BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/23295)

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) RULES, 1995; AND 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) RULES, 2005.

In respect of
Capstocks & Securities (India) Pvt. Ltd.
(PAN: AABCC6234A)
(SEBI Regn. No.: INZ000165931)

In the matter of Capstocks & Securities (India) Pvt. Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection of Capstocks & Securities (India) Pvt. Ltd. (hereinafter referred to as the **'Noticee'** or **'Company'**). The Noticee is registered with SEBI as a Stock Broker (Registration no. INZ000165931) at BSE, NSE and MCX. The registered office of the Noticee is at Capstocks Towers, Thakaraparambu Road, Fort, Thiruvananthapuram, Kerala - 695023. The inspection was conducted during October 08, 2021 to December 13, 2021 and the period covered under inspection was from April 01, 2020 to September 30, 2021. The observations made during the course of inspection were recorded as inspection report and findings were communicated to the Noticee *vide* SEBI letter dated March 03, 2022. The Noticee

had submitted its comments / explanations on the aforesaid observations of the inspection *vide* its letter April 06, 2022.

2. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee for alleged violations of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:

Table No. 1

Sr. No.	**Alleged violations**	**Regulatory provisions violated**
A	Non segregation of clients' funds	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 & 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
B	Non settlement of clients' accounts	Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.
C	Incorrect submission of data to the 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 margin to the exchange	SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer, *vide* order dated November 01, 2022, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) and under section 23-I of the SC(R) Act, 1956 read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules, 2005'**) to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, 1956 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing ref. no. EAD-8/AS/VC/57895/2022 dated November 15, 2022, (hereinafter referred to as '**SCN'**) was issued to Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules read with section 15-I of SEBI Act, 1992; and rule 4(1) of the SCR Adjudication Rules read with section 23-I of the SC(R) Act, 1956, 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 the Noticee under section 15HB of the SEBI Act, 1992 and section 23D of the SC(R) 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* email / letter dated November 29, 2022, Noticee sought extension of 10 days' time for submission of reply to the SCN, which was granted to the Noticee. Thereafter, Noticee submitted reply to the SCN *vide* email / letter dated December 9, 2022. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on December 29, 2022 *vide* hearing notice dated December 19, 2022. Authorized Representative (hereinafter referred to as **"AR"**) of Noticee along with Compliance Officer of Noticee attended the hearing on December 29, 2022 and reiterated the submissions made by Noticee *vide* reply dated December 9, 2022.

In addition, AR requested time to furnish the additional submissions in response to the allegations levelled in Para 5B and 5C of the SCN, which was acceded to. *Vide* email / letter dated January 06, 2023, Noticee furnished the additional submissions in response to the allegations levelled in Para 5B and 5C of the SCN.

6. The allegations levelled against the Noticee in the SCN are as under:
   A. Non segregation of clients' funds,
   B. Non settlement of clients' accounts,
   C. Incorrect submission of data to the exchange, and
   D. Incorrect reporting of margin to the exchange.

7. In the reply to the SCN, Noticee has reiterated its submission made to SEBI on April 6, 2022, in reply to the findings of inspection report. The key submissions made by the Noticee *vide* email / letter dated December 9, 2022 are summarised below:

a) *"Reply to Para A (i): As a Stock broker, we have never utilized the credit balance, in any of our client's accounts intentionally to meet the settlement obligation or debit balance of other or for the Company's own purpose. Further, at the end of each week i.e, every last trading day of the week or as the case may be, the Company has reconciled the balances available in all the client money accounts along with the cash collaterals deposited with the Exchanges/Clearing Corporation. In all such instances, the funds available was found to be in excess of the credit balance clients.*

Further, it is submitted that on 25-09-2020, 17-03-2021 and 22-03-2021, there were no shortage in Client Accounts and on the contrary, "G" is found to be positive, to the extent of Rs 26,88,204, Rs 2,0929,914 & Rs 1,59,39,487 and details of the same are tabled herein below.

Table No. 2

	25-09-2020	***17-03-2021***	***22-03-2021***
Particulars	***Amount***	***Amount***	***Amount***
Total of day end balance in all Client Bank Accounts (In Rs.)	*6,12,17,282*	*3,66,69,293*	*1,31,85,275*

	25-09-2020	*17-03-2021*	*22-03-2021*
Collateral deposited with clearing corporations in form of Cash and Cash Equivalents (In Rs.)	*22,81,97,500*	*24,73,80,000*	*24,73,80,000*
Collateral deposited with clearing member in form of Cash and Cash Equivalents (In Rs.)	*5,00,000*	*8,00,000*	*8,00,000*
Total Credit Balance of all clients (In Rs.)	*28,72,26,578*	*26,39,19,379*	*24,54,25,789*
Excess Funds	*26,88,204*	*2,09,29,914*	*1,59,39,487*

b) *Reply to Para A (ii): It is submitted that, for computation of differentials i.e "G", funds available with various Exchange were not taken into consideration. The table depicted herein below reflects the true state of affairs:*

Table No. 3

Particulars	***Total Amount***	***Funded Portion available for Margin Utilisation***
FD deposited in MCX towards Margin (ABC)	*25,00,000*	*25,00,000*
cash deposited in BSE for BMC	*1,25,000*	*1,25,000*
BG deposited in BSE Base Minimum Capital	*13,75,000*	*3,43,750*
BG deposited in MCX for Base Minimum Capital	*7,50,000*	*1,87,500*
Cash deposited in MCX for Base Capital	*27,50,000*	*27,50,000*
Totals	*75,00,000*	*59,06,250*

If the above is taken into consideration, the amount of Rs 132,025/- alleged to be utilized for meeting proprietary margin obligation, shall remain invalid.

c) *Reply to Para A (iii): Of the 5 instances, on 18-09-2020, Rs 19,25,47619.49 was the actual margin utilized for credit balance clients and not Rs 16,48,05,994. If the actual amount is considered "J" will fall negative i.e Rs 38,32,702.00.*

Further, on 05-03-2021 Rs 188863182.00 was the actual unutilized collateral lying with CC/CM and not Rs 16,39,14,305. If the actual amount is considered "J" will turn negative i.e Rs 21,08951.00

Table No. 4

Free/unblocked Collateral deposited with Clearing corporation (In Rs.)

Exchange	***Amount***
NSE EQ	*2,36,70,971.93*
NSE FO	*3,51,47,285.76*
NSE SLBM	*1,30,000.00*
NSE CD	*10,00,000.00*
MCX	*12,81,46,672.02*
Total- A	***18,80,94,929.71***

Free/unblocked Collateral deposited with Clearing Member (In Rs.)

Exchange	***Amount***
AXIS CD	*5,68,252.29*
Edelweiss- NSE COMM	*2,00,000.00*
Total- B	***7,68,252.29***

Total (A+B) ***18,88,63,182.00***

d) Reply to Para A (v): In 18 instances (13 dates) where funds (Rs.6.22 lakh) of 79 clients funds were in fact routed from our own bank account to the Client Money Account to set off bad debts, in the respective Client accounts. The amount so written off and realized thereafter were subsequently transferred to the Own Account.

Table No. 5

Voucher	***Voucher***	***Narration***	***Cheque***	***Deposits***	***Withdrawals***	***Remarks***
05-06-2020	*BPV2-0506*	*Bank Payin Chq No:025256 Fund Transfere From Hdfc 28 To 21 (T466G004,T466R005, T466S021)*	*25256*	*0.00*	*13,777.00*	*Client Ledger copies attached as Annexure 13B*
05-06-2020	*BPV3-0506*	*Bank payin chq no:025257 Fund Transfere From Hdfc 28 To 21 (T315R004,T315M002, T284P001)*	*25257*	*0.00*	*59,067.00*	*Client Ledger copies attached as Annexure 13C*
05-06-2020	*BPV6-0506*	*Bank Payin Chq No:025260 Fund Transfere From Hdfc 28 To 21 (T165A004)*	*25260*	*0.00*	*22,342.00*	*Client Ledger copies attached as Annexure 13D*

Voucher	Voucher	Narration	Cheque	Deposits	Withdrawals	Remarks
05-06-2020	BPV10-0506	Bank Payin Chq No:025261 Fund Transfere From Hdfc 28 To 21 (T228S001)	25261	0.00	1,903.23	Client Ledger copies attached as Annexure 13E
05-06-2020	BPV4-0506	Bank Payin Chq No:025258 Fund Transfere From Hdfc 28 To 21 (TM495)	25258	0.00	11,930.38	Client Ledger copies attached as Annexure 13F
23-06-2020	BPV35-2306	Bank Payment Ch No:025270 Fund Transfere From HDFC 28 TO 21 (tbp026 t532)	25270	0.00	3,836.00	Client Ledger copies attached as Annexure 13G
14-12-2020	BRV40-1412	Bank Cheq No:485281 Fund transfered from 21 TO 28(t13P008,T13B007,T13A022,T13A033,T13P008,N006,R033	485281	1,66,076.45	0.00	Client Ledger copies attached as Annexure 13H
13-01-2021	BPV53-1301	Bank Payment Cheq No:25560 Fund Transfer From HDFC 28-21(TAM045(T326AP))	25560	0.00	3,529.67	Client Ledger copies attached as Annexure 13I
14-01-2021	BRV25-1401	Bank PayinCheq No:484416 Fund Transfer From 21-28(T228B001)	484416	5,337.99	0.00	Client Ledger copies attached as Annexure 13J
14-01-2021	BPV56-1401	Bank Payout Fund Transfered From 28-21(T514S004,K001,M001,J002,B003,N002,S003,S009,E001,K002)	25561	0.00	48,459.00	Client Ledger copies attached as Annexure 13K
19-01-2021	BPV36-1901	Bank Payment Fund Transfered From 28-21(T323R006)	25564	0.00	2,172.42	Client Ledger copies attached as Annexure 13L
21-01-2021	BPV37-2101	Bank PayoutCheq No:025567 Fund Transfere From 28-21(T165D001)T165	25567	0.00	15,820.00	Client Ledger copies attached as Annexure 13M
04-02-2021	BPV62-0402	Bank Payout Fund Transfere From 28-21(T165D006&K003,T162V002,TA7K011,V6,G4,V014,G6,K1,T012,P6,K2,A011		0.00	17,450.36	Client Ledger copies attached as Annexure 13N
18-03-2021	BPV27-1803	Bank Payout Fund Transfered From 28-21(T139S004,T001,R002,S022,P001,A001,S007,T470K002)	24499	0.00	12,521.00	Client Ledger copies attached as Annexure 13O

Voucher	*Voucher*	*Narration*	*Cheque*	*Deposits*	*Withdrawals*	*Remarks*
23-03-2021	*BPV2-2303*	*Bank Payout Fund Transfered From 28-21(T165P6,K4,K010,T1L1,R8,J026,B3,A7,A27,H1,P24,M27,S75,A26,R5*	*24500*	*0.00*	*8,357.12*	*Client Ledger copies attached as Annexure 13P*
27-03-2021	*BPV1-2703*	*Bank Payout Fund Transfered From 28-21(CH13,CH12&T112)*	*25296*	*0.00*	*79,465.00*	*Client Ledger copies attached as Annexure 13Q*
31-03-2021	*BPV94-3103*	*Bank Payout Fund Transfered From 28-21(T162,CH10,T323,T466)*	*25299*	*0.00*	*1,41,506.00*	*Client Ledger copies attached as Annexure 13R*
23-04-2021	*BPV36-2304*	*Bank Pay-out Fund Transferred From 28-21(TM495,TS1173)*	*25412*	*0.00*	*8,790.00*	*Client Ledger copies attached as Annexure 13S*

e) *Reply to Para B: It was observed that the member has not settled accounts of 1,231 inactive clients (amounting to Rs.73.72 lakh) during the period of inspection.*

(i) *Out of the 1231 clients referred in annexure E, the actual amount comes to only Rs.66,88,656.50, after deducting an amount of Rs 6,83,413.06, accounted repetitively for different quarters, in 614 No of Client accounts.*

(ii) *Of the above 1231 Clients, one account (55990) having a balance of Rs.27,90,361.20, is our own account maintained for MCX derivatives trading, which requires no settlement. Hence the total unsettled amount comes to only Rs.38,98,295.30, which was duly settled, in due course.*

(iii) *In the case of accounts having a credit balance of above Rs. 10,000/- (i.e in 54 Accounts, amounting to Rs 25,04,992.66), we have duly ensured settlement of the said amounts in the respective client accounts, in the same quarter itself. However, in the inspection report, such cases are found reported as "not settled".*

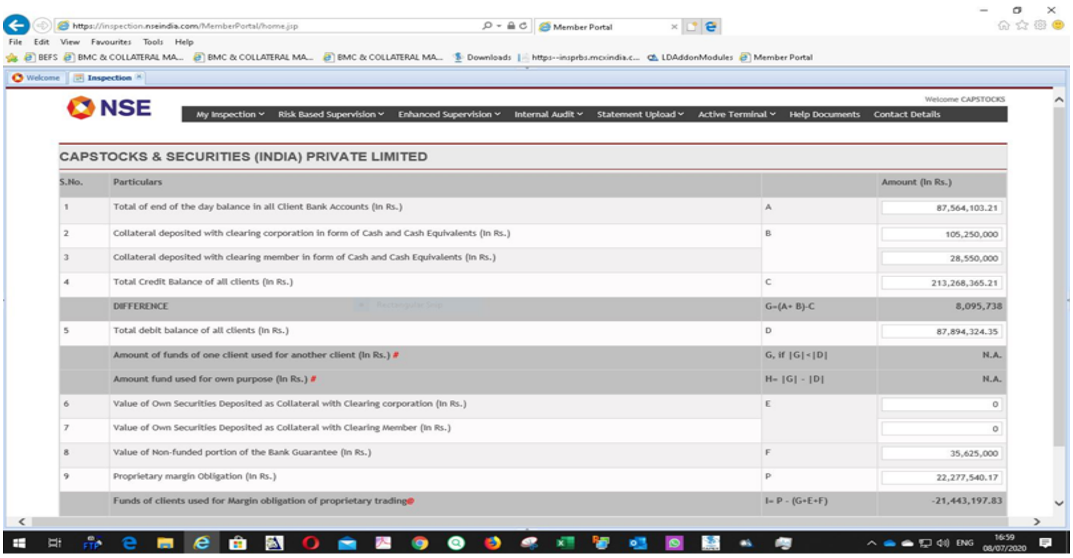
(iv) *Of the remaining, in 1176 Client accounts, we were entitled to retain an amount up to Rs 10,000/-, as per NSE circular no. NSE/INSP/36889, dated February 02, 2018. It is to be noted herein, of the above, in 134 accounts balance was less than Rs 1000/- and in 767 accounts, below Rs 500/- only.*

f) *Reply to Para C (i) ,(ii), (iii):*

It is reiterated that we have neither over reported nor under reported the value of Collaterals to the Exchange. The following points substantiate our stand in support of the issues raised under Para (C):

(i) *Our calculation of collateral deposits with Clearing Corporation and Clearing Member are again attached, as Annexure 15.*

(ii) *Unencumbered creditors / debtors' figures reported by us on 03/07/2020 are the same as calculated by the Inspection team. The screen shot of the same from NSE portal is given below and mail confirmation received from NSE is enclosed.*



CAPSTOCKS & SECURITIES (INDIA) PRIVATE LIMITED

S.No.	Particulars		Amount (In Rs.)
1	Total of end of the day balance in all Client Bank Accounts (In Rs.)	A	87,564,103.21
2	Collateral deposited with clearing corporation in form of Cash and Cash Equivalents (In Rs.)	B	105,250,000
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents (In Rs.)		28,550,000
4	Total Credit Balance of all clients (In Rs.)	C	213,268,365.21
	DIFFERENCE	G=(A+ B)-C	8,095,738
5	Total debit balance of all clients (In Rs.)	D	87,894,324.35
	Amount of funds of one client used for another client (In Rs.) #	G, if |G|<|D|	N.A.
	Amount fund used for own purpose (In Rs.) #	H= |G| - |D|	N.A.
6	Value of Own Securities Deposited as Collateral with Clearing corporation (In Rs.)	E	0
7	Value of Own Securities Deposited as Collateral with Clearing Member (In Rs.)		0
8	Value of Non-funded portion of the Bank Guarantee (In Rs.)	F	35,625,000
9	Proprietary margin Obligation (In Rs.)	P	22,277,540.17
	Funds of clients used for Margin obligation of proprietary trading	I= P - (G+E+F)	-21,443,197.83

(iii) *The following Bank Guarantees were not considered in the calculation by the Inspection team for various dates:*

Table No. 6

Sl No.	*Exchange/ Segment*	*BG Amount*
1	*BSE EQ*	*1375000*
2	*MCX*	*750000*
		2125000

(iv) *The differences noted in the case of Margin utilized are on account of the same in minimum margin calculation of credit client's account.*

(v) *Free / Unblocked collateral balance are reported on basis of the following files from Clearing Corporation and Clearing member:*

NSE Equity Cash Segment- MG01
NSE FAO Segment- MG11
NSE SLBM Segment- MG01
NSE CD & NSE Commodity- Clearing Member file
NSE CD- FSR Report & FD Report
MCX Total Collaterals- Total Margin utilized

(vi) *Further, the Inspection team has not considered our deposits held in NSE SLBM & Currency and Deposits with our Clearing Member Edelweiss for NSE Commodity segment, in several cases.*

(vii) *Regarding Para C (iii), the following differences may kindly be noted:*

- *Our PMS client account "00630340000082" maintained with HDFC bank was considered by the Inspection team to arrive at the bank balance, whereas we have not considered the same in our calculation.*
- *In the case of the highest difference, as reported by the Inspection team, i.e. bank balance of Rs 11.70 crores on 28/08/2020, the figures reported by us are correct and details of the same are given below:*

Table No. 7: The Bank Accounts Considered for reporting balance on 28/08/2020

Bank Accounts	Account Name	Bank Balance
920020042287565	AXIS MCX	5,01,000
918020064628448	AXIS NEW A/C NO 918020064628448	2,07,416
2995201000057	CANARA BANK NSE CM ACCOUNT	29,901
630340000065	HDFC BSE CM A/C -00630340000065	18,781
600340083694	HDFC BSE CURRENCY SETTLEMENT - 83694	1,11,396
990620004301	HDFC BSE SETT A/C - 4301	67,972
990620007705	HDFC BSE STAR MF SETT A/C-7705	8,84,826
632340000027	HDFC E BROKING NSE CM A/C-27	7,27,300
630340000072	HDFC F&O CM A/C -00630340000072	1,56,485
990630001730	HDFC F&O SETT ACC1730 (OLD)	23,54,917
600340055830	HDFC FAO SETTL A/C(IL&FS)- 5830	51,882
57500000170791	HDFC MCX CM A/C -57500000170791	4,724
57500000170752	HDFC MCX SETTLEMENT A/C -70752	2,19,425
990680028316	HDFC MCX-SX CASH SETT- 00990680028316	3,753
630340000185	HDFC MSX CM A/C-00630340000185	30,960
630340000021	HDFC NSE CM A/C -00630340000021	1,84,35,880
600340041695	HDFC NSE CURR DER SETT A\C-41695	1,60,607
630340000178	HDFC NSE CURRE DERI CM A\C -178	212
990610011679	HDFC NSE Mutual Fund Settlement - 11679	58,011

990610005593	*HDFC NSE SETTLEMENT A/C -5593*	*1,54,20,909*
46102000014368	*IDBI BANK NSE0046102000014368*	*1,05,182*
200004423121	*INDUSIND BANK -0050-E94022-050*	*4,21,432*
9902000005444	*IOB NSE CM- 009902000005444*	*2,21,276*
30310512877	*SBI NSE -30310512877*	*5,62,195*
113010200001465	*U T I BANK (NSE CM)*	*1,71,143*
34985700000029	*YES BANK AC 034985700000029*	*2,34,998*
	FD Taken For Submitting Bank Guarantee To MCX Exchange, And Which Is Not Reflected In MCX Collateral Statements	*3,37,50,000*
	Total Bank Balance Reported	***7,49,12,584***

(viii) Reply to Para C (v): It is stated that we have reported cash & cash equivalent correctly to the Exchange. The copy of the client ledgers are enclosed as annexure denoting clear ledger balance reported by us as cash & cash equivalent.

g) Reply to Para D: It is submitted that the figures reported by us are true and in the given instance, the inspection team has not considered the early Pay in value as well as the MTM margin collected on T+2. A revised working with respect to client is detailed below:"

Table No. 8

Margin Date	*05-Apr-21*
Client Id	*TM450*
Name	*MAHADEVAN M **
Exchange	*NSECM*
Clear balance on T-day as per Inspection Report	*4,972.14*
Add uncleared Kerala cess debited Bill No- KFC13455-3103	*45.74*
Clear balance on T-day	*5,017.88*
Add: Early Payin Value (details attached as annexure …)	*31,940.00*
Value of Pledge stocks	*3,24,595.50*
Total value of funds and securities value Available Margin Reporting	*3,61,553.38*
Add: MTM Margin Collected on T+2	*20,878.50*
Total margin reported	*3,82,431.88*

8. The additional submission in response to the allegations levelled in Para 5B and 5C of the SCN, made by the Noticee *vide* email / letter dated January 06, 2023 are summarised below:

a) *Reply to Para B: In furtherance to our reply dated 9/12/2022, it is submitted herein that the Inspection team, while scrutinizing the running account settlement details has erroneously considered client balances for settlement, as at the end of each calendar quarter, instead of a gap of 30/90 days, between two running account settlements, as per NSE circular NSE/INSP/36889, dated February 02, 2018.*

The above mandate is as per NSE FAQ, on Actual Settlement of Client Accounts (Point 1 of Annexure - A to NSE circular NSE/INSP/36889, dated February 02, 2018) wherein, it is stated as follows "Clients whose funds and securities are maintained on a running account basis have to be settled by members on a monthly / quarterly basis as per the client mandate. Members should ensure that there is a gap of maximum 30/90 days (as per the client mandate) between two running account settlements."

In order to substantiate the same, we are furnishing herewith sample details of running account settlement of one Mr. Jyothish Prasad (Client Code T4J004), for the sake of clarity:

The running account settlement of the above Client was done on 04/05/2020 i.e for the 1st Quarter of FY 2020-21 and Rs. 1.00 Lac payment was released to the said Client, as part of quarterly settlement. The Client has thereafter transferred back the said amount on 13/05/2020. However, in the inspection report it is wrongly stated that the aforementioned Client account was not settled for Q1 2020 - 21, for an amount of Rs. 1.00 Lac.

Similarly, the same Client account was again mentioned as not settled in Q4-2020-21, for an amount of Rs.2.00 Lacs. As part of Running account settlement for Q4-2020-21, the said client account was settled on 28/01/21 and a payment of Rs. 2,53,294.59 was released on the same day. Subsequently, the Client has transferred back an amount of Rs. 2.00 Lacs on 01/02/2021, which was followed by the corresponding settlement of this client account by releasing an amount of Rs. 2.00 Lacs, on 23/04/21.

It may kindly be noted that, status quo of settlement in the above format was maintained till the release of SEBI circular dated 27/7/22, which mandated enforcement of Client Account settlement on First Friday of the quarter(s) i.e., Apr-Jun, Jul-Sep, Oct-Dec & Jan- Mar in lieu of the above settlement.

It is therefore amply made clear that the Inspection team has overlooked the aforementioned circular, while arriving at their conclusion on Non settlement of 1231 inactive Client Accounts, across different quarters. Consequently, the alleged statement that the Noticee has violated various provisions of relevant SEBI circular shall not hold steam and Noticee may kindly be vindicated of any violation, arising on that count.

Furthermore, as per Point 7 of Annexure - A to NSE Circular NSE/INSP/36889 dated February 02, 2018, Trading members are allowed to retain an amount of up to Rs 10,000/- in Client accounts. Notwithstanding the above, in 54 accounts, we have ensured settlement of the said amounts in the respective client accounts, the same quarter itself, which may kindly be taken note.

b) *Reply to Para C (i): It is vehemently denied that we have neither under reported nor over reported the value of collaterals and to substantiate the above fact we have depicted the split-up details of collaterals reported to the Exchange(s). For the above, we have relied on the data uploaded on 08-03-2021 (Table no. 9) & 22-03-2021 (Table no. 10), which is alleged to be the dates over reported by Rs 3.28 Crore & under reported, by an amount of Rs 6.75 Crore. It is to be noted that the actual value of Collaterals uploaded on 08-03-2021, is Rs 21,11,17,500.00 and on 22-03-2021, is Rs 24,81,80,000.*

Table No. 9

Date: 08/03/2021			
Table Summary			
Particulars	***Totals***	***Funded Portions***	
Total Cash	*7,35,05,000*	*7,35,05,000*	
Total FDR	*7,58,00,000*	*7,58,00,000*	
Total BGs	*15,47,50,000*	*6,18,12,500*	
Total Collaterals		***21,11,17,500***	
Exchange / Segment	***Type***	***Amount***	***Source File Name***
NSE Equity	*Cash*	*60,00,000*	*S.No. 1 in C_MG05_11674_08032021_01.CSV*
NSE Equity	*Cash*	*15,00,000*	*S.No. 2 in C_MG05_11674_08032021_01.CSV*
NSE Equity	*Cash*	*50,00,000*	*S.No. 20 in C_MG05_11674_08032021_01.CSV*
NSE Equity	*Bank Guarantee*	*2,51,25,000*	*S.No. 22 in C_MG05_11674_08032021_01.CSV*
NSE FAO	*Cash*	*25,00,000*	*S.No. 1.1.1 in F_CL01_11674_08032021_02.LIS*

NSE FAO	*Bank Guarantee*	*25,00,000*	*S.No. 1.1.7 in F_CL01_11674_08032021_02.LIS*
NSE FAO	*Cash*	*25,00,000*	*S.No. 1.2 in F_CL01_11674_08032021_02.LIS*
NSE FAO	*Bank Guarantee*	*5,50,00,000*	*S.No. 2.1 in F_CL01_11674_08032021_02.LIS*
NSE FAO	*Cash*	*5,10,00,000*	*S.No. 2.2 in F_CL01_11674_08032021_02.LIS*
NSE CD	*Cash*	*2,00,000*	*FSR Report*
NSE CD	*FD*	*8,00,000*	*FD Confirmation Letter*
NSE SLBM	*Cash*	*1,30,000*	*S.No. 13 in S_MG05_11674_08032021_01.CSV*
BSE EQ	*Cash*	*11,25,000*	*BSE Collateral File*
BSE EQ	*Bank Guarantee*	*13,75,000*	*BSE Collateral File*
MCX Commodity	*Cash*	*2,50,000*	
MCX Commodity	*Bank Guarantee*	*7,50,000*	*MCX_COLCBA_55990_20210308.pdf*
MCX Commodity	*Cash*	*25,00,000*	*MCX_COLC_7025_20210308.pdf*
MCX Commodity	*Bank Guarantee*	*7,00,00,000*	*MCX_COLC_7025_20210308.pdf*
MCX Commodity	*FDR*	*7,50,00,000*	*MCX_COLC_7025_20210308.pdf*
CM			
NSE Commodity-Edelweiss	*Cash*	*2,00,000*	*Row No. 42-FREE Balance For Limit_NSE_COMMODITY_10162_08-03-2021.xlsx*
NSE CD- Axis Bank	*Cash*	*6,00,000*	*Cash - 11674_SUMMARY_08032021_CD_NSE.PDF*

Table No. 10

Date : 22/03/21			
Table Summary			
Particulars	***Collateral Value***	***Funded Portions***	
Total Cash	*8,25,05,000*	*8,25,05,000*	
Total FDR	*7,58,00,000*	*7,58,00,000*	
Total BGs	*17,97,50,000*	*8,98,75,000*	
Total Collaterals		***24,81,80,000***	
Exchange / Segment	***Type***	***Amount***	***File Name***
NSE EQ	*Cash*	*60,00,000*	*S.No 1 - C_MG05_11674_22032021_01.CSV*
NSE EQ	*Cash*	*15,00,000*	*S.No 2 - C_MG05_11674_22032021_01.CSV*
NSE EQ	*Cash*	*2,00,00,000*	*S.No 20 - C_MG05_11674_22032021_01.CSV*
NSE EQ	*Bank Guarantee*	*25,00,000*	*S.No 22 - C_MG05_11674_22032021_01.CSV*
NSE EQ	*Bank Guarantee*	*2,26,25,000*	*S.No 22 - C_MG05_11674_22032021_01.CSV*
NSE FAO	*Cash*	*50,00,000*	*S.No 1.1 - F_CL01_11674_22032021_01.LIS*
NSE FAO	*Cash*	*4,50,00,000*	*S.No 2.2 - F_CL01_11674_22032021_01.LIS*
NSE FAO	*Bank Guarantee*	*25,00,000*	*S.No 1.1.7 - F_CL01_11674_22032021_01.LIS*
NSE FAO	*Bank Guarantee*	*8,00,00,000*	*S.No 2.1 - F_CL01_11674_22032021_01.LIS*
NSE CD	*Cash*	*2,00,000*	*FSR_Report_18-03-2021.pdf*
NSE CD	*FD*	*8,00,000*	*FD Confirmation_letter.pdf*
BSE EQ	*Cash*	*11,25,000*	*BSE Collateral_File.pdf*
BSE EQ	*Bank Guarantee*	*13,75,000*	*BSE Collateral_File.pdf*
MCX Commodity	*Cash*	*25,00,000*	*MCX_COLC_7025_20210322*

MCX Commodity	*Cash*	*2,50,000*	
MCX Commodity	*Bank Guarantee*	*32,50,000*	*MCX_COLC_7025_20210322 & MCX_COLCBA_55990_20210322*
MCX Commodity	*Bank Guarantee*	*6,75,00,000*	*MCX_COLC_7025_20210322*
MCX Commodity	*FD*	*7,50,00,000*	*MCX_COLC_7025_20210322*
NSE SLBM	*Cash*	*1,30,000*	*S.No 13 - S_MG05_11674_22032021_01.CSV*
NSE COMMODITY	*Cash*	*2,00,000*	*Cell D21 - NSE_COMMODITY_10162_22-03-2021.xlsx*
NSE CURRENCY	*Cash*	*6,00,000*	*Deposit Summary - Cash - 11674_SUMMARY_22032021_CD_NSE.PDF*

c) *Reply to Para C (ii): It has been alleged in Para C (ii) that the Noticee has reported incorrect amount regarding non funded portion of bank guarantees to the Exchange, which is categorically denied. To reinforce our claim, we are tabling herein below the non-funded portion of Bank Guarantee details submitted to Exchange, again for the date 22-03-2021. From the details uploaded to the Exchange, for the sample date i.e on 22-03-2021, it is apparent that the Noticee has duly & correctly reported the details to the Exchange, which warrants no penal or regulatory action.*

Table No. 11

Exchange/ Segment	**BG Amount**	**Funded Portions**	**Non-Funded Portions**	**Source File**
NSE Equity	2,51,25,000	1,25,62,500	1,25,62,500	C_MG05_11674_22032021_01.CSV
NSE FAO	8,25,00,000	4,12,50,000	4,12,50,000	F_CL01_11674_22032021_01.LIS
BSE Equity	13,75,000	6,87,500	6,87,500	BSE Collateral_File.pdf
MCX Commodity	7,07,50,000	3,53,75,000	3,53,75,000	MCX_COLCBA_55990_20210322.pdf & MCX_COLC_7025_20210322.pdf
Totals	**17,97,50,000**	**8,98,75,000**	**8,98,75,000**	

d) Reply to Para C (iii): In support of our claim, refuting the allegation, we are tabling herewith bank-wise balance for 28/08/2020 and Bank Statements dated 28/08/2020 as Annexure in support of figures mentioned in table. Further, in the case of the highest difference, as reported by the Inspection team, i.e. bank balance of Rs 11.70 crores on 28/08/2020, the figures reported by us are correct.

Details of free / unblocked collateral, deposited with CC/CM as on 05/03/2021 are given in table.

Table No. 12

Date: 05-03-2021			
CC			
Excahnge / Segment		**Amount**	**Source File details**
NSE Equity		2,36,70,971.93	point no. 15) Balance Deposits Available (A4-B14) in C_MG01_2_11674_05032021.lis
NSE FAO		3,51,47,285.76	Point no. 17.Excess Effective Deposits Required(B16 - A5) in F_MG11_11674_05032021.LIS
NSE CD		10,00,000.00	FSR Report and FD Confirmation Letter Attached
NSE SLBM		1,30,000.00	Point No. 17) Balance Deposits Available (A5-B16) in S_MG01_11674_05032021.lis
MCX COMMODITY			
Deposits-Cash	25,00,000.00		MCX_COLC_7025_20210305.pdf
BGS	7,00,00,000.00		MCX_COLC_7025_20210305.pdf
FDR	7,50,00,000.00		MCX_COLC_7025_20210305.pdf
	14,75,00,000.00		
Less: BMC	50,00,000.00		
	14,25,00,000.00		
Less: Margin	1,43,53,328.00		Total of D, E, F in MCX_MARGIN_55990_20210305.csv
		12,81,46,672.00	
CM			
NSE CD- Axis Bank		5,68,252.29	Recovery / Excess IN 11674_SUMMARY_05032021_CD_NSE.PDF
NSE Commodity-Edelweiss		2,00,000.00	Row No. 42 in NSE_COMMODITY_10162_05-03-2021.xlsx
	TOTAL	**18,88,63,181.98**	

e) *Reply to Para C (v): It is contended that we have reported cash & cash equivalent correctly to the Exchange. The copy of the client ledgers are enclosed as annexure denoting clear ledger balance reported by us as cash & cash equivalent.*

f) *In view of the foregoing, Additional submissions, called for at the time of hearing on 29-12-2022, we earnestly request you to not take any action against us and to exonerate from the charges levelled against the Noticee. Further, while dealing with the alleged violations stated in the Adjudication Notice, we request you to consider a settled principle of law that every minor discrepancy, irregularity or technical or venial* *breach found during the course of Inspection is not culpable and does not call for initiation of penalty proceedings.*

g) *As well, we request you to appreciate the fact that the Company has not made any disproportionate gain or gained any unfair advantage, and the Company has also not caused any loss to investors or group of investors. It is also pertinent to note that none of the Clients of the Company have raised any complaints, grievances, or issues against the us with respect to any of the allegations, in the inspection report."*

CONSIDERATION OF ISSUES AND FINDINGS

9. 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 the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as 'SC(R) Act, 1956') read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

   (b) Clause 3, clause 6.1.1(j) and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

   (c) Section 23D of the 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.

   (d) Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

   (e) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011

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

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; and Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

10. 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

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.

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 utilisation 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.

………………..

*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:

………………

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.

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

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

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

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:

a. The authorization shall be renewed at least once a year and shall be dated.

b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.

c. The authorization shall contain a clause that the Client may revoke the authorization at any time.

d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.

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.*

f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.

g. Such periodic settlement of running account may not be necessary:

i. for clients availing margin trading facility as per SEBI circular

ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).

h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.

i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.

j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.

Relevant provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011

6. If during inspection it is found that a member has reported falsely the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment.

7. The penalty shall be collected by the Stock Exchange within five days of the last working day of the trading month and credited to its Investor Protection Fund.

11. 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 the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as 'SC(R) Act, 1956') read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.**
- **(b) Clause 3, clause 6.1.1(j) and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.**
- **(c) Section 23D of the 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.**
- **(d) Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.**
- **(e) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.**

12. At the outset, I find that there are four major alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter: (i) Non segregation of clients' funds; (ii) Non settlement of clients' accounts; (iii) Incorrect submission of data to the exchange; and (v) Incorrect reporting of margin to the exchange.

(i) Non segregation of clients' funds

(a) 'G' negative: Mis-utilisation of clients' funds for other purposes

13. It was alleged in the SCN that during inspection it was observed that out of 43 sample dates [all trading days during the months of September 2020 (22 days) and March 2021 (21 days)] chosen for verification of mis-utilisation of clients' funds, the value of 'G' was negative on 25 dates, indicating possible mis-utilisation of clients' funds for other purposes i.e. funds of credit balance clients being utilized either for settlement obligations of debit balance clients or for the stock members' own purposes. The negative value of 'G' was in the range of ₹ 12.14 Lakh to ₹ 4.47 Crore for these days.

Reply of Noticee

14. In response to the above allegation, Noticee submitted that it has never utilized the credit balance, in any of its client's accounts intentionally to meet the settlement obligation or debit balance of other or for the Company's own purpose. On every last trading day of the week the Company has reconciled the balances available in all the client money accounts along with the cash collaterals deposited with the Exchanges/Clearing Corporation, wherein, the funds available was found to be in excess of the credit balance clients, in all such instances. Noticee further furnished that on September 25, 2020, March 17, 2021 and March 22, 2021, there were no shortage in client accounts and "G" was positive on these three days.

Findings

15. 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 utilisation 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.

16. I find that the Noticees has given reply in respect of negative value of 'G' on 3 dates only (September 25, 2020, March 17, 2021 and March 22, 2021) out of the alleged negative value of 'G' on 25 dates. Therefore, the contention of Noticee that it has never utilized the credit balance, in any of its client's accounts intentionally to meet the settlement obligation or debit balance of other or for the Company's own purpose is not acceptable. Further, the contention of Noticee that on every last trading day of the week the funds available was in excess of the credit balance

clients is not relevant here as the SCN alleges that the value of ‘G’ was negative on 25 specified dates out of the 43 sample dates. Therefore, I hold that value of ‘G’ was negative as alleged in the SCN and thus the Noticee has not complied with the above referred SEBI circular.

(b) ‘I’ Positive: Clients’ assets were utilized for own (proprietary) margin obligations

17. It was observed that the member has done proprietary trading during the inspection period. In 1 out of 43 sample dates, the value of ‘I’ was positive, indicating clients’ assets were utilized for own (proprietary) margin obligations on that day i.e. March 5, 2021. The amount of misuse was ₹ 1.32 Lakh.

Reply of Noticee

18. In response to the above allegation, Noticee submitted that for computation of differentials i.e. ‘G’, funds available with various Exchange were not taken into consideration. Noticee stated that FD deposited towards Margin and Cash / BG deposited for Base Minimum Capital with the exchanges were not considered.

Findings

19. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that 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.

20. I note that SEBI circular no. CIR/MRD/DRMNP/ 36 /2012 dated December 19, 2012 state that *'No exposure shall be granted against such BMC deposit'.* Therefore, I find that the contention of Noticee that funds available with various Exchange towards Margin and Base Minimum Capital (BMC) were not taken into consideration is not acceptable as the benefit of funds deposited for Margin and BMC cannot be given to Noticee. Further, the working of 'I' that how the Noticee arrived at negative value and how it differs from the calculation of 'I' positive as alleged in SCN has not been provided by the Noticee along with supporting documents in support of its contentions. Therefore, I cannot accept the submission of the Noticee and based on material available on record I hold that value of 'I' was positive as alleged in the SCN and thus the Noticee has not complied with the abovereferred SEBI circular.

(c) 'J' Positive: Mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations

21. It was observed that in 5 out of 43 dates, value of 'J' was positive, indicating mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations for these 5 days. The said misuse of clients' fund ranged from ₹ 6.65 Lakh to ₹ 2.39 Crore.

Reply of Noticee

22. In response to the above allegation, Noticee submitted that of the 5 instances, on September 18, 2020, ₹ 19,25,47619.49 was the actual margin utilized for credit balance clients and not ₹ 16,48,05,994. If the actual amount is considered "J" will fall negative i.e. ₹ 38,32,702.00. Further, on March 05, 2021, ₹ 18,88,63,182.00 was the actual unutilized collateral lying with CC/CM and not ₹ 16,39,14,305. If the actual amount is considered 'J' will turn negative i.e. ₹ 21,08951.00.

Findings

23. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that the clients' funds lying with the clearing

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

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

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

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

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

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

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

24. In view of the reply of Noticee along with documents that actual margin utilized for credit balance clients on September 18, 2020 was ₹ 19,25,47619.49, I am inclined to accept the submission made by Noticee that ‘J’ was negative on September 18, 2020. However, Noticee has not furnished any supporting documents regarding the contention that ‘J’ was negative on March 05, 2021, thus his submissions cannot be accepted. Further, in respect of the positive value of ‘J’ on remaining 3

dates out of the alleged 5 dates, the Noticee has not made any submission indicates that Noticee has nothing to submit in this regard and the allegation levelled against Noticee is accepted by it. Therefore, I hold that the value of 'J' on 4 dates was positive as alleged in the SCN and thus the Noticee has not complied with the abovereferred SEBI circular.

(d) Balances of the credit balance clients used towards margin obligation of debit balances clients

25. SCN alleges that in another sample set selected for verification for the weekly enhanced risk-based supervision reported dates [All weekly submission reporting dates from April 01, 2020 to September 30, 2021 (total 78 dates)], it was observed that the balances of the clients with credit balance were used towards margin obligation of clients with debit balances on 37 dates out of 78 sample dates. The misuse of credit balance clients' funds ranged from ₹ 13.77 Lakh to ₹ 3.39 Crore.

Reply of Noticee

26. I find that Noticee has not furnished any reply regarding balances of the clients with credit balance used towards margin obligation of clients with debit balances on 37 dates.

Findings

27. I note that Noticee has not made any submission in response to the allegation of balances of the clients with credit balance used towards margin obligation of clients with debit balances on 37 dates indicates that Noticee has nothing to submit in this regard and the allegation levelled against Noticee is accepted by it. Therefore, I hold that the balances of the clients with credit balance were used towards margin obligation of clients with debit balances on 37 dates. The misuse of credit balance clients' funds ranged from ₹ 13.77 Lakh to ₹ 3.39 Crore.

28. 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. However, the funds of the clients were mis-utilised by the Noticee as discussed in foregoing paragraphs. Therefore, I hold that the allegation that Noticee has violated the provisions 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 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stand established.

(e) Funds of clients routed through own account by Noticee

29. It was observed that in 18 instances funds of 79 clients amounting to ₹ 6.22 lakh were routed through own account by the Noticee.

Reply of Noticee

30. In response to the above allegation, Noticee submitted that the funds were in fact routed from Noticees own bank account to the Client Money Account to set off bad debts, in the respective client accounts. The amount so written off and realized thereafter were subsequently transferred to own account.

Findings

31. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the 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.

32. I find that the Noticee has not given any tenable explanation except merely providing few ledger copies. In absence of proper explanation and supporting documents affirming that the said transactions were for legitimate purpose as specified in SEBI circular, the submission of Noticee is not acceptable. Therefore, I hold that the Noticee has violated 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.

(ii) Non settlement of clients' accounts

Allegation

33. It was alleged in the SCN that it was observed that Noticee has not settled the 1231 inactive clients' accounts across six quarters of the inspection period and total amount of non-settlement was ₹ 73.72 Lakh and quarterly average amount of non-settlement was ₹ 12.28 Lakh.

Reply of Noticee

34. In response to the above allegation, Noticee submitted that 614 client accounts amounting to ₹ 6,83,413.06 were accounted repeatedly for different quarters, and one account (55990) having a balance of ₹ 27,90,361.20, is Noticees own account maintained for MCX derivatives trading, which requires no settlement. Further, in case of accounts having a credit balance above ₹ 10,000/- (i.e in 54 Accounts, amounting to ₹ 25,04,992.66), the settlement of the said amount was done in the same quarter itself. Noticee further submitted that in 1176 client accounts, it was entitled to retain an amount up to ₹ 10,000/-, as per NSE circular no. NSE/INSP/36889, dated February 02, 2018. Noticee submitted that the inspection team has erroneously considered client balances for settlement, as at the end of each calendar quarter, instead of a gap of 30/90 days, between two running account settlements. Noticee submitted that the client accounts were settled in a quarter and thereafter, the clients have transferred back the amount in their account, however, it is wrongly stated in the inspection report that the client accounts were not settled in that quarter.

Findings

35. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, there must be a gap of maximum 90/30 days (as per the

choice of client viz. Quarterly/Monthly) between two running account settlements. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 specify that 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.

36. In view of the reply given by the Noticee and material available on records, I am inclined to accept the submissions of the Noticee only regarding the balance of ₹ 27,90,361.20 in Noticees own account maintained for MCX derivatives trading and the settlement of ₹ 25,04,992.66 in 54 accounts was done in the same quarter. However, the Noticees submission that 614 client accounts amounting to ₹ 6,83,413.06 were accounted repeatedly for different quarters cannot be accepted as the accounts of the said client remained unsettled for multiple quarters, therefore, the amount not settled in each quarter is counted separately. Noticees submission that in 1176 client accounts Noticee was entitled to retain an amount up to ₹ 10,000/-, as per NSE circular no. NSE/INSP/36889, dated February 02, 2018, cannot be accepted as the said NSE Circular 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 for not settling the amount of inactive clients is not acceptable.

37. As regards the submission of Noticee that the inspection team has erroneously considered client balances for settlement, as at the end of each calendar quarter, instead of a gap of 30/90 days, Noticee has provided evidence with respect to 54 instance only out of the total of 1231 instances and therefore the said contention cannot be accepted.

38. 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 mis-utilisation of funds by the stock brokers, thereby safeguarding the integrity of the market which in the instant case, has been disregarded by the Noticee. In view of the above, I find that the allegation that Noticee has violated the provisions of clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, stands established.

(iii) Incorrect submission of data to the Exchange

39. It was observed that the Noticee reported the incorrect data to the Exchange for following:

(a) Incorrect reporting of the value of collateral

40. It is alleged in SCN that Noticee over-reported the value of collateral on 15 dates out of 43 sample dates and the difference of over-reporting ranged from ₹ 6.56 lakh to ₹ 3.28 crore. Noticee under-reported the value of collateral on 28 sample dates and the difference of under-reporting was in the range of ₹ 5.93 lakh to ₹ 6.75 crore.

41. In response to above allegations, Noticee submitted that it has neither over reported nor under reported the value of collaterals to the Exchange. It has relied on the data uploaded by the exchanges and furnished the data uploaded on March 08, 2022 and March 22, 2022 along with supporting documents. Noticee further submitted that deposits held in NSE SLBM & Currency and Deposits with their clearing member Edelweiss for NSE commodity segment were not considered, in several cases.

42. I find that over-reporting of collateral on 15 dates and under-reporting of collateral on 28 sample dates out of 43 sample dates was alleged in the SCN, however, Noticee has furnished the data for 2 dates only. Therefore, the contentions of the

Noticee is not acceptable and I hold that the allegations regarding incorrect reporting of collateral by the Noticee, stand established.

(b) Incorrect reporting of the value of non-funded bank guarantee

43. It is alleged in SCN that Noticee reported incorrect amount regarding non-funded bank guarantee to the Exchange. The difference between figures reported by Noticee and the calculation done by the inspection team ranged from ₹ 10.62 lakh to ₹ 2.41 crore.

44. In response to above allegations, Noticee furnished the non-funded portion of bank guarantee details submitted to the Exchange for the sample date i.e. on March 22, 2022 and stated that it has correctly reported the details to the Exchange. Noticee submitted that 2 bank guarantees were not considered in the calculation by the inspection team for various dates.

45. I find that the reporting of incorrect amount w.r.t. non-funded bank guarantee to the Exchange on 43 sample dates was alleged, however, Noticee has furnished the data only for 1 date i.e. on March 22, 2022. Therefore, the contentions of the Noticee is not acceptable and I hold that the allegations regarding incorrect reporting of non-funded bank guarantee by the Noticee, stand established.

(c) Incorrect reporting of the data towards weekly monitoring of client funds

46. It is alleged in SCN that Noticee has incorrectly reported the data towards weekly monitoring of client funds with regards to bank balance (78 dates), collateral deposits (78 dates), unencumbered debtors and creditors (1 date), value of non-funded portion of bank guarantee (78 dates), margin utilized for positions of credit balance clients (78 dates) and free / unblocked collateral deposited with clearing corporation and clearing member (71 dates).

47. In response to incorrect reporting of data towards weekly monitoring, Noticee has furnished the bank-wise balance along with bank statements for August 28, 2020, in the case of the alleged highest difference, and contended that the figures

reported by it are correct. Further, Noticee submitted that PMS Client account "xxx082" maintained with HDFC bank was considered by the inspection team to arrive at the bank balance. Free / Unblocked collateral balance were reported on basis of the files from clearing corporation and clearing member. Unencumbered creditors / debtors' figures reported by Noticee are the same as calculated by the Inspection team.

48. Considering the materials available on record and the factual evidence made available to me, I accept the submissions made by the Noticee regarding incorrect reporting of unencumbered creditors / debtors' figures. However, Noticees contention w.r.t. incorrect reporting of data towards weekly monitoring of client funds with regards to bank balance, collateral deposits, value of non-funded portion of bank guarantee, margin utilized for positions of credit balance clients and free / unblocked collateral deposited with clearing corporation and clearing member is not acceptable as the Noticee has furnished the details of bank balance only for 1 date i.e. August 28, 2020 and details of free / unblocked collateral deposited with clearing corporation and clearing member for March 05, 2021 only. Noticee has not furnished any tenable explanation along with the supporting documents for other dates and rest of the allegations regarding incorrect reporting of data. Therefore, I hold that the allegations regarding incorrect reporting of data towards weekly monitoring by the Noticee, stand established.

(d) Incorrect reporting of cash & cash equivalent, based on peak margin calculation

49. It is alleged in SCN that Noticee has incorrectly reported the cash & cash equivalent to the Exchange for 7 clients out of a sample of 15 clients, based on peak margin calculation. In response to the said allegations, Noticee has not submitted any reply.

50. I find that in response to above allegation, Noticee has not submitted any reply, which indicates that Noticee has nothing to submit in this regard and the allegation

levelled against Noticee is accepted by it. Therefore, I hold that the allegation that Noticee incorrectly reported the cash & cash equivalent, based on peak margin calculation, stands established.

(e) Incorrect reporting of cash & cash equivalent, based on EoD margin calculation

51. It is alleged in SCN that Noticee has incorrectly reported the cash & cash equivalent to the Exchange for 5 clients out of a sample of 21 clients in case of EoD margin calculation.

52. In response to above allegations, Noticee submitted that it had reported cash & cash equivalent correctly to the Exchange. The copy of the ledgers of the client were enclosed by Noticee indicating the ledger balance of clients, which was reported as cash & cash equivalent by the Noticee.

53. Considering the materials available on record and the factual evidence made available to me, I accept the submissions made by the Noticee regarding incorrect reporting of cash & cash equivalent to the Exchange for 5 clients. Therefore, I am of the view that the allegations regarding incorrect reporting of cash & cash equivalent to the Exchange by the Noticee, does not stand established.

54. I note that objective of the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 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 data as established at para no. 42, 45, 48 and 50 above, 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 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

(iv) Incorrect reporting of margin to exchange

Allegation

55. It is alleged in the SCN that Noticee reported incorrect margin pertaining to 1 client amounting to ₹ 0.53 Lakh.

Reply of Noticee

56. In response to the above allegation, Noticee submitted the figures reported by it are true and in the given instance, the inspection team has not considered the early Pay in value as well as the MTM margin collected on T+2. In this regard, Noticee submitted a revised working with respect to the said client.

Findings

57. I note that as per SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, if during inspection it is found that a member has falsely reported the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment. The objective of the circular is that the members should report the margins correctly to the Exchanges, to increase the transparency in dealings of the stock brokers, so that the margins of clients are regularly monitored by stock exchanges and client collateral is not used for any purposes other than meeting the respective client's margin requirements.

58. I find that Noticee has not provided any documents in support of its claim that the client had made early Pay in and the MTM margin was collected on T+2 from the client, thus, the contention of the Noticee cannot be accepted. Therefore, I hold that the allegation that Noticee has violated the provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, stands established.

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

59. 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 following provisions:
    (a) Section 23D of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as 'SC(R) Act, 1956') read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.
    (b) Clause 3, clause 6.1.1(j) and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
    (c) Section 23D of the 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.
    (d) Clause 12 of Annexure of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
    (e) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011

60. The object of inspection of the books of accounts and records of any intermediary is to monitor and identify 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.

61. I find from the material available on record that the Noticee has failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients by Non segregation of clients' funds (mis-utilizing the funds

of clients), Non settlement of clients' accounts, Incorrect submission of data to the exchange and Incorrect reporting of margin to the exchange. 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 and section 23D of the SC(R) Act, 1956.

62. 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...".

63. The aforesaid violations, makes the Noticee liable for penalty under section 15HB of the SEBI Act, 1992 and section 23D of the SC(R) Act, 1956. 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.*

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 15J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SC(R) Act, 1956 read with Rule 5(2) of the SCR Adjudication Rules?

64. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992 and Section 23-J 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.]

65. 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. With respect to the repetitive nature of the default, I find that *vide* Adjudicating order dated December 29, 2017, a penalty of Rs. 2,50,000 was imposed on the Noticees for violation of SEBI Regulations and Circulars on account of short collection of margins / non-collection of margins. Further, *vide* Adjudicating order dated May 31, 2021, a penalty of Rs. 7,00,000 was imposed on the Noticees for violation of SC(R) Act, 1956 and SEBI Circulars on account of Mis-use of clients' funds, Non-settlement of funds and securities of clients and Incorrect reporting of margin collection to the exchange etc. Therefore, I note that the Noticee is repetitive defaulter. With regard to the investor complaints against Noticee, I find that no complaints were made against the stock broker in previous 5 years. 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. 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

66. 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, and section 23-I of the SCR Act read with Rule 5 of the SCR Adjudication Rules, 1956, I hereby impose the following monetary penalty under section 15HB of the SEBI Act, 1992 and section 23D of the SC(R) Act, 1956, on the Noticee:

Sr. No.	Penalty Provisions	Amount of penalty (in ₹)
1	Section 15HB of SEBI Act, 1992	₹ 7,00,000/- (Rupees seven lakhs only)
2	Section 23D of SC(R) Act, 1956	₹ 8,00,000/- (Rupees eight lakhs only)
Total amount of penalty		**₹ 15,00,000/-** **(Rupees fifteen lakhs only)**

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

67. 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

68. 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)	

69. 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.

70. 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: January 31, 2023 **ADJUDICATING OFFICER**