BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/21447)

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 AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995; SECTION 23-I OF THE SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005 AND SECTION 19-H OF THE DEPOSITORIES ACT, 1996 READ WITH RULE 5 OF THE DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of
Shree Tisai Consultant Private Limited
(PAN No.: AAHCS2180D)
(SEBI Reg. No.: INZ000215732)

In the matter of Shree Tisai Consultant Private Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted inspection of the books of accounts and other records of Shree Tisai Consultant Private Limited (hereinafter also referred to as '**Noticee**' or **'Company**'), 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, 1992'**), Securities Contracts (Regulations) Act, 1956 (hereinafter

referred to as **'SC(R) Act, 1956 '**), Depositories Act, 1996 and SEBI Circulars. The inspection was conducted during October 12, 2021 to October 29, 2021 and the period covered under inspection was from April 01, 2020 to September 30, 2021 (hereinafter referred to as **'inspection period'**).

2. Based on the findings of inspection, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the SEBI Act, 1992 section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996 for the alleged violation of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:

Sr. No.	**Alleged Violations**	**Regulatory Provisions**
A	Mis-utilization of funds and securities of clients	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.
B	Monthly / quarterly non-settlement of funds and securities of clients	Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
C	Incorrect reporting of Networth to exchange	Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

D	Incorrect reporting of enhanced supervision data	Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
E	Incorrect reporting of cash & cash equivalent balance	Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
F	Incorrect reporting of risk based supervision	Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
G	Discrepancies in account opening and Know Your Client (KYC)	Para 4(vi) and para 5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020.

APPOINTMENT OF ADJUDICATING OFFICER

3. By a *communiqué* dated August 05, 2022, the undersigned had been appointed as Adjudicating Officer to conduct the adjudication proceedings in the manner specified under rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**), rule 4 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules'**) and rule 4 of the Depositories (Procedure for Holding Inquiry and imposing penalties) Rules, 2005 (hereinafter referred to as **'Depositories Adjudication Rules'**) and impose such penalty on the Noticee, as deemed fit, in terms of rule 5 of the SEBI Adjudication Rules, rule 5 of the SCR Adjudication Rules and rule 5 of the Depositories Adjudication Rules read with section 15HB of the SEBI Act, 1992 section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996 for the alleged violations of the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing ref. no. EAD-8/AS/VS/44262/2022 dated August 22, 2022, (hereinafter referred to as '**SCN'**) was issued to Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, rule 4(1) of the SCR Adjudication Rules and rule 4(1) of the Depositories Adjudication Rules read with section 15-I of SEBI Act, 1992, section 23-I of the SC(R) Act, 1956 and section 19H of the Depositories Act, 1996 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon Noticee under section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996 for the alleged violations. I note that SCN issued to the Noticee was duly served by Speed Post Acknowledgement Due and by e-mail.

5. Vide letter dated August 30, 2022, Noticee sought extension of time for submission of reply to the SCN, which was granted to the Noticee. The additional details sought by Noticee regarding allegations in SCN were provided vide email dated September 15, 2022. Noticee vide email dated September 16, 2022 requested for any other internal working or report or document which SEBI had considered for issuing the SCN. In this regard, Noticee was informed that all relevant documents were already furnished. Thereafter, Noticee submitted reply to the SCN vide letter dated September 26, 2022. In the interest of natural justice, an opportunity of hearing was granted to the Noticee October 07, 2022 vide hearing notice dated September 20, 2022. Authorized Representative of Noticee attended the hearing on October 07, 2022 and reiterated the submissions made by Noticee vide reply dated September 26, 2022.

6. The allegations levelled against the Noticee in the SCN are as follows:

A. Mis-utilization of funds and securities of clients;
B. Monthly / quarterly non-settlement of funds and securities of clients;
C. Incorrect reporting of Networth to exchange
D. Incorrect reporting of enhanced supervision data;
E. Incorrect reporting of cash & cash equivalent balance
F. Incorrect reporting of risk based supervision; and
G. Discrepancies in account opening and KYC.

7. The key submissions made by the Noticee vide letter dated September 26, 2022 are summarised under:

(a) *"Noticee submits that nothing in the reply herein shall be deemed to be admitted in any manner though not specifically dealt with or specifically denied hereinafter.*

(b) *Most of the observations are procedural lapses and are the same are very small in terms of number and quantum. Hence, the Noticee humbly requests to take a lenient view in respect of the observation and its consequences.*

(c) *In response to allegations in Para A of the SCN related to mis-utilization of client funds and Securities, Noticee refers to and reiterates its submission to the reply to Inspection Report dated 9th January, 2022. Additionally, Noticee has increased its Share Capital by ₹ 1,00,00,000/- in March 2022. Noticee further evaluated and put in place a mechanism to ensure and check that creditors balance does not exceed the Deposits and Bank balances.*

(d) *In response to allegations in Para B of the SCN related to non-settlement of monthly / quarterly settlement of client funds and securities, Noticee submits that despite of the delay, the said accounts have been ultimately settled in subsequent quarters. Further, amount up to ₹ 10,000/- which was allowed as retention were retained. The observation is very miniscule both in terms of number and value. Attention is drawn to Sr No. 1 of Annexure A of NSE circular NSE/INSP/36248 dated 6th November, 2017 where* *violation of such a low quantum is classified as procedural violations and no penalty is prescribed. Since the quantum of violation is very miniscule in terms of value and numbers and ultimately the accounts have been settled, Noticee humbly request to drop the said observation.*

(e) *In response to Para C of the SCN, the allegations of incorrect reporting of unaudited Networth as on 31.03.2021 is denied. Noticee states that the variation in Networth is only in respect of the debtors and the same has been erroneously considered by the inspection team as ₹ 3.23 crores despite of the fact that the total outstanding debtors as per audited financials as on 31.03.2021 are only ₹ 2.28 crores. Noticee further would like to draw attention to the header "Audited" signifying that the unaudited Networth was verified under the impression that it is audited where the fact is that audited Networth was issued vide certificate dated 14.02.2022.*

Thus, based on the above submissions and considering the oversight in calculation of debtors, the aforesaid allegations for violation of clause 6.1.1.j of Annexure of SEBI circular SEBI/ HO/ MIRSD/ MIRSD2/ CIR/P/2016/ 95 dated 26th September, 2016 may be dropped.

(f) *In response to Para D of the SCN, detailed response in respect of each item where variation in respect of incorrect reporting of enhanced supervision data for 5 dates is given below:*

(i) *In respect of minor variation of ₹ 25,638/- and 652/- on 04.09.2020 and 18.09.2020 respectively is on account minor changes on account of delayed pay-in charges or Demat charges.*

(ii) *In response to difference in reporting of debtors on 04.09.2020, 18.09.2020 and 24.09.2021, Noticee humbly requests that the observation may kindly be dropped as the debtors figure is not relevant for enhanced supervision reporting.*

(iii) *The table below shows date wise difference in reporting of collateral deposited with clearing corporation and clearing member in the form of* *cash and cash equivalent and the Noticee's explanation to the same is given below the table:*

Table No. 2

Date	*Collateral in form of Cash and Cash Equivalent*	*As per Exchange (In ₹)*	*Reported by the Trading Member (In ₹)*	*Difference (In ₹)*	*Net (In ₹)*
04.09.20	Exchange	14577000	17764500	-3187500	-687500
	CM	15929323	13429323	2500000	
18.09.20	Exchange	14577000	17764500	-3187500	-666571
	CM	15962157	13441228	2520929	
05.03.21	Exchange	19100000	22975000	-3875000	-1375000
	CM	26829763	24329763	2500000	
09.03.21	Exchange	19100000	22975000	-3875000	-1375000
	CM	30332600	27832600	2500000	

- *The difference of ₹ 25 Lakhs is on account of different classifications. Since the amount given to NSEIL as security deposit for F&O segment, Noticee has classified it as deposit with Exchange. The said amount is shown under Clearing Member Report under "Any other Approved forms of Margin" in their report.*
- *Remaining difference other than that on account of security deposit of ₹ 25 Lakhs above on 04.09.2020 and 18.09.2020 is on account of 50 % of bank guarantee of ₹ 13,75,000/- with BSE. Further, on 05.03.2021 and 19.03.2021, the amounts have been inadvertently taken at full value instead of 50%.*
- *Further, a miniscule difference of ₹ 20,929/- on 18.09.2020, seems to be on account of some calculation error.*

(iv) In response to difference in reporting non-funded value of bank guarantee of ₹ 74,87,500/- on 04.09.2020 and 18.09.2020, Noticee submits that the figures considered by the inspection team does not

include non-funded portion of bank guarantee of ₹ 6,87,500/- (50% of ₹ 13,75,000/ -). Balance ₹ 68,00,000/- was incorrectly considered by the Noticee while reporting. However, despite of the variation in submission in the value, the Principle 3 of monitoring of client assets does not turn adverse as shown in table below:

Table No. 3

Date	*Reported J (₹)*	*Variation in Reporting (₹)*	*Revised J (₹)*
04.09.2020	*-87,37,500*	*68,00,000*	*-19,37,500*
18.09.2020	*-87,37,500*	*68,00,000*	*-19,37,500*

(v) *In response to difference of ₹ 7,55,552/- on 05.03.2021 in reporting free/unblocked collateral deposited with clearing corporation, Noticee submits that the figure considered by the inspection team is not correct. Noticee has correctly reported the same as ₹ 1,45,85,171/- and the same is reflected in MG01 file.*

(vi) *In response to difference of ₹ 3,000/- on 19.03.2021, Noticee submits that the difference is miniscule and humbly request that the observation be dropped on for its materiality.*

(vii) *In response to difference in respect of margin utilized for positions of Credit Balance Clients on 04.09.2020, 18.09.2020, 05.03.2021 and 19.03.2021, Noticee at the inception submits that despite of the variation in submission in the value, the Principle 3 of monitoring of client assets does not turn adverse.*

Table No. 4

Date	*Reported J (₹)*	*Variation in Reporting (₹)*	*Revised J (₹)*
04.09.2020	*-1,69,11,047*	*1,20,10,732*	*-49,00,315*
18.09.2020	*-4,20,83,723*	*1,11,52,890*	*-3,09,30,833*
05.03.2021	*-1,92,96,688*	*-2,72,007*	*-1,95,68,695*
19.03.2021	*-1,99,68,216*	*-5,37,897*	*-2,05,06,113*

Based on above submission, the variation in submission of bank balance and creditors are miniscule, different classification or error. Noticee humbly requests that since the variation does not materially alter the principles of Monitoring of client assets, lenient view be taken on the same.

(g) In response to Para E of the SCN, Noticee submits that the aforesaid error is not intentional and purely on account of selecting or unselecting various option on the report generation window of the back-office software while generating the report and the Noticee has taken necessary steps for elimination of such human error by implementing maker-checker facility and test checking the report before submission. Noticee further submits its detailed explanation as follows:

(i) <u>Incorrect reporting of client ledger balance:</u>

Explanation in respect of 152 instances is enclosed herewith and marked hereto as Exhibit-"11". Detailed explanation in respect of difference in reporting of financial ledger balance (Column A) in cash and cash equivalent reporting in case of 152 instances is as follows:

- *In 145 instances amounting to ₹ 73,60,698/-, the difference is on account of credit entry posted in ledger in lieu of early pay-in which was inadvertently considered in reporting the financial ledger balance in cash and cash equivalent.*
- *In 6 instances amounting to ₹ 4,056/-, the difference is demat transaction charges which were not considered in reporting.*
- *In 1 instance amounting to ₹ 10,000/- the difference is on account of cheques issued not cleared.*

(ii) <u>Incorrect reporting of client clear balance:</u>

Explanation in respect of 32 instances is enclosed herewith and marked hereto as Exhibit-"15". Detailed explanation in respect of difference in *reporting of clear balance (Column B) in cash and cash equivalent reporting in case of 32 instances amounting to ₹ 2,70,994/- is as follows:*

- *In 5 instances amounting to ₹ 3,653/-, the difference is demat transaction charges which were not considered in reporting.*
- *In 26 instance amounting to ₹ 1,56,510/- the difference is on account of cheques issued not cleared and 1 instance amounting to ₹ 1,10,849 is cheques deposited not cleared.*

Noticee further craves leave to produce the remaining client ledgers as and when required during the proceedings.

In view of the above submission and considering the fact that there is no provision to revise the submission in case of error, Noticee request to take a lenient view on the same observation.

(h) In response to Para F of the SCN, Noticee submits that the alleged violation should be dropped merely on the fact that there is no under reporting as the value of collaterals from debit balance client's reported is lower than value computed by the Exchange. Noticee further submits that the difference is because the Exchange has taken gross value without haircut whereas the Noticee has considered haircut.

Pertinent to note that the instruction given on the Exchange portal is ((Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as on.....". POA stocks to be excluded". Thus, in the absence of specific instructions or guidelines, Noticee has conservatively reported the value of collateral and therefore the said allegations of violation of clause 6.1.1.j of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26th September, 2016 shall be dropped.

(i) In response to Para G (i) of the SCN, Noticee submits that the issue is merely related to display of cropped signature. For online KYC, Noticee has been using off the shelf vendor applications and following the process provided by the vendor in their application. During the relevant period, wet signature and photographs uploaded by the clients at the time of online KYC registration were required to be uploaded separately by the client before they were e-sign and therefore signature appears on a separate page of KYC. This process is in accordance with clause 3 (c) of the SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated 24th April, 2022, which states that "Even cropped signature affixed on the online KYC form under e-sign shall also be accepted as valid signature". Pertinent to note that, Noticee has subsequently migrated to new E-KYC software of a different vendor and the cropped signatures are displayed in placeholders.

Based on the above submissions, Noticee states that the wet signatures and photographs were accepted in a prescribed manner. Thus, the Noticee humbly requests that the aforesaid observation be dropped.

(j) In response to Para G (ii) of the SCN, Noticee submits that they are using an off the shelf vendor application for online KYC which is widely used by many other stock brokers and as per the confirmation from the vendors, their software is subjected to rigorous in-house testing and validations periodically. In addition, the Noticee further submits:

(i) Neither SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated 24th April, 2022 nor the subsequent 3 clarificatory circulars issued by CDSL provided for the guidelines including format, scope, methodology, deadline, qualification and experience requirement of auditors, methodology for submission of report has never been specified by CDSL.

(ii) Meanwhile, the said observation was not pointed out during the CDSL inspection which concluded in January, 2021 and therefore the

Noticee believed that CDSL will come out with required guidelines for audit of EKYC software.

(iii) *Pertinent to note that, once the observation was pointed to the Noticee in the subsequent in November, 2021 and after discussion when it was adequately clear that there is not going to be any separate guidelines for EKYC audit, Noticee has carried out the audit of EKYC application.*

In view of the aforesaid submission and considering the fact that Noticee is using a vendor product whose functionality test is extensively done by the vendor, Noticee requests humbly requests that the aforesaid observation may be dropped."

(k) *Noticee places its reliance on the following laws and judgments for the same:*

(i) *It was held in order dated 25.07.2011 passed by the Hon'ble Securities Appellate Tribunal ("Tribunal") in* ***UPSE Securities Limited V. SEBI*** *(Appeal No. 109 of2011) that:*

"5......Every little irregularity I 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. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law. Having said this, we leave the matter at that."

(ii) *To the same effect Hon'ble Securities Appellate Tribunal in its Order dated 16.06.2011 in the matter of* ***Religare Securities Ltd vs SEBI*** *(Appeal No. 23 of 2011), inter alia observed as follows: "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 I 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 I deficiencies to the intermediary at the time of inspection and making it compliant....".*

(iii) In Order dated 11.09.2012 passed by Hon'ble Tribunal in ***DSE Financial Services Ltd. V. SEBI*** *(Appeal No. 153 of 2012). For ready reference, relevant paragraph have been reproduced below:*

"3. ...... we have observed that 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 have also observed 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. As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/ initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action."

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN and material available on record. I have also perused the submissions made by the Noticee in this regard. The issues that arise for consideration in the present case are as follows:

I. Whether the Noticee has violated the following provisions:

(a) 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.

(b) Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

(c) Clause 8.1.1, clause 6.1.1.j and clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(d) Para 4(vi) and para 5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020.

II. Does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996?

III. If so, 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, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules; and Section 19-I of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

9. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

Section 23D of SC(R) Act, 1956

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

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

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

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

Annexure

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 clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

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

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

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the

Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

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

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

Principle:

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

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

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

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

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

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

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

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

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

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6.1.1.j In case stock broker shares incomplete/wrong data or fails to submit data on time.

……………...

8. Running Account Settlement

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

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

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

Annexure-A

Running Account Authorization

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

………………....

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

……………….

SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020

4. In order to enable the Online KYC process for establishing account based relationship with the RI, Investor's KYC can be completed through online / App based KYC, in-person verification through video, online submission of Officially Valid Document (OVD) / other documents under eSign, in the following manner:

…………………

vi. Once all the information as required as per the online KYC form is filled up by the investor, KYC process could be completed as under:

a. The investor would take a print out of the completed KYC form and after affixing their wet signature, send the scanned copy / photograph of the same to the RI under eSign, or

b. Affix online the cropped signature on the filled KYC form and submit the same to the RI under eSign.

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*5. **Features for online KYC App of the RI -** SEBI registered intermediary may implement their own Application (App) for undertaking online KYC of investors. The App shall facilitate taking photograph, scanning, acceptance of OVD through Digilocker, video capturing in live environment, usage of the App only by authorized person of the RI. The App shall also have features of random action initiation for investor response to establish that the interactions not pre-recorded, time stamping, geo-location tagging to ensure physical location in India etc is also implemented. RI shall ensure that the process is a seamless, real-time, secured, end-to-end encrypted audiovisual interaction with the customer and the quality of the communication is adequate to allow identification of the customer beyond doubt. RI shall carry out the liveliness check in order to guard against spoofing and such other fraudulent manipulations. The RI shall before rolling out and periodically, carry out software and security audit and validation of their App. The RI may have additional safety and security features other than as prescribed above.*

10. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the following provisions:

(a) 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.

(b) Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

(c) Clause 8.1.1, clause 6.1.1.j and clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(d) Para 4(vi) and para 5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020.

11. At the outset, I find that there are seven major alleged violations to be established for attracting the provisions stated in Issue- I in the instant matter: (i) Mis-utilization of funds and securities of clients; (ii) Monthly / quarterly non-settlement of funds and securities of clients; (iii) Incorrect reporting of Networth to exchange (iv) Incorrect reporting of enhanced supervision data; (v) Incorrect reporting of cash & cash equivalent balance (vi) Incorrect reporting of risk based supervision; and (vii) Discrepancies in account opening and KYC.

(i) Mis-utilization of funds and securities of clients

Allegation

12. During inspection it was observed that in 46 out of 47 sample instances, funds of credit balance clients' were mis-utilized to meet the obligations of debit balance clients and / or for its own purpose. The amount of mis-utilization ranged from ₹1.67 lakhs to ₹1.20 crores. It was also observed that in 13 out of 43 sample instances, funds and securities of clients' were mis-utilized toward proprietary margin obligations. The amount of mis-utilization ranged from ₹22.69 lakhs to ₹1.19 crores.

Findings

13. In response to the above allegations, I note that Noticee has referred to and reiterated its submission made to SEBI in reply to inspection report dated January 9, 2022. Noticee submitted that the shortfall has been recouped and proper internal checks have been implemented to ensure compliance of requirement related to monitoring of client Assets. Noticee furnished that in order to ensure that there will not be any mis-utilization in future, Noticee has increased its share capital by ₹ 1.00 Crore in March 2022. Noticee has further evaluated and put a mechanism in place to ensure and check that creditors balance does not exceed the Deposits and Bank balances.

14. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that 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 value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations.

15. 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.

16. I find that the value of 'G' was negative on 46 out of the 47 sample dates, thus the funds of credit balance clients were misused by the broker for settlement obligations of debit balance clients. Further, I observe the value of 'I' was positive on 13 dates, therefore, I note that the client's funds were utilized towards margin obligations of proprietary obligations. In this regard, I note that the measure taken by SEBI (provisions of the circular) are intended to increase transparency in fund / client management by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI rules and regulations.

17. I find that Noticee has accepted the shortfall in funds and securities and submitted that the shortfall has now been recouped and there are adequate funds in the system to ensure that there will not be any mis-utilization in future. Noticee's submission that the shortfall has been recouped in coming months does not absolve Noticee from past violations that persisted during the inspection period. Therefore, I hold 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.

(ii) Monthly/Quarterly non-settlement of funds and securities of clients

Allegation

18. During inspection it was revealed that Noticee had not settled the credit balance of inactive clients on quarterly basis in 38 instances for 27 unique clients code (UCC). The total non-settled amount was ₹ 1,95,251/-. It was also observed that, in 7 instances there was gap of more than 90 days between two running account settlements.

Findings

19. As per SEBI Circular no. CIR/MIRSD/SE/Cir-19/2009 dated December 03, 2009, 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. However, I find that the Noticee had not settled the credit balance of inactive clients amounting to ₹ 1.95 lakhs on quarterly basis in 38 instances for 27 unique clients code. In response to the above allegations, I note that Noticee submitted that despite the delay, the said accounts had been ultimately settled in subsequent quarters, thus, Noticee has accepted the non compliance.

20. Noticee has submitted that amount upto Rs.10,000/- which is allowed to be retained was retained. In this regard, I note that NSE Circular No. NSE/INSP/24849 dated October 29, 2013 states that Member may retain an

amount of up to ₹ 10,000 for active clients only. This threshold limit on retention of amount is not applicable in case of clients who have not traded even once during the month/quarter in which the settlement is being undertaken. Thus the justification given by the Noticee is not acceptable.

21. In this regard, I note that the said SEBI circular intends that the stock brokers should settle the funds of clients periodically, so that clients' funds are not kept unsettled by the stock broker for indefinite period on any pretext. The circular was issued with a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers and to keep the investor informed about his/her account, so as to curb any misutilisation of funds by the stock brokers, thereby safeguarding the integrity of the market which in the instant case, has been completely disregarded by the Noticee. In view of the above, I find that the allegation that Noticee has violated the Clause 12(e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, stands established.

22. I note that Noticee has not furnished any specific reply regarding 7 instances where a gap of more than 90 days for account settlements was observed. I note that Clause 8.1.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stipulate that the stock broker shall ensure that there must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements. Therefore, I hold that Noticee has violated the provisions of the said SEBI Circular.

(iii) Incorrect reporting of Networth to exchange

Allegation

23. Inspection revealed that Noticee had reported Networth of ₹ 1.59 crores as on March 31, 2021, whereas, as per exchange's working Networth was ₹ 11.93 lakhs.

__Findings__

24. In reply to the observation, Noticee submitted that the variation in Networth is only in respect of the debtors and the same was erroneously considered by the inspection team as ₹ 3.23 crores, despite of the fact that the total outstanding debtors as per audited financials as on 31.03.2021 were only ₹ 2.28 crores. Noticee further submitted that the unaudited Networth was verified under the impression that it was audited, however, the audited Networth was issued vide certificate dated 14.02.2022, which was after the date of inspection.

25. I note that Noticee has submitted the audited Networth certificate provided by auditors which indicate that the Networth of the Noticee was ₹ 1.56 crores as on March 31, 2021. In view of the same, I find the allegation that Noticee violated the provisions of clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, does not stand established.

(iv) Incorrect Reporting of Enhanced Supervision data

Allegation

26. It was observed during the inspection that Noticee had reported incorrect data to the stock exchange under weekly enhance supervision, on September 04, 2020, September 18, 2020, March 05, 2021, March 19, 2021 and September 24, 2021 as given below in the table:

Table No. 5: Incorrect reporting of data on September 04, 2020

Sr. No.	Particulars	Amount as per Exchange Working (In Rs.)	Balance reported by the Trading Member (In Rs.)	Difference (In Rs.)
1	Collateral deposited with exchanges in form of Cash and Cash Equivalents	1,45,77,000.00	1,77,64,500.00	(31,87,500.00)
2	Collateral deposited with clearing member in form of Cash and Cash Equivalents	1,59,29,323.28	1,34,29,323.28	25,00,000.00
3	Total Credit Balance of all clients	5,31,30,651.86	5,31,56,289.86	(25,638.00)

4	Total debit balance of all clients	2,55,54,763.04	3,60,20,556.95	(1,04,65,793.91)
5	Value of Non funded portion of the Bank Guarantee	12,50,000.00	87,37,500.00	(74,87,500.00)
6	Margin utilized for positions of Credit Balance Clients	1,71,84,035.74	2,91,94,767.54	(1,20,10,731.80)

Table No. 6: Incorrect reporting of data on September 18, 2020

Sr. No.	Particulars	Amount as per Exchange Working (In Rs.)	Balance reported by the Trading Member (In Rs.)	Difference (In Rs.)
1	Collateral deposited with exchanges in form of Cash and Cash Equivalents	1,45,77,000.00	1,77,64,500.00	(31,87,500.00)
2	Collateral deposited with clearing member in form of Cash and Cash Equivalents	1,59,62,157.29	1,34,41,228.00	25,20,929.29
3	Total Credit Balance of all clients	5,33,48,366.28	5,33,47,714.00	652.28
4	Total debit balance of all clients	2,10,08,134.70	3,10,72,553.00	(1,00,64,418.30)
5	Value of Non funded portion of the Bank Guarantee	12,50,000.00	87,37,500.00	(74,87,500.00)
6	Margin utilized for positions of Credit Balance Clients	1,99,36,885.11	3,10,89,774.60	(1,11,52,889.49)

Table No. 7: Incorrect reporting of data on March 05, 2021

Sr. No.	Particulars	Amount as per Exchange Working (In Rs.)	Balance reported by the Trading Member (In Rs.)	Difference (In Rs.)
1	Collateral deposited with exchanges in form of Cash and Cash Equivalents	1,91,00,000.00	2,29,75,000.00	(38,75,000.00)
2	Collateral deposited with clearing member in form of Cash and Cash Equivalents	2,68,29,762.63	2,43,29,761.94	25,00,000.69
3	Margin utilized for positions of Credit Balance Clients	1,28,93,721.48	1,26,21,713.93	2,72,007.55
4	Free/unblocked Collateral deposited with Clearing corporation	1,38,29,619.30	1,45,85,171.68	(7,55,552.38)

Table No. 8: Incorrect reporting of data on March 19, 2021

Sr. No.	Particulars	Amount as per Exchange Working (In Rs.)	Balance reported by the Trading Member (In Rs.)	Difference (In Rs.)
1	Total of day end balance in all Client Bank Accounts	59,69,747.23	59,72,747.23	(3,000.00)
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents	1,91,00,000.00	2,29,75,000.00	(38,75,000.00)
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents	3,03,32,601.29	2,78,32,600.29	25,00,001.00
4	Margin utilized for positions of Credit Balance Clients	1,37,01,806.21	1,31,63,908.59	5,37,897.62

Table No. 9: Incorrect reporting of data on September 24, 2021

Sr. No.	Particulars	Amount as per Exchange Working (In Rs.)	Balance reported by the Trading Member (In Rs.)	Difference (In Rs.)
1	Total debit balance of all clients	1,60,77,384.34	3,27,27,042.53	(1,66,49,658.19)

Findings

27. In response to above observations, Noticee submitted the item wise response regarding variations in respect of incorrect reporting of enhanced supervision data on the 5 dates.

28. In respect of minor variation of ₹ 25,638/- and ₹ 652/- on September 04, 2020 and September 18, 2020 respectively in total credit balance of all clients, Noticee submitted that it is on account minor changes on account of delayed pay-in charges or demat charges. I note that the Noticee has not provided any supporting documents in this regard. Therefore, the contention of the Noticee is not acceptable.

29. In response to difference in reporting of debtors on September 04, 2020, September 18, 2020 and September 24, 2021, Noticee submitted that the

observation may kindly be dropped as the debtors figure is not relevant for enhanced supervision reporting. However, I note that SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 stipulate that the stock brokers are required to submit the data regarding aggregate value of debit balances of all clients as obtained from trial balance across stock exchanges as on last trading day of every week to the stock exchanges on or before the next trading day. Therefore, the contention made by the Noticee is not tenable and based on available records, I hold that Noticee reported the incorrect data to the stock exchange in this regard.

30. Noticee submitted the date wise difference in reporting of collateral deposited with clearing corporation and clearing member in the form of cash and cash equivalent as under:

Table No. 10

Date	Collateral in form of Cash and Cash Equivalent	As per Exchange (In ₹)	Reported by the Trading Member (In ₹)	Difference (In ₹)	Net (In ₹)
September 04, 2020	Exchange	14577000	17764500	-3187500	-687500
	CM	15929323	13429323	2500000	
September 18, 2020	Exchange	14577000	17764500	-3187500	-666571
	CM	15962157	13441228	2520929	
March 05, 2021	Exchange	19100000	22975000	-3875000	-1375000
	CM	26829763	24329763	2500000	
March 19, 2021	Exchange	19100000	22975000	-3875000	-1375000
	CM	30332600	27832600	2500000	

- Noticee submitted that the difference of ₹ 25 Lakhs is on account of different classifications. Since the amount given to NSEIL as Security Deposit for F&O segment, Noticee has classified it as deposit with exchange. The said amount is shown under clearing member report under "Any other Approved forms of Margin" in their report.

- Noticee submitted that the remaining difference other than that on account of security deposit of ₹ 25 Lakhs above on September 04, 2020 and September 18, 2020 is on account of 50% of bank guarantee of ₹ 13,75,000/- with BSE. Further, on March 05, 2021 and March 19, 2021, the amounts were inadvertently taken at full value instead of 50%. Further, a miniscule difference of ₹ 20,929/- on September 18, 2020, seems to be on account of some calculation on error.

31. With regards to difference in collateral of ₹ 25 lakhs deposited with exchanges and clearing member, I find that the benefit of ₹ 25 lakhs cannot be given to Noticee because the same was deposited with the Exchange as Base Minimum Capital. With regards to deposit of ₹ 13,75,000/-, the benefit of ₹ 13,75,000/- cannot be given to Noticee as the same is also a part of Base Minimum Capital deposited with the Exchange. Further, I note that the submission of Noticee regarding collateral deposited that the amounts were inadvertently taken at full value instead of 50% on March 05, 2021 and March 19, 2021, and difference on account of some calculation error indicate that Noticee has accepted the incorrect reporting of data by it to the Exchange. Therefore, the contentions of Noticee in this regard are not acceptable and I hold 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.

32. In response to difference in reporting non-funded value of Bank Guarantee of ₹74,87,500/- on September 04, 2020 and September 18, 2020, Noticee submitted that the figures considered by the inspection team did not include non-funded portion of Bank Guarantee (BG) of ₹6,87,500/- (50% of ₹13,75,000/-). Noticee further submitted that balance ₹68,00,000/- was incorrectly considered by the Noticee while reporting. However, despite of the variation in submission in the value, the Principle 3 of monitoring of client assets does not turn adverse.

33. I note that the SEBI circular dated September 26, 2016 specify that 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’ and aggregate value of Non-funded part of the BG across Stock Exchanges is to be reported as part of ‘F’. Accordingly, only 50% of value of BG as considered in inspection report should have been reported for value of non-funded part of the BG. Therefore, the contention of the Noticee is not acceptable. Further, from the reply of Noticee, I observe that the Noticee has admitted that ₹ 68,00,000/- was incorrectly considered by Noticee while reporting to the Exchange. The other submission of the Noticee that despite of the variation in submission in the value, the Principle 3 of monitoring of client assets does not turn adverse is not relevant here as the Noticee is alleged for reporting of incorrect data to the Exchange. Therefore, the contention of the Noticee in this regard is not tenable and I hold that the Noticee has violated the provisions of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

34. In response to difference of ₹ 7,55,552/- on March 05, 2021 in reporting free / unblocked collateral deposited with clearing corporation, Noticee submitted that the figure considered by the inspection team is not correct. Noticee has correctly reported the same as ₹ 1,45,85,171/- and the same is reflected in MG01 file. In response to difference of ₹ 3,000/- on March 19, 2021 in total end day balance in all client bank account, Noticee submitted that the difference is miniscule and humbly request that the observation be dropped on for its materiality. Considering the materials available on record and the factual evidence made available to me, I am of the view that the said allegation against the Noticee does not stand established.

35. In response to difference in respect of margin utilized for positions of credit balance clients on September 04, 2020, September 18, 2020, March 05, 2021 and March 19, 2021, Noticee submitted that despite of the variation in submission in the value, the Principle 3 of monitoring of client assets does not turn adverse. I note that the said contentions of the Noticee is not relevant here

as the allegation against the Noticee is reporting of incorrect data to the Exchange.

36. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stock brokers are required to submit the obligatory data as on last trading day of every week to the stock exchanges on or before the next trading day. The objective of the SEBI circular is to increase transparency in dealings of the stock brokers, so that the funds and securities of clients are regularly monitored by stock exchanges and stock brokers should not misuse the funds and securities of clients. I find that by incorrect reporting of information, the intent of the said circular was disregarded by the Noticee. In view of the same, I hold 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.

(v) Incorrect reporting of cash & cash equivalent balance

Allegation

37. It was alleged during the inspection that Noticee had incorrectly reported the data towards client ledger balance & clear balances, i.e. ₹ 73.73 lakhs and ₹2.70 lakhs, respectively.

Findings

38. In response to these allegations, Noticee submitted that the aforesaid error is not intentional and purely on account of selecting or not selecting of various options on the report generation window of the back-office software while generating the report and the Noticee has taken necessary steps for elimination of such human error by implementing maker-checker facility and test checking the report before submission. Noticee further requested to take a lenient view in the said matter.

39. I note that Noticee has accepted the error and submitted that the error is not intentional and the difference is on account of credit entry posted in ledger in lieu of early pay-in which was inadvertently considered in reporting the financial ledger balance in cash and cash equivalent. In view of the same, I hold that the Noticee has violated the provision of clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(vi) Incorrect reporting of risk based supervision

Allegation

40. It was observed during the inspection that Noticee had submitted incorrect data for risk based supervision to the Exchange w.r.t. details of total available collaterals from all debit balance clients. It was observed that there was difference of ₹ 38.17 lakhs between data reported by the Noticee and working done by exchange.

Findings

41. In response to these allegations, Noticee submitted that the alleged violation should be dropped merely on the fact that there is no under reporting as the value of collaterals from debit balance client's reported is lower than value computed by the Exchange. Noticee further submitted that the difference is because the Exchange has taken gross value without haircut whereas the Noticee has considered haircut. Noticee has referred to the Exchange portal which state that ((Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as on.....". POA stocks to be excluded". Thus, in the absence of specific instructions or guidelines, Noticee has conservatively reported the value of collateral.

42. I note that the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 mandates trading members to report the aggregate value of debit balances of all clients as obtained from trial balance across stock exchanges. It does not specify to report minimum of debit balance or collateral

of debit balance clients as contended by Noticee. Also, the contentions of Noticee regarding haircut is not tenable as the Noticee was required to report total available collaterals from debit balance clients. Thus, I hold that Noticee has made incorrect reporting of ₹ 38.17 lakhs and hence, found to be non-compliant during inspection period. Therefore, I hold that Noticee has violated the provision of Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(vii) Discrepancies in Account opening and KYC

Allegation

43. During inspection, it was observed in 124 instances that Noticee has not inserted cropped signature (cropped from a signed cancelled cheque or signature on a white paper or signature made on the screen of a device) of the Beneficiary Owner (hereinafter referred to as **'BO'**) in the place holders of KYC form and displayed it to the BO before e-signing the document by BO or has not obtained scanned copy/photograph of the KYC from the BO with his/her wet signature under e-sign.

44. Inspection also revealed that Noticee had not carried out the software & security audit and validation of online account opening app periodically.

Findings

45. In response to above allegations, Noticee submitted that the issue is merely related to display of cropped signature. For online KYC, Noticee has been using off the shelf vendor applications and following the process provided by the vendor in their application. Noticee further submitted that during the relevant period, wet signature and photographs uploaded by the clients at the time of online KYC registration were required to be uploaded separately by the Client before they were e-sign and therefore signature appears on a separate page of KYC. This process is in accordance with clause 3 (c) of the SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020, which states that

"Even cropped signature affixed on the online KYC form under e-sign shall also be accepted as valid signature". Noticee has subsequently migrated to new E-KYC software of a different vendor and the cropped signatures are displayed in placeholders.

46. I note that the provisions mentioned by Noticee in the above para only refers to what can be accepted as a valid signature whereas the violation pointed out during inspection was that Noticee has not inserted the cropped signature in the placeholder in the KYC form. Thus their submissions in this respect is not acceptable.

47. I find that in reply to the inspection report Noticee had submitted that it had been complying with the cropped signature requirements off-line and that they have migrated to new E-KYC software of a different vendor and the cropped signatures are displayed in placeholders. However, this does not absolve Noticee from the past violations that persisted during inspection period. Therefore, I hold that Noticee was non-compliant during inspection period and violated the provision of para 4 (vi) of SEBI Circular No SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24 2020.

48. In response to this, allegations regarding not carrying out of the software & security audit and validation of online account opening app periodically, Noticee submitted that they are using an off the shelf vendor application for online KYC which is widely used by many other Stock Brokers and as per the confirmation from the vendors, their software is subject to rigorous in-house testing and validations periodically. In addition, the Noticee further submitted that neither SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated 24th April, 2020 nor the subsequent 3 clarificatory circulars issued by CDSL provided for the guidelines including format, scope, methodology, deadline, qualification and experience requirement of auditors, methodology for submission of report has never been specified by CDSL. Noticee further stated the said observation was not pointed out during the CDSL inspection which concluded in January, 2021

Once the observation was pointed to the Noticee in the subsequent in November, 2021 and after discussion when it was adequately clear that there is not going to be any separate guidelines for EKYC audit, Noticee has carried out the audit of EKYC application.

49. SEBI circular SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020 under the para "***Features for online KYC App of the RI"*** clearly mandate that the RI shall before rolling out and periodically, carry out software and security audit and validation of their App. I note from the response of the Noticee that it did not carry out the software & security audit and validation of online account opening app periodically. In this regard, I note that the above referred SEBI circular clearly indicates the requirement of periodic software & security audits and validation of app. I also note that Noticee has submitted that the said observation was not pointed out during the CDSL inspection in January, 2021 and therefore the Noticee believed that CDSL will come out with required guidelines for audit of EKYC software is not acceptable, as SEBI circular dated April 24, 2020 was already issued to stock brokers was required to be followed by the Noticee. Therefore, the contentions made by the Noticee are untenable and the Noticee was non-compliant during inspection period and violated the provision of the SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24 2020.

Issue II. Does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996?

50. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the provisions of (a) 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; (b) Clause 12(e) of Annexure-A of SEBI Circular

SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009; (c) Clause 8.1.1, clause 6.1.1.j and clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; and (d) Para 4(vi) and para 5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/73 dated April 24, 2020.

51. The object of inspection of the books of accounts and records of any intermediary is to monitor and identity any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions mentioned at Para no. 2 of this order.

52. Noticee has quoted three judgments i.e. UPSE Securities Limited V. SEBI, Religare Securities Ltd vs SEBI and DSE Financial Services Ltd. V. SEBI, passed by the Hon'ble SAT asserting that the purpose of carrying out inspection is not punitive and every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not attract penalty.

53. I find from the material available on record that the Noticee has grossly failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients by mis-utilizing the funds and securities of clients, monthly/quarterly non-settlement of funds and securities of clients, incorrect reporting of enhanced supervision data, incorrect reporting of cash & cash equivalent balance, incorrect reporting of risk based supervision and by failing to comply with account opening and KYC guidelines of SEBI. The above violations, are serious in nature and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996.

54. In this regard, reliance is placed upon the judgment of Hon’ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has 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 and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

55. The aforesaid violations, makes the Noticee liable for penalty under section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996. The contents of the said provisions of law is reproduced herein below:

<u>SEBI Act, 1992</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*

<u>SC(R) Act, 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.*

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.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act,1992 read with Rule 5(2) of the SEBI Adjudication Rules; Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules; and Section 19-I of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

56. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, Section 23-J of the SC(R) Act, 1956, and Section 19-I of the SC(R) Act, 1956 , which reads as under:-

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I 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.]

SC(R) Act, 1956

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

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India 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 of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.]

Depositories Act, 1996

Factors to be taken into account while adjudging quantum of penalty

***19-I.** While adjudging the quantum of penalty under section 19 or section 19H, 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 19A to 19F shall be and shall always be deemed to have been exercised under the provisions of this section.]

57. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance of the provisions of the SC(R) Act, 1956 and SEBI Circulars is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. The inspection findings do bring out a number of instances where the Noticee has not been complying with the requirements of the SC(R) Act, 1956 and SEBI circulars as listed above. Further, I have also considered the submissions of the Noticee that they have taken corrective steps in this regard. However, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, rules and regulations and circulars / directions issued thereunder, which it failed to do during the inspection period. The conduct of the Noticee in not complying with the provisions of the SC(R) Act, 1956 and SEBI Circulars cannot be taken lightly. The violations by the Noticee are serious considering and have a detrimental impact on the market integrity and therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence.

ORDER

58. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, section 23-I of the SC® Act read with Rule 5 of the SCR Adjudication Rules, 1956 and section 19H of the Depositories Act, 1996 read with Rule 5 of the Depositories Adjudication Rules, I hereby impose the following monetary penalty under section 15HB of the SEBI Act, 1992, section 23D of the SC(R) Act, 1956 and section 19G of the Depositories Act, 1996 on the Noticee:

Sr. No.	Penalty Provisions	Amount of penalty (in ₹)
1	Section 15HB of SEBI Act, 1992	₹ 1,00,000/- (Rupees one lakhs only)
2	Section 23D of SC(R) Act, 1956	₹ 5,00,000/- (Rupees five lakhs only)
3	Section 19G of Depositories Act, 1996	₹ 1,00,000/- (Rupees one lakh only)
Total amount of penalty		**₹ 7,00,000/-** **(Rupees seven lakhs only)**

In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

59. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the 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

60. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

61. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

62. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: November 25, 2022 **ADJUDICATING OFFICER**