**WTM/ASB/MIRSD/MIRSD-SEC-1/22812/2022-23**

**SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI**

**ORDER**

**Under Sections 11(1), 11(4), 11B(1), 11B(2) and 11D of the Securities and Exchange Board of India Act, 1992, read with Section 15HA of Securities and Exchange Board of India Act, 1992, and Section 12A(1) and 12A(2) of Securities Contracts (Regulation) Act, 1956 read with Section 23D of Securities Contracts (Regulation) Act, 1956 in the matter of BRH Wealth Kreators Ltd.**

**IN RESPECT OF**

| Sr. No. | NOTICEE | PAN |
|---|---|---|
| **1.** | BRH Wealth Kreators Ltd. | AACCB5141L |
| **2.** | BRH Commodities Pvt. Ltd. | AACCB5142K |
| **3.** | Anubhav Bhatter | AHBPB4285E |
| **4.** | Shiv Kumar Damani | ADYPD0490J |
| **5.** | Mrugesh Devashrayi | AGUPD3529P |
| **6.** | Asit Kumar Ghosh | NOT AVAILABLE |
| **7.** | Prosperous Vyapaar Pvt. Ltd. | AAHCP7740A |
| **8.** | Polo-Setco Tie Up Pvt. Ltd. | AABCP7880R |
| **9.** | Parton Commercial Pvt. Ltd. | AAECP6196R |
| **10.** | AB Investments | NOT AVAILABLE |

| | | |
|---|---|---|
| **11.** | Bluesnow Supplier Pvt. Ltd. | NOT AVAILABLE |

*(The aforesaid entities are hereinafter referred to by their respective names /serial numbers or collectively as "the Noticees")*

**BACKGROUND:**

1. BRH Wealth Kreators Ltd. (formerly BMA Wealth Creators Ltd.) ("**BRH")** is registered as a Stock Broker with SEBI registration number INZ000184733. BRH was a member of the National Stock Exchange of India Ltd. **("NSE"**) in Equity, Equity Derivatives, Currency Derivatives and MFSS segments and BSE Ltd. (**"BSE"**), in Equity, Equity Derivatives, and Currency Derivatives. BRH Commodities Pvt. Ltd. (formerly BMA Commodities Pvt. Ltd.) ("**BRHCPL"**) was a member of Multi Commodity Exchange of India Ltd. (**"MCX"**) and National Commodity & Derivatives Exchange Ltd. (**"NCDEX"**).

2. Based on *prima facie* violations observed in a report submitted by NSE's email dated October 04, 2019, SEBI had passed an *Ex Parte Ad Interim Order no. WTM/AB/SEBI/ERO/25/2019 dated October 7, 2019* ("**Interim Order**") against BRH, BRHCPL, Anubhav Bhatter, Shiv Kumar Damani, Murgesh Devashrayi, Prosperous Vyapaar Pvt. Ltd., Polo-Setco Tie Up Pvt. Ltd. and Parton Commercial Pvt. Ltd.. The directions issued in the Interim Order are reproduced below: -

   i. *"BRH Wealth Kreators Ltd. (formerly BMA Wealth Creators Ltd.), Shiv Kumar Damani, Anubhav Bhatter, Murgesh Devashrayi, BRH Commodities Private Ltd. (formerly BMA Commodities Pvt. Ltd.), Prosperous Vyapaar Pvt. Ltd., Polo-Setco Tie Up Pvt. Ltd. and Parton Commercial Pvt. Ltd. are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;*

ii. *The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*

iii. *The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of National Stock Exchange of India Ltd. ("**NSE**") and BSE;*

iv. *The aforesaid Noticees are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately to NSE and BSE but not later than 5 working days from the date of receipt of this Order;*

v. *Till further directions in this regard, the assets of the Noticees shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned Exchanges/depositories;*

vi. *The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees and persons except for the purpose mentioned in sub–para (v) above, after confirmation from NSE/BSE;*

vii. *The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of NSE/BSE;*

viii. *The Exchanges, clearing corporations and depositories shall appoint forensic auditor to track misuse of client's funds/securities and to identify the net assets/liabilities of Noticee no. 1 (BRH Wealth Kreators Ltd.) and Noticee no. 5 (BRH Commodities Private Ltd.) and submit the report to SEBI within 90 days;*

ix. *The Exchanges shall deal with the complaints/claims of the clients against the member and may return the amount of client fund and*

*securities to the clients and may also use assets of the Noticee no. 1 to meet clients'/Exchanges'/clearing members'/clearing corporations', obligations."*

3. The exchanges, clearing corporations and depositories were also directed to appoint a forensic auditor to track misuse of clients' funds /securities and identify the net assets/liabilities of BRH and BRHCPL and submit the report to SEBI within 90 days.

4. Thereafter, vide *Order no. WTM/AB/MIRSD/HO/40/2019–20 dated January 2, 2020* ("**Confirmatory Order**"), the directions issued vide the Interim Order were confirmed against all the persons covered in the Interim Order.

5. NSE submitted the final forensic audit report ("**FAR**") in the matter to SEBI on March 03, 2020. The period covered under the audit was from April 01, 2016, to September 30, 2019 (Some data sets in the audit were extracted and analysed for the period beyond September 30, 2019). SEBI, along with BSE, NSE, CDSL and NSDL, had also earlier inspected the books of accounts and other records of BRH between October 01, 2018, and October 05, 2018, for the period April 01, 2017 to July 25, 2018. Similarly, SEBI, along with MCX and NCDEX, inspected the books of accounts and other records of BRHCPL between November 26, 2018, and November 28, 2018, covering the period April 01, 2017, and October 30, 2018.

6. SEBI, thereafter, issued a Show Cause Notice ("**SCN**") dated October 29, 2021, alleging the following: -

   a) Misutilisation of clients' securities.
      i. Pledging of clients' securities by BRH and BRHCPL.
      ii. Diversion of funds by BRH and BRHCPL through loan against securities ("**LAS**").
   b) Misutilisation of clients' funds by BRH.

c) Misutilisation of clients' funds by BRHCPL.

d) Misutilisation and diversion of client securities and funds by BRH through Related Parties.

e) Discrepancies in Email ids and Mobile numbers data of clients.

f) Misuse of Power of Attorney ("**POA**") as Depository Participant ("**DP**") by BRH.

g) Wrong/Non-submission of data by BRH and BRHCPL.

h) Non-cooperation by BRH.

i) Non-redressal of grievances of investors by BRH.

j) Register of pledge not maintained and details of pledged shares of clients not provided by BRHCPL.

k) Bounce mail notification of Electronic Contract Notes not provided by BRHCPL.

7. Subsequent to the issuance of the SCN, an opportunity of personal hearing was granted to the Noticees on October 20, 2022. Noticee 3 appeared in person on behalf of himself and also represented Noticees 1 and 2. Noticees 4 and 5 appeared in person via video conferencing. Mr. Amit Agarwalla, Advocate, appeared on behalf of Noticees 6 to 11. The Noticees, thereafter, also made written submissions.

8. The summary of the written and oral submissions made by the Noticees is given below: -

**Noticees 1 to 3 – BRH, BRHCPL and Anubhav Bhatter.**

a. The business model of BRH was guided towards providing its clients exposure to various trading platforms. In order to provide leverage to its clients to simultaneously trade on all the platforms, BRH used to pledge securities bought in the name of clients with banks and other financial institutions ("**FIs**"). This practice was known to the clients and also had their implied consent.

b. This was a common practise followed by most brokerages operating in the country. The annual accounts of BRH for the last several years disclosed details of the client securities that had been pledged.

c. This business model remained undisturbed until the issuance of Circular No. CIR/HO/MIRSD/DoP/CIR/P/2019/75 dated June 20, 2019, by SEBI. After the issuance of this Circular, the banks and FIs which were hitherto cooperating with the Noticee till now started taking steps to reduce their exposure to such loans. The FIs actions to protect their own interest was at the cost of the investors.

d. SEBI and NSE have targeted Anubhav Bhatter as being the only person responsible for the affairs of the Company. The fact remains that the dealings of the Company have remained the same since its inception when the company was promoted by Mr. Sudhanshu Agarwalla, Mr. Avinash Agarwalla and Mr. Anubhav Bhatter.

e. The FAR is completely silent on the transactions between BRH and group entities of the Agarwalla Family up to September 2018.

f. It was submitted that even though the FAR was submitted by NSE to SEBI on March 03, 2020, they failed to supply a copy of the FAR to the Noticees despite repeated requests.

g. The SCN wrongly alleges that there was a substantial increase in pledged securities from INR 169 Crore in the quarter ended June 2018 to INR 448 Crore as on the quarter ended December 2018, that the debtors' balance was INR 156 Crore in the quarter ended December 2018 and that the securities pledged as on the quarter ended December 2018 were more than clients' indebtedness to BRH which amounted to INR 292 Crore.

h. While looking at the pledge positions of BRH, it should be appreciated that BRH provided combined exposure together with default funding to the clients on the various trading platforms, including on the F&O segment of NSE. While the clients having credit balance otherwise when dealing on the F&O segment did not maintain cash securities as

mandated by NSE, and this was provided by BRH out of the credit facilities availed by pledging their shares.

i. The actual LAS utilization of BRH was lower than the amounts mentioned in the FAR. It was only INR 197.83 Crore and not INR 448 Crore as on the quarter ended December 2018 and it was INR 79.37 Crore instead of INR 169 Crore as on the quarter ended June 2018. This is because the bank only funded 40-50% of the value of shares and not for its full value.

j. It was also submitted that the actual debtors of BRH as on September 29, 2018, was 68,387 clients having an aggregate of INR 163.40 Crore debit balance approximately, and as of September 30, 2019, it was 31,803 clients having an aggregate of INR 76.01 Crore debit balance approximately.

k. It was denied that there was any diversion of funds by BRH and /or BRHCPL through LAS of the clients. The LAS was availed as per practice prevalent at the relevant time since the year 2006.

l. It was denied that LAS funds were transferred to seven related parties of BRH, as alleged in the SCN. BRH had its own internal accruals and the amounts were used for carrying out its payment obligations. The amounts paid to Parton Commercial Pvt. Ltd., Prosperous Vyapaar Pvt. Ltd., BRH Stainless Ltd., AB Investments and East West Infra Projects Pvt. Ltd. were all against their respective dues towards BRH, and no amount is due and /or payable by any of these entities to BRH.

m. In respect of the allegation in the SCN that there were discrepancies in email ids or mobile numbers of clients, that whenever such discrepancies were pointed out by clients, the same were duly rectified. There was no mala fide intention in this regard, as many clients had several of their family members and related entities enrolled as clients and for the sake of convenience, they used to provide a common email ID and mobile number.

n. BRH had over 1 lakh satisfied clients and none of them ever complained of non-receipt of trade information on either email or mobile numbers. It

was denied that discrepancies in email ids or mobile numbers data of clients have even been used for misuse of funds / securities of clients by BRH /BRHCPL.

o. It was submitted that BRH had more than one lakh customers, and all KYC documents, including the POA and Authority letters, were bound in one booklet. The clients used to sign all documents, and thus, there weren't any POA missing. Since the client base was very large, there were occasions when immediately the documents were not located. However, whenever any such request was made in the course of an inspection, the same was duly complied with by the Compliance Team. On the closure of business in September 2019, almost all employees had left the company, and thus, it was difficult to readily supply all documents in the course of inspection by the Forensic Auditor. This, however, cannot raise a presumption that the POA of 48 clients was unavailable

p. It was denied any purported discrepancy in POA had been used as a method for misuse of funds /securities of clients by BRH /BRHCPL.

q. In respect of the allegation in the SCN regarding the diversion of funds to related parties, it was submitted as under: -

i. AB Investments was a client of BRH, and a copy of the ledger of transactions undertaken by it with BRH was submitted before SEBI. It was argued that from a perusal of the ledger, it would be evident that no excess amount was paid to AB Investment by BRH as alleged by NSE. BRH had only made payment of the amounts due to AB Investments on account of its trading balance.

ii. Polo Setco Tie Up Pvt Ltd. ("**Polo"**) is a non-banking finance company. Polo had provided loans not just to BRHCPL but also to various clients of BRH. For the last several years, there have been regular transactions between Polo and BRH directly and through BRHCPL. The accounts of Polo and BRHCPL were squared off every year and any excess amount provided to Polo

was repaid with interest and vice versa. However, once the business of BRH stopped September 30, 2019, and thereafter due to the passing of *Interim Order dated October 07, 2019*, by SEBI against BRH, BRHCPL and Polo, there could not be any further business conducted leading to the accounts getting frozen on such date. There is also no mention of the sums used through Polo to purchase shares held by Agarwalla family of BRH and BRHCPL. The ultimate beneficiaries of the substantial amounts from Polo are the Agarwallas' and their group entities who held shares of BRH and BRHCPL. As stated above, Polo still has securities of over INR 13 Crores in BRH, and also credit balance of substantial amounts with BRH.

iii. Prosperous Vyapaar Pvt Ltd. ("**Prosperous**") - It was a client of BRH and a ledger reflecting the transactions between the entities was submitted. It was argued that the ledger statement would show that no excess payments were made to Prosperous.

iv. Bluesnow Suppliers Pvt. Ltd. ("**Bluesnow**") - Bluesnow had provided office space to BRH and had charged a license fee against the same. Though the Forensic Auditor has accepted a payment of INR 5.27 Crore as license fees, however, a further payment of INR 1.68 Crore for the subsequent period has not been taken into account. In terms of the Agreement with Bluesnow, based on the commitment of BRH, it had made capital expenditures in the concerned premises and it was agreed between them that if BRH untimely terminates the agreement for any reason, it shall make payment of the license fees for the remaining period. BRH failed to make payment of the license fees for the remaining period as its accounts got frozen, but yet it had already made payment of INR 1.68 Crore towards the licence fee. The Forensic Auditor ignored such facts and no opportunity was provided to BRH to give such clarification.

v. It is denied that there has been any net outflow of funds by BRH to AB investments, Polo, Prosperous or Bluesnow beyond their individual obligations or that it indicates misuse or diversion of clients' securities by BRH through these entities as alleged or at all.

r. In respect of the allegation that there was a mismatch in the data reflected in its books and the demat statements, it was submitted that the CDSL data showing the total pledge of BRH for approximately INR 175 Crore was the correct figure and numbers reflected in the BRH office record was incorrect due to a software error.

s. As regards the allegation in the SCN that the Noticee had not cooperated with the audit and inspections teams and it had failed to redress investor grievances, it was stated that it was made known to NSE and the Forensic Auditor that after the closure of business September 30, 2019, there was massive chaos in their offices when almost all employees left. However, despite that, support was provided to NSE and the Forensic Auditor.

t. It was also denied that there was non-redressal of grievances of investors by BRH, and it was stated that the compliance team provided full support and resolved all grievances of the investors in 2017-18.

**Noticee 4 – Shiv Kumar Damani**

a. It was submitted by Noticee 4 that prior to joining BRH, he had worked with SKP Securities, where Noticee 3 was his colleague. Noticee 3 resigned from SKP Securities in 2001 and later in 2002-03 approached him to join the new company that he was starting.

b. Thereafter, in the year 2006, he was made the head of the H.O. Dealing for a year and then in 2007, he was appointed as a Director of BRH and designated as the head of Risk Management.

c. It was submitted that even after the Noticee's appointment as a Director, his duties and responsibilities were segregated by the company in a precise manner.

d. It was submitted that even though he was designated as a Director, he continued to work like an employee working under the instructions of the Directors /Promoters.

e. It was further submitted that it was under Anubhav Bhatter's instructions that all dealings in pledging of securities with the banks and other functions were discharged. Mr. Bhatter was solely accountable for all the finances and audits of the company.

**Noticee 5 -** Mrugesh Devashrayi

a. Noticee submitted that the SCN was issued against him only because he was a director of Noticee 1 and Noticee 2 and there are no specific allegations against him.

b. Noticee's association with the said Noticees started in 2009 when he joined as an employee.

c. It was submitted that the Noticee was designated as a Director in 2018 and he served in that role till 2019. It was only a nominal appointment to fill the position.

d. Noticee also stated that he was not a signatory to any of the bank accounts of BRH and his role was limited to business development.

e. It was also submitted that most of the allegations pertain to the period when the Noticee was not a Director of BRH.

**Noticee 6 -** Asit Kumar Ghosh

a. Noticee submitted that he was initially an employee of BRHCPL and was made a Director in the same company only from April 01, 2016.

b. It was submitted that apart from salary the Noticee was drawing, he did not get any other benefits or emoluments.

c. Noticee also submitted that he was not involved in management decisions.

d. It was submitted that just because the Noticee was designated as a director, the same does not mean that he was in charge of the day to day management of the company.

**Noticee 7 -** Prosperous Vyapaar Pvt. Ltd.

a. It was submitted that the Noticee was a separate legal juristic entity having no management connection with BRH. Noticee was only one of the clients /customers of BRH.

b. In the usual course of business, for the purpose of availing margin, they had transferred their shares to the general pool account of BRH, apart from providing cash security.

c. The allegation that an excess sum of INR 5 Crores or any part thereof was transferred to them was denied.

d. It was submitted that they have only been paid amounts earned from trading on the stock exchanges. A copy of the ledger account and trading accounts were submitted.

e. It was submitted they are yet to receive INR 2,50,32,278/- from BRH and this is also reflected in the ledger statement that was submitted before SEBI.

f. It was further submitted that the Forensic Auditor has in a causal manner picked up a figure from the accounts of BRH and tried to paint a picture that they have been paid excess amounts by BRH.

g. The Noticee submitted that it cannot be held liable for the source of fund used by BRH to make payment of its liability towards it.

**Noticee 8 –** Polo-Setco Tie Up Pvt. Ltd.

a. It was submitted that the Noticee is a Non-Banking Finance Company and in the usual course of business, they had, from time to time, taken loans from BRHCPL.

b. It was also submitted that all such loans were paid back with interest. TDS was deducted for such payments and in support of this, the Noticee submitted a copy of the TDS Certificates.

c. The Noticee submitted that they had never enquired from BRHCPL about the source of their funds and added that they were informed by BRHCPL that such loans were well within the knowledge of SEBI and Stock Exchange and disclosed in the regular audits conducted by such agencies.

d. The Noticee also submitted a copy of a ledger statement to buttress its claim that no amount was owed to BRHCPL. It was further submitted on the strength of the ledger statement that they are yet to receive a sum of INR 3,68,30,600.56 from BRHCPL.

e. It was also submitted that the Noticee had invested in shares of various listed companies through BRHCPL and they are yet to receive such shares.

**Noticee 9 –** Parton Commercial Pvt. Ltd.

a. The Noticee submitted that in the usual course of business, they had from time to time taken loans from BRHCPL.

b. It was submitted that all such loans were repaid with interest. TDS was deducted for such payments and in support of this, the Noticee submitted a copy of the TDS Certificates.

c. The Noticee submitted that they had never enquired from BRHCPL about the source of their funds.

d. The Noticee also submitted a copy of a ledger statement to buttress its claim that no amount was owed to BRHCPL and reiterated that they had no business or any other association with BRHCPL since 30.3.2019.

**Noticee 10 –** AB Investments

a. Noticee submitted that it was only a client of BRH and in the usual course of such business, they maintained a running account with BRH, which at times had credit or debit balances.

b. Noticee denied the allegation in the SCN that it had received sums in excess of its entitlement from BRH and that there has been a net outflow of funds by BRH to the Noticee.

c. In respect of the observations in the FAR that a sum of INR 1.80 Crore was paid by BRH from LAS availed by them, it was submitted that a sum INR 2.43 Crore approximately was due and payable by BRH to the Noticee as on 20.05.2016 and it was against such dues, a sum of INR 1.80 Crore was paid by BRH on 20.05.2016. Noticee further submitted that just after receiving the said amount from BRH, in view of their intention to carry on the trading, they had once again paid a sum INR 1.80 Crores to BRH.

d. Noticee was not aware of the source of funds of BRH from where their dues were paid.

**Noticee 11 -** Bluesnow Supplier Pvt. Ltd.

a. It was submitted that the Noticee was a separate juristic entity having no connection with the business dealings of BRH.

b. Noticee owned a commercial space which was leased to BRH for a monthly license fee of INR14,93,380.

c. The money transferred to Noticee by BRH were payments towards dues under the agreement.

## CONSIDERATION

9. I am now moving to consider the issues on merit. I propose to take up the allegation in the SCN pertaining to the Misutilisation of Client Securities by BRH and BRHCPL and diversion of client securities and funds to related parties together.

**a. Misutilisation of Client Securities by BRH and BRHCPL.**

**b. Misuse and diversion of client securities and funds by BRH through Related Parties.**

10. The SCN has alleged that the securities of clients were pledged by BRH and BRHCPL, and funds including amounts raised though such loans against securities, were diverted. Before proceeding to consider these issues, it would be appropriate to look at the measures put in place by SEBI to prevent misuse of client securities. I note that SEBI has issued Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993. Clause 1 of the said Circular provides as under: -

*i.* "*it shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following: -*

*a. Securities received for sale or kept pending delivery in the market;*

*b. Securities fully paid for, pending delivery to clients;*

*c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);*

*d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;*

*e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc."*

11. SEBI Circular No. MRD/DOP/SE/Cir–11/2008 dated April 17, 2008, provides that Stock Brokers should have systems in place to prevent misuse of client collateral. The relevant portion of the said Circular reads as under: -

*"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. Brokers should also maintain records to ensure proper audit trail of use of client collateral."*

12. Further, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides for uploading of clients'

fund balance and securities balance by the Stock Brokers on Stock Exchange system, provides that: -

*"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.*"

13. As per the pledge information submitted by BRH, there was a substantial increase in pledge during the quarter ended ("**QE**") December 2018. The clients' securities that were pledged, which stood at INR 169 Crore at the end of QE June 2018, increased to INR 448 Crore by the end of December 2018. The corresponding debit balance, which was owed by its clients, was only INR 156 Crore in QE December 2018. This mismatch of INR 292 Crore (INR 448 Crore – INR 156 Crore) between the client securities pledged and clients having debit balance indicated that BRH was pledging securities of clients not having any debit balance.

The pledge details for two sample dates (September 28, 2018 and September 30 2019) is extracted from the FAR and reproduced below:

**September 28, 2018**

- Securities worth approximately INR 45 Crore belonging to 9,493 clients having credit balance were pledged by BRH.
- BRH pledged approximately INR 130 Crore, which was more than the client indebtedness amounting to approximately INR 35 Crore (5,965 debit balance clients.)

**September 30, 2019**

- Securities worth approximately INR 107 Crore belonging to 7,451 clients having credit balance were pledged by BRH.
- BRH pledged approximately INR 68 Crore, which was more than the client indebtedness amounting to approximately INR 7 Crore (2,819 debit balance clients).

14. From the FAR, it was observed that in certain instances, clients' securities were transferred from clients' demat accounts to the demat account of BRH and thereafter, to the account of BRHCPL for pledging. It is also noted that these clients, whose securities were pledged in this manner, were not clients of the commodity segment or traded in the commodity segment during the pledging period.

15. Based on securities pledged data received from CDSL, it was observed that BRH and BRHCPL had pledged client securities with six FIs (HDFC Bank, JM Financial, Bajaj Finance Limited, ICICI Bank, Axis Bank and ICCL) for availing LAS facility. I note that LAS statements of three out of six banks /NBFCs, which had extended loans to BRH and BRHCPL, were analysed in the FAR. It was noted that INR 513 Crore was disbursed by these three FIs to BRH and BRHCPL as LAS during the period April 1, 2016 to September 30, 2019. It is also noted that the FAR identified 23 instances where LAS funds totalling INR 150.13 Crore were transferred to seven related parties of BRH, the details of which are given below:

i. INR 80.61 Crore (54%) to Polo;
ii. INR 50.67 Crore (34%) to Parton;
iii. INR 8 Crore (5%) to Agarwallas (Subodh Agarwalla, Subhas Chandra Agarwalla and Prahlad Rai Agarwalla);
iv. INR 5 Crore (3%) to Prosperous;
v. INR 4 Crore (3%) to BRH Stainless Ltd.;
vi. INR 1.80 Crore (1%) to AB Investments;
vii. INR 0.05 Crore to East West Infra Projects Pvt. Ltd.

16. Apart from the above, I note that complaints were received by SEBI alleging that Anubhav Bhatter, director of BRH, had siphoned off funds from BRH to related parties. Based on the observations of forensic report and replies obtained from the related parties, NSE submitted their analysis and observations vide emails dated December 31, 2020, and January 1, 2021**.** The summary of observations made by NSE is as follows:

a) **AB Investments** – AB Investments was a client of BRH. After examining the records of BRH, it was noted that an amount of INR 2.90 Crore is payable to AB Investments in respect of the transactions undertaken by it on the exchange platform. However, it was observed during the audit that the net outflow of funds from BRH to AB Investments amounted to INR 5.48 Crore. In view of the same, it was noted that an excess amount of INR 2.58 Crore had been transferred to AB Investments by BRH.

b) **Polo Setco Tie Up Pvt. Ltd**– Polo was an NBFC. During the inspection conducted by NSE, it was observed that securities of other clients worth INR 31.10 Crore were misappropriated through Polo. It is also noted from the FAR that Polo had a loss of approximately INR 17 Crore in the F&O segment during the period covered by the forensic audit. However, despite losses in the F&O segment, a net outflow of funds amounting to INR 150.54 Crore (including funds amounting to INR 80.61 Crore from the LAS account) from BRH to Polo was observed by the forensic auditor. I note that the said Noticee in its reply has stated that it was not a client of Noticee No. 2 and it used take loans from BRHCPL in the normal course of business. It was also stated that such loans taken in the past have been repaid with interest.

I see not merit in this argument taken by the Noticee. I note that in terms of Rule 8(f) of the Securities Contract (Regulation) Rules, 1957, Stock Brokers cannot engaged in any other business involving financial liability. Therefore, the contention of the Polo that it used to avail loans from Noticee No. 2 even though it was not a client of BRHCPL would itself entail that that the Noticees were

engaged in activities that were in contravention of the applicable legal provisions.

c) **Prosperous Vyapaar Pvt. Ltd.** – Prosperous was registered as a client of BRH. It was observed that securities worth INR 105.69 Crore were sold in the account of Prosperous. Since BRH had not reported any securities in the account of Prosperous (except for one ISIN in the month of August 2018, which was sold subsequently in the month of September 2018), it was noted that the securities sold through this account belonged to other clients of BRH.

As per the holding reported by the Forensic auditor as of September 30, 2019, securities amounting to INR 8.31 Crore are payable to Prosperous. During the audit period, the F&O loss amounting to INR 0.60 Crore was observed in the account of Prosperous. However, the outflow of funds from BRH to Prosperous which was observed during the audit amounted to INR 20.14 Crore (including funds amounting to INR 5 Crore from LAS account).

d) **Bluesnow Suppliers Pvt. Ltd.** - Bluesnow was not a client of BRH. Bluesnow had received a total amount of INR 5.27 Crore as license fees from BRH. However, the forensic auditor had pointed out total outflow of funds amounting to INR 6.95 Crore from BRH to Bluesnow. Thus, a difference of INR1.68 Crore was observed in the total amount credited to Bluesnow over and above the obligations that BRH had towards it.

17. From the aforesaid observations, it is observed that there was a net outflow of funds from BRH to AB Investments, Polo, Prosperous and Bluesnow beyond their individual obligations, indicating misuse and diversion of client securities. It is also noted from the records that all these entities were connected to BRH, the details of which are given in the Table below:-

| Noticee No. | Name of the Noticee | Basis of Connection |
|---|---|---|
| 7 | Prosperous Vyapaar Pvt. Ltd. | • Received Loan Against Securities (LAS) of Rs. 5 crore<br>• Debiprasad Ganguly and Uma Bhaduri, who were directors of the company, were the employees of BRH.<br>• Payments made to them such as advance against Salary, reimbursement of travelling expense, etc. were observed in the books of Noticee no. 1. |
| 8 | Polo-Setco Tie Up Pvt. Ltd. | • Received LAS of Rs. 80.61 crore.<br>• Holds 26.06% shares in Noticee no. 1 and 49% shares in Noticee no. 2.<br>• Ram Kishore Sharma and Vinay Dujari who were directors of the company, were the employees of BRH.<br>• Payments made to them such as advance against Salary, reimbursement of travelling expense, etc. were observed in the books of Noticee no. 1. |
| 9 | Parton Commercial Pvt. Ltd. | • Received LAS of Rs. 50.67 crore.<br>• Holds 0.08% shares in Noticee no. 1.<br>• Vinay Dujari and Netre Thapa who were of the directors of the company, were the employees of BRH. Payments made to them such as advance against Salary, reimbursement of travelling expense, etc. were observed in the books of Noticee no. 1 |
| 10 | AB Investments | • Received LAS of Rs. 1.80 crore.<br>• Related party of Noticee no. 1 as disclosed by Noticee no. 1 in its audited financials for FY 17-18. |
| 11 | Bluesnow Supplier Pvt. Ltd. | • Ram Kishore Sharma, who was one of the directors of the company was an employee of Noticee No. 1. He was also a director of Noticee No. 8.<br>• Payments made to them such as advance against Salary, reimbursement of travelling expense, etc. were observed in the books of Noticee no. 1 |

18. In their replies, BRH and BRHCPL first adopted the defence that the practise of pledging client securities was a standard industry practice and it enjoyed the implicit approval of the clients. I am, however, unable to accept this contention as it is noted that SEBI has put in place stringent norms providing the limited purposes for which such activities can be undertaken. Further, even if, for the sake of argument, it is accepted that such practises were with the consent of the clients, it would still not absolve the Noticees from the liability for contravening mandatory provisions of securities laws.

19. Noticees 1 and 2 have also sought to argue that FAR has failed to look at the total exposure of the respective clients across all segments. Even this contention, I note, is without merit. The very fact that the value of client securities pledged by the aforesaid Noticees was significantly more than the debit balance owed by its clients would show that the quantum of securities pledged was beyond levels permitted in terms of the SEBI Circulars mentioned above.

20. I fail to find any merit in the arguments put forward by Noticees 7 to 11 on the basis of certain ledger statements that have been produced before me. I note that the said Noticees have not submitted any underlying documents to substantiate the veracity of the contents of the said statements. Further, exchanges after considering the representations made by these Noticees have come to a categorical conclusion that the amounts transferred to these related parties were more than the obligation of BRH to these entities.

21. It is noted that it was contented on behalf of the Noticee 1, 2 and 3 that the FAR and the SCN does not delve into the role of Sudhanshu Agarwalla and Avinash Agarwalla, who along with Noticee 3, were the initial directors of Noticee 1. In this regard, I note that a similar contention was raised by Noticee 3 prior to the passing of the confirmatory order and at that stage, taking into account the same, it was directed in the confirmatory order that:-

*"The present director of BMA, namely, Noticee no. 3, in his oral submissions made during the hearing, has contended that the said pledge of securities were being undertaken by the erstwhile management of BMA i.e. Mr . Avinash Agarwalla and Mr. Sudhandhu Agarwalla and continued by the present management. Therefore, the stock exchanges, clearing corporations and depositories, are further directed that the forensic audit or appointed by them shall also look into the role of Mr . Avinash Agarwalla and Mr. Sudhandhu Agarwalla, who are non - dominant promoters of Noticee no. 1 and are alleged to be directly or indirectly in control of the companies i.e. Shakti Auto Finance Pvt. Ltd., Bhagwati Syndicate Pvt. Ltd., Snowtex Investment Ltd., Sumee Trading Pvt. Ltd. and Snowtex Securities Ltd., forming the promoter group of Noticee no. 1, as submitted by the Noticee no. 1 to 5 in their submissions , to ascertain whether they had any role in the unauthorized pledging or misappropriation of the securities of the clients of BMA, during their*

*tenure as director of BMA and recommend appropriate action against such erstwhile management /directors."*

22. I note from the records that pursuant to the said directions the matter was examined by SEBI and views of NSE was also taken on the issue. Thereafter, based on the examination of the material available on record, it was decided to not to proceed against Mr. Avinash Agarwalla and Mr. Sudhandhu Agarwalla and accordingly they have not been made Noticees in the proceedings before me. In view of the same, I am constrained to note that contention raised by the Noticee in respect of the role of Mr. Avinash Agarwalla and Mr. Sudhandhu Agarwalla is beyond the scope of the present proceedings.

23. From the above, it is noted that contrary to the provisions of the SEBI Circulars, BRH and BRHCPL were pledging securities of clients lying with it for purposes other than those permitted under the Circulars issued by SEBI. This is further underlined by the fact that Noticee 1 and 2 were pledging securities of clients who had a credit balance. Further, as stated above, even in the case of clients having debit balances, the quantum of securities pledged were much larger than the debit balance of such clients. In many instances, the securities were first transferred by Noticee 1 to Notice No. 2, even in cases where such securities belonged to clients who did not trade in the commodities segment during this period, before being pledged eventually by Noticee 2.

24. In view of the same, I find that BRH and BRHCPL had misutilised clients' securities and also misappropriated clients' funds and securities through its related parties namely, AB Investments, Polo Setco Tie Up Pvt. Ltd, Prosperous Vyapaar Pvt Ltd and Bluesnow Suppliers Pvt. Ltd. and thus violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**c. Misutilisation of clients' funds by BRH**

25. To prevent the misuse of clients' funds by the stock broker, Clause 1 of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, provides that:

*"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."*



26. Also, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides for uploading of clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system. The Circular also provides that: -

"*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.*"

27. As per the inspection report of BRH, on 37 out of 38 sample instances, funds of credit balance clients were misutilised for meeting the obligations of debit balance clients and/or for its own purpose. The amount of misutilisation ranges from INR 1.45 Crore to INR 8.00 Crore. A few instances of the misutilisation of client funds identified in the inspection report is detailed in the table below: -

**Table 1**

| Date | Total (client bank balance + settlement a/c balance | Aggregate value of collaterals (cash/FD/(BG/2)) (INR) | Aggregate value of credit balance of all clients (as per trial balance after adjustments) (INR) | A+B-C |
|---|---|---|---|---|
| | [A] | [B] | [C] | [G] |
| 01.02.2018 | 3,21,10,105 | 38,26,00,928 | 49,47,08,672 | -7,99,97,640 |
| 02.02.2018 | 31,99,41,111 | 38,26,00,928 | 78,25,39,379 | -7,99,97,340 |
| 12.02.2018 | 5,27,29,961 | 38,26,00,928 | 51,53,27,201 | -7,99,96,313 |
| 14.02.2018 | 1,28,36,442 | 38,26,00,928 | 47,54,33,662 | -7,99,96,292 |
| 15.02.2018 | 1,72,66,727 | 38,26,00,928 | 47,98,63,520 | -7,99,95,865 |
| 16.02.2018 | 1,53,07,478 | 51,76,00,928 | 61,29,03,942 | -7,99,95,537 |
| 19.02.2018 | 1,10,86,268 | 53,76,00,928 | 62,86,82,731 | -7,99,95,536 |
| 20.02.2018 | 1,19,31,290 | 53,76,00,928 | 62,95,26,784 | -7,99,94,566 |
| 21.02.2018 | 1,68,10,735 | 38,26,00,928 | 47,94,06,227 | -7,99,94,565 |
| 22.02.2018 | 1,68,60,421 | 38,26,00,928 | 47,94,55,058 | -7,99,93,710 |
| 23.02.2018 | 2,07,67,435 | 38,26,00,928 | 48,33,61,975 | -7,99,93,613 |
| 26.02.2018 | 2,94,19,501 | 51,76,00,928 | 62,70,13,232 | -7,99,92,804 |
| 27.02.2018 | 4,57,20,622 | 51,76,00,928 | 64,33,14,104 | -7,99,92,555 |
| 28.02.2018 | 47,11,36,837 | 38,26,00,928 | 86,82,44,994 | -1,45,07,229 |

28. I note from the replies of Noticee No. 1 and 2, that they have made similar arguments in respect of this allegation regarding misutilisation of securities and misutilisation of funds. In view of the same, as already stated in para 18 and 19 of this Order, their contentions are without merit and are liable to be rejected.

29. In view of the above, it is noted from the sample analysis that in the overwhelming majority of the cases that were analysed, it was observed that BRH had misutilised funds of its clients having credit balances. In view of the same, I hold that BRH has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**d. Misutilisation of clients' funds by BRHCPL**

30. It is noted from the inspection report that in all the 20 sample cases analysed during the inspection, funds to the credit of the clients were misutilised for meeting the obligations of debit balance clients or for utilising the money for its own purpose. The amount of misutilisation ranges from INR 4.42 Crore to INR 7.30 Crore. A few instances of the misutilisation of client funds identified in the inspection report are detailed in the table below: -

**Table 2**

| Date | Total (client bank balance + settlement a/c balance | Aggregate value of collaterals (cash/FD/(BG/2)) (INR) | Aggregate value of credit balance of all clients (as per trial balance after adjustments) (INR) | (A+B)-C |
|---|---|---|---|---|
| | [A] | [B] | [C] | [G] |
| 16-08-17 | 2053911.66 | 88431591.59 | 163284524.44 | -72799021.19 |
| 04-09-17 | 2312918.53 | 88431591.59 | 163729501.45 | -72984991.33 |
| 18-04-17 | 2572072.16 | 88321591.59 | 142540078.22 | -51646414.47 |
| 15-05-17 | 3463280.55 | 88321591.59 | 141541706.95 | -49756834.81 |
| 13-06-17 | 3553883.22 | 88321591.59 | 136085324.21 | -44209849.40 |
| 07-07-17 | 8240858.10 | 98321591.59 | 155569627.57 | -49007177.88 |
| 18-07-17 | 1280027.86 | 88431591.59 | 160792641.04 | -71081021.59 |

31. I note from the replies of Noticee No. 1 and 2, that they have made similar arguments in respect of this allegation of regarding misutilisation of securities and misutilisation of funds. In view of the same, as already stated in para 18 and 19 of this Order, those contentions are without merit and are liable to be rejected.

32. It can therefore be noted that in the sample analysis it was observed that BRHCPL has misutilised funds of credit balance clients on 20 days with the amount of misutilisation ranging from INR 4.42 Crore to INR 7.30 Crore. In view of the same, I note that BRHCPL has misutilised client funds and thus violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**e. Wrong/Non-submission of data by BRH and BRHCPL**

33. SEBI has taken a number of measures to ensure that stock brokers periodically report the details of funds and securities of clients held by them to the stock exchanges. The measures put in place by SEBI are detailed below: -

*i.* SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides that *"The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member*

*7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges*

*7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)*

*7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities*

*7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month."*

ii. Clause 2 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides that stock brokers shall inform the stock exchanges of existing and new bank and demat accounts in the specified format.

iii. SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 also provides that stock brokers shall submit half yearly Risk Based Supervision data within the time specified by the stock exchange.

*iv.* Clause 9.1 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides that *"the stock brokers shall provide Permanent Account Numbers of all their Directors, Key Management Personnel and dealers to the Stock Exchanges within three months from the date of this Circular. Any change in the aforesaid details/information shall be intimated to the Stock Exchanges within seven days of such change."*



*v.* Clause 3.2 of Annexure of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides that *"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"*

34. It is alleged in the SCN that there was a discrepancy in the data related to pledged securities, value of client security holdings and client fund balances reported by BRH to NSE. I note from the records that as on September 30, 2019, as per CDSL's data, the total pledge of BRH amounted to approximately INR 175 Crore whereas as per BRH's submission to NSE, it amounted to INR 246 Crore. It is therefore noted that there was a mismatch between the data submitted by BRH to the exchanges and the data available with CDSL.

35. Similarly, I note that as September 30, 2019, the value of securities as per the back office statement of holding was INR 320 Crore (25,631 Clients holding 2,653 scrips)

whereas in the submission made to NSE, the value of securities was reported as INR 278 Crore (28,666 Clients holding 2,661 scrips).

36. Even in respect of client balances, it is noted that there was a mismatch between the data recorded in the back office system of BRH and the data reported to NSE. The details of the same as on September 30, 2019 are given in the table below: -

| **Particulars** | **As per back office** | **As per BRH submission to NSE** |
|---|---|---|
| Total Client Count | 1,22,935 | 2,30,511 |
| Client having credit balances (payable to Clients) | INR205 Crore | INR152 Crore |
| Client having debit balances (receivable from Clients) | INR88 Crore | INR73 Crore |

37. It is further alleged in the SCN that that there was a mismatch in the details of the DP accounts and bank accounts disclosed by BRH and BRHCPL to the exchanges and the information obtained during the inspection. I note from the records that on verification of the list of DP accounts reported by BRH and BRHCPL to the exchange as of November 5, 2019, with the back office master data, it was observed that 6 DP accounts of BRH, 25 bank accounts of BRH and 11 bank accounts of BRHCPL were not reported to the exchanges.

38. It was also observed during the inspection that BRH has not complied with Risk Based Supervision requirements reported to the Exchange for the year 2017-18.

| **Particular** | **As per Member Submission** | | | **As per Details provided by the Member** | | | **Difference** |
|---|---|---|---|---|---|---|---|
| | **NSE** | **BSE** | **Total** | **NSE** | **BSE** | **Total** | |
| Total no. of Branches | 507 | 332 | 839 | 359 | 228 | 587 | 252 |

| Particular | As per Member Submission | | | As per Details provided by the Member | | | Difference |
|---|---|---|---|---|---|---|---|
| | NSE | BSE | Total | NSE | BSE | Total | |
| Number of Branches Inspected by Member during the FY 2017-18 | 302 | 302 | 604 | 230 | 203 | 433 | 171 |
| Number of APs Inspected by Member during the FY 2017-18 | 333 | 27 | 360 | 177 | 20 | 197 | 163 |
| Number of Sub-brokers Inspected by Member during the FY 2017-18 | 7 | 1 | 8 | 4 | 1 | 5 | 3 |
| Number of branches with voice recording facility | 106 | 106 | 212 | 46 | 80 | 126 | 86 |
| Total amount of delayed payment charges collected from the clients (in INR) | 22,89,08,306.00 | | | 31,45,34,508.00 | | | 8,56,26,202.00 |

39. It is also observed that BRHCPL had failed to report the PAN and other required information of one of its directors and its compliance officer under the enhanced supervision submission to the exchange:

| Sr. No | Name | Designation |
|---|---|---|
| 1 | Mrugesh Bhaskarbhai Devashrayi | Additional Director |
| 2 | Sushanta Chakraborty | Compliance Officer |

*40.* I note that the only defence offered by the said Noticees was that the mismatch of data was due to issues with their backend software, and Noticees have accepted that there was a mismatch in data as pointed out by the FAR. In view of the same, I am constrained to note that BRH and BRHCPL have wrongly reported or not reported pledge data, funds and securities balance of clients, details of bank and demat accounts, PAN of directors and Key Managerial Personnel and weekly enhanced supervision data, and thus violated SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**f. Non-cooperation by BRH:**

41. As stated in the preceding part of this order, SEBI had vide the interim order directed the exchanges to *"appoint [a] forensic auditor to track misuse of client's funds/securities and to identify the net assets/liabilities of Noticee no. 1 and Noticee no. 5".* As per the FAR, the forensic auditor had requested for the data / information during review from November 06, 2019 December 24, 2019 along with access to the employees/directors for obtaining the necessary information / clarification. However, I note from the records that the following information was not provided even after repeated follow-up: -

a) Audited financials for the FY ending 2017, 2018, 2019 and unaudited financials as of September 30, 2019.
b) List of bank accounts operated by members and corresponding bank statements.
c) Employee master data.
d) BRH did not provide access to any of the employees or process owners for a explanation of the processes being followed at BRH and BRHCPL for providing any clarifications.
e) KYC documents for select Clients.
f) Loan sanction letters / agreements with various banks for all facilities (LAS, OD, term loans, WC, etc.)
g) Financial data for BRHCPL.
h) Net worth of BRH as of September 30, 2019.
i) BRH did not provide access to finance and operations personnel during the on-site visit of the auditor.
j) BRH has taken significant time to provide key data. BRH was unable to provide support for generating reports through its back office vendors.

42. Regulation 21 of the SEBI (Stock Brokers) Regulations, 1992 provides for following obligations of a stock broker on inspection by the Board:

*"(1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.*

*(2) The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.*

*(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.*

*(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give."*



43. Also, Regulation 24 of the SEBI (Stock Brokers) Regulations, 1992, provides that:

*"Board may appoint a qualified auditor to investigate into the books of account or the affairs of the stock – broker:*

*Provided that, the auditor so appointed shall have the same powers of the inspecting authority as mentioned in regulation 19 and the obligations of the stockbroker in regulation 21 shall be applicable to the investigation under this regulation."*

44. In the matter of Dalmia Industrial Development Ltd. v. SEBI[1], the Hon'ble Securities Tribunal had upheld the finding by SEBI against the Noticee in that matter for failing to cooperate with the auditor appointed by the Exchange on the direction of SEBI.

[1] Appeal No. 471 of 2022|Date of decision September 01, 2022

45. In view of the above, I noted that BRH failed to produce to the inspecting authority such books, accounts and other documents in its custody or control and failed to furnish to the auditor appointed on the directions of SEBI, the statements and information sought by them and therefore has not complied with Regulation 21 read with Regulation 24 of the SEBI (Stock Brokers) Regulations, 1992.

**g. Non-redressal of grievances of investors by BRH**

46. Regulation 9(e) of SEBI (Stock Brokers) Regulations, 1992 provides that any registration granted by the Board to a stock broker shall be subject to the stock broker taking adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complaint. It is observed that BRH has not redressed the grievances of investors within one month from the date of receipt of the complaint in 19 instances.

47. I note that the Noticee, in its reply, other than stating that there has been no delay in redressing investor grievances has not provided any material to support the said claim. In view of the above, I am constrained to go by the findings made in the FAR and hold that BRH has failed to redress investor complaints within the stipulated time and thereby contravened Regulation 9(e) of SEBI (Stock Brokers) Regulations, 1992.

**h. Register of pledge not maintained and details of pledged shares of clients not provided by BRHCPL**

48. To ensure that client securities maintained with the stock broker are reflected in the client DP account maintained by it, SEBI has put in place measures for periodic reconciliation of these two accounts. Towards this end, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides as under: -

*"The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member*

*7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges*

*7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)*

*7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities*

*7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month."*

49. It was noted during the inspection that as on March 28, 2018, as per the statements provided by BRHCPL, there were no securities in the client DP account maintained by it. Despite this, it was noted that BRHCPL had pledged and unpledged many shares during the period April 2017 to September 2018 from its DP account having client ID 54842194. It is also noted from the records that during the inspection BRHCPL was not able to provide the register of pledge and details of clients whose securities has been pledged by them along with purpose of such pledge.

50. In view of the above, I hold that BRH has failed to provide details of pledge of clients' securities and thus violated SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

**a. Bounce mail notification of Electronic Contract Notes not provided by BRHCPL**

51. In terms of the regulations and byelaws of the respective stock exchanges, all trading members have to issue contract notes to their clients for the trades executed

through them. SEBI has permitted the issuance of such contract notes in electronic form and put in place measures to be adopted by members in case contract notes are being delivered to clients electronically. In this regard, Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir-20/2005 dated September 08, 2005 regarding electronic contract notes provides for the "*Requirements for acknowledgement, proof of delivery, log report etc."* which lay down as under: -

*2.4.1 Acknowledgement*

*The acknowledgement email shall be retained by the member in a soft and non-tamperable form.*

*2.4.2 Proof of delivery*

*i. The proof of delivery i.e., log report generated by the system at the time of sending the contract notes shall be maintained by the member for the specified period under the extant regulations of SEBI/stock exchanges and shall be made available during inspection, audit, etc.*

*ii. The member shall clearly communicate to the client in the agreement executed with the client for this purpose that non-receipt of bounced mail notification by the member shall amount to delivery of the contract on email ID of the client.*

*2.4.3 Log Report for rejected or bounced mails*

*i. The log report shall also provide the details of the contract notes that are not delivered to the client/e-mails rejected or bounced back.*

*ii. Also, the member shall take all possible steps (including settings of mail servers, etc.) to ensure receipt of notification of bounced mails by the member at all times within the stipulated time period under the extant regulations of SEBI/stock exchanges."*

52. I note from the records that during the inspection, the records of BRHCPL were inspected on a sample basis and it was observed for the sample that was examined, bounce mail notification was not enabled for contract notes sent electronically to clients. In view of the same, I am constrained to hold that BRH has failed to provide bounce mail notification of electronic contract notes and thus violated SEBI Circular MRD/DoP/SE/Cir-20/2005.

53. Having recorded my findings on the contraventions that have been alleged against Noticees 1, 2 and 7 and 11, the next issue that arises for consideration is the liability of the directors of Noticees 1 and 2 for the contraventions established in the preceding paragraphs. Noticees 3 and 5 were directors of both BRH and BRHCPL during the period covered under the FAR. Noticee 3, I note, apart from being a director in these two companies right from 2004, was also the promoter of both these entities. Noticee 5 was appointed as a director in both these entities on August 24, 2018. Noticee 4 was a director of Noticee 1 from the year 2004, and Noticee 6 was a director of BRHCPL from the year 2016. I note that when violations of the magnitude that have been detailed in the preceding paragraphs of this order stand established against a company, then it becomes necessary to ensure that persons in charge of the company during the relevant period are held accountable. Directors are responsible for the day to day management of a company and have the duty to ensure that the company is complying with applicable regulatory norms. I, therefore, note that directors in such cases cannot escape from the liability arising out of contraventions by the company. In this regard, Section 27 of the SEBI Act provides as under:-

***"Contravention by companies.***

*27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*

*(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*

*Explanation : For the purposes of this section,—*

*(a) "company" means any body corporate and includes a firm or other association of individuals; and*

*(b) "director", in relation to a firm, means a partner in the firm"*

54. While addressing the question of the liability of the directors, I cannot lose sight of the fact that Noticee 3 was not just a director of Noticee 1 and 2 right from the year 2004, he also directly /indirectly held significant beneficial interest in both these companies. Noticee 4, I note, was a director of Noticee 1 from the year 2004 itself and therefore cannot avoid liability merely by stating that even though he has been designated as a director he continued to act as an employee and had received remuneration only commensurate to the said role. I note that Noticee 5 and 6 have also made arguments similar to the one made by Noticee 4. It is noted that Noticee 6 was appointed as a director of Noticee 2 with effect from July 01, 2016 and therefore it is noted that he acted as a director of Noticee 2 for the entire period covered under the FAR. Noticee 5, on the other hand, I note, was appointed as a director of Noticee 1 only with effect from August 24, 2018, and therefore acted in the role of a director of Noticee 1 only for a period of 13 months out of the more than 40 months covered under the FAR. Therefore, the liability of the said Noticee will be limited to the time he had spent as a director of Noticee 1.

55. I shall now proceed to consider the directions that should be issued against Noticees that would be commensurate with the violations committed by them. A stock broker plays a critical role in the securities market as it acts as an interface for retail investors and is therefore required to maintain high standards of integrity and fairness in the conduct of its business dealings, and uphold the trust reposed by investors who hold their funds and securities with it. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and ensure that their rights are protected. Noticees 1 to 2 have shown blatant disregard to applicable regulatory norms, which has resulted in not just losses being suffered by its clients but has also shaken the faith reposed by the average investor in market institutions. I am, therefore, of the considered view that such actions on the part of a registered intermediary needs to be dealt with a stern hand to protect the integrity of the securities market.

56. It is also noted that the SCN had also called upon the Noticees to Show Cause for not imposing penalties under Section 15HA of the SEBI Act for violation of the provisions of Section 12A of the SEBI Act read with Regulation 3(d), 4(1), 4(2)(m) and 4(2)(p) of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices Related to the Securities Market)Regulations, 2003 ("**PFUTP Regulations**") which were alleged to have been attracted on account of their role in misappropriating /misutilising funds and securities of the clients of Noticees 1 and 2. Before proceeding to consider this issue, it would be appropriate to reproduce the said provisions which have been alleged to have been attracted by the Noticees:-

*"3. Prohibition of certain dealings in securities*

*No person shall directly or indirectly—*

*d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of t h e Act or the rules and the regulations made there under.*

*4. Prohibition of manipulative, fraudulent and unfair trade practices*

*(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.*

*Explanation. – For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.*

*(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —*

*(m) a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity;*[2]

*(p) an intermediary predating or otherwise falsifying records [including contract notes, client instructions, balance of securities statement, client account statements;"*

57. As already stated in the preceding part of this Order Noticees 1 and 2 have violated provisions of the SEBI Circulars by misappropriating clients' funds /securities and diverting funds to related entities (Noticees Nos 6 to 11). The said related entities i.e. Noticees 6 to 11, have also played a major role in aiding and abetting BRH and BRHCPL in mis-appropriating the securities and funds of their clients. Further, the Noticees 3 to 6 were the directors of Noticees 1 and 2 during the period when such misutilisation of funds and securities was happening. In view of the same, I hold that the said actions of the Noticees fall within the definition of *"fraud"* as defined under regulation 2(1)(c) of the PFUTP Regulations and thereby attract they attract the provisions of Section 12A of the SEBI Act read with Regulation 3(d) and 4(1) of the PFUTP Regulations. Further, such actions also attract the provisions of regulations 4(2)(m) from February 01, 2019, till the date of the Interim Order.



58. I also note the instant proceedings also provide for imposing of monetary penalty under Section 15HA of the SEBI Act and Section 23D of the Securities Contract (Regulation) Act, 1956 ("**SCRA**"), The relevant penalty provisions are reproduced below:

[2] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019

Before the substitution the provision read as follows:
*"an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;"*

***Section 15HA of the SEBI Act***

***Penalty for fraudulent and unfair trade practices.***

*15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he*
*shall be liable to a penalty which shall not be less than five lakh rupees but which may extend*
*to twenty-five crore rupees or three times the amount of profits made out of such practices,*
*whichever is higher*

***Section 15J of the SEBI Act***

*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.*

**Section 23 D of the SCRA, 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."*

**Section 23J of the SCRA**

*"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."*

59. Upon consideration of the penalty provisions, I find that *Noticees 1 and 2*, by failing to segregate securities/funds of its clients and diverting such securities/funds to third parties, has failed in performing its statutory and fiduciary obligations and, therefore, make them liable for imposition of monetary penalty under section 23D of the SCRA. Further, as stated above, the conduct of the Noticees fall within the definition of 'fraud' under the PFUTP regulations and therefore, Noticees 1 to 3 and 7 to 11 are also liable for monetary penalties under Section 15HA of the SEBI Act.

60. On the question of monetary penalty to be imposed on Noticees 4 to 6, I note that they have already undergone debarment pursuant to the Interim Order for a period of more than three years. I also cannot lose sight of the fact that Noticee 3 was managing the affairs of Noticees 1 and 2, which is also borne out in the settlement agreement dated September 01, 2018, entered between Noticee 3, Avinash Agarwalla and others. In view of the same, I am of the considered view that no further directions for penalty are required against them.

**DIRECTIONS**

61. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1), 11B(2) read with Section 19 of the Securities and Exchange Board of India Act, 1992, and Section 12A of the Securities Contract (Regulation) Act, 1956, pass the following directions:

a. Noticees 1 to 3 are hereby restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of **7 years**.

b. Noticees 7 to 11 are hereby restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of **5 years**.

c. It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone pursuant to the Interim Order read with the Confirmatory Order shall be taken into consideration and set off from period mentioned above.

d. The following Noticees shall also be liable to pay monetary penalty, as specified hereunder: -

| NOTICEE | PROVISIONS UNDER WHICH PENALTY IMPOSED | PENALTY AMOUNT (IN RUPEES) |
|---|---|---|
| NOTICEE 1 | SECTION 15HA OF THE SEBI ACT AND SECTION 23D OF THE SCRA | 5 CRORE |
| NOTICEE 2 | SECTION 15HA OF THE SEBI ACT AND SECTION 23D OF THE SCRA | 5 CRORE |
| NOTICEE 3 | SECTION 15HA OF THE SEBI ACT | 1 CRORE |

| | | |
|---|---|---|
| NOTICEE 7 | SECTION 15HA OF THE SEBI ACT | 10 LAKHS |
| NOTICEE 8 | SECTION 15HA OF THE SEBI ACT | 10 LAKHS |
| NOTICEE 9 | SECTION 15HA OF THE SEBI ACT | 10 LAKHS |
| NOTICEE 10 | SECTION 15HA OF THE SEBI ACT | 10 LAKHS |
| NOTICEE 11 | SECTION 15HA OF THE SEBI ACT | 10 LAKHS |

e. The directions issued under paragraph 9 of the Interim Order read with the Confirmatory Order in so far as it relates to *Noticees 4* to *6,* shall stand vacated.

f. *Noticees 1, 2* and *3* shall, jointly and severally, be liable to repay / refund the monies due to investors / clients of Noticee 1, under the supervision of NSE.

g. *Noticees 1, 2* and *3* shall, jointly and severally, be liable to return the securities due to the investors / clients of Noticee 1 or their monetary value as on the date of actual payment of money in lieu of shares, under the supervision of NSE.

h. *Noticees 1, 2* and *3* shall not dispose of or alienate any of their assets, whether movable or immovable (including funds in their bank accounts), or create any interest or charge in any such assets, till such time the refunds / repayments as directed at paragraphs 61 (f) and 61 (g) above are completed.

i. The Banks are directed to ensure that no debits are made in the bank accounts held by *Noticees 1, 2* and *3*, except for the purpose of payment of money to the clients/investors under the written confirmation of NSE, till such time the refunds / repayments as directed at paragraphs 61 (f) and 61 (g) above are completed.

j. NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated Demat account where all the securities lying in the Demat accounts of *Noticees 1 and 2* shall be transferred.

k. The NSE Defaulters Committee shall open and operate dedicated interest bearing bank account(s) with a Nationalized Bank where all the funds lying in various bank accounts held in the name of *Noticees 1 and 2* shall be transferred.

l. The modalities of selling the assets, depositing the proceeds thereof in the Escrow Account(s) opened in accordance with the directions contained in paragraphs 61 (j) and 61 (k) above and disbursing the amounts to the clients / investors after verifying the claims, shall be worked out by NSE. NSE shall have a lien on the remaining amount, if any, lying in the Escrow Account(s), after satisfying the claims of the investors/clients. The lien shall be up to the extent of total money disbursed by the Exchange out of its Investor Protection Fund accounts to the clients/investors of *Noticees 1 and 2*.

m. NSE shall deal with the claims of the clients / investors in accordance with its bye-laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism.

n. NSE shall proceed with the recovery of funds and securities from the assets of the *Noticees* to cover any shortfall in funds and securities in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.

62. The Order shall come into force with the immediate effect.

63. A copy of this order shall be forwarded to the Noticees, all the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents for ensuring compliance with the above directions.

**Place: Mumbai**
**Date: January 11, 2023**

**ASHWANI BHATIA**
**WHOLE TIME MEMBER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**