WTM/SM/MIRSD/MIRSD_DPIEA/24256/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4), 11B(1) 11B(2) AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A OF SECURITIES CONTRACTS (REGULATION) ACT, 1956

IN THE MATTER OF ANUGRAH STOCK & BROKING PRIVATE LIMITED

In respect of:

Sl. No.	Name of the Noticees	PAN
1.	Anugrah Stock & Broking Private Limited	AAACW2920N
2.	Mr. Paresh Mulji Kariya	AAEPK0469M
3.	Ms. Sadhana Paresh Kariya	AJHPK6018N
4.	Om Sri Sai Investments	AADFO8242K
5.	Teji Mandi Analytics Private Limited	AACCT9530H
6.	Mr. Anil Gopal Gandhi	ABWPG5141P
7.	Ms. Riddhi Kalapi Shah	AAIPS0707L

BACKGROUND

1. Based on the market intelligence about Anugrah Stock & Broking Private Limited (hereinafter referred to as "**ASBPL/Broker/Trading Member** that it is involved in business or activities other than that of securities and is collecting funds from clients under assured return schemes, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had on different dates advised the National Stock Exchange of India Limited (hereinafter referred to as "**NSE**"/'**Exchange**') to take various steps as under:

Sl. No.	Date	Event
1.	April, 2020	To appoint a forensic auditor to look into the business activities and to ascertain misappropriation of clients' funds and securities, if any, by ASBPL for the period from April 2019 to April 30, 2020 (hereinafter referred to as "**Examination Period**").
2.	May 02, 2020	Pursuant to the advisory given by SEBI, the NSE had appointed a forensic auditor to look into the matter.
3.	June 04, 2020	The preliminary findings of the forensic report were discussed in the meeting held with the NSE and the NSE was subsequently advised to examine matter relating to the Derivative Advisory Services (hereinafter referred to as "**DAS**") offered by ASBPL and take corrective action in time. The NSE was also advised to expedite the forensic audit process.

4.	July 10, 2020	The NSE was advised to consider taking action of disablement of trading terminal of ASBPL, if deemed fit in the matter.
5.	July 17, 2020	As advised by SEBI, based on the preliminary findings of the forensic audit report, the NSE issued a Show Cause Notice to ASBPL on July 17, 2020 for *inter alia* potentially receiving approximately INR 165.10 Crore in relation to DAS from its clients promising assured returns, shortfall of client funds, incorrect reporting of margin, etc. Vide the said SCN, ASBPL was called upon to furnish its reply by July 27, 2020.
6.	August 03, 2020	The NSE vide order dated August 03, 2020 disabled the trading terminal of ASBPL in derivatives segment pursuant to advice of SEBI, as mentioned in sl. no. 3 above.

2. Aggrieved by the Order of the NSE dated August 03, 2020, ASBPL filed Appeal Lodging No. 245 of 2020 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**") wherein the Hon'ble SAT passed an order dated August 17, 2020 and directed as under:

"10. In the meanwhile, we direct that the effect and operation of the impugned ex-parte order dated August 3, 2020 shall remain stayed with immediate effect subject to the following:-

(i) We restrain the appellant to continue with its business of DAS as well as in its sister concern OSSI with immediate effect during the pendency of the appeal.

(ii) We further restrain the appellant from enrolling any fresh client in the derivatives segment during the pendency of the appeal.

(iii) We direct the appellant to deposit a sum of Rs. 165 crores before the respondent within two weeks from today. The amount so deposited shall be kept in an interest bearing account by the respondent and shall be subject to the result of the appeal.

(iv) The appellant will file a reply to the show cause notice within three weeks from today. The respondent will fix a date thereafter and, after giving an opportunity of hearing, will decide the matter in accordance with law. "

3. As ASBPL failed to deposit the sum of INR 165.10 Crore by August 31, 2020, as directed by the Hon'ble SAT, the trading terminal of ASBPL in the derivatives segment was again deactivated by the NSE, with effect from September 01, 2020. Further, the NSE also withdrew the trading rights of ASBPL in all other segments with effect from September, 04, 2020. Pursuant to a forensic audit carried out by the NSE into the affairs and conduct of business of ASBPL, the Exchange submitted the Forensic Audit Report dated October 05, 2020 (hereinafter referred to as "**FAR**") in the matter of ASBPL to SEBI on October 06, 2020 followed by its observation on the findings of the FAR submitted to SEBI on October 15, 2020.

4. Thereafter, on receipt of the FAR alongwith NSE's analysis & comments thereon and based on SEBI's own examination, SEBI found ASBPL to be in *prima facie* violation of provisions of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), the Securities (Contracts) Regulation Rules, 1957 (hereinafter referred to as "**SCR Rules, 1957**"), the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "**PMS Regulations**"), the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**") and certain SEBI Circulars issued under the SEBI Act and accordingly, SEBI vide order dated November 13, 2020 (hereinafter referred to as "**SEBI Order**") approved following enforcement actions against ASBPL and various related entities:

"9. In view of the aforesaid, the following enforcement actions have been approved by SEBI against ASBPL and various related entities:

(i) Disciplinary Enquiry proceedings against ASBPL under Section 12(3) of SEBI Act, 1992 read with SEBI (Intermediaries) Regulations, 2008;

(ii) Proceedings for issuing regulatory directions against Shri Paresh Mulji Kariya, Ms. Sadhana Paresh Kariya - the directors of ASBPL, Om Sri Sai Investments, Teji Mandi Analytics Pvt. Ltd. (which is registered as authorized person of ASBPL, with NSE) and the directors of Teji Mandi Analytics Pvt. Ltd., namely a) Shri Anil Gopal Gandhi and b) Ms. Riddhi Kalapi Shah (hereinafter together referred to as "the directors of Teji Mandi Analytics Pvt. Ltd.") under Sections 11(1), 11(4), 11B(1) & 11D of SEBI Act, 1992;

(iii) Initiation of prosecution against ASBPL, Shri Paresh Mulji Kariya, Ms. Sadhana Paresh Kariya and Om Sri Sai Investments under Section 24(1) of SEBI Act, 1992 for prima facie acting as unregistered portfolio manager."

5. In addition to approving the aforesaid enforcement action, SEBI also passed following directions against ASBPL, its directors and various related entities:

"10. Under the above circumstances, I, in exercise of powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

(i) ASBPL is suspended till the completion of the enquiry proceedings, as referred to at para 9(i) under Chapter V of the SEBI (Intermediaries) Regulations, 2008 and Regulation 27 of SEBI (Stock Brokers) Regulations.

(ii) ASBPL, its directors, Shri Paresh Mulji Kariya and Ms. Sadhana Paresh Kariya, Teji Mandi Anlytics Pvt. Ltd. (which is registered with NSE as an Authorized Person of ASBPL),the directors of Teji Mandi Anlytics Pvt. Ltd. and Om Sri Sai Investments 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, till the completion of proceedings referred at para 9 (i) and/or para 9 (ii), as the case may be, except with the prior permission of NSE. This direction is subject to the direction given by Hon'ble Bombay High Court vide its order dated September 18, 2020 in Arbitration Petition No. 30 of 2020 and other connected matters;

(iii) ASBPL, its directors, Shri Paresh Mulji Kariya and Ms. Sadhana Paresh Kariya, and Om Sri Sai Investments are prohibited from providing any unregistered portfolio management services;

(iv) ASBPL, Shri Paresh Mulji Kariya, Ms. Sadhana Paresh Kariya, Teji Mandi Anlytics Pvt. Ltd., the directors of Teji Mandi Anlytics Pvt. Ltd. and Om Sri Sai Investments are directed to provide a full inventory of all its assets (including assets under the possession of Receiver appointed by the Hon'ble

High Court of Bombay), whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all its bank accounts, demat accounts and mutual fund investments, immediately, to NSE but not later than 5 working days from the date of receipt of this order;

(v) Subject to any order/direction of Hon'ble Bombay High Court which may be issued in Arbitration Petition No. 30 of 2020 and other connected matters, the assets of the aforesaid persons 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 as per its bye laws;

(vi) The depositories are directed to ensure that no debits are made in the demat accounts, held by ASBPL (PAN: AAACW2920N), Shri Paresh Mulji Kariya (PAN: AAEPK0469M), Ms. Sadhana Paresh Kariya (PAN: AJHPK6018N), Teji Mandi Anlytics Pvt. Ltd. (PAN: AACCT9530H), Shri Anil Gopal Gandhi (PAN: ABWPG5141P), Ms. Riddhi Kalapi Shah (PAN: AAIPS0707L) and Om Sri Sai Investments (PAN: AADFO8242K) except for the purpose mentioned in sub-para (iv) above, after confirmation from NSE;

(vii) The banks are directed to ensure that no debits are made in the bank accounts held by ASBPL (PAN: AAACW2920N), Shri Paresh Mulji Kariya (PAN: AAEPK0469M), Ms. Sadhana Paresh Kariya (PAN: AJHPK6018N), Teji Mandi Anlytics Pvt. Ltd. (PAN: AACCT9530H), Shri Anil Gopal Gandhi (PAN: ABWPG5141P), Ms. Riddhi Kalapi Shah (PAN:AAIPS0707L) and Om Sri Sai Investments (PAN: AADFO8242K)till the completion of proceedings referred at para 9 (i) and/or para 9 (ii), as the case may be, except for the purpose of payment of money to the clients/investors under the written confirmation of NSE or to comply with any order/direction which may be passed by Hon'ble Bombay High Court in Arbitration Petition No. 30 of 2020 and other connected matters."

6. Pursuant to passing of the aforesaid SEBI Order and based on the findings/ observations made in the FAR, a common Show Cause Notice dated December 15, 2020 (hereinafter referred to as "**SCN**") was issued to ASBPL, Mr. Paresh Mulji Kariya, Ms. Sadhana Paresh Kariya, Om Sri Sai Investments ("**OSSI**"), Teji Mandi Analytics Private Limited ("**TMAPL**"), Mr. Anil Gopal Gandhi and Ms. Riddhi Kalapi Shah (hereinafter individually referred to by their respective "***names/Noticee nos.***" and collectively as "***Noticees***", unless the context specifies otherwise) asking them to respond as to why suitable directions under sections 11(1), 11(4) and 11B(1) of the SEBI Act should not be issued against them for their alleged violations of Section 12 (1) of the SEBI Act read with regulation 3 of the PMS Regulations, rules 8 (3)(f) and 15 of the SCR Rules, 1957, Clauses A (1), (2), (4) & (5) and B (6) of Code of Conduct as provided under Schedule II read with regulation 9 of the Stock Brokers Regulations, regulation 17 of the Stock Brokers Regulations, 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.

7. Subsequently, a Supplementary Show Cause Notice dated July 23, 2021 (hereinafter referred to as "**SSCN**" and collectively referred to as "**SCNs**") was issued to the *Noticee nos. 1 to 4* calling upon them to show cause as to why appropriate directions under sections 11(1), 11 (4), 11B (1), and 11D of the SEBI Act, should not be issued against them for the violations of the provisions of regulation 4(1), 4(2)(f) and 4(2)(p) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and clause A (3) of the Code of Conduct as specified in Schedule II read with regulation 9 of the Stock Brokers Regulations.

In addition, the *Noticee nos. 1* to *4* were also called upon to show cause as to why monetary penalty under Section 11B (2) read with Section 15HA of the SEBI Act and Section 12A(2) read with Section 23H of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCR Act**"), should not be imposed against them for the aforesaid violations.

8. The brief findings/observations of the FAR, as contained in the SCNs, are as under:

i. The *Noticee no. 1* i.e., ASBPL is a registered member with the NSE, the NSE Clearing Limited (hereinafter referred to as "**NCL**"), the BSE Limited (hereinafter referred to as "**BSE**"), Indian Clearing Corporation Limited (hereinafter referred to as "**ICCL**"), the Metropolitan Stock Exchange of India Limited (hereinafter referred to as "**MSE**") and Metropolitan Clearing Corporation of India Limited (hereinafter referred to as "**MCC**") and ASBPL is registered with SEBI as a Stock Broker with registration number INZ000200231 and also as a Depository Participant (for short "**DP**") of Central Depository Services Limited (for short "**CDSL**") with SEBI registration number IN-DP-93-2015.

ii. The *Noticee no. 2* (Mr. Paresh Mulji Kariya) and the *Noticee no. 3* (Ms. Sadhana Paresh Kariya) are the designated directors and shareholders of the *Noticee no. 1* i.e., ASBPL. Further, the *Noticee no. 4* (OSSI) is a partnership firm where the *Noticee nos. 2* and *3* are its partners and consequently, the *Noticee no. 4* is an associate entity of the *Noticee no. 1* as the *Noticee no. 2* and *3* who are directors of the *Noticee no. 1*, are also partners in the *Noticee no. 4*. The *Noticee no. 5* i.e., TMAPL is a registered authorized person of the *Noticee no. 1* and the *Noticee no. 6* i.e., Mr. Anil Gopal Gandhi and the *Noticee no. 7* i.e., Ms. Riddhi Kalapi Shah are directors of the *Noticee no. 5*.

iii. The *Noticee nos. 1* to *4* are alleged to have engaged in providing Derivative Advisor Services (in short '**DAS**') which was in the nature of Portfolio Management Services (for short "**PMS**") while promising assured returns to the prospective clients and the above stated PMS activities were being carried out without seeking requisite registration under the PMS Regulations. It is alleged that the *Noticee no. 1* has mis-utilized client funds and securities and has not maintained its books of accounts. The *Noticee no. 1* is further alleged to have indulged in manipulative, fraudulent or deceptive schemes and has deceived its clients while dealing in securities market by maintaining incorrect client ledgers, falsifying balance sheet, falsifying records of client account statements and other books of account. In view of the aforesaid omission and commission by the *Noticee no. 1*, it is alleged that the *Noticee no. 1* has failed to exercise due skill and care and fairness to clients in its business, has resorted to malpractices and has also failed to comply with statutory requirements.

iv. The *Noticee nos. 5* to *7* are alleged to have deleted client data of the *Noticee no. 1* from its email server thereby aiding and abating the *Noticee no. 1* in engaging in DAS in the nature

of PMS promising assured returns without seeking registration under the PMS Regulations.

v. Thus, in view of the aforesaid observations/findings, the SCN and SSCN have been issued to the *Noticees* alleging the violations of various provisions of the securities laws as recorded in paragraph 4, 6 and 7 above.

9. I note from the records before me that the SCN and SSCN were duly served upon the *Noticees* as per following details:

SCN issued to the *Noticees*			
Sr. No.	**Noticee**	**Date of delivery of SCN**	**Mode of delivery**
1.	*Noticee no. 1*(ASBPL)	December 17, 2020	SPAD
2.	*Noticee no. 2* (Mr. Paresh Mulji Kariya)	December 18, 2020	SPAD
3.	*Noticee no. 3* (Ms. Sadhana Paresh Kariya)	December 17, 2020	SPAD
4.	*Noticee no. 4* (OSSI)	December 17, 2020	SPAD
5.	*Noticee no. 5* (TMAPL)	February 04, 2021	Email
6.	*Noticee no. 6* (Mr. Anil Gopal Gandhi)	February 04, 2021	Email
7.	*Noticee no. 7* (Ms. Riddhi Kalapi Shah)	February 04, 2021	Email
SSCN issued to the Noticee nos. 1 to 4			
8.	*Noticee no. 1* (ASBPL)	September 18, 2021	Newspaper publication
9.	*Noticee no. 2* (Mr. Paresh Mulji Kariya)	August 07, 2021	SPAD
10.	*Noticee no. 3* (Ms. Sadhana Paresh Kariya)	September 18, 2021	Newspaper publication
11.	*Noticee no. 4* (OSSI)	September 18, 2021	Newspaper publication

REPLY, PERSONAL HEARING AND SUBMISSIONS

10. Pursuant to receipt of the SCN, none of the *Noticees* except for the *Noticee no. 7* has replied to the SCN. In this regard, I note that the *Noticee no. 7* vide email dated February 07, 2021 has sought one week's extension to file a detailed reply while submitting her preliminary response to the SCN. Further, an opportunity of inspection of documents was granted to the *Noticee no. 7* on April 07, 2021 on a request made by her vide letter dated March 22, 2021. Subsequently, the *Noticee no. 7* vide letter dated May 19, 2021 filed her reply to the SCN. As regards, the SSCN issued to the *Noticee nos. 1* to *4*, none of the said *Noticees* has filed any reply refuting the charges/allegations made in the SSCN within the stipulated time as indicated therein. However, in order to comply with principle of natural justice, an opportunity of personal hearing was granted to all the *Noticees* on February 02, 2022. I note from the records available before me that an attempt was made to communicate the aforesaid date of hearing to the *Noticees* at their last known addresses by serving the hearing notice through SPAD on December 15, 2021, however the same could not be served upon the *Noticees* except for the *Noticee no. 2*. Therefore, the said hearing notice had to be served upon the *Noticees* (except the *Noticee no. 2*) through newspaper publication dated January 19, 2022 published in the newspapers namely, *The Times of India*, *Maharashtra Times* and *Navbharat*. I note that just before the start of the personal hearing scheduled on February 02,

2022, the *Noticee no. 5* vide email dated February 02, 2022 has filed its reply dated January 29, 2022 to the SCN. Further, during the hearing held through video conferencing on February 02, 2022, the *Noticee no. 2* appeared through his Authorized Representative (AR) M/s Ganesh & Co., represented by Ms. Gauri Joshi, Advocate, and sought 4 weeks' time to file a detailed reply. At the same time, when enquired about appearance of authorized representative on behalf of *Noticees no. 1, 3* and *4* (all connected parties to *Noticee no. 2*), no reply was forthcoming, hence it was deemed that no one had appeared on behalf of them. The *Noticee nos. 5* and *7* appeared through their respective ARs and made submissions in line with their aforesaid written replies. No one appeared on behalf of the *Noticee no. 6* before me.

11. Further, the *Noticee no. 7* vide letter dated February 25, 2022 filed a post hearing written submission as well. Subsequently, the *Noticee no. 6*, one of the directors of the *Noticee no. 5*, vide his email dated April 13, 2022 confirmed that the reply dated January 29, 2022 filed by the *Noticee no. 5* should be treated as his personal reply as well and further requested to consider the said reply filed against the SCN as the final reply on behalf of the *Noticee nos. 5* and *6*. Thereafter, the *Noticee no. 7* filed a letter dated April 29, 2022 to bring on record certain developments and information in relation to the matter which are germane to the present proceedings and also filed certain documentary evidences in support of her earlier replies/submissions dated May 19, 2021 and February 25, 2022.

12. It is noted that another opportunity of personal hearing was granted to the *Noticee nos. 1, 3, 4* and *6* (who failed to appear before me on earlier occasion on February 02, 2022 as noted above) as well as *Noticee no. 2* (who had sought adjournment on earlier occasion) on June 01, 2022. In this regard, I find that on the appointed day, just before the start of the hearing, Ms. Gauri Joshi, who had appeared for *Noticee no. 2* in previous hearing dated February 02, 2022, emailed the scanned copies of the replies on behalf of the *Noticee nos. 1* and *4* and sought adjournment of hearing on the ground that she has got a very short time left for preparing for the hearing on behalf of *Noticees no. 1* and *4*. However, she did not mention anything about *Noticee no. 2* in the said email, in respect of whom she had earlier appeared on February 02, 2022 and got adjournment on that date. Later on, at the time scheduled for hearing (on the same day), Ms. Joshi however, appeared on behalf of all 4 Noticees i.e. the *Noticee nos. 1 to 4* and reiterated her aforesaid request for an adjournment. However, during the course of the hearing, she was informed that it is not feasible to accede to her requests of adjournment especially when she was in receipt of the common SCNs which narrated all the relevant facts and allegations in respect to all the *Noticees* she was appearing for, at least since the last hearing on February 02, 2022. She was however advised to file a detailed reply on each aspect of the SCN and SSCN with supporting documents. The AR vide email dated June 02, 2022 finally filed scanned copy of the reply dated June 02, 2022 on behalf of the *Noticee no. 3*. Further, vide email dated July 04, 2022, Ms. Gauri Joshi sought additional 10 days' time to file their details submissions on behalf of the *Noticee nos. 1* to *4* on or before

July 14, 2022. Accordingly, vide email dated July 15, 2022 scanned copies of separate post hearing written submissions dated July 15, 2022 have been filed by Ms. Joshi on behalf of the *Noticee nos. 1* to *4*. Subsequently, the *Noticee no. 7* also, vide a note dated October 03, 2022 has filed an *aide memoire* to the previous submissions made by her. This submission of *Noticee no. 7* was supplemented by later emails dated December 07, 2022, January 02, 2023 and February 06, 2023.

13. The contents of the replies and post hearing written submission, as filed by the *Noticees*, are summarised as under:

Noticee no. 1- Anugrah Stock & Broking Private Limited, _Noticee no. 2_-Mr. Paresh Mulji Kariya, _Noticee no. 3_-Ms. Sadhna Paresh Kariya and _Noticee no. 4_-Om Sri Sai Investments

13.1 The *Noticee no. 1*/their Advocates were never notified of the hearing until merely 14 minutes before the hearing i.e. vide email dated June 01, 2022 at 2:46 pm which was sent by SEBI in response to ASBPL's advocate's email dated June 01, 2022 of 2:32 pm by which ASBPL's advocate filed a reply to the SCN on behalf of the *Noticee no. 1*. Accordingly, when the ASBPL's advocate appeared before the Learned WTM and requested for a short adjournment, the same was denied by the Learned WTM on the ground that SEBI had made several attempts to serve notice of hearing on ASBPL at its office and it was always undelivered. It was submitted by ASBPL's advocates that if delivery was not possible at ASBPL premises, SEBI could have easily done the service through ASBPL's advocates, who were officially on record, who had filed vakalatnama on behalf of ASBPL and its directors and whose offices were always open for service/delivery. Despite the aforesaid, personal hearing which is its right under the principles of natural justice, was refused, hence, SEBI has not followed the principles of natural justice. In this regard, reliance is placed on the landmark judgement of the Hon'ble Supreme Court in *Natwar Singh vs. Directorate of Enforcement*.

13.2 The *Noticee no. 1* executed a Clearing Member-Trading Member (for short "**CMTM**") Agreement dated April 26, 2010 with Edelweiss Securities Limited (for short "**Edelweiss**") by which Edelweiss undertook the obligation of clearing and settlement of ASBPL's deals on the derivative segment. Pursuant to consolidation of all clearing services business of Edelweiss with one of its group companies, Edelweiss Custodial Services Limited ("**ECSL**"), the *Noticee no. 1* vide CMTM Agreement dated June 24, 2016 appointed ECSL as its clearing member wherein ECSL would allocate a margin to ASBPL, which would in turn allocate the same among its clients. In return, the clients would pledge their securities with ASBPL, who would in turn pledge them with ECSL. Moreover, ECSL used to charge interest @18% per annum for funding the MTM shortfall (if any) in the guise of non-payment of the debt balance on various occasions.

13.3 The FAR is to be completely ignored and set aside by SEBI inasmuch as there is clear element of bias when the relationship of ECSL with the NSE is considered. Pertinently, Ms. Kamala Kantharaj, who is on the Board of ECSL and is associated with ECSL since 2017, was the erstwhile enforcement head at the NSE. Also, S. R. Batliboi, which is the designated auditor of ECSL is also an associate of E&Y having close relations with E&Y. The aforesaid facts clearly establish the reasons for the sudden omission of the ECSL from the FAR prepared by E&Y. Accordingly, the FAR cannot be relied upon because of the vested interest of ECSL, direct connection between ECSL's auditor S.R. Batliboi with E&Y and the presence of ex-NSE senior employees on the board of ECSL.

13.4 The wrongdoings done by ECSL, as highlighted by ASBPL on numerous occasions before the NSE and SEBI, were not even mentioned in the FAR which is in complete contrast with the conclusion arrived at by the NSE Clearing Ltd. (hereinafter referred to as "**NCL**") in its enquiry on ECSL stating that the pledged securities were erroneously liquidated by ECSL. Hence, the FAR has not completely considered all the required materials causing its findings to be erroneous and it needs to be revisited.

13.5 Till 2020, the *Noticee no. 1* operated with more than 400 sub-brokers and authorised persons in India and the *Noticee no. 5* is one such Authorized Person, which was made its sub-broker *w.e.f.* January 16, 2009 and was given access to five trading terminals by ASBPL to trade on behalf of the *Noticee no. 5*'s clients.

13.6 Even though the clients opened their trading accounts with ASBPL, the trading activity in the said accounts were operated/managed/controlled by the *Noticee no. 5*. Instructions, as and when necessary, to execute the trades were issued directly by the clients to the *Noticee no. 5* and ASBPL was never involved in any manner in such communication as evident from the Computer to Computer Link (for short "**CTCL**") record of ASBPL available with SEBI. The *Noticee no. 5* was responsible for all aspects of these trades and ASBPL only offered a platform for trades made by the *Noticee no. 5* on behalf of its clients.

13.7 As a trading member, ASBPL was only responsible for the collection of brokerage fees from the clients and for passing on a large percentage of it to the *Noticee no. 5*. Moreover, the benefit of any margin procured from ECSL was also passed on to the *Noticee no. 5*. The *Noticee no. 5* was finally responsible for the allocation and utilisation of the margin in their own capacity.

13.8 Through an email received by the *Noticee no. 1* post its debarment, it was visible that the *Noticee no. 5* offered and induced multiple clients to invest in a derivatives/options "scheme". Considering there were multiple presentations in various formats made to the clients of ASBPL, it is plausible that the *Noticee no. 5* might have represented the said scheme as a part of ASBPL's offerings and services.

13.9 The general market practice in terms of the SEBI Circular ref. SEBI/HO/MIRSD/DPIEA/CIR/P/2020/115 dated July 01, 2020 is that when a Trading Member has a debit balance with a Clearing Member, the latter calls upon the former to clear the same. One of the first steps adopted by the Trading Member to clear such a debit balance is by providing a cash collateral. In case a cash collateral is not provided or the same is insufficient, the Clearing Member may proceed to encash the unencumbered bank guarantees furnished by the Trading Member. Even after the encashment of the Bank Guarantees the debit balance is not cleared, or when no bank guarantees are furnished, the Clearing Member may invoke the clients' pledged securities and use the proceeds to clear the debit balance of the respective client. In the present set of eventualities, the Clearing Member i.e., ECSL has done neither.

13.10 Due to the falling & volatile markets in March 2020 and sudden increase in margin utilization, ASBPL immediately informed the *Noticee no. 5* to intimate its clients to provide additional collateral to avoid a margin shortfall and did not ask the clients of the *Noticee no. 5* directly (as was the practise followed ASBPL) as advised by the *Noticee no. 5* vide email dated March 05, 2019. However, no collateral was received from clients of the *Noticee no. 5* due to which there was a market shortfall indicating the non-diligent and negligent manner of the *Noticee no. 5* in keeping ASBPL in the dark, *vis-a-vis* its clients.

13.11 To recover the shortfall, ECSL started selling majority of the shares collaterals rampantly and indiscriminately, between the months of March to June 2020 without ASBPL's consent despite having the knowledge that these are pledged shares belonging to the clients. In a complete disregard to an established practice, ECSL directly sold the securities of the clients in the open market without first invoking the collateral sufficiently available with it in terms of cash balance, fixed deposits, bank guarantees and securities (about INR 200 Crore). It is pertinent to note that ECSL's behaviour was reckless and in complete disregard to the extant guidelines, inasmuch as while it sold off clients' securities, it failed to do the required due diligence and sold shares in a haphazard manner, selling shares belonging to one client to make up for the debit in another client. In no instance did ECSL ask for the balance of the clients so they could conduct the requisite due diligence. This massive due diligence failure led to the indiscriminate selling of client's securities. On 26 different days between March 09, 2020 and May 07 2020, shares, mutual funds and other securities approximately worth INR 420 Crore were sold by ECSL. This happened, despite the fact that ECSL was well informed about the securities lying with it with respect to each client. Apparently, a majority of the portfolio of the clients was eroded because of ECSL selling shares without the clients' consent. Even assuming without admitting that ECSL had to sell the pledged shares, they ought to have sold them DP account-

wise, client-wise, depending upon the margins of each client, which data was always available with ECSL.

13.12 Therefore, ASBPL was caught between two events that occurred due to the sudden market fall. Firstly, due to the negligence and inaction of the *Noticee no. 5* the margins were not maintained and; secondly, due to the rampant and irregular sell-off of pledged securities by ECSL.

13.13 The PowerPoint presentation has not been sent by the *Noticee no. 2* from his email paresh.kariya@anugrahsb.com dated May 13, 2017 because at that time, many employees of the *Noticee no. 1* had access to the aforesaid email address being the official email of the ASBPL's director. In fact, several of the employees who had access to the aforesaid email address were also close to the directors of the *Noticee no. 5*, having worked closely on several transactions with them. Therefore, any of these employees could have sent out this email either for the purpose of framing the *Noticee no. 1* and *2* and/or increasing the customer base of the *Noticee no. 5*. Hence, there is the high probability that the aforesaid email has actually been perpetrated by the *Noticee no. 5* through these rogue employees of ASBPL because 99% of the individuals / customers whose names have been set out in list of the person who allegedly availed the DAS facility from ASBPL were in fact, customers of the *Noticee no. 5*. The same can be specifically distinguished from their Client IDs which begin with "TM". It is clarified that though it is made to look as if the DAS was pitched to potential clients by ASBPL, the same was actually not done by ASBPL, since its directors were not involved/aware of the same.

13.14 ASBPL's profile (listing out PMS as one of the offered services) shared with Bank of India, is an old profile that has been submitted to the bank which incorrectly states that ASBPL provides PMS and as such, has no bearing with the issues raised in the SCN. In any event, the same does not prove that ASBPL actually provided DAS.

13.15 With regards to the email dated April 11, 2017, it is clear that the client has been misinformed with respect to his understanding that DAS is offered by the *Noticee no. 1* through their F&O service. It has become clear to ASBPL that the *Noticee no. 5* had been offering DAS to its clients through ASBPL's F&O platform. There is also a high possibility that the directors of the *Noticee no. 5* were misrepresenting to the potential clients that ASBPL was offering DAS. With respect to the email communication dated 29 September 2018 there is a possibility that the client Mr. Dhaval Trivedi must have mistakenly referred to OSSI instead of ASBPL since there are common directors.

13.16 OSSI had received monies in the form of loans and not investments from certain individuals, as OSSI being a separate entity in itself and not in the business of stock broking, was in a position to accept loans, finance from other individuals without any restrictions. In fact, there is also a possibility of an individual/entity being a client of

ASBPL as well as simultaneously a lender of OSSI. Hence, the confirmation cum receipts relied upon by SEBI is a possibility. In any event, the same does not mean that ASBPL was providing DAS/PMS.

13.17 ASBPL and OSSI have their office on the same premises. They also have common director-partners. Therefore, there is a chance that certain administrative or executive instructions might have been issued from the employees of one entity to another or certain work of one entity may have been done by the other. However, the businesses of both entities are completely separate and do not connect or depend on each other in any manner and as such, both entities filed their returns separately and have been paying their taxes separately. All transactions of OSSI and ASBPL have been arm's length in nature and the Tax Returns for the same have been filed separately. Even assuming without admitting that the email has been sent by ASBPL, no such activity was actually conducted as ASBPL was very much aware that it is illegal to conduct fund based activities in DAS. In fact, while ASBPL had also registered itself with SEBI as a PMS provider, it actually never ventured into that business.

13.18 With regards to its clients' emails requesting ASBPL to consider their payments as PMS investments, it is submitted that sometimes certain clients have misinterpreted ASBPL's services as a PMS activity. Such clients were not aware of the fact that ASBPL does not indulge in PMS activity. A bare perusal of the said client's ledgers would show that ASBPL has not charged any performance fees as mentioned in the presentation which is part of Exhibit 10. However, it has recently come to ASBPL's attention that the *Noticee no. 5* has been marketing the PMS/DAS to its clients.

13.19 The question of shortfall vis-a-vis ASBPL and its clients' securities cannot arise since as per the information provided in the FAR, the auditor intended to ascertain the shortfall of securities after excluding the sale done by erstwhile clearing members ECSL and ICICI Bank. The result is an apparent shortfall of INR 684 Crore worth of securities.

13.20 Moreover, there is no logic behind the exclusion of sale of securities done by ECSL and ICICI Bank in said calculation. The value of securities as on August 27, 2020 was INR 704.75 Crore after taking into account trades done in ASBPL's terminal on the BSE, the NSE and also taking into account off market transfers. Since the sale of pledged securities was done by ECSL and ICICI Bank on their terminals, it is obvious the same would not be a part of the trade data of ASBPL clients' trade data. Calling this resultant 'shortfall' is not only misleading but also wrong. The value of the sale of shares by ECSL and ICICI Bank as on August 27, 2020 was around INR 610 Crore which ought to be considered.

13.21 The **NCL** vide order dated October 22, 2020 has adjudged ECSL to have committed a misuse of the ASBPL's clients' securities by selling them in an irregular and

haphazard manner. Therefore, once the NCL has held that ECSL is at fault, the ASBPL cannot be held to be in violation of the same allegations. It is pertinent to note that the NCL acted belatedly and initiated a Limited Purpose Inquiry (LPI) on September 18, 2020 long after it had initiated action and passed orders against ASBPL, despite raising of several alarms by ASBPL to the NSE on the conduct of ECSL. The belated action by the NCL is an indication of shielding ECSL from regulatory action and ASBPL urges SEBI to investigate the reasons for the said delay on the part of NCL, despite multiple correspondences between ECSL and the NCL from the months of April 2020 itself.

13.22 The *Noticee no. 1* has taken the necessary steps to recover its legitimate dues from its debtor constituents/clients (i.e. those clients having debit balance with ASBPL) by issuing recovery notices to multiple clients amounting to INR 62.71 Crore in the first batch of recovery proceedings. Pertinently, as per the FAR, ASBPL had INR 417.75 Crore worth of securities as of August 27, 2020 belonging to those clients who had a debit balance i.e. payables to ASBPL, which was around 33% more than the amount payable to the creditors therefore providing sufficient headroom. The *Noticee no. 1* had issued the aforesaid notices because it lost the option of the encashment of securities due to the debarment of ASBPL by the exchanges. The deficit in funds and securities could have been avoided had ECSL correctly encased the securities of only those clients having the MTM debit at that point of time. SEBI also needs to investigate the high possibility of collusion between the NSE and ECSL as there are significant allegations made against both the entities in judicial courts.

13.23 In any event, the FAR has erred in alleging that there was misstatement of clients' ledgers balances in the ledgers maintained by the *Noticee no. 1*. The fact that these clients belong to the *Noticee no. 5*, any allegations pertaining to such misstatement of clients' ledgers balances should be directed to the *Noticee no. 5* including its KMP, the *Noticee no. 6* and the *Noticee no. 7* and not to the *Noticee no. 1*. In many cases, the *Noticee no. 1* belatedly found that the *Noticee no. 5* was sending many statements on its own letterhead, which is a clear violation of regulations pertaining to sub-brokers. In fact, there is sufficient cause to believe that the *Noticee no. 5* had motive to falsify and misstate the accounts of the clients as they had, in their own and independent capacity, promised many clients, as given on oath by Mr. Bulchandani, a certain fixed return, which they were unable to deliver. The directors and KMP of the *Noticee no. 5* have since absconded to avoid prosecution, which is in violation of the order passed by SEBI on November 13, 2020 and of the directives issued by the Hon'ble Bombay High Court on September 18, 2020 in the Arbitration Petition No. 30 of 2020. SEBI should investigate the actions of the *Noticee no. 5* and apply appropriate provisions, as opposed to arriving at the wrongful conclusion that the *Noticee no. 5* aided and abetted ASBPL.

13.24 By inducing and conducting the schemes, the *Noticee no. 5* was the ultimate beneficiary where, its directors and KMPs opened trading accounts between 2017-2020 and have received more than INR 100 Crore as pay-out. It was a well-planned scheme wherein the family of directors and KMPs of the *Noticee no. 5* would enrich themselves gradually at the expense of the other clients. The following table is a summary of the bank payments received by family members of directors and KMPs of the *Noticee no. 5*:

Client Code	Name	Payments during Year 2017-2020 (in INR)
TM228	Lalit Popatlal Shah	20,69,99,918.65
TM285	Jayesh Pravinchandra Shah	19,19,17,759.40
TM33	Ketan Lalit Shah	18,94,11,179.75
TM286	Dipti Jayesh Shah	10,87,70,052.89
TM505	Bharat Nemchand Shah	10,66,52,227.33
TM14	Nimish Shah(HUF)	8,90,49,545.40
TM853	Prafulla Lalit Shah	5,30,92,447.75
TM05	Riddhikalapi Shah	5,18,47,633.20
TM570	Samir Jayantilal Shah	4,89,87,927.00
TM94	Bipin Nemchand Shah	2,04,57,669.00
TM819	A R Capital	41,75,000.00
TM71	Kshama Anil Gandhi	33,70,134.00
TM1834	Saroj Gandhi	21,03,129.00
Total		**107,68,34,623.00**

13.25 There has been no crystallization of accounts of *Noticee no. 1*, done by any of the auditors, be it by ASBPL's own auditor or those appointed by the NSE i.e. E&Y. Hence, in case of absence of such crystallization, clearly demarcating shortfall, if any, in the books of accounts of ASBPL, there cannot be any penalisation of *Noticee no. 1*.

13.26 It is not denied that certain payments were made to clients having running debit balance as there were longstanding client relationships. Due to persistence and insistence of the *Noticee no. 5* and the pandemic situation, certain clients' requests of pay-outs were acceded to. However, to the best of ASBPL's knowledge the same has been repaid by certain clients and in any event, ASBPL had not benefitted by giving these pay-outs to the clients so as to cause any loss to a third party client. Hence, it is denied that the *Noticee no. 1* has misutilised client funds and securities.

13.27 No proof or evidence has been produced to substantiate the fact that the *Noticee no. 1* has misstated its books of accounts through its Journal Voucher ("**JV**") entries as alleged. In any event, ASBPL's balance sheets and the alleged JV entries were not

audited and hence cannot be taken as substantive evidence to prove misstatement of book of accounts by the *Noticee no. 1*.

13.28 The *Noticee no. 1* is not denying that inter-client adjustments were not done by them however, the same have been done on the instructions and with the consent of the respective clients and the *Noticee no. 5*. ASBPL has not given any misinformation to clients. In fact, it is clear from the list of the 11 sample entries that most of them are actually clients of the *Noticee no. 5* (with client code starting from TM). By doing this, the *Noticee no. 1* is not put to any added advantage and there is no unlawful gain to ASBPL or any unlawful loss to the clients.

13.29 There is a possibility that there is a discrepancy between the books of the *Noticee no. 1* and its back end data due to the fact that the books of the *Noticee no. 1* for that particular time have not been audited. There were numerous challenges to operate during the lockdown period due to the COVID 19 pandemic and therefore there are increased chances of accountancy errors.

13.30 The allegation made by SEBI that ASBPL provided an unregulated PMS, whereas the *Noticee no. 5* aided and abetted ASBPL in the mobilization of funds by offering various schemes to clients, based on the selective approach of the FAR, is extremely myopic and incorrect. The *Noticee no. 5* actively solicited, advertised and engaged in providing a service, scheme and returns to multiple persons in different formats, through tertiary level authorized persons under them and opened multiple proxy accounts in the name of the family members. TMAPL was trading, on their own, in the clients' accounts on the basis of a written (as in the case of Mr. Kamal Bulchandani) and oral agreement. This can be verified through the CTCL information available in the trade records with the Exchanges. TMAPL further created and disseminated false statements to their clients, including its family members who have been given falsified accounts statements by TMAPL who have disguised themselves as victims instead of the beneficiaries that they are. They further aided and abetted in the absconding of the KMPs of TMAPL. It was shocking to see that the SEBI has wrongfully alleged the PFUTP charge on ASBPL and not against TMAPL. As per the information available with SEBI and information provided, the PFUTP charge should not be levied against ASBPL, and instead should be levied against TMAPL and 31 other individuals who are involved in providing unregulated portfolio services.

13.31 There is also no evidence whatsoever as to the intent or to show as to how ASBPL stood to gain from these transactions. As such, knowledge and intent are key ingredients for an offence of fraud to be made out as *mens rea* - the mental element behind a crime or wrongdoing or wilful intent, is a key element of "fraud" as defined under regulation 2 (1) (c) of the PFUTP Regulations. In any case the findings pertaining to charges of fraudulent and unfair trade practices are vague and elements

of the said charges have not been met. SEBI has not produced any material to show that ASBPL was involved in a fraud. In the absence of any facts or explanation, it is difficult to imagine how ASBPL can be considered to have committed such serious violations.

13.32 SEBI has provided no explanation, no findings as to intent, involvement or for that matter, any benefit derived by ASBPL. SEBI has not just failed to meet the higher degree of proof that is required of it in such cases, it has even failed to meet the basic requirements of "*intent*" and it has apparently proceeded on the basis of conjectures and surmises, which in the context of the allegations is not enough. SEBI cannot rely upon probability or circumstantial evidence to establish a serious charge of fraud. It also cannot make wild allegations of manipulation or fraudulent action unsupported with convincing evidences. The charges are such that they must be supported by evidence on record, which in this case does not exist and hence the charges are unsustainable. In this regard, the reliance has been placed on the orders passed by SEBI in the matters of *Taneja Aerospace and Aviation Limited and Ors* dated March 16, 2017 and *Milkyways Mercantiles Private Limited and Ors* dated January 11, 2016 and the Hon'ble SAT in *Sterlite Industries v. SEBI* (decided on October 22, 2001).

13.33 SEBI should not impose any monetary penalty since there has already been strong action taken by the SEBI including debarment, non-disposition of assets, freezing of demat accounts, freezing of bank accounts. Furthermore, SEBI itself has not been able to crystallize the quantum of default and shortfall due to the litigation against ECSL. ASBPL cannot be penalized for the same cause of action by multiple authorities citing the same regulations, due to the nature of double jeopardy of the action. Any penalization would be detrimental to the interest of the clients since the assets of the *Noticee no. 1* will be used to settle all outstanding liabilities, many of which have not been accepted by the NSE under their IPF provisions. This belated and unwarranted action would only further harm the clients.

13.34 Though, the *Noticee no. 3* is a director and partner in the *Noticee nos. 1* and *4*, the *Noticee no. 3* has never been involved in the day to day management of ASBPL and/or OSSI. The *Noticee no. 3* is a homemaker and has never taken any decisions with regards to the business and functioning of the *Noticee nos. 1* and *4*.

13.35 No case has been made out by SEBI against the *Noticee no. 3*, let alone a whisper to show that she was involved in the management of ASBPL and/or OSSI when the alleged violations took place. Apart from the fact that they have been addressed to the *Noticee no. 3* and that the *Noticee no. 3* is a director and partner in the aforesaid entities making her responsible for the conduct of the business of the aforesaid entities, there is no other reference linking her to any of the violations alleged in the SCN and SSCN.

13.36 It is settled law that when an entity (company/ firm) is made liable under a certain law and a person is alleged to be liable as a director / partner of the entity, the necessary averments ought to be contained in the SCN before the person can be subjected to any violations. A clear case has to be spelt out against the person made liable. Merely, being described as a director is not sufficient to establish the fact that a person is responsible for the alleged violations made against the company/firm. Reliance has been placed on the judgements of the Hon'ble Supreme Court in *SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89* and *National Small Industries Corpn. Ltd; v. Harmeet Singh Paintal, (2010) 3 SCC 330* and order of the Hon'ble Securities Appellate Tribunal in *Sayanti Sen vs. SEBI (2019 SCC Online SAT 132)*.

13.37 It is shocking that the *Noticee no. 3* is alleged to be in violation of the PFTUP Regulations when in the facts and circumstances set out in the SCN, all the allegations are made against the *Noticee nos. 1* and *4* and the role of the *Noticee no. 3* is not even mentioned indicating that any case as made out against the *Noticee no. 3*. The standard of proof for proving fraud under the PFTUP Regulations is very high as held in *P. G. Electroplast vs. SEBI (SAT Appeal No. 144 of 2014)*, wherein the Hon'ble Securities Appellate Tribunal has held that *"In such a situation, the submissions of the Respondent appear to be based on material which is completely inadequate, particularly when the charge pertaining to PFUTP is sought to be established against the Appellant. There has to be sufficient material to bring home such a severe charge against the Appellant the charge relating to violation of PFUTP Regulations is a serious charge and hence a higher degree of proof is required to sustain it".*

13.38 Maintaining two separate balance sheets and not disclosing the liability of the *Noticee no. 4* to the *Noticee no. 1* in its ITR, has nothing to do with securities markets for it to be in violation of the PFTUP Regulations and the *Noticee no. 4* cannot be held liable under it. Moreover, OSSI is not a stockbroker, so the *Noticee no. 4* cannot be held liable under the Stock Brokers Regulations or section 12 (1) the SEBI Act. Pertinently, the standard of proof for proving fraud under the PFTUP Regulations is very high, and in the facts and circumstances set out in the SCN, mere reliance on certain balance sheets (that are not even audited) is wholly insufficient and does not meet the high threshold of fraud. In this regard, reliance is placed on the order of the Hon'ble Tribunal in *P. G. Electroplast (supra)*.

13.39 As regards the conclusion inferred in the SSCN that all the *Noticees* (including the *Noticee no. 4*) are deemed to be guilty of the contravention committed by ASBPL, except for a formal connection between the *Noticees*, SEBI has failed to establish/prove direct involvement of the *Noticee no. 4*.

***Noticee no. 5*- Teji Mandi Analytics Private Limited and *Noticee no. 6*-Mr. Anil Gandhi**

13.40 The allegations made against the *Noticee nos. 5* and *6* in the SCN are false and same are denied in toto.

13.41 The allegations made in the SCN are also the subject matter of the investigation of C.R. No. 25 of 2020 registered with the Economic Offences Wing ("**EoW**") of Mumbai Police, wherein the investigating agency has carried out detailed investigation and filed the initial Charge Sheet. Pursuant to the Charge sheet, SPL Case No. 484 of 2021 is pending before Additional Session Judge, Sessions Court Mumbai for trial. Apart from the above case, SEBI has also filed SPL Case No. 974 of 2021 before the Hon'ble 22nd Additional Session Court, Mumbai under the SEBI Act and the same is also pending for trial.

13.42 It is well settled principle of law that when criminal prosecution has been pending in respect of particular incident, no inquiry in respect of the said can be initiated/carried out as the same can cause prejudice to the person who is facing criminal prosecution. Under such circumstances the possibility of violation of the fundamental rights is grave and defence being prejudiced against the person facing trial, cannot be ruled out. It is pertinent to note that the *Noticee no. 5* has fundamental right of defence as well as of keeping silence as per the provision of the Constitution of India. Reliance is placed on the judgement of the Hon'ble Supreme Court of India in the matter of *Delhi Cloth General Mills Ltd. V/s Kushal Bhan reported in AIR 1960 SC 806* wherein it has been held that, *"it is advisable not to proceed with the Departmental enquiry till the decision of the trial Court so that the defense of the employee may not be prejudiced".* There are catena of judgements on the same issue delivered by the Constitutional Courts and the *Noticee no. 5* and *6* keep their rights reserved to rely on said judgments at the time of hearing.

13.43 In view of above-mentioned circumstance and facts, SEBI is requested to withdraw the above referred SCN as the same is in the violation of law which has been laid down by Hon'ble Supreme Court of India in catena of Judgements as mentioned herein above.

***Noticee no. 7*-Ms. Ridhi Kalapi Shah**

13.44 The present reply is limited to the *Noticee no. 7*'s role, or lack thereof, as the director of the *Noticee no. 5* which was managed and run by the *Noticee no. 6* and was also assisted by Mr. Kalapi Shah, who has confirmed the contents of the Reply filed by the *Noticee no. 7*.

13.45 The *Noticee no. 7* is an engineer by profession and had been working with a software company until 2015. She was in full time employment and therefore never worked in the *Noticee no. 5*. She did not even have the relevant qualification to be associated with

a financial intermediary nor had any knowledge of the securities or derivative market. The *Noticee no. 5* was founded by the *Noticee no. 6* and because it needed two directors, the *Noticee no. 7* was requested by her husband Mr. Kalapi Shah and the *Noticee no. 6* to be one of the directors.

13.46 The *Noticee no. 7* was not involved or engaged in any business decisions or any issues regarding the *Noticee no. 5* and that the *Noticee no. 6* along with the assistance of Mr. Kalapi Shah were running the business and affairs of the *Noticee No. 5*. Contrary to any presumption of involvement in the fraud committed by the *Noticee no. 1*, the *Noticee no. 7* and her relatives are in fact victims of the fraud themselves having lost substantial amounts of monies.

13.47 The SCN, insofar as it pertains to the *Noticee no.7*, proceeds on a footing of presumption of involvement merely because the *Noticee no.7* is a director of the *Noticee no. 5*. There is no adverse observation or any averment made specifically against the *Noticee no. 7* other than a generic mention of the *Noticee no. 7* being a director of the *Noticee no. 5*. The central charge under Paragraph 9 (g) of the SCN pertains to a mere suggestion that 2 emails had been deleted from the *Noticee no. 5*'s email server, which has been arrived at on the basis of observation in paragraph 6.2.10 of the FAR. The SCN does not contain any allegation and does not even mention the name of the *Noticee no. 7*, except for in the address and a generic mention of "Director of TMAPL".

13.48 The FAR, which is the only document, relied upon by SEBI does not mention the name of the *Noticee no.7*.

13.49 The findings in the FAR have been adopted and relied upon by SEBI in their affidavit filed before the Hon'ble High Court, in the matter of *Nimish Shah versus SEBI & Ors* and the relevant paragraph of the said affidavit filed by SEBI is extracted below:

"Further, the role of the Respondent No.7 viz. Teji Mandi Analytics Private Limited ("TMC") was assessed by NSE and no transactions in the name of TMC were found in the books of Anugrah. NSE has also informed SEBI that TMC is an authorised person approved by NSE."

13.50 The *Noticee no. 7* never drew any salary or remuneration, held no office space, did not participate in any meetings or discussions, and had no relationship with the concerned individuals except for social occasions. These facts have also been corroborated by both Mr. Kalapi Shah and the *Noticee no. 6*.

13.51 Mr. Kalapi Shah was drawing a meagre salary which was deposited in the account of the *Noticee no. 7* as Mr. Kalapi Shah had no accounts of his own after the closure of his bank accounts in India as advised by his Advisor in the USA. Apart from a sum of INR 3 Lakh in 2016 which was paid to Mr. Kalapi Shah which was deposited into the

joint account of the *Noticee no. 7* and Mr. Kalapi Shah, no other monies were received in the account of the *Noticee no. 7*.

13.52 The *Noticee no. 7* had filed an appeal against the ex-parte order dated November 30, 2020, passed by the NSE. In the affidavit filed by the NSE, it is admitted by the NSE that notice was served only upon the *Noticee no. 5* and marked to the attention of Mr. Kalapi Shah, being the contact person for the *Noticee no. 5* as per exchange records. Consequently, vide an order dated August 3, 2021, the above ex-parte order, insofar as the *Noticee no. 7*, was quashed. This further bolsters the *Noticee no. 7*'s case and only goes to highlight her complete lack of knowledge or involvement into the affairs of the *Noticee no. 5*.

13.53 Pertinently, even the SSCN issued in furtherance of the present SCN has not made any additional or fresh averments against the *Noticee no. 7* and has, in fact, not been issued to the *Noticee nos. 5* to *7* at all. The *Noticee no. 7* got to know of the same only during the personal hearing when this was raised by SEBI with the *Noticee no. 1*.

13.54 It is trite law that allegations made against an individual, in the capacity of director of a company, have to be substantiated with specific findings of impropriety or involvement. Proviso to Section 27 (1) of the SEBI Act, also provides that no person can be held liable if it's proven that any contravention occurred without his / her knowledge. Therefore, there is an inherent burden upon SEBI to establish findings against any individual arraigned as a noticee in any proceedings and in the present case, a bare perusal of both the SCN and the FAR shows a clear lack of finding of involvement of the *Noticee no. 7*. Reliance is placed on the following orders:

(i) *Sayanti Sen vs. SEBI* (Decided by the Hon'ble SAT on August 09, 2019)

(ii) *Rahul H Shah & Anr. vs. SEBI* (Decided by Hon'ble SAT on September 15, 2004)

(iii) S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. (2005 5 SCC 89)

(iv) National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Anr. (2010 3 SCC 330)

13.55 There is no verification of the emails received from the complainant. All that seems to have been done is checking the emails of the *Noticee no. 6*. There is no verification done on the server of the *Noticee no. 1*. It is still not clear if the email was sent from the *Noticee no. 5* or the *Noticee no. 1* as the *Noticee no. 5* has been only acting as a facilitator of the *Noticee no. 1* and could have communicated whatever was asked to be communicated to the clients by the *Noticee no. 1*, These narrations are incomplete and so is the premise drawn in the FAR.

13.56 In any case, these allegations against the *Noticee no. 6* cannot be attributed to or extended to the *Noticee no. 7*. According to the FAR, the inspection team had visited

the premises of TMAPL and copied all the records and documents from the electronic devices of the *Noticee no. 6*. In the FAR, the *Noticee no. 6* is rightly shown as the *relevant person* for the *Noticee no. 5*. It was therefore, the *Noticee no. 6's* computer and mobile which was scanned and data collected and not that of Mr. Kalapi Shah or the *Noticee no. 7*. Therefore, it is for the *Noticee no. 6* to respond to this allegation.

13.57 While an allegation is made against the *Noticee no. 5* incorrectly on the deletion of data, it is important to note that the email id of the *Noticee no. 5* was on the domain of the *Noticee no. 1* which was maintaining the servers of the *Noticee no. 5*. There is also a possibility of the *Noticee no. 1* deleting the records. The *Noticee no. 7* understands that the *Noticee no. 5* had no administrator rights to delete any email or manipulate the servers.

13.58 There was an authorization obtained from the *Noticee no. 7* to enable Mr. Kalapi Shah to operate the bank accounts with the *Noticee no. 6*. As per Mr. Kalapi Shah, the transaction alerts were messaged to him and the alerts over email were sent to the *Noticee no. 6*. The *Noticee no. 7* never ever signed any single cheque or accessed the bank account at any point of time.

13.59 The *Noticee no. 7* has provided all the submissions and responses to the best of her capacity and knowledge and have been diligent in compliance with all the directions and also attended the personal hearing as directed. Therefore, the learned Member may kindly consider disposing of the SCN against the *Noticee no. 7* at the earliest if the learned Member is convinced with the submissions of the *Noticee no. 7* and separate the *Noticee no. 7* from the group to avoid any further delay.

CONSIDERATION OF ISSUE AND FINDINGS

14. Considering the findings of various facts and evidences by SEBI from FAR, the allegations levelled against the *Noticees* in the SCN and SSCN based on such findings and the explanations offered by the *Noticees* through their written and oral replies to the SCN and SSCN as well as during personal hearing and their post hearing written submissions, I find that in this case, the following issues require consideration:

I. Whether the *Noticee nos. 1* and *4* have engaged in providing DAS in the nature of PMS promising assured returns to their clients, without having requisite registration from SEBI and whether the *Noticee nos. 5* has aided and abated the *Noticee no. 1* in this regard.

II. Whether the *Noticee no. 1*, a stock broker registered with SEBI, has mis-utilized clients' funds & securities and has not maintained its books of accounts.

III. Whether the *Noticee nos. 1, 4 and 5* have violated the relevant provisions of SEBI Circulars, the SCR Rules 1957, the SEBI Act read with the PMS Regulations, 1993,

the Stock Broker Regulations and the PFUTP Regulations, 2003 as applicable to them.

IV. If the answers to the aforesaid issues are in affirmative, then what was the role of the directors and partners of the *Noticee nos. 1* and *4* namely, Mr. Paresh Mulji Kariya (*Noticee no. 2*) and Ms. Sadhana Paresh Kariya (*Noticee no. 3*) and what was the role of the directors of the *Noticee no. 5* viz., Mr. Anil Gopal Gandhi (*Noticee no. 6*) and Ms. Riddhi Kalapi Shah (*Noticee no. 7*)

15. Before dealing with the issues framed above, it would be appropriate to refer to the relevant provisions of law alleged to have been violated in the matter, extracts whereof are reproduced below:

THE SECURITIES CONTRACTS (REGULATION) RULES, 1957

Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

i. the *governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,*

ii. in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

iii. nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n)of sub-rule (8)]16

Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.

15.(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years :

(a) Register of transactions (Sauda book).

(b) Clients' ledger.

(c) General ledger.

(d) Journals.

(e) Cash book.

(f) *Bank pass-book.*

(g) *Documents register showing full particulars of shares and securities received and delivered.*

(2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:

(a) *Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.*

(b) *Counterfoils or duplicates of contract notes issued to clients.*

(c) *Written consent of clients in respect of contracts entered into as principals.*

THE SEBI (STOCK BROKERS) REGULATIONS, 1992

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

B. Duty to the Investor

(6) Fairness to Clients: A stock-broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time, that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain

a direct or indirect personal advantage from the situation and shall not consider clients' interest inferior to his own.

To maintain proper books of account, records, etc.

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

(a) Register of transactions (Sauda Book);

(b) Clients ledger;

(c) General ledger;

(d) Journals;

(e) Cash book;

(f) Bank pass book;

(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;

(h) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members;

(i) Counterfoils or duplicates of contract notes issued to clients;

(j) Written consent of clients in respect of contracts entered into as principals;

(k) Margin deposit book;

(n) Client account opening form in the format as may be specified by the Board.

(2) Every stock broker shall intimate to the Board the place where the books of account, records and documents are maintained.

(3) Without prejudice to sub-regulation (1), every stock broker shall, after the close of each accounting period furnish to the Board if so required as soon as possible but not later than six months from the close of the said period a copy of the audited balance sheet and profit and loss account as at the end of the said accounting period:

Provided that, if it is not possible to furnish the above documents within the time specified, the Stock Broker shall keep the Board informed of the same together with the reasons for the delay and the period of time by which such documents would be furnished.

THE SEBI ACT, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be

associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

THE SEBI (PORTFOLIO MANAGERS) REGULATIONS, 1993

3. ***Registration as portfolio manager****.*

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:

Provided that a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application.

THE (PFUTP) REGULATIONS, 2003

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: —

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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

CIRCULARS ISSUED BY SEBI

- *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.*

16. Before proceeding to deal with the issues framed above, I find it appropriate to deal with the preliminary objections/issues raised on behalf of the *Noticees* stating that SEBI has acted against the principles of natural justice by not providing an opportunity of proper hearing to the *Noticee nos. 1* to *4*. It is further contended by the *Noticee nos. 5* and *6* that the charges/allegations as recorded in the SCN are subject matter of a pending criminal prosecution/proceeding and thus, no inquiry/civil proceedings in respect of the said matter can be initiated/carried out against them as the same can cause prejudice to the *Noticee nos. 5* and *6* who are facing criminal prosecution. It is also strongly canvassed by the *Noticee no. 1* that the FAR ought not to be considered on account of there being a clear element of bias involved and/or at least the findings of FAR must be revisited as it has not completely considered all the required materials even if assuming without admitting that there is no element of bias in the FAR.

17. As regards the submission made before me pertaining to lack of opportunity of proper hearing on behalf of the *Noticee nos. 1* to *4*, I note that an opportunity of personal hearing was granted to all the *Noticees* on February 02, 2022. The AR for the *Noticee no. 1* vide email dated February 01, 2022 while requesting for postponement of the aforesaid scheduled hearing has submitted as under:

"Sir/Madam,

We are concerned for our client Anugrah Stock and Broking Private Limited.

We refer to your letter bearing Reference No. OW/RA/2021/37468/1 dated 15th December, 2021 in respect of the personal hearing which is scheduled on 2nd February, 2022 at 2.30 p.m. in the matter of Show Cause Notice No. SEBI/HO/MIRSD/DPIEA/OW/RA/2020/21828/2 dated 15th December, 2021 and Supplementary Show Cause Notice no. SEBI/HOMIRSD/DPIEA/OW/ RA/2021/16263//1 dated 23rd July, 2021 ("said Show Cause Notices"). Our client have not received the said Show Cause Notices till date and we request you to kindly provide us the copies of said Show Cause Notices at your earliest. We notify to your goodselfs that Mr. Kariya, who is the concerned person to provide the instructions in the matter is currently in imprisonment and we will take the necessary instructions from him. Due to covid-19 protocol, taking instructions from him is taking time.

In view of the above we request your goodself to provide us the copies of said Show Cause Notices to enable us to take necessary instructions in the matter.

Once we receive the copies of said Show Cause Notices, we shall require 6 (six) weeks' time to file a Reply to the said Show Cause Notices, therefore the matter be placed on suitable date for hearing and request your good self to defer the hearing of matter scheduled on 2nd February, 2022."

Thereafter, during the personal hearing held through video conferencing on February 02, 2022, Ms. Gauri Joshi appeared as the arguing counsel on behalf of the *Noticee no. 2* and requested for 4 weeks' time to file detailed reply on the grounds that the *Noticee no. 2* has not been served with the SCN & SSCN and she needs time to file reply as she has been engaged

by this *Noticee* recently. Accordingly, the aforesaid request was acceded to and 4 weeks' time was granted to the *Noticee no. 2* to file his detailed reply. At this stage, a specific query was put to both the arguing counsels for the *Noticee no. 2* (who is MD of the *Noticee no. 1*, husband of the *Noticee no. 3* and also one of the two partners of the *Noticee no. 4*) and the AR of the *Noticee no. 1* (who vide the aforesaid email dated February 01, 2022 had sought adjournment on behalf of the *Noticee no.* 1) as to who is appearing for/ representing the *Noticee nos. 1, 3* and *4* however, no response was received from either of the said representatives which prompted me to record that no one appeared on behalf of/represented the *Noticee nos. 1, 3* and *4* during the hearing held on February 02, 2022. Accordingly, another opportunity of personal hearing was *inter alia* granted to the *Noticee nos. 1* to *4* on June 01, 2022. The communication regarding the second opportunity of hearing fixed on June 01, 2022 was attempted to be delivered to the *Noticee nos. 1* to *4* vide letters dated April 19, 2022, sent through SPAD as well as by hand delivery mode at their last known addresses available with SEBI. However, as the aforesaid letters sent to the *Noticee nos. 1, 3* and *4* at their last known addresses could not be delivered, a newspaper publication dated May 11, 2022 had to be published in Hindustan Times, Navbharat Times and Lokmat, clearly indicating the date of hearing in the aforesaid publication.

18. Interestingly, just minutes before the start of the scheduled second hearing, the AR of *Noticee no. 1 to 4*, emailed scanned copies of the replies each one dated June 01, 2022, on behalf of the *Noticee no. 1* and *4* and also sought adjournment with respect to the hearing scheduled on the same day by taking the ground that she has received a short notice for preparing for the hearing, hence effective hearing cannot be held at the scheduled time. Then, on the appointed time, the AR of *Noticee nos. 1* to *4* appeared but reiterated her request for adjournment as sought vide her email sent just minutes before the commencement of hearing. Looking at such casual approach on the part of the *Noticees no. 1 to 4*, during the course of the hearing, the *Noticee nos. 1* to *4* were informed that it is not feasible to accede to their aforesaid request of adjournment not only due to the fact that they have not taken the personal hearing scheduled for them seriously but also owing to my busy calendar which did not permit a short adjournment and any long adjournment would have unduly delayed the matter further. Therefore, they were advised to file a comprehensive reply to the SCNs within four weeks' time which will be taken on record and considered while deciding the matter. Subsequently, the AR vide email dated June 02, 2022 submitted as under:

"Sir,

We refer to the online hearing held yesterday at 3.30 p.m. before the Hon'ble WTM in the subject matter where we requested the Hon'ble Member to grant a short adjournment in the matter to enable us to argue the matter. We submitted before the Hon'ble Member that we were not aware of yesterday's hearing and we came to know about the same at 2.46 pm yesterday vide an email from your goodself when we received a reply to

our today's email of 2.32 p.m. wherein we submitted a Reply to the subject SCN on behalf of Noticee Nos. 1 and 4.

Upon hearing the above request the Hon'ble Member stated that SEBI had attempted to serve our clients however the same remained undelivered due to which SEBI had published the intimation of today's hearing. To this, we submitted that we have not only been representing our clients, Noticee Nos.1 to 4 on previous hearings before the Hon'ble Member but also corresponding with the concerned department on our clients behalf. Hence, the concerned department ought to have intimated today's hearing to us as well. We also intimated to the Hon'ble Member that Noticee No. 2 has been in jail for the past few months due to which it is not only difficult for him to access his communications but also difficult for us to take instructions from him. The Hon'ble Member then indicated the time constraints and difficulties to allot the next date and directed us to file detailed replies on behalf of our clients. However, upon considering our genuine request the Hon'ble Member stated that he would consider fixing the matter for hearing at a future date after discussing with the concerned department and convey the same to us.

In view of the fact that the matter has not yet been heard on merits we humbly request your good self to provide us with a date of hearing to enable us to appear and argue the matter on merits."

19. In response to the aforesaid email received from the AR on behalf of the *Noticee nos. 1* to *4*, SEBI vide email dated June 06, 2022 informed the AR of the *Noticee nos. 1* to *4* as under:

"Madam,

*As you are aware that the captioned hearing in the subject matter was scheduled through video conferencing on June 01, 2022 (**second hearing**) where you along with the Advocate (instructed by you) appeared on behalf of the Noticee nos. 1 to 4.*

*It is also pertinent to refer to the hearing held on February 02, 2022 (**first hearing**) when you appeared on behalf of the Noticee no. 2 alone. Upon being asked specifically as to who are representing the Noticee nos. 1, 3 and 4, no response came forward (despite the fact that the Noticee no.2 is still MD of the Noticee no. 1 and is also husband of the Noticee no. 3). Further, you had submitted to be granted sufficient time to file response on behalf of the Notice no. 2. Consequently, steps were taken to serve the hearing notice through other mode i.e., paper publication which was duly served on May 11, 2022 stating unequivocally that hearing is scheduled on June 01, 2022. Now vide email dated June 02, 2022, you have inter alia claimed that you have not only been representing all the aforesaid clients (the Noticee nos. 1 to 4) on previous hearings before the Hon'ble Member but also were corresponding with the concerned department on their behalf. The aforesaid claim is however, found to be not true, because during the course of first hearing despite being asked to confirm who is representing the Noticee nos. 1, 3 and 4 you chose to maintain that you are representing the Noticee no. 2 only. Further, it is also noted that there is no vakalatnama or authorization letter filed by you with SEBI till date to suggest that you are representing the Noticee nos. 1, 3 and 4 as well.*

Fact that was not disputed during the course of second hearing held on June 01, 2022 is that your clients knew about the schedule of second hearing well in advance and despite that you kept on requesting for

adjournment just before the commencement of hearing on the ground that you were not informed about the hearing in advance, which is not a justified reason for seeking adjournment to the CA just when the hearing was about to begin and despite the fact that you were already present before him on behalf of your clients. Please note that any delay or lack of communication between you and your clients is purely your internal matter.

You may also appreciate that the gravity of the matter was also emphasized during the course of first hearing held on February 02, 2022 and second hearing was accordingly scheduled on June 01, 2022. During the second hearing, sensitivity involved in the matter was once again reiterated. It was also informed to you that calendar of the CA are completely full as hearings in different matters are already scheduled till January 2023. Considering the administrative works that quasi-Judicial Authority requires to perform, you were intimated by the CA that granting another date for hearing would not be feasible in the matter. In this regard, having relooked at the calendar of the CA, it is found that it will not be feasible to accommodate any further hearing in the matter. However, considering your concerns and interest of the Noticee nos. 1 to 4 and to afford them due opportunity to defend the charges as levelled in the SCN and SSCN, the CA has granted 4 weeks' time to the Noticee nos. 1 to 4 to file detailed reply on each aspect with supporting documents for his consideration while disposing of the SCN and SSCN on merit."

20. I note that the *Noticee nos. 1* to *4* have now submitted that SEBI has acted against the principles of natural justice by not providing an opportunity of proper hearing to them. In this regard, I however, note from the records available before me that the *Noticee nos. 1* to *4* have neither responded to nor addressed/disputed the factual narrations in the email dated June 06, 2022 of SEBI which has in detail, dealt with the grievances of the *Noticees no. 1 to 4* on the issue of personal hearing. Therefore, it can be construed that these 4 *Noticees* have admitted the said narrations made in the above mentioned email addressed by SEBI. Therefore, without addressing/disputing the factual narrations/positions in the aforesaid email of SEBI (which succinctly captures the events and the lackadaisical conduct of the said *Noticees* leading up to the second hearing held on June 01, 2022), it is now not open to the *Noticee nos. 1* to *4* to contend that the said proceedings have been conducted against the principles of natural justice by not providing an opportunity of proper hearing to them. I cannot lose sight of the fact that although the AR has claimed to have been representing the *Noticee nos. 1* to *4* from the very beginning of the current proceedings, the records would reveal that the AR has till date not filed Authorisation Letter/Vakalatnama in respect of the *Noticee nos. 3* and *4* despite having been issued several reminders from SEBI in this regard.

21. Further, it is not the case of the *Noticee nos. 1* to *4* that they wanted to place some arguments during the course of the hearing which were otherwise not possible to be captured or could not be put in writing in their post hearing written submissions dated July 15, 2022. In fact, I note that the *Noticee nos. 1* to *4* have filed a written submission on the allegations/charges levelled in the SCN and SSCN largely on the similar lines of their earlier replies dated June 01 and 02, 2022. It is also not the grievance of the *Noticee nos. 1* to *4* that they were given

insufficient time to prepare and file their post hearing written submissions which has led to missing out on certain crucial submissions and therefore, they wanted an opportunity of hearing to place those submissions which were missed out to be placed in their post hearing written submissions. In fact, it is relevant to emphasize here that an additional time of 10 days was granted to them on their request, to file their detailed post hearing written submissions (by July 14, 2022) which was finally filed on July 15, 2022, as noted above. Therefore, I find that enough and adequate opportunities have been provided to the *Noticee nos. 1* to *4* to appear and file replies/make submissions (which they have availed of and filed detailed post hearing submissions), hence, principle of natural justice has been duly complied with. Hence, the grievances of these 4 *Noticees* are unfounded and misplaced on facts.

22. In any case, the *Noticee nos. 1* to *4* have not demonstrated that the afore discussed events have caused any prejudice to them or that they have been incapacitated in any manner in putting forward their defence against the charges/violations levelled in the SCN and SSCN. As noted above, the *Noticees no. 1 to 4* having filed a detailed written submission on the similar lines of their earlier replies dated June 01 and 02, 2022, I am of the considered view that granting another hearing would not have served any meaningful purpose and would have surely been an empty formality. In this regard, I rely on and refer to the judgement passed by the Hon'ble Supreme Court of India in the matter of *Karnataka State Road Transport Corporation and Another vs SG Kotturappa and Anr. [(2005) 3 SCC 409]* wherein the Hon'ble Apex Court has held that the principles of natural justice are not required to be complied with when it will lead to an empty formality. I note that the said judgement has been relied upon and cited with approval by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**") in its order dated August 11, 2022 passed in *Appeal No. 329 of 2020-Kantilal Hiran vs. SEBI*. Therefore, I find that the above stated contentions put forward by the *Noticee nos. 1 to 4* are *sans* any merit and accordingly rejected and consequently, the case laws cited in support of the said contentions do not come to the rescue of the *Noticee nos. 1 to 4* and accordingly are not dealt with.

23. As regards contention of the *Noticee nos. 5* and *6* that the charges/allegations as recorded in the SCN are subject matter of a pending criminal prosecution/proceeding and thus, no inquiry/civil proceedings in respect of the said matter can be initiated/carried out against them as the same can cause prejudice to their case in criminal prosecution, I note that the present civil proceedings pending before me and the prosecutions proceedings filed by SEBI pending before the competent court, are distinct and independent from each other. Further, I note that there is no bar on SEBI in pursuing civil and criminal proceedings on the same set of facts against an entity especially when it is a well settled position of law that SEBI has power to pursue multiple proceedings. In respect of criminal proceedings filed by other agencies including EoW of Mumbai Police, I note that the investigating agencies have not investigated involvement of the said noticees with respect to the violation of the

provisions of above stated securities laws. I am of the view that SEBI's investigation is independent and separate from that of other investigating agencies. I further note that the charge in the SCN against the *Noticee nos. 5* and *6* is to be established mainly on the fact that the *Noticee nos. 5* and 6 have deleted specific emails (sent to the clients pertaining to DAS) from the email server of the *Noticee no. 5* thereby aiding and abating the *Noticee no. 1* in engaging in DAS which was in the nature of PMS, promising assured returns without seeking registration under the PMS Regulations. The proof adduced in support of the said allegations made in the SCN has already been provided to the said noticees along with the SCN. I, therefore, find that the submissions of the *Noticee nos. 5* and 6 cannot be accepted.

24. I further note that the *Noticee no. 1* has submitted that the FAR ought not to be considered on account of there being a clear element of bias involved and/or at least the findings of FAR must be revisited as it has not completely considered all the required materials even if assuming without admitting that there is no element of bias in the FAR. In this regard, I note that the findings of the FAR have been arrived at on the basis of tangible facts or evidences such as review of data, holdings of clients, bank statements etc. maintained and provided by the *Noticee no. 1* itself or the details/data extracted from its back-office records which are not otherwise disputed by the *Noticee no. 1*. Further, the findings so arrived *inter alia* on the strength of the aforesaid data/documents are capable of being challenged by the *Noticee no. 1* by controverting the said findings with the help of documentary proof to the contrary, which the *Noticee no. 1* has miserably failed to do so. As regards its contentions that findings of the FAR must be revisited as the FAR has not considered all the required materials, I note that merely stating that the FAR has failed to consider certain documents/materials without specifying any details of such documents/materials does not come to the aid of the *Noticee no. 1*. It is also not the case of the *Noticee no. 1* that it was prohibited or stopped in any way at any stage of the extant proceedings from adducing the said documents/materials (which the FAR has failed to consider), which would have helped its defence or contradicted the findings of the FAR. It is further noted that ECSL being a Clearing Member, enquiry proceeding (which is a separate proceeding from the present proceeding) has been initiated by the NCL wherein the role and actions of ECSL have been examined and the independent findings have been arrived at by the NCL. In any case, these findings are part of a separate and independent proceeding initiated by the NCL, as noted above and therefore do not warrant any consideration in the extant proceeding. Therefore, I do not find any merit in the contentions of the *Noticee no. 1* pertaining to FAR as worthy of acceptance.

I. ***Whether the Noticee nos. 1 and 4 have engaged in providing DAS in the nature of PMS promising assured returns to their clients, without having requisite registration from SEBI and whether the Noticee nos. 5 has aided and abated the Noticee no. 1 in this regard***

25. Moving on to examine the first issue framed above, I note that the SCNs allege that the *Noticee no. 1* directly as well as through its associated entity i.e., the *Noticee no. 4* was engaged in an activity under the name and style of DAS in derivative segments and was indulging in promising/providing assured returns to its clients, which is not a permitted activity to be carried out as a stock broker and while doing so, it has committed a series of violations which are grave and repetitive and which have been found exposing clients' assets to huge risk. It is noted that DAS was pitched/offered to potential clients of the *Noticee no. 1* as an investment service under two plans, Gold and Platinum, requiring a minimum investment amount of INR 10 Lakh and INR 1 Crore respectively. The investment options provided under both these plans (that a client could avail) were to be availed of either by investing the entire amount by cheque or 60% in cheque and remaining 40% via stocks. If one goes for the latter option, then the stocks would be subject to a haircut of 50% of value of shares. Additionally, under the Gold plan, there was no restriction on withdrawal, whereas Platinum plan had a lock-in period of one year with assured return of minimum 12% per annum.

26. In this context, I note from Annexure 7.1 of the FAR (supplied with the SCNs to the *Noticees*) that one of such emails through which DAS as an investment service was pitched to one of the potential clients, was sent by *Noticee no. 2* to one Mr. Girish Dhoot on May 13, 2017. In this regard, I note that the *Noticee no. 1* has contended that the PPT related to DAS has not been sent by the *Noticee no. 2* from his email paresh.kariya@anugrahsb.com on May 13, 2017 because at that time many employees of the *Noticee no. 1* (allegedly close to the directors of the *Noticee no. 5*) had access to the aforesaid email address, being the official email address of the ASBPL's director i.e., the *Noticee no. 2* and any of these employees could have sent out this email either for the purpose of framing the *Noticee no. 1 and 2* and/or increasing the customer base of the *Noticee no. 5*.

27. In response to the above, it is pertinent to note here that the *Noticee no. 2* has not denied the fact that the said PPT related to DAS was actually sent to one of the prospective clients from the aforesaid email but has only claimed that the said PPT was sent by one of the employees (who also had access to the said email and was allegedly close to the directors of the *Noticee no. 5*) of the *Noticee no. 1* and was not sent by him personally. Therefore, there is no dispute to the above fact, rather it is admitted by the *Noticee no. 1* that the PPT on DAS was indeed sent to one of the potential clients through the said email albeit allegedly by one of the employees of the *Noticee no. 1*. To such a claim of the *Noticee no. 2*, I note that admittedly the aforesaid email was sent from a specific email (paresh.kariya@anugrahsb.com) of the *Noticee no. 2* bearing his own name in it and not from

generic emails such as customercare@anugrahsb.com or contact@anugrahsb.com of the *Noticee no. 1* and therefore, it is the *Noticee no. 2* who is responsible for all the mails sent from the said specific email ID, as the ownership of the said specific email ID (he being one of the directors of the *Noticee no. 1* and as the specific email ID was created in the name of the *Noticee no. 2*) lies only with the *Noticee no. 2*. Even if it is assumed for the sake of the argument, that the said mail was actually sent by different employee of the *Noticee no. 1*, there is no denial to the point that these employees were not directed/authorised to do such an act especially when nothing has been brought on record by the *Noticee no. 2* to demonstrate that the *Noticee no. 2* has taken any remedial steps to rectify the error committed by the employees of *Noticee no. 1*. The *Noticee no. 2* has not stated as to what corrective measures he took when he found out that such an unauthorized email related to PPT pitching DAS as an investment service by the *Noticee no. 1* was sent from the official email ID of the *Noticee no. 1* allegedly by its employee, and whether he, at least, sent an email to the said client denying any DAS being offered by the *Noticee no. 1* at all. Rather, the entire chain of events shows the callous manner in which the affairs at the *Noticee no. 1* was knowingly being carried out by the *Noticee no. 2* who is a director of the *Noticee no. 1*, without putting any checks and balances in place, be it in the matter of communications with the clients or in the way the affairs of *Noticee no. 1* were being managed so much so that despite strenuously attempting to submit that the email was not sent by him, *Noticee no. 2* has failed to demonstrate any action, whatsoever, taken against any such employee who allegedly had sent the said email. Therefore, I find that the *Noticee no. 2* has merely tried to distance himself from the said act of sending the PPT to potential clients without denying the fact that the said PPT was indeed sent to one potential client from his own email ID. Therefore, I hold that DAS was indeed pitched as an investment service to the potential clients by the *Noticee no. 1* and hence, reject all the contentions put forward by the *Noticees no. 1 and 2* in this regard, which are noting but an attempt to put a smokescreen on such an illicit conduct displayed by them while acting as the Director of *Noticee no. 1*.

28. I note that the *Noticee no. 1* has also tried to disassociate itself from the entire episode by contending that even though the clients opened their trading accounts with the *Noticee no. 1*, the trading activity in the said accounts were operated/ managed/controlled by the *Noticee no. 5*. Instructions, as and when necessary, to execute the trades were issued directly by the clients of the *Noticee no. 5* and the *Noticee no. 1* was never involved in any manner in such communication. Admittedly, the *Noticee no. 5* is the Authorised Person ('**AP**') of the *Noticee no. 1* and therefore, SEBI Circular on *'Market Access through Authorised Person'* dated November 06, 2009 is squarely applicable to the *Noticee no. 1* (hereinafter referred to as "**Circular**"). The said Circular allows registered stock brokers (including trading members) of stock exchanges to provide access to clients through AP while prescribing a minimum framework for governing the market access through authorised persons. The relevant framework applicable to the *Noticee no. 1* is as under:

*"**5. Conditions of Appointment***

The following are the conditions of appointment of an authorised person:

a) The stock broker shall be responsible for all acts of omission and commission of the authorized person.

b) All acts of omission and commission of the authorized person shall be deemed to be those of the stock broker.

c) The authorized person shall not receive or pay any money or securities in its own name or account. All receipts and payments of securities and funds shall be in the name or account of stock broker.

d) The authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the stock broker and he shall not charge any amount from the clients.

g) The stock broker and authorised person shall enter into written agreement(s) in the form(s) specified by Exchange. The agreement shall inter-alia cover scope of the activities, responsibilities, confidentiality of information, commission sharing, termination clause, etc."

29. A bare perusal of the aforesaid stipulations of the said Circular makes is abundantly clear that even if it is assumed that the clients' accounts were operated/managed/controlled by the *Noticee no. 5*, the *Noticee no. 1* cannot wash its hands off from and turn a blind eye on the acts of the *Noticee no. 5*, as the *Noticee no. 1* is ultimately responsible for all acts of omission and commission of the *Noticee no. 5*. Further, it is mandatory for *Noticee no.1 and 5* to enter into written agreement(s) in the form(s) specified by Exchange which shall *inter-alia* cover the scope of the activities, responsibilities, confidentiality of information, commission sharing, termination clause, etc. as mandated under para 5(g) of the aforementioned SEBI Circular however, the *Noticee no. 1* has not produced any such written agreement entered into with the *Noticee no. 5* specifying its activities and responsibilities which would reveal that the accounts of clients of the *Noticee no. 1* brought on-board by *Noticee no. 5* were to be operated/managed/controlled by the *Noticee no. 5* independently and alone, without any control of the *Noticee no. 1*.

30. In this regard, I find it relevant to note here that the *Noticee no. 1* is a stock broker duly registered with SEBI and under the registration granted to it, it was permitted to do acts in due compliance of the relevant laws. In terms of the above mentioned circular, registered stock brokers of stock exchanges are permitted to provide access to clients through APs while prescribing a minimum framework governing the market access through authorised persons. The permission to provide access through the APs has certain objectives and therefore, the permission was further subjected to limitation and liability. The circular specifically provides that for all acts of omission and commission of such AP, the whole and sole liability shall be of the stock broker as the provision further provides a legal fiction that all the acts of omission and commissions of the AP shall be deemed as the same have been done or omitted to have been done by and on behalf of the stock broker. It has been noted

from the submissions of the above *Noticees* that they have not denied the alleged acts of omission and commission and therefore, in the absence of any plausible justification, I see no merit in the argument that, the clients were of the *Noticee no. 5* and the acts of providing DAS services were carried out by the *Noticee no. 5* alone without authorization and approval of *Noticee no. 1*. In view of the aforesaid deliberations and in the absence of any such agreement between the *Noticee nos. 1 and 5* as mandated under para 5(g) of the Circular, I find the aforesaid submission is not tenable and further after considering the evidences all the more, I find that the act of providing DAS services was indeed being carried out by the *Noticee no. 1*.

31. Having concluded that the DAS was indeed offered/pitched by the *Noticee no. 1* to its potential clients, I now move on to examine as to how much money was collected under the said scheme of DAS. In this context, I note that on the basis of the findings arrived at in the FAR from the review of the Electronically Stored Information ("**ESI**") of the *Noticee no. 1*, that was provided by *Noticee no. 1* only, the SCNs further record that an email dated March 02, 2020 was found with the subject "MIS DAS BUSINESS 2019-20 OF FEB MONTH" containing a DAS MIS excel file for the period April 2019 to February 2020, examination of which revealed that a total investment of INR 165.10 Crore was received from 677 clients across various months. Out of these 677 clients appearing in the said DAS MIS excel file, 627 clients were appearing in the client master of the *Noticee no. 1*. On further review of the client ledgers for each of these clients and bank books, it is noted that out of INR 165.10 Crore, INR 69.26 Crore were traced in the books of the *Noticee no. 1* and INR 44.90 Crore have been received in the books of accounts of *Noticee no. 4* i.e., OSSI, thus in total, more than INR 114 Crore was found to have been received in the account of the *Noticee nos. 1* and *4*, where the *Noticee no. 2* was instrumental in managing the affairs of both these entities. The FAR has further taken note of an email dated April 11, 2017, whereby a client has stated to have given money for investment in F&O strategy (DAS) and informed the *Noticee no. 1* about issuance of cheque of ₹48 lakh (60% of investment) and also informed about his intent to transfer the balance 40% of his investment in the form of equity shares to his demat account maintained with the *Noticee no. 1*.

32. I note that it is already established sufficiently in the preceding paragraphs that the *Noticee no. 1* has pitched/offered DAS as a service to its potential clients. Further, it is noted that the *Noticee no. 1* has not offered any explanations rebutting the charge that it has collected INR 165.10 Crore from 677 clients across several months (pertinently 627 clients out of these 677 were appearing in the client master of the *Noticee no. 1)* and consequently, the said charge has been admitted by it. However, I note that the *Noticee no. 1* has put the onus of carrying out the said DAS activities completely on the *Noticee no. 5* by putting forward a feeble argument in its defence, that vide email dated April 11, 2017, the client has been misinformed with respect to his understanding that DAS is offered by the *Noticee no. 1* through their F&O service whereas the truth is that the *Noticee no. 5* had been offering DAS

to its clients through *Noticee no. 1's* F&O platform and the directors of the *Noticee no. 5* were misrepresenting to potential clients that the *Noticee no. 1* is offering DAS services.

33. With respect to the aforesaid submissions of the *Noticee no. 1*, it is already demonstrated above that the *Noticee no. 1*, being a Trading Member, is responsible for all actions of the *Noticee no. 5*, being its Authorised Person. Even if the clients are brought by the *Noticee no. 5*, the *Noticee no. 1* needs to define the business conduct *vis-à-vis* respective clients and cannot turn a blind eye on the conduct of the *Noticee no. 5* especially when it is incumbent on the *Noticee no. 1* to monitor the conduct of the *Noticee no. 5*, as it is undisputedly using the platform provided by the *Noticee no. 1*. The records further show that the alleged activity was not confined to any specific period which could come to the rescue of the *Noticee no. 1* by way of explaining that it was not aware of the alleged activities or the same were carried out during a specific period at its back without it being aware of it. Rather, the records clearly show that transactions involving big amounts have been credited in the bank account of the *Noticee no. 1* and also securities have been received by the *Noticee no. 1* as investment in the DAS scheme, through which *Noticee no. 1* was guaranteeing assured return and these funds and securities were constantly being accepted and used by *Noticee no. 1* for a sufficient period of time to rule out any possibility of the same being carried out without the knowledge, consent or awareness of the *Noticee no. 1*. Under the circumstances, as observed above, the regulatory framework casts an obligation on the *Noticee no. 1* to monitor the activities of the Authorized Person registered under the Trading Member and such Trading Member is squarely responsible for all the acts of such Authorized Person. At this stage, it is interesting to reiterate that the *Noticee no. 1* has admitted that the DAS was being run by one of its Authorized Persons i.e., the *Noticee no. 5* as well. In view of the aforesaid deliberations and in the absence of any plausible explanation put forward by the *Noticee no. 1*, I find that the charge that *Noticee no. 1* has collected a sum of INR 165.10 Crore from 677 clients across months under its DAS service, stands established which in turn, proves that the DAS was being offered and monies were actually being collected by the *Noticee nos. 1 and 5* in flagrant violation of applicable laws.

34. I note that during the relevant time when the *Noticee no. 1* offered DAS as its investment service/scheme and collected the aforesaid money, it did not have PMS registration from SEBI. The *Noticee no. 1* has submitted that it had also registered itself with SEBI as a PMS provider, however, it never ventured into that business. As per details available on record, I note that the *Noticee no. 1* held PMS registration during the period 2007-2010 however, it cannot be ascertained as to whether any service was provided or not by it and therefore, a benefit of doubt may be given to the *Noticee no. 1* in as much as the *Noticee no.1* has submitted that it had also registered itself with SEBI as a PMS provider, however, it never ventured into that business during the said period. However, there is nothing on record that suggests that the *Noticee no. 1* had sought and obtained registration under the PMS Regulations to carry out PMS activity during the relevant time, when DAS (as one of the

PMS services) was offered to the clients by the *Noticee no. 1*. Further, as noted above, under the Gold plan of DAS, there was no restriction on withdrawal whereas the Platinum plan had a lock-in period of one year with assured return of minimum 12% per annum which is not even disputed by the *Noticee no. 1*. Thus, I hold that the *Noticee no. 1* was engaged in providing the DAS in the nature of PMS therein promising assured returns to clients without even having a registration under the PMS Regulations, 1993.

35. As regards the submission of the *Noticee no. 1* that *Noticee no. 1*'s profile (listing out PMS as one of the offered services) shared with Bank of India, is an old profile that had been submitted to the bank which incorrectly states that the *Noticee no. 1* provided PMS services. Hence, the said profile has no bearing with the issues raised in the SCN and in any event, the same does not prove on standalone basis that the *Noticee no. 1* actually provided DAS. In this context, I note that having already recorded the findings that the *Noticee no.1* has pitched DAS as an investment service to its potential clients and having collected INR 165.10 Crore from 677 clients across several months through the said DAS service, the said contention of the *Noticee no. 1* may at best be treated as just an afterthought exercise to evade the issue which has be rejected having no merit in it.

36. As far as the allegation against the *Noticee no. 4* is concerned that it has also provided DAS to the clients of the *Noticee no. 1*, I note that the SCNs record that the FAR noted another email dated September 29, 2018, whereby a client has drawn a cheque of INR 20 Lakh in favour of the *Noticee no. 4* (i.e., OSSI) and requested the *Noticee no. 1* to start PMS of INR 20 Lakh. The FAR noted certain confirmation-cum-receipts were issued to the clients (who had provided the amounts towards DAS) by the *Noticee no. 4* and it was termed as a loan having variable interest with a repayment of principal amount at the end of one year along with a post-dated cheque.

37. In this regard, I note from Annexure 7.5 of the FAR that the client (Mr. Dhaval Trivedi) had drawn the said cheque of INR 20 Lakh in favour of the *Noticee no. 4* (i.e., OSSI) which was deposited in the specific bank account no. 57500000237831 belonging to the *Noticee no. 4* having specific details such as Bank Branch-Fort, IFSC Code-HDFC0000060. Therefore, it was not possible that the client would have mistakenly deposited the said money in the specific bank account of the *Noticee no. 4* believing that he is depositing the same in the bank account of the *Noticee no. 1*. Also, it is abundantly clear from the aforesaid email that the money deposited in lieu of PMS (DAS Services), was deposited to the specific bank account of the *Noticee no. 4* only and simultaneously a request was also made to the *Noticee no. 1* to start the PMS. Had the money been deposited in the bank account of OSSI by mistake, either *Noticee no. 1* would have intimated the said client about it stating that no such services are being provided by it or the client himself would have requested *Noticee no. 4* to refund the money back to him so that he can deposit the same only in the bank account of *Noticee no. 1*. Given the fact that no such communication was made by either *Noticee no. 1* or the

client, it leads to the unassailable conclusion that the funds were deposited into the account of *Noticee no. 4* deliberately for the purpose of getting DAS services from *Noticee no. 1* only. Considering the aforesaid and the fact that the *Noticee no. 4* is an associate of the *Noticee no. 1*, as the *Noticee no. 2* and *3* who are directors of the *Noticee no. 1*, are also partners in the *Noticee no. 4*, I am of the firm view that all transactions of the *Noticee nos. 4 and 1* certainly have not been at arm's length and considering the above undisputed fact, I find strength in the above findings that the *Noticee no. 1* was very much aware about the unauthorised business of DAS having been carried out on its behalf, in the name and on account of the *Noticee no. 1* only.

38. It is astounding to note that the *Noticee no. 1* has not countered/refuted any of these observations except for merely attempting to dismiss the same by stating that there could be a possibility that an individual/entity being a client of *Noticee no. 1* may also be a lender to the *Noticee no. 4*, and therefore the confirmation cum receipts, is a possibility but could not mean that the *Noticee no. 1* was providing DAS. I therefore find that the response of the *Noticee no. 1 per se* is nothing but a lame attempt to deny the charge without any credible basis or evidence. In any case, the *Noticee no. 1* has accepted that the confirmation cum receipt was issued by the *Noticee no. 4*.

39. The contention of the *Noticee no. 1* that sometimes certain clients have misinterpreted its services as a PMS activity and that such clients were not aware of the fact that the *Noticee no. 1* does not indulge in PMS activity is nothing but a bald submission without any substantive documentary evidence to refute the afore said allegations. It is a matter of admitted fact that the *Noticee no. 1* was registered with SEBI as a PMS provider but claims to have never ventured into that business. Assuming that the said contention of the *Noticee no. 1* that the clients had misinterpreted its service as that of a PMS activity was correct for the sake of argument, it becomes all the more an onerous task for the *Noticee no. 1* to remove the said misinterpretation immediately by clarifying to the said clients that it is not providing any PMS services as perceived by them. This also becomes more important particularly when the *Noticee no. 1* itself admits that it was aware that it is illegal to conduct fund-based activities in the derivatives segment. Given the fact that no such clarification was ever issued by *Noticee no. 1*, I reject all the contentions of the *Noticee no. 1* in this regard including the submission that there is a possibility that the client Mr. Dhaval Trivedi must have mistakenly referred to the *Noticee no. 4* in his email dated September 29, 2018, instead of mentioning about the *Noticee no. 1*, since there are common directors. Hence, I hold that the *Noticee no. 4* alongwith the *Noticee no. 1*(as already established above) have engaged in providing DAS which was in the nature of PMS service while promising assured returns to the clients.

40. The SCNs state that the FAR has observed that some complaints were received by NSE against the *Noticee no. 5* in the month of March 2020 wherein one of the complainants shared 2 emails, one containing a presentation on "Options Advisory Services" as a product and the other containing various attachments including the performance report, consolidated

bills, etc. However, during a review of the email data pertaining to the email ID tejimandi@anugrahsb.com, collected from the laptop of the *Noticee no. 5*, these two specific emails sent to the clients of *Noticee no. 1* were not found present in the said data, suggesting that by that time, the *Noticee no. 5* had already deleted the clients' data of the *Noticee no. 1*, including these two emails, from his mail data on the email server of *Noticee no. 1*. Therefore, it is alleged that the *Noticee no. 5* has aided and abated the *Noticee no. 1* in engaging in providing DAS in the nature of PMS promising assured returns. With respect to the aforesaid allegation, I note that the *Noticee no. 5* has merely contended that the said allegation made against the *Noticee no. 5* in the SCN are false and the same are denied in toto, without even disputing the said factual matrix based upon which, the allegation was levelled against the *Noticee no. 5* in the SCNs. Further, in this respect, it has been noted from the submissions of the *Noticees no. 1 to 3* that it was *Noticee no. 5* that was carrying out the activities of PMS while also promising assured return. Though, the SCN does not specifically alleged that it was the *Noticee no. 5* that was carrying the activities but it proceeds to allege that that *Noticee no. 1* was engaged in the activities of PMS without having proper registration and to carry out the above activities, entities like *Noticees no. 4* and *5* were used. The SCN, in the above context alleges that the *Noticee no. 5*, by deleting the evidences, in the form of data has aided and abetted the *Noticee no. 1* in such unauthorized activities. I have already found above that there is no dispute to the fact of deleting the data relating to the emails of the *Noticee no. 5* from the server of *Noticee no. 1*. It is also not disputed that the contents of the said emails containing presentation on "Options Advisory Services" and the performance report of such unauthorized DAS services, lead to an undisputed observation that the said two emails were sent to the clients for luring them to give their funds and securities to *Noticee no. 1* to avail the services of DAS. Therefore, I am of the view that the allegation of deleting the aforementioned evidence also stands established. Thus, I hold that by deleting its own client data from the server of *Noticee no. 1*, *Noticee no. 5* has aided and abated the *Noticee no. 1* in providing DAS in the nature of PMS while promising assured returns to the clients of the *Noticee no. 1*.

41. In view of the aforesaid discussion and deliberations, I conclude and hold that the *Noticee nos. 1 and 4* have engaged in providing DAS which was in the nature of PMS thereby promising assured returns to the clients without seeking requisite registration under the PMS Regulations. I also hold and conclude that the *Noticee no. 5* has aided and abated the *Noticee no.1* in providing DAS in the nature of PMS thereby promising assured returns to the clients of the *Noticee no. 1*. Thus, I hold that the first issue i.e., whether the *Noticee nos. 1* and *4* have engaged in providing DAS in the nature of PMS promising assured returns to their clients, without having requisite registration from SEBI and whether the *Noticee no. 5* has aided and abated the *Noticee no. 1* by deleting the data pertaining to the PMS activities in this regard is answered in affirmative.

II. ***Whether the Noticee no. 1, a stock broker registered with SEBI, has mis-utilized clients' funds & securities and has not maintained its books of accounts.***

42. Having concluded the first issue in the affirmative, I now move on to examine and record my findings with respect to the aforesaid second issue. I note that the SCNs record as under:

a. Shortfall of Client Funds and Securities as on August 27, 2020

43. As per FAR, the *Noticee no. 1* has debtors amounting to INR 781.43 crore and creditors amounting to INR 298.95 Crore as on August 27, 2020. This is to say that the *Noticee no. 1* had certain instances where clients' balances were positive in its books (i.e. *Noticee no. 1* owed money to these clients) and such positive balances amounted to a total of INR 298.95 Crores in its books of accounts. At the same time, there were clients who were having debit balances in their accounts due to their trading in securities market and such debit balances amounted to a total of INR 781.43 Crores. The potential shortfall after considering the deposits, funded portion of bank guarantees, and bank balance etc. amounted to INR 297.62 Crore which are detailed out as under:

Sr. No.	Particulars	As on 27/08/2020 (₹in crore)
1	Total payables - A	298.95
2	Total cash/ bank balance/funded portion of bank guarantees - B	1.33
3	**Amount misused by Member – C = A-B**	**(297.62)**
4	Amount of Debtors	781.43

44. It is observed from the above table that an amount of INR 298.95 Crores was payable to the clients against the funds of merely INR 1.33 Crores available with the *Noticee no. 1*, thereby implying that the *Noticee no. 1* had already misused client funds to the tune of INR 297.62 Crore as on August 27, 2020.

45. Further, in terms of the FAR, the total value of securities of clients kept in the custody of *Noticee no. 1* amounted to INR 704.75 Crore, whereas the value of securities with the *Noticee no. 1* in its demat account amounted to INR 20.89 Crore only. Consequently, there was shortfall of securities amounting to INR 683.87 Crore, as shown in the Tale below: -

Sr. No	Particulars	Value as on 27/08/2020 (₹in crore)
1	**Securities of creditors – ₹ 270.46 crore (own securities:– ₹17.24 crore)**	**287.70**
2	**Securities of debit balance clients**	**417.05**
	- Up to debit balance	206.82
	- In excess of debit balance	210.23
3	**Total Value of securities– A (S. Nos. 1+2)**	**704.75**
4	**Value of securities as per the holding statements provided by NSDL and CDSL– B**	**20.89**
	Shortfall (C=A-B)	**683.87**

It has been observed that instead of securities worth of INR 704.75 Crore that were required to be available in the Register of Securities (in short 'ROS') (as per the figures reflecting in the reconstructed ROS) of the *Noticee no. 1*, the securities to the tune of INR 683.87 Crore were not available in the reconstructed ROS, as on August 27, 2020. This clearly indicated a substantial shortfall of clients' securities suggesting that the *Noticee no. 1* had misused the clients' securities to the tune of INR 683.87 Crore. From the above table, it is observed that there was a total shortfall of INR 981.49 Crore in value terms (INR 297.62 Crore funds shortfall and INR 683.87 Crore securities shortfall), in the books of *Noticee no. 1* as unearthed by the FAR, indicating a total amount of INR 981.49 Crores of misappropriation of clients' assets by the *Noticee no. 1*.

46. With regards to the shortfall of funds as captured above, I note that the *Noticee no. 1* has submitted that it has taken necessary steps to recover its legitimate dues from its debtor constituents/clients (i.e. those clients having debit balance with the *Noticee no. 1*) by issuing recovery notices to multiple clients amounting to INR 62.71 Crore in the first batch of recovery proceedings. Therefore, the fact that the *Noticee no. 1* has taken remedial steps/measures to plug the shortfall of the funds, I have no iota of doubt in holding conclusively that the said charge of shortfall of funds has been explicitly, albeit indirectly, admitted by it. In any case, the *Noticee no. 1* has not brought on record that any money in this regard has been even recovered. Further, the *Noticee no. 1* has submitted that it was having INR 417.75 Crore worth of securities as of August 27, 2020 on behalf of its debit balance clients which constituted around 33% more than the amount payable to the credit balance clients, which would have provided sufficient headroom as far as meeting the shortfall of funds is concerned. I do not find the said submissions of the *Noticee no. 1* tenable, as the *Noticee no.1* has merely provided computation of funds availability without any supporting documentary material for the same. When examined with the demat statements of the *Noticee no. 1*, as obtained from the Depositories, I find that securities worth of only INR 20.89 Crores were present in the said demat account of *Noticee no. 1* as compared to its own record which was showing that it was holding securities worth INR 704.75 Crores (including securities worth INR 417.75 Crores on behalf of debit balance clients). Also, I cannot lose sight of the fact that the said amount is yet to be realised and falls within the realm of mere possibility (of being recovered) hence, at the best can be described as mere conjectures. Pertinently, as noted above, the INR 20.89 Crore worth securities in the demat account of *Noticee no. 1*, as on August 27, 2020, has already been taken into account while calculating the shortfall of clients' securities as above and therefore that too cannot be used by the *Noticee no. 1* for narrowing the gap of shortfall of clients' funds.

47. At this stage, I can't be oblivious of the fact that the allegation is regarding misutilization of the clients' funds and securities and not the delay in realising the outstanding amount or securities from the debtor clients. To that extent, I see no explanation from the *Noticee no. 1* as far as the allegations pertaining to the misutilization of clients' funds and securities to the

amount mentioned above is concerned. I further can't close my eyes to the plight the *Noticee no. 1* has brought to its client and the present proceedings have been initiated after the *Noticee no. 1* has been declared as "defaulter' and amongst several other serious proceedings against the *Noticee no. 1*, there is also a proceeding going on for the liquidation of the *Noticee no. 1*. Even, the instant proceedings are arising out of the SCN issued in December 2020 and it is now more than two years since the SCN has been issued, however, the *Noticee no. 1* has not been able to show even a semblance of evidence to persuade me that there was no misuse of clients' funds and securities and that it had sufficient balance of funds and securities at its disposal (as on August 2020) to meet the outstanding liabilities. Under the circumstances, the justifications, whatsoever have been advanced by the *Noticee no. 1*, are bald in character having no substance to rely on and therefore not worthy of consideration.

48. It is further noted from page 11 of the FAR that the securities (of the clients) were sold off by ECSL (Clearing Member of the *Noticee no. 1*) to recover the mark-to-market (in short 'MTM') losses which were not obliged/honoured by the *Noticee no 1* as the Trading Member of ECSL. Therefore, in any case, there was MTM obligations to be discharged by the *Noticee no 1* towards ECSL (on aggregate level) as its Clearing Member, and hence, these clients' securities, kept by the *Noticee no. 1* with ECSL as collaterals, cannot be considered as assets of the *Noticee no 1* and thus cannot be taken into account by the *Noticee no 1* in arriving at calculations for shortfall of securities. It is pertinent to note here that the charge against ECSL is not that they should not have sold off those securities, rather the charge is that they should have done due diligence prior to selling off the securities so that securities of credit balance clients ought to have been protected and not sold off by ECSL. It is to be noted here that no action has been taken against ICICI Bank Limited, another Clearing Member of the *Noticee no.* 1, as ICICI Bank Limited was found to have done proper due diligence while selling the securities only pertaining to the debit balance clients of *Noticee no. 1*.

49. I note that the *Noticee no. 1* has submitted that the *Noticee no. 5* was the ultimate beneficiary as its directors and KMPs had opened trading accounts between 2017-2020 with *Noticee no. 1* and have received more than INR 100 Crore as pay-out. I note that the said submission has no bearing on the charge of shortfall of clients' funds and securities against *Noticee no. 1* as the directors and KMPs of the *Noticee no. 5* were all clients of the *Noticee no. 1* only. Further, it is also not the case of the *Noticee no. 1* that these clients had been given any undue preferential treatment or these clients have taken recourse which was otherwise not available to other clients. Also, I note that the argument of the *Noticee no. 1* in respect of crystallization of accounts is vague in nature as it has failed to specify the particular accounts, which according to it were not crystallized and have been wrongly identified as crystallized by the auditor. In any case I note from para 6.3 of the FAR that crystallisation of accounts has been done, basis which shortfall of funds and securities was calculated, and such crystallization has not been disputed by the *Noticee no. 1*. Thus, I do not agree with the

submissions made by the *Noticee no. 1* in his regard and hold and conclude that there was indeed huge amounts of shortfall of clients' fund and securities as on August 27, 2020.

b. <u>Payments made to clients having running debit balance at any point in time during the revised review period – April 2019 till August 27, 2020</u>

50. The SCNs record that a total amount of INR 134.15 Crores was paid to 1500 clients when they had a debit balances, immediately before the said payment were made through bank accounts to them, details of which are reproduced as follows:

Particulars	Amount (₹in cr.)
Total pay-outs	685.28
Total amount paid to clients when they had a debit balance immediately before the bank payment was made	134.15

51. I note that the *Noticee no. 1* has admitted to have made payments to clients in spite of debit balances in their financial ledgers, for which it has taken a plea that the payments were made to those debit balance clients in the light of longstanding relationships with these debit clients. Due to persistent insistence of the *Noticee no. 5* and the pandemic situation, certain clients' requests for pay-outs were acceded to. However, to the best of the *Noticee no. 1's* knowledge the same has been repaid by certain clients and in any event, the *Noticee no. 1* had not benefitted by giving these pay-outs to the clients so as to cause any loss to any third party client.

52. I observe that the violation alleged in the SCNs was that the *Noticee no. 1* was making payments to certain clients, when, in fact, it had to recover funds from these clients due to the debit balances in their ledgers, as maintained in the books of accounts of *Noticee no. 1*. In order to make payments to these clients, the *Noticee no. 1* has utilized the funds lying with it that belonged to other clients, thereby indicating misuse of creditor's funds. Thus, it becomes apparent that the payments made to such debit balance clients were arising from some contractual agreement between the *Noticee no. 1* and these clients and possibly linked to the DAS with assured return scheme because of which it had to make such pay-outs to such debit balance clients. It is immaterial if such payments made to clients having running debit balance has caused loss to any third party or has resulted into any benefit to the *Noticee no. 1* as the mere fact that the said act of paying to the debit balance clients was committed, itself constitutes the violation of law and code of conduct governing the activities of a stock broker. The claim that some of such clients have repaid the amount also does not come to aid of the *Noticee no. 1* especially when, in support of its claim, the *Noticee no. 1* has not cared to submit any documentary evidence. Thus, I find and conclude that the *Noticee no.1* has made payments to clients running debit balances with it, which in any case is also admitted by it, and these payments have been made in utter disregard for the applicable provisions of SEBI Act, Regulations framed thereunder as well as the applicable circulars issued by SEBI governing the conduct of Trading Members of the stock exchanges.

c. Misstatement of debtors and creditors

53. I note from the SCNs that Journal Voucher ('JV') entries in clients' ledgers were present which had a corresponding entry in the general ledger of Vigil Credits and Mercantile Private Limited (hereinafter referred to as "**Vigil**"), which is a related party of the *Noticee no.1*. These JVs formed part of the data collected from the *Noticee no.1* as on May 02, 2020. However, as per the data subsequently collected on August 27, 2020, this ledger did not have any such JVs which could correspond to entries in the ledger of Vigil, which indicates that the *Noticee no.1* had misstated the books of accounts using these JVs. Further, on comparative review of Vigil's ledger with clients' ledgers of *Noticee no. 1*, it was noted that JV entries were passed over the whole examination period extending upto May 02, 2020, affecting both debtors and creditors balances as on April 30, 2020. The summary of balance of Debtors and Creditors as submitted by the *Noticee no.1* as on April 30, 2020 *vis-à-vis* recalculated balances, calculating these balances sans JV entries, is as follows:

Particulars	**Debtors (₹in cr.)**	**Creditors (₹in cr.)**	**Net Debtors / (Creditors)**
As per balances submitted by ASBPL	46.11	33.43	12.68
Recalculated balance by removing JVs from calculation	521.30	279.12	242.19
Difference in balances	**475.19**	**245.69**	**229.51**

54. I note that the *Noticee no.1* has not categorically denied the aforesaid charge, however, it has submitted that no proof or evidence has been produced to substantiate the fact that the *Noticee no. 1* has misstated its books of accounts through its JV entries as alleged. In any event, the *Noticee no.1's* balance sheets and the alleged JV entries were not audited and hence cannot be taken as substantive evidence to prove misstatement of book of accounts by the *Noticee no. 1*. However, to such a protest, it is noted that the *Noticee no.1* has not explained anything on the details of these adjustments along with the formal communications made by/to clients accepting/requesting such adjustments and has also not provided a justification for each JV. The JVs do not have a complete narration which give details of any such adjustment. Hence, in order to reinstate the potential actual client balances, the impact of the JVs passed through Vigil affecting client balances, were negated and the figure was arrived at which is captured in the aforesaid table. Therefore, having failed to explain the adjustments made in JVs despite being given opportunities to explain the same and in the absence of appropriate narrations in those JVs, I am of the firm view that the onus is on the *Noticee no.1* to prove that bogus JVs have not been passed by it. I find that the *Noticee no. 1* has miserably failed to discharge the said burden. Even at this stage also, instead of offering its plausible explanation to refute those findings related to misstatement of debtors and creditors as explained in the FAR and captured in the SCNs, the *Noticee no. 1* is asking for evidence in this regard. The entire conduct of *Noticee no. 1* on this issue goes on to show that it has no explanation to offer and has scant regard for any regulatory framework. Thus, I

find and conclude that the *Noticee no. 1* has misstated about debtors and creditors in its books of accounts and resultantly has not maintained its books of account.

d. Misstatement of client ledgers available with the clients

55. The SCNs state that the FAR has observed that complaints were received against the *Noticee no. 1* by NSE and the ledgers were also provided by the complainants. It is observed that adjustments entries were passed in the back office of the *Noticee no.1* which were not visible in client ledgers. The following is the summary of 11 such sample clients where discrepancies in closing balances were observed:

Sr. No.	Client code	*Closing balance as on April 30, 2020 (Debit) / Credit*		
		As per trial balance submitted by ASBPL (₹)	As per recalculated balance (after reversing Vigil JVs) (₹)	As per client submission (₹)
1	TM2182	0.12	48,27,833	49,60,559
2	TM1744	(2,83,499.34)	16,90,839	30,41,470
3	TM307	(1,987.20)	(15,89,939.20)	47,05,052.60
4	TM308	(1,37,604.52)	5,54,864.22	1,95,49,241.52
5	TM1775	(28,939.99)	64,48,661	66,53,583
6	TM1296	(29,936.69)	22,76,713	36,53,122
7	TM2284	653	3,43,29,977	3,59,10,038
8	ASB040	288	28,95,219	2,60,060
9	TM1815	2,98,139.88	40,94,401.85	35,45,636
10	TM699	(4,06,904.34)	(5,13,585.17)	20,96,473.83
11	TM1858	3,69,916.72	16,20,354	25,19,450

56. I note that when the said ledgers of the aforesaid clients were compared with the back office data of the *Noticee no. 1*, it was found that the *Noticee no. 1* has reported deflated opening balance of clients by dividing the opening balance by 100 or by 20 in some ledgers in the back office, whereas higher balances were shown in ledgers given to the clients. For instance, the details of one of the clients (Client TM2284) for the month of April 2020 are shown below:

Details of opening & closing balance of client TM2284 for the month of April 2020

Particulars	Amount as per ASBPL's Trial B **above** submitted (A) (₹)	Amount as per Client ledger submitted by the client (B) (₹)	Difference (B-A) (₹)
Opening balance as on April 01, 2020	5,28,976.89	5,28,97,689.00	5,23,68,712.11
Closing balance as on April 30 2020	653.00	3,59,10,038.00	3,59,09,385.00

Details of debits and credits of Client TM2284 for the month of April 2020

Particulars	Amount as per ASBPL's data (A) (₹)	Amount as per Client ledger submitted by the client (B) (₹)	Difference (B-A) (₹)
Debit entries	2,60,58,666.81	2,58,51,924.00	-2,06,742.81
Credit entries	2,74,11,036.65	88,64,273.00	-1,85,46,763.65

57. From the above, I have no hesitation in holding and concluding that the *Noticee no. 1* was misstating the balances in the books of accounts and at the same time, was not reporting these adjustment entries to the clients in the clients' ledgers. The same is also admitted by the *Noticee no. 1*, as the *Noticee no. 1* has not denied that inter-client adjustments were not done by it. Further, the purpose behind having such checks and balances is to ensure that the conduct of the market intermediary is in conformity with the accepted behaviour in the securities market. Therefore, it becomes immaterial if from such act, any benefit has accrued to the entity or any loss is caused to the clients. The mere fact that the said unwarranted conduct was exhibited by the registered market intermediary which is otherwise prohibited, is good enough to hold it responsible for the said act. The impact of the said acts either on it or on the clients is not a criterion at all in deciding the violation. Thus, I reject all the contentions made by the *Noticee no. 1* in this regard and hold and conclude that the *Noticee no. 1* has misstated client ledgers available with the clients

e. Multiple discrepancies in data management and reporting

58. I note that the SCNs record various instances of discrepancies in data management and reporting done by the *Noticee no.1*. the details as recorded in the SCNs are as follows:

i. Misrepresentation of financials of the *Noticee no. 4*: The FAR noted that vide email dated October 22, 2019, balance sheet of the *Noticee no. 4* as on March 31, 2019 was found. It was observed that there were two worksheets – one named "Bal Sheet Original" and other named "Bal Sheet for ITR". Based on the above, it was observed that the liability towards the *Noticee no. 1* to the extent of INR 66.87 Crore has not been disclosed in the ITR filed for the assessment year 2018-19.

ii. Discrepancies in certain accounts in Trial balance: The opening balance of account of Vigil, as per Trial Balance provided by the *Noticee no. 1*, was Nil, whereas the ledger extracted from back office showed a balance of INR 91.04 Crore in the said account. Similar discrepancies were also noted in the closing balance of Vigil as on April 30, 2020.

iii. Transaction in ledgers not appearing in Bank book and Bank statement: Based on ledger review of Sri Sai Sadhana Investment, a bank receipt entry was noted on March 31, 2020 amounting to INR 15.66 Crore. However, the same was not appearing in the bank book and bank statement of the *Noticee no. 1* till April 30, 2020.

iv. Transaction appearing in Bank book submitted by ASBPL, not present in back end data and bank statements: Based on the review of bank books submitted by the *Noticee no. 1*, it was noted that the *Noticee no. 1* has received INR 40 Crore from Edelweiss on April 01, 2020 and the same was transferred to Sri Sai Sadhana Investments on the same day. However, while verifying these transactions from the back-end data of the *Noticee no. 1*, it was noted that these entries were not present in

the back-end data of the *Noticee no. 1* and the same were not reflected in the bank statement of the *Noticee no. 1*.

59. I observe that the *Noticee no.* 1 is seen to have suppressed the amount of creditors and debtors by passing multiple JV entries in the client ledgers as is evident from the above observation. The *Noticee no. 1* has therefore been found to have misstated the balances in the books of accounts and at the same time did not report these adjustment entries to the clients in their client ledgers. For example, the opening balance of account of Vigil, as reported by the *Noticee no.* 1 in the trial balance was NIL whereas the ledger extracted from the *Noticee no.* 1's back office records indicated that the opening balance was INR 91.04 Crore. The reflection of those transactions which appear in the ledgers but were not appearing in the Bank books/Bank statements and transactions that were appearing in Bank books/Bank statements but not seen in back-office data and bank statements, is a clear indication of the misstatement of the number and value of Debtors and Creditors *inter alia* amounting to falsification of records.

60. In response to the aforesaid charges, the *Noticee no. 1* has submitted that there is a possibility that there is a discrepancy between the books of the *Noticee no. 1* and its back end data. Thus, I note that the *Noticee no. 1* has unconditionally admitted that the aforesaid observations regarding discrepancies are correct but has tried to justify the said discrepancies taking the plea of COVID 19 pandemic stating that due to numerous challenges being faced during the pandemic, accountancy errors happened. However, I note that till date, the *Noticee no. 1* has not shown any willingness to resolve the discrepancies and put the reconciled ledger/accounts before me. This only goes on to show that the aforesaid argument is just a feeble attempt to come out of the rigour of the aforesaid categorical findings and therefore the said contentions is rejected being not tenable. Hence, I hold and conclude that the *Noticee no. 1* has failed to maintain its books of accounts. In view of the discussions and deliberation as captured in the preceding paragraphs, I have to hold and conclude that the *Noticee no. 1*, a stock broker registered with SEBI, has mis-utilized clients' funds & securities and has also not maintained its books of accounts as per applicable provisions. Thus, I find that the second issue i.e., *whether the Noticee no. 1, a stock broker registered with SEBI, has mis-utilized clients' funds & securities and has not maintained its books of accounts*, is also answered in affirmative.

III. ***Whether the Noticee nos. 1, 4 and 5 have violated the relevant provisions of SEBI Circulars, the SCR Rules 1957, the SEBI Act read with the PMS Regulations, 1993, the Stock Broker Regulations and the PFUTP Regulations, 2003 as applicable to them.***

61. I have already held and concluded above that the *Noticee nos. 1 and 4* were engaged in providing DAS Services which was in the nature of Portfolio Management Services, and were also promising assured returns to its clients. Such DAS services were being provided without obtaining requisite registration under SEBI (Portfolio Managers) Regulations, 1993.

It has also been held above by me that the *Noticee no. 5* has aided and abated the *Noticee nos. 1 and 4* in the activities of DAS scheme. It is further held and concluded in the preceding paragraphs that the *Noticee no. 1* has mis-utilized clients' funds and securities and not maintained its books of accounts as mandated under applicable provisions. The *Noticee no. 1* has been found to be involved in falsification of records and offering assured returns through a scheme run as "Derivatives Advisory Services", in an unauthorized manner, directly as well as through its associated entity i.e., the *Noticee no. 4*. The *Noticee no. 1* has promised "assured returns" to mobilise clients' money knowing fully well that every investment in the market is subject to market risks and the investments made by the client can also run into losses. Thus, the claims/representations made by the *Noticee no. 1* were blatantly misleading and were made only to allure the investors to avail the DAS, being offered by the *Noticee no. 1* again knowing fully well, that fund based activities are not allowed in derivative segments to a Trading Member. The above discussed misleading representations made by the *Noticee no. 1* are therefore, deceptive and fraudulent in nature and are well covered within the definition of "fraud" defined under regulation 2(1)(c) of the PFUTP Regulations, 2003. The *Noticee no. 1* was well aware of the fact that all such transactions that resulted in shortage of clients' funds and securities, are a serious breach of trust of its fiduciary responsibilities owed to its clients/investors. The entire gamut of activities of the *Noticee no. 1*, namely, maintaining incorrect client ledgers, falsifying balance sheet, falsifying records of clients' account statements and other books of accounts, were thus fraudulent in nature resulting in causing damage to the interest of thousands of innocent clients. Therefore, I find that the *Noticee no. 1* along with the *Noticee no. 4*, through their DAS activities, have indulged in manipulative, fraudulent or deceptive schemes and deceived its clients while dealing in securities market.

62. In view of the aforesaid discussion, I hold and conclude that the *Noticee no. 1* has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/ P/2016/95 dated September 26, 2016, Rules 8(3)(f) & 15 of the SCR Rules 1957, Section 12(1) of the SEBI Act, 1992 read with regulation 3 of the PMS Regulations, 1993, regulation 17 of the Stock Broker Regulations, 1992 and regulation 4(1), 4(2)(f) and 4(2)(p) of the PFUTP Regulations, 2003. The *Noticee no. 4* has violated Rule 8(3)(f) of the SCR Rules, 1957, Section 12(1) of the SEBI Act, 1992 read with regulation 3 of the PMS Regulations, 1993 and regulation 4(1), 4(2)(f) and 4(2)(p) of the PFUTP Regulations, 2003. Further, I hold that the *Noticee no. 5* has violated Rules 8(3)(f) of the SCR Rules 1957, Section 12(1) of the SEBI Act, 1992 read with regulation 3 of the PMS Regulations, 1993.

63. By violating the aforesaid Circulars, rules, regulations framed under the SEBI Act, 1992 and also aforesaid provisions of the SEBI Act, 1992, I find that the *Noticee no. 1* has further violated Clauses A (1), (2), (3), (4) & (5) and B (6) of Code of Conduct as provided under Schedule II, read with Regulation 9 of the Stock Broker Regulations.

64. To put the aforesaid discussions in perspective, I note that a stock broker acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which it operates. Such a stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings, and is expected not be motivated purely by prospects of financial or personal gain. The aforesaid Code of Conduct prescribed for stock brokers also casts an obligation on a stock broker to act with due skill, care and diligence in the conduct of all its business and not to indulge in manipulative, fraudulent or deceptive transactions or schemes. It is equally incumbent on the stock broker to abide by all the provisions of the SEBI Act and the rules, regulations issued by the Government, SEBI and the Stock Exchanges from time to time as may be applicable to it.

65. I further note that the SSCN dated July 23, 2021 has alleged that the *Noticee no. 4* (OSSI) has violated Clause A(3) of the Code of Conduct as specified in Schedule II read with regulation 9 of the Stock Broker Regulations, 1992. I observe that Clause A(3) provides that a stock broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distort the market equilibrium or to make personal gains. Therefore, it is clear that for the application of the said Clause, the *Noticee no. 4* must be a stock broker having a certificate of registration issued by SEBI. However, the details available on record do not indicate that the *Noticee no. 4* is registered with SEBI as a stock broker. At the same time, it is an undisputed fact that the *Noticee no. 4* is a close associate of the *Noticee no. 1*, who is indeed a stock broker. In view of the aforesaid and having regard to the pre-condition of being a stock broker for invocation of the said Clause I hold that the charge of violation of Clause A(3) of the Code of Conduct as specified in Schedule II read with regulation 9 of the Stock Broker Regulations, 1992 is not made out against the *Noticee no. 4*. Hence, I am inclined to accept the contention made by the *Noticee no. 4* in this regard and exonerate it from the said charge.

IV. ***If the answers to the aforesaid issues are in affirmative, then what was the role of the directors and partners of the Noticee nos. 1 and 4 namely Mr. Paresh Mulji Kariya (Noticee no. 2) and Ms. Sadhana Paresh Kariya (Noticee no. 3) and what was the role of the directors of the Noticee no. 5 viz., Mr. Anil Gopal Gandhi (Noticee no. 6) and Ms. Riddhi Kalapi Shah (Noticee no. 7)***

66. I have already held and concluded the first three issues in affirmative and therefore now move on to examine the exact role and part played by the *Noticee nos. 2, 3, 6 and 7* and record my findings in this regard. As noted above, The *Noticee no. 2* (Mr. Paresh Mulji Kariya) and the *Noticee no. 3* (Ms. Sadhana Paresh Kariya) are husband and wife and are the designated directors and shareholders of the *Noticee no. 1* i.e., ASBPL. Further, the *Noticee no. 4* (OSSI) is a partnership firm where the *Noticee nos. 2* and *3* are the only partners and consequently, the *Noticee no. 4* is an associate of the *Noticee no. 1* by virtue of *Noticee no. 2* and *3* holding

directorship of the *Noticee no. 1* and also being the partners in the *Noticee no. 4*. Further, Mr. Anil Gopal Gandhi (*Noticee no. 6*) and Ms. Riddhi Kalapi Shah (*Noticee no. 7*) are directors of the *Noticee no. 5* i.e., TMAPL which is a registered Authorized Person of the *Noticee no. 1*.

67. In this regard, I note that the *Noticee no. 1* being a company which is an artificial juristic person and an inanimate legal entity cannot act by itself and it can act only through its individual directors, who are expected to discharge their responsibilities on behalf of the company with utmost care, skill and diligence. Further, in terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things which the company is legally authorised to exercise and do. Therefore, the Board of Directors, being the repository of wisdom and decision making abilities and responsible for the conduct of the day-to-day business of a company, shall be liable for any non-compliance of law and such liability shall be upon the individual directors who comprise the board of the company and are in control of the affairs of the company. In this regard, I would like to refer to the provisions of section 27 of the SEBI Act, 1992 while attributing the contraventions committed by a company to the role played by the Directors of such a company which are placed below:

"***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 provided in this 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 anybody corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm."

68. Thus, as per the SEBI Act, 1992, for the contravention of law committed by a company, apart from the company, the directors of the company who at the time of the said contravention were having knowledge of the said contravention or any negligence on their part has resulted in the said contravention, are also liable for the said contravention of law committed by the company. In this case, from the material available on record, it is

observed that none of the two directors of the *Noticee no. 1* was designated as Managing Director or Executive Director or Independent Director. It is also observed from the material available on record that during the relevant period, the *Noticee no. 1* did not have a CEO or CFO or any other officer who could have been designated as key managerial personnel. Therefore, all the directors of the *Noticee no. 1* i.e., the *Noticee nos. 2 and 3* were practically in charge and were responsible for managing the affairs/business of the *Noticee no. 1*. It is pertinent to note that the *Noticee no. 3*, apart from being a director, was also holding 59% of stake in *Noticee no. 1* whereas the *Noticee no. 2* was holding only 41% shareholding in the *Noticee no. 1* as on May 05, 2020, indicating the fact that, the *Noticee no. 3* was having controlling shareholding in the *Noticee no. 1*. Further, as established above, based on the review of bank books submitted by the *Noticee no. 1*, it was noted that the *Noticee no. 1* has received INR 40 Crore from Edelweiss on April 01, 2020 and the same was transferred to Sri Sai Sadhana Investments on the same day. It is pertinent to note here that the *Noticee no. 3* alongwith the *Noticee no. 2* are again the two directors of Sri Sai Sadhana Investments to which the aforesaid money has been transferred, which further shows that the two were certainly managing the affaires of the *Noticee no. 1* and were aware of all the wrongdoings committed by the *Noticee no. 1*.

69. With regard to role of the *Noticee no. 2*, there is now no dispute at all that he was not only involved in managing affairs at the *Noticee no. 1*, but also has been playing key roles at the *Noticee no. 1*. The *Noticee nos. 2 and 3* have vehemently argued that though the *Noticee no. 3* was a director of the *Noticee no. 1*, she was not involved in the day to day affairs of the *Noticee no. 1* and therefore, no action should be taken against her. In this regard, I note that under Section 166 of the Companies Act, 2013 certain duties have been spelt out with respect to discharge of the obligation by directors of a company. Perusal of this statutory provision would indicate that a director of a company shall exercise his/her duties with due and reasonable care, skill and diligence, and shall exercise independent judgment. In the context of the above stated statutory provision dealing with the duty of a director under law, the above noted director i.e. the *Noticee no. 3* was supposed to discharge her functions as a director of the *Noticee no. 1* with due diligence on account of the fiduciary obligation inherently thrusted upon her under law *vis-à-vis* the company, especially when she is the majority shareholder of the *Noticee no. 1* having a controlling stake in its affairs. I deem it appropriate here to refer to the observations of the Hon'ble Supreme Court of India in the matter of *N Narayanan vs Adjudicating Officer,* SEBI decided on April 2, 2013, wherein the Court observed as follows:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant

of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

70. It is a well settled law that the position of a director of a company is embodiment of a fiduciary relationship with the company and a director is under a legal obligation to observe utmost good faith towards the company in any transaction done with it or on its behalf. Therefore, under the facts and circumstances of the present matter, looking at the statutory and fiduciary obligation that the above mentioned *Noticee no. 3* director was expected to discharge her fiduciary duties towards the *Noticee no. 1* company, she cannot plead complete ignorance about the unauthorised DAS activities carried out in the nature of PMS by the *Noticee no. 1* (of which she held the position of a director) or the resultant fraudulent activities the *Noticee no. 1* has indulged into.

71. Another contention of the *Noticee no. 2 and 3* is that one of the essential ingredients of the fraud and fraudulent conduct, independent of the PFUTP Regulations, 2003 is *mens rea* which in turn has to be supported with a motive to commit such fraud. In this regard, I would like to refer to the observations of the Hon'ble Supreme Court in the case of *Kanaiyalal Baldev Bhai Patel vs. SEBI [2017]143 SCL 124 (SC)(DoD-20/09/2017*) in which, while dealing with the definition of "fraud" as provided under the PFUTP Regulations, 2003, the Apex court observed as under:

> *"...The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required. "*
>
> The Hon'ble Supreme Court have further observed that:
>
> *"...14. To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in Securities and Exchange Board of India vs. Kishore R. Ajmera (supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified. "*

72. Therefore, as laid down by the Hon'ble Supreme Court, the test to examine as to whether the alleged "fraud" has been actually committed is a matter of preponderance of probability. As the contravention under the securities laws are of civil nature, it *de hors* the requirement

of establishment of '*mens rea*', as opposed to the requirement under the provisions of other laws including criminal law under the provisions of Indian Penal Code, 1860. There, the establishment of *mens rea* is not essentially required to be proved for penal action against contravention of the securities laws. Therefore, it is sufficient to establish that the acts of entities are contrary to the provision and/or in violations of the rules and regulations provided governing the transactions of securities. It is not an imperative requirement to establish the intent with which the alleged acts were performed. In addition to the above, having gone through the records in the instant matter, it is strongly observed that it was a deliberate act by the *Noticee nos. 1 and 4* to provide DAS without having requisite registration under the PMS Regulations, 1993 and more so, promising assured returns to their clients, knowing fully well that the investments in securities markets are subject to market risks, and returns on such investments are dependent on so many factors which are ever changing and dynamic in nature and therefore, are beyond the control of any stock broker.

73. In the context of the present proceedings, it is reiterated that the PFUTP Regulations, 2003 and the PMS Regulations, 1993 have been formulated with the main objective of prohibiting fraud in the securities markets and regulating portfolio management activities so as to safeguard the interests of investors and hence, registration of portfolio management activities with SEBI has been made mandatory. The PMS Regulations, 1993 *inter alia*, seek to create a structure within which Portfolio Managers will have to operate and the said regulations make them duly accountable for the portfolio management services rendered by them by requiring the Portfolio Managers to comply with various criteria prescribed in the relevant provisions of the PMS Regulations, 1993, as the same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.

74. As recorded above, besides being the directors of *Noticee no. 1*, the *Noticee no. 2 and 3* were also the partners of the *Noticee no. 4*. In this regard it is worth noting that as per Section 25 of Indian Partnership Act, 1932 every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. Therefore, in the absence of any document showing that the *Noticee no. 3* was indeed acting as a dormant/sleeping partner and had no role in day-to-day management of the *Noticee no. 4*, I find that on the basis of the material available on record before me and based on the submission of the *Noticee no. 3*, there is no dispute that the *Noticee* no. *3* was undeniably a partner in the *Noticee no. 4*. Under the above undisputed facts and further considering the same that she was a partner in *Noticee no. 4* and also, along with *Noticee no. 2*, is a major shareholder and a director in the *Noticee no. 1* and she along with *Noticee no. 2* are certainly liable for acts, deeds and misdeed of the *Noticees no. 1 and 4.*

75. Now moving onto the roles played by the *Noticee nos. 6 and 7*, I note that they are directors of the *Noticee no. 5* (which is an Authorised Person of the *Noticee no. 1*) and are alleged to be responsible for the actions of the *Noticee no. 5* in terms of the deliberations captured in

respect of the directors in the preceding paragraphs. In this regard, as noted above, I note that the *Noticee no. 6* has filed replies on behalf of the *Noticee no. 5* and himself wherein he has merely denied the allegations levelled against the *Noticee no. 5* without any documentary evidence. Thus, I find that having recorded a finding that the *Noticee no. 5* has aided and abated the *Noticee no. 1* in carrying out DAS in the nature of PMS and in promising assured returns without having requisite registration, it leads to the inescapable conclusion that the *Noticee no. 6* is responsible for the conduct of the *Noticee no. 5* which being a juristic person, cannot act on its own.

76. As far as the role of the *Noticee no. 7* in the affairs of the *Noticee no. 5* is concerned, I note that the entire thrust of the arguments put by the *Noticee no. 7* is that she was a namesake director and was not involved or engaged in any business decisions or any issues regarding the *Noticee no. 5* and that the *Noticee no. 6* along with the assistance of Mr. Kalapi Shah (husband of the *Noticee no. 7*) was running the business and affairs of the *Noticee No. 5*. It has been emphasised that she has no expertise or domain knowledge pertaining to the securities market. It was the *Noticee no. 6* and her husband i.e. Mr. Kalapi Shah, who were known to each other for quite some time, were basically managing the entire business of the *Noticee no. 5*. It was to fulfil the requirement posed by NSE for *TMAPL* to be an Authorised Person of the *Noticee no. 1* that she was made a director along with the *Noticee no. 6*, since her husband being a citizen of United States of America was not eligible to be nominated as a director of *TMAPL*. She was otherwise employed somewhere else on full time basis and was not associated with managing the business of *TMAPL* in any manner. In support of the above, several documents including complaints filed and statement recorded before other authorities have been filed to show that she was not involved in managing the affairs of *TMAPL*. She has also relied upon heavily on an email of the *Noticee no. 6*, wherein he has admitted that the *Noticee no. 7* had not participated and had no role in activities relating the business of the *Noticee no. 5*.

77. In this respect, my attention is drawn to the documents filed by *Noticees* including the reply of the *Noticee no. 7* that on several documents including the complaints of investors, the name of Mr. Kalapi Shah (husband of *Noticee no. 7*) has been mentioned as one of the persons involved in managing the affaires of the *Noticee no. 5*. However, as these documents have been filed in the course of the present proceedings and further, considering the fact Mr. Kalapi Shah is not a noticee before me, it may not be appropriate for me to deal with his role in the instant proceedings. It has been argued before me that various proceedings under other laws have been initiated against ASBPL and are pending before various other authorities, and in those proceedings also *Noticee no. 7* has not been made a party. In this regard, it is a trite law that each proceeding has to be disposed of on its own merit based on the appreciation of materials and evidences on record.

78. Adverting to the case of *Noticee no. 7* in the present proceedings, the submissions that have been vehemently advanced by the *Noticee no. 7* are that there is no adverse observation in the SCN or any averment made specifically against her to suggest her responsibility for the alleged fraudulent activities, be it related to *TMAPL* or be it pertaining to the *Noticee no. 1*. There are nothing substantial *qua* her which could be enough even on preponderance basis to hold her liable for the allegation of deletion of 2 emails from the email account of the *Noticee no. 5* and /or for aiding and abetting the violations committed by the *Noticee no 1*. In order to advance her innocence, it has been submitted that considering that she had no role in managing the affairs of *Noticee no. 5*, not only the examination of SEBI but also other investigating agencies including the Forensic Auditor, have not recovered any device from her possession or gathered any evidence which could be considered as a material within the eyes of law to proceed against her. Having gone through the records and having perused her submission carefully, it is observed that the *Noticee no. 6*, in his complaint dated November 04, 2020 to EOW has stated that *Noticee no. 7* was not involved in the day to day activities of *Noticee no. 5*. At the same time, it is also observed from the statements of some of the complainants, who had filed criminal complaint against the *Noticee nos. 1 and 5*, that all of them have uniformly stated in their complaints that it was the *Noticee no. 6* who had approached, induced and allured them to invest through *Noticee no. 1*. Further perusal of those complaints and statements shows that none of them has specifically stated or attributed any role to *Noticee no. 7*. It has further been submitted with supporting evidence that even in the examination of NSE and in the complaint filed before the Metropolitan Magistrate, Mumbai (Criminal Case No. 305/SW/2021), the *Noticee no. 7* has not been implicated as an accused, as nothing incriminating against her was unearthed in the course of examination so as to be observed as material to proceed against her.

79. The fact remains that *Noticee no. 7* was not involved in day to day activities of *Noticee no. 5* nor it can be said that she had played any proactive role in the entire alleged activities in any manner. Rather, the examination reveals that it was the *Noticee no. 6* along with the husband of the *Noticee no. 7*, who were instrumental in managing the affairs of the *Noticee no. 5* and had joined hands with other *Noticees* in perpetrating the alleged activities. In addition to the above, it is also brought to my notice that though *Noticee no. 7* remained associated, albeit passively, with *Noticee no. 5* for a substantial period of time (approx. 15 years), however, there is nothing on record or otherwise, which could show that she has drawn any monetary benefit of any nature including salary during the said long period of her association with the *Noticee no. 5*. Entire records narrate only a solitary instance of transaction when an amount of INR 3,00,000/- was received by her in an account that she holds jointly with her husband Mr. Kalapi Shah. Regarding this, she has contended that it was remuneration paid to Mr. Kalapi Shah who was working and associated with business of the *Noticee no. 5* and the funds were transferred to her joint account, however, it was not intended to be paid to her but to her husband. Moreover, it has been emphasized that she is an Engineer by profession and

was in full time employment at a software company until 2015. Based on the above, it has been vehemently canvassed before me to establish that she was not involved in day to day functioning of *Noticee no. 5* and was made a director of *Noticee no. 5* by her husband.

80. While the aforesaid arguments/submissions have their own merit for consideration, at the same time, I note certain facts from the materials on record, which *inter alia* have not been disputed viz; *Noticee no. 7* is a signatory to the Memorandum of Association and Article of Association of *Noticee no. 5*; She has signed on the undertakings submitted by *Noticee no. 5* to NSE declaring it as 'fit and proper'; She has also signed on Trading Member and Authorized Person Agreements dated February 16, 2019 with *Noticee no. 1*; She is also a signatory to shareholding pattern submitted by *Noticee no. 5* to NSE wherein she is shown as one of the two shareholders of *Noticee no. 5*.

81. Thus, I cannot lose sight of the fact that *Noticee no. 7* was a signatory to important and material documents which were submitted by *Noticee no. 5* with various authorities. At the same time, she has been admittedly a director of *Noticee no. 5* for a long period of more than 15 years. Further, it is not the case of *Noticee no. 7* that she was a non-executive director or an Independent Director of *Noticee no. 5*. At best, her case is that she was only a 'namesake director' and was 'filling-in' for her husband, however, the said contentions are not sufficient within the four corners of law to fetch complete exoneration to her. There is no position called 'namesake director' under any law including the provisions of the Companies Act, 2013. In the end, taking a holistic view of the matter and after having considered the above factual positions, and at the same time, having considered the fact that she was in a full time employment as an Engineer till 2015, and was not involved in daily operations of *Noticee no. 5*, the materials on records do not indicate her direct implication in the alleged activities pertaining to the deletion of emails from the account of the *Noticee no. 5*. Further, considering the statement of the complainants including the statement of *Noticee no. 6* and other materials specific to the matter, it is observed that the allegations and evidence so far brought on record are not adequate enough to bring home the allegations successfully against *Noticee no. 7*. Under the circumstances, based on the materials produced during the proceedings, I am inclined to grant benefit of doubt to the *Noticee no. 7*, however, at the same time, considering the undisputed facts pertaining to her as mentioned at paras 79 and 80 above, it is necessary that she is strongly warned to be careful in her activities pertaining to dealings in securities market or while getting associated with any entity in any manner that deals in securities market.

82. Before parting with the proceedings, while appreciating the aforesaid findings and discussions holistically, it is now held beyond any doubt that the *Noticee no. 1* directly as well as through an associated entity (the *Noticee no. 4*), was engaged in an activity under the name and style of DAS and was also indulging in promising assured returns to its clients, which is an abuse of the certificate of registration granted to it to act as a stock broker because the

Noticee no. 1 was engaged in fund based activities which is not a permitted activity to be carried out as a stock broker and while doing so, it has committed a series of violations which are grave and repetitive, exposing client's assets to huge risk. The above conduct of the *Noticee no. 1* has not only breached the ethical standards but also shows the kind of unscrupulous acts it was engaged in to make financial gains at the cost of the gullible clients. The *Noticee no. 5* is a registered Authorized Person of the *Noticee no. 1*. The regulatory framework casts an obligation to monitor the activities of the Authorized Person registered under the Trading Member, and such Trading Member is squarely responsible for all the acts of such Authorized Person. The *Noticee no. 1* is seen to have suppressed the amounts of creditors and debtors by passing multiple JV entries in the client ledgers as is evident from the aforesaid factual discussions. The *Noticee no. 1* has therefore been found to have misstated the balances in the books of accounts and at the same time, did not report these adjustment entries to the clients in their client ledgers. Hence, after a comprehensive analysis of all the issues in the earlier paragraphs, I have no hesitation in holding that the acts and conduct of the *Noticee no. 1* as narrated in detail in the preceding paragraphs are sufficient, not only to qualify as "unfair trade practice' but also those acts & conducts have led to further acts of dealing in securities in a fraudulent manner thereby breaching the PFUTP Regulations. Therefore, I find that the conduct of the *Noticees no. 1 to 4* as elaborated above falls, squarely into the label of a fraudulent, prohibited and unfair trade practices under the provisions of the PFUTP Regulations.

83. Having already held in the preceding paragraphs that the *Noticees* have violated the applicable provisions of the SEBI Act, SCR Rules, 1957, the PMS Regulations, the PFUTP regulations, Code of Conduct under the Stock Broker Regulations and SEBI Circulars, I note that the *Noticees* are liable for:

    i. Issuance of appropriate directions under Sections 11B (1), 11(4) and Section 11(1) of the SEBI Act, 1992 read with Section 12A of the Securities Contracts(Regulation) Act, 1956, and

    ii. Imposition of monetary penalty under Sections 11B(2) and Sections 15HA of the SEBI Act, 1992 read with Section 23H of the Securities Contracts(Regulation) Act, 1956

84. The provisions of the aforesaid sections are reproduced below for ease of reference:

The SEBI Act, 1992

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.

The Securities Contracts (Regulation) Act, 1956

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.

85. Keeping in view the aforesaid findings that the *Noticees no. 1 to 4*, having committed fraudulent acts and unfair trade practice, I find that the *Noticees no. 1 to 4* are liable for imposition of monetary penalty under Section 15HA of the SEBI Act, 1992. At the same time, having committed fund based activities and by falsifying books of accounts and other records, *Noticees no. 1 to 4* have violated the provisions of Rules 8(3)(f) and 15 of the SCR Rules, 1957 and, therefore, are liable for imposition of monetary penalty under Section 23H of the SCR Act. In this regard, the factors as provided under Section 15J of the SEBI Act, 1992 are being taken into due consideration while adjudging the quantum of penalty to be levied on the *Noticees no. 1 to 4* in this order.

DIRECTIONS AND PENALTIES

86. Having carefully considered the materials available on record and the submissions advanced by the *Noticees* and following the principles of preponderance of probabilities, I hold that the charges relating to violation of the provisions of the SEBI Act, SCR Act, SCR Rules, 1957, PMS Regulations, Stock Broker Regulations and various circulars as brought out in detail in this order are found to have been substantially established. At this stage, I am also cognisant about the directions issued against the *Noticees* vide SEBI Order dated November 13, 2020 which are still in operation. Hence, considering the gravity of the violations found established on the *Noticees no. 1 to 6*, I am of the view that the directions qua *Noticees no. 1 to 6*, issued under SEBI Order dated November 13, 2020 inter alia deserve to be continued for the purpose of proceedings pending before NSE. At the same time, to meet the ends of justice, it will be sufficient to pass following additional directions, while exercising the powers conferred upon me under Section 11(1), 11(4), and 11B(1) read with Section 19 of the SEBI Act and Section 12A(2) of the SCR Act:

i. The *Noticee no. 1* (Anugrah Stock & Broking Private Limited), the *Noticee no. 2* (Mr. Paresh Mulji Kariya), the *Noticee no. 3* (Ms. Sadhana Paresh Kariya) and the *Noticee no. 4* (Om Sri Sai Investments) are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of 7 years from the date of this Order.

ii. The *Noticee no. 5* (Teji Mandi Analytics Private Ltd.) and the *Noticee no. 6* (Mr. Anil Gopal Gandhi) are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of 5 years from the date of this Order.

iii. The *Noticee no. 2 (*Mr. Paresh Mulji Kariya), the *Noticee no. 3* (Ms. Sadhana Paresh Kariya) and *Noticee no. 6* (Mr. Anil Gopal Gandhi) are restrained from associating with a listed entity, a material subsidiary of a listed entity or a SEBI registered intermediary in any capacity, either directly or indirectly, in any manner whatsoever, for a period of 5 years from the date of this Order.

iv. The following penalty is levied on the *Noticees*:

Under Section	**Anugrah Stock & Broking Private Limited**	**Mr. Paresh Mulji Kariya**	**Ms. Sadhana Paresh Kariya**	**OSSI**
Section 15HA of the SEBI Act, 1992	INR 2 Crores	INR 1 Crore	INR 1 Crore	INR 1 Crore
Section 23H of the Securities Contracts (Regulations) Act, 1956 for Running Fund Based Activity	INR 1 Crore	INR 20 Lakhs	INR 20 Lakhs	INR 20 Lakhs
Section 23H of the Securities Contracts (Regulations) Act, 1956 for falsifying Books of Accounts of ASBPL	INR 1 Crore	INR 20 Lakhs	INR 20 Lakhs	-

87. The proceeding initiated against the *Noticee no. 7* (Ms. Ridhi Kalapi Shah) by way of SCN dated December 15, 2020 is disposed of in terms of observations mentioned at para 81 above.

88. It is further clarified that during the period of restrain the existing holding of securities, including the units of mutual funds of *Noticees no. 1 to 6* shall remain under freeze. At the same time, it is also clarified that any direction, issued vide the present order or SEBI Order dated November 13, 2020 shall not come in the way of any proceedings being conducted by NSE with respect to default by ASBPL and payment of money and /or delivery of securities to the clients/investors of ASBPL.

89. The penalty shall be paid by the *Noticees no 1 to 4* within a period of forty-five (45) days, from the date of receipt of this order. Payment can be made by way of crossed demand draft drawn in favour of "SEBI–Penalties remittable to Government of India", payable at Mumbai, or by online payment by following the below path at SEBI website www.sebi.gov.in

ENFORCEMENT →Orders →Orders of Chairman/Members →Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html and selecting Type of Category as 11B orders.

90. The *Noticees no. 1 to 4* shall forward the demand draft or the details/confirmation of penalty so paid through e-payment to "The Division Chief, Division of Post Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051" in the format given in the Table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

91. The obligation of the *Noticees no. 1 to 6*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees no. 1 to 6*, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

93. A copy of this order shall be served upon the *Noticees*, the Stock Exchanges, the Registrar and Transfer Agent, the Banks and the Depositories for ensuring compliance with the above direction.

Sd/-

DATE: February 28, 2023
PLACE: MUMBAI

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA