BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/JR/2023-24/ 30086]

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) RULES, 1995.

In respect of

Marfatia Stock Broking Private Limited

PAN: AADCM6730B

<u>Background</u>

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of Marfatia Stock Broking Private Limited (hereinafter referred to as "**Noticee**") at its registered office located at 216, Glacier Complex, Jetalpur Road, Vadodara 390007 for the period January 1, 2022 to December 30, 2022 (hereinafter referred to as "inspection period"/ "**IP**").

2. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated July 20, 2023 submitted to SEBI, certain alleged non-compliances were observed of Circulars issued by SEBI and National Stock Exchange (hereinafter referred to as "**NSE**") and notice issued by Bombay Stock Exchange (hereinafter referred to as "**BSE**"). The extracts of the violation alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the tabulation below:

S. No.	Alleged violations	Regulatory provisions
1	Monthly/ Quarterly settlement of funds and securities	SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022 and BSE Notice No. 20200210-47 dated February 10, 2020.
2	Analysis of Enhanced Supervision Data	SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/INSP/33276 dated September 27, 2016, NSE/INSP/31912 dated March 07, 2016, & NSE/INSP/33861 dated December 21, 2016, NSE/INSP/35184 dated June 23, 2017, NSE/INSP/37395 dated April 02, 2018, NSE/INSP/37580 dated April 20, 2018, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/44459 dated May 26, 2020 and NSE/INSP/50012 dated October 19, 2021.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide communique dated January 4, 2024, appointed the undersigned as the Adjudicating Officer 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 Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), the alleged violations of SEBI Circulars, NSE circulars and notice of BSE, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated January 10, 2024 was issued to Noticees in terms rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed under section 15HB of SEBI Act on the Noticee for the aforesaid violations alleged to have been committed by it.

5. The Noticees, vide letter dated February 9, 2024 replied to the SCN stating, inter alia, the following:

Monthly/ Quarterly settlement of funds and securities

- *We would also like to clarify that we have regularly attempted fund pay out to inactive clients but the same was return back due to inactive bank account details mapped with us for which we have duly informed the respective clients for updation of bank account details with us in some cases back office has not generated client fund pay out for which only receipt was there so the said client was settled during quarterly settlement later and the same was rectified from back office and no further instance were found, also your good self will appreciate that after SEBI circular issued for quarterly settlement of all client on first Friday at the end of each quarter no single observation was found during course of inspection which clearly shows our due diligence followed for implementing the said circular.*

- *Your good self will appreciate that non settled amount comes to only **0.0704% to 0.0002** % during the said period, which is itself shows that there is no intention of non-settlement of such miscellaneous credit balance of clients. Also your good self will find that after communicating with our inactive client, bank details are duly updated and credit balances are duly in decreasing value for each month end.*
- *The instances observed during inspection period for quarterly non settlement of client fund was primarily due to a change in client bank details, which is procedural lapses and does not consider as principal violation. Hence we have followed the relevant circulars issued by exchange and SEBI regarding settlement of client funds and securities from time to time.*

Analysis of enhanced supervision data

- *We have already rectified queries for the said wrong reporting as and when alert received from exchange and you will find that in our latest reporting there is no such mismatch ,Also you will appreciate that we have inadvertently reported lower funded portion of BG due to which there is increase in Value of "G" and no such mis-utilization of client funds arise . We humbly submit that in all inadvertent wrong reported data we have either reported less funded portion of BG or reported less free balance with CC or CM. So there is no intention for mis-utization of client funds. Please find below table along with reply:*

Particulars	***Reply***
Total of day end balance in all Client Bank Accounts (In Rs.)	*Mis match is only due to value date and clearing date- other wise no wrong reporting found*

Collateral deposited with clearing corporation in form of Cash and Cash Equivalents (In Rs.)	*we have inadvertently reported lower amount of funded portion against BG issued- Due to this Value for"G" as per Enhance Supervision will increase*
Collateral deposited with clearing member in form of Cash and Cash Equivalents (In Rs.)	*We have inadvertently reported lower amount of deposit with our CM- Due to this Value of "G" as per Enhance Supervision will increase*
Value of Non funded portion of the Bank Guarantee (In Rs.)	*Difference arise because we have reported lower amount of funded portion Also inadvertently we have missed out to report non funded portion of BG against our property collateral - we have reported less towards prop balance and no client asset was impacted*
Margin utilised for positions of Credit Balance Clients	*We have uploaded the said amount generated from back office as to rely upon data generated from back office as to rely upon data generated from back office we have not verified the manually that are correct or not as we have process margin files and other required file as received from exchange.*
Free/ unblocked Collateral deposited with Clearing corporation (In Rs.)	*Difference is due to we have consider only MGO 1 free balance , as we have not consider cash allocated balance with CC we had reported less free balance with CC which have no*

	impact on client asset after observation anse during regul ar inspection of NSE *we have rectified the same*

- *The purpose of monitoring of enhance supervision data for stock broker is to ensure that client assets are not mis-utilize. In our case no such observations found for principle violation with regards to enhance supervision.*
- *Also all this wrong reported data are procedural lapses and no principal violation is there, so we request your good self to kindly consider our submission and not to take any adverse view for the same.*

6. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on March 6, 2024 vide hearing notice dated February 21, 2024. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated February 9, 2024. The AR also undertook to make further submissions in the matter.

7. The Noticee vide letter dated March 14, 2024 made further submissions stating, inter alia, the following:

   "We humbly submit that out of 73 instances we have attempted fund pay-out to 51 instances where in funds were return back due to non-updated client bank account details available with us. Where in other 22 instances such UCC codes were not fetch from back office while generating monthly fund pay-out to clients where client has not done any trade in last 30 days. Such codes are duly settled while we processing fund pay-out request on quarterly basis where we are generating client funds pay-out to all clients. Your good self will also appreciate that after implementation of quarterly settlement of funds to be done on first Friday of next week of the quarter end, there is no single observation found by inspection team where we have not done quarterly

settlement of client funds which shows that we have followed due care and skill for implementation of the said circular issued by SEBI and Exchanges.

With regards to observation found for wrong reporting of data with respect to enhances supervision, your good self will appreciate that there is no principal violation observed by inspection team with regards to misutilisation of client funds i.e. funds of credit balance clients are used against debit balance client or towards proprietary obligation. The said observation/ alerts are already been generated by exchange through off site inspection alert mechanism and the inadvertently reported data is rectified in further reporting as per guidance provided by inspection team of exchange. Further in our case we have inadvertently reported lower amount of funded portion of bank guarantee which shows that if such amount added it will increase more positive value of "G" as per enhance supervision. While in other case we have reported lower value of non-funded portion of bank guarantee which shows that we have taken lower benefit towards our proprietary obligation. SO in both the observation it will having positive impact on our enhance supervision data. Also your good self will appreciate that we have duly rectified the queries that has been observed during off site inspection and there is no such mismatch was observed in latest reporting with regards to mismatch in bank balance, collateral deposit with clearing corporation or clearing member, value of non-funded bank guarantee and free unblock collateral deposited with clearing corporation or clearing member"

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I- Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

i. Monthly/ Quarterly settlement of funds and securities

ii. Analysis of Enhance Supervision Data

ISSUE II- Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding further, it will be appropriate to refer the provisions of law referred to in the SCN. The same are reproduced hereunder:

Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009,
https://www.sebi.gov.in/legal/circulars/dec-2009/dealings-between-a-client-and-a-stock-broker-trading-members-included_2891.html

SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016,
https://www.sebi.gov.in/legal/circulars/sep-2016/enhanced-supervision-of-stock-brokers-and-depository-participants_33334.html

SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021,
https://www.sebi.gov.in/legal/circulars/jun-2021/settlement-of-running-account-of-client-s-funds-lying-with-trading-member-tm-_50570.html

SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022
https://www.sebi.gov.in/legal/circulars/jul-2022/settlement-of-running-account-of-client-s-funds-lying-with-trading-member-tm-_61222.html

BSE Notice No. 20200210-47 dated February 10, 2020.
https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20200210-47

NSE circular NSE/INSP/33276 dated September 27, 2016,

https://www.nseindia.com/resources/exchange-communication-circulars

NSE/INSP/31912 dated March 07, 2016,

https://nsearchives.nseindia.com/content/circulars/INSP31912.pdf

NSE/INSP/33861 dated December 21, 2016,

https://nsearchives.nseindia.com/content/circulars/INSP33861.pdf

NSE/INSP/35184 dated June 23, 2017,

https://nsearchives.nseindia.com/content/circulars/INSP35184.pdf

NSE/INSP/37395 dated April 02, 2018,

https://nsearchives.nseindia.com/content/circulars/INSP37395.pdf

NSE/INSP/37580 dated April 20, 2018,

https://nsearchives.nseindia.com/content/circulars/INSP37580.pdf

NSE/INSP/41498 dated July 03, 2019,

https://nsearchives.nseindia.com/content/circulars/INSP41498.pdf

NSE/INSP/44459 dated May 26, 2020 and

https://nsearchives.nseindia.com/content/circulars/INSP44459.pdf

NSE/INSP/50012 dated October 19, 2021.

https://nsearchives.nseindia.com/content/circulars/INSP50012.pdf

FINDINGS

10. 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: (a)-Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

A) Monthly/ Quarterly settlement of funds and securities

i) It has been observed that the Noticee has not done settlement of inactive clients on 73 instances out of total 4493 instances verified for clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction.

ii) In view of the above, it is alleged that the Noticee has violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022 and BSE Notice No. 20200210-47 dated February 10, 2020.

iii) The Noticee submitted that it had regularly attempted fund payout to inactive clients but the same was returned due to inactive bank account details mapped with it for which the Noticee informed the clients for updation of bank account details. In 51 of 73 instances funds were returned due to non-updated client bank account and in 22 instances UCC codes could not be fetched from back office while generating monthly fund pay-out to clients where client has not done trade in last 30 days. However, after implementation of quarterly settlement of funds to be done on first Friday of next week of the quarter end, there is no single observation of quarterly non-settlement of client funds.

iv) I observe that the Noticee has admitted that in 73 instances out of total 4493 instances, it had failed to do settlement of inactive clients which comes to only 0.0704% to 0.0002% of the total creditor for the month end during the IP. In 51 instances fund payout was returned back due to non-updated client bank account details for which Noticee took steps by informing the clients to update the bank details. However, in 22 instances Noticee failed to fetch the UCC codes from back office. Although I agree that the number of instances where the Noticee has failed to settle the accounts of the inactive clients is few, being a SEBI registered intermediary, it was the duty of the Noticee to be vigilant about fetching the UCC codes from the back office.

v) In view of the above, I find that the allegation of violation of SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021, SEBI/HO/MIRSD/DOP/P/CIR/2022/101 dated July 27, 2022 and BSE Notice No. 20200210-47 dated February 10, 2020 by the Noticee stands established.

B) <u>Analysis of Enhanced Supervision Data</u>

i) It is observed from the inspection and the data reported by the Noticee that there is a difference in the data with respect to enhanced supervision on the points as mentioned below on 8 sample dates during April 01, 2022 to June 30, 2023:

a) Total of day end balances in all Client Bank accounts.
b) Collateral deposited with clearing corporation in form of cash and Cash Equivalents.
c) Collateral deposited with clearing member in form of cash and Cash Equivalents.
d) Value of Non funded portion of the Bank Guarantee.
e) Margin utilized for positions of Credit Balance Clients.
f) Free/ Unblocked Collateral deposited with Clearing corporation.

ii) In view of the above, it is alleged that the Noticee has violated SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/INSP/33276 dated September 27, 2016, NSE/INSP/31912 dated March 07, 2016, & NSE/INSP/33861 dated December 21, 2016, NSE/INSP/35184 dated June 23, 2017, NSE/INSP/37395 dated April 02, 2018, NSE/INSP/37580 dated April 20, 2018, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/44459 dated May 26, 2020 and NSE/INSP/50012 dated October 19, 2021.

iii) The Noticee submitted that there is no principal violation observed by inspection team with regard to misutilisation of client funds i.e. funds of credit balance clients are used against debit balance clients or towards proprietary obligation. Noticee further submitted that in all inadvertent wrong reported data it had either reported less funded portion of BG or reported less free balance with CC or CM which showed that if such amount was added it would increase the positive value of "G". It was also submitted that it had duly rectified the queries that was observed in latest reporting.

iv) I observe that the Noticee had admitted to the difference in the data provided in the 'Balance Reported in Weekly Enhance Supervision' and the calculated amount. From the material available on record, I find that in all the cases, the reported figure is less than the calculated amount, which indicates that there was no malafide intention on the part of the Noticee but an inadvertent error. However, it may be noted that the weekly reporting of data is not only to calculate the value of "G" but also for better transparency. Being a SEBI regulated intermediary, Noticee had the responsibility to report the correct figures irrespective of whether it increase or decrease the value of "G". The Noticee has exhibited a casual approach while reporting the data which is unbecoming of a stock broker.

v) In view of the above, I find that the allegation of violation of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/INSP/33276 dated September 27, 2016, NSE/INSP/31912 dated

March 07, 2016, & NSE/INSP/33861 dated December 21, 2016, NSE/INSP/35184 dated June 23, 2017, NSE/INSP/37395 dated April 02, 2018, NSE/INSP/37580 dated April 20, 2018, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/44459 dated May 26, 2020 and NSE/INSP/50012 dated October 19, 2021 by the Noticee stands established.

ISSUE II- Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

11. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* wherein the Hon'ble Court had observed: "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.''

12. Therefore, the aforesaid violations committed attract monetary penalty under Section 15HB of the SEBI Act on the Noticee The text of provision is reproduced hereunder:

Section 15HB of SEBI Act: -

Penalty for contravention where no separate penalty has been provided: 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, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

Factors to be taken into account by the adjudicating officer under SEBI Act

15J. 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

14. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its failure nor has it been alleged by SEBI. As regard to the repetitive nature of the default, there is nothing on record to show that the nature of default by the Noticee is repetitive.

15. I find that the Noticee was under a statutory obligation to abide by and comply with the provisions of the Circulars / directions issued by SEBI and stock exchanges, which they failed to do during the inspection period. The very purpose of the said provisions is to deter wrongdoing and promote ethical conduct in securities market. Noticee being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. The violations as established above certainly deserve imposition of penalty.

ORDER

16. Having considered the facts and circumstances of the case, the factors mentioned in section 15J of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995 I hereby impose following penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under section 15 HB of the SEBI Act on the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

17. 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

18. 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 Securities and Exchange Board of India.

DATE: March 18, 2024
PLACE: MUMBAI

BARNALI MUKHERJEE
ADJUDICATING OFFICER