BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/VV/AK/2022-23/21664]

Under section 15-I of the Securities and Exchange Board of India Act, 1992 read with rule 5 of the Securities and Exchange Board Of India (procedure for holding inquiry & imposing penalties) Rules, 1995

&

section 23-I of the Securities Contracts (Regulation) Act, 1956 and rule 5 of the Securities Contracts (Regulation) (procedure for holding inquiry and imposing penalties) Rules, 2005

&

section 19-H of Depositories Act 1996 read with rule 5 of Depositories (procedure for holding inquiry and imposing penalties) Rules, 2005.

In respect of –

Bonanza portfolio Limited

(PAN: AAACB0764B)

(SEBI Reg. No. INZ000212137)

In the matter of Bonanza portfolio Limited

A. BACKGROUND

1. Securities and Exchange Board of India ('hereinafter referred to as "**SEBI"**) conducted inspection of the books of accounts and other records of Bonanza Portfolio Limited (hereinafter referred to as "**Noticee"/ "Broker"**), to ascertain whether the Noticee had complied with the provisions of Securities and Exchange Board of India Act 1992 (hereinafter referred to as "**SEBI Act**"), Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as 'the "**SCRA**"), Depositories Act 1996"(hereinafter referred to as "**Depositories Act**"). The inspection was conducted during August 23, 2021 to October 28, 2021 and the period covered under inspection was from April 2020 to July 2021 (hereinafter referred as "**Inspection Period**"). The observations made during the course of

inspection were recorded as inspection report and communicated to the Noticee vide SEBI letter dated January 19, 2022. The Noticee had submitted its comments/ explanations on the aforesaid observations of the inspection vide its letter February 21, 2022.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Asha Shetty was appointed as the Adjudicating Officer (hereinafter referred to as "**erstwhile AO**"), vide communiqué dated August 1, 2022, under:

    a) Section 15-I (1) of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Adjudication Rules"**),

    b) Section 19-H of Depositories Act 1996 read with rule 3 of Depositories (procedure for holding inquiry and imposing penalties) Rules, 2005 (hereinafter referred to as **"Depositories Adjudication Rules"**). and

    c) Under section 23-I of SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the "**SCRA Adjudication Rules**").

    to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 19G of the Depositories Act and Section 23D of SCRA, for the violations as mentioned below in the table no. 1. Pursuant to the internal structuring, undersigned has been appointed as Adjudicating Officer (AO) *vide* communiqué dated October 06, 2022. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*."

C. SHOW CAUSE NOTICE, REPLY, HEARING

3. The Show Cause Notice (hereinafter referred to as "**SCN**") bearing no. EAD-8/AS/VS/42749/2022 dated August 12, 2022 was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules/Depositories Adjudication Rules/SCRA Adjudication Rules to show cause as to why an inquiry should not be held and

penalty not be imposed against it under section 15HB of the SEBI Act, section 19G of Depositories Act and section 23D of SCRA for the violation alleged in the below table:

Table No 1

S.N.	Alleged violation	Statutory Provision
1	Mis-utilization of funds and securities of clients	(i) section 23D of SC(R) Act, 1956 read with clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. (ii) Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
2	Non-segregation/Mis-utilization of funds of clients:	(i) section 23D of SC(R) Act, 1956 read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and (ii) Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016..
3	Monthly/Quarterly settlement of funds and securities of clients	(i) clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. (ii) Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
4	Client Funding (sample of 50 clients)	(i) clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.
5	Client's order placement	(i) clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.
6	Incorrect/Non Reporting of Enhanced Supervision data	(i) clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
7	Non-closure of client beneficiary accounts and clients collateral account:	(i) clause 5(a) of SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 and (ii) clause 12 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 220 read with clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/22 dated May 25, 2020.
8	DIS issuance/Executions (DP Operations)	(i) CDSL Communiqué no. CDSL/OPS/DP/SETTL/2021/54 dated February 08, 2021.

4. The SCN was issued through SPAD/email and duly delivered to the Noticee in terms of rule 7 of SEBI Adjudication Rules/Depositories Adjudication Rules/ SCRA Adjudication Rules. Subsequently, Noticee filed its reply vide letter dated November 07, 2022. The hearing was concluded on November 10, 2022. The hearing was scheduled through video conferencing on WebEx platform. On the

scheduled date of hearing, the authorized representative of the Noticee appeared before me through video conference and reiterated the submission vide letter dated November 07, 2022 and requested for the filing of post hearing submission which was acceded by me in the interest of principles of natural justice. Noticee filed the post hearing submission vide email dated November 17, 2022. The process of adjudication proceeding has been mentioned below:

Table No 2

Noticee	SCN	Reply	Hearing Concluded
Bonanza Portfolio Limited	August 12, 2022	Letter November 07, 2022, and November 17, 2022	November 10, 2022

5. The allegations levelled in the SCNs against Noticee, its submissions and findings in respect of the same are dealt with in the subsequent paragraphs of this order.

D. RELEVANT PROVISIONS

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

Regulation of Transactions Between Clients and Brokers

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

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

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

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

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

i. money held or received on account of clients;

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

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

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

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

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

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

SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

2. SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

a)……..

………………..

d) Clause2.6 stands modified as,"Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in,except,in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time. "This clause would be effective from August 1, 2017.

SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017

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

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

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

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

Annexure

2.Reporting of Bank and Demat accounts maintained by Stock Broker:

……………………………………………………………………………………….

2.4.In line with the prevalent regulatory requirement, it is reiterated that;

…………………………………………………………………………………………

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

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

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

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

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

> ***A**- Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges.*
>
> ***B**- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i.e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.*
>
> ***C**- Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations).*
>
> ***D-**Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)*
>
> ***E-**Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)*
>
> ***F**-Aggregate value of Non-funded part of the BG across Stock Exchanges*
>
> ***P-**Aggregate value of Proprietary Margin Obligation across Stock Exchanges*
>
> ***MC-**Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges*
>
> ***MF-**Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges.*

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

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

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

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

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

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

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

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

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

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

Principle: The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the client's funds to the extent of positive value of G. The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).
If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

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

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange. The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

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

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

Principle: The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J is calculated as under:

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

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B. In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilized towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

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

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

3.4. Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.

3.5. Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.

3.6. Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.

<u>SEBI Circular No: SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020</u>

***12.** The TM / CM shall be required to close all existing demat accounts tagged as 'Client Margin/ Collateral' by June 30, 2020. The TM / CM shall be required to transfer all client's securities lying in such accounts to the respective clients' demat accounts. Thereafter, TM / CM are prohibited from holding any client securities in any beneficial owner accounts of TM/CM, other than specifically tagged accounts as indicated above, and in pool account(s), unpaid securities account, as provided in SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019.*

<u>SEBi Circular No.: SEBI/HO/MIRSD/DOP/CIR/P/2020/22 dated May 25, 2020</u>

2. In view of the situation arising due to Covid-19 pandemic, lockdown imposed by the Government, representations received from the Depositories and the Clearing Corporations and that the change to the systems and software development still under progress, it has been decided to extend the implementation date of the aforesaid circular to August 01, 2020. Accordingly, in terms of paragraph 12of the circular, the trading member (TM) / clearing member (CM) shall be required to close all existing demat accounts tagged as 'Client Margin / Collateral' by August 31, 2020.

<u>SEBI Circular No.: CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019.</u>

5*.Opening and reporting of Demat Accounts by TM/CM:*

In order to implement the above,the following course of action shall be taken by TM/CM:

a) All the existing client securities accounts opened by the TM/CM other than 'Pool account' (including 'Early Pay-in'), 'Client Margin Trading Securities account' and 'Client collateral account' shall be wound up on or before August 31, 2019.The TM/CM shall within one week of closure of existing client accounts, inform the Stock Exchange/s the details in the following format:

Name of DP	*Account Number/ Client ID*	*DP ID*	*Name of Account*	*PAN*	*Date of Closing*

<u>SEBI Circular No.: MIRSD/SE/Cir-19/2009 dated December 3, 2009</u>

<u>Running Account Authorization</u>

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

…………………………………………………………………………………………………

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

<u>SCRA, 1956</u>

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

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

<u>SEBI Act</u>

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*

Depositories Act, 1996
Penalty for contravention where no separate penalty has been provided
19G*. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

E. CONSIDERATION OF ISSUES AND FINDINGS

6. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticees and material available on record. The issues that arise for consideration in the present case are:

   Issue No I Whether Noticee is in violation of provisions mentioned under Table no 1.

   Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, 19G of the Depositories Act and Section 23D of SCRA?

   Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules, Section 19-I of Depositories Act read with rule 5(2) of Depositories Adjudication Rule and section 23-I and 23J of SCRA read with rule 5(2) of the SCRA Adjudication Rules?

Issue No I. Whether Noticee is in violation of provisions mentioned under the Table no 1.

7. **Mis-utilization of funds**

   Allegation

   7.1. It was observed in the inspection report that in 23 out of 43 sample instances, funds of credit balance clients' have been mis-utilized to meet the obligations of debit balance clients and/or for its own purpose. The amount of mis-utilization ranges from ₹27 lakhs to ₹19.63 crores.

7.2. It was observed that in 6 out of 43 sample instances, funds of clients' mis-utilized toward proprietary margin obligations. The amount of mis-utilization ranges from ₹1.02 crore to ₹10.82 crores.

7.3. It was observed that in 23 out of 43 sample instances, funds of credit balance clients' have been mis-utilized to meet the margin obligations of debit balance clients and proprietary obligations. The amount of mis-utilization ranges from ₹42 lakhs to ₹31.65 crores.

7.4. In the view of the above it has been alleged that Noticee has violated the provision of section 23D of SC(R) Act, 1956 read with clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Reply

7.5. *Noticee submitted that there are sufficient bank balances of the creditors and the figure in column G was positive on all these dates mentioned in the Show Cause Notice. It is submitted that the inspecting team failed to consider our balances of two client bank accounts and our short term loans HDFC Bank FDRs.*

7.6. *Noticee submitted that while calculating G, Among the Collaterals are the value of the FDs that were issued by HDFC bank (being proceeds of borrowings by Bonanza):*

a. *An amount of Rs. 16.97 Crs to 20.97 Crs have not been considered by SEBI while considering Bonanzas funds as a part of Exchange Collateral as reported under column "B" of the daily Enhanced Supervision data submitted by Bonanza to the Exchanges during September 2020.*
b. *This amount of Rs. 20.97 crs is a part of the FD of Rs. 41.94 crs that was issued by HDFC in favour of NCL in 2016 on behalf of Bonanza. The HDFC bank had issued the FD on the strength of a borrowing made by Bonanza which had a regular periodic renewal and repayment stipulation. This loan facility was a regular commercial transaction that was sanctioned to Bonanza and its Promoters on their standing and financial strength as well as its past performance, account conduct and behaviour and Goodwill of the company.*
c. *These Bank FDRs, made out of the STI- from the bank deposited with the Clearing Corporation, were legitimate and were considered by the*

Exchanges. If at any point we were told that this is not permissible we would have made alternative arrangements. This can be seen by the fact that when NSE ask us to clear the STL by 31st March, 2021, we cleared the same by Jan. 2021 itself and even after paying all STL amount, our figure under 'G' is positive.

7.7. *Noticee submitted that query regarding FDs against Short Term Loans was also pointed out by NSE in their previous Inspection report and the matter had been placed before the Member and Core Settlement Guarantee Fund Committee ("MCSGFC"/COMMITTEE) of NSE held on October 22, 2020. The decision of the Committee is as under and we have been advised by the committee to close these STL before March 31 ,2021, the concerned order read as follow: "Considering the interpretational issue on funded/non-funded portion of fixed deposit. the Committee decided that the Noticee be directed to recoup the shortfall of Clients funds by March 31, 2021, and to refrain from considering fixed deposits funded by way of short-term loan to arrive at the availability of clients' funds."*

7.8. *The pledge / re — pledge software system was not fully stabilized in initial days Of September 2020. Sometime stocks received in payout from clearing corporation / exchanges not received on time even these securities payouts are received post 9 pm and often in midnight also. Due to this, the shares of clients could not be pledged / re-pledged as on that day. Considering these issues, NSE has also issued a circular number NSE/lNSP/45583 dated September 3, 2020 in this regard that there will be no short margin penalty from September 1, 2020 to September 15, 2020 to facilitate a smooth transition for Members to the new system.*

7.9. *Noticee submitted that no client's funds or securities have been used to meet our Proprietary margin obligation.*

7.10. *That no creditors fund has been used for meeting the margin requirement obligation of debit balance clients / Pro margin. This is primarily because of the mistake in the NCCL MGII file giving details of collateral deposits of the Members from aware of this mistake in NCCL File. After raising the query with NCCL about the credit for actual non cash collateral utilization by the clients, the NCCL has referred to its circular dated 25th Sep., 2020 about some changes in the file structure as the deposit files during 1st Sep. 2020 to 24th Sep, 2022 has not been correctly considered the non-cash collateral utilization and accordingly the figure of unutilized deposit available was not proper. NCCL vide its email dated 2nd November 2022 has confirmed our unutilized available deposit for each date from 1st September, 2020 to 24th September, 2022 for F&O segment and considering this correct unutilized available deposit for each respective date there is no misutilization of credit* *balance clients' funds to meet the margin obligation of debit clients / Pro margin.*

Finding

7.11. I note that in the present case, it is an un-disputed fact that the portion of the FD was funded through Short Term Loan which is availed through a bank. In this regard, I note that Clause 3.3.1 of Annexure of SEBI circular no SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides the following formula of G as, G= (A+B)-C for the purpose of calculation of G. Herein, A is cash with the stock broker and with the clearing corporation/clearing member, B is cash equivalents with the stock broker and with the clearing corporation/clearing member and C is Clients' funds as per ledger balance.

7.12. Further, under the Clause 3.2.B of Annexure of said circular prescribed that that <u>**Only the funded portion**</u> **of the bank guarantee shall be considered*, i.e.* the amount deposited by the Noticee with the bank to obtain the bank guarantee as a part of B. (emphasis supplied)** Therefore, the non-funded portion of the bank guarantee is technically a borrowed fund and cannot be considered towards availability of clients' funds with the Noticee. The SCN has given the details of the instances wherein the value of "G" was found to be negative thereby indicating that the funds of the credit balance clients were utilised for the settlement obligations of the debit balance clients or for own obligations. Further, I am also cognizant of the decision of MCSGFC held on October 22, 2020 in the matter of Trading Member M/s. Bonanza Portfolio Ltd. I note that the Member and Core Settlement Guarantee Fund Committee (MCSGFC) of NSE in its order dated September 6, 2021 (relied upon by the Noticee) made the following findings: "*The Committee finds that Exchange Circular No. NSE/INSP/2016/33276 dated September 27, 2016, prescribes explicitly that the funded portion of the bank guarantee shall be considered, i.e. the amount deposited by the Noticee with the bank to obtain the bank guarantee. Therefore, the non-funded portion of the bank guarantee is technically a borrowed fund and cannot be considered towards availability* *of clients' funds with the Noticee. Like-wise, the portion of the fixed deposit, which is funded by the bank in the form of a short-term loan, is technically a borrowed fund and cannot be considered towards availability of clients' funds with the Noticee. Therefore, after excluding the fixed deposit receipts, funded by way of a short-term loan of Rs. 27 crores from the funds available with the Noticee, the shortfall of clients' funds with Noticee works out at Rs.26.28 crores, as on October 31, 2019."*

7.13. In the view of the above I note that the portion of the fixed deposit, which is funded by the bank in the form of a short-term loan, is technically a borrowed fund and cannot be considered towards availability of clients' funds with the Noticee. Thus, Noticee's contention that Portion *i.e*. 50% (non-funded) of Short Term Loan F.D. funded by HDFC Bank Ltd. has been deducted from the collaterals is bereft of any merits.

7.14. Additionally, Noticee submitted that inspection team failed to consider the two bank accounts (J&K bank – ************057 and HDFC ********284) and FDs issued by HDFC Bank Account in the 'G' table. In this regard, I note that the HDFC account number–********284 is Loan Against Shares(LAS) account and the same has been admitted by the Noticee. Further, it is pertinent to note that Clause 1(I) of the SEBI circular SEBI/ HO/ MIRSD/ MIRSD2/ CIR/P/2016/95 dated September 26, 2016 mandates that Stock Broker must follow the uniform nomenclature for naming/tagging of Bank and Demat accounts and reporting of such account. Further, Noticee did not provide any detailed explanation why J&K bank a/c – ************057 should be considered in the G calculation before inspection team of SEBI. I note that even if I admit that the J&K bank account should be considered for the calculation of the G, I find that as per the data provided by the Noticee, balance amount in the account ranges between Rs. 70260.12 as on 31/07/2020 and 100260.12 as on 02/09/2020 which does not make the G positive on 02/09/2020. I highlight that SCN made no allegation of G negative as on the date of 31/07/2020. Further, on 02/09/2020, if we consider the said J&K account for the purpose of calculation G, it still remains negative *i.e.* 7,98,90,344.49. Thus, I am not inclined to accept such contention of Noticee.

7.15. Noticee submitted that there were systemic changes introduced due to pledge-repledge system which led to J value being positive. In this regard, I note that the pledge-repledge system was introduced by SEBI circular SEBI/MIRSD/DoP/CIR/P/2020/28 dated February 25, 2020 and the same was to be implemented on with effect from June 1, 2020. Due to restrictions imposed by Covid it had been decided to extend the implementation date of the aforesaid circular to August 01, 2020. Further, in view of the technical difficulties and pending stabilizsation of the new system, NSE had issued a circular that, from 1st Sep. 2020 to 15th September 2020 no short margin penalty will be charged. Even after considering the same, I note that Noticee had a positive value of 'J' on 15 days (out of 23 instances as alleged in the SCN) ranging from 31.65 cr to 0.42 cr respectively on September 21, 2020 to March 30, 2021. Thus, I note that even though the Noticee had ample time to make necessary adjustments as per the revised system but it failed to do so.

7.16. Noticee submitted that there was a mistake in NCCL File which has been rectified by NCCL subsequently. Noticee placed reliance on the email dated November 02, 2022 received from NCCL. In this regard, I have perused the said email and find that, the unutilized collateral in MG11 file was recomputed by NCCL for the period September 01 to 24, 2020. However, I note that Noticee failed to provide any justification with respect to instances of J positive post September 24, 2020. Further, I note that Noticee had a positive value of 'J' on 8 days (out of 23 instances as alleged in the SCN) ranging from 6.12 cr to 0.42 cr respectively on March 02 to March 30, 2021. Thus, such contention of the Noticee is not acceptable.

7.17. In the view of the above, I find that Noticee violated the provision of section 23D of SC(R) Act, 1956 read with clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3 of

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

8. **Non-segregation/Mis-utilization of funds of clients**

Allegation

8.1. It has been alleged that there was transfer of funds amounting to ₹60.19 crores between client and Noticee's own accounts for other than specified purposes.

8.2. Further, it was observed that on 5 dates in Future and Option (F&O) segment, Noticee met its proprietary obligation via client bank accounts amounting to ₹22.16 crores and on 5 dates in Currency Derivatives (CD) segment, Noticee met its proprietary obligation via client bank accounts amounting to ₹2.34 crores.

8.3. In view of the above, it has been alleged that the Noticee has violated the provision of section 23D of SC(R) Act, 1956 read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Reply

8.4. *Noticee submitted that the said transfer of funds was in lieu of amount to be recovered from the Client Bank Account, such as Service tax/GST, Transaction Charges, STT, Stamp Duty, SEBI Fee, Brokerage, DPC etc. Further, the same has been substantiated by the verified certificate from the Chartered Accountants since 01.04.2017 to 31.03.2022.*

8.5. *Noticee submitted that 5 of F&O segment and 5dates of CDS segment are met from our own account only.*

8.6. *In addition to above Noticee submitted that there was a difference in amount of F&O Pay-in shared by SEBI Inspection team. Actual Pay-in has different amount from the amount SEBI inspection provided to us.*

Finding

8.7. I note that Noticee submitted that transfer of funds were in lieu of amount to be recovered from the Client Bank Account, such as Service tax/GST, Transaction Charges, STT, Stamp Duty, SEBI Fee, Brokerage, DPC etc. Noticee also submitted a certificate from a registered Chartered Accountant certifying the same. At this juncture it is pertinent to note that as per provision of clause 2.4.2 of SEBI circular dated September 26, 2016, transfer of amount for recovery of brokerage, statutory dues etc. constitutes legitimate purpose. Thus, transfer of amount for recovery of aforesaid charges will constitute 'legitimate purpose'.

8.8. From the perusal of record, I note that Noticee *vide* reply dated November 07, 2022 submitted the certificate only for the period of 01-04-2020 to 31-03-2021 and 01-04-2021 to 31-03-2022. However, in the SCN allegation has been made with reference to the inspection period *i.e.* 01-04-2020 to 31-07-2021. Thus, it is not possible to ascertain whether the excess transfer of funds from client Bank a/cs to own a/cs has been made for the legitimate purpose during inspection period. Accordingly, vide email dated 25/11/2022, Noticee was advised to file a separate CA certificate on eligible funds receivable from client bank account for the period of 01-04-2021 to 31-07-2021. The same has been submitted by the Noticee vide email date 28/11/2022. I note from the record that Noticee in its comments to the inspection report submitted a CA certificate dated February 17, 2022 on eligible funds receivable from client bank account for the period of 01-04-2020 to 31-07-2021 which is annexed to the said comments in the form of Annexure 2.

8.9. I note from the records that both the certificate issued by I.P. Mehta & Co. When both the aforementioned certificates have been compared, I have noticed discrepancies which are as follows:

Table No. 3

	CA certificate filed while giving comments to inspection report (dated Feb 17, 2022)	CA certificate filed before me in the present adjudication proceedings (dated Oct 04, 2022 and Nov 28, 2022)
Opening Own Funds Receivable Amount from Client / Settlement Bank A/c as on 01-04-2020	146.20	103.04
Total Net Own Funds to be received from Client Bank Accounts & Settlement A/c as on 31/07/2021	101.93	58.38

8.10. In the view of the above, I have a doubt in the veracity of CA certificate submitted by the Noticee. I note that except the aforementioned CA certificates Noticee failed to provide any other evidence to substantiate its submission that excess transfer of funds from the Clients' Bank a/c to own bank a/c is in furtherance of the legitimate purpose *i.e.* Client Bank Account, such as Service tax/GST, Transaction Charges, STT, Stamp Duty, SEBI Fee, Brokerage, DPC etc. I note from the records that Noticee has not maintained daily reconciliation statement clearly indicating the details of funds transferred between Client bank accounts & own bank accounts.

8.11. Noticee submitted that they had met the pay in obligation (top 5 dates of F&O segment and top 5 dates of 5 of CDS segment) from own account. In this regard, I note from above paras that Noticee failed to substantiate its claim that on said dates it transferred the money from client account for legitimate purpose and subsequently made payment from own a/c. Further, Noticee failed to provide any other specific conclusive evidence for the said 5 dates of F&O segment and said 5 dates of CDS segment.

8.12. Further, Noticee submitted that there is discrepancy in the F&O Pay-in shared by SEBI inspection team. In this regard, I note that Noticee has not disputed the observation made by the inspection team with respect to the 5 instances in CDS segment. I also note that Noticee failed to show the discrepancy in Pay-in calculation before the inspection team during the inspection or while submitting comments to inspection report.

8.13. In the view of pre-paras I find that in top 5 dates in each segment (F&O and CDS segment), Noticee met it proprietary obligation via client bank accounts as funds are transferred from client bank accounts to own bank accounts and from own bank accounts to settlement bank accounts.

8.14. In view of the above, I find that the Noticee has violated the provision of section 23D of SCRA Act, 1956 read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

9. **Monthly/Quarterly settlement of funds and securities of clients**

Allegation

9.1. Inspection team observed that Noticee failed to do settlement of funds and securities active clients in 7 instances (out of sample of 100 instances) amount ranging from ₹1.31 lakhs to ₹7.34 lakh. Thus, it has been alleged that the Noticee has violated the provision of clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Reply

9.2. *Noticee submitted present matter relates 5 clients and total of 7 instances. In all these 7 instances, since the clients owe Bonanza monies, there is no instance or requirement of monthly/ quarterly settlement as on the said dates as the clients do not have any credit funds with Bonanza. On the contrary, these 5 clients (in 7 instances and dates) owe monies to Bonanza (all being debtor Clients as on those dates).*

Finding

9.3. I note that as per clause 12(e) of SEBI circular MIRSD/SE/Cir-19/2009 dated December 3, 2009, the settlement of funds shall be done within 1 working day of the pay-out, unless client specifically authorizes the trading member in writing to maintain a running account.

9.4. In the present case, Noticee contended that since the clients owe Bonanza monies, there is no instance or requirement of monthly/ quarterly settlement. In this regard, I note that Noticee, while calculating the fund for the settlement set aside the 2 times of stocks value (50% haircut on stocks). At this juncture it is pertinent to note that as per FAQs-Actual Settlement of funds and Securities as provided in NSE circular no. 318/2018 dated February 02, 2018:

the application of haircut for the purpose of valuation of securities towards actual settlement as well as towards margin collection should be based on the risk management policy adopted by the Member and informed to the clients. The policy should be uniform across all their clients and should be applied consistently for a minimum period of 1 year

…..While computing the value of securities, the closing rate for the trade date prior to the settlement date (T-1 day) should be considered after appropriate hair-cut viz. VaR margin rate applicable for the security in the Capital Market segment.

…..In case the member applies hair cut in excess of VaR rate on a regular basis then such higher rate may be considered for determining the amount to be retained, provided the member has intimated the requirement of additional margins to the clients through the policy and procedures document…

9.5. In view of the above, I note from the records that clarification was sought from the Noticee vide email dated May 10, 2022 regarding copy of haircut policy and evidences that the same policy was communicated to clients. Further, daily margin statement of 10 sample active clients were sought to ascertain whether the haircut applied is consistent across clients. Vide email dated May 23, 2022, Noticee shared the policy on settlement practice.

I find that on the perusal of the said policy, it does not make a mention on haircut policy regarding valuation of securities. Further, the Noticee has not provided daily margin statement of 10 sample active clients as sought to ascertain whether the haircut applied is consistent across clients.

9.6. In view of the above, I find that the Noticee has violated the provision of clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

10. **Client Funding (sample of 50 clients)**

Allegation

10.1. It is alleged that in 15 instances of the total 50 instance checked, it was observed that Noticee has funded clients beyond T+2+5 days of amount totaling to ₹3.94 crores. Thus, it alleged that Noticee has violated the provision of clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Reply

10.2. *Noticee submitted that exposure amounts mentioned against each of the 15 Clients is not for any particular/ same date for all the clients but the dates for each client is different. Hence, to make or use a summation of the amounts of all these 15 clients may not be appropriate and therefore should not be considered as such.*

10.3. *Noticee submitted that we wish to submit that most of these clients are our very long-standing active regularly trading clients and the trading account of many of them have been in credit subsequent to such exposure and we have made consistent efforts in this regard to restrict exposures to clients.*

10.4. *Noticee submitted that they are able to implement exposure beyond T+2+5 to Our almost 100% Of the clients. You will notice that we have more than 40,000 active clients and the component of these 15 clients whose debit balances are systematically been recovered and is negligible. Since it is a dynamic business and occasionally client get exposures against their available stocks or may be due to cheque updation etc.*

10.5. *We assure you that we will further strengthen our system so that exposures should not be allowed to any client having debit beyond the T+2+5 time lines.*

Finding

10.6. I note that Noticee did not deny the inspection finding that it had granted further exposure to the aforesaid 15 instances beyond the prescribed T+2+5 days. At this juncture it is pertinent to note the clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 which provides that obligation on the part of the Stock Broker (Noticee) is that when a client's inability to pay the requisite amount results in a debit balance, they shall not provide them further exposure if the debit balance persists beyond the fifth trading date as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017. It came into force from August 1, 2017. Therefore, it is mandatory obligation on the part of Noticee to not fund the clients beyond the prescribed T+2+5 days.

10.7. The submission made by Noticee that they have more than 40,000 active clients and the component of these 15 clients whose debit balances are systematically been recovered and is negligible and assurance that they will further strengthen their system so that exposures should not be allowed to any client having debit beyond the T+2+5-time lines would be utmost taken as a mitigating factor. Therefore, the submissions of the Noticee cannot be accepted as there is no exception provided in the SEBI circulars regarding regular clients with sound financial backgrounds.

10.8. In the view of the above it is alleged that the Noticee has violated the provision of clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

11. **Client's order placement**

Allegation

11.1. It was observed that the Noticee has not taken order confirmation from the clients who have visited its office/branch/Authorized Person's office and placed the orders. It has been alleged that Noticee has failed to keep proper evidence of physical record written and signed by its clients. Thus, it has been alleged that the Noticee has violated the provision of clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

Reply

11.2. *Noticee submitted that said allegation relate to a few instances where Clients are visiting the Branches for placing orders. Further, Noticee submitted that when Clients visits the Branch, their visits may be for various purposes viz general queries. KYC completion, submission of documents etc. They normally take client's signature and in/out time in visitor's register, which we feel would suffice for the general purposes/ visits. We submit that more than 95% of the trade/ orders are issued/placed by clients over the phone and internet and only a very few clients make casual visits to our Offices and may request for a trade to be put across that may be mainly due to connectivity issues that they may be facing. For the telephonic orders and those received through Other channels, we have produced voice recordings that are maintained by us.*

Finding

11.3. I note that clause III of the SEBI Circular dated September 26, 2017 prescribes that all brokers shall execute trades of clients only after keeping evidence of the client placing such order. In the present case, SCN alleged that Noticee failed to maintain the record of those clients who placed the orders by visiting the Noticee's office/branch/Authorized Person's office. I note that Noticee admitted that there are few instance when clients visit to their premises for the purpose placing the order. However, no records has been put forward by the Noticee to substantiate its claim that Noticee has maintained the record of clients' placing order by visiting the Noticee's office/branch/Authorized Person's office which is mandatory in terms of clause III of the said circular dated September 26, 2017. Thus, I find that Noticee failed to discharge its burden of proof.

11.4. In the view of the above, I note that the Noticee has violated the provision of clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

12. **Incorrect/Non Reporting of Enhanced Supervision data**

Allegation

12.1. It was observed that Noticee has submitted incorrect data under weekly reporting for 5 sample dates i.e. as on September 04, 2020, September 25, 2020, March 05, 2021, March 26, 2021 and July 30, 2021. Thus, it has been alleged that Noticee violated the provision of clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Reply

12.2. *Noticee submitted that data submitted by us was a correct data. We had several times asked the inspection team as well as requested the post* *inspection team of SEBI to provide the calculation on the basis Of which they have arrived at the figures mentioned in Annexure K of the Inspection report. Hence it should not be construed that we had submitted incorrect data*.

12.3. *Noticee submitted that SEBI has not considered bank balance of their two client accounts. Further, SEBI has not considered the full amount of FDs worth Rs. 41.94 Crs issued by HDFC bank that was lodged with the Exchange on 04.09.2020 & on 25.09.2020.*

Finding

12.4. I note that clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 mandates that Noticee shall submit the data of A, B, C, D, E, F, P, MC and MF as on last trading day of every week to stock exchange. From the records and as contended by the Noticee that there is difference between the inspection team and the Noticee with reference to the calculation of A, B, C, D, F, MC and MF. I note that calculation as mentioned in the annexure K of the inspection report is already mentioned in annexure A of the Inspection Report and provided along with inspection report. Further, I note that Noticee failed to provide any rationale/explanation that how it reached to the figures as submitted by it. However, from the reply of the Noticee it is clear that while calculating the disputed figures, Noticee is taking into account the Short Term Loan F.D. funded by HDFC Bank Ltd. and two bank accounts (J&K bank – ************057 and HDFC ********284). I note from that portion of the fixed deposit, which is funded by the bank in the form of a short-term loan, is technically a borrowed fund and cannot be considered towards availability of clients' funds with the Noticee. Further, balances of the two bank accounts have also not been considered (Please refer para 7.11-7.14 of this order). Thus, I note that such contention of Noticee is not acceptable.

12.5. In the view of the above, I note that the Noticee has violated the provision of clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

13. **Non-closure of client beneficiary accounts and client's collateral account**

Allegation

13.1. It was observed that Noticee has not closed client Beneficiary account no. **************96, which was suspended for debit and credit as on July 31, 2021 and transaction of ₹0.09 crores was observed during the inspection period.

13.2. It is observed that Noticee has not closed client collateral account no. *************88 till date of inspection, leading to the delay of 699 days (i.e. from September 01, 2019 to July 31, 2021).

13.3. In view of the above, it is alleged that the Noticee has violated the provision of clause 5(a) of SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 and clause 12 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020 read with clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/22 dated May 25, 2020.

Reply

13.4. *Noticee submitted that Demat account number **************96 could not be closed as securities of untraceable clients are still lying in this account. The said account is suspended for debit and credit by the NSDL. Further, Noticee submitted as and when these clients had approached us to take their shares back, as a process we submit the Client Master of the clients to National Stock Exchange and in turn the NSE will ask NSDL to open this account for 2-3 days and shares of such of these clients are transferred to the ultimate beneficiaries. The said account is not in regular use and since scrips are held in these accounts, the account could not be closed. The*

SEBI inspection team have been apprised of this matter and the NSE have been informed about this from the time since the said account was opened. With regards to transactions of Rs.0.09 crs that were done in this account in no cases we received any shares from outside. Further, particular Depositories account was opened by Bonanza to hold the shares that belonged to its clients since the last 20 plus years and whereabouts of substantial clients, Bonanza is unable to ascertain despite regular and protracted efforts.

13.5. *As regards the Demat Account No. *************88, the situation is somewhat similar to the One mentioned above, the only difference being that the shares maintained in this demat account relate to many of the Old sub-brokers/ Authorized Persons across the country who have long cease to be dealing with Bonanza. In fact, most of them have even shifted their location and are not traceable. Hence, we are unable to close this demat account as there are demat shares in the said account and unless they are disposed of to the rightful owners/ sub-brokers, we will be unable to close the account.*

Finding

13.6. I note that present case is squarely covered by the SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019. I note that said circular has been titles as "*Handling of Clients' Securities by Trading Members/Clearing Members*". Thus, as per the allegation with respect to the Noticee in the present issue aforesaid circular is attracted.

13.7. I note that clause 5(a) of SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 prescribes that all the existing client securities accounts opened by the TM/CM other than 'Pool account' (including 'Early Pay-in'), 'Client Margin Trading Securities account' and 'Client collateral account' shall be wound up on or before August 31, 2019. Further, the obligation has been put on the broker to inform the exchange about the closure.

13.8. I note that in the present case Noticee failed to close the demat account nos. *************88 and **************96. Noticee contended that since in the said account there are demat shares and unless they are disposed of to the rightful owners/ sub-brokers, the said account cannot be closed. In this regard, I note that Noticee failed to provide any supporting evidence that they had tried to trace clients having securities in the demat account no. *************88. Further, Noticee with reference to demat account no. **************96 submitted the sample letters which they have sent to clients at the last available addresses. In this regard I note that none of the sample relied upon by the Noticee has any securities balance. All the said sample letter specifically mentioned that "*shareholding with us is nil as per the statement enclosed*". Thus, I find that said reliance placed by Noticee in the said sample letter is of no use.

13.9. In view of the above, I note that the Noticee has violated the provision of clause 5(a) of SEBI Circular CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019.

14. **DIS issuance/Executions (DP Operations)**

Allegation

14.1. It was observed that Noticee as a Depositories Participant (DP) is providing e-DIS facility to its clients from the month of January 2021 for pre-trade authorization. It was observed that the Noticee has not provided the facility to revoke/cancel the mandate provided by it in case of e-DIS, whereas option is available in their trading terminal of client.

Reply

14.2. In this regard, Noticee submitted that particular automation/ implementation that is required to be done by the software vendor is reported to be still under process with our Vendor ODIN (63 moons technologies). We are following up with the vendor and requesting for an early redressal of the matter. Further, Noticee also submitted that it appears that more than 80% of the DPs are facing the same issue.

Finding

14.3. I note that Noticee has accepted the allegation made under the SCN and submitted that they are not able to follow the mandate as prescribed under CDSL Communiqué no. CDSL/OPS/DP/SETTL/2021/54 dated February 08, 2021 due to technological difficulties. I note that A(2)(f) of aforesaid circular prescribed that Intermediary providing e-DIS facility for pre-trade authorization /Mandate shall enable its client to revoke / cancel the mandate provided by them.

14.4. Further, Noticee submitted that they are trying to overcome the technological difficulties by following up with the vendor and the proof of the same has been submitted. I note that all these factors are mitigating factors and these factors do not obliterate the obligation to follow the mandate prescribe under clause A(2)(f) of circular no. CDSL/OPS/DP/SETTL/2021/54 dated February 08, 2021. I am also cognizant of the fact that the facility to revoke/cancel the mandate provided by them in case of e-DIS is available in their trading terminal of client.

14.5. I note that clause D (2) of the said circular mandates that DPs are informed to take note of timelines to implement specific directions issued to depositories. Said circular mandates, the implementation of revocation of pre-trade authorization/mandate by March 15, 2021. However, I note from the records and reply submitted by the Noticee that Noticee has failed to follow the mandate of the said circular.

14.6. In the view of the present facts and circumstances, I note that the Noticee has violated the clause A(2)(f) of CDSL Communiqué no. CDSL/OPS/DP/SETTL/2021/54 dated February 08, 2021.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, 19G of the Depositories Act and Section 23D of SCRA?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules, Section 19-I of Depositories Act read with rule 5(2) of Depositories Adjudication Rule and section 23-I and 23J of SCRA read with rule 5(2) of the SCRA Adjudication Rules?

15. I find it fit to deal with the both the issue together. I note that the Noticee, being a registered intermediary is required to comply with the various Regulations/Circular/Rules as laid down by the SEBI/Exchange/Depositories, with objective of promoting prudential norms for protecting the investors in the securities market. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. I note that the Noticee has remedied the lapses in certain cases, post-inspection by SEBI, however, such non-compliance, unearthed during time of inspection deserves and attracts penalty.

16. Further, in view of the violation as established above, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI vs. ShriRam Mutual Fund [2006] 68 SCL 216(SC) which 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...*"

17. I would also like to refer to the order of the Hon'ble Securities Appellate Tribunal in the matter of *Religare Securities Limited v. Securities and Exchange Board of India (Appeal No. 23 of 2011 dated June 16, 2011)* wherein, the Hon'ble SAT has observed, "*It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the 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 compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."

18. While determining the quantum of penalty under sections 15HB SEBI Act, section 19G of Depositories Act, and 23D of SCRA, I have considered factors listed in section 15J of SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules, 19-I of Depositories act read with 5(2) of Depositories Adjudication Rules and 23J of SCRA Act read with Rule 5(2) of the SCRA Adjudication Rules which provides that factors while adjudging quantum of penalty. Further, Supreme Court in its judgment **SEBI vs Bhavesh Pabari** (2019) 18 SCC 246 held that "*We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty*." Therefore, in the light of Bhavesh Pabri (Supra) judgment, I note that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. I note from the reply of the Noticee that corrective steps have been taken and it has been considered as mitigating factor wherever these steps are backed by valid document. I also note from the record that there is no investor complaint has been pending with respect to the Noticee.

F. Order

19. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, Section 19-H of Depositories Act 1996 read with rule 5 of Depositories Adjudication Rule and section 23-I of the SCRA read with rule 5 of the SCRA Adjudication Rules, I hereby impose the following penalty on Noticee i.e. Bonanza portfolio Limited:

Penalty	Charging Provisions
₹ 6,00,000 (Rupees Six Lakhs only)	Section 23-D of SCRA
₹ 3,00,000 (Rupees Three Lakhs only)	Section 15HB of SEBI Act
₹ 1,00,000 (Rupees One Lakhs only)	19G of the Depositories Act
₹ 10,00,000 (Rupees Ten Lakhs only)	**Total**

20. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

G. Penalty Payment Options

21. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

22. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-1-DRA-3), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

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

24. In terms of Rule 6 of the SEBI Adjudication Rules/ SCRA Adjudication Rules/ Depository Adjudication Rules, copy of this Order is sent to the Noticee and Board.

Date: November 30, 2022	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**