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

In respect of

Arihant Capital Markets Ltd.

(SEBI registration no.s INB/F/E230783938, INB/F010705532, INB/F260783932, INE260783938, IN-DP-NSDL-165-2000, IN-DP-CDSL-317-2005 and INM000011070)

In the matter of

Arihant Capital Markets Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (herein after referred to as 'SEBI'), had carried out inspection of Stock Broker – Arihant Capital markets Ltd. (ACML) (hereinafter referred to as the 'Noticee'), during the period from April 01, 2014 to March 11, 2016 (inspection period), wherein certain irregularities were observed with respect to settlement of running account and segregation of client and own funds and securities, by Arihant Capital Markets Ltd. (hereinafter referred to as 'Noticee').
2. In view of above, current proceedings were initiated against the Noticee for violation of clause 12(e) of the Annexure to SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and also Circular SMD/ SED/ CIR/ 93/ 23321 dated November 18, 1993.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide communication order dated February 22, 2019 under section 15I(1) and 15 I(2) of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (SCR AO Rules) read with 23I of Securities Contracts (Regulation), Act, 1956 (SCRA) to inquire into and adjudge under section 15HB of the SEBI Act, 1992 read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (AO Rules) and section 23D of SCRA read with Rule 5 of SCR AO rules.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

4. A Show Cause Notice (SCN) dated May 09, 2019, was served on the Noticee on May 14, 2019, under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (AO Rules). However, no response was received from the Noticee till the expiry of fourteen days, within which the information was sought from the Noticee vide SCN dated May 09, 2019.
5. Thereafter, vide Hearing Notice (HN) dated May 30, 2019, the Noticee was given opportunity of personal hearing, in terms of Rule 4(3) of AO rules, on June 18, 2019. The same was successfully delivered to the Noticees on May 31, 2019.
6. In the meantime, the Noticee, vide letter dated May 27, 2019, which was received on May 3 1, 2019, sought for extension of time to file its reply to the SCN.
7. Subsequently, vide letter dated June 06, 2019, the Noticee was granted time to file its reply to the SCN before June 27, 2019. Vide the same letter dated June 06, 2019, the Noticee was also granted second

opportunity of personal hearing on July 09, 2019 at 11:00 AM.The aforesaid letter was duly delivered to the Noticee on June 07, 2019.

8. Thereafter, vide letter dated July 01, 2019, Noticee filed its written submission to the SCN.
9. On the scheduled date of hearing, Authorized Representative (AR) of the Noticee attended the hearing on behalf of the Noticee and reiterated its earlier submissions made vide letter dated July 01, 2019 and filed additional written submissions vide e-mail dated July 11, 2019.
10. The key submissions of the Noticee are as follows:

Detailed response to each of the allegations related to Settlement of Client Funds and Securities are given below:

a) *In joint response to the allegations that we have not settled any client accounts as on 30th June, 2015 and further that we have not been able to implement the provisions of SEBI Circular MIRSD/SE/Cir-19/2009 dated 3rd December, 2009 even after the delay of more than 5 years, we submit:*
b) *The process of Quarterly settlement of client funds and securities has been adopted by us since the date of its proposed implementation and since then the requirement is effectively complied in general terms.*
c) *The effectiveness of compliance in the area can also be verified from the fact that there has not been any adverse final observation or penalty in respect of non-compliance in this area in any of the Internal Audit and Exchange (BSE/ NSE) SEBI inspections in past particularly in past 4 years from 2015 to 2019.*
d) *The process of Settlement of Funds and Securities is managed through dedicated module in our back office software. The back office module of the back office system has features like calculating settlement, generating retention reports and Statements of funds and securities, emailing reports to clients, marking settlement preference etc.*
e) *The allegation of non-settlement of client funds is made on the basis of verification of highest outstanding funds and securities balances of active and inactive clients taken on 30th June, 2015. As per the current process of settlement followed by us, the Client accounts are settled at any day of the quarter which may not necessarily be the last day of the month/ quarter. Hence, concluding non-settlement on the basis of single day balance is logically incorrect and not in sync with the process of settlement followed.*
f) *We have average 45,000 clients every quarter who are required to be settled. Settling all the clients on a single day considering the resource and other constraints is not possible based on logical and practical grounds. Hence, settlement of clients is done on different days of the quarter. Infact, we have not come across any member in the industry with considerable client base doing settlement on a single day.*
g) *In details related to settlement of funds and securities submitted with pre-inspection questionnaire submitted to the inspection team, different dates of settlement are mentioned for sample clients. The dates are not necessarily the last day of the quarter indicating that the client accounts are settled on the last date of the quarter.*
h) *In our submission dated 23rd December, 2016 (Annexure-III of SCN) with respect to quarterly/ monthly settlement of funds/ securities where it is stated that "We do actual settlement for regular trading clients on a regular basis during the month itself and for all other clients remained in the process we do settlement on the last day of the quarter, the word "Month" is mis-typed instead of "Quarter". Hence, we humbly request you to have a lenient view on the said typing error.*
i) *There are only 36 cases where settlement was not done due to reasons like in-active or suspended ISIN, non-availability of updated bank or DP details etc. These cases are very miniscule in number and are on account of reasons which are not in our control. Thus to conclude that we have not implemented the provisions of the circular even after a delay of more than 5 years merely on such handful cases is incorrect, unfair, unjust and blown out of proportion.*

Thus, based on above submission we state that we are complying with the requirement of Settlement of Client funds except for cases which are not in our control. We are a listed entity run by dedicated, qualified and experienced team of Professionals. Being a listed company under Corporate Governance, we maintain highest standard of adherence to regulatory compliances *including SEBI and Exchange circulars and guidelines. The compliance requirements are implemented immediately as per the requirement specified therein without any delay.*

j) *Retention upto a value of Rs. 10,000 specified in Para 5 is in accordance with Exchange Circulars.*

k) *RMS policy of holding 200% margin as compared to the debit is for risk management purpose and the policy is communicated to the client. It is in accordance with note (b) to point no.4 of the NSE's FAQ on settlement of funds and securities states "In case the member applies hair cut in excess of VaR rate on a regular basis then such higher rate may be considered for determining the amount to be retained, provided the member has intimated the requirement of additional margins to the clients through the policy and procedures document and consistently through the daily margin statements issued to clients". In our case, the additional margin is communicated to client and collected as a regularly basis. Thus, the higher retention specified in Para 5 is in accordance with the regulatory requirement.*

l) *Para 6 of the SCN, provides extracts of our in-active client policy which is also annexed as Annexure-IV). The policy is for in-active client accounts and is separate from in-active client accounts for the purpose of Settlement of Client Funds and Securities. For settlement of client funds, In-active client shall mean those client who has not traded during the quarter as against those who have not traded for a period of one year for general in-activity purpose.*

On the basis of above submission, we state that we have been complying the requirement of SEBI Circular MIRSD/SE/Cir-19/2009 dated 3rd December, 2009 as per the requirement. We further state that there has not been any delay in implementation.

i. *In response to the allegations of specific 62 cases of non-settlement given in SCN, we state that the observation is in respect of only 30 clients:*

   i. *36 instances are instances where settled became applicable on account of securities of client held by us. In these cases, the client had mapped a Third Party DP with us which has subsequently closed and the details of new demat account were not updated by the client in our system. In such cases, we had initiated transfer of stock on the indicated date of settlement but the instruction were failed due to reasons like unavailability of demat account. However, it shall be noted that we had obtained the required details from such clients and settled the accounts subsequently.*

   ii. *In 6 instances, there are no funds and securities balances on the indicated date of settlement.*

Thus, the 62 instances of client accounts are settled in the manner specified above.

ii. *It is alleged in Para 8 and 9 of the SCN, that the client funds have been mis-utilised by ACML for settlement and obligation of debit balance clients on 8 occasions out of 18 randomly selected days. The allegations are on the basis of following observations that end of day balance of cash and cash equivalent lying in the client and settlement bank accounts and stock exchanges were less then gross creditors and the amount of Debtors is more than the amount of mis-utilisation computed above.*

iii. *The calculations and observations are broadly based on principles and methods laid down for Monitoring of Client Assets specified in SEBI Circular on Enhanced supervision. (Ref no. SEBI/HO/MIRSD/ MIRSD 2/CIR/P/2016/95 dated 26th September, 2016) which became applicable from 01.07.2017 onwards.*

iv. *Prior to implementation of Enhanced supervision there was no standard formula or method for calculation of mis-utilisation of client funds. Previously, different methods for calculation of mis-use of client funds were used by SEBI and Exchanges.*

v. *It has already been submitted in our response to inspection report that the primary reason for shortfall indicating mis-utilisation of client funds that the BG being considered at 50% of its value. Considering value of BG upto funded portion is the method specified for computation of various values for Monitoring of client Assets specified in SEBI circular of 2016.*

vi. *Further, it has to be noted that the BG's issued by the bank are against the Fixed Deposits kept with the bank. The fixed deposits are created from Own Funds and cannot be used for any other purpose till the continuation of BG* *facilities. During the 8 days when there is alleged mis-use due to shortfall there were fixed deposits of around Rs. 12 Crores as against the shortfalls ranging from 2 to 7 crores. Thus, by this measure also there is no mis-utilisation of client funds.*

vii. *The SCN has alleged violation of SEBI circular SMD/SED/CIR/93/23321 dated 18th November, 1993 for mis-use or non-segregation of client's funds and securities. We are unable to understand as to why such methodology for calculation of mis-use never been deployed until recently and why such a major violation been not brought to notice in any of our previous SEBI or Exchange inspections if such requirement pre-existed since 1993.*

viii. *It is also pertinent to note that the SEBI circular on Enhanced Supervision does not make any reference to the above mentioned SEBI circular of 1993 indicating that both are intended to be unconnected to each other.*

Thus, legality of indirect application of principles of 2016 circular calculation of mis-utilisation is incorrect and unjust and therefore needs to be revisited.

ix. *Creditor ("E") balance also includes amount due to our Group Company, Associates, Subsidiaries, Directors and their family members etc. Credit balance of such internal creditors cannot be rightly termed as mis-utilisation. In order to arrive at prudent, real, correct and judicious conclusion on mis-use of client funds, only External Creditors balances should be considered and compared. Thus, internal creditor balances should be Creditors can be further classified into Internal and External and not Total Creditors (which also includes which includes Associates, Directors and their family members, group companies etc).*

x. *Brokerage, Service Tax, Proprietary Trading Profits, Delay Pay-in Charges, DP charges etc. are the income which are received or receivable from client in client account. Similarly, certain expenses paid on behalf of client like STT, Stamp Duty, Transaction Charges, Transaction charges etc. In order to arrive at correct figure of non-segregation or mis-use, cumulative balances of such figure needs to be considered.*

xi. *We have an Over Draft facility from bank in our Own account. Since the overdraft is ultimately utilized for Client purpose only is needs to be deducted from arriving at actual client funds mis-used.*

ISSUES FOR CONSIDERATION

11. After perusal of the material available on record, the following issues arise for consideration;

I. Whether the Noticee has violated clause 12(e) of the Annexure to SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and also Circular SMD/ SED/ CIR/ 93/ 23321 dated November 18, 1993?

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992 and section 23D of SCRA?

III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

12. Before dealing with the issues involved in the matter in seriatim, the texts of the said provisions are reproduced as under :-

SEBI Circulars- MIRSD/SE/Cir-19/2009 dated December 3, 2009

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 pay-out. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*

(e) The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a

'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

<u>SEBI Circular dated November 18, 1993</u>

Regulation of Transactions between Clients and Brokers

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

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

Issue No. I: Whether the Noticee has violated clause 12(e) of the Annexure to SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and also Circular SMD/ SED/ CIR/ 93/ 23321 dated November 18, 1993?

<u>Non-settlement of funds</u>

13. It is alleged that the Noticee did not settle its clients account during the period of inspection and thus, violated SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009.
14. In this regard, it is observed that pursuant to analysis of active / inactive client's account, taken on the basis of highest outstanding fund and securities balance as on June 30, 2015 to verify whether the Noticee ACML had settled the accounts of its clients during 6 quarters falling under the inspection period, it was observed that in forty eight (48) instances, the notice failed to settle its clients' accounts.
15. It is further observed that the list of unsettled clients' accounts was also provided to the Noticee at the time of inspection.
16. Here, it is noted that the Noticee in its submissions has submitted that "*out of the 39 instances whose securities was more than Rs. 10, 000, was rejected by our back office software due to reasons, which were out of control such as mapped depository account is invalid / freeze/ suspended and that the same was settled at a later date.*"
17. In this regard, it is noted that clause (e) of the circular dated December 3, 2009, reads as "*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.*"
18. From above, it is clear that the broker has to necessarily settle funds and securities of its clients within the calendar quarter or calendar month, depending on the preference of the client. However, in the present case, from the details submitted by the Noticee with respect to settlement of funds of the clients, it is clear that the funds of the selected 48 clients were settled beyond the stipulated period of one calendar quarter.
19. For instance funds and securities of client *Sweta Goenka*, which were due for settlement on September, 2014, were settled after a long gap of almost four quarters i.e. on December 20, 2015.
20. Thus, from above it is clear that the Noticee has itself accepted the fact that the Noticee has not settled any clients' funds within the stipulated time. It is further noted that the Noticee in defence of its contention has stated that the clients' accounts were unsettled due to reasons which were not in its control such as in-active or suspended ISIN, non-availability of updated bank or DP details etc. In this regard, it is noted that Noticee contention is not acceptable and that the Noticee should have taken due steps to ensure that the accounts were settled as mandated in the circular.
21. It is further noted that the Noticee has also stated in its submissions that *"the effectiveness of compliance in the area can be verified from the fact that there has not been any adverse final observation or penalty in respect of non-*

compliance in this area in any of the Internal Audit and Exchange (BSE/ NSE) SEBI inspections in past particularly in past 4 years from 2015 to 2019."

22. In this regard, it is a matter of record that the transactions under current proceedings relate to the period pertaining to prior 2015 i.e. from April 01, 2014. However, contention of the Noticee pertains to period 2015 onwards. Thus, submissions of the Noticee are devoid of merit.

Mis-utilization of funds

23. It is further alleged in the SCN that the Noticee (stock-broker) has mis-utilized clients' funds for debit balance of other clients.
24. It is mentioned in the inspection report that the Noticee has utilized the securities of its clients to secure over draft facility from the bank for its working capital requirements. Details in this regard as mentioned in the inspection report, are given below:

Date	Lender Name	Amount Sanctioned (in Rs Crores)	Availed (in Rs Crores)
01 May '14	AXIS BANK	6	2.62
02 May '14	AXIS BANK	6	3.33
3 May '14	AXIS BANK	6	2.95
4 May '14	AXIS BANK	6	2.95
5 May '14	AXIS BANK	6	0.75
6 May '14	AXIS BANK	6	3.65
7 May '14	AXIS BANK	6	4.00
8 May '14	AXIS BANK	6	3.90
9 May '14	AXIS BANK	6	2.67
10 May '14	AXIS BANK	6	2.98
12 May '14	AXIS BANK	6	3.16
13 May '14	AXIS BANK	6	1.76
14 May '14	AXIS BANK	6	0.71
3 Sep '15	AXIS BANK	6	1.60
4 Sep '15	AXIS BANK	6	0.77
5 Sep '15	AXIS BANK	6	0.33
6 Sep '15	AXIS BANK	6	0.33
8 Sep '15	AXIS BANK	6	2.09
9 Sep '15	AXIS BANK	6	1.44
15 sep'15	AXIS BANK	6	1.00
19 sep'15	AXIS BANK	6	1.01

25. In this regard, it is pertinent to mention that Clause 2.1 of SEBI circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 states that brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements / pay-ins.
26. It is further noted that SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, reads as "*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.*"
27. Thus, by virtue of afore-mentioned provisions, the Noticee was required to segregate clients' funds from its own funds. However, from the submission of the Noticee it is noted that *"Creditor ("E") balance also includes amount due to our Group Company, Associates, Subsidiaries, Directors and their family members*

etc. Credit balance of such internal creditors cannot be rightly termed as mis-utilisation. In order to arrive at prudent, real, correct and judicious conclusion on mis-use of client funds, only External Creditors balances should be considered and compared. Thus, internal creditor balances should be Creditors can be further classified into Internal and External and not Total Creditors (which also includes which includes Associates, Directors and their family members, group companies etc).”

28. In this regard it is noted that the circular dated November 18, 1993 categorically specified what moneys to be paid into client accounts and what moneys to be withdrawn from client accounts and clearly spelt out that no other moneys could be paid or withdrawn from client accounts. It is noted that circular allowed withdrawal of moneys from client account towards:
    - *I.* money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the broker from clients or money drawn on client’s authority, or money in respect of which there is a liability of clients to the broker, 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 broker as may have been paid into the client account under para 1 C [ii] or 1 C [iv] of the circular;
    - *III.* money which may by mistake or accident have been paid into such account in contravention of para C of the circular. The circular states that no money shall be drawn from client accounts other than for the aforesaid purpose.
29. It is thus noted that the circular does not permit moneys to be withdrawn from the clients account for or towards payment of debt due to the group company of the broker from the client, or, money in respect of which there is liability of client to the group Company, Associates, Subsidiaries of the broker. The debt/ liability of the client towards the group Company, Associates, Subsidiaries of the client cannot become the debt/ liability of the Noticee with the client.
30. Thus, when the circular, in itself, did not permit withdrawal of funds other than as a client of the Noticee and for the purposes specified therein, the question of withdrawing money towards debt/ liability due to the group Company, Associates, Subsidiaries of the Noticee from the client does not arise. The Noticee by withdrawing funds from the clients account on client’s authority, to adjust towards debt/ liability of the client towards its group Company, Associates, Subsidiaries, has built a new edifice which the circular did not provide for, to achieve indirectly what could not be achieved directly.
31. Here, it is pertinent to mention that the Hon’ble Supreme Court in Jagir Singh Vs. Ranbir Singh(1979 AIR 381), has held that what cannot be done directly, cannot be allowed to be done indirectly as that would be an evasion of the statute. The Supreme Court has held that it is a well-known principle of law that the provisions of law cannot be evaded by shift or contrivance, and that the objects of a statute cannot be defeated in an indirect or circuitous manner.
32. It is further noted that the Noticee, in its submissions has also submitted that *“Brokerage, Service Tax, Proprietary Trading Profits, Delay Pay-in Charges, DP charges etc. are the income which are received or receivable from client in client account. Similarly, certain expenses paid on behalf of client like STT, Stamp Duty, Transaction Charges, Transaction charges etc. In order to arrive at correct figure of non-segregation or mis-use, cumulative balances of such figure needs to be considered.”*
33. The Noticee has further submitted that “*The SCN has alleged violation of SEBI circular SMD/SED/CIR/93/23321 dated 18th November, 1993 for mis-use or non-segregation of client’s funds and securities. We are unable to understand as to why such methodology for calculation of mis-use never been deployed until recently and why such a major violation been not brought to notice in any of our previous SEBI or Exchange inspections if such requirement pre-existed since 1993”*

"The calculations and observations are broadly based on principles and methods laid down for Monitoring of Client Assets specified in SEBI Circular on Enhanced supervision. (Ref no. SEBI/HO/MIRSD/ MIRSD 2/CIR/P/2016/95 dated 26th September, 2016) which became applicable from 01.07.2017 onwards"

34. In this regard, as stated earlier that by virtue of Clause 2.1 of SEBI circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements / pay-ins. Also, by virtue of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, 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. Both the abovementioned circulars were in operation much before the inspection period and hence, it was regulatory duty on part of the Noticee to ensure that client's money is kept separately than its own account.
35. Thus, it is noted that when the circular, in itself, did not permit deploy of funds for any other purposes except as specified therein, the question of deploying of client's funds by the Noticee for over draft facility / loan/ collateral, does not arise.
36. It is further noted that para 3.2 and 3.3 of SEBI Circular on Enhanced supervision. (Ref no. SEBI/HO/MIRSD/ MIRSD 2/CIR/P/2016/95 dated 26th September, 2016, are mere enhanced supervision and methodology in the form of guidelines, bringing out clarity to the law for calculating mis-utilization of clients' funds, which was already in place since 18th November, 1993.
37. Moreover, it is not a case where a new provision / regulatory obligation has been brought into existence vide circular dated 26th September, 2016. Thus, contention of the Noticee cannot be considered for the purpose of current proceedings.
38. Therefore, it is clear that the action on part of the Noticee has led to the violation of SEBI Circular SMD/ SED/ CIR/ 93/ 23321 dated November 18, 1993.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992 and section 23D of SCRA?

39. The aforesaid violations as mentioned above, make the Noticee liable for penalty under 15HB of SEBI Act 1992 and section 23D of SCRA, which reads as follows:

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.*

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 not exceeding one crore rupees.*

40. As regards the Noticee, it is clear that it is liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India Order in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein Hon'ble SC 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…"

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

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

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, 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 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."

42. Based on the material available on record, it is not possible to quantify the disproportionate gain or unfair advantage enjoyed by an entity or the losses suffered by the investors. There is no material available on record to establish that the violations on part of the Noticee were repetitive in nature.
43. It is noted from the available records that the Noticee had settled its clients' funds and securities after having brought the same to it's notice. In light of above facts and circumstances, appropriate penalty, under section 15 HB of SEBI Act and section 23D of SCRA needs to be imposed on Noticees.

ORDER

44. Having considered all the facts and circumstances of the case, violation established, the factors mentioned in Section 15J of the SEBI Act, following penalty is imposed upon the Noticee viz, Arihant Capital Markets Ltd. for violation of provisions of clause 12(e) of the Annexure to SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and also Circular SMD/ SED/ CIR/ 93/ 23321 dated November 18, 1993:

a) Penalty of Rs. 1,00,000/- (Rupees One Lakh only) under the provisions of Section 15 HB of the SEBI Act.

b) Penalty of Rs. 5,00,000/- (Rupees Five Lakh only) under the provisions of section 23D of SCRA.

45. Noticee shall remit / pay the said amount of penalties (total Rs. 6,00,000/- (Rupees Six Lakh only) 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 e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

46. The above Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:

4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

47. Payment can also be made online by following the below path at SEBI website **sebi.gov.in**
ENFORCEMENT → Orders → Orders of AO → PAY NOW

48. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: July 17, 2019 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**