BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/30724]

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

In respect of:

Jainam Broking Limited

PAN: AABCJ3918N

In the matter of Jainam Broking Limited

A. BACKGROUND

1. Jainam Broking Limited (hereinafter referred to as "**Noticee/Jainam**") has been registered with the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a stock broker since September 30, 2004. The registration number of the Noticee is INZ000198735. SEBI had undertaken inspection of the Noticee on October 04, 2023, and October 05, 2023, for the period April 01, 2022 to July 31, 2023 (hereinafter referred to as "**Inspection period/IP**").

2. Post the culmination of the aforesaid inspection, an inspection report (hereinafter referred to as **"IR"**) was prepared. The findings of the said inspection were communicated to the Noticee vide letter dated November 29, 2023. In response to the findings in the Inspection Report, the Noticee submitted its replies vide letter dated December 15, 2023, and e-mails dated January 05, 2024, and February 06, 2024.

3. After the receipt of the Noticee's reply to the Inspection Report, the findings of the inspection vis-a-vis the response of the Noticee were analyzed by the concerned department of SEBI. Thereafter, a Post Inspection Analysis report (hereinafter referred to as **"PIA"**) was prepared by SEBI.

4. Based on the findings of the inspection conducted by SEBI and the responses of the Noticee, certain non-compliances of SEBI Circulars and Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as "**PML Rules**") were alleged. The summary of the violations alleged to have been committed by the Noticee and the corresponding provision of the law are given in the table below:

Table 1

Sr. No.	**Alleged Violations (Summarized)**	**Regulatory Provisions**
1.	The Noticee has not updated the Know Your Client (**KYC**) of clients within the stipulated time (i.e., within ten days after the commencement of an account-based relationship with a client) in 1,501 instances with the Central Registry of Securitization and Asset Reconstruction and Security Interest of India (**CERSAI**) Portal for KYC records, i.e., Central KYC Record Registry (**CKYCR**). Moreover, in 200 instances, the KYCs of clients were not updated with CKYCR at all.	Clauses 3 and 6 of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016 (hereinafter referred to as "**SEBI Circular dated July 21, 2016**") and Clauses 114, 115, and 116 of SEBI Master Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169 dated October 12, 2023 (hereinafter referred to as "**SEBI Master Circular dated October 12, 2023**") read with Clause 9 (1A) of the PML Rules.

B. APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated July 11, 2024 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**), to inquire

into and adjudge under the provisions of Section 15HB of the SEBI Act for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee.

C. <u>SHOW CAUSE NOTICE, REPLY, AND HEARING</u>

6. Show Cause Notice ref no. SEBI/EAD-2/NH/YK/23192/2024 dated July 16, 2024 (hereinafter referred to as **"SCN/Notice"**) was served upon the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, not be imposed on it in terms of the provisions of Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee.

7. The SCN dated July 16, 2024, *inter alia*, alleged the following:

   "***<u>KYC of clients not updated with CKYCR within stipulated time</u>***

   - *It was observed from IR that out of 37,172 active clients, the Noticee has not updated the KYC of 2,768 clients on the CERSAI Portal for KYC records, i.e., CKYCR.*

   - *It was observed that the aforesaid findings were communicated to the Noticee by SEBI vide letter dated November 29, 2023. The Noticee vide letter dated December 15, 2023 had, inter alia, stated as under in respect of the aforesaid finding in the IR: "We will revert on this separately on Friday."*

   - *Thereafter, vide e-mails dated January 05, 2024, and February 06, 2024, the Noticee had submitted its remarks for 2,768 clients.*

   - *In this regard, it was observed from PIA that, as per the regulatory requirement, the Noticee was required to upload KYC data of clients onboarded after August 01, 2016 with CKYCR. Therefore, 1,054 instances wherein clients were onboarded before the cut-off date, i.e., August 01, 2016, may be excluded from observation. It was further observed from PIA that out of the remaining 1,714 instances, in 1,501 instances, updates with CKYCR were carried out after the due date as stipulated in applicable* *laws. However, in 200 instances, updates with CKYCR were not carried out at all. Thus, it was alleged in the PIA that there was a violation of applicable provisions in a total of 1,701 instances.*

- *In view of the above, it is alleged that the Noticee has violated the provisions of Clauses 3 and 6 of the SEBI Circular dated July 21, 2016 and Clauses 114, 115, and 116 of the SEBI Master Circular dated October 12, 2023, read with Clause 9 (1A) of the PML Rules."*

8. The SCN along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 2

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[1]	Remarks
1.	Through E-mail	om............@jainam.in; com.............@jainam.in; ne.............@jainam.in;	Delivered on July 16, 2024.
2.	Through Speed Post with Acknowledgment Due	*Jai………Surat – 395 007*	Delivered on July 22, 2024, as per the consignment tracking on India Post.
		P03………Gandhinagar – 382 355	Delivered on July 22, 2024, as per the consignment tracking on India Post.

9. The Noticee, vide e-mail dated July 31, 2024, requested an extension of time up to August 20, 2024, to submit its reply to the SCN. In the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered. Vide e-mail dated July 31, 2024, the Noticee was advised to submit its reply to the SCN, if any, at the latest by August 09, 2024. However, vide e-mail dated

[1] *E-mail ID and address excised for the sake of confidentiality.*

August 09, 2024, the Noticee again requested an extension of time upto August 20, 2024, to submit its reply to the SCN. Accordingly, in the interest of natural justice, an opportunity of hearing was granted to the Noticee on August 21, 2024, at 11:30 A.M., vide hearing notice dated August 12, 2024. The Noticee was also advised to submit its reply, if any, at the latest by August 20, 2024. The Noticee was also advised to confirm the name of the official(s) / representative(s) with the designation(s) appearing for the hearing at least three days before the hearing date. However, the Noticee had neither submitted any reply on merits nor confirmed the names of the officials appearing for the hearing until August 20, 2024. In the interest of natural justice, one more opportunity of hearing was granted to the Noticee on August 23, 2024, at 03:30 P.M., vide e-mail dated August 20, 2024. The Noticee was also advised to submit its reply, if any, latest by August 21, 2024. The Noticee submitted its reply vide letter dated August 23, 2024, received by SEBI via e-mail on August 23, 2024 at 02:04 P.M. almost an hour before the hearing was to commence in the matter. Further, the hard copy of the reply was received by SEBI on August 26, 2024.

Reply of the Noticee

10. Vide letter dated August 23, 2024, the Noticee has made its submissions in response to the SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.

Hearing

11. On the scheduled date of the personal hearing, i.e., August 23, 2024, the Noticee appeared through its Authorized Representative (hereinafter referred to as **"AR"**) who reiterated the submissions made by the Noticee vide letter dated August 23, 2024.

12. It is noted that the SCN, along with the annexures and the Hearing Notice, were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing.

D. <u>CONSIDERATION OF ISSUES AND FINDINGS</u>

13. I have carefully perused the charges levelled against the Noticee in the SCN, its replies, and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether the Noticee has not updated the KYC of clients with CKYCR within the stipulated time and thereby violated the provisions of Clauses 3 and 6 of the SEBI Circular dated July 21, 2016, and Clauses 114, 115, and 116 of the SEBI Master Circular dated October 12, 2023 read with Clause 9 (1A) of the PML Rules?**

II. **Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15HB of the SEBI Act?**

III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act?**

14. Before proceeding further, it is pertinent to refer the relevant provisions of law, allegedly violated by the Noticee. The same are reproduced hereunder:

"SEBI Circular dated July 21, 2016

3. As per the 2015 amendment to PML (Maintenance of Records) Rules, 2005 (the rules), every reporting entity shall capture the KYC information for sharing with the Central KYC Records Registry in the manner mentioned in the Rules, as per the KYC template for 'individuals' finalised by CERSAI.

6. In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, wherever KYC is required to be carried out as per the circulars issued by SEBI from *time to time and accordingly, shall take steps to prepare their systems for uploading the KYC data.*

SEBI Master Circular dated October 12, 2023

114. As required under the PML Rules, registered intermediaries shall capture the KYC information for sharing with the Central KYC Records Registry in the manner mentioned in the PML Rules, as per the KYC template finalised by CERSAI.

115. Registered intermediaries shall within ten days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the CKYCR.

116. Registered intermediaries shall ensure that all existing KYC records of legal entities and of individual clients are uploaded on to CKYCR when the updated information is obtained/received from the client.

PML Rules

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(1A) Subject to the provisions of sub-rule (1), every reporting entity shall within ten days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central KYC Records Registry;"

Issue I - Whether the Noticee has not updated the KYC of clients with CKYCR within the stipulated time and thereby violated the provisions of Clauses 3 and 6 of the SEBI Circular dated July 21, 2016, and Clauses 114, 115, and 116 of the SEBI Master Circular dated October 12, 2023 read with Clause 9 (1A) of the PML Rules?

15. It was alleged in the SCN that the Noticee has not updated the KYC of 1,501 clients on the CERSAI Portal for KYC records, i.e., CKYCR within the stipulated time period of ten days from the commencement of an account-based relationship with a client.

16. In response to the above allegations, the Noticee in its reply dated August 23, 2024, has, *inter alia*, stated:

"We submit that the out of 37,172 samples KYC records verified, there were 1501 instances were not updated within the stipulated time which is 4% of the total sample where delay was observed, however, immediate steps were initiated to register the same with CERSAI."

17. In this regard, I note that the Noticee has admitted the findings of the inspection, i.e., KYC of 1,501 clients was not updated on the CKYCR within the due date as stipulated in applicable laws.

18. It was further alleged in the SCN that, in respect of 200 clients, updates with CKYCR were not carried out at all.

19. In response to the above allegations, the Noticee in its reply dated August 23, 2024, has, *inter alia*, stated:

"We further submit that out of 37172 samples KYC records verified, there were 200 instances were not updated with CERSAI (CKYC) which is 0.54% of the total sample records were details were not updated with CERSAI (CKYC).

Total KYC instances not uploaded to CERSAI	*200*
Less: CKYC records updated to CERSAI post inspection. Details annexed as per Exhibit 4 (48% of total 200 records)	*96*
Less: Account Closed thus the details could not be uploaded to CERSAI (post inspection). Details annexed as per Exhibit 4	*15*
Less: Accounts changed into Major status. Details annexed as per Exhibit 4	*01*
Less: Accounts Dormant in Nature thus the same couldn't be uploaded as submitted to the inspection team. Details annexed as per Exhibit 4	*30*
CKYC not registered	*58*

"

20. In this regard, I note that the Noticee has admitted the findings of the inspection, i.e., KYC of 200 clients was not updated on the CKYCR during the IP. The Noticee, in its reply, submitted that out of 200 clients, 15 clients' accounts were closed, 30 clients were dormant in nature, and the status of one account changed into major. The Noticee, in its reply, further submitted that it has taken corrective measures in this regard by updating the KYC of 96 clients on the CKYCR. However, the Noticee has not adduced any evidence that substantiates any of its claims. In the absence of evidence to substantiate the claims, it is difficult to accept this submission of the Noticee.

21. In view of the discussions in the previous paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. As noted from previous paragraphs, it is an admitted fact that the Noticee has not updated the KYC of clients within the stipulated time in 1,501 instances with CKYCR, and in 200 instances, the KYCs of clients were not updated with CKYCR at all during the IP. Being a registered intermediary, the Noticee is required to proactively abide by all legal requirements within the stipulated time period. Thus, it is established that the Noticee had violated the provisions of Clauses 3 and 6 of the SEBI Circular dated July 21, 2016 and Clauses 114, 115, and 116 of the SEBI Master Circular dated October 12, 2023, read with Clause 9 (1A) of the PML Rules.

Issue II - Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

22. As it has been established that the Noticee has violated the provisions of law as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

23. The Noticee in its reply dated August 23, 2024, has, *inter alia*, stated:

"………even if a few still remain those are of technical and venial nature and have not caused any prejudice to the clients or markets at large. We are committed to

complying with the law and request that the procedural lapses be seen in the context of our overall scale of operations handled and the various compliance measures adopted by us."

24. In this regard, I note that the Noticee, in its reply, has also placed reliance on the orders of the Hon'ble SAT in the matter of Chona Financial Services Pvt. Ltd. vs. SEBI, Religare Securities Ltd. vs. SEBI, UPSE Securities Ltd. vs. SEBI, and also the SEBI order passed in the matter of Indiabulls Mutual Fund.

25. In this regard, it is noted that in the present case, lapses in updating the KYC of the clients on CKYCR have been established against the Noticee. I note that the SEBI Circulars envisage that the registered intermediaries shall upload the KYC data with CKYCR in respect of all individual accounts opened on or after August 01, 2016, within ten days after the commencement of an account-based relationship with a client. However, the Noticee failed to comply with the requirement of the Circulars in 1,701 instances. The non-adherence on the part of the Noticee to the applicable laws cannot be dismissed as an inadvertent omission. I further note that the facts of the cases cited by the Noticee do not pertain to the update of clients' KYC on CKYCR, which is in question in the present proceedings. Hence, the facts of the present proceedings differ from the facts of the cases cited by the Noticee.

26. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund (2006 (5) SCC 361)* wherein Hon'ble Supreme Court of India 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

27. It is also pertinent to refer to the order of the Hon'ble Supreme Court of India in the matter of *SEBI vs Sandip Ray (Appeal Diary No. 791/2023*) wherein Hon'ble Supreme Court of India held that:

"Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992. After we have heard learned counsel for the appellant, it clearly manifests that the ***Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.*** *Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs. 75,000/- as inflicted upon noticee no. 5 (Mr. Sandip Ray) and noticee no. 6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs. 1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of".* **(emphasis supplied)**

28. Thus, when the statute prescribes a minimum penalty, the adjudicating officer has to follow the mandate of the statute.

29. The text of the above said Section 15HB of the SEBI Act is reproduced below:

"Penalty for contravention where no separate penalty has been provided.

15HB*. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

Issue III - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

"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."

<u>Factors Considered While Imposing Penalty</u>

31. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. As regard the repetitive nature of the default, I take note of the fact that SEBI had previously imposed penalties on the Noticee for violation of securities law in its capacity as a Depository Participant of CDSL and also as a Stock Broker.

32. It is an admitted fact that the Noticee has not followed the stipulated procedures for updation of clients' KYC on CKYCR with respect to 1,701 clients out of 37,172 clients verified. It is noted from the material on record that for some cases the delays were of more than seven years.

33. CKYC facilitates the inter-usability of KYC records and reduces the burden for customers of producing and verifying KYC for every new financial intermediary. The law specifically mandates the requirement of updating the KYC of the clients on CKYCR within ten days after the commencement of an account-based relationship with a client. The non-adherence on the part of the Noticee to the extant Circulars, as brought out in the preceding paragraphs, clearly shows that the Noticee has failed to comply with the statutory requirement within the stipulated time. It is pertinent to note that the PML Rules also mandate to update the KYC of the clients on CKYCR within ten days after the commencement of an account-based relationship with a client. Being a registered intermediary, the Noticee must uphold a high level of professionalism and take statutory compliance very seriously. Therefore, default on part of the Noticee cannot be viewed leniently.

34. The aforementioned factors have been taken into consideration while adjudging the penalty.

E. ORDER

35. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee as given in the table below**:**

Table 3

Penal Provision	**Penalty Amount**
Section 15HB of SEBI Act	Rs. 3,00,000/- (Rupees Three Lakhs Only)

36. I am of the view that the said penalty is commensurate with the lapses/omissions on part of the Noticee.

37. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

38. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the SEBI.

Date: August 30, 2024
Place: Mumbai

N HARIHARAN
CHIEF GENERAL MANAGER
AND ADJUDICATING OFFICER