records of the clients mapped with three of the four APs under inspection in the present matter.

56. The Noticee submits that the same is due to a human error and the said certain human error was due to which the details collected from the system to be submitted to the exchange were incorrect. However, the records and the process of collection of the data has been updated to avoid the repetition of such an error.

57. Furthermore, the records of the exchange and the Noticee have been correctly updated to give a true and fair picture of the mapping of the clients with each of its APs including the three impugned APs. The copy of the updated *records of the clients with each of the APs with the records of the exchange is attached herewith and marked as "Annexure L".*

58. It is further submitted that no loss or discomfort was caused to the clients of the APs in regard to the aforesaid errors in the mapping. Here it is important to clarify that there was error in the registration of the clients and that the clients of the Noticee, however it was only the record of mapping was incorrect due to some human error. However, necessary steps have been taken immediately upon the error being highlighted to the Noticee and there for the violation is any does not persist any longer.

59. It is pertinent to note that the Noticee has 1317 APs PAN India and every AP has hundreds of clients. The allegation of non-reporting of clients mapped is simply due to a human error. The AP generates a report and submits the weekly report for the clients mapped. However, in the said weekly report some client's data was missed while generating the report. The Noticee follows all the due procedure to ensure the reporting of the clients mapped. Considering the vast amount of clients with the Noticee through its APs, the error found during the alleged non-reporting can be considered negligible.

It is further submitted that the error is just a temporary mismatch and it is submitted that the Notice has timely and regularly updated the date of the clients mapper with the various APs and does not in any way suggest that there was lapse in the systems in place by the Noticee and accordingly it cannot be alleged that the Noticee has violated of provisions of NSE Circular bearing reference no. NSE/COMP/49509 dated September 03, 2021 read with provisions of Clause A (5) Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations and also violation of Clause A (2) of Schedule II for the Code of Conduct read with Regulation 9 of the stock Brokers Regulations.

E. Submission on Law

60. The Noticee submits that it has been carrying out timely inspection of its APs and there has never been any previous allegations of violation of its duties in this regard and accordingly it cannot even in the present case be alleged that there has been lapse in the Noticee's efforts to fulfil its duties. In addition to the above detailed submissions, the Noticee also relies on the following case laws to state that the Noticee exercised a reasonable due diligence while exercising its duties as the principal broker.

61. It is submitted that the observations of the Hon'ble Supreme Court in the case of Chander Kanta Bansal v. Rajender Singh Anand, [2008 (5) SCC 117] is noteworthy to mention, wherein the Hon'ble Court had stated that:

> *"……..The words 'due diligence' have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conductof his own affairs…."*

62. The above-mentioned judgment is reiterated in the case of Almondz Global Securities Limited v. Securities and Exchange Board of India (Appeal No. 275 of 2014) wherein it was held as follows:

> *"47. … It is settled law that due diligence means reasonable diligence expected from a Merchant Banker. A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker. A Merchant Banker cannot be expected to act like an investigating agency and start with a note of*

suspicion as regards the bona fides of the company, on whose behalf it is entrusted with the task of drafting and preparing the DRHP, RHP and the Prospectus, etc….

…

52. This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances…."

63. Reliance hereby has been made on WTM Order No. WTM/GM/EFD DRA-1/12/FEB/2017 in the matter of Brooks Laboratories Ltd. dated February 09, 2017, which reads as follows:

"19. Bearing in mind these principles governing 'due diligence', the merchant banker cannot be expected to look at each and every statement and information provided by the issuer with suspicion unless the facts and circumstances at the relevant time so demand…."

64. Further, in WTM Order No. WTM/RKA/ID-8/96/2014 in respect of PNB Investment Services Ltd. dated February 09, 2017, which reads as follows:

"10. …. In view of the above, the due diligence expected from the merchant banker is reasonable diligence. Such obligation has to be enquired into and found out on the higher degree of preponderance of probability taking into account the facts and circumstances of the case. The merchant banker cannot be expected to look into each and every statement and information provided by the issuer with suspicion unless the facts and circumstances at the relevant time demand so. Accordingly, the obligation of the Noticee in this case has to be examined keeping in mind the above principles."

65. The above extract of the Orders highlights that due diligence in law means reasonable diligence, hence, everything that is reasonable has to be done in the process of due diligence and it does not mean doing everything possible. Further, no extraordinary step can be expected in the due diligence process unless there exists a suspicion at the time of due diligence.

66. The Noticee reiterates that it exercised reasonable diligence by carrying out timely and through inspection of its APs and also ensuring the compliance of the applicable provisions from their end. It is submitted that the Noticee did not find any suspicion while carrying out such inspection in regard to the observations raised in the present SCN and further more even when the Noticee has observed any deviation in the compliances required to be maintained by the APs, it ensures it is immediately rectified and also the same violations are not repeated in the future. From the perusal of the aforesaid submissions made herein, an adverse inference cannot be drawn against the Noticee that it failed to exercise due diligence while as the principal for its APs.

67. It is submitted that the Hon'ble Supreme Court in the case of SEBI v. Kishore R. Ajmera (2016) 6 SCC 368 has stated that an inferential conclusion must be arrived at from proven and admitted facts. In this regard, the Noticee submits that there is no proof provided by your goodself in the Notice that there was lack of due diligence exercised by the Noticee, despite that the Noticee has been alleged to violate the provisions of various Circular of NSE and also the of provisions of Schedule II for Code of Conduct read with the SEBI (Stock Brokers) Regulation, 1992.

68. From the aforesaid explanations it is clear that the Noticee has not violated any law / circular issued by SEBI as alleged in the SCN. However, it must be noted that the lapses, if any pointed out in the SCN are merely momentary *lapses to ensure that no inconvenience is caused to the clients whose interest is the primary concerns for the Noticee as a broker and similarly for its APs as its agents.*

69. Furthermore, the Noticee have never defrauded or deceived any investors' interest in any manner. It has never even received any such complaints from any of its clients. The Noticee have always worked towards placing its clients' interests on the top and the same can be seen from the fact that even in the Inspection Report and the present SCN no observation has been made about any investor grievance not being taken care of or any discrepancy thereof.

70. The Noticee is committed to comply with the law and request that the procedural lapses, if any, be seen in the context of its overall volume, the number of transactions executed by it and the various compliance measures adopted by it.

71. The Hon'ble SAT in UPSE Securities Ltd. VS EBI in Appeal No.109 of 2011dated July25, 2011 held that:

> *"...before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity..."*

72. The Noticee would also like to bring to your goodself's notice the matter of IFCI Financial Services Limited (adjudication order No. EAD/ AO-NP/ JR/ 39 /2017 dated May 22, 2017), the learned Adjudicating Officer has observed as under:

> *"There are observations in the inspection report and Noticee has taken rectifying steps or have improved procedure for better compliance. Further the observations made are procedural in nature and many of these are complied with after being pointed out by the inspection team. No serious observations are made where investors' interests would be adversely affected. ……. In view of these, I do not find it a fit case for imposing monetary penalty."*

73. The same has been observed in the matter of Marfatia Stock Broking Private Limited (Adjudication Order No. EAD-12/ AO/SM/191 /2017-18 dated February 26, 2018), wherein the learned Adjudicating Officer has observed as under:

> *"There were observations in the inspection report and Noticee have reported the compliance within the time frame and wherever there was delay it has taken rectifying steps and improved procedure for better compliance. Further the observations made are procedural in nature and all of these are complied with after being pointed out by the inspection team. No serious observations are made where investors' interests would be adversely affected. In view of these, I do not find it a fit case for imposing monetary penalty."*

74. Further, Honourable SAT, in DSE Financial Services Ltd. v SEBI in Appeal No. 153 of 2012, order dated September 11, 2012 held that:

> *"…every minor discrepancy/ irregularity found during the course of inspection is not culpable and object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it complaint."*

75. In addition to the above, your goodself shall also have to justify the imposition of penalty on the Noticee in its acts as the principle to its APs, contemplating the stipulations provided under Sections 15 I, 15HB, and 15 J of the SEBI Act.

76. For a better understanding of all the above-mentioned provisions of the SEBI Act, the Noticee would like to rely upon the Order of Hon'ble SAT in the case of Kensigton Investment Ltd. Vs. SEBI and Brentfield Holdings Ltd. Vs. The Chairman, Adjudicating Officer, SEBI Appeal Nos. 27, 28, 30 and 31/2002 wherein it was held that:

> *Para 57: "On a perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable `significance, especially in view of the guidelines provided by the legislature in section 15J. "The Adjudicating Officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case."*
>
> *Para 62 and 63: 62. "In this context it is also relevant to know the significance of the expression "shall be liable to a penalty" appearing in the section 15A. The Supreme Court in Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal (supra) held that the expression "shall be liable to a penalty" occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of such obligation or penalty".*
>
> *63. "As already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."*
>
> *Para 66: "There is nothing on record to show that the Appellants acted deliberately in defiance of law, or guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. Taking into consideration, the relevant facts, the legal provision and the principles laid down by the Hon'ble Supreme Court in Hindustan Steel, MCTM Corporation and Jiwani's case I am of the view that imposition of penalty on the Appellants in appeal Nos.27/2002, 28/2002 and 30/2002 is not justified and accordingly I set aside the orders passed by the Respondent against the Appellants in the said appeals."*

77. The above-mentioned case law stipulates that the relevant authority has to justify the imposition of a penalty covering the realm of the factors provided under Section 15J of the SEBI Act and therefore no authority can just unilaterally impose a penalty on the delinquent. Moreover, a case of levying penalty can only arise in a situation wherein the delinquent has deliberately acted in defiance of law which the Noticee did not, in the present case.

78. Further, in the case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002, wherein the then Hon'ble SAT observed the following:

> *"We also do not think that the appellant had deliberately suppressed the information with ulterior motive. The appellant can, at best, be held to have made a technical lapse. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record. The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal*

consequence. It ultimately depends on the facts of each case. In this case, the breach was bona fide and the appellant was under the impression since it had already made a disclosure earlier it was not necessary to make a fresh disclosure once again. This, in our view, is an error of judgment and, at best, an error of understanding the law. Ignorance of law is no excuse but an erroneous interpretation is a mitigating factor especially if such interpretation is honest and bona fide to the knowledge of the appellant. Following the judgment in Cabot International and for the reasons stated herein, we hold that the breach cannot be called as deliberate and the non-disclosure was due to lack of understanding of the law. In that view of the matter, the impugned order is set aside."

79. In relation to levying penalty in venial acts the observation of the Hon'ble Supreme Court in Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579 is noteworthy to mention wherein the Hon'ble Court had stated that:

Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and MadhusudhanGordhandas& Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established. It has also been observed in Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563) by this Court that:-
"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Actor where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"."

80. These above-mentioned decisions have recognized the distinction between the ingredients for the commission of the offence under the SEBI Act (which in certain cases is not required to include any mensrea) and the imposition of penalty which, with or without the requirement of mensrea, requires a "wilful default" or "deliberate defiance". In the present case, therefore, the imposition of penalty, if any event would be unjustified and ought to be set aside for there is an absence of wilful default or deliberate defiance.

81. Without prejudice to the aforesaid, before arriving at the conclusion, the Noticee would also need to examine the factors mentioned under Section 15 J of the SEBI Act which also needs to be considered by your goodself, while deciding on imposing a penalty against the Noticee. In addition to the above, your goodself also needs to examine Section 19-I of the Depositories Act, 1996, wherein the factors similar to Section 15 J of the SEBI Act are given, while imposing a penalty on the Noticee.

82. The wordings of Section 15J are as follows:

"15J: Factors to be taken into account by the adjudicating officer:
While adjudging the 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, whether 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."

83. With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": It is submitted that the findings do not lead to any conclusion that there has been disproportionate gain or unfair advantage to the Noticee from the aforesaid alleged non–compliances. Your goodself has also not pointed out any averment specifying such gain or unfair advantage allegedly gained by the Noticee. Hence, *it is submitted that there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the aforesaid allegation can be attributed the Noticee or the APs.*

84. With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default": It is submitted that there are no investor complaints filed at any Stock Exchange or with SEBI in respect of the alleged non–compliances. It is also submitted that your goodself has not shown any loss caused to other investors as a result of the Noticee's act. In absence of such direct information, the allegation of causing loss to other investors is also not applicable. Therefore, it is submitted that there is no amount of loss caused to an investor or group of investors as a result of the aforesaid allegation can be attributed the Noticee or the APs.

85. With regard to Clause (c):- "the repetitive nature of the default": It is submitted that the Noticee has never been held guilty by SEBI in any other matter for not doing a proper and reasonable due diligence while acting on the principal to its APs. As a matter of fact, the Noticee has an impressive track record in this regard.

86. With reference to the aforesaid, it is pertinent to note that the Hon'ble Supreme Court of India in the matter of Adjudicating Officer vs. Bhavesh Pabari (Civil Appeal No. (S).11311 of 2013, dated February 28, 2019) has held that section 15J is illustrative and the relevant factors depend from case-to-case basis. The relevant provisions are reproduced below:

"..This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15¬J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty."

87. In lieu of the above factors of Section 15 J, your goodself is requested to take a liberal approach and employ utmost prudence in levying any penalty against the Noticee, if your goodself decides so.

88. In addition to the above factors, your goodself is also requested to consider the following case laws while levying penalty, if any, against the Noticee. Firstly, the case of Bhagat Ram v. State of Himachal Pradesh (1983)IILLJ1SC inter alia stating:

> *Para 5: "the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution"*

89. Secondly, the case of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) wherein the Hon'ble Supreme Court had held that:

> *Para 9: "But the Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review."*

90. The principle propounded hereinabove is equally applicable in the present case. As a result, your goodself is humbly requested to take into account the fact that whatever penalty, if any is imposed upon the Noticee, should be commensurate with the degree of default.

91. In regards to the findings to the SCN, it is stated that the non-compliance of the said SEBI Circulars is a technical or venial breach. It is submitted that the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v. State of Orissa (AIR 1970 SC 253) had on the point of technical and venial violations had clearly stated that:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances... Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

92. The same principle was also followed by the Hon'ble Securities Appellate tribunal in the matter of M/s. Cabot International Capital Corporation vs. Adjudicating Officer, Securities & Exchange Board of India (Appeal No. 24/200). The said judgement of Cobalt International was also followed by the Hon'ble Tribunal in the matter of Reliance Industries Limited Vs. Securities and Exchange Board of India (Appeal No. 39/2002), wherein the Hon'ble Tribunal while dealing with the issue of leaving of penalty in cases of technical and venial violation had stated that:

> *"The appellant can, at best, be held to have made a technical lapse. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record. The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case. In this case, the breach was bona fide and the appellant was under the impression since it had already made a disclosure earlier it was not necessary to make a fresh disclosure once again. This, in our view, is an error of judgment and, at best, an error of understanding the law. Ignorance of law is no excuse but an erroneous interpretation is a mitigating factor especially if such interpretation is honest and bona fide to the knowledge of the appellant. Following the judgment in Cabot International and for the reasons stated herein, we hold that the breach cannot be called as deliberate and the nondisclosure was due to lack of understanding of the law. In that view of the matter, the impugned order is set aside."*

93. The said orders were further also followed in the matters of Samkit Shares and Stock brokers Pvt. Ltd. (Appeal No. 53/2003) dated August 31, 2004 and Chona Financial Services P Ltd. Vs SEBI (Appeal No.95/2003).

94. It is submitted that levy of any penalty in the present matter in view of the alleged technical breaches if any is going to seriously harm the Noticee and ruin its future prospects and therefore penalty should not be imposed upon. The said opinion has also been endorsed by the Hon'ble Securities Appellate Tribunal in the matter of Doogar and Associates Securities Ltd. Vs. Securities and Exchange Board of India, wherein the tribunal has clearly held that:

> *"18. It was submitted that the Appellant would be suspended from the NSE and the stigma of suspension will affect its reputation and tarnish his image. Even the Respondent has treated the misconduct of the Appellant as, a minor penalty. One of the minor penalties is warning or censure under Regulation 13(1)(a)(i). We feel it appropriate that a warning or censure for this technical violation would meet the ends of justice as any other punishment would ruin the business of the appellant for this technical default. It is not in dispute that the offence is technical as rightly stated by the Counsel for the SEBI. Such a technical flaw should not be visited with a penalty that would ruin the business of the appellant.*
> *19. In that view of the matter we confirm the order of SEBI with respect to the misconduct. However, substitute the penalty to one under Regulation 13(1)(a)(i) of the SEBI (Procedure for Holding Inquiry)*

Regulations, 2002. Accordingly, we set aside the penalty imposed by the Respondent and direct the Respondent to give a suitable warning to the Appellant."

95. It is further submitted that it has been and will always be the Noticee's endeavours to fully comply with all applicable provisions of Bye laws, Rules, Regulations and Circulars of the Exchange. Despite this, at times there are some minor lapses which occur due to human errors in the rush of day-to-day operations to ensure best services to the clients. The Noticee would request you to kindly take a lenient view and condone such lapses, if any.

96. Therefore, Noticee have never acted deliberately in defiance of the law or are guilty of wilful misconduct or conscious breach of any provision. The Noticee is aware that it owes a duty to its clients and it is submitted that both the Noticee and its APs have acted as prudent brokers in the ordinary course of its dealings with all its clients and the lapses observed, if any, in the Inspection report and carried forwarded in the present SCN, are isolated instances of human error and not forming any pattern which would lead to doubt/suspicion or for personal benefit or with the intent to defraud the investors/clients. The process of Inspection should be considered as enabler to strengthen the process of a broker and not as a means to find fault with him.

97. Further, on becoming aware of the stray lapses, if any, the Noticee have immediately taken steps to rectify the same and avoid their recurrence in future, which is also the objective of an inspection and hence, such penalty should not be imposed on it.

…"

10. On the rescheduled date of hearing viz., June 12, 2024, the Noticee appeared for hearing through its Authorized Representatives (ARs) viz., Shri Pulkit Sharma (Advocate, Mindspright Legal), Ms. Nirali Mehta (Advocate, Mindspright Legal), Shri Juan D'Souza (Advocate, Mindspright Legal), Shri Prashant Salian (Deputy Vice President, Compliances, Choice), Shri Anil Kedia (Vice President, Choice) and Shri Ajay Kejriwal (Director, Choice) wherein they relied upon and reiterated the submissions made by Noticee vide letter dated June 10, 2024. Further, the ARs sought time till June 20, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed.

11. Vide letter dated June 18, 2024, the Noticee made following additional submissions as reply to the SCN:

"…

1. At the outset, we are grateful to your goodself for grant of an opportunity of personal hearing to the Noticee before your goodself and affording an opportunity to submit these Written Submission post the hearing in addition to the Reply of the Noticee in regard to the charges and allegations outlined in the captioned Show Cause Notice issued against the Noticee (hereinafter referred to as "SCN").

2. It is hereby submitted that these submissions are to be considered in conjunction to and in continuation of the submissions advanced on behalf of the Noticee during the hearing held on June 12, 2024 as well as the response filed on behalf of the Noticee dated June 10, 2024 (hereinafter referred to as the "Reply").

3. At the outset, it is humbly submitted that the observed violations are merely technical in nature and the same at the very best are venial violations which in itself ought not warrant for any regulatory penalty to be imposed thereupon. It is further submitted that the violations, if any, committed by the Noticee have been duly rectified by improving the level of inspection and also reducing the number of Authorised Persons Authorised Persons (hereinafter referred to as "APs") associated with the Noticee.

4. Furthermore, the Noticee humbly submits that the said observations were made during the surprise inspection conducted by SEBI and the stock exchanges on specified dates at the offices of its APs and the said observations ought not be used to draw any adverse inference upon the Noticee qua its compliance with the prescribed Rules, Regulations and Circulars. It is once again reiterated that during the course of due diligence done by the Noticee, no lapses in compliance were observed by it.

5. At the threshold, the crux of the allegation made against the Noticee emanates from SEBI's stand that the Noticee and its Authorised Persons have a 'Principal-Agent relationship' and therefore, in this regard, the Noticee ought to be held liable for a negligent act undertaken by the APs irrespective of the nature whatsoever. In this regard, the Noticee humbly submits that while there is in fact a 'Principal-Agent relationship' between the parties, the same could only extend to all the permitted activities under the agency agreement which in the present case is the AP Agreement and any acts in derogation thereof could not fall within the ambit of the agency.

6. Additionally, it is also submitted that while entering into an 'AP Agreement', the APs warrant to the Trading Member that it shall abide with all relevant circulars, notices, directions, order etc. and any act in derogation thereof would ipso facto become an unauthorised act undertaken by the agent.

> *"AP agrees to abide by and comply with and adhere to the circulars, notices, directions, order etc. that may be promulgated or issued from time to time either by SEBI, BSE, Reserve Bank of India or any other regulatory authority."*

7. Therefore, the Noticee submits that in the present instance, it would be incumbent to state that the Noticee is under bonafide belief that APs are undertaking their daily business in a fashioned manner. Furthermore, it is submitted that the Noticee is also compliant with the regulatory requirement of routinely inspecting the premises and books and accounts of APs in compliance with the circular of the National Stock Exchange of India Ltd. (hereinafter referred to as "NSE") bearing reference no. NSE/INSP/42448 dated October 18, 2019 and no default has been observed in this regard. It is further submitted that till date, no lacuna has been observed in the due diligence process of the Noticee to attribute violations against it. In this regard, the Noticee further elaborates that, any digression found by SEBI were momentary lapses and could not have been identified by the Noticee in the ordinary course of its due diligence and inspection. Therefore, it is submitted that the violations, if any, despite due care and diligence are without the permission and knowledge of the Noticee cannot be attributed to the Noticee. Further, unless any specific deviation can be noted in the process of due diligence/inspection adopted by the Noticee, the violation by the APs cannot be attributed to the Noticee. It is also submitted that the Noticee cannot be liable for the acts of the APs which are done beyond the scope of their 'Agent-Principal relationship' even when such act is committed by the agent.

8. The Noticee relies upon the decision of the Hon'ble Supreme Court in the matter of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt [(1966) SCC Online SC 210] whereby it was held that a principal can only be held liable for the agent in the event that there is a finding that the wrongful act was authorised by the principal. The relevant excerpt is extracted hereunder for ease of reference:-

> *"28. The law is settled that master is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment, the servant's act does not make the employer liable. In other words, for the master's liability to arise, the act must be a wrongful*

act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The driver of a car taking the car on the master's business makes him vicariously liable if he commits an accident. But it is equally well settled that if the servant, at the time of the accident, is not acting within the course of his employment but is doing something for himself the master is not liable. There is a presumption that a vehicle is driven on the master's business and by his authorised agent or servant but the presumption can be met. It was negatived in this case, because the vehicle was proved to be driven by an unauthorised person and on his own business. The de facto driver was not the driver or the agent of the owner but one who had obtained the car for his own business not even from the master but from a servant of the master. Prima facie, the owner would not be liable in such circumstances."

(emphasis supplied)

9. Further, the Noticee also relies upon the decision of the Hon'ble Bombay High Court in the matter of M. Shashikant & Co. & Ors. v. Union of India & Ors. [(1986) SCC Online Bom 456] whereby the question of the liability of an agent on account of an unauthorised act came into question. The relevant excerpt is extracted hereunder for ease of reference:-

"7. Shri Bulchandani then relied upon Paragraph 383 of the Hand Book, of Import- Export Procedures, 1980-81 to claim that the petitioners will be liable to the same legal obligations and penalties arising out of the Agent's action or inaction under law, as he himself would be otherwise. It was urged that the petitioners can be legally held guilty for the illegal acts of his Agent. It is impossible to accede to the submission of the learned counsel. A principal can never be guilty for wrongful acts of the Agent which were done without notice to the principal. The petitioners were not responsible or were not even conscious as to what was imported by M/s Mangla Brothers. In these circumstances, it is impossible to sustain the impuged order passed by respondent No. 2 and the petitioners are entitled to the relief sought."

(emphasis supplied)

10. The Noticee further submits that the watch is to be kept through timely inspection where in the frequency of the inspection and the various aspects of such inspection have been defined. There is no allegation that the Noticee has failed to undertake such timely inspections nor that its process of inspection and its outcome was flawed in any manner. Further, there is no allegation that the Noticee observed these violations and still allowed it to be continued or failed to undertake action against the APs after observing such violations. In this particular scenario no charges can be levied against the Noticee for the violation of Stock Broker Code of Conduct or any of the other Rules, Regulations and Circulars of SEBI.

11. It is further reiterated that the Noticee is in the business of stock broking since the past 31 years, while placing utmost regard to all regulatory compliances in a timely manner. The Noticee has about 8,00,000 registered clients. These clients are serviced with the work force of a team of 1253 dedicated and trained employees. Further the Noticee has various branches across India along with a network of 1317 APs PAN India.

12. It is further submitted that it has been and will always be the Noticee's endeavours to fully comply with all applicable provisions of Bye laws, Rules, Regulations and Circulars of the Exchange. Despite this, at times there are some minor lapses which occur due to human errors in the rush of day-to-day operations to ensure best services to the clients. The Noticee would request you to kindly take a lenient view and condone such lapses, if any.

13. Therefore, it is once again reiterated that the Noticee have never acted deliberately in defiance of the law nor is it guilty of wilful misconduct or conscious breach of any provision. The Noticee is aware that it owes a duty to its clients and it is submitted that both the Noticee and its APs have acted as prudent brokers in the ordinary course of its dealings with all its clients and the lapses observed, if any, in the Inspection report and carried forwarded in the present SCN, are isolated instances of human error and not forming any pattern which would lead to doubt/suspicion or for personal *benefit or with the intent to defraud the investors/clients. The Noticee further highlights that the process of Inspection should be considered as enabler to strengthen the process of a broker and not as a means to find fault with it and punish it for small transgressions, if any, without appreciating the efforts of the broker to maintain necessary compliances and steps taken to plug the loopholes pointed out during the course of the inspection.*

14. Further, on becoming aware of the stray lapses, if any, the Noticee have immediately taken steps to rectify the same and avoid their recurrence in future, which is also the objective of an inspection and hence, such penalty should not be imposed on it.

15. In view of the aforementioned submissions, the Noticee humbly prays that based on the facts and circumstances, no penalty ought to be imposed thereupon and accordingly, the proceedings initiated against the Noticee ought to be quashed.

16. It is once again reiterated that the Noticee is a law-abiding member of the securities market and has put in place all the necessary processes and procedures to ensure compliances with all applicable Acts, Rules, Regulations, Bye-laws, Circulars, etc. as laid down by SEBI and amended from time to time.

…"

D. CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant case are:

Issue No. I:	Whether the Noticee has violated the provisions of SEBI Stock Broker Regulations, 1992, as alleged?
Issue No. II:	If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992?
Issue No. III:	If yes, what should be the monetary penalty that can be imposed upon the Noticee?

13. Before proceedings with the matter on merits, I would first deal with key technical contentions made by the Noticee.

13.1. The Noticee in its submissions as reply to the SCN has submitted that the Noticee exercised a reasonable due diligence while exercising its duties as the principal broker. In this regard, the Noticee has cited the judgments of Hon'ble Supreme Court in the case of Chander Kanta Bansal v. Rajender Singh Anand, [2008 (5) SCC 117], Hon'ble Securities Appellate Tribunal in the case of Almondz Global Securities Limited v. Securities and Exchange Board of India (Appeal No. 275 of 2014), WTM Order No. WTM/GM/EFD DRA-

1/12/FEB/2017 in the matter of Brooks Laboratories Ltd. dated February 09, 2017, WTM Order No. WTM/RKA/ID-8/96/2014 in respect of PNB Investment Services Ltd. dated February 09, 2017.

In this regard, the Noticee has also submitted, " …*the crux of the allegation made against the Noticee emanates from SEBI's stand that the Noticee and its Authorised Persons have a 'Principal-Agent relationship' and therefore, in this regard, the Noticee ought to be held liable for a negligent act undertaken by the APs irrespective of the nature whatsoever. In this regard, the Noticee humbly submits that while there is in fact a 'Principal-Agent relationship' between the parties, the same could only extend to all the permitted activities under the agency agreement which in the present case is the AP Agreement and any acts in derogation thereof could not fall within the ambit of the agency*… *It is also submitted that the Noticee cannot be liable for the acts of the APs which are done beyond the scope of their 'Agent-Principal relationship' even when such act is committed by the agent*…" In this regard, the Noticee has cited the judgments of Hon'ble Supreme Court in the matter of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt [(1966) SCC Online SC 210] and of Hon'ble Bombay High Court in the matter of M. Shashikant & Co. & Ors. v. Union of India & Ors. [(1986) SCC Online Bom 456].

13.2. In this regard, I note that as per SEBI Circular MIRSD/DR-1/CIR-16/09 dated November 06, 2009, "*The stock broker shall be responsible for all acts of omission and commission of the authorized person*" and "*All acts of omission and commission of the authorized person shall be deemed to be those of the stock broker*" and "*If any trading terminal is provided by the stock broker to an authorised person, the place where such trading terminal is located shall be treated as branch office of the stock broker.*" and "*Stock Broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them*". Therefore, I note that any lapses on part of the AP are deemed to be those of the stock broker. Therefore, the Noticee's contentions cannot be sustained and hence not acceptable.

14. I now proceed to deal with the matter having regard to the submissions of the Noticee on merits:

Issue No. I: Whether the Noticee has violated the provisions of SEBI Stock Broker Regulations, 1992, as alleged?

15. I note from the material available on record that the following was inter alia observed and alleged in respect of the Noticee:

16.1. Finding A: Trading terminals verification:

16.1.1. In this regard, the following was inter alia observed and alleged that:

A) **Stockology Securities Private Limited:** 1 trading terminal (2 segments) allocated to the AP was operated by other than approved user/person.

B) **Maloo Commodities and Stock Trading Private Ltd:** 2 trading terminals situated at the place of inspection has been operated by other than approved users/persons.

Accordingly, it was alleged that the Noticee had violated provisions of Regulation 26(xix) and Clause A(1) & A(2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

16.1.2. In this regard, I note that Regulation 26(xix) of SEBI Stock Broker Regulations, 1992 reads as under:

"…

Liability for monetary penalty.

26. A stock broker [65][***]shall be liable for monetary penalty in respect of the following violations, namely—

…

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

…"

16.1.3. Further in this regard, I note that Clause A(1) & A(2) of Schedule II for Code of Conduct read with Regulation 9 of of SEBI Stock Broker Regulations, 1992 reads as under:

"…

Conditions of registration.

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

…

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

…

Schedule II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

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

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

…"

16.1.4. In this regard, it was inter alia observed and alleged that in case of Stockology Securities Private Limited, 1 trading terminal (2 segments) allocated to the AP was operated by other than approved user/person as per below:

S. No.	User ID	Segment	CTCL ID	Approved user as per exchange	Remarks
1	44731	CM	452010018001	Mr. Aniket Shukla	The CTCL was not operated by approved user Mr. Aniket Shukla, instead it was operated by Mr. Vikas Bundela (employee of AP)
2	40522	FO	452010018001	Mr. Aniket Shukla	The CTCL was not operated by approved user Mr. Aniket Shukla, instead it was operated by Mr. Vikas Bundela (employee of AP)

In this regard, the Noticee has submitted:

"… *It is submitted that the observation of the Inspection Team pertains to a* *specified period during the day on which the physical inspection was conducted by them at the premises of the AP i.e. October 12, 2023 between the period 10:00 AM to 11:00 AM. On the basis of this limited period observation, it cannot be concluded that the said terminal was operated by unauthorized person for the entire duration for the existence of the said terminal especially when such observation is based on a brief period on the day of inspection…It is submitted that Mr. Aniket Shukla being the promoter and main point of contact from Stockology was co-ordinating with the Inspection Team for their smooth process of inspection and also handling the client requirements as and when required. Therefore, he was not available at his system when the inspection team made the aforesaid observation. Furthermore, it is put forth to the Noticee by Mr. Aniket that one of his clients had instructed him to track a particular stock and that he would issue necessary instructions upon reaching the limits as instructed. However, since he was not available to track the movement of the stock as requested by the client, he had instructed one of his staff to keep watch on the said stock. Therefore, when the specific observation was made by the Inspection Team, such staff member was sitting on the terminal keeping track of the stock as instructed and this led to the incorrect observation*…"

16.1.5. In this regard, I note from the material available on record that the inspection team observed that 1 trading terminal (2 segments) allocated to Stockology Securities Private Limited was operated by Mr. Vikas Bundela, while Mr. Aniket Shukla was the approved user/person for the said trading terminal. I further note that the Noticee has not disputed the allegation that Mr. Vikas Bundela was operating the said trading terminal in so far the Noticee has interalia submitted, "*when the specific observation was made by the Inspection Team, such staff member was sitting on the terminal keeping track of the stock as instructed*".

16.1.6. As regards the Noticee's contention, "*Mr. Aniket Shukla being the promoter and main point of contact from Stockology was co-ordinating with the Inspection Team for their smooth process of inspection and also handling* *the client requirements as and when required. Therefore, he was not available at his system when the inspection team made the aforesaid observation",* I note that the Noticee did not make any such contention at the time providing response to the findings of inspection to SEBI. Thus, I am not convinced with the contention of the Noticee in this regard and apparently the same are made as an afterthought.

Further, the Noticee's contention, "*one of his clients had instructed him to track a particular stock"* is not acceptable as the same is without any specifics and is therefore vague in nature.

Further in this regard, I note that as per Regulation 26(xix) of SEBI Stock Broker Regulations, 1992, a stock broker is liable for a monetary penalty for extending use of trading terminal to any unauthorized person or place. Therefore, the Noticee's submissions, "…*On the basis of this limited period observation, it cannot be concluded that the said terminal was operated by unauthorized person for the entire duration for the existence of the said terminal especially when such observation is based on a brief period on the day of inspection..."* is devoid of merit and hence not acceptable.

16.1.7. It was also observed and alleged that in case of Maloo Commodities and Stock Trading Private Ltd 2 trading terminals situated at the place of inspection had been operated by other than approved users/persons as per below:

S. No.	CTCL ID	Approved user as per exchange	Person operating at the time of inspection	Remarks
1	440001002001	Mr. Ravindra Ramesh Maloo	Mr. Vipin	The CTCL was not operated by approved user Mr. Aniket Shukla, instead it was operated by Mr. Vikas Bundela (employee of AP)
2	440001002003	Mr. Bhushan G Kottipalliwar	Mr. Tileshwar Barapatre	The CTCL was not operated by approved user Mr. Aniket Shukla, instead it was operated by Mr. Vikas Bundela (employee of AP)

16.1.8. In this regard, I note from the material available on record that the inspection team observed that 2 trading terminal allocated to Maloo Commodities and Stock Trading Private Ltd were operated by Mr. Vipin and Mr. Tileshwar Barapatre, while Mr. Ravindra Ramesh Maloo and Mr. Bhushan G Kottipalliwar were the approved user/person for the said trading terminal. I further note that the Noticee has not disputed the allegation that unauthorised persons were operating the said trading terminals.

16.1.9. In this regard, I note that the Noticee's submission "…*It is submitted that operation of the terminal by the person not being the approved user is not a regular course of action for Maloo Commodities. It is affirmed that in ordinary course only the approved user operates the terminals designated to him. However, it is submitted that, September 26, 2023 was an exceptional day when suddenly two of the three approved users were not available in office to execute trades on behalf of the clients and therefore, it created undue pressure on the one approved user who was available in the office*…" is devoid of merit as Regulation 26(xix) of SEBI Stock Broker Regulations, 1992, makes a stock broker liable for a monetary penalty for extending use of trading terminal to any unauthorized person or place. Therefore, the Noticee's submission is not acceptable.

16.1.10. I further note that the Noticee's submissions are in nature of admission in so far the Noticee has submitted, "…*As regards the trades executed from the terminal of Mr. Ravindra Maloo on September 26, 2023, it can be noted that only three trades on behalf of one client has been executed from the said terminal..."* and *"…While the intention of Mr. Maloo when issuing instructions to his staff, Mr. Vipin was for him to pass on the instructions to the authorized dealer who was present at the office to place the trades from his terminal. However, Mr. Vipin misunderstood the instructions of Mr. Maloo and accordingly executed the trades from the terminal where Mr. Ravindra himself was the approved dealer…"* and "…*this is a one-off event…*"

16.1.11. Further in this regard, I note that the Noticee's submission, "…*Mr.*

Tileshwar is a dealer with necessary certificates issued by NiSM to enable him to be appointed as an approved dealer…" is out of context as Mr. Tileshwar Barapatre was not an approved user for the trading terminal.

I also note that the Noticee's submissions are in nature of admission in so far the Noticee has submitted, "…*Mr. Tileshwar who also had the necessary NiSM Certification to be appointed as an authorized user for the terminal, executed certain trades on the behalf of the client…"*

16.1.12. In view thereof, I find that the allegation that in case of Stockology Securities Private Limited, 1 trading terminal (2 segments) allocated to the AP was operated by other than approved user/person and in case of Maloo Commodities and Stock Trading Private Ltd, 2 trading terminals situated at the place of inspection has been operated by other than approved users/persons, stands established. Therefore, I hold that the Noticee had violated Regulation 26(xix) and Clause A(1) & A(2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI Stock Brokers Regulations, 1992.

16.2. Finding B: Verification of bank statement:

16.2.1. In this regard, the following was inter alia observed and alleged:

A) **The Grow Capital Finance Services (Proprietor -Reena Pathak):**
In 03 instances, movement of funds between client & AP was observed.

B) **Maloo Commodities and Stock Trading Private Ltd:-**
In 10 instances, movement of funds between client & AP was observed.

Accordingly, it was alleged that the Noticee had violated provisions of Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/48536 dated June 09, 2021; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers)

Regulations, 1992.

16.2.2. In this regard, I note that Clause A(2) and Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 reads as under:

"…

Conditions of registration.

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

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

…

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General

…

(2) Exercise of due skill and car : A stock-broker shall act with due skill, care and diligence in the conduct of all his business

…

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

…"

16.2.3. It was inter alia observed and alleged that in case of Maloo Commodities and Stock Trading Private Ltd, in 10 instances, movement of funds between client & AP was observed.

16.2.4. In this regard, I note that the Noticee has submitted, "…*In this regard it is submitted that the AP registered with the Noticee is Maloo Commodities and Stock Trading Private Limited which is a company incorporated under the provisions of the Companies Act, 2013 on November 30, 2021…Ravindra Maloo HUF is a Hindu Undivided Firm of the promoter director and shareholder of Maloo commodities. Therefore, it can be said that the Ravindra Maloo HUF is not an entity who comes within the purview of either the Noticee or SEBI… it is submitted that the transactions pertained to the repayment of the loan taken by the Ravindra Maloo HUF from the entities which also happen to be the clients of the Noticee*"

In this regard, I note from the text of the related provision alleged to have been violated that as per NSE circular NSE/COMP/48536 dated June 09, 2021, "…*the Authorised Person is prohibited from:*

1. *Accepting any receipt or payment/delivery of funds & securities of the clients. Authorised Person shall not collect or receive any funds or securities from the clients and shall not charge any amount from the clients, directly or indirectly, for the services rendered on behalf of the Member as an agent"*

16.2.5. In this regard, I note that the material available on record has not brought out how the bank statement of Ravinder Maloo HUF was relevant to the alleged violation with regard to Maloo Commodities and Stock Trading Private Ltd. Therefore, I am inclined to allow benefit of doubt to the Noticee in this regard.

16.2.6. It was also inter alia observed and alleged that in case of The Grow Capital Finance Services (Proprietor -Reena Pathak), in 03 instances, movement of funds between client & AP was observed.

16.2.7. In this regard, the Noticee has submitted that, "…*Vide this NSE Circular it is clarified that an AP is restrained from collecting or receiving any funds or securities from the clients and further, he is restrained from charging any amount from the clients, directly or indirectly, for the services rendered on behalf of the broker as an agent…"* and *"…However, upon perusing the allegations which has been levied in the present case, it can be noted that the allegation against Grow Capital is in respect to the payment of certain funds made by the AP to the clients…"*

16.2.8. I note that the Noticee has inter alia contended that the provision does not mention anything about payment of funds by AP to clients. In this regard, I note from the text of the related provision alleged to have been violated that as per NSE circular NSE/COMP/48536 dated June 09, 2021, "…*the*

Authorised Person is prohibited from:

2. ***Accepting any receipt or payment/delivery of funds & securities of the clients****…"*

Further, the NSE Circular also states, "*Member shall conduct periodic inspection of their Authorised Persons and records of the operations carried out by them in accordance with Exchange circular dated October 18, 2019 (Ref NSE/INSP/42448NSE/INSP/42448)."*

I also note that Annexure A of NSE Circular NSE/INSP/42448NSE/INSP/42448 states, "*Members while undertaking the inspection of Branches and AP offices shall examine that all applicable regulatory requirements have been complied with including following indicative parameters:*

…

3. There is ***no movement of Funds*** *and securities between the client and AP/branch official for settlement of trades on the Exchange. Demat statement and bank accounts of the AP to be examined to verify such instances.*

…"

Therefore, I note that the Noticee's contention is devoid of merit and hence not acceptable.

16.2.9. In this regard, the Noticee has also inter alia submitted, "*upon enquiry with Grow it was represented to us by Grow Capital that the due to some internal arrangement between the client and Grow Capital, a portion of the brokerage earned by the AP from the trades of such clients were returned to such client. The decision to repay part of the brokerage earned by the AP from the trades of the client was not in furtherance to the Grow Capital being the agent of the Noticee but was in its personal capacity and therefore no allegation of violation of the provisions of the NSE Circular dated June 09, 2021 can be alleged against the Noticee."*

In this regard, I note that as per the provisions of NSE circular NSE/COMP/48536 dated June 09, 2021, the Authorised Person is prohibited from accepting any receipt or payment/delivery of funds & securities of the clients and the Authorised Person shall not collect or receive any funds or securities from the clients and shall not charge any amount from the clients, directly or indirectly, for the services rendered on behalf of the Member as an agent. Further, I note that the transaction with respect to the refund of brokerage is in relation to the services rendered on behalf of the Member as an agent. Therefore, the Noticee's contention is devoid of merit and not acceptable.

16.2.10. In view thereof, I find that the allegation that in case of The Grow Capital Finance Services (Proprietor -Reena Pathak), in 03 instances, movement of funds between client & AP was observed, stands established. Therefore, I hold that the Noticee had violated Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/48536 dated June 09, 2021 and Clause A(2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

16.3. Finding C: Office management of AP:

16.3.1. In this regard, the following was inter alia observed and alleged:

A) Teena Bansiya: Upon visit, it was observed that the AP-Ms. Teena Bansiya was not working from the address provided to the Exchange.

B) Stockology Securities Private Limited: Complaint register not maintained properly.

C) The Grow Capital Finance Services (Proprietor -Reena Pathak): Complaint register not maintained properly.

D) Maloo Commodities and Stock Trading Private Ltd:- Terminal of other trading Member was also there at the AP place and no proper demarcation was maintained with AP of other Member.
Documents were maintained jointly with other AP's documents and documents were not segregated properly.

Accordingly, it was alleged that the Noticee had violated provisions of Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with Clause 16 and 19 of Annexure A to NSE circular NSE/INSP/42448 dated October 18, 2019; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

16.3.2. It was inter alia observed and alleged that Teena Bansiya was not available at the said location and interior work was going on. So, the NSE inspection team called the AP on the contact number updated with Exchange-79xx91xx97. The call was attended by the brother of AP-Mr. Shubham Jain who informed that they were not in business due to health condition of his sister-Teena Bansiya (AP). Further, it was observed from the bank statement that the AP had made a payment of Rs.4.78 Lakhs to workie i.e. co-working space, from which it can be construed that the AP is not working from the address provided to the Exchange.

16.3.3. In this regard, the Noticee has submitted, "…*Ms. Teena Bansiya at the time of the inspection conducted at her premises, she was expecting a baby and accordingly was not attending office…she does not have any terminal assigned to her all the trades of the clients mapped with her were placing their trades through the online trading mechanism and therefore never visited her office for placement of any others and such other things connected to it and therefore these clients also raised their issues and objections with Ms. Bansiya virtually i.e. telephonically or through other electronic means of communications…since Ms. Teena was not frequenting her office premises, the landlord of the said premises decided* *that it was an ideal time to renovate the said premises so as to cause least bit of trouble to the occupier viz. Ms. Teena."*

The Noticee has further submitted, "…*As regards to the observation that Ms. Teena was operating from another premise for which she had paid an amount of Rs. 4.78 Lakhs to Workie, a co-working space. In this regard it denied that Ms. Teena was operating from some other premises other than the one registered in the records. It is submitted that the payment to Workie was to enable Ms. Teena to shift the premises from the present address to the new premises at Workie, however, the same did not work out and the payment was forfeited by Workie. It is further submitted that Ms. Teena is still operating from the already registered premises after she resumed going to office therefore the observation that she was operating from some other premises is incorrect…as regard the observation that when contacted Ms. Teena, her brother answered the call from the Inspection Team and said that Ms. Teena was no longer in the business. In this regard it is submitted that the same is either due to an in appropriate understanding of the question by the brother of Ms. Teena or due to the inappropriate understanding of the response of the brother of Ms. Teena. It is hereby affirmed that Ms. Teena continues to be the AP of the Noticee and continues doing her business from the same location as registered…"*

In this regard, I note from the material available on record that the alleged violation with respect to Teena Bansiya that she was not working from the address provided to the Exchange, has not been brought out clearly along with specific details, with regard to Teena Bansiya. Therefore, I am inclined to allow benefit of doubt to the Noticee in this regard.

16.3.4. Further, it was inter alia observed and alleged that in case of Stockology Securities Private Limited and The Grow Capital Finance Services (Proprietor -Reena Pathak), the complaint register was not maintained properly and that in case of Maloo Commodities and Stock Trading Private Ltd. documents were maintained jointly with other AP's documents and documents were not segregated properly.

16.3.5. In this regard, the Noticee has submitted that, "…*it is submitted that the same is a baseless allegation and the same is not substantiated by any proof to that accord…it is submitted that the APs of the Noticee have maintained the Complaint Register. It is further submitted that there is no specific format which has been prescribed to be followed for maintenance of these registers… while the Noticee has prescribed a standard format of the registers which are required to be maintained at their offices whether branch or otherwise…It is further submitted that it has been confirmed by the Noticee that the APs did not receive an complaints which are required to be entered in to in the Investor Grievance register and therefore through these registers were maintained by these APs, it was not kept in best of the shapes having no use for such registers in recent times*…"

16.3.6. In this regard, I note from the material available on record that the alleged violations in respect of Stockology Securities Private Limited and The Grow Capital Finance Services (Proprietor -Reena Pathak) that the complaint register was not maintained properly, has not been brought out clearly along with specific details in respect of the Noticee in this regard. Therefore, having regard to the submissions of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

16.3.7. It was also inter alia observed and alleged that in case of Maloo Commodities and Stock Trading Private Ltd. documents were maintained jointly with other AP's documents and documents were not segregated properly.

In this regard, the Noticee has submitted that, "*it is submitted that the aforesaid observation is made on the basis of a file found at the office premises during the course of the inspection. Upon enquiry and examination of the contents of the file, it was noted that the file was maintained by the office peon of the AP and the file contained counter foils of the pay-in-slip of the cheques deposited by him. It is submitted that since the office is a shared premises the services of peon are sometimes offered* *for the assistance of the other broker's AP and accordingly for deposit of cheques which are received by the APs from their clients to be deposited in their respective broker's client accounts. It is submitted that as a record of the cheques deposited by the peon on behalf of the APs, he maintained the counter foils of the pay-in-slip used by him to deposit such cheques. This is maintained by him for his personal record and not at the insistence of either of the broker's AP. It is further submitted that this file does not form part of the books and records maintained by the AP but was the personal record of the peon of the AP and therefore was not required to be under inspection*."

16.3.8. In this regard, I note from the material available on record that save for only a copy of picture of file cover, no other details and/or documents are available as per material available on record. Therefore, I am inclined to allow benefit of doubt to the Noticee in this regard.

16.4. Finding D: Non-Reporting of clients mapped to Authorised Persons (AP):

16.4.1. In this regard, the following was inter alia observed and alleged:

A) Teena Bansiya

As per submission to exchange - 1470 clients

As per data provided by member - 1477 clients

No. of clients not reported to exchange - 7 clients

B) Stockology Securities Private Limited

As per submission to exchange - 8015 clients

As per data provided by member - 8133 clients

No. of clients not reported to exchange - 118 clients

C) The Grow Capital Finance Services (Proprietor -Reena Pathak)

As per submission to exchange - 6741 clients

As per data provided by member - 6967 clients

No. of clients not reported to exchange - 226 clients

Accordingly, it was alleged that the Noticee had violated provisions of Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/49509 dated September 03, 2021; Clause A (2) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

16.4.2. In this regard, I note that Clause A(2) of Schedule II for Code of Conduct read with Regulation 9 of of SEBI Stock Broker Regulations, 1992 reads as under:

"…

Conditions of registration.

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

…

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

…

Schedule II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

…

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

…

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

…"

16.4.3. I also note that NSE Circular No. NSE/COMP/49509 dated September 03, 2021 reads as under:

"…

In order to have additional information about the APs and to enhance the regulatory oversight over them, it has been decided, after mutual discussion with other Exchanges, to obtain and *maintain the details of the clients that are mapped to the respective registered APs. In view of the same, all the trading members are hereby required to upload the details of such clients, if any, as given in Annexure-A, against the respective APs in the Exchange database*

…"

16.4.4. In this regard, the Noticee's submissions are in nature of admission in so far the Noticee has submitted, "*the same is due to a human error and the said certain human error was due to which the details collected from the system to be submitted to the exchange were incorrect… the records and the process of collection of the data has been updated to avoid the repetition of such an error… in the said weekly report some client's data was missed while generating the report… the error is just a temporary mismatch...*"

16.4.5. In view thereof, I find that that the allegation that the Noticee did not report clients mapped to APs, stands established. Therefore, I hold that the Noticee has violated Clause A (5) of Schedule II for Code of Conduct read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992 read with NSE circular NSE/COMP/49509 dated September 03, 2021.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992?

17. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI (Stock Brokers) Regulations, 1992.

18. In this regard, the Noticee has interalia contended that, "*the procedural lapses, if any, be seen in the context of its overall volume, the number of transactions executed by it and the various compliance measures adopted by it*." In this regard, the Noticee has cited the judgments of Hon'ble SAT in UPSE Securities Ltd. Vs SEBI in Appeal No.109 of 2011, SEBI Adjudication Order No. EAD/ AO-NP/ JR/ 39 /2017 dated May 22, 2017 in the matter of IFCI Financial Services Limited, SEBI Adjudication Order No. EAD-12/ AO/SM/191 /2017-18 dated February 26, 2018 in

the matter of Marfatia Stock Broking Private Limited, Honourable SAT, in DSE Financial Services Ltd. v SEBI in Appeal No. 153 of 2012.

The Noticee has further contended, "…*your goodself shall also have to justify the imposition of penalty on the Noticee in its acts as the principle to its APs, contemplating the stipulations provided under Sections 15 I, 15HB, and 15 J of the SEBI Act…"* In this regard, the Noticee has cited the judgments of Hon'ble SAT in the case of Kensigton Investment Ltd. Vs. SEBI and Brentfield Holdings Ltd. Vs. The Chairman, Adjudicating Officer, SEBI Appeal Nos. 27, 28, 30 and 31/2002, Hon'ble SAT in the case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002, Hon'ble Supreme Court in Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579, Hon'ble Supreme Court of India in the matter of Adjudicating Officer vs. Bhavesh Pabari (Civil Appeal No. (S).11311 of 2013, dated February 28, 2019), Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v. State of Orissa (AIR 1970 SC 253), Hon'ble Securities Appellate tribunal in the matter of M/s. Cabot International Capital Corporation vs. Adjudicating Officer, Securities & Exchange Board of India (Appeal No. 24/200) and Hon'ble Securities Appellate Tribunal in the matter of Doogar and Associates Securities Ltd. Vs. Securities and Exchange Board of India.

19. In this regard, I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire category of the intermediary viz., SEBI Registered Stock Brokers and not just about minor procedural aspects specific to the Noticee.

20. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

> *" ... In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established .... "*

21. Therefore, for the above violation, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act which provides as following:

"…

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.

…"

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

SEBI Act

"………..

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—

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

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

c. the repetitive nature of the default.

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

…………..."

23. In the instant matter, I note that the material on record does not indicate the amount of disproportionate gain or unfair advantage made by the Noticee, and the amount of loss caused to an investor or group of investors as a result of the aforesaid violation, nor does it specifically indicate that the violation committed by the Noticee is repetitive in nature. However, I note that the Noticee being a SEBI registered Stock Broker was required to comply with the applicable provisions of securities law, which it failed to, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. Such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

24. Considering the facts and circumstances of the instant case, the material available on record, the factors mentioned in preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/ (Rupees Two Lakhs Only) on the Noticee under Section 15HB of SEBI Act, 1992, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

25. The Noticees shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

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

DATE: October 09, 2024	**AMAR NAVLANI**
PLACE: MUMBAI	**ADJUDICATING OFFICER**