

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/HP/2020-21/9410-9411]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

1) Narayan Securities Limited (PAN: AAACN2728F) having address at 1/7, 3rd Floor, East Patel Nagar, Opposite Metro Pillar No. 178, New Delhi, Delhi - 110008
Email Id – nspl@narayansecurities.com, rameshsaraf@narayansecurities.com

2) Galaxy Infraprojects & Developers Private Limited (PAN: AACCG7477N)
having address at Shop No. F-40, 1st floor, Raghuleela Mega Mall, Near Poisar Bus Depot, S. V. Road, Kandivali (West), Mumbai – 400067
Email Id - galaxyinfradev2007@gmail.com

In the matter of Narayan Securities Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, '**SEBI**'), initiated adjudication proceedings against Narayan Securities Limited (hereinafter referred to as, the '**Noticee 1**') and Galaxy Infraprojects & Developers Private Limited (hereinafter referred to as, the '**Noticee 2**') pursuant to investigation in the captioned matter. Noticee 1 and 2 are collectively referred to as '**Noticees**'.
2. Adjudication proceedings have been initiated against,

- a) Noticees 1 and 2 under section 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, '**SCRA**') for alleged violations of Section 16 of SCRA read with SEBI Notification S.O.184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.
- b) Noticee 1 under section 15HB of SEBI Act, 1992, (hereinafter referred to as, '**SEBI Act**') and Section 23D of SCRA for alleged violations of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 (**1993 circular**), SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 (**2008 circular**), SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (**2016 circular**), SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular CIR/MRD/DMS/28/2010 dated August 31, 2010 (**2010 circulars**) and Clauses A (2) and (5) of the code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as, '**Brokers Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated March 13, 2020 to inquire into and adjudge under Section 15HB of SEBI Act and Section 23D and Section 23H of SCRA, the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated *vide* order dated March 30, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/HP/10922/2020 dated June 19, 2020 (hereinafter referred to as '**SCN**'), was issued to the Noticees in terms of Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**Adjudication Rules**'), to show cause as to why an inquiry should not be held and penalty not be imposed against

the Noticees in terms of Section 15HB of SEBI Act and Section 23D and Section 23H of SCRA for the aforesaid alleged violations.

5. The allegations levelled against the Noticees in the SCN are summarized as below:
6. SEBI conducted an investigation in the matter to ascertain the role of Noticee 1 in the alleged misappropriation of securities (including Dewan Housing Finance Limited - DHFL) for the period from August 01, 2018 to October 10, 2018 (**Investigation Period**). However, wherever deemed necessary, reference has been made to outside this period.
7. A complaint was lodged by Noticee 2 against Noticee 1, for alleged misappropriation of 40,00,000 shares of DHFL transferred by Noticee 2 to Noticee 1. In September 2018, Noticee 1 had huge exposure in DHFL in derivatives segment at NSE and had also deposited client securities as collateral with Clearing Member, Globe Capital Markets Ltd. (GCML). The sharp fall in the share price of DHFL (from Rs 650 to 250 approximately) led to margin calls by GCML to Noticee 1. The failure to pay the margin by Noticee 1 led to selling of collateral by GCML.
8. Considering the shortfall and precarious financial condition of Noticee 1 as reported by NSE and GCML during a meeting convened by SEBI, both Exchange and clearing member were asked to monitor the development on day to day basis and also submit report on the events which led to Noticee 1 in meeting its pay in obligations. It was observed that there was a shortfall of securities worth Rs.34.27 crores and shortage of funds amounting to Rs.10.25 crores as on October 04, 2018. Subsequently, Noticee 1 settled securities and fund payable to its clients under NSE supervision. The status of settlement as on January 30, 2019 was as follows:
 - a) Noticee 1 *vide* email dated October 25, 2018 stated that they had made payments to 391 clients through bank transfers/cheques amounting to Rs. 20.17 lakh.

- b) Further, settlement of 220 clients' funds of Rs 5.74 crore had been settled under NSE supervision, as intimated by Noticee 1 vide email dated January 30, 2019. However, the funds of 2 clients could not be settled as there was debit balance in their group accounts.
- c) Status of settlement of securities by Noticee 1, provided by NSE on January 30, 2019 was as follows:

Status of settlement of securities by Narayan Securities Limited as on January 30, 2019						
Particulars	Target		Completed		Pending	
Particulars	Nos.	Amount (Rs. Cr)	Nos.	Amount (Rs. Cr)	Nos.	Amount (Rs. Cr)
Credit balance clients	73	1.42	73	1.42	0	0
Debit balance clients	107	2.24	94	1.79	13	0.45
TOTAL	180	3.66	167	3.21	13	0.45

- d) Further, the settlement of securities of 8 out of 13 clients was pending for various reasons such as inactive ISIN, closure of demat a/c, no demat a/c, whereas in case of 5 clients the debit balance was in excess of securities.

9. Inspection and action by NSE against Noticee 1:

- a) It was observed that NSE conducted an inspection of Noticee 1 covering a period from April 1, 2017 to October 10, 2018 which included the aspects of failure to settle the dues of GCML and the shortfall in funds and securities.
- b) The terminal of Noticee 1 had been disabled in all segments and Noticee 1 had applied for total surrender of membership on March 27, 2019.
- c) Subsequently, NSE's Member & Core Settlement Guarantee Fund Committee (MCSGFC) (erstwhile MSC/DAC) passed an order against Noticee 1 levying penalty of Rs. 50,00,000 on September 09, 2019, application for surrender of

membership of Noticee 1 was kept in abeyance for a period of 3 years from the date of order and the trading terminals of Noticee 1 moved to disabled mode.

- d) Thereafter, Noticee 1 *vide* its letter dated December 9, 2019 sought review of MCSGFC decision dated September 9, 2019 and had also requested for personal hearing. Accordingly, the aforesaid matter was scheduled for hearing before the MCSGFC in its meeting to be held on January 28, 2020.

10. **Background of Noticee 1**

Noticee 1 is registered with SEBI as Stock Broker in equity segment, Interest Rate Derivative Segment, Currency Derivative Segment and Equity Derivative Segment of NSE (Registration number: INZ000176139), Registered Stock Broker in Equity Derivative Segment and Currency Derivative Segment of BSE (Registration number: INZ000176139), Registered Stock Broker in Currency Derivative Segment and Interest Rate Derivative Segment of MSEI (Registration number: INZ000176139) and Registered Depository Participant of CDSL IN-DP-CDSL-411-2007.

Management of Noticee 1

Details of Directors of Noticee 1 is as under:

S.No.	Name	Designation	Date of Appointment	PAN
1	Ramesh Chandra Saraf	Director	10/11/1992- till date	AARPS2666K
2	Aditya Saraf	Director	31/01/2009- till date	AWWPS1249K
3	Ashish Saraf	Director	11/07/2015- till date	AKJPS4920L
4	Prashant Saraf	Director	31/01/2006- till date	AGMPS5742H
5	Indresh Bansal	Director	23/10/2013- till date	AEIPB8703M

Shareholding Pattern of Noticee 1

Sr. No.	Name	No of Shares	% of holding
1	Ramesh Chandra Saraf	443000	18.44
2	Ashish Saraf	245000	10.2
3	Aditya Saraf	300000	12.49

4	Madhu Saraf	273000	11.36
5	Hina Saraf	190000	7.91
6	Vantika Saraf	10000	0.42
7	Hanuman Prasad Saraf HUF	75000	3.12
8	Ramesh Chandra Saraf HUF	100000	4.16
9	Ashish Saraf HUF	50000	2.08
10	Search Finvest Pvt. Ltd.	330000	13.74
11	Guardian Portfolio Consultants P. Ltd	376500	15.67
12	Panchsheel Securities Private Limited	10000	0.41
	Total	2402500	100

11. During the course of investigation, reports were sought from NSE, BSE and MSEI with regard to alleged mis-appropriation of clients' securities and funds by Noticee 1. MSEI confirmed *vide* email dated October 03, 2019 that Noticee 1 had not traded at MSEI during the period April 01, 2017 to October 10, 2018 in any of the segments.
12. It was observed from NSE report that securities received from Noticee 2 were used for purposes other than specified. On verification of transaction statement of own beneficiary account of Noticee 1, it was observed that Noticee 1 has received 40,00,000 shares of DHFL in the month of July 2018 from Noticee 2. Noticee 2 traded only once on August 06, 2018 and sold 1,50,000 shares of DHFL. In derivative segment, no trade was observed by Noticee 2. Funds pay out amounting to Rs. 9.28 crores was given to Noticee 2 on August 9, 2018, August 21, 2018 and August 24, 2018.
13. It was further observed that Noticee 1 pledged some of the aforesaid securities with NBFCs - Aditya Birla Finance Ltd, Edelweiss Retail Finance Ltd and Globe Fincap Ltd to raise funds for their own purpose. Noticee 1 had also transferred securities to Ridhisidhi Financial Advisory Pvt. Ltd. which is an associate company and rest of shares were placed with GCML for meeting margin obligation of Noticee 1.

14. It was also observed that Noticee 1 sold 19,00,000 shares of DHFL amounting to approximately Rs.66.50 crores pertaining to Noticee 2 through its clearing member GCML on September 21, 2018.

15. On verification of register of securities and financial ledger of clients, it was observed that Noticee 1 sold client securities placed with clearing member to meet obligations of proprietary account and its associates. Securities of 23 clients were sold amounting to Rs. 28.28 crores between September 27, 2018 to October 4, 2018 without informing the respective clients and taking their consent. It was further observed that Noticee 1 made journal entries in the client ledgers regarding this sale and reduced the quantity and amount in the register of securities. However, Noticee 1 simultaneously passed credit journal entries in the financial ledger of clients without any actual payment of funds to the client.

16. The details of client wise amount of securities sold by Noticee 1 are as under:

Sr. No.	Client code	Client Name	Amount (Rs.)
1	NAR1471	Surinder Kaur Sethi	10,35,43,670
2	NAR1527	Gurleen Kaur Sethi	3,15,72,196
3	CRS130	Ridhisidhi Financial Advisory Pvt Ltd	2,56,11,561
4	NAR0133	Surya Shakti Resources Pvt Ltd	2,37,84,000
5	CMS54	Manisha Sureka	1,68,43,328
6	NAR0248	Avyaan Capital Private Limited	1,59,95,263
7	CKC21	Kailash Chandra Saraf & Sons Huf	1,34,85,498
8	CPB70	Pawan Kumar Bajaj Huf	93,41,987
9	CAS95	Amit Saraf Huf	66,71,056
10	CRC01	Ramesh Chandra Saraf & Sons Huf	64,62,412
11	CAS72	Ashish Saraf (Huf)	59,89,048
12	CAS11	Aditya Saraf	55,33,082
13	CKS09	Ashish Saraf	41,78,542
14	NAR0824	Ramesh Chandra Saraf	31,38,485
15	CHS08	Hina Saraf	25,90,320
16	CAS98	Aditya Saraf (Huf)	22,40,678

Sr. No.	Client code	Client Name	Amount (Rs.)
17	CVS62	Vantika Saraf	21,78,300
18	CHS51	Hanuman Prasad Saraf Huf	18,08,846
19	CPA13	Panchsheel Securities Pvt. Ltd.	15,24,470
20	CSK96	Sanju Kumari	3,60,183
21	CRB15	Ravi Prakash Bardia	18,000
22	CRM05	Raj Kumari	7,104
23	CTA01	Taneja Alka	5,106
		Total	28,28,83,136

17. Based on the available UCC records of 5 clients, it was observed that these clients had given POAs for securities to Noticee 1 for meeting payin/settlement and margin obligation. However, Noticee 1 misused the securities belonging to these clients by using them for meeting its own obligations/obligations of other clients and thereby misused the POAs of these clients.

18. On account of the aforesaid misappropriation of clients' securities, a shortfall in the availability of clients' securities was observed as on October 10, 2018. On comparison of Register of Securities (ROS) with holding statement of beneficiary accounts, securities lying with clearing member, GCML and securities pledged by Noticee 1 with Bank/NBFCs as on October 10, 2018, it was observed that out of Rs. 24.25 crores securities payable by Noticee 1, securities amounting to Rs. 16.85 crores were not available with Noticee 1. The details are as per table below:

Particulars	Amount (Rs.in crores)
Value of Securities as per ROS (Proprietary- Rs. 9.46 crores, Client- Rs. 14.79 crores) (A)	24.25
Securities available with Noticee 1	
Value of securities available with clearing member as per their statement- Rs.9.88 crs after adjusting amount of Rs.9.88 crs blocked by the clearing member (B)	NIL
Value of securities pledged with NBFCs and Bank - Rs.13.68crs after adjusting amount of Rs.8.35 crs blocked by Bank/ NBFCs towards loan liability (C)	5.33
Securities available in beneficiary accounts (D)	2.07
Total securities available with TM E= (B+C+D)	7.40
Shortfall of Securities (F= A-E)	16.85

19. On verification of trial balance dated October 10, 2018 and other records submitted during inspection, it was observed that Noticee 1 had client payables amounting to Rs. 35.68 crores against which they had funds of Rs. 5.06 crores available in their bank accounts/with their clearing member and with the Clearing corporation/Exchange. Thus, Noticee 1 had a shortage of Rs. 30.62 crores payable to their clients. The Details of non-availability of client funds are as per below table:

Particulars	Amount Rs. (in cr.)
Client payables (A)	35.68
Funds available with Noticee 1	
Deposit available with clearing member (Rs.10 crs) after adjusting amount blocked by clearing member (Rs.10 crs) (B)	-
Bank balance as per Bank statement of member (C)	0.06
Amount available with Exchange/Clearing Corp. (D)	5.00
Total funds available (E= B+C+D)	5.06
Non availability of funds (F= E-A)	-30.62

20. Further, details of the submission with respect to funds made by Noticee 1 under weekly submission of Enhanced Supervision data for the week ended August 31, 2018 and September 28, 2018 are as under:

Date	Total End of the day balance in all Client Bank Accounts A	Collateral deposited with Exchanges in form of Cash and Cash Equivalents B	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) C	Difference D= A+B-C
31-Aug-18	9,82,916	12,40,69,889	12,44,84,016	5,68,789
28-Sep-18	35,91,805	4,74,75,000	12,64,00,097	-7,53,33,291

21. From the above, it was observed that as on August 31, 2018, Noticee 1 reported client payables of Rs.12.44 crores as against funds worth Rs.12.51 crores reported as available with Noticee 1; whereas as on September 28, 2018, Noticee 1 reported client payables of Rs.12.64 crores as against funds worth Rs.5.10 crores reported

as available with Noticee 1. Thus, Noticee 1 reported a shortfall of Rs.7.53 crores to meet its client payables.

22. Thus, Noticee 1 failed to ensure that the funds available in the client bank/s together with balances available with clearing member and funds with clearing corporation are not less than the funds payable to the client at all times as prescribed by Exchange circular no. NSE/INSP/29096 dated March 11, 2015.

23. On examination of BSE report it was observed that Noticee 1 received 40,00,000 shares of DHFL in the month of July 2018 in its own beneficiary account which were further transferred to Globe Fincap Ltd and pledged with Edelweiss and Aditya Birla. Funds raised from pledging of DHFL shares were being used to meet proprietary obligation of Noticee 1 in derivative segment of NSE which was not in accordance with Point 4.6.3 (d) of Exchange capital market regulation. During joint Inspection, as Inspection area advised by SEBI, detailed working of pledging was done by NSE. Based on verification of stock register, CDSL holding and NBFC pledged securities available with BSE as on 03-10-2018, unavailability of securities and inadequate funds had been observed.

24. *Vide* email dated December 26, 2019 and reminder email dated January 7, 2020, comments were sought from Noticee 1 in relation to the observations in the aforementioned NSE report. Noticee 1 had replied *vide* email dated January 13, 2020 that Noticee 1 had submitted their reply to the show cause notice issued by NSE. Noticee 1 also provided the copy of the said reply. Following are the submissions of Noticee 1 to NSE with respect to violations observed in NSE report:

a) With respect to misuse of securities received from Noticee 2, Noticee 1 submitted that it is a different set of transactions and the shares were transferred off market from the demat account of Noticee 2 to the demat account of company through duly signed delivery instruction slip (DIS) having nomenclature of loan.

- b) With respect to the sale of securities of 23 clients, Noticee 1 submitted that the securities were sold by its clearing member referring it as RMS (risk management system) action and Noticee 1 had given due credit to all the clients whose shares were sold during 27.09.2018 to 4.10.2018 by its clearing member. Further the act of sale of securities (under RMS action) was never objected by any of the constituent as in the financial ledger due credits was passed for which due payment has already been made to them.
- c) With respect to shortfall of funds, Noticee 1 had submitted that it had settled most of the balances of the creditors through memorandum of understanding and there is no shortfall in client funds as on date.

25. Following was observed from report of NSE and BSE and the reply from Noticee 1:

- a) As per the NSE report, Noticee 1 used the securities of Noticee 2 for purposes other than specified.
- b) Noticee 1 had sold client securities placed with its clearing member to meet obligations of proprietary account and its associates. Securities of 23 clients had been sold amounting to Rs. 28.28 crores between September 27, 2018 to October 4, 2018 without informing the respective clients and without taking their consent. Further, it was observed that out of the aforesaid 23 clients, few of them (i.e. Aditya Saraf, Ashish Saraf, Ramesh Chandra Saraf, Hina Saraf, Vantika Saraf, Ashish Saraf (HUF), Aditya Saraf (HUF), Panchsheel Securities Pvt. Ltd., Ramesh Chandra Saraf (HUF), Hanuman Prasad Saraf HUF, Ridhisidhi Financial Advisory Private Limited) were also shareholders/associate to Noticee 1 and hence related to Noticee 1. However, securities of clients (be it related or non-related to broker) should be distinguished from brokers' own securities and cannot be misused by the broker.

- c) It was further observed that major amount of securities were misused by Noticee 1 from the accounts of clients who were not shareholders of Noticee 1. It was observed that securities other than DHFL were also misused by Noticee 1.
- d) Further, Noticee 1 made journal entries in the client ledgers regarding these sales and reduced the quantity of securities in the respective client's ROS and credited their financial ledgers for the sale without any actual payment of funds to the client. Thus, Noticee 1 misappropriated the client securities for its own purpose and made incorrect entries in the financial ledgers.
- e) Based on the available UCC records of some clients it was observed that these clients had given POAs for securities to Noticee 1 for meeting payin/settlement and margin obligation. However, Noticee 1 misused the securities belonging to these clients by using them for meeting its own obligations/ obligations of other clients and thereby misused the POAs of these clients. NSE vide email dated February 12, 2020 provided instances of misuse of such PoA by Noticee 1. The details are as given in table below:

Sr. no.	Name of the client	Date of misuse	Ledger balance of the client as on the date of misuse of PoA (Amt in Rs.)	F&O Segment Obligation (A)	CM Segment Obligation (B)	Settlement and Margin Obligations of the client as on the date of misuse of PoA (C=A+B)	Value of Sec Sold (Amt in Rs.)
1	Ravi Prakash Bardia	01-Oct-18	80,839	Nil	Nil	Nil	18,000
2	Surinder Kaur Sethi	01-Oct-18	Nil	Nil	Nil	Nil	90,47,003
3	Surinder Kaur Sethi	03-Oct-18	91,02,669	Nil	Nil	Nil	6,48,11,311
4	Surinder Kaur Sethi	04-Oct-18	91,02,669	Nil	Nil	Nil	2,96,85,356
5	Gurleen Kaur Sethi	01-Oct-18	Nil	Nil	Nil	Nil	30,30,512
6	Gurleen Kaur Sethi	03-Oct-18	32,37,222	Nil	Nil	Nil	2,56,44,770
7	Gurleen Kaur Sethi	04-Oct-18	32,37,222	Nil	Nil	Nil	28,96,914

- f) It was observed that as on August 31, 2018, Noticee 1 reported client payables of Rs.12.44 crores as against funds worth Rs.12.51 crores reported as available with Noticee 1, whereas, as on September 28, 2018, Noticee 1 reported client payables of Rs.12.64 crores as against funds worth Rs.5.10 crores reported as available with Noticee 1. Thus, Noticee 1 has reported a shortfall of Rs.7.53 crores to meet its client payables.
- g) It was further observed that on October 10, 2018, Noticee 1 had client payables amounting to Rs. 35.68 crores against which Noticee 1 had funds of Rs. 5.06 crores available in its bank accounts/with its clearing member and with the Clearing corporation/Exchange. Thus, Noticee 1 had a shortage of Rs. 30.62 crores payable to its clients.
- h) The aforesaid shortage of clients' funds with Noticee 1 implied that Noticee 1 had misutilised clients' securities and funds.

26. In view of the above, it was alleged that Noticee 1 had misappropriated the clients' securities and funds and hence violated SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI circular no. MRD/DoP/SE//Cir-11/2008 dated April 17, 2008, SEBI circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI circular CIR/MRD/DMS/13/2010 dated April 23, 2010 and CIR/MRD/DMS/28/2010 dated August 31, 2010. Further, Noticee 1 failed to adhere to code of conduct in respect of due skill, care and diligence and obligations prescribed through circulars of SEBI and hence violated Clauses A (2) and (5) of the code of conduct prescribed for Stock brokers as specified under Schedule II of Regulation 9 of Brokers Regulations.

27. A complaint was lodged by Noticee 2 on October 05, 2018 with CDSL with regard to transfer of 40,00,000 shares of DHFL to Noticee 1. Noticee 2 claimed that they had transferred 40,00,000 equity shares of DHFL to Noticee 1 for the purpose of selling the same in the open market. Noticee 2 had received sale advise of only 1.5 Lacs shares, the balance 38.5 Lacs shares of DHFL were lying with Noticee 1. However,

demat statement of Noticee 2 was not correct by not disclosing balance 38.5 Lacs shares of DHFL. Noticee 2 had requested CDSL to restore the aforementioned 38.5 lacs shares in their account.

28. In reply, CDSL *vide* email dated October 09, 2018 replied to Noticee 2 that 40 Lacs shares of DHFL were debited from demat account of Noticee 2 on the basis of Delivery Instruction Slip (DIS) submitted by Noticee 2. Further, non-receipt of sale proceeds of shares and selling of shares is broking related activities and does not fall under the purview of depository. Hence, CDSL requested Noticee 2 to approach the concerned stock exchange.

29. Subsequently, on October 09, 2018 CDSL forwarded the aforesaid complaint to SEBI and mentioned that said complaint is not under purview of depository. Brief report was sought from NSE on aforesaid complaint. The same was submitted by NSE on January 23, 2019. Following was observed from the report submitted by NSE:

- a) Noticee 1 received 40,00,000 shares of DHFL worth Rs.243.40 crores in the month of July 2018 from Noticee 2. The said shares were misappropriated as under:
 - i. 15,75,000 shares were pledged with NBFCs – Aditya Birla Finance Limited (ABFL), Edelweiss Retail Finance Limited (ERFL) and Globe Fincap Limited (GFL) to raise funds for own purpose by Noticee 1, of which 12,75,000 shares were sold by these entities.
 - ii. 5,00,000 shares were transferred to associate company of Noticee 1 and client of Noticee 1, M/s. Ridhisidhi Financial Advisory Pvt. Ltd.
 - iii. 19,00,000 shares were placed with the Clearing Member, GCML for meeting margin obligation.

- b) During September expiry, Noticee 1 and his associate clients suffered a loss of approximately Rs. 150 crore in F&O segment due to huge positions taken in the scrip of DHFL by them. Due to fall in the prices of DHFL on September 21, 2018,

to fulfil the pay-in obligation of MTM loss, on the request of Noticee 1, Clearing Member - GCML sold securities worth Rs.115.25 crores (including 19,00,000 shares of DHFL worth Rs.66.5 crores) lying as collateral with them.

30. It was observed that 40,00,000 shares of DHFL were transferred by Noticee 2 in the month of July 2018 to Noticee 1 through off market route. The alleged misappropriation of shares by Noticee 1 is given as under:

Received from client	Quantity received	Transferred to	Quantity transferred
Galaxy Infraprojects & Developers Private Limited (1205120000050892)	40,00,000	Globe Capital Market Limited	19,00,000
		Aditya Birla Finance Limited	7,00,000 *
		Globe Fincap Limited	3,50,000
		Edelweiss Retail Finance Limited	5,25,000
		Ridhisidhi Financial Advisory Pvt. Ltd.	5,00,000
		Client beneficiary account-Noticee 1	25,000
TOTAL	40,00,000	TOTAL	40,00,000

*Includes 1,50,000 shares of DHFL transferred by Noticee 2 to Noticee 1, which were subsequently transferred by Noticee 1 to NBFC, Aditya Birla on July 2, 2018. Thereafter these 150000 shares were unpledged on August 6, 2018 and transferred to Noticee 2, who has sold the said shares on the same day through Noticee 1.

31. It was observed that at the time of the aforesaid transfer of 40,00,000 shares of DHFL i.e. July, 2018, Noticee 2 was only having a DP account with Noticee 1, the Depository Participant. Subsequently, on August 06, 2018 Noticee 2 registered as a client of Noticee 1, the stock broker and unique client code NAR1900 was allotted to them.

32. Further, DIS slips pertaining to aforesaid transfer was submitted by CDSL (as uploaded by DP i.e. Noticee 1). In the consideration column of DIS, the remark was "Loan". Noticee 2 was specifically asked to provide the reason behind giving shares as "Loan" to Noticee 1. In response, Noticee 2 submitted that *"The Company had transferred 40 Lacs shares through off market to Narayan securities limited for "sale" and not as a "Loan". In connection with the same, we would like to state that the*

term "Loan" is not mentioned in the DIS slip and the same is attached for your ready reference". It was observed from the DIS slips submitted by Noticee 2 that the consideration column was blank.

33. CDSL was asked to provide their comments on the aforesaid mismatch in the consideration column of the DIS (having same numbers) submitted separately by Noticees. CDSL replied that *'It seems that some of the information on DIS like date, total instruction issued (In words only), reason code, signature of the BO, counter BO name etc. was separately captured by DP/client on their respective copy of DIS'*.
34. It was observed that Noticee 2 had transferred 40,00,000 shares of DHFL (From DP-ID12051200, CLIENT ID- 00050892 to DP-ID12051200, CLIENT ID- 00000627) to Noticee 1 in its proprietary account in the month of July 2018. Noticee 2 did not have client-broker relationship with Noticee 1 at the time of the aforementioned transfer of shares. Subsequently, on August 06, 2018 Noticee 2 became registered as a client with Noticee 1. Hence, there was no client-broker relationship between Noticee 1 and 2 when 40,00,000 shares of DHFL were transferred by Noticee 2 to Noticee 1 and that too to the proprietary account of Noticee 1.
35. With regard to aforesaid off market transfer, Noticee 1 submitted that 40,00,000 shares of DHFL were received from Noticee 2 as 'loan'. However, Noticee 1 neither provided the formal agreement nor provided the extracts of books of accounts with regard to aforesaid loan. Hence, the submission of Noticee 1 that 40,00,000 shares of DHFL were received as 'loan' is not correct. Further, Noticee 2 also failed to provide any formal agreement with regard to aforesaid transfer of 40,00,000 shares.
36. Therefore, transfer of 40,00,000 shares of DHFL by Noticee 2 to Noticee 1 was an off market transfer between Noticees through a private arrangement and there was no mis-appropriation of client's securities by Noticee 1 under a client-broker relationship with respect to the aforesaid 40,00,000 shares transferred by Noticee 2.

37. Further, Noticee 2 was asked to provide reason behind transfer of such large quantity of shares to Noticee 1. In response, Noticee 2 submitted that *“The shares were intended to be sold to encash the investment for future business opportunities”*. The transfer of 40,00,000 shares of DHFL by Noticee 2 to Noticee 1 was an off market transfer between two entities through a private arrangement. The transaction statement of Noticee 2 obtained from depositories showed that the said shares were being held by Noticee 2 for a long period viz. prior to January 01, 2017 and were transferred during the period from July 02, 2018 to July 16, 2018 as given in the table below:

Date	Qty
02/07/2018	500000
02/07/2018	500000
02/07/2018	500000
10/07/2018	500000
10/07/2018	500000
10/07/2018	500000
16/07/2018	1000000
Total	40,00,000

38. There was no negative announcement made by DHFL during July 17, 2018 to August 16, 2018. Further, out of the said 40,00,000 shares, only 1.5 lacs shares were sold in the market from the account of Noticee 2.

39. *Vide* emails dated December 06 and 19, 2019, Noticee 2 submitted the following:

- a) 40,00,000 shares were transferred to Noticee 1 with an understanding of these shares to be sold in open market and the resultant proceeds to be given to Noticee 2. However, out of the total shares given, the proceeds of only 1,50,000 shares were transferred to Noticee 2.
- b) On failure to honor the commitment of transferring the balance proceeds from sale of shares, Noticee 2 has repeatedly asked Noticee 1 to transfer the balance shares back to its other beneficial demat accounts, *vide* emails dated August 30

and 31, 2018, September 01 and 22, 2018, February 19, 2019 etc. Further, on account of aforementioned issue, Noticee 2 has also raised the issue with the complaints section of CDSL *vide* email dated October 05, 2018 asking for restoration of unauthorized debits in their DP account maintained with Noticee 1.

- c) The shares were intended to be sold to encash the investment for future business opportunities.
- d) There was no agreement entered between the Noticees.
- e) Noticee 2 had transferred 40,00,000 shares through off market to Noticee 1 for “sale” and not as a Loan. In connection with the same, Noticee 2 stated that the term “Loan” is not mentioned in the DIS slip.
- f) In addition to the above, Noticee 2 had also registered a complaint against Noticee 1 with SEBI Scores, bearing registration no. SEBI/MH19/13439/D/1.

40. While the said 40,00,000 shares were transferred in the month of July 2018, and Noticee 2 had received the sale proceeds of only 1,50,000 shares from Noticee 1 which were sold by Noticee 1 on August 6, 2019, however, Noticee 2 lodged the complaint to the Depository (CDSL) much later on October 05, 2018 which was approximately after three months from the transfer of shares. Further, the emails by Noticee 2 to Noticee 1 for transfer of the unsold shares were sent only from August 30, 2018, approximately 2 months after the transfer. From the UCC details of Noticee 2 as obtained from BSE, it was observed that Noticee 2 was registered as client with six trading members. Instead of trading through any of these trading members, Noticee 2 transferred 40,00,000 shares to Noticee 1 in its proprietary account (who was not trading member of Noticee 2 at that point of transfer of shares). Since the aforesaid off market transfer was significant, alert was generated by CDSL. In response to alert generated by CDSL, Noticee 1 had sought explanation from Noticee 2 regarding the alert generated by CDSL. Further, a complaint was lodged by Noticee 2 on SCORES for the aforesaid issue on December 06, 2019. The said

complaint was lodged by Noticee 2 only after SEBI sought information from Noticee 2 with regard to transfer of 40,00,000 shares to Noticee 1. Hence, Noticee 2 made no effort for at least two months to get the consideration amount from Noticee 1 with respect to the transfer of 40,00,000 shares.

41. Noticee 1 was asked to provide reason behind shares received from Noticee 2 through off market route and the details of the consideration paid/cost of acquisition and relationship with Noticee 2. Noticee 1, *vide* email dated December 27, 2019 replied that 40,00,000 shares were received as loan from Noticee 2, though no formal agreement was entered/executed but on DIS, purpose of transfer was clearly mentioned as loan and the value of the shares was the consideration. After transfer of shares for Loan, Noticee 2 approached Noticee 1 for opening a trading account on August 06, 2018. Subsequently, Noticee 2 instructed Noticee 1 to sell 1.5 lakh shares out of 40,00,000 shares given towards Loan as Noticee 2 was in need of the funds.

42. The aforesaid issue of transferring 40,00,000 shares by Noticee 2 to Noticee 1 also was placed before MCSGFC. With regard to securities received as "Loan" by Noticee 1, MCSGFC observed that while Noticee 1 submitted that the securities were received from Noticee 2 not in the capacity of client, but as a loan; however, Noticee 1 had failed to record the same as loan in its books and the said shares were received from Noticee 2 as a registered client of Noticee 1. Hence, the said submission of the Noticee 1 was not correct as per MCSGFC.

43. While Noticee 1 has claimed that 40,00,000 shares of DHFL were received as Loan from Noticee 2, it also submitted that no formal agreement was executed between the Noticees with regard to the aforesaid "Loan". *Vide* email dated December 30, 2019, Noticee 1 was specifically asked to provide extracts of its books of accounts wherein securities received from Noticee 2 was shown as Loan, and a reminder mail was also sent on January 06, 2020. However, Noticee 1 failed to provide requisite information/document. Since, Noticee 1 neither provided the formal agreement nor provided the extracts of books of accounts with regard to aforesaid loan, it was

alleged that the submission of Noticee 1 that 40,00,000 shares of DHFL were received as 'loan' was not correct. Noticee 1 was also asked to provide proof of payment of consideration by Noticee 1 to Noticee 2 with regard to the transfer of the aforesaid 40,00,000 shares. However, Noticee 1 failed to provide any proof of payment.

44. On examination of the Bank statements of Noticee 2 (a/c nos. as per UCC) for the period from June 01, 2018 to October 10, 2018, it was observed that there were only credit entries for fund received against 1,50,000 shares. Based on the submissions made by the Noticees, it was observed that Noticees have not provided any proof of payment of consideration for transfer of 40,00,000 shares (except 1,50,000 shares) through off market route during July 2018. Hence, it was alleged that Noticee 1 (being transferee (s)/buyers) had not paid the consideration to Noticee 2 (being transferor/seller) for off market receipt of shares.

45. Therefore, it was alleged that Noticees are in violation of Section 16 of SCRA read with SEBI Notification S.O. 184(E) dated March 1, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.

46. The aforesaid alleged violations, if established, make the Noticee 1 liable for monetary penalty under Section 15HB of SEBI Act and Section 23D and 23H of SCRA and make the Noticee 2 liable for monetary penalty under Section 23H of SCRA.

47. The SCN was delivered to the Noticees by email on June 19, 2020. Noticee 1 filed the reply to the SCN vide letter dated August 01, 2020 and September 04, 2020. Noticee 2 filed the reply to the SCN by email on August 01, 2020. Opportunity of hearing was provided to the Noticees through video conferencing. Authorized Representatives (AR) of Noticee 1 attended the hearing on behalf of Noticee 1, while Noticee 2 did not appear for the hearing. Mr. Prakash Shah, Mr. Kushal Shah, Mr. Ramesh Chandra Saraf and Mr. Ashish Saraf appeared for the hearing on September 10, 2020 as AR of Noticee 1. AR of the Noticee 1 reiterated the

submissions made in its reply dated August 01, 2020 and September 04, 2020. *Vide* reply dated September 24, 2020, Noticee 1 filed its additional submissions.

48. The key submissions of the Noticees are summarized as below:

Submissions of Noticee 1:

49. It was alleged in the SCN that Noticee 2 had transferred 40,00,000 shares of DHFL to Noticee 1 through off-market in the month of July, 2018, and that no consideration was paid by Noticee 2 to Noticee 1 for the aforesaid off market transfer of shares. In this respect, Noticee 1 submitted as under:

- a) In July - 2018, Noticee 2 transferred 40,00,000 shares of DHFL in off market in proprietary account of Noticee 1 as a friendly loan. As it was a friendly loan, based on oral understanding, no formal agreement was entered by and between them. The said transfer of shares in off market was to be used for business purpose i.e. proprietary (own) trading of Noticee 1.
- b) As aforesaid, there was an oral understanding between them that the shares will be loaned to Noticee 1 without any compensation to be paid by it. Besides, it was mentioned by Noticee 2 that the shares which are loaned to Noticee 1 can be utilised for taking positions in DHFL.
- c) Relevant provision of SCRA stipulates that there should be consideration between beneficial owners for off market transfer of shares. However, the same does not apply to them, as the shares were transferred in proprietor account of Noticee 1 purely as a loan and no consideration was required to be passed on to Noticee 2. The DIS entered into for the said off market shares also had nomenclature of loan and not for any other purpose. The reason as selected in DIS is 'others'.

- d) Further, Noticee 2 has stated in replies submitted to SEBI that the transfer of 40,00,000 shares of DHFL was for encashment for future business opportunities. This shows that even Noticee 2 had transferred shares in off market keeping in mind the returns that would be earned/generated by utilizing the shares for over a period of time.
- e) At the time of transfer of shares, it did not have broker-client relationship with Noticee 2. It is only in August 2018, Noticee 2 was registered as its client and thereby broker-client relationship got established. Hence, Noticee 2 transferred the shares to it (a Broker) with whom Noticee 2 had no broker-client relationship at the relevant time. Thus, the aforesaid transaction can only be classified as transaction for no consideration i.e. not intended for selling the shares.
- f) In this regard, Noticee 1 relied upon the Order of Hon'ble Securities Appellate Tribunal in the case of Rajendra G Parikh Vs. SEBI (Appeal No 44 of 2009), wherein it was observed as under:
- 'Apart from the bald allegation made in the show cause notice, there is not an iota of material on record to show that these persons formed a cartel or that the promoters of the company were in a way linked with the persons to whom the shares had been transferred in off market transactions. He has not referred to any material which could substantiate these findings nor could it be pointed out to us by the learned counsel appearing for the Board. Merely because promoters transferred the shares to them in off market transaction is no ground to hold that there was a link between the two. Off market transactions are not per se illegal. (emphasis supplied)'*

50. With respect to utilization of 40,00,000 shares of DHFL transferred by Noticee 2, Noticee 1 submitted as under:

- a) Upon receipt of 40,00,000 shares of DHFL in proprietary account of Noticee 1, some of the shares were pledged with NBFC's such as Aditya Birla Finance Ltd, Edelweiss Retail Finance Ltd and Globe Fincap Ltd to raise funds for its business

purpose. Some shares were also transferred to Ridhisidhi Financial Advisory Pvt Ltd, an associate company. Rest of the shares were placed with Globe Capital Market Limited for meeting margin obligation.

- b) Pursuant thereto, Noticee 1 undertook huge exposure in F&O segment in DHFL based on the perception of DHFL in the market.
- c) On September 21, 2018, the share price of DHFL fell by more than 50% in single day. Due to this, Noticee 1 suffered heavy losses in F&O segment. Due to the pay in obligation in F&O segment, the shares of DHFL were sold by the Clearing Member. Apart from the shares of DHFL which were in proprietary account, Clearing Member also sold some other shares. Further, the NBFC's to whom shares were pledged, also sold its shares of DHFL and other shares due to shortage of Margin.

51. With respect to allegation of non-availability of client funds, Noticee 1 submitted as under:

- a) There was a temporary crunch of funds with Noticee 1 due to pay in obligation with its clearing member because of fall in price of DHFL. But in due course of time it had taken the following steps to ensure that all creditors are paid off.
- b) Out of total creditors as on October 10, 2018 in books of Noticee 1, it received support from group / family accounts belongs to promoter of Noticee 1 including its directors/shareholders accounts, the family accounts of directors/shareholders or the companies in which it is having full control in accordance with law. These group/family accounts had already surrendered their respective credit balances of Rs.38,77,30,310.84 lying with it by issuing a confirmatory letter in this regard.
- c) There were 567 creditors amounting to Rs.5,33,33,074.83. Out of these creditors, 546 have been paid in full amounting to Rs. 5,33,33,074.83. Two

creditors (Client Codes- NAR1471 amounting Rs.10,33,29,627.39 and NAR1527 amounting Rs. 3,15,42,949.78) have been settled via MOU dated December 06, 2018 and they have submitted an undertaking.

- d) In view of foregoing submission, Noticee 1 submitted that there was no shortage of client funds.

52. With respect to allegation of non-availability of client securities, Noticee 1 submitted that it would be wrong to suggest that there is non-availability of securities of creditors. All the client securities were available either in their respective demat account or Client beneficiary account. Further, the clients who had given the securities as margin were available with the Clearing member M/s Globe Capital Ltd. Noticee 1 further submitted as under:

- a) With respect to total securities of creditors as on October 10, 2018 in books of Noticee 1, it received support from group/family accounts belonging to promoter including its directors/shareholders accounts, the family accounts of directors/shareholders or the companies in which it is having full control in accordance with law. These group/family accounts had already surrendered their respective credit balances as well as securities lying with the company by issuing a confirmatory letter in this regard. The group accounts who had surrendered their securities had also provided consent letters for disablement of their UCC.
- b) Such act of surrender of securities of family/group accounts and for disablement of their UCC, it had also taken verbal consent of NSE followed by demonstration of surrender of credit balance in trial balance on which NSE officials also appreciated the bonafide spirit of company to give new life to the company and safeguard the interest of retail investors.
- c) For the securities of the clients which are lying with the Globe Capital Ltd., it had transferred its own securities to the clearing member and have released the securities of clients. It had transferred these securities to the respective clients.

d) In view of foregoing submission, there is no shortfall of client securities.

53. Finally, Noticee 1 submitted that it has been very prompt in making payments to the clients from the very first day of start of its business. In the entire career of its business as a Broker, at no point in time, any complaint or grievance is filed by any of its clients regarding any delay in making payment to them. It ensured that all clients' funds are kept in designated client Bank/Exchange/Clearing Member accounts only. There were no lapses in compliance with the enhanced supervision norms that require weekly submissions of data. Further, it had paid to all its creditors and also given personal properties to clients so that they are not at loss. All the funds and securities were returned to clients as per their demand and account statement.

54. In its additional submissions, Noticee 1 submitted that prior to off-market transaction of 40,00,000 shares, it was in no way connected with Noticee 2. It is only through reference of some other entity Noticee 2 was introduced to it. Noticee 1 referred some paragraphs of SCN with respect to submission of Noticee 2 and complaint filed by Noticee 2. Noticee 1 stated that as per the submissions of Noticee 2 as referred, the off market transfer of shares was not for sale to it but was intended to be sold "on market". Pertinently, as per the email communications as sent by Noticee 2 to it, Noticee 2 had been persistently asking Noticee 2 to transfer the balance unsold shares back which is also a pointer to the fact that the shares were never meant to be sold to Noticee 1 by Noticee 2.

55. Noticee 1 further stated that in case Noticee 2 wanted to immediately sell the shares, it ought to have dealt with any of the trading members since at the time of transfer of shares there was no Broker - Client relation between Noticee 1 and 2. Further, the circumstantial evidences leads to acceptance of facts and findings that there was no instruction from Noticee 2 to sell the shares immediately at the time of transfer but to be sold "on market" at a future date. When Noticee 2 instructed it to sell 1.50 Lakh shares of DHFL, it executed sell orders as per their instructions "on market".

Besides, there is no evidence/material on record to show/demonstrate that at any other point in time, Noticee 2 instructed Noticee 1 to sell the remaining shares.

56. With respect to long position in DHFL share, Noticee 1 submitted as under:

- a) Noticee 2 had transferred the shares of DHFL to it with no consideration to be paid but with an intention to encash their Investment for future business opportunities. Hence, Noticee 1 took a huge buy (long) position in DHFL shares by utilising the shares given by Noticee 2. Pertinently, at the relevant time i.e. from July 2018 to 05.10.2018 no grievance of any nature was raised by Noticee 2 for holding 38.50 lakhs shares of DHFL by it.
- b) In July 2018, DHFL was considered to be a Blue Chip Company. It was one of the leading housing finance companies in India with a large network across the country that caters to millions of customers. Further, the management team of DHFL consisted of highly recognized and reputed name with vast experience in the arena of Financial Services.
- c) The Price movement of the Scrip of DHFL was consistently on an upward trend since January 2017 till August 2018. In January 2018, scrip opened at Rs 245.10 and closing price as on August 2018 was Rs 666.80. In view of the aforesaid, it had taken a huge long position in DHFL expecting to gain from the rise in price so as to encash future business opportunities.
- d) However, in September 2018, there was sudden and unprecedented sharp fall in the price of DHFL, with the scrip price touching low of Rs. 246.25 and closing at Rs 275.40 in September 2018. In press release dated September 21, 2018 issued by DHFL it is inter alia stated that the fall of price of the stock of DHFL also came as a big surprise to the company itself, since the fundamentals of DHFL were quite strong.

e) Due to such sudden sharp and unprecedented fall in September 2018, it suffered huge loss on the open long (buy) position held by it in the scrip of DHFL. Thus, as a victim in this fall, it lost everything even that was owned by it and ruined itself financially by all means.

57. Noticee 1 submitted that SCN has relied upon the Inspection report as prepared by NSE and Order passed by MCSGFC. Since, MCSGFC appointed by SEBI has already taken cognizance of the findings as made in the SCN, Noticee 1 requested that no additional penalty be imposed on it. In this regard, Noticee 1 relied upon Orders dated April 24, 2020 and December 23, 2019 passed by Adjudicating Officer, SEBI in the matter of Castor Seed Contract at NCDEX.

58. Noticee 1 further submitted that there are no adverse findings against it, in inspection conducted in the month of September 2018 for the period from April 01, 2017 to July 31, 2018. Noticee 1 referred the relevant paragraphs of the said Inspection Report as under:

"2. A joint inspection was undertaken in the month of September 2018 with SEBI and BSE covering the period from April 1, 2017 till July 31, 2018. During the course of inspection, it was gathered that the Noticee has incurred losses of more than Rs. 150 crores in F&O segment specifically in one scrip viz; M/s. Dewan Housing Finance Limited (hereinafter referred to as 'DHFL'), of which losses in the PRO account were to the tune of around Rs. 77.36 crores.

4. In view of the serious regulatory concern observed during the aforesaid joint inspection, a detailed inspection of the Noticee was initiated by the Exchange covering a period from April 01, 2017 to October 10, 2018 to verify the matter by carrying out investigation with respect to shortages in client funds & securities, misappropriation of client assets etc."

59. Further, Noticee 1 stated that on October 08, 2018, it voluntarily requested NSE to disable all its trading terminals for all segments. In this regard, Noticee 1 referred relevant paragraph of Order passed MCSGFC as under:

"5. The Noticee had vide its letter dated October 8, 2018 requested for voluntary disablement in all segments. Accordingly, the trading terminals of the Noticee was disabled in all segment of the Exchange w.e.f October 9, 2018. As a risk containment measure and to safeguard the interest of the investors, it was also decided to continue the disablement of the Noticee under Rule 13(A) (a) of Chapter IV of NSEIL Rules, till the final decision in the matter. "

60. Noticee 1 also referred some of the paragraphs of Order passed by MCSFGC on date September 9, 2019 as under:

"16. As a risk containment measure and to safeguard the interest of the investors, the disablement of Noticee continues in exercise of Rule 13 (A) (a) of Chapter IV of NSEIL Rules, till the final decision in the matter.

17. Noticee has now settled most of its clients under intimation to SEBI/ NSE and there are no investor complaint pending in the Exchange records. In view of the same, BGs worth Rs. 3.17 crores were released to Noticee.

18. Pursuant to erstwhile DAC direction, Noticee had submitted a revised net worth certificate certifying a net worth of Rs.2.29 crores as on November 16, 2018.

19. Noticee has applied for total surrender of membership on March 27, 2019.

20. As on date, Noticee has deposits of Rs. 0.33 crores available with the Exchange and there are no pending investor complaints against Noticee."

61. Noticee 1 submitted that it had filed review application dated December 11, 2019 against the order passed by MCSFGC. Noticee 1 also submitted the extract of the Order passed by MCSFGC and also submitted the copy of the order passed by MCSFGC on February 28, 2020 (wherein the review was rejected by NSE).

Submissions of Noticee 2:

62. Noticee 2 stated that the SCN conveys various facts and findings which has come to its knowledge for the first time. Noticee 1 did represent itself as a big and reputed stockbroker authorised to carry on stock broking business through the trading platform of both NSE and BSE. Noticee 1 also represented to be a reputed Depository Participant (DP) authorised to carry out Depository Services on behalf of CDSL. Based on such representation Noticee 2 decided to encash its long-term investments held in the form of equity shares of DHFL through broking and depository services from Noticee 1. Noticee 1 emailed a copy of its client registration kit on or about June 29, 2018 to render both depository and stock broking services to Noticee 2. Accordingly, it executed such client registration kit to authorise Noticee 1 to carry out both depository and stock broking services. Noticee 2 never executed any separate document for its trading account on August 06, 2018 as alleged. The email dated June 29, 2018 received at 4:07 PM from Noticee 1 stating a fact reproduced as *"SIR which bank do you prefer in demat account In trading account we add your both bank accounts but in demat account only 1 bank account is entered, Regards Narayan Securities Ltd"*. Thus, Noticee 1 did confirm simultaneous opening of trading cum depository account. Therefore, client-broker relationship was established on June 29, 2018 itself and all other interpretations are afterthought and manipulative. Relying on aforesaid representations, Noticee 2 entrusted 40,00,000 equity shares of DHFL in July 2018 in the manner as advised by some Mr. Ashok Kumar Saraf (mobile no 8860850201) on behalf of Noticee 1 to encash the same through online trading platform of NSE or BSE but definitely not as a private arrangement of sale to them.

63. Noticee 2 further submitted that the payout for 1,50,000 equity shares sold on August 06, 2018 was released to Noticee 2 subsequent to its due dates. Having received the pay out, it pursued to restore the unsold 38,50,000 equity shares of DHFL back to its beneficiary account. On September 22, 2018, Noticee 2 could arrange to transfer 10,00,000 equity shares of DHFL lying to the credit of its DP account with Noticee 1 to its another DP account maintained with IIFL. Balance

38,50,000 equity shares of DHFL remained entrusted with Noticee 1 for which a complaint was lodged with CDSL on October 05, 2018 to restore the same to its beneficiary account. CDSL responded *vide* its email dated October 09, 2018 which is reproduced as *"Dear Sir, This is with reference to complaint against Narayan Securities Limited. We have reviewed your complaint and observed that on the basis of delivery instruction slips submitted by you, 40 lac qty of DHFL was debited from your demat account on 02-07-2018, 10-07-18 & 16-07-2018. Further to inform you that your complaint regarding non receipt of sales proceeds of shares and selling of shares in your demat account is broking related activity and does not fall under the purview of depository, you are requested to approach to concerned stock exchange for redressal broking related activity. Regards, Durgesh Gaurav IG Cell Central Depository Services (India) Limited"*. Such an observation of CDSL refers subsistence of client broker relationship on the date of its entrustment and not August 06, 2018 as alleged. Thereafter, Noticee 2 was advised to lodge a complaint to SEBI through its platform SCORES. The complaint was registered as SEBI/MH19/13438/D/1 dated December 06, 2019 and SEBI/MH20/24109/D/1 dated June 29, 2020.

64. Noticee 2 submitted that the fact of the entrustment of 40,00,000 equity shares of DHFL has been interpreted and dealt with differently and distinct conclusions are drawn as under:

- a) **By Noticee 1** : Para 24 of the SCN provides that Noticee 1 has represented before NSE that it has received 40,00,000 equity shares of DHFL belonging to Noticee 2 as "loan". Para 32 of the SCN records submission of the Noticee 2 that such transfers is "not a loan". Para 35 of the SCN provides that submission of Noticee 1 having received 40,00,000 equity shares of DHFL from the Noticee 2 as loan is held to be not correct.
- b) **By the Depository CDSL** : Para 22 of SCN refers to the complaint dated October 05, 2018 which was lodged by Noticee 2 before CDSL. Para 28 of SCN refers disposal of the said complaint requesting Noticee 2 to approach the

concerned stock exchange. Para 33 of the SCN provides that in the opinion of CDSL there has been some interpolation or insertion of entries in the delivery instruction slip issued by Noticee 2. Para 29 of SCN refers to the fact that CDSL did forward the said complaint to SEBI which sought a brief report from NSE. NSE provided and held that equity shares of DHFL belonging to Noticee 2 have been misappropriated by Noticee 1.

- c) **By the Stock Exchange NSE** : Para 10 and 25 of SCN specifically mentions that as per NSE report, Noticee 1 used the securities of Noticee 2 for purposes other than specified. Subsequent to the date of the SCN, Noticee 2 continued to pursue for restoration of balance 38,50,000 equity shares of DHFL to its beneficiary account *vide* its complaint reference no NSEWRO/031494/19-20/ISC upon which NSE *vide* its email dated July 01, 2020 advised that "*Further as the details shared by you it has been observed that shares were transferred through DIS, hence the matter does not come under exchange purview. You may approach the respective depository for redressal for the issue.*"

Noticee 2 *vide* email dated July 03, 2020 submitted before NSE that it did approach the concerned depository, by its communication dated October 09, 2018, to which CDSL advised Noticee 2 to approach concerned stock exchange for redressal. Noticee 2 requested NSE to review its decision for redressal of its complaint. Response of NSE is awaited.

- d) **By the Stock Exchange BSE** : Para 23 of SCN refers to a report from BSE which *inter alia* conveys that Noticee 1 has received 40,00,000 equity shares of DHFL in the month of July 2018 in its own beneficiary account which were further transferred to Globe Fincap Ltd and pledged with Edelweiss and Aditya Birla. Funds raised from pledging of DHFL shares were being used to meet proprietary obligation of Noticee 1 in derivative segment of NSE. As such equity shares of DHFL of Noticee 2 were used for purposes other than specified.

65. Noticee 2 submitted that the AO has disregarded and ignored all the above findings and conclusions of the respective parties, and concluded that no client-broker

relationship existed between Noticee 1 and 2 when 40,00,000 shares of DHFL were transferred by Noticee 2 to Noticee 1 and that entrustment of 40,00,000 equity shares of DHFL is to be considered a spot delivery contract as provided under Sec 2(i) of the SCRA.

66. Noticee 2 submitted that aforesaid entrustment of shares does not fulfil any of the conditions necessary to become a legal "contract" as defined under sec 2(a) of SCRA let alone a spot-delivery contract. In this respect Noticee further submitted as under:

- a) The entrustment is not a sale. Noticee 1 do not claim to have purchased such shares. No consideration has ever been agreed by and between Noticee 1 and 2. Basic ingredients of a legal contract are not subsisting to its entrustment of shares as aforesaid. Further, the AO has not appreciated its facts exchanged through various emails available in its records.
- b) Entrustment of 40,00,000 equity shares of DHFL comprise 38,50,000 shares misappropriated by Noticee 1 and balance 1,50,000 shares sold on behalf of Noticee 2. When 1,50,000 equity shares of DHFL are valid sale under provisions of SCRA other shares should not be adjudicated as a spot delivery contract.
- c) The AO erroneously held that transfer of 40,00,000 shares of DHFL by Noticee 2 to Noticee 1 was an off market transfer between Noticees through a private arrangement and there was no mis-appropriation of client's securities by Noticee 1 under a client-broker relationship with respect to the aforesaid 40,00,000 shares transferred by Noticee 2. Noticee 2 never executed any separate document for its trading account on August 06, 2018 as alleged. In email dated June 29, 2018 received at 4:07 PM from Noticee 1, Noticee 1 did confirm simultaneous opening of trading cum depository account. Therefore, client-broker relationship was established on June 29, 2018 itself. All other interpretations are afterthought and manipulative. Noticee 2 has submitted

copies of client registration kit and entire emails exchanged by Noticee 2 for reference.

- d) Findings and observations of MCSGFC are valid for Noticee 1 and thus equally relevant for Noticee 2.
- e) The AO has failed to investigate role and nexus of clearing member GCML which is one of the beneficiaries of its entrusted securities. Subsequently, GCML has taken over entire depository operations of Noticee 1 with all its assets and liabilities.

CONSIDERATION OF ISSUES AND FINDINGS

67. The issues that arise for consideration in the instant matter are:

- Issue No. I** Whether Noticees 1 and 2 have violated Section 16 of SCRA read with SEBI Notification S.O.184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.
- Issue No. II** Whether Noticee 1 has violated provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016, SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular CIR/MRD/DMS/28/2010 dated August 31, 2010 and Clauses A (2) and (5) of the code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of Brokers Regulations.
- Issue No. III** If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 23H of SCRA in respect of Noticee

1 and 2 and under Section 15HB of SEBI Act and Section 23D of SCRA in respect of Noticee 1.

Issue No. IV If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of SEBI Act and Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticees 1 and 2 have violated Section 16 of SCRA read with SEBI Notification S.O.184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA**

68. It is alleged in the SCN that a transfer of 40,00,000 shares of DHFL by Noticee 2 to Noticee 1 through a series of 7 off-market transactions in July 2018 was an off market sale of shares by Noticee 2 to Noticee 1 for which consideration was not paid by Noticee 1 to 2 as stipulated in Section 2(i) of SCRA.

69. I have considered the submissions of the Noticees and note that both Noticee 1 and Noticee 2 have denied that the said transfer of 40,00,000 shares of DHFL was a sale transaction for which consideration was required to be paid. While Noticee 1 has stated that the transaction was a loan of securities in terms of an oral agreement, Noticee 2 has stated that the shares were transferred by it to Noticee 1 for the purpose of selling on-market, and the transfer of shares was not a sale to Noticee 1.

70. I have perused the copy of DIS slips available on record and find that the copies do not contain consideration amount and consideration column is left blank by Noticee 2. The purpose of transfer is recorded as 'others'. I note that the transfer has taken place through CDSL which requires a reason code to be captured in the DIS at the time of transfer and also in the system when making the transfer. I note that the reason code as recorded in CDSL system is '06' which stands for 'others'. I note that CDSL has specified the updated list of reason codes to be entered in the system in

its communique no. CDSL/OPS/DP/SYSTM/2018/275 dated May 28, 2018 which requires reason code to be entered for every off-market transfer of shares.

71. Having considered the replies of the Noticees, the copies of DIS through which transfer was carried out and the reason for transfer as recorded in the CDSL system, I find that the transaction is not carried out as a sale transaction. I note that an off-market sale would have been recorded with reason code '02' in the CDSL system, and the DIS would have reflected the same. However, the transfers are made with reason code '06' and not '02', making it clear at the time of transfer that these were not off-market sale transactions. I also find merit in the submission of Noticee 2 that of the 40 lakh shares, 1.5 lakh shares were sold on-market by Noticee 1 on behalf of Noticee 2, and requisite consideration from such sale was received by Noticee 2, supporting its contention that the 40 lakh shares were not sold to Noticee 1. Hence, the transfer of 40 lakh shares of DHFL through off-market transactions by Noticee 2 to Noticee 1 cannot be held to be a sale transaction, and consequently, the question of payment of consideration on the same day or the next day in terms of Section 2(i) of SCRA does not arise. It is not within the ambit of these proceedings to determine the nature of the transaction between Noticee 1 and 2, as to whether it was a loan or some other private arrangement, or whether the shares were transferred for use as margin or for sale at a later date. However, it is established that the said transfer of shares cannot be held to be a sale transaction.

72. In view of the above, I find that violation of Section 16 of SCRA read with SEBI Notification S.O.184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA by Noticee 1 and 2 is not established.

Issue No. II Whether Noticee 1 has violated provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016, SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular CIR/MRD/DMS/28/2010 dated August 31, 2010 and

Clauses A (2) and (5) of the code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of Brokers Regulations.

73. The allegation against Noticee 1 pertains to misutilization of client funds and securities for the purpose of meeting its own obligations, and misusing Power of Attorney for selling client securities to meet its own pay-in shortfalls.
74. Noticee 1 was a broker providing broking services to its clients as well as trading in its proprietary account. Noticee 1 has admitted that of the 40 lakh shares it received from Noticee 2, some of the shares were pledged with NBFC's such as Aditya Birla Finance Ltd, Edelweiss Retail Finance Ltd and Globe Fincap Ltd to raise funds for its business purpose. Some shares were also transferred to Ridhisidhi Financial Advisory Pvt Ltd, an associate company. Rest of the shares were placed with Globe Capital Market Limited (GCML) for meeting margin obligation. Pursuant thereto, admittedly, Noticee 1 took very large long positions in futures of DHFL and on huge price fall in the stock, suffered a loss of Rs.150 crores.
75. In order to meet the large losses, Noticee 1 not only sold 19,00,000 shares of DHFL amounting to approximately Rs.66.50 crores through its clearing member GCML on September 21, 2018, it also sold client securities placed with clearing member to meet obligations of proprietary account and its associates. Securities of 23 clients were sold amounting to Rs. 28.28 crores between September 27, 2018 to October 4, 2018. Further, the NBFC's to whom shares were pledged, also sold its shares of DHFL and other shares due to shortage of Margin
76. In this regard, Noticee 1 has submitted that with respect to total securities of creditors as on October 10, 2018 in books of Noticee 1, it received support from group/family accounts belonging to promoter including its directors/shareholders accounts, the family accounts of directors/shareholders or the companies in which it is having full control in accordance with law. These group/family accounts had already surrendered their respective credit balances as well as securities lying with the

company by issuing a confirmatory letter in this regard. The group accounts who had surrendered their securities had also provided consent letters for disablement of their UCC.

77. Noticee 1 has further stated that for such act of surrender of securities of family/group accounts and for disablement of their UCC, it had also taken verbal consent of NSE followed by demonstration of surrender of credit balance in trial balance on which NSE officials also appreciated the bonafide spirit of company to give new life to the company and safeguard the interest of retail investors. For the securities of the clients lying with the Globe Capital Ltd., it had transferred its own securities to the clearing member and have released the securities of clients. It had transferred these securities to the respective clients.

78. In this regard, I note that NSE MCSFGC in its order dated September 9, 2019 states that at para 17 that, *“Noticee has now settled most of its clients under intimation to SEBI/ NSE and there are no investor complaint pending in the Exchange records. In view of the same, BGs worth Rs. 3.17 crores were released to Noticee”*. I also note that in para 21.2.4(e), the order notes that *“the Noticee had settled most of its clients under intimation to SEBI/NSE. As on date, securities amounting to Rs.45 lacs are pending to be settled.*

79. On the shortage of funds, Noticee 1 has submitted that its group/family accounts had already surrendered their respective credit balances of Rs.38,77,30,310.84 lying with it by issuing a confirmatory letter in this regard. There were 567 creditors amounting to Rs.5,33,33,074.83. Out of these creditors, 546 have been paid in full amounting to Rs. 5,33,33,074.83. Two creditors (Client Codes- NAR1471 amounting Rs.10,33,29,627.39 and NAR1527 amounting Rs. 3,15,42,949.78) have been settled via MOU dated December 06, 2018 and they have submitted an undertaking. I further note that the NSE MCSFGC in its order dated September 9, 2019 states in para 21.1.3 (f) that *“the Noticee had settled most of its clients under intimation to SEBI/NSE. As on date, 2 clients amounting to Rs.0.14 lacs are pending to be settled*

which the Noticee has claimed to have retained against the debit balances in the group account of these clients”

80. I note from the above that Noticee 1 had entered into undocumented transactions with Noticee 2 based on which it took huge speculative positions in its own account. This action by the Noticee 1 not only caused losses to itself but also jeopardized the funds and securities of its clients. I find that in order to meet with its obligations on account of sudden losses, the Noticee 1 then put at risk the securities of not only its own family/ group accounts but also of its unrelated clients in complete disregard of the norms laid down for segregation of client funds and securities, use of Power of Attorney and use of client collateral.

81. I take note of the Noticee’s submission that it has settled dues of its clients and also met with its obligations on NSE, and has subsequently asked for its terminals to be disabled. I also take note that the Noticee 1 has been fined Rs.50 lakhs by NSE. However, the claim that Noticee 1 was able to largely settle its obligations towards the exchange and towards its clients cannot justify utilization of its clients’ funds and securities to meet its own obligations. I also note the disputed nature of transactions between Noticee 1 and Noticee 2 and lack of documentation by the Noticee 1 in carrying out the transactions in its own account on the basis of shares obtained from Noticee 2.

82. In view of the above, I find that the Noticee 1, acted in violation of 1993 circular and 2016 circular, and by engaging in reckless speculative trades, jeopardized its clients’ funds and securities. It also acted in violation of the 2008 circular in meeting its own obligations by utilizing clients collateral and misusing Power of Attorney in violation of 2010 circulars. The Noticee thus did not act with due skill care and diligence in the entire episode and failed to abide by applicable provisions laid down by SEBI & NSE. Hence, it is established that Noticee 1 violated the provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular

CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular CIR/MRD/DMS/28/2010 dated August 31, 2010 and Clauses A (2) and (5) of the code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of Brokers Regulations.

83. The text of relevant provisions of the aforesaid SEBI circulars are as below:

SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

1. D) *“No money shall be drawn from clients account other than –
 - i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client’s authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;
 - ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;
 - iii. money which may by mistake or accident have been paid into such account in contravention of para C above.”*
-
2. *It shall be compulsory for all Member brokers to keep separate accounts for client’s securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities.*

SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated Sep 26, 2016

Client Fund Monitoring

3. *Monitoring of Clients’ Funds lying with the Stock Broker by the Stock Exchanges –*
 - 3.1 *Stock Exchanges shall put in place a mechanism for monitoring clients’ funds lying with the stock broker to generate alerts on any misuse of clients’ funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3.*

3.2 Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A - Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B - Aggregate value of collateral deposited with clearing corporations and/or clearing member

C - Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D - Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

MC - Aggregate value of Margin utilized for positions of Credit balance Clients across Stock Exchanges

MF - Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

3.3 Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers...

SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008

2. In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that :-

2.1 Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the

respective client's margin requirements / pay-ins. Brokers should also maintain records to ensure proper audit trail of use of client collateral.

2.2 Brokers should further be able to produce the aforesaid records during inspection. The records should include details of :-

a. Receipt of collateral from client and acknowledgement issued to client on receipt of collateral

b. Client authorization for deposit of collateral with the exchange / clearing corporation / clearing house towards margin.

c. Record of deposit of collateral with exchange / clearing corporation / clearing house

d. Record of return of collateral to client

...

2.3 The records should be periodically reconciled with the actual collateral deposited with the broker.

2.4 Brokers should issue a daily statement of collateral utilization to clients which shall include, inter-alia, details of collateral deposited, collateral utilised and collateral status (available balance / due from client) with break up in terms of cash, Fixed Deposit Receipts (FDRs), Bank Guarantee and securities.

3. In case of complaints against brokers related to misuse of collateral deposited by clients, exchanges should look into the allegations, conduct inspection of broker if required and based on its findings take necessary action. 4. In case client collateral is found to be mis-utilised, the broker would attract appropriate deterrent penalty for violation of norms provided under Securities Contract Regulation Act, SEBI Act, SEBI Regulations and circulars, Exchange Byelaws, Rules, Regulations and circulars.

SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010

General Guidelines:

The POA shall not facilitate the stock broker to do the following:

..

15. Execute trades in the name of the client(s) without the client(s) consent.

.

18. *Merging of balances (dues) under various accounts to nullify debit in any other account.*

Brokers Regulations, 1992

Code of conduct for Stock Brokers[Regulation 9]

A. *General.*

(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.*

(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*

Issue No. III If yes, whether the failure, on the part of the Noticee 1 would attract monetary penalty under Section 15HB of SEBI Act and Section 23D of SCRA in respect of Noticee 1.

Issue No. IV If yes, what would be the monetary penalty that can be imposed upon the Noticee 1 taking into consideration the factors stipulated in Section 15J of SEBI Act and Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?

84. As it is established that the Noticee 1 violated provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular CIR/MRD/DMS/28/2010 dated August 31, 2010 and Clauses A (2) and (5) of the

code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of Brokers Regulations, Noticee 1 is liable for monetary penalty under Section 15 HB of SEBI Act and Section 23 D of SCRA.

85. The text of Section 15HB of SEBI Act and Section 23D of SCRA is as below:

SEBI Act:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

SCRA:

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

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

86. While determining the quantum of penalty under Section 15HB of SEBI Act and Section 23D of SCRA, the following factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA have to be given due regard:

Factors to be taken into account by the adjudicating officer

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

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Factors to be taken into account by adjudicating officer

23J.*While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

87. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by the Noticee 1. Further from the material available on record, it is noted that the Noticee suffered a loss of Rs.150 crore on account of speculative positions taken by it. The material on record does not document the monetary loss to the investors /clients on account of default by the Noticee 1. While Noticee 1 claims that it has settled dues of its clients, and nothing to the contrary is brought out during the investigation, I note that Noticee 2 has made a claim of 38.5 lakh shares of DHFL being misappropriated by Noticee 1.

88. Noticee 1 has stated that the NSE MCSGFC has already taken cognizance of the findings as made in the SCN and imposed a penalty of Rs. 50 lakh against Noticee 1. While taking note of the penalty levied on the Noticee by NSE, on perusal of order of MCSGFC, I note that the findings in the said order also includes other violations such as shortfall in net worth, false reporting of margin and MTM collected from clients in F&O segment.

89. I also note that the proceedings initiated by NSE are for violations of the NSE circulars by Noticee 1 whereas the instant proceedings are for contravention of provisions of the SCRA, and the circulars issued by SEBI.

90. I note that the actions by the Noticee 1 have violated the most basic principles of broker functioning as laid out in the 1993 and 2016 SEBI circulars which require that client securities and funds be maintained separately so that they are not jeopardized due to broker's own trading. The actions of Noticee 1 raise serious questions about the skill, care and diligence exercised by it in the conduct of its business. Such violations cannot be considered lightly and deserve to be appropriately penalized.

91. In view of the above, I am of the view that a penalty of ₹ 25,00,000/- under Section 15HB of SEBI Act for violation of provisions of 2008 circular, 2010 circulars and Clauses A (2) and (5) of the code of conduct prescribed for Stock Brokers as specified under Schedule II of Regulation 9 of Brokers Regulations will be commensurate with the violations committed by the Noticee 1, Further, a penalty of ₹ 25,00,000/- under Section 23D of SCRA for violation of provisions of 1993 circular and 2016 circular will be commensurate with the violations committed by the Noticee 1.

ORDER

92. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and Section 23J of SCRA in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee 1 viz. Narayan Securities Limited:

S. No.	Penalty Amount	Under the provisions of
1	₹25,00,000/-	Section 15HB of SEBI Act
2	₹25,00,000/-	Section 23D of SCRA
Total	₹50,00,000/- (Rupees Fifty Lakh only)	

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

94. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

95. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: OCTOBER 21, 2020

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER