

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/HP/2020-21/8753]

**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. **Ashok Kumar Kayan, Broker, (PAN ALKPK2298K), CSE (SEBI Reg. No. - INB030491111)** having address at 1, R.N. Mukherjee Road, Martin Burn Building, 3rd Floor, Room No. 319, Kolkata - 700001, West Bengal
Email ID: akayan30@gmail.com

In the matter of Nikki Global Finance Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, '**SEBI**'), initiated adjudication proceedings under section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, '**SCRA**') against **Ashok Kumar Kayan, Broker, CSE** (hereinafter referred to as, '**Noticee/Broker**') pursuant to investigation in the matter of Nikki Global Finance Limited (hereinafter referred to as, '**the Company/NGFL**').
2. Adjudication Proceedings have been initiated against the Noticee under section 23D of SCRA for alleged violation of section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.
3. SEBI conducted an investigation in the matter to ascertain whether there were any disclosure violations by the promoters of the Company and certain other entities under PIT Regulations, 1992 and/or SAST Regulations, 2011 during the

period July 01, 2009 to May 30, 2014 (hereinafter referred to as '**investigation period**' or '**IP**').

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 12, 2019 to inquire into and adjudge under section 23D of SCRA, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated December 31, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD-5/MC/HP/5285/4/2020 dated February 10, 2020 (hereinafter referred to as '**SCN**'), was issued to the Noticee in terms 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 Noticee in terms of section 23D of SCRA for the aforesaid alleged violations.
6. The allegations levelled against the Noticee in the SCN are summarized as below:
7. It was alleged in the SCN that Noticee has failed to segregate securities or monies of clients Overarching Dealers Pvt Ltd.(**Overarching**) and Levia Trading Private Limited (**Levia**).
8. It was observed that Levia had bought 56,492 shares of NGFL and sold 1,28,448 shares of NGFL during the period from November 16, 2013 to March 31, 2014 on BSE. However, on perusal of the demat account of Levia received from NSDL, it was observed that the number of shares debited from the demat account of Levia was not matching with the shares sold by Levia on BSE during the said period. It was also observed from the demat statements of Levia received from NSDL and

CDSL that there was a debit of 2,18,207 shares from the demat account of Levia, while the shares sold by Levia on BSE was only 1,28,448 shares i.e. an additional 89,759 shares were debited from the demat account of Levia. The said additional shares were transferred from Levia to clearing member as per the demat account.

9. Further, on examination of the trades executed by Levia on BSE, it was observed that the broker was shown as The Calcutta Stock Exchange Limited (CSE). However, CSE stated that Levia was not a client of CSE, however, Levia was a client of the Noticee, one of the members of CSE. SEBI sought clarification from the Noticee, *inter-alia*, with respect to debit of additional shares from the demat account of Levia. Noticee stated in its reply to SEBI that the said excess 89,759 shares were debited from the demat account of Levia for the trades executed by another entity, namely Overarching having registered with the Noticee for the trading done during the period from February 18, 2014 to March 03, 2014. Noticee further stated that the sale and share movement was processed by mutual consent of the clients and no objection or demand has been raised for the same till date. Further, Noticee also provided duly attested ledger copies of Overarching and Levia. It was observed from the said ledgers that although the shares were debited from the demat account of Noticee, the sale proceeds of 89,759 shares were credited to Overarching.
10. SEBI sought documentary evidence of clients authorizing Noticee to debit the shares, CDRs mentioning the said arrangement etc. Noticee, *inter-alia* replied as under - *"...we had taken the mutual consent of the clients regarding the movement of shares in our email which has been subsequently deleted due to mail storage. However, we are trying to contact the clients to get the consent..."* Therefore, it was observed that Noticee failed to provide the proof regarding mutual consent received from the clients as claimed by the Noticee. In view of the reply received from Noticee, SEBI requested BSE to provide details of trading done by Overarching in the Company during the Investigation Period. Further,

CDSL and NSDL were requested to provide the demat statements of Overarching. From the replies of BSE, CDSL and NSDL, it was observed that Overarching had sold 89,759 shares of the Company during the period from February 18, 2014 to March 03, 2014. Further, there was no holding/transaction in the demat account of Overarching. Therefore, it was alleged that the securities pay-out obligation of Overarching was fulfilled by the Noticee through debit of demat account of Levia. Hence, Noticee has failed to segregate securities or moneys of clients Overarching and Levia and thus, allegedly violated Section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.

11. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 23D of SCRA, which reads as follows:

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 not exceeding one crore rupees".

12. In response to the SCN, Noticee filed its submissions / reply dated March 16, 2020. An opportunity of hearing was provided to the Noticee on August 04, 2020 vide notice dated July 15, 2020. Hearing on August 04, 2020 was attended by Mr. Harshvardhan Kayan, the Authorised Representative of the Noticee (AR). AR of the Noticee reiterated the submissions made in its reply dated March 16, 2020.

13. The key submissions of the Noticee are summarized as below:

14. Noticee submitted that both Levia and Overarching are registered with it with large delivery turnovers executed through it as a broker. Noticee further submitted that, in this case Noticee had received a request from Levia on February 11, 2014 to adjust the shares with Overarching on account of internal business transactions between them. Noticee further stated that, it had subsequently sent a letter to Overarching on February 13, 2014 and acknowledged credit of these shares with the strong worded letter that these settlements are not to be done in such manner in the future.
15. Noticee further submitted that on a proprietary level they had no interest in such transactions other than to perform their duties as Broker and earn a brokerage fee. Further, both Levia and Overarching do not maintain their DP account with the Noticee. Noticee has submitted the relevant communications as mentioned in above paragraph. Noticee further stated that the matter was settled and there have been no complaints from any of these clients.
16. Noticee submitted that there has been no misappropriation of funds or securities from their end and any action was done at the instruction of clients, hence lenient view may be taken in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I Whether the Noticee has violated Section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 23D of SCRA.

And

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

Issue No. I **Whether the Noticee has violated Section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008**

18. I note from the submissions that the Noticee has not disputed the transactions as described in the SCN.

19. From the evidence on record, it is seen that Overarching, a client of the Noticee sold 89,759 shares of Nikki Global during the period from February 18, 2014 to March 03, 2014. When the client sold the shares, it did not have any holding of these shares in its demat account. The delivery of the shares sold was made from the demat account of another client i.e. Levia. Evidence further shows that a total of 2,18,207 shares of Nikki Global were debited from the demat account of Levia, whereas Levia sold only 1,28,448 shares of Nikki Global on BSE. The additional 89,759 shares debited from the demat account of Levia were used to deliver against the sales made by Overarching.

20. In defense of the use of securities of one client for meeting obligations of another client, Noticee stated that a request was received from Levia on February 11, 2014 to adjust the shares with Overarching on account of internal business transactions between them. I have perused a copy of the letter submitted by the Noticee in support of this contention. The Noticee has also stated that these clients did not maintain their DP account with the Noticee. From this, I conclude that the Noticee used PoA to debit the said shares from the account of Levia.

21. Clause 2.1 of the SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 states that *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. Section 23 D of SCRA also requires that securities or moneys of the client or clients shall not be used for self or for any other client.

22. Noticee contention that on a proprietary level they had no interest in such transactions other than to perform their duties as Broker and earn a brokerage fee shows that Noticee disregarded the aforesaid requirements prohibiting use of securities of one client to meet obligations of another client while carrying out their business. Such conduct undermines the safeguards put in place by the aforementioned provisions to safeguard the securities and funds of clients.

23. Therefore, I find that even if the Noticee had the consent of Levia and Overarching for the said transaction, it still amounts to a violation of provisions of Section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 23D of SCRA.

and

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

24. As it has been established that the Noticee violated provisions of Section 23D of SCRA and SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008, Noticee is liable for monetary penalty under Section 23D of SCRA.

25. The text of Section 23D of SCRA is as below:

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 not exceeding one crore rupees".

26. While determining the quantum of penalty under Section 23D of SCRA, the following factors stipulated in Section 23J of SCRA have to be given due regard:

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.*

27. I note that the material does not bring out any quantifiable figures to assess the disproportionate gain or unfair advantage made as a result of default by the Noticee or the exact monetary loss to the investors /clients on account of default by the Noticee. I note that the Noticee would have earned some brokerage on the impugned transactions which could be directly attributable as gain accruing from the default. I also note that the material on record has brought out a single instance of default.

28. In view of the above, I find that a penalty of ₹1,00,000/- (Rupees One lakh only) under Section 23D of SCRA will be commensurate with the violations committed by the Noticee.

ORDER

29. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under Section 23-I of the SCRA read

Adjudication Order in respect of Ashok Kumar Kayan in the matter of Nikki Global Finance Limited

with Rule 5 of the Adjudication Rules, I hereby impose the penalty of ₹1,00,000/- (Rupees One Lakh only) on the Noticee viz. Ashok Kumar Kayan, Broker.

30. 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

31. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV 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

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

DATE: AUGUST 27, 2020

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER