

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/22878-22877]

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**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

**Keshav Securities Pvt. Ltd.**

**(SEBI Registration No. INZ000296230)**

In the matter of Keshav Securities Pvt. Ltd. – Stock Broker

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**BACKGROUND OF THE CASE**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted inspection of Keshav Securities Pvt. Ltd. (Stock Broker) (hereinafter referred to as “**Noticee**”) for the period April, 2020 to September, 2021 (hereinafter referred to as “**inspection period/ IP**”).
2. Noticee is registered with SEBI as a Stock Broker under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**broker Regulations**”) vide SEBI registration no. INZ000296230.
3. The inspection findings were communicated to the Noticee vide SEBI letter dated February 02, 2022, enclosing copy of the Inspection report (hereinafter referred to as “**IR**”). After examining the reply submitted by the Noticee dated February 24, 2022, it has been alleged that Noticee has contravened various provisions of the securities laws in respect of activities carried out by the Noticee as Stock

Broker. The extracts of the violations alleged to have been committed by the Noticee and the corresponding provisions of the securities laws are tabulated below:

<b>Sl. no</b>	<b>Alleged violations</b>	<b>Regulatory Provisions</b>
1.	Misuse of Clients' funds and Securities.	<ul style="list-style-type: none"> <li>• <i>Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.</i></li> <li>• <i>Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.</i></li> </ul>
2.	Delay in settlement of Funds.	<ul style="list-style-type: none"> <li>• <i>Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.</i></li> <li>• <i>Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.</i></li> </ul>
3.	Reporting and short collection of margin.	<ul style="list-style-type: none"> <li>• <i>Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.</i></li> <li>• <i>Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.</i></li> </ul>
4.	Client funding.	<ul style="list-style-type: none"> <li>• <i>Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.</i></li> </ul>
5.	Stock Reconciliation.	<ul style="list-style-type: none"> <li>• <i>Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.</i></li> </ul>
6.	Client Registration process (KYC and KRA) and UCC verification.	<ul style="list-style-type: none"> <li>• <i>Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.</i></li> </ul>
7.	Client Order Recording.	<ul style="list-style-type: none"> <li>• <i>Clause III of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.</i></li> </ul>

8.	Enhanced supervision data.	<ul style="list-style-type: none"> <li>• <i>Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</i></li> </ul>
9.	Risk Based Supervision	<ul style="list-style-type: none"> <li>• <i>Clause 6.1.1.j. read with clause 6.1.1.e. of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</i></li> </ul>

4. In view of the above, adjudication proceedings were initiated under Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) and Section 15HB of SEBI Act, 1992 against the Noticee for the aforesaid alleged violations of various provisions of the Acts, Regulations and Circulars as stated above.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated October 25, 2022, under Section 19 read with Section 15(l) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**SEBI Adjudication Rules**’) and under Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**SCRR**”), and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and under the provisions of Section 23D of SCRA and Section 15HB of the SEBI Act, 1992.

#### **SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING**

6. Show Cause Notice No. SEBI/EAD-3/BM/UR/56527/2022 dated November 04, 2022 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against it and why penalty should not be imposed under Section 23D of

SCRA and Section 15HB of the SEBI Act, 1992., for the aforesaid alleged violations.

7. The SCN was duly served on the Noticee via SPAD on November 10, 2022 and also through email dated November 07, 2022. The proof of the service is on record. Vide email dated January 09, 2023, Noticee submitted its reply to the SCN. The submissions made by the Noticee are as summarized below:

- **Misuse of Clients' Funds:**

*Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. As soon as these were detected it had rectified them and made sure they are not repeated. This was a onetime thing, and happened due to lockdown. Noticee submitted that this was the same observation raised by NSE in their observation via letter dated Sep 01, 2021 and it had already given the data to NSE for the week ending 14/08/2021 proving that the above shortfall is not there today.*

- **Delay in settlement of funds:**

*Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. It had missed a few instances here, but it had made sure these are not repeated in future. Noticee further submitted that this was the same observation raised by NSE in their observation via letter dated Sep 01, 2021.*

- **Reporting and short collection of margin:**

*Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. The 5 instances reported in the SCN are from 16th April 2020 from 27th April 2020. This is again a clerical error and it had rectified these errors soon after and made sure not to repeat them.*

- **Client Funding:**

Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. The 5 instances reported in the SCN are from 16th April 2020 from 27th April 2020. This is again a clerical error. It had rectified these errors soon after and made sure not to repeat them.

- **Stock Reconciliation:**

Noticee submitted that its back office software had crashed due to which many errors were seen. It had given the detailed reply of each instance in the attached annexure "Annexure 5 - Stock Reconciliation.xlsx".

- **Client Registration Process (KYC and KRA) and UCC Verification**

Noticee submitted that the details mentioned in the UCC were of the family members and it had made the necessary changes after getting the notification from the exchange. This shown in the attached "Annexure 6 - Client Registration Process and UCC Verification.xlsx".

- **Client order recording:**

Noticee submitted that all of its clients are family members and share holders and all the trades done by them are done in their presence. There was no calling outside client (Calling).

- **Reporting of weekly and monthly Enhanced Supervision data:**

Noticee submitted that the date range when these error found were from Feb 20, 2021 to Apr 2021. Its' staff was working from home and Noticees' director was the only one coming to office and trying to manage everything from logging into the servers to trading and giving remote access to staff for making bills and reporting data to exchanges. Due to long distance working there were a few clerical errors made and it rectified them as soon as these were brought to our notice.

- **Risk Based Supervision:**

*Noticee submitted that the loan amount of Rs.22.51 crores is given to the group company viz. Modispaces Real Estate Pvt Ltd, which is a sister concern company. Further, loan given to BNE infraprojects is interest free loan given to relatives which has now turned into bad debts. Noticee submitted that it also received a letter dated November 9, 2022 from SEBI regarding this same point and it was not aware that it could give loans to sister concerns. This is a lapse on its part.*

8. Pursuant to issuance of the SCN, in the interest of principles of Natural Justice, Noticee was granted opportunity of hearing on December 12, 2022 vide hearing notice dated November 28, 2022, however, the aforesaid hearing could not be held on the scheduled day and time due to some inadvertent reasons. Subsequent to that, vide email dated December 13, 2022, the hearing in the matter was scheduled on December 19, 2022, however the Noticee requested to schedule the hearing on second week of January 2023. In view of which, vide email dated December 19, 2022, Noticee was granted final opportunity of hearing on January 09, 2023. The hearing was completed on the scheduled day and time. The minutes of the hearing in this regard are on record. During the course of hearing, Noticee made oral submissions and also informed that it had applied for surrender of its certificate. Pursuant to the hearing following information was sought from the Noticee:
- a. Copy of application for surrendering the membership with both the exchanges;
  - b. Detailed reply to the SCN dated November 04, 2022.

Noticee vide email dated January 09, 2023, submitted the information/documents as sought from it during the course of hearing. Vide email dated January 11, 2023, Noticee submitted additional submissions to the SCN, in regard to imposition of penalty by the exchanges on the same nature of violations.

## **CONSIDERATION OF ISSUES AND FINDINGS**

9. I have carefully perused the charges levelled against the Noticee, its reply and the documents/material available on record. The issues that arise for consideration in the present case are:

### **Issue No. I**

- a. Whether Noticee has misused Clients' funds and Securities in violation of the provisions of securities laws?
- b. Whether Noticee has delayed in settlement of funds in violation of the provisions of securities law?
- c. Whether Noticee has submitted wrong report about the margin collected from the clients' and violated the provisions of securities laws?
- d. Whether Noticee has funded clients' and violated the provisions of securities laws?
- e. Whether the Noticee had violated Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992 on account of mismatch between back office holdings of client's securities and securities as per the DP Statements?
- f. Whether Noticee has uploaded inaccurate details regarding client registration process (KYC and KRA) and UCC verification and violated the provisions of securities laws?
- g. Whether the Noticee has not maintained call data recordings as evidence of client order placement and violated the provisions of securities laws?
- h. Whether the Noticee had reported incorrect details to exchange regarding Reporting of weekly and monthly Enhanced supervision data and has violated SEBI Circulars and provisions of securities laws?
- i. Whether the Noticee has incorrectly reported the data regarding Risk based supervision and has violated provisions of securities laws?

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

**Issue No. III** If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 and 23J of SCRA?

10. The relevant provisions of law are reproduced below:

**Securities Contracts (Regulation) Act, 1956**

*Penalty for failure to segregate securities or moneys of client or clients.*

**23D.** *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**SEBI Circular SMD/SED/CIR/93/23321 (Regulation Of Transactions Between Clients And Brokers)**

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

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

*i. Moneys received from or on account of each of his clients and,  
ii. the moneys received and the moneys paid on Member's own account.*

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

*i. money held or received on account of clients;  
ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;  
iii. money for replacement of any sum which may by mistake or accident have*



*been drawn from the account in contravention of para D given below;  
iv. a cheque or draft received by the Member representing in part money  
belonging to the client and in part money due to the Member.*

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

*i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;  
ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;  
iii. money which may by mistake or accident have been paid into such account in contravention of para C above.*

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

### **SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 (Enhanced Supervision of Stock Brokers and Depository Participants)**

The aforementioned circular can be found at the link below:

[https://www.sebi.gov.in/legal/circulars/sep-2016/enhanced-supervision-of-stock-brokers-and-depository-participants\\_33334.html](https://www.sebi.gov.in/legal/circulars/sep-2016/enhanced-supervision-of-stock-brokers-and-depository-participants_33334.html)

### **SEBI/MIRSD/SE/Cir-19/2009 (Dealings between a client and a stock broker - trading members included)**

Running Account Authorization

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all

receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

**SEBI Circular-CIR/DNPD/7/2011(Short-collection/Non-collection of client margins)**

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

**SEBI Circular-SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 (Mechanism for regular monitoring of and penalty for short-collection/non-collection of margins from clients)**

*3.The penalty structure and framework for short-collection/non-collection of margins by members from their clients shall be as under:*

*xii. Exchanges shall examine implementation of these instructions during the inspection of its members. If during inspection or otherwise, incorrect reporting on collection of margin from client by member is found, the member shall be penalized up to 100% of such amount short collected.*

**SEBI Circular-CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 (Clarification to Enhanced Supervision Circular)**

*d.Clause2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time. "This clause would be effective from August 1, 2017.*

## **Broker Regulations**

17. (1) Every Stock Broker shall keep and maintain the following books of account, records and documents, namely :—

(g) Documents register containing, inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities;

### **SEBI Circular- CIR/MIRSD/15/2011 (SMS and E-mail alerts to investors by stock exchanges)**

B. Uploading of mobile number and E-mail address by stock brokers

i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.

ii. Stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address.

iii. Stock brokers shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of clients.

iv. Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents.

### **SEBI Circular- CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 (Prevention of Unauthorised Trading by Stock Brokers)**

III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of:

- a. Physical record written & signed by client,
- b. Telephone recording,
- c. Email from authorized email id,
- d. Log for internet transactions,
- e. Record of SMS messages,
- f. Any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

## **FINDINGS**

### **Issue No. I**

#### **a. Whether Noticee has misused Clients' funds and Securities in violation of the provisions of securities laws?**

11. It was alleged in the SCN that the total available fund with the broker was less than the ledger credit balance of the clients.
12. During the inspection, it was observed that funds of credit balance clients are being utilized for the stock brokers' own purposes. Further, it was observed that, out of 52 sample days, G was negative on 29 days i.e. in 55% of the sample instances ranging from Rs. 4.11 crores to Rs.7.22 Lakhs.
13. As per clause 3.3.1 of annexure of SEBI Circular SEBI /HO /MIRSD/ MIRSD2/ CIR/P/2016 /95 dated September 26, 2016, the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C). Stock Exchanges shall calculate the difference i.e. G as follows –

$$G = (A+B)-C$$

14. If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for

settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.

15. As per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 clause 3.3.1 of annexure if the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for their own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H = |G| - |D|$$

16. During inspection, sample was taken by SEBI for the month of September 2020 and March 2021 and it was observed that in 29 instances out of total 52 instances checked, Negative G ranged from Rs. 7.22 lakhs to Rs. 4.11 crores. The instances of G negative as observed in the Inspection report are as follows-

Table No. 1

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
		A	B	C	D	E	F	P	MC	MF	G =(A+B-C)
1	01.09.2020	2,41,551.96	13,45,000.00	8,15,68,583.13	0	2,75,52,285	10,00,000.00	127552284.5	8,43,82,264.94	1,68,58,341	<b>5,31,72,969</b>
2	02.09.2020	27,02,158.53	13,45,000.00	8,17,83,733.13	0	2,75,52,285	10,00,000.00	127552284.5	8,54,90,763.54	1,41,89,878	<b>5,54,18,425</b>
3	03.09.2020	4,390.92	13,45,000.00	7,96,52,028.73	0	2,68,73,724	10,00,000.00	126873724.2	8,14,59,985.61	85,00,000	<b>5,48,52,362</b>
4	04.09.2020	74,645.30	13,45,000.00	7,11,66,754.84	0	2,68,73,724	7,00,00,000	96873724.19	7,45,52,927.29	1,62,44,389	<b>6,34,07,890</b>
5	07.09.2020	74,645.30	13,30,000.00	7,18,73,857.92	0	2,65,27,662	10,00,000.00	126527661.8	7,35,85,765.19	1,83,65,942	<b>6,12,00,787</b>

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
6	08.09.2020	74,645.30	13,20,00,000	7,19,24,176.57	0	2,64,14,536	10,00,00,000	126414536.3	7,41,76,869.02	1,91,45,717	<b>6,01,50,469</b>
7	09.09.2020	74,645.30	13,15,00,000	7,28,34,857.62	0	2,63,27,160	10,00,00,000	126327160.1	7,38,83,602.78	1,40,90,385	<b>5,87,39,788</b>
8	10.09.2020	74,645.30	13,05,00,000	7,28,36,199.07	0	2,54,99,894	10,00,00,000	125499894	7,31,50,731.11	1,98,80,738	<b>5,77,38,446</b>
9	11.09.2020	74,645.30	13,05,00,000	7,33,06,906.49	0	1,92,83,032	10,00,00,000	119283032.3	7,29,66,616.43	1,45,20,207	<b>5,72,67,739</b>
10	14.09.2020	21,69,645.30	13,39,05,000	9,17,39,875.16	0	1,59,98,740	10,00,00,000	115998740	7,08,06,898.54	83,75,875	<b>4,43,34,770</b>
11	15.09.2020	74,645.30	13,67,50,000	9,45,09,340.45	0	1,61,52,177	10,00,00,000	116152176.7	8,33,75,484.34	62,25,712	<b>4,23,20,305</b>

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
12	16.09.2020	74,645.30	13,67,55,000	9,47,67,769.29	0	1,62,21,923	10,00,00,000	116221923.4	7,22,16,298.37	1,87,24,186	<b>4,20,61,876</b>
13	17.09.2020	72,603.03	13,67,55,000	9,49,24,229.55	0	1,61,53,474	10,00,00,000	116153474.4	7,28,79,323.38	1,63,02,336	<b>4,19,03,373</b>
14	18.09.2020	72,603.03	13,67,55,000	8,92,42,284.77	0	1,60,61,674	10,00,00,000	116061674.4	7,27,19,238.94	1,84,46,055	<b>4,75,85,318</b>
15	21.09.2020	72,603.03	13,30,00,000	9,02,90,067.62	0	1,54,93,612	10,00,00,000	115493611.8	7,41,79,591.56	1,06,98,828	<b>4,27,82,535</b>
16	22.09.2020	74,603.03	13,25,14,000	9,57,44,869.04	0	1,56,52,400	10,00,00,000	115652400.2	7,89,92,454.07	2,66,88,840	<b>3,68,43,734</b>
17	23.09.2020	18,74,571.28	12,58,73,000	10,41,27,053.94	0	1,17,01,854	10,00,00,000	111701853.8	8,94,31,408.20	1,60,54,839	<b>2,36,20,517</b>



Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
18	24.09.2020	26,473.92	11,81,99,000	10,26,03,803.94	0	2,09,94,443	10,00,00,000	120994442.9	8,12,94,762.03	86,48,394	<b>1,56,21,670</b>
19	25.09.2020	2,38,008.87	11,60,00,000	8,94,07,612.04	0	2,39,78,602	10,00,00,000	123978602.2	7,58,63,626.33	1,86,95,655	<b>2,68,30,397</b>
20	28.09.2020	2,37,831.87	11,60,00,000	8,94,40,362.04	0	2,44,09,241	10,00,00,000	124409240.7	8,00,22,080.53	1,62,12,645	<b>2,67,97,470</b>
21	29.09.2020	2,33,831.87	11,60,00,000	9,03,51,147.84	0	2,49,68,247	10,00,00,000	124968247	7,99,67,286.29	1,80,08,571	<b>2,58,82,684</b>
22	30.09.2020	2,33,831.87	11,60,00,000	9,02,30,269.83	0	2,46,94,899	10,00,00,000	124694898.6	7,95,78,193.12	1,00,25,297	<b>2,60,03,562</b>
23	01.03.2021	9,63,091.98	12,34,00,733	14,26,11,054.33	0	1,41,81,959	10,00,00,000	114181958.8	11,81,02,871.88	1,54,66,711	<b>-1,82,47,229</b>

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
24	02.03.2021	9,63,091.98	12,34,007.33	14,24,29,732.88	0	1,43,13,099	10,00,000.00	114313098.6	11,73,91,654.53	1,64,94,377	-1,80,65,908
25	03.03.2021	5,967.59	12,34,007.33	13,92,94,312.92	0	1,45,69,434	10,00,000.00	114569433.8	12,02,12,943.25	1,09,77,065	-1,58,87,612
26	04.03.2021	5,967.59	12,34,007.33	13,60,28,347.33	0	1,45,99,465	10,00,000.00	114599465.4	12,06,09,858.76	78,65,760	-1,26,21,647
27	05.03.2021	5,327.15	12,44,007.33	13,77,71,972.89	0	1,48,10,027	10,00,000.00	114810027.5	12,23,14,859.33	66,21,275	-1,33,65,913
28	08.03.2021	5,742.90	12,60,007.33	13,86,46,116.50	0	1,45,14,961	10,00,000.00	114514960.9	12,53,71,385.43	73,92,301	-1,26,39,641
29	09.03.2021	10,539.08	12,60,007.33	13,82,60,912.68	0	1,30,96,426	10,00,000.00	113096426.2	12,06,90,646.52	83,77,873	-1,22,49,641

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
30	10.03.2021	10,539.08	12,76,0733	13,21,29,540.79	0	1,29,96,722	10,00,000.00	112996721.8	11,80,66,851.71	1,70,61,152	-45,18,269
31	12.03.2021	12,193.84	12,76,0733	12,83,35,600.99	0	1,29,54,026	10,00,000.00	112954025.9	11,85,32,938.64	1,59,08,403	-7,22,674
32	15.03.2021	12,193.84	12,61,0733	12,89,80,176.69	0	1,27,53,258	10,00,000.00	112753257.6	12,05,20,895.23	1,12,25,833	-28,67,250
33	16.03.2021	12,549.34	12,46,0733	12,76,86,853.69	0	1,27,14,682	10,00,000.00	112714682.2	11,99,94,908.32	1,28,46,593	-30,73,571
34	17.03.2021	12,583.31	11,76,0733	12,13,25,433.50	0	1,26,62,810	10,00,000.00	112662809.6	11,38,48,339.76	1,62,03,395	-37,12,117
35	18.03.2021	12,583.31	11,60,0733	12,03,27,807.64	0	1,23,61,566	10,00,000.00	112361565.6	10,58,27,216.27	2,56,27,494	-43,14,491

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing members	
36	19.03.2021	12,583.31	11,60,00,733	11,75,12,158.27	0	1,23,33,579	10,00,00,000	112333578.7	10,62,07,399.45	2,36,73,615	-14,98,842
37	22.03.2021	12,727.97	11,60,00,733	11,59,61,663.14	0	1,24,29,349	10,00,00,000	112429348.9	10,65,64,179.00	2,33,70,479	-51,798
38	23.03.2021	12,727.97	11,60,00,733	12,87,07,660.03	0	1,23,87,885	10,00,00,000	112387885.3	11,01,86,603.00	1,67,77,249	-1,26,94,199
39	24.03.2021	12,727.97	11,60,00,733	13,89,00,607.07	0	1,24,28,539	10,00,00,000	112428538.6	11,58,38,114.70	1,13,79,708	-2,28,87,146
40	25.03.2021	12,727.97	11,60,00,733	14,52,00,380.60	0	1,22,27,587	10,00,00,000	112227587.4	11,77,03,669.32	2,22,40,435	-2,91,86,920
41	26.03.2021	12,727.97	11,60,00,733	15,71,65,347.1	0	1,19,21,055	10,00,00,000	111921055.4	12,62,95,666.65	1,33,72,372	-4,11,51,874

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations/ or clearing member	
42	30.03.2021	12,432.97	12,25,00,733	15,85,21,635.55	0	1,19,81,493	10,00,00,000	111981493.5	12,30,94,930.32	1,75,26,595	- <b>3,60,08,470</b>
43	31.03.2021	12,432.97	12,90,00,733	15,70,53,762.55	0	1,31,07,035	10,00,00,000	113107035.4	12,58,40,665.30	66,95,282	- <b>2,80,40,597</b>

17. I understand that A+B should be equal to C in respect of clients having credit balance or excess funds as mentioned above. I understand that if A+B is less than C, it translates into funds being used either for own purpose or for other clients who have insufficient funds and if A+B is more than C, it means that the

funds received from the clients have not been accounted for to the extent of the excess. I understand that if the credit balance clients' funds were not utilised then the Noticee would have had to use its own funds to fund the clients with insufficient balance in their account. Therefore, in either of the circumstances, it amounts to misutilisation as the Noticee is substituting its own funds with the funds of the clients. From the above, I thus observe that the funds of credit balance clients were being utilized for settlement obligations of debit balance clients or the Noticee's own purpose. The average amount of misutilization by the Noticee was Rs. 1.75 crores.

18. During the course of Inspection, it was observed that, the value of J was positive in the range Rs. 3.92 lakhs to Rs. 1.26 Crores in 7 out of 43 sample instances with average alleged misutilised amount of Rs. 61.44 lakh. The details in this regard are tabulated below:

Table No. 2

Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation / clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	Value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member across all Stock Exchanges	Non funded portion of the Bank Guarantee across all Stock Exchanges	Proprietary Margin obligation across exchanges	Margin utilized for positions of credit balance clients across all Stock Exchanges	Unutilized collateral lying with the clearing corporations / or clearing member	Clients funds lying with the clearing corporation/clearing member being utilised towards margin obligations of debit balance clients and proprietary margin obligations.
	A	B	C	D	E	F	P	MC	MF	$J=(C-A)-(MC+MF)$ if $G>0$ , $J=B-(MC+MF)$ if $G<0$
14.09.2020	21,69,645.30	13,39,05.00	9,17,39,875.16	0	1,59,98,740	10,00,00,00	115998740	7,08,06,898.54	83,75,875	1,03,87,456.35
15.09.2020	74,645.30	13,67,55.00	9,45,09,340.45	0	1,61,52,177	10,00,00,00	116152176.7	8,33,75,484.34	62,25,712	48,33,498.92

16.0 9.20 20	74,64 5.30	13,67, 55,00 0	9,47,67, 769.29	0	1,62,2 1,923	10,00, 00,00 0	11,62, 21,92 3	7,22,16, 298.37	1,87,2 4,186	37,52,639.55
17.0 9.20 20	72,60 3.03	13,67, 55,00 0	9,49,24, 229.55	0	1,61,5 3,474	10,00, 00,00 0	11615 3474. 4	7,28,79, 323.38	1,63,0 2,336	56,69,967.09
21.0 9.20 20	72,60 3.03	13,30, 00,00 0	9,02,90, 067.62	0	1,54,9 3,612	10,00, 00,00 0	11549 3611. 8	7,41,79, 591.56	1,06,9 8,828	53,39,045.17
24.0 9.20 20	26,47 3.92	11,81, 99,00 0	10,26,0 3,803.9 4	0	2,09,9 4,443	10,00, 00,00 0	12099 4442. 9	8,12,94, 762.03	86,48, 394	1,26,34,173.81
30.0 9.20 20	2,33,8 31.87	11,60, 00,00 0	9,02,30, 269.83	0	2,46,9 4,899	10,00, 00,00 0	12469 4898. 6	7,95,78, 193.12	1,00,2 5,297	3,92,947.52

19. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, clause 3.3.3 of annexure the value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations. From the above I observe that value of J is positive in 7 out of 43 sample instances which clearly indicates that the clients' funds were utilised towards margin obligations of debit balance clients and proprietary margin obligations.
20. In this regard, it is pertinent to mention the judgement of the Hon'ble Securities Appellate Tribunal (Hon'ble 'SAT') in the matter of **Samco Securities Ltd. vs SEBI** (Appeal No. 493 of 2021 decided on March 30, 2022), wherein the Hon'ble tribunal held:

*".....We find that mis-utilization of the clients' credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients' accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016..."*



21. Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. As soon as these were detected it had rectified them and made sure they are not repeated.
22. From the above submission of Noticee, I find that Noticee had not denied the allegations made against it. Noticee in its reply submitted that it had been penalized by BSE for Rs. 4,44,967 for the same violation. I observe from the documents submitted by the Noticee that BSE had penalized Noticee for misuse of clients funds for the period April 2017 – March 2018, which is different from the period inspected by SEBI. I note from above that misuse of clients' funds by Noticee happened even before the inspection of SEBI. Thus Noticee's submission that misuse of clients' fund in 2020-2021 happened due to Covid lockdown does not deserve any merit.
23. Therefore, in view of the above, I observe that the Noticee has violated Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**b. Whether Noticee has delayed in settlement of funds in violation of the provisions of securities law?**

24. It was alleged in the SCN that the Noticee delayed in quarterly/monthly settlement of funds.
25. During the Inspection it was observed that, in 4 instances out of 200 sample instances, accounts were not settled once per month or quarter. The details in this regard are given below:

Table No. 3

<b>Instances wherein Member has not done actual settlement atleast once per month / quarter.</b>										
<b>Sr No.</b>	<b>Date of Settlement</b>	<b>Quarter</b>	<b>Client Code</b>	<b>Client Name</b>	<b>Combined Ledger Balance as on T day</b>	<b>Value of Securities available Collaterals as on Date Settlement (across all segments &amp; Exchanges)</b>	<b>Total funds/ Securities available</b>	<b>Total Funds / Securities to be retained</b>	<b>Shortfall in Actual Settlement of Funds / Securities</b>	
1	10-Nov-20	Oct-Dec 20	KS09	SUNIL S. MODI	1,77,075		1,77,075	-	1,77,075	
2	28-Sep-20	Jul-Sep 20	KS100	SANTOSH MAHAN SARIA	-	2,35,909	2,35,909	-	2,35,909	
3	11-Jun-20	Apr-Jun 20	KS15	KESHAV S MODI	45,88,146	68,60,664	1,14,48,810	96,74,061	17,74,749	
4	11-Feb-20	Oct-Dec 20	KS19	RISHI MAHAN SARIA	2,70,054		2,70,054	1,86,827	83,228	
									<b>22,70,961</b>	

26. In 2 instances there was gap/delay of more than 90 days in running account settlement dates. The details in this regard is placed below:

Table No. 4

Instances wherein Gap between two quarterly settlement is more than 90 days					
Sr. no	Number of Days	Date of Settlement	Quarter	Client Code	Client Name
1		10/Nov/20	Oct- Dec 20	KS107	SHYAMSUNDER S. MODI HUF
2	135	25/Mar/21	Jan-Mar 21	KS107	SHYAMSUNDER S. MODI HUF

27. Clause 12 (e) of Annexure-A of Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, provides that the actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities.
28. Further, Clause 8.1.1. of the SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 titled "Enhanced Supervision of Stock broker/Depository Participants" dated September 26, 2016, provides that, there must be a gap of maximum 90/30 days (as per the choice of client viz. Quaterly/Monthly) between two running account settlements.
29. As provided by Clause 8.1.1. of the SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95, the gap between quarterly settlement of two running account settlement dates should not be more than 90 days. It was alleged in the SCN that on two instances there was a gap of more than 90 days. I note than in 1 instance only belonging to one client the gap between two quarterly settlement is more than 90 days. The details in this regard is placed below:

Table No. 5

Sr. no	Number of Days	Date of Settlement	Quarter	Client Code	Client Name
1		10/Nov/20	Oct- Dec 20	KS107	SHYAMSUNDER S. MODI HUF
2	135	25/Mar/21	Jan-Mar 21	KS107	SHYAMSUNDER S. MODI HUF

30. From the above, I note that, in 1 instance belonging to one client, there was gap of more than 90 days in two quarterly settlement. I further note that the SEBI circular dated December 3, 2009 mandates settlement of funds within twenty-four hours of the payout and empowers the client to authorize the stock broker to actually settle the funds at least once in a calendar quarter or month, as preferred by the client. Here, it is pertinent to mention that Hon'ble SAT in the matter of **Indira Securities Pvt Ltd vs SEBI**, Appeal no 50 of 2014, decided on June 23, 2014, had observed that .....“The concept of monthly or quarterly running settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3, 2009, with a view to instil greater transparency and discipline in the dealings between the clients and the broker. The circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advisory Committee (SMAC), Market Participants and major stock exchanges. Therefore, the circular dated December 3, 2009, issued by SEBI is not a directive only but a mandatory one”.
31. Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. It had missed a few instances here, but it had made sure these are not repeated in future.
32. From the above submission, I find that Noticee has accepted the non-compliances as has been alleged against it. Noticee in its reply submitted that it had been penalized by NSE for the same violation. I observe from the documents submitted by the Noticee that the NSE had imposed penalty of Rs. 67,500 against Noticee in 2 instances for actual settlement of funds, whereas the current

adjudication proceedings pertains to 4 instances which includes its 2 instances as observed by the NSE. Further, NSE has not penalized the Noticee for delay in settlement of fund.

33. Therefore, I am of the view that that the Noticee has failed and delayed to settle the funds of its clients in accordance with the 2009 circular read with the 2016 circular which require the Noticee to settle the funds of its clients within the specified period and thus I find that Noticee has violated Clause 12 (e) of Annexure-A of Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1. of the SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95.

**c. Whether Noticee has submitted false report about the margin collected from the clients' and violated the provisions of securities laws?**

34. It was alleged that the Noticee submitted false report regarding the margin collected from the clients' and thus was found to be non-complaint of Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 and Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

35. It was observed that, Noticee had reported wrong EoD Margin in 7 out of 38 sample instances. The amount of alleged wrong reporting was thus Rs. 9,63,128.56. The details in this regard are placed below:

Table No. 6

Date of Verification	Segment	Client Code	Client Name	TOTAL EOD Minimum Margin (CM & FO)	TOTAL Peak Minimum Margin (CM & FO)	Clear Ledger Balance	Peak Ledger Balance	F D / B G	Margin Pledge Securities	Collateral Securities	Free Balance (Funds + Collaterals)	WRONG REPORTING (EOD Margin)	WRONG REPORTING (Peak Margin)
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15-Dec-20	CM	KS12	ANITA G. MODI	15,62,252.20	82,101.36	7,01,118.18	7,01,118.18	-	-	-	7,01,118.18	8,61,134.02	-
02-Nov-20	CM	KS100	SANTOSH MAHANSA RIA	83,241.59	-	60,000.00	60,000.00	-	-	-	60,000.00	23,241.59	-
04-Dec-20	CM	TM04	KARUNA GOENKA	43,588.56	9,635.78	42,835.22	42,835.22	-	-	-	42,835.22	753.34	-
04-Dec-20	CM	TM05	DOONGAR MAL TAINWALA HUF	43,509.41	9,640.73	40,000.00	40,000.00	-	-	-	40,000.00	3,509.41	-
03-Dec-20	CM	TM02	MANISH D. TAINWALA	42,048.29	9,633.12	40,000.00	40,000.00	-	-	-	40,000.00	2,048.29	-
03-Dec-20	CM	TM03	MUKESH D TAINWAL	42,005.68	9,635.78	40,000.00	40,000.00	-	-	-	40,000.00	2,005.68	-
23-Jun-20	FO	KS109	VINIT S MODI HUF	19,74,753.46	-	15,80,926.97	15,80,926.97	-	-	3,23,90.26	19,04,317.23	70,436.23	-
<b>TOTAL:</b>											<b>9,63,128.56</b>		<b>-</b>

36. As per, Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, a member should not give false report about the margin collected from the clients.

37. The significance of collection of margin has been detailed by Hon'ble SAT in the matter of **SMC Global Securities Ltd. Vs SEBI** (Appeal No. 152 of 2013), wherein it held as follows:

*“....44. The significance of the concept of margin lies in the fact that it is treated as ‘defaulter-pay’. This means that in the event of a counter-party default, margin protects the surviving party by absorbing losses using the collateral provided by*

*the defaulting entity. Each portfolio has its own designated margin for absorbing the potential losses in relation to that particular portfolio. In addition to the initial margin, another equally important risk management technique is the daily margining, i.e., collateralization of credit risk. Here margining is not static and has to be recalculated or adjusted six times a day as the risk rises or falls. On the basis of his volatility in any given scrip, the clients are asked for margin money over and above the initial margin already paid upfront. This is collected as additional margin, and comprises an equally important facet of the Risk Management System. For this purpose, the risk management method should be adequate. It is a stock-broker's professional responsibility, rather it is his duty, to investigate the financial capability of an investor entering a margin transaction and to inform that investor of the implication of a margin transaction. The form of collection of margin money, its adequacy and deposit, including limit on exposure, are extremely important ingredients of a purposeful and effective margining system in the present day capital market culture. Expeditious and correct reporting of margin also acquires great significance towards this end.*

*47. Margin money has always played an important role in containing risks which are inherent in the functioning of any capital market. Owing to its non-adherence huge market crashes have been witnessed all over the globe in the recent past. The vital position that the margining system holds as a crucial instrument to maintain market equilibrium can never be undermined. It is, therefore, pertinent for all market players to maintain the sanctity of margining as a risk management tool while dealing in securities, be it in the cash or in the F&O segment....”*

38. Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. This is again a clerical error and it had rectified these errors soon after and made sure not to repeat them.
39. From the above submission, I find that Noticee had accepted the non-compliances as has been alleged against it. Noticee in its reply submitted that it had been penalized by NSE and BSE for the same violation. I observe from the documents submitted by the Noticee that the NSE had imposed penalty of Rs.

16,100 against Noticee in 2 instances for incorrect reporting of margin collected from the clients. Out of the aforesaid 2 instances considered by NSE only 1 instance is same out of the 7 instances as has been observed in the instant proceedings.

40. Hence, I find that Noticee had violated Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 and Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

**d. Whether Noticee has funded clients' and violated the provisions of securities laws?**

41. It was alleged that Noticee had provided exposure to its clients beyond T+2+5 days in 5 instances amounting to Rs. 7.05 lacs and thus had funded the clients as per details below:

Table No. 7

UCC	Date of debit	T+2+5 days	Amount of debit	Amount recovered	Amount not recovered	Further exposure date	Amount of exposure	Amount funded
KS13	24 Apr 2020	05/05/2020	1961.76	0	1961.76	7 May 2020	186734.5	188696.26
KS13	27 Apr 2020	06/05/2020	1961.76	0	1961.76	8 May 2020	13098.33	15060.09
KS14	16 Apr 2020	27/04/2020	462.98	0	462.98	29 Apr 2020	102661.77	103124.75
KS14	17 Apr 2020	28/04/2020	462.98	0	462.98	30 Apr 2020	215314.69	215777.67
KS14	24 Apr 2020	05/05/2020	462.98	10.96	452.02	7 May 2020	187740.93	188192.95
							<b>705550.22</b>	<b>710851.72</b>



42. I note that, as per clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in. Further clause 2.6 of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 provides that Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017.
43. In the instant case I find that the Noticee gave exposure to its clients beyond the fifth trading day in 5 instances.
44. Noticee submitted that during the Covid Lockdown it was short of staff. Hence clerical errors had occurred. The 5 instances reported in the SCN are from 16th April 2020 from 27th April 2020. Noticee vide its reply had not denied and had accepted the fact that it had funded the clients'.
45. Noticee in its reply submitted that it had been penalized by NSE and BSE for the same violation. I observe from the documents submitted by the Noticee that BSE had penalized Rs. 60,000 Noticee for client funding for the period April 2017 – March 2018, which is different from the period inspected by SEBI. From the above it is observed that funding of clients' by the Noticee is not one of the case as it happened earlier too and thus Noticee is repeatedly violating the same.
46. In view of the above, I find that the allegation, that Noticee has violated Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 stands established.

**e. Whether the Noticee had violated Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992 on account of mismatch between back office holdings of client's securities and securities as per the DP Statements?**

47. It was alleged that there was a mismatch between back office holdings of client's securities and securities as per the DP Statements. The mismatch between back office holdings of clients' securities and securities lying in DP accounts in 12 instances amounted to Rs. 1.50 crores. The particulars of the mismatch are stated as below:

Table No. 8

ISIN	Qty as per Backoffice	Qty as per DP Holding Statement	Difference	Bhav as on T-1 Day	Total Value	Absolute Value
INE108 A01013	0	1000	-1000	10	- 10,000.00	10000
INE270 A01029	25000	20000	5000	23.8	1,19,000.00	119000
INE191 A01027	32000	145	31855	429.65	1,36,86,500.75	13686500.75
INE754 A01055	25000	5000	20000	51.55	10,31,000.00	1031000
INE425B 01027	300	375	-75	55.5	- 4,162.50	4162.5
INE180 G01019	5500	0	5500	10	55,000.00	55000
INE294 G01026	10	0	10	93.55	935.50	935.5
IN8431C 01022	120	0	120	10	1,200.00	1200
INE397 D01024	0	33	-33	694.1	- 22,905.30	22905.3
INE431C 01023	0	120	-120	10	- 1,200.00	1200
INE491V 01019	1000	0	1000	118	1,18,000.00	118000
INE966 A01022	0	2	-2	87.5	-175.00	175
						<b>1,50,50,079.05</b>

48. Regulation 17(1)(g) of the SEBI (Stock Brokers) Regulations, 1992, provides that, every Stock Broker shall keep and maintain documents register containing, inter -alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities.
  49. In the instant case, I observe that there was mismatch between back office holdings of clients' securities and securities lying in DP accounts in 12 instances amounted to Rs. 1.50 crores.
  50. Noticee submitted that its back office software had crashed due to which many errors were seen.
  51. From the above submission of the Noticee, I find that notice has accepted that there was a mismatch between back office holdings of client's securities and securities as per the DP Statements. Noticee in its reply submitted that it had been penalized by NSE and BSE for the same violation. I observe from the documents submitted by the Noticee that NSE had penalized Noticee for mismatch in stock reconciliation as of April 2021 and February 2021, whereas in the instant proceeding, Noticee has been penalised for the mismatch as on dated September 2021 and is thus for different period.
  52. Thus, it is established that, Noticee had violated Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.
- f. Whether Noticee has uploaded inaccurate details regarding client registration process (KYC and KRA) and UCC verification and violated the provisions of securities laws?**

53. It was alleged in the SCN that Noticee has uploaded inaccurate details regarding client registration process (KYC and KRA) and UCC verification and thus violated SEBI Circular CIR/MIRSD/15/ 2011.

54. During verification of all client details at the time of inspection with back office and exchange UCC, mismatch of Email and Mobile were observed. Out of 10 sample instances, in 8 instances, E-mail IDs and mobile no. of the clients in its' database were not matching with the details in the exchanges' database. The details are as follows:

Table No. 9

Sr. no.	UCC	UCC name	Member Back office	BSE	NSE	Mismatch from Exchange
1	KS100	SANTOSH MAHANSARIA	9870979762	9930340024	9930340024	Both
2	KS13	SHEETAL N. SAWARTHIA	9867888817	9820997799	9867888817	BSE
3	KS14	POONAM P. JAIN	9869055838	9324724934	9324724934	Both
4	KS21	STUTI KESHAV MODI	9819057755	9769946802	9769946802	Both
5	KS22	SURBHI GAUTAM MODI	9830422764	7045954725	9920161135	both
6	MS01	MODI REALTY AND INFRA	9833230007	9820997799	9833230007	BSE
7	TM04	KARUNA GOYENKA	7977796541	9322605725	7977796541	BSE
8	TM06	PRAGYA BANSAL	9320044794	9322605725	9320044794	BSE
<b>Mismatch in Email Id.</b>						
S no.	UCC	UCC name	Member	BSE	NSE	Mismatch from Exchange
1	KS15	KESHAV S MODI	modicontracts@gmail.com	keshavmodikspl@gmail.com	keshavmodikspl@gmail.com	Both
2	KS22	SURBHI GAUTAM MODI	modicontracts@gmail.com	surabhi191kspl@gmail.com	surabhimodikspl@gmail.com	Both
3	TM01	VIMLA TAINWALA	modicontracts@gmail.com	vimladevitainwala@gmail.com	vimladevitainwala@gmail.com	Both
4	TM02	MANISH TAINWALA	modicontracts@gmail.com	manishtainwala1@gmail.com	manishtainwala1@gmail.com	Both
5	TM03	MUKESH D. TAINWALA	modicontracts@gmail.com	mukeshtainwala@gmail.com	mukeshtainwala@gmail.com	Both
6	TM04	KARUNA GOYENKA	modicontracts@gmail.com	karunatainwala@gmail.com	karunatainwala@gmail.com	Both
7	TM05	DOONGARMAL TAINWAL	modicontracts@gmail.com	doongarmaltainwala@gmail.com	doongarmaltainwala@gmail.com	Both
8	TM06	PRAGYA BANSAL	modicontracts@gmail.com	pragyabansal22@gmail.com	pragyabansal22@gmail.com	Both

55. From the above table, it was also observed that, Noticee had uploaded same email addresses for all the 8 clients'.

56. Clause 2(B) of the SEBI Circular CIR/MIRSD/15/ 2011, provides that, stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address, and they shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of

clients. Further, the aforesaid circular provides that, Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client.

57. Noticee submitted that the details mentioned in the UCC were of the family members and it had made the necessary changes after getting the notification from the exchange. Noticee in its reply also submitted that it had been penalized by NSE for the same violation. I observe from the documents submitted by the Noticee that the NSE had imposed penalty of Rs. 7,000 against Noticee as it had mapped 3 mobile numbers to 12 clients'. Further, the data of clients observed in instant proceeding are different from the clients which were before NSE.
58. In regard to the above submission of the Noticee that the details mentioned in the UCC were of the family members, I note that as per Clause 2 (B) of SEBI Circular CIR/MIRSD/15/ 2011, "Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents." Thus from the text of aforementioned circular, I find that the stock broker can at the specific written request of the client, upload the same mobile number/E-mail address for more than one client provided such clients' belong to one family. I observe that while the Noticee has not uploaded same mobile number for the clients' as given in the table no. 9, it has given same email ID for the clients. Noticee has not submitted any substantive or documentary evidence showing that the clients' having the same emails belonged to same family or they had requested for same email as per the aforesaid circular. Further I observe from the table that though the mobile numbers are different the same does not match with the numbers appearing in the exchange's website. Hence the aforesaid contention of the Noticee cannot be accepted.
59. In view of the above, I find that, Noticee has violated Clause 2(B) of the SEBI Circular CIR/MIRSD/15/ 2011 dated August 02, 2011.

**g. Whether the Noticee has not maintained call data recordings as evidence of client order placement and violated the provisions of securities laws?**

60. It was alleged that, Noticee did not maintain call data recordings as evidence of client order placement.

61. During the course of inspection, vide email dated January 10, 2022, Call data recording was sought from the Noticee.

62. Noticee vide email dated January 12, 2022, submitted that all of its clients are family members and shareholders and all the trades done by them are done in their presence. There was no calling outside client (Calling).

63. I find that the aforesaid contention of the Noticee cannot be accepted because the relevant circular does not creates exception for the trading in case of family members.

64. As per clause III of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017, broker shall execute trades of clients only after keeping evidence of the client placing such order.

65. In view of the same, Noticee was found to have violated Clause III of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

**h. Whether the Noticee had reported incorrect details to exchange regarding Reporting of weekly and monthly Enhanced supervision data and has violated SEBI Circulars and provisions of securities laws?**

66. It was alleged that the Noticee had reported incorrect details to Exchange regarding Monitoring of Client assets on all 3 sample days. Details in this regard are as below:

Table No. 10

CLEARING NO	3200	3200	3200	3200	3200	3200	3200	3200	3200	3200	3200	3200	3200
MEM NAME	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.	KESH AV SECURITIES PVT.L TD.
ASONDATE	12/03/2021	16/04/2021	26/03/2021	23/04/2021	01/04/2021	30/04/2021	09/04/2021	12/02/2021	05/03/2021	26/02/2021	19/03/2021	19/02/2021	05/02/2021
TOTAL OF DAY END BALANCE IN ALL CLIENT BANK ACCOUNTS - (A)	12194	8638.57	12728	10026	12433	10026	23433	1056	5327	977267	12194	52370	1056
COLLATERAL DEPOSITED WITH CLEARING CORPORATIONS IN FORM OF CASH AND CASH EQUIVALENTS - (B1)	12160733	90000733	11000733	62500733	12300733	6000733	90000733	117275733	11840733	117275733	11000733	117275733	113975733
COLLATERAL DEPOSITED WITH CLEARING MEMBER IN FORM OF CASH AND CASH EQUIVALENTS - (B2)	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL CREDIT BALANCE OF ALL CLIENTS - (C)	127129541	118382223	158521636	112644687	154873765	93407595	119789912	131748266	134633654	142609772	117512158	125459236	121914659
DIFFERENCE = G=(A+B1+B2)-C	551	283	485	501	318	333	297	144	162	243	749	813	793

	661	728	081	339	605	968	657	714	275	567	923	113	787
	4	51	75	28	99	36	46	77	94	72	1	3	0

67. From the above table it is observed that, Noticee has not submitted the correct details to exchange regarding Monitoring of Client assets to Exchange Enhanced Supervision framework. It was also observed that the funds of credit balance clients were being used for settlement/margin obligation of Proprietary account.
68. Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 provides that stock brokers shall submit the data regarding monitoring of clients' funds as on last trading day of every week to the Stock Exchanges on or before the next trading day.
69. Noticee submitted that the date range when these error found were from Feb 20, 2021 to Apr 2021. Its' staff was working from home and Noticees' director was the only one coming to office and trying to manage everything from logging into the servers to trading and giving remote access to staff for making bills and reporting data to exchanges. Due to long distance working there were a few clerical errors made and it rectified them as soon as these were brought to their notice. However, Noticee has not given any documentary evidence showing rectification was done as claimed by it. Noticee vide its above submission has accepted the violation levelled against it.
70. Noticee in its reply submitted that it had been penalized by NSE and BSE for the same violation. I observe from the documents submitted by the Noticee that the Rs. 75,000 penalty imposed by NSE is on the charge of Non-maintenance of register of securities, holding statement, bank book and client ledger in the prescribed format and not on charge of reporting of incorrect details to exchange regarding Reporting of weekly and monthly Enhanced supervision data.



71. In view of the above, I find that Noticee has violated Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

**i. Whether the Noticee has incorrectly reported the data regarding Risk based supervision and has violated provisions of securities laws?**

72. It was alleged in the SCN that there was mismatch in Risk Based Supervision data submitted by Noticee and by the exchange.

73. During the inspection, it was observed that Noticee had not correctly reported the value of loans given to other entities. Further it was observed that there was a difference of Rs. 15,00,000 between the data reported by Noticee and the calculation of the exchange. The detail in this regard is tabulated below:

Table No. 11

Particulars	As per Noticee	As per NSE	Difference
Loans Given	27,26,60,517.44	27,41,60,517.44	15,00,000.00

74. Noticee submitted that the loan amount of Rs.22.51 crores is given to the group company viz. Modispaces Real Estate Pvt Ltd, which is a sister concern company. Further, loan given to BNE infraprojects is interest free loan given to relatives which has now turned into bad debts. Noticee submitted that it also received a letter dated November 9, 2022 from SEBI regarding this same point and it was not aware that it could give loans to sister concerns. This is a lapse on its part.

75. It is observed that Noticee has not replied on the specific charge regarding incorrect reporting of the value of loans given to other entities, instead it submitted that it was not aware that it could not give loans to its sister concerns. As postulated by legal maxim "ignorantia juris non excusat", ignorance of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions

were illegal, even if he honestly believed that they were not breaking the law. Further, Noticee has not given any explanation for difference of Rs. 15,00,000. Thus, the aforesaid contention of the Noticee is not teneable.

76. In view of the same, Noticee has violated Clause 6.1.1.j. read with clause 6.1.1 e. of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

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

77. In view of the above, it can be concluded that the Noticee failed to comply with the various Regulations and Circulars for stock brokers by violating provisions of :
- Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
  - Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
  - Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 and Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.
  - Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.
  - Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.
  - Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.
  - Clause III of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

- Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- Clause 6.1.1.j. read with clause 6.1.1 e. of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

78. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** interalia held “ *once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.*”
79. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 23D of SCRA and 15HB of the SEBI Act, 1992 which read as under:

*Section 23 D of SCRA-*

*Penalty for failure to segregate securities or moneys of client or clients: 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 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 No. III If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?**

80. While determining the quantum of penalty under Section 23D of SCRA and 15HB of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in Section 23J of SCRA Section 15J of the SEBI Act respectively, which reads as under:-

***Factors to be taken into account by the adjudicating officer.***

*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.*

*Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

***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 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.]*

81. I note that material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made as a result of the defaults by the Noticee. I also note that no prior default of the Noticee is available on record. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors/clients on the account of defaults made by the Noticee. However Noticee as a registered intermediary is required to comply with the various Circulars Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. The gravity of such violation as also the other non-compliances certainly deserves penalty which would act as deterrent to the Noticee in future.

### **ORDER**

82. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of SCRA and Section 15J of the SEBI Act, taking note of Section 23D of SCRA and 15HB of the SEBI Act, 1992, and also taking into account judgement of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of the powers conferred under Section 15 I of the SEBI Act, 1992, and Rule 5 of Adjudication Rules, I, impose following penalty on the Noticee

Sr. No.	Alleged Violation	Charging Provisions	Penalty
1.	Section 23D of SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD2/CIR/P/2016/95 dated September 26, 2016.	Section 23D of SCRA	Rs. 12,00,000/- (Rupees Twelve Lakhs Only)
2.	<p>Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.</p> <p>Clause 6 of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 and Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.</p> <p>Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.</p> <p>Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.</p> <p>Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.</p> <p>Clause III of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.</p>	Section 15HB of the SEBI Act, 1992	Rs. 4,00,000/- (Rupees Four Lakhs Only)

	<p>Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</p>		
	<p>Clause 6.1.1.j. read with clause 6.1.1 e. of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.</p>		
		<p>Total: Rs. 16,00,000 (Rupees Sixteen Lakhs Only)</p>	

83. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by Noticee.

84. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

85. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee

- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

86. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

87. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Keshav Securities Pvt. Ltd. – Stock Broker and also to the Securities and Exchange Board of India.

**Date: January 16, 2023**

**Place: Mumbai**

**BARNALI MUKHERJEE  
ADJUDICATING OFFICER**