BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/VV/NK/ /2020-21/9246]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, 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 AND UNDER SECTION 19-H OF DEPOSITORIES ACT, 1996, READ WITH DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Composite Investments Pvt. Ltd.
(PAN no. - AAACC7373B)

In the matter of inspection of Composite Investments Pvt. Ltd. - Stock Broker & Depository Participant

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BACKGROUND

1. Composite Investments Private Limited (hereinafter referred to as **"Broker/Noticee/DP"**) is SEBI registered Stock Broker and Depository Participant having following registration details:-

Category	Concerned Exchange/ Depository	SEBI Registration No
Broker	BSE NSE MSEI	INB/INF/INE 010752039 INB/INF/INE 230752038 INB/INF 260752036
DP	CDSL	CDSL- IN-DP-43-2015

2. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) carried out Comprehensive Joint Inspection ("**Inspection**") with the Exchanges and CDSL of the Noticee for the period from April 2017 to August 31, 2018 ("**Inspection Period**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide Communiqué dated January 31, 2020 to conduct adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI AO Rules"), Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "SCRA AO Rules") and Rule 4 of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "DP AO Rules") for the alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated July 29, 2020 (hereinafter referred to as **"SCN"**) was issued to the Noticee through digitally signed E-mail in under Rule 4(1) of the SEBI Adjudication Rules, Rule 4(1) of the SCRA Adjudication Rules and Rule 4(1) of the Depositories Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under of Section 15HB of the SEBI Act, 1992, section 15A(b) of SEBI Act, 1992, Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA") and Section 19G of the Depositories Act, 1996 (hereinafter referred to as 'DP Act'). The allegations levelled against the Noticee in the SCN are summarized as follows:-

   A. **Wrong Nomenclature in client and settlement bank accounts:** SEBI Circulars Nos. (i) SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

   B. **Funds of Credit Balance Clients are being utilized for meeting the obligations of debit balance clients:** SEBI Circulars Nos. (i) SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

   C. **Incorrect Reporting of credit balance of clients:** Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

   D. **Improper running account authorization form**: Clause 12(c) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

E. **Non-settlement of inactive clients:** SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with NSE Circular NSE/INSP/24849 dated October 29, 2013.

F. **Funding of clients beyond T+2+5 days:** Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

G. **Error in uploading correct and complete client details to UCC database:** Clause 2(b) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 read with BSE Exchange Notice No. 20140819-17 dated August 19, 2014 and Notice No. 20140825-23 dated August 25, 2014.

H. **Discrepancy in calculation of Networth:** SEBI Circular SEBI/HO/ MIRSD /MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL.

I. **KYC details from KRA not fetched:** SEBI Circular MIRSD/ Cir-5 /2012 dated April 13, 2012 read with CVL KRA communiqué CVL/OPS/INTERM/GENRL/12-030 dated August 11, 2012.

J. **No second level authentication done:** Clause 16 of Code of Conduct read with Regulation 37 of SEBI (Depositories and Participants) Regulations, 2018 and CDSL communiqué CDSL/OPS/DP/1577 dated May 13, 2009.

K. **Wrong reason for updation for off market transfers in 2 instances:** Clause 4 of Code of Conduct read with Regulation 37 of SEBI (Depositories and Participants) Regulations, 2018 and CDSL communiqué CDSL/OPS/DP/SYSTM/6085 dated August 17, 2016.

L. **Concurrent audit report are not in prescribed format:** Clause 11 of Code of Conduct read with Regulation 37 of SEBI (Depositories and Participants) Regulations, 2018 and CDSL communiqué CDSL/A,I&C/DP/POLCY/2018/205 dated April 18, 2018.

5. The Noticee acknowledged the receipt of SCN vide email dated July 30, 2020 and submitted its reply to the SCN vide letter dated August 12, 2020.Thereafter, In order to comply with the principles of natural justice, The Noticee was provided an opportunity of personal hearing through WebEx due to ongoing pandemic as well as for Hearing at SEBI Bengaluru Local Office (BLO) through video conferencing on August 31, 2020 vide digitally signed hearing notice email dated August 19, 2020.

6. However, Noticee vide email dated August 31, 2020 sought another date and time for hearing. Accordingly, Noticee was granted an opportunity for hearing on September 07, 2020 to appear either through video conferencing at BLO or Webex.

7. Mr. Satish Kumar Dutt and Mr. Prakash Nayak, the Authorised Representatives(AR) of the Noticee appeared on the scheduled date. The Hearing was conducted via Webex. The AR reiterated the submissions made by Noticee vide letter dated August 12, 2020 and has also requested time to make additional submissions which were made vide letter dated September 09, 2020 and email dated September 11, 2020

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN, written and oral submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

   I. **Whether the Noticee has violated alleged SEBI rules, regulations and circulars as mentioned in point no. 4 above?**

   II. **Whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992, Section 15A (b) of SEBI Act, 1992, Section 23D of the SCRA and Section 19G of the Depositories Act?**

   III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, Section 23J of the SCRA and Section 19I of the Depositories Act?**

Issue – I :- **Whether the Noticee has violated alleged SEBI rules, regulations and circulars as mentioned in point no. 4 above?**

In this regard, based on the material available on record and on the submissions made by Noticee vide letter dated August 12, 2020 & September 09, 2020 and email dated September 11, 2020 against these allegations, I Proceed to discuss Allegations against Noticee and my observations thereon:

A. Wrong Nomenclature in client and settlement bank accounts:

Allegation:

i) It is alleged that the word "Client" was not mentioned in 7 of the 8 bank accounts maintained for the purpose of Clients' funds. Also the word "Settlement" does not appear in 3 out of the 4 Bank accounts maintained for settlement purpose.

ii) In view of the above it is alleged that, the Noticee has violated SEBI Circulars Nos. (i) SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

Reply:

In this regard, Noticee has submitted the bank account statements and letter issued by Deputy Manager of HDFC Bank Ltd. evidencing that, Noticee has changed the nomenclature in Bank Accounts as stated in their submissions

Observation:

i) It was observed that the word "Client" was not mentioned in 7 of the 8 bank accounts maintained for the purpose of Clients' funds. Also the word "Settlement" does not appear in 3 out of the 4 Bank accounts maintained for settlement purpose. The list these 10 accounts is as under:

S	Account Number	Name of the A/c	Purpose of account
1	911020062721096	Composite Investments Pvt Ltd	Client A/c
2	2811208941	Composite Investments Pvt Ltd	Client A/c
3	00090330001396	Composite Investments P L-Derivative A/c	Client A/c

4	00650330000047	Composite Investments Pvt Ltd Composite	Client A/c
5	00090340000207	Composite Investments Pvt Ltd NSE MFSS S	Client A/c
6	00600340041747	Composite Investments Pvt Ltd NSE MFSS S	NSE CDS Settlement A/c
7	052323400000085	Composite Investments Pvt Ltd	Client A/c
8	00990610004047	Composite Investments Pvt Ltd	NSE CM Settlement A/c
9	00990620009528	Composite Investments Pvt Ltd	BSE CM Settlement A/c
1	05230340001557	Composite Investments Pvt Ltd	BSE Client Settlement A/c

ii) As per the documents submitted by the Noticee, the "client/ settlement" word was added in the bank Account name during FY 2017-18.

iii) Thus, in view of the above, I find that Noticee was in non-compliance, to the extent as mentioned above, during the inspection period and has violated SEBI Circulars Nos. (i) SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016. I also note that the Noticee has taken necessary corrective steps subsequently and submitted the valid and relevant documents in support of the same.

B. Funds of Credit Balance Clients are being utilized for meeting the obligations of debit balance clients

Allegations:

i) During inspection, in order to make assessment of possible misuse of the clients' funds by the Noticee, the following facts were taken into account after selecting dates as sample which includes top 20 turnover dates during inspection period and all the dates of February,2018:

A: Total fund balance available in all client and Settlement Bank Accounts maintained by the Stock Broker.

B: Aggregate value of collateral deposited with clearing corporations and/or clearing broker (in cases where the trades are settled through clearing broker) in form of Cash and Cash Equivalents (Fixed Deposits (FD), Bank Guarantees (BG), etc.). Only funded portion of the Bank Guarantee considered as part of B.

C: Aggregated value of Credit Balances of all clients as obtained from trail balance across stock exchanges (Open bills of clients not adjusted as broker follows settlement day billing).

D: Aggregate value of Debit Balance of all clients as obtained from trial balance across stock exchanges (Open bills of clients not adjusted as broker follows settlement day billing).

G: (A+B-C); Negative value depicts extent of misuse of client funds by broker for debit balance client or for own purpose.

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation / clearing broker, i.e., A+B should always be equal to or greater than clients' funds as per ledger balance (C).

ii) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as "1993 Circular") mandates that, no money shall be drawn from clients' account other than money properly required for payment to or on behalf of clients or for or towards payment of a debt due to broker from clients or money drawn on clients' authority, or money in respect of which there is a liability of clients to the Broker, provided that money so drawn shall not in any case exceed the total value of the money so held for the time being for such each client. Consequently, money given by clients has to be available with the stock broker all the time. Value of Bank Guarantee ('BG') extended to the Noticee is usually twice of the value of funds deposited or availing such facility. Since, leveraged portion of BG is over-and-above the money held for clients, it cannot be taken into account while calculating B.

iii) Analysis of data submitted according to principle laid down above is given in the following table:-

SN	Date	Total (client bank balance + settlement a/c balance)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Cash+FD +BG/2)	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total debit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)	Revised G = A+B-C Negative value of G : Extent of misuse of client funds by broker for debit balance clients
		A	**B**	**C**	**D**	**G=A+B-C**
1	01-Feb-18	16534446.31	147215074.67	185325842.05	39268962.96	21576321.07
2	02-Feb-18	34515113.21	144715074.67	202263737.24	41440465.92	23033549.36
3	05-Feb-18	39577418.17	149325074.67	192267235.32	25882192.37	3364742.48
4	06-Feb-18	54729640.72	147325074.67	215764914.36	31482270.54	13710198.97
5	07-Feb-18	35829450.30	147325074.67	182095662.75	23269913.62	1058862.22
6	08-Feb-18	35418569.07	144325074.67	184399418.73	28094350.75	4655774.99
7	09-Feb-18	32062223.71	148774074.67	191877580.06	33664327.78	11041281.68
8	12-Feb-18	24828685.70	149120074.67	182170874.83	27814010.26	8222114.46
9	14-Feb-18	26215193.07	151684074.67	189279463.64	27743971.01	11380195.90
10	15-Feb-18	22580995.92	149684074.67	181536828.05	28718092.53	9271757.46
11	16-Feb-18	15873327.67	148084074.67	178568763.45	31530660.20	14611361.11
12	19-Feb-18	15860159.58	148084074.67	181047566.15	30509820.44	17103331.90
13	20-Feb-18	17773834.54	148084074.67	174607677.08	23491439.33	8749767.87
14	21-Feb-18	31190892.03	148624074.67	181500443.19	20181110.47	1685476.49
15	22-Feb-18	28009375.83	148624074.67	183694262.96	16730048.21	7060812.46
16	23-Feb-18	24129801.21	146024074.67	176180603.57	24438037.06	6026727.69
17	26-Feb-18	23263334.76	146816074.67	184613808.13	31162416.87	14534398.70
18	27-Feb-18	17595837.15	152148074.67	185011888.53	32908762.21	15267976.71
19	28-Feb-18	12732574.87	152148074.67	178694086.83	29613498.00	13813437.29
20	26-Apr-17	6212525.91	173244925.80	173439005.88	7149292.70	6018445.83
21	24-May-17	7210955.82	174487925.80	180860605.85	9994929.22	838275.77
22	27-Jun-17	10719382.23	201000925.80	205632083.44	18198802.65	6088224.59
23	28-Jun-17	9510801.24	196600925.80	197702387.83	19909790.60	8409339.21
24	29-Jun-17	5306695.38	183014925.00	186646724.26	20779057.61	1674896.12
25	27-Jul-17	12544066.81	172037225.80	169217563.86	14687971.33	15363728.75

26	29-Aug-17	29025169.78	168810330.59	203874091.66	25423889.60	6038591.29
27	26-Sep-17	15042729.33	167993530.59	178743718.71	12445990.84	4292541.21
28	27-Sep-17	16903889.80	167993530.59	176931030.41	10022897.15	7966389.98
29	25-Oct-17	29514497.10	154739640.11	169188171.68	7606045.03	15065965.53
30	26-Oct-17	9811741.70	157239140.85	157789441.00	7981506.77	9261441.55
31	29-Nov-17	9476084.58	156692923.83	165810243.84	15817108.52	358764.57
32	27-Dec-17	8835858.49	143207924.83	189516447.47	60306098.18	37472664.15
33	24-Jan-18	11265525.61	140622074.67	201397392.52	55828747.66	49509792.24
34	27-Mar-18	18549925.44	158611074.67	169729782.21	11118855.47	7431217.90
35	25-Apr-18	4288010.41	141274628.40	144671200.87	5541754.62	891437.94
36	29-May-18	8335236.49	158097001.50	167609119.33	4794841.98	1176881.34
37	30-May-18	24358307.37	151597001.50	160977205.98	4279019.03	14978102.89
38	27-Jun-18	25236574.53	124299914.93	123888365.62	242062.71	25648123.84

iv) On analysis of the above detail, it is alleged that, the Noticee has mis-utilized clients' funds in 22 out of 38 cases (where the value of G is negative) and the extent of misuse was in the range of Rs. 11.76 Lakhs to Rs. 4.95 Crs. The average value of funds misutilized is Rs. 1.36 crores.

v) Thus, In view of the above it is alleged that Noticee has violated SEBI Circulars Nos. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

Reply :

In this regard, Noticee has submitted its own workings and provided the recalculated Excel sheet with supporting documents and also attached a certificate from Internal Auditors certifying the corrected balances in the excel sheet, which shows negative value of G in 22 cases Noticee has provided justification for 21 cases as follows:

i) *Enhanced Supervision figures in the month of February 2018 were to be submitted monthly. However, figures have been calculated by SEBI on daily basis for the month of February.*

ii) *The balances lying with Clearing Corporation and Clearing Member have on some days been taken wrongly. We have enclosed the statements for all the days and the excel sheet has been reworked and highlighted yellow along with a certificate from our Internal Auditors certifying these figures.*

Enhanced Supervision figures do not take into account stocks of clients pledged with IL&FS (Clearing Member) for the purpose of margin and hence have shown as if funds of credit balance clients have been misused for debit balance clients. We had one HNI client R209, who had pledged substantial stocks (in excess of his debit) with IL&FS & had a debit balance with us. This client had done an arbitrage transaction by buying in the cash market and selling in the futures. All debits in futures were completely covered by the increase in the value of stocks purchased in the cash market as it was an arbitrage position. Because of this, the value of G shows a negative balance. If we remove this debit, there would be no shortfall. We submit that there has not been any misuse of funds of credit balance clients and exposure was never denied to them to the extent of their credit. We have shown in additional columns, the debit balance of R209, his shares pledged with IL&FS and additional shares available with us in his DP with POA in our favour. We are enclosing statements from IL&FS (Clearing member) highlighting the stocks pledged with them pertaining to client R209. We have also enclosed the DP statement of the client showing the holding.

In addition to above, Noticee has *inter-alia* further stated that, "the *HNI client who had a debit in the F&O segment had done an arbitrage transaction by buying in the cash market and selling in the futures. Hence the positions of the HNI client were completely hedged. As the stocks had moved up in value the sale position in the futures had resulted in a debit. But this was completely made good by the increase in the value of the stocks in the cash market. Because of this, the value of G shows a negative balance. If we remove this debit, there would be no shortfall. The said client had held these futures positions for one year and on completion, had squared off all futures positions. Also he had liquidated substantial portion of his hedged holdings in cash market and has regularized his account in March 2018.*

During this period, he also had moved substantial stocks (in excess of his debit) to IL&FS (our Clearing Member) as a back up for his positions in Futures besides having a large amount stocks in his DP with POA in our favour. This secured all his debits without leaving to any room for us to suffer financial losses .

We have enclosed the workings to show the client holding of stocks in the cash market as against his futures positions. CA certificate authenticating the figures are also attached for your kind reference.

Further we submit that there has not been any misuse of funds of credit balance clients and exposure was never denied to them to the extent of their credit. As submitted earlier with the statement in support there has been no funds used for Proprietary positions."

Observation:

i) It is to be noted that, the said 1993 Circular lays down comprehensive guidelines for stock brokers in dealing with funds and securities of clients. It specifies several exclusive requirements. The aforesaid observation clearly falls under Clause D of the 1993 Circular. In terms of 1993 Circular, the stock broker is mandated not only to keep separate accounts for clients' and own dealings but also not to withdraw money from clients' account except in the situations permitted thereunder. The 1993 Circular does not permit using excess funds of one client to meet liability of another client. The observations and finding in the inspection report that are basis of charge in this case had been provided to the Noticee alongwith the SCN as Annexure 2.

ii) In order to determine whether the Noticee has utilized clients' funds for purposes other than those permitted as stipulated in 1993 circular, the principle specified in the 2016 Circular has been applied such that the total available funds i.e. day end balance in all clients bank accounts (A), cash and cash equivalents with the stock broker and with the exchange / clearing corporation/ clearing member (B), should always be equal to or greater than clients' funds as per ledger balance (C) and if [(A+B) – C = G] is negative, then it indicates that the credit balance clients' funds have been misused by the stock broker for its own purposes or for settlement obligations of debit balance clients.

iii) In this case, it has been specifically found in the inspection report that the total of clients' funds (available in bank accounts, cash / cash equivalent deposits with exchange / clearing corporation / clearing member) available with the Noticee on 22 dates out of 38 sample dates were lesser than the total credit balance of all clients of the Noticee resulting into mis-utilisation of credit balance clients fund for the purpose of debit balance clients which is not permissible in terms of the 1993 Circular, I further note that the difference between the clients' funds available with the Noticee i.e. (A+B) and the total credit balance of clients as prescribed in terms of the 2016 Circular ranges from Rs. 11.76 Lakh to (on 29/05/2018) to Rs. 4.95 Crore (on 24/01/2018). The average value of funds misutilized is Rs. 1.36 crores.

iv) The Noticee has submitted that, the client funds were verified on all dates on February 2018, though, the reporting by the broker was at the end of month. In this regard, it may be noted that the broker is required to maintain funds of credit balance clients on continuous basis and not only on reporting dates.

v) The observation pertains to misuse of client funds by the broker. Thus, the margins collected/ deposited in the form of securities cannot be considered for the purpose of assessing the misuse of the clients' funds, which Noticee has considered in its calculations and which was being certified by auditor.

vi) Further, with regard to the deposits with BSE as submitted by the Noticee also mentions Base Minimum Capital (BMC) of Rs. 25 lakh as Base Minimum Capital (BMC). Thus, Rs. 25 lakh (Rs. 1.25 lakh Cash + 23.75 lakh BG) cannot be considered towards collateral as the exchange does not give exposure on such deposits.

vii) Thus, in view of the allegations levelled against the Noticee above, the reply/submissions of the Noticee and the relevant material available on record, I found that the Noticee was in violation of SEBI Circulars SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

C. <u>Incorrect Reporting of credit balance of clients</u>

Allegations:

i) The data submitted by the broker to the stock exchanges for monitoring of Clients' Funds lying with the broker was verified for the reporting dates. It was observed that the data regarding (C) i.e. total credit balances of all clients after adjusting for open bills for clients, un-cleared cheques deposited by clients and un-cleared cheques issued to clients and the margin obligation etc. reported by the Stock Broker to the exchanges under enhanced supervision was not correct on 6 out of 39 dates on which data was verified. The details are placed below:

S No	Date	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation) "C"

		As reported to Exchange in Enhanced Supervision data	As obtained from the system
1	31.07.2017	182,713,750	182,659,896
2	31.08.2017	200,698,899	200,670,096
3	31.10.2017	153,860,601	152,376,706
4	30.11.2017	168,129,797	166,177,930
5	31.01.2018	157,563,993	192,490,367
6	28.02.2018	177,513,091	178,694,087

ii) In view of the above, it is alleged that the broker has violated clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

Reply:

In this regard, Noticee has submitted that for the 4 instances dated 31.07.2017, 31.08.2017, 31.10.2017 and 30.11.2017, the excess amount was reported to Exchange by error by Noticee. Further, for the instances dated 31.01.2018 and 28.02.2018, Noticee has provided the following comments:-

Date	***Difference***	***Comments***
31.01.2018	*3,49,26,374*	*There was no provision available to get clear balance of creditors in the back office earlier. However, in that particular month, the software providers had made provision for getting clear balance in the back office. Unaware of this, we had deducted T day (Equity & Derivatives) & T-1 day (Equity) obligations from total creditors as was the norm. This has had double effect on the creditor's balance which resulted in this difference. However, this has not recurred in the subsequent submissions as we realised the error.*
28.02.2018	*11,80,996*	*There were debit balances of two clients in their HUF account D124 & L126 to the tune of 11,80,996. They also had their individual accounts in the same name where there were credit balances of a similar amount. Hence we have deducted that amount from both Debtors & Creditors to nullify the effect. We have enclosed the respective client's ledger copies for your kind reference.*

Observation:

Thus, It is observed that Noticee has admitted that it had reported incorrect details of credit balance of Client funds due to error in 6 instances mentioned above as

per submission under Enhanced Supervision of Stock Brokers as mandated in SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. However, the 4 out of 6 instances, involve excess reporting leaving 02 instances where Noticee had reported less credit balance of clients balance thereby materially impacting calculation of 'G' for those two dates. Therefore,, in view of the above, I find that Noticee was in violation, to the extent as stated above, of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. I also note the Noticee has mentioned ensuring non-occurrence of such error subsequently and having made necessary entries to give nullifying effect towards rectifying the error along with extract of ledgers as proof.

It may be noted that, as per SCN, the aforesaid violation makes Noticee liable to the penalty under section 15A (b) of the SEBI Act, which is reproduced below:

15A Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder,—
b. to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations 65[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents,] he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

However the following line in above para: "*or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents* ", was Inserted by the Finance Act, 2018 w.e.f. 08-03-2019 in the SEBI Act and the inspection was conducted for the period before 08-03-2019 i.e., from April 2017 to August 31, 2018.

Thus, in light of the same, the aforesaid violation of incorrect reporting does not make Noticee liable to penalty under section 15A(b) of the SEBI Act but liable under Section 15 HB of the SEBI Act.

Now the next question is whether mentioning of wrong charging provision is fatal to the proceedings as far as the violation by the Noticee is concerned and whether the same resulted in any prejudice to the Noticee. In this connection, I would like to refer to the order of ***Hon'ble High Court of Bombay in the matter of SEBI vs. Sangeeta Jayesh Valia (Appeal no. 2 of 2004 order dated December 05, 2003***) wherein it was observed that "*It is well settled that if the power to act in the*

authority exists in a fact situation, such exercise of power is not vitiated by the reference to wrong provision of law. Mention of wrong provision of law shall not render the exercise of power by the authority bad in law if the source of power can be traced in some other provision."

Further, ***Hon'ble SAT also in the matter of Canbank Investment Management Services Ltd. vs SEBI (Appeal no. 34/2000 dated March 30, 2001)*** had held that "*The legal position in such a situation has been well explained by the Supreme Court in several cases. The court had held that even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. In the instants case source of power exists under 15E and the Adjudicating Officer has rightly exercised that power."*

Reliance is also placed on ***Union of India and Another v/s Tulsi Ram Patel & Ors. {(1985) 3 SCC 398}*** wherein it was held (para 126*)".... if source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists."*

D. Improper running account authorization form

Allegation:

It is alleged that, the running account authorization form in the following cases contained clause that the clients may revoke the authorization at any time by giving 7 days' notice instead it should be revocable by client at any time without prior notice.

S No.	Client Name	UCC
1	Bhaggyashree Satish Mandora	81B02
2	Kukade Pooja Sanjay Kumar	81k06
4	Aanjan Midha	82A02
5	Sys Two Analytics And Research Ind Pvt Ltd	82S43
6	Sujit M	82S04
7	Shriram Gangaram Shimpi	MHS32
8	Sumit Kedia Gandhi	MHS33
9	Anil Ram Asrani	MHA18
10	Sitaram Sharma	MHS40

In view of the above, it is alleged that the broker has violated clause 12(c) of Annexure A of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

Reply:
In this regard, Noticee has submitted the copies of running account authorization received from 5 clients with the required changes in the clause for UCC: 81K06, MHS32, MHS33 & MHS40. Noticee has *inter-alia* stated that, "*The remaining 4 clients are not trading since 2018 and their account is in freeze status. In case they wish to trade again, we will obtain fresh authorization form in proper format.*"

Observation:
The Noticee is admittedly found to be in violation of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. I also note that Noticee has taken the corrective steps to rectify post observation in SEBI Inspection Report and submitted valid documents as evidence towards the same.

E. Non-settlement of inactive clients

Allegation:-

i. It is alleged that, broker has not carried out settlement *(above Rs. 500)* of inactive clients for each quarter during the inspection period i.e., from June 2017 to June 2018 aggregating to Rs. 76,37,974.88/-. Following is the no. of unsettled inactive clients and unsettled funds and securities balance at each quarter:-

QTR	No. of Clients	Quarter end Fund & Securities Balance in Rs.
Jun-17	386	25,47,481.56
Sep-17	413	16,27,694.56
Dec-17	390	20,45,457.28
Mar-18	425	7,48,568.67
Jun-18	505	6,68,772.81

ii. Thus, it is alleged that the broker has violated SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with NSE circular NSE/INSP/21651 dated Sep 07, 2012 and NSE/INSP/24849 dated October 29, 2013.

Reply:

In this regard, Noticee has submitted that, it has settled considerable number of client's balances within 90 days from the date of previous settlement and the reason for few clients' accounts showing unsettled balances was due to the management framed policy of retaining upto Rs.10000/- balance in client accounts and technical lapses due to migration from the old Software (IdealX) to GTL (iSPARC),the lapse was taken into consideration by noticee and settlement was carried out thereafter.

The Noticee vide letter dated September 09, 2020 has submitted retention statements/ ledger extracts as documentary proof for settling the clients having balances up to Rs.10000/- who had not traded during the quarter. The Noticee further states in its aforesaid letter that, *"it had retained upto Rs. 1000/- for those clients who had demat account with them towards DP charges….A lot of clients used to get agitated if we completely settle their accounts and demand small DP charges rather than paying small DP charges rather than paying small amounts frequently. We have enclosed CA Certificates for the settlement made with dates of settlement the dates of settlement. However, currently we are not retaining any amounts whatsoever and we are making full settlement to clients irrespective of whether they have DP A/c with us or not. A few retention statements for recently settled clients as proof of this are enclosed for your kind reference. We are trying to collect whatever DP Charges accrue in such client account thereafter separately or as and when they sell stocks which they hold. We once again reiterate that we do not have balances due to any dormant client account as on date."*

Noticee has submitted the retention statement / ledger extracts as documentary proof for settling the clients having balances upto Rs.10000/- who had not traded during the quarter, the CA certificate for the settlement made with the dates of settlement and few retention statements for recently settled clients.

Observation:

I note that Noticee has demonstrated having taken steps to settle the inactive client accounts after pointed out by Inspection. It has also submitted valid documents along with CA certification in support of the same. However, it is noted that while doing such settlement, the Noticee has admitted that, it had retained Rs.10,000/- or Rs.1,000/- in client accounts. SEBI Circular MIRSD/ SE /Cir-19/2009 dated December 3, 2009 inter alia mentioned that members could frame policy for inactive clients covering aspect of time period, return of client assets

and procedure for reactivation of the same. It was clarified vide NSE Circular NSE/INSP/24849 dated October 29, 2013 that threshold of Rs. 10000/- is applicable only in respect of settlement of active clients and no such threshold applies for inactive clients. I note that inspection team had already provided for consideration of aspect associated with retaining some small amount for inactive clients towards any petty charges by taking the sample of non-settled inactive client accounts having balance of more than Rs.500/-.

Thus the policy of Noticee towards retaining amount for inactive clients up to Rs 10000/- or Rs.1000/- during the inspection period as stated by Noticee is not a correct interpretation of Regulatory provisions in this regard and holds it, in non-compliance with SEBI Circular MIRSD/ SE /Cir-19/2009 dated December 3, 2009 & NSE Circular NSE/INSP/24849 dated October 29, 2013. As such, I agree with the Inspection team's conclusion in the PIA that, for such clients the amount retained by the Noticee is being considered as unsettled.

Further, the reply of the Noticee pertaining to errors due to migration in software cannot be accepted. As per clause A(3) of the Code of Conduct of the stock brokers *"stock-broker shall act with due skill, care and diligence in the conduct of all his business"*. Thus, the Noticee should have been more careful while migrating back-office software.

I also note that Noticee has demonstrated with evidence that it is currently following the practice of not retaining any amount while settling inactive clients. Further, during the inspection period, the amount considered, as per the PIA, as non-settled at the end of various quarters had considerably come down from quarter ending June 2017 to June 2018.

In view of the above, it is established that Noticee was not settling accounts of its clients within stipulated time as prescribed in SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. In view of the same, I find that the Noticee has violated SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with NSE circular NSE/INSP/21651 dated Sep 07, 2012 and NSE/INSP/24849 dated October 29, 2013.

F. Funding of clients beyond T+2+5 days

Allegation:

i) It is alleged that stock broker has funded its clients beyond T+2+5 and The funded exposure amounts to Rs. 1,48,002.84 and Rs. 2,81,063.02.

ii) Thus, it is alleged that the broker has violated clause 2.6 of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Reply:

In this regard, Noticee has submitted holding statement for UCC "SHAN" and has *inter-alia* stated that, "*it had Rs.3,60,716/- worth stocks in this account.*" Further, for client D12, Noticee has *inter-alia* stated that, "*There has been a lapse in identifying the client debit and getting the same cleared. However, now the issue is resolved and the account has been regularized"*

Observation:

I note from the reply that, Noticee has admitted the said allegation that, in case of Client Codes SHAN & D12, Noticee has funded these 2 clients beyond T+2+5 days and allowed further exposure amounting to Rs.2,81,063.02/- and Rs.1,48,002.84/-. I further note that, the Noticee has submitted the statement of holdings of the client SHAN as on respective date. On perusal of the said statement, I find that the stocks lying in the demat account was mentioned as "broker ben holding" and "unsettled holding".

In view of the above, I find that the Noticee provided funding to two clients beyond T+2+5 days on two instances, which is in violation of clause 2.6 of Annexure of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

G. Error in uploading correct and complete client details to UCC database

Allegation:

i) It is alleged that the stock broker has not uploaded correct and complete details of some of the clients to the UCC database of the Exchange and Further, there were certain discrepancy observed w.r.t client registration documents.
ii) In view of the above, the broker is alleged to have violated clause 2(b) of SEBI circular CIR/MIRSD/15/2011 dated August 2, 2011 read with BSE Exchange

Notice No. 201408-19-17 dated August 19, 2014 and No. 20140825-23 dated August 25, 2014

Reply:

Noticee has *inter-alia* stated that, *it has uploaded the correct details to UCC database of the Exchange during September 2017. The same data has also been provided to NSE. All the correct details are now available in UCC database. We have also uploaded the correct email id and mobile numbers. The same has been done during September 2017.*

Further, Noticee has submitted the list of corrected mail id and mobile numbers and also submitted copies of declarations received from clients who had family accounts with same mobile number/email id.

Observation:-

i. It is alleged in the SCN that, the stock broker has not uploaded correct and complete details of the clients to the UCC database of the Exchange (details of clients being enclosed as **Annexure 5 of the SCN)**. Further, there was certain discrepancy observed w.r.t client registration documents of clients mentioned in **Annexure 6 of SCN**.

ii. In this regard, Noticee has admitted and taken the corrective steps and for duplication of mobile number and/or email id due to same email id / mobile number used by family members, Noticee has obtained declaration from corresponding clients.

iii. In view of the above, I find that, Noticee was in violation of clause 2(b) of SEBI circular CIR/MIRSD/15/2011 dated August 2, 2011 read with BSE Exchange Notice No. 201408-19-17 dated August 19, 2014 and No. 20140825-23 dated August 25, 2014.

H. <u>Discrepancy in calculation of networth</u>

Allegation:

i) It is alleged that the trading member has incorrectly reported the Networth to the exchange upon verification of the Networth certificate submitted by the Trading member as on 31-Mar-2018.

ii) Thus, the broker is alleged to have violated SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL.

Reply:

In this regard, Noticee has submitted the copy of CA certified Networth certificate with Networth of Rs. 5,93,49,953/- submitted for next quarter that is, as on 30th September 2018 to Exchange which includes the missed item in Networth calculation. Noticee has also stated that, the subsequent Networth statements also include the missed item.

Observation:

I have taken notice of the fact that, Noticee has not included advances for expenses (given more than 3 months) under "doubtful debt & advances while calculating Networth submitted to the exchange as on 31-Mar-2018 and therefore reported incorrect Networth to the exchange.

Based on the submissions of Noticee, I note that, the Noticee has admitted its deficiency in calculation of net worth and rectified the calculation of Networth statements after being pointed out by the inspection team. In view of the above, I find that the allegation of discrepancy in the Networth reported to the exchange is established against the Noticee. Therefore, I find that the Noticee was in violation of SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL.

The Following Allegations, i.e., (I) to (L) pertain to Depository Participant, **Composite Investment Private Limited**. I would like to first list the allegations and corresponding reply and, then, state my observations.

I. KYC details from KRA not fetched

Allegation:

In case of Account Opening, It is observed that Noticee has not fetched / download the KYC from KRA for pending, hold or rejected instances.

I note that the Inspection team had found that in case of Account Opening, for below mention cases Noticee has not fetched / download the KYC from KRA as stated in CVL KRA communiqué CVL/OPS/INTERM/GENRL/12-030 dated August

11, 2012 (Ref. SEBI Circular MIRSD/ Cir-5 /2012 dated April 13, 2012) for pending, hold or rejected instance.

BO ID	BO Setup Date	First Holder's Name	Holders PAN	KRA Status
29517	24-JUL-2018	SUDHEESH S	ARRPS4465M	UNDER_PROCESS - Incomplete/ Existing / Old KYC
28488	20-MAR-2018	N G BALAJI. (2nd Holder)	AMWPB7463L	Hold with reason PAN Card Copy Not Legible

Thus, it is alleged that the Noticee is in violation of SEBI Circular MIRSD/ Cir-5 /2012 dated April 13, 2012 read with CVL KRA communiqué CVL/OPS/INTERM/GENRL/12-030 dated August 11, 2012

Reply:

In this regard, Noticee has submitted the copies of the KYC details fetched for BO ID: 29517 & 28488 from KRA.

Observation:

I observe that the PIA (post inspection analysis) has noted the DP has accepted the observation of the inspection team and has submitted that it has taken corrective steps. Noticee has submitted relevant and valid documents before me as documentary evidence towards the same. Thus, in light of the same, I find that the Noticee has violated the provisions of SEBI Circular MIRSD/ Cir-5 /2012 dated April 13, 2012 read with CVL KRA communiqué CVL/OPS/INTERM/GENRL/12-030 dated August 11, 2012.

J. <u>No second level authentication done</u>

Allegation:

i) It is alleged that, in case execution of following high value DIS, it is observed that DP is not doing 2nd level authentication through back office. However, senior official of the DP has verified and counter signed on DIS.

S.No	Transaction date	DIS No	BO ID	Value
1	14-MAR-2018	27533	14424	11550000
2	31-JAN-2018	27351	1115	3887970
3	17-NOV-2017	27098	26921	14895000

4	18-DEC-2017	27270	21839	3524378
5	31-JAN-2018	27352	1115	894875
6	26-DEC-2017	27279	22604	6330400
7	24-Jan-18	27471	22604	22500000

ii) Thus, it is alleged that the DP has violated Clause 16 of Code of Conduct read with Regulation 37 of DP Regulations and CDSL communiqué CDSL/OPS/DP/1577 dated May 13, 2009.

Reply:

In this regard, Noticee has *inter-alia* stated that, "*Our senior official has been verifying and counter signing all high value DIS. Now we have implemented the same in our back office and 2nd level authentication is been done through back office as well.*" Further Noticee has also submitted the Screenshot of the same.

Observation:

I observe that, the PIA has noted that Noticee had admitted that, In case of execution of high value DIS it was not doing 2nd level authentication through back office as stated in CDSL communique CDSL/OPS/DP/1577 dated May 13, 2009 and senior officials of the DP were verifying and counter signing on DIS. I further note that the Notice has taken corrective steps and adopted the appropriate practice in compliance with Regulatory Provisions post inspection team observation. Therefore, I find that Noticee was in violation of Clause 16 of Code of Conduct read with Regulation 37 of DP Regulations and CDSL communique CDSL/OPS/DP/1577 dated May 13, 2009

K. Wrong reason for updation for off market transfers in 2 instances

Allegation:

i) DP has updated wrong reason in case of 2 off-market transfers.

ii) Thus, it is alleged that the DP has violated clause 4 of code of conduct read with Regulation 37 of DP Regulations and CDSL communique CDSL/OPS/DP/SYSTM/6085 dated August 17, 2016.

Reply:

In this regard, Noticee has stated that, "*These transactions were between two separate Demat accounts of same BO. The error was inadvertent and we have taken sufficient measures to prevent the recurrence of such errors*."

Observation:

I observe that the PIA has noted that Noticee had admitted that, in case of off-market transfers it has updated wrong reason. i.e., it has updated Transfer between family members instead of Transfer between two accounts of same holder. DIS Numbers: 27531 & 24335. I find the lapse has happened in two instances and Noticee had submitted that the error was inadvertent and sufficient measures have been taken by it to prevent recurrence of such errors. Therefore, I find that Noticee was in violation of clause 4 of code of conduct read with regulation 37 of DP Regulations and CDSL communique CDSL/OPS/DP/SYSTM/6085 dated August 17, 2016.

L. Concurrent audit report are not in prescribed format

Allegation:

i) It is alleged that Concurrent audit reports are not in CDSL prescribed format. i.e., auditor has submitted in old format.
ii) Thus, Noticee is in violation of clause 11 of code of conduct read with Regulation 37 of DP Regulations and CDSL communiqué CDSL/A, I&C/DP/POLCY/2018/205 dated April 18, 2018.

Reply:

Noticee has submitted that, on verification of the error pointed out by inspection, they got the audit conducted afresh and received the reports from Auditors in the new format prescribed by CDSL. In this regard, Noticee has also submitted the copies of Concurrent Audit Reports in compliance with CDSL requirements.

Observation:

I note from the submissions of Noticee including concurrent Audit reports submitted for the months of April 2018 to September 2018, that it has taken corrective steps post the observation of the inspection team. The PIA also noted that the corrective steps were taken. Therefore, I find that Noticee was in violation of Clause 11 of Code of Conduct read with Regulation 37 of SEBI (Depositories and Participants) Regulations, 2018 and CDSL communiqué CDSL/A,I&C/DP/POLCY/2018/205 dated April 18, 2018.

<u>Issue – II</u>:- Whether the Noticee is liable for imposition of monetary penalty under Section 23D of SCRA, Section 15HB of the SEBI Act and Section 19G of Depositories Act?

9. SEBI takes various steps and measures from time to time in order to protect the interest of investors in securities market and also to promote orderly, fair and transparent dealings by the stock brokers. Further, SEBI also prescribes various checks and balances by issuing various circulars to prevent any misuse by stock brokers while dealing in the market and with their clients.

10. Under the SEBI Act 1992, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the securities market by such measures as it may think fit. The role of the stock broker as a market intermediary is indeed very crucial. It is the role of the stock broker to put proper systems, process and procedure in place to detect and prevent any practice and non-compliance, which is effecting the interests of investors. In the instant case, I note that the Noticee has not been compliant with various SEBI rules, regulations and circulars as alleged in the SCN and, as brought out in foregoing Paragraphs.

11. The object of inspection of the books of accounts and records of any intermediary is to monitor and identity any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, Rules, and Regulations made thereunder and Circulars issued from time to time and thereafter take necessary corrective steps for orderly, fair and transparent conduct of market participants.

12. In this connection I would like to refer to the order of the Hon'ble Securities Appellate Tribunal in the matter of **Religare Securities Limited v. Securities and Exchange Board of India (Appeal No. 23 of 2011 dated June 16, 2011)** wherein, the Hon'ble SAT has observed, "*It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious*

lapse is found during the course of the inspection, the Board should not proceed against the delinquent.“

13. Therefore, The aforesaid violations committed by the Noticee attracts penalty under Section 23D of SCRA , Section 15HB of the SEBI Act and 19G of the Depositories Act, which reads as below –

Section 23D of 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.”*

Section 15HB of 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, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”*

Depositories Act

Penalty for contravention where no separate penalty has been provided.

*“**19G**. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”*

14. Here, it is also important to refer to the observation of the Hon’ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was held that, *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the*

Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

<u>Issue – III</u>:- If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992 Section 23J of the SCRA and Section 19I of Depositories Act, which reads as under :-?

While determining the quantum of penalty under Section 23D of SCRA, Section 15HB of the SEBI Act and 19G of the Depositories Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act , Section 23J of the SCRA and Section 19I of Depositories Act, which reads as under :-

Factors to be taken into account by the adjudicating officer:

Section 15J - *While adjudging quantum of penalty under section 15, 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.

Section 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 aresult 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

Depositories Act

Factors to be taken into account while adjudging quantum of penalty

> ***Section 19- I.*** *While adjudging the quantum of penalty under section 1H, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default."*

15. As per the material available on record, the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors, if any, as a result of the Noticee's failures is not quantifiable. I also observe that there are no investor complaints on record arising out of failure on the part of the Noticee. As for repetitive factor, there is no Regulatory action, on record, taken against Noticee in past by SEBI. I also observe the Noticee has taken corrective steps to rectify the violations observed during the inspection and put in place appropriate system and control. Wherever appropriate and backed by valid documents (with CA Certification at some places) as well as acceptable reasoning given by the Noticee, I have considered such steps taken as mitigating factor. However, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and Circulars / directions issued thereunder, which it failed to do. In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under under Section 23D of SCRA, Section 15HB of the SEBI Act and Section 19G of Depositories Act.

ORDER

16. Having considered all the facts and circumstances of the case, the material available on record, the level of lapses committed by the Noticee, mitigating

factors taken into account and the factors mentioned in Section 23J of the SCRA, Section 15J of the SEBI Act and Section 19I of Depositories Act and in exercise of the powers conferred upon me under Section 23-I of the SCRA, Section 15-I of the SEBI Act and Section 19H of Depositories Act read with Rule 5 of the SEBI AO Rules, SCRA AO Rules and Depositories AO Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) under Section 23D of SCRA, Section 15HB of SEBI Act and Section 19G of Depositories Act. I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.

PENALTY PAYMENT OPTIONS

17. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

18. Noticee can also remit / pay the said amount of penalties through e-payment facility into Bank Account. the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI– Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

19. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department 1-DRA-2), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

21. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : September 29, 2020
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer