

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**(ADJUDICATION ORDER NO: Order/SM/AR/2018-19/2439)**

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

*In respect of:*

**Pee Dee Kapur Stock & Securities Ltd.**  
**(Stock Broker- NSE)**  
**(REG- INB231185134)**  
802, International Trade Tower,  
Nehru Place, New Delhi-110019

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), along with M/s Ravi Ranjan & Co., Chartered Accountants, conducted an inspection of the books of accounts, documents and other records of Pee Dee Kapur Stock & Securities Ltd (hereinafter referred to as '**PD Kapur**' or '**Noticee**') during the period August 1, 2006 to August 10, 2006. The inspection of the books of accounts of the Noticee was conducted for the Financial Years 2004-05, 2005-06 and from April 2006 till the date of inspection. The inspection of the Noticee was conducted at its registered

office address which is located at 802, International Trade Tower, Nehru Place, New Delhi-110019.

2. During the course of inspection and upon examination of various records, it was observed by SEBI that Noticee had committed certain irregularities/violations while functioning as a stock broker of NSE (SEBI Reg No. INB231185134). Based on the findings of the inspection and the observations contained in the Inspection Report (hereinafter referred to as 'IR'), it was alleged that Noticee has violated the provisions of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), Securities Contract (Regulation) Act, 1956 (hereinafter referred to as '**SCR Act**'), Securities Contract (Regulation) Rules, 1957 (hereinafter referred to as '**SCR Rules**'), SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Broker Regulations**') and also the various provisions of SEBI Circulars and Stock Exchange Circulars / instructions that were issued from time to time. In view of the above allegations/findings against the Noticee, adjudication proceedings were initiated against the Noticee under the provisions of sections 15F & 15HB of SEBI Act and also under section 23 H of SCR Act.

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

3. Vide Order dated April 16, 2009, Ms. Jyoti Jindgar was appointed as the Adjudicating Officer ( '**AO**' ) under Section 19 read with Section 15 I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995**') and Section 23-I of SCR Act read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**Adjudication Rules 2005**') to inquire into and adjudge under the provisions of sections 15F and 15HB of the SEBI Act and under section 23H of SCR Act for the alleged violation of the various provisions of law committed by the Noticee.

Subsequently, I have been appointed as the Adjudicating Officer in the matter, vide an Order dated June 22, 2015.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:**

4. Show Cause Notice ref. EAD/JJ/ADJ/PDK/08/10/191557 dated January 19, 2010 (hereinafter referred to as '**SCN**') was issued to the Noticee under the provisions of Rule 4 of the Adjudication Rules 1995 & Adjudication Rules 2005, to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on it under the provisions of sections 15F and 15HB of the SEBI Act and section 23H of the SCR Act for the alleged violation of the relevant provisions of law by the Noticee, as listed in the inspection report at appropriate places, a copy of which was also provided to the Noticee during the course of the present proceedings. The SCN issued to the Noticee, *inter alia*, alleged the following:

- (i) *Inspection of your books of accounts was conducted by SEBI during the period August 1 to August 10, 2006. Based on the findings of the inspecting officials and after considering your reply the following violations have been alleged against you:-*
  - a. *Failed to intimate the place of maintenance of books of accounts, in violation of Regulation 17(2) of SEBI (Stock Brokers and Sub brokers) Regulations, 1992 r/w Section 209 of the Companies Act.*
  - b. *Failed to enter into rent agreement for its corporate office and its registered office premises in violation of Regulation 7A(2) of SEBI (Stock brokers & Sub-broker) Regulations, 1992.*
  - c. *Have made large cash withdrawals & receipts in violation of clause A(1) and A(2) Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.*
  - d. *Have misused the Client accounts by moving funds between business and client accounts which resulted in violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and*

*Rule 4(b) of SEBI (Stock Brokers & Sub Brokers) Rules, 1992 and provisions of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.*

- e. Have routed the funds for clients' transactions through group company Perpetual Finvest Lease Pvt. Ltd. Which has resulted in violation of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004.*
- f. Have entered into large movements of funds with its group companies without any corresponding securities transactions giving the appearance of indulging in fund based activities in violation of Rule 8(1) (f) and 8 (3)(f) of SCR Rules, 1957.*
- g. Have included misleading statements in the Client Agreement forms which has resulted in the violation of clause A(2) of the Code of Conduct specified under Regulation 7 of SEBI (Stock Brokers & Sub-brokers) Regulations, 1992.*
- h. Have committed irregularities in the Client Registration forms and agreements in violation of SEBI Circular No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004. SEBI circular nos SMD/Policy/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir-5/97 dated April 11, 1997. Rule 4(b) of SEBI (Stock Brokers & Sub-Brokers) Rules, 1992. Clauses A(5) and D(1) of Code of Conduct specified under Regulation 7 of SEBI(Stock Brokers & Sub-brokers) Regulations, 1992.*
- i. Have not maintained a separate account for client securities in violation of SEBI circular no. SMD/SED/cir/93/23321 dated November 18, 1993*
- j. Have transferred trades executed for a constituent to another in violation of clauses A(1) and A(2) Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.*

- k. Have dealt with unregistered sub brokers which has resulted in the violation of SEBI circular nos. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, SMD-I/3118 dated December 27, 1993, SMD/Policy/Cir/3/ 97 dated 31.03.97. Section 12(1) of SEBI Act, 1992 and Rule 3 of SEBI (Stock brokers and Sub-brokers) Rules, 1992.*
  - l. Have not framed the Code for Insider Trading which has resulted in the violation of SEBI (Prohibition of insider trading) Regulations, 1992.*
  - m. Have settled the margin requirement of one group company with that of the balances of other group companies which has resulted in the violation of the provisions of clause A(5) of Schedule II specified under Regulation 7 of SEBI(Stock Brokers & Sub-brokers) Regulations, 1992.*
5. Thereafter, a supplementary SCN dated October 14, 2011 was also issued to the Noticee in the matter, *inter alia*, detailing the relevant places in the IR wherein the abovementioned violations against the Noticee were mentioned and the same was served on the Noticee along with a copy of IR. The Noticee, vide its letters dated April 09, 2010, April 12, 2012 and May 30, 2013, submitted its reply to the SCN and contended that it had not committed any violation of the provisions of law as mentioned in the SCN.
6. In the interest of natural justice, opportunity of personal hearings were granted to the Noticee on September 22, 2011, May 27, 2013 and on October 21, 2016. Mr D. K Kapur, Director and Compliance officer on behalf of the Noticee appeared for the hearings on the stipulated dates and denied all the allegations that were levelled against the Noticee in the SCN.
7. Pursuant to the hearings, the Noticee made additional submissions vide its letters dated October 21, 2016 and November 04, 2016 and the same is also on record. Vide its aforementioned letters, Noticee reiterated its submissions made vide its earlier letters dated April 09, 2010, April 12, 2012

and May 30, 2013 and further submitted additional documents in support of its arguments. The Noticee further mentioned the following:-

- (i) It is on record of SEBI that the Dealing Office of the Noticee, where the pay-in and pay-out of funds and securities are being settled is situated at Mumbai since inception and therefore all the Accounts Books, Depository details etc. are being maintained and kept at the Mumbai office of the Member Broker.*
- (ii) It is further on record of SEBI that the Member Broker had his Registered Office only at Delhi and therefore only the statutory records and the records for financial transaction of own funds are being maintained and kept at Delhi office of the Member Broker. The same fact was appraised to the Inspecting Authority before the start of the Inspection vide letter dated 1st July, 2006 and requested to start Inspection at Mumbai. However, the request was rejected.*
- (iii) Further it is also pertinent to submit that previous Correspondences done by SEBI with the Noticee, through the NSE, Mumbai, were received by the Noticee at its Mumbai office itself. Thus the above-said facts were well within the knowledge of SEBI.*
- (iv) With respect to allegation of change in client code, it is hereby placed on record that this observation made in the Inspection Report is not an independent finding of the Inspection Team. As a matter of fact, the findings of NSE Inspection Report dated 24th August, 2006 on this issue were pointed out in the Inspection Report without going to the details and merits of the case by the Inspection Team.*
- (v) In this regard, a penalty of Rs. 1,08,200/- was imposed by the NSE on account of this wrong client code. The Noticee filed a detailed representation before the Disciplinary Committee of NSE along with the documentary evidences. After considering the document placed, the Disciplinary Committee of NSE waived off the penalty and refunded Rs. 1,07,900/.*

- (vi) *With respect to the allegation of not entering into rent agreement, the Noticee submitted that the office premises occupied and used by the Noticee, both at Mumbai & Delhi, are owned by the Directors of the Member / their family owned concerns and no monthly rent was paid to them. Therefore, there was no reason to draw a formal rent agreement for the same. Further, only refundable security deposit to the respective owners was paid without any monthly rental obligation.*
- (vii) *With respect to allegation of large cash withdrawal, the Noticee contended that most of the transitions between two offices of the Noticee were through banking channel and only 3 transactions for total of Rs. 12.75 and 7 transactions for total of Rs. 7.36 were in cash during the year 2004 - 2005 and 2005 - 2006 respectively and these were out of Cash Balance in hand. Further, on few occasion when the funds transfer in cash took place as per the business necessity and the urgency etc., the same was duly deposited in bank by the receiving office on the very next day.*
- (viii) *With respect to the allegation of moving funds between business and client accounts, the Noticee contended that it had, in its reply dated February 15, 2007 had clarified such transactions and also placed on record certain details by way of annexure. After being satisfied with the reply of the Noticee, the Inspecting Authority has changed their allegation, and observed that "the member needs to have a proper system to take its brokerage and other levies. The member has not replied as to whether or not it has such system."*
- (ix) *However, the Noticee, in annexure to its reply dated February 15, 2007, had explained the nature of all debit entries appearing in Bank Books of client account, cash segment of Inspection Report and all debit entries appearing in Bank Books of client account, Derivative Segment. In the said Annexure, the member broker placed on record the nature of each and every such transaction.*

- (x) *That the Inspecting team has not appreciated the fact that on many occasions funds are transferred from the Business Account to meet out short term requirements to meet pay-in liability and the said amount is remitted back from Client Account to Business Account on a later date. Thus, the funds out of client bank account were transferred in business account only for two reasons purposes as under:*
- a. Amount on account of brokerage and other statutory levees being collected form client.*
  - b. Returning back the amount to business account, that was being transferred from business account to client account on as earlier date (to meet out short term requirements), which is allowed under SEBI Circular dated November 18, 1993.*
- (xi) *With respect to the allegation of large movements of funds with its group companies without any corresponding securities transactions giving the appearance of indulging in fund based activities, the Noticee contended that transactions mentioned in Table 12 of the Inspection Report (page 13) were carried out a Registered Office, New Delhi and the same were out of the own funds of the Noticee. It is important to note that no Securities Transaction are carried out at Delhi Office.*
- (xii) *As matter of fact, the financial transactions with group companies as pointed out in Inspection Report were carried out at the Head Office, Delhi, which were in the nature of receipt / payment of old ledger balances and, therefore, there existed no corresponding entry of the Securities. In light of this, the Noticee denied any violation of Rule 8(1)(f) and Rule 8(3)(f) of SCR Rules.*
- (xiii) *With respect to the allegation of having routed the funds for clients' transactions through group company viz. Perpetual Finvest Lease Pvt. Ltd., the Noticee contended that M/s Perpetual Finvest Lease Pvt. Ltd. and all other family owned firms are independent legal*



entities. The Noticee is neither the Proprietor nor holding any shares of these families owned Companies/firms. They are carrying out various activities during their normal course of business since for the last 10-15 years with various purposes and are being assessed to Income Tax independently. Further, these transactions have nothing to do with any transactions relating to the Noticee and its clients.

- (xiv) The Noticee further contended that it has never provided any margin Trading Facility to any of its Client. Therefore, there has been no contravention of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004 and the said Circular, therefore, stood fully complied with by the Member Company in words and spirit.
- (xv) Further, the Noticee has also contended that the transactions pointed out vide Annexure - II (f) of the Inspection report fall prior to the date of enforceability of the under reference SEBI Circular. The afore-said SEBI Circular was enforced from 10th February, 2006, as informed by NSE to its Members vide Circular No. NSE/INSP/2005/42, dated 9th December, 2005. The above said SEBI Circular, therefore, have no applicability to the transactions referred to by your goodself. From a careful reading of this circular dated 9<sup>th</sup> December 2005 of NSE it is evident that, although the SEBI Circular was referred, the NSE instructed its member to desist from the violation not later than 10<sup>th</sup> February, 2006 (i.e. much later date from the date of Circular).
- (xvi) With respect to the allegation of irregularities in the Client Registration forms and agreements, the Noticee contended that the 'Uniform Requirement' were prescribed vide Circular No. SEBI/MIRSD/DPS-1/CIR-31/2004, doled August 26, 2004. Since the Client Registration form and the Member-Client Agreement were printed initially in the year 2002, hence the requisite details viz. Clients Investments/Trading experience as pointed out in Table 14, Trading preference etc. were not pointed in the Book-lets itself which were examined by the Inspecting Team. However, the said details

were collected by the Member Broker from its Clients and the same were produced before the Inspecting Team separately.

- (xvii) *The Noticee further contended that for the purpose of convenience and control, consolidated client registration forms were prepared for all the clients whether corporate or non-corporate and the relevant details of the client were filed-in at the appropriate column in the said form; in the column for date of birth, the corporate client fills-in its date of incorporation. Further, in addition to the above, a corporate client is also obliged to furnish copy of the 'Certificate of Incorporation' and Memorandum of Association\ together with list of directors/partners with their residential address and the same were duly obtained accordingly.*
- (xviii) *Further, with regard to the observation that the Noticee has changed the name from the Pee Dee Kapur Securities Ltd. w.e.f 22nd November, 2005 however the agreements entered into by the Member Broker with its Clients after the said date were also in the name, of Pee Dee Kapur Securities Ltd., it is submitted that though the name of the Member was changed in the record of Registrars of Companies (ROC) with effect from November, 2005; but after constant and much pursuance, NSE enabled the new name of the Member Broker on Stock Exchange's Trading System with effect from 27<sup>th</sup> June, 2006 only. Hence, in order to avoid any mismatch between the documents, Member-constituent agreements were executed in the name of Pee Dee Kapur Securities Ltd. Since, the Member Broker is a Corporate entity; hence the same did not lead to many legal infirmities or prejudicial to anybody's interest.*
- (xix) *With regard to the allegation of not maintaining a separate account for client securities and Noticee and dealing with unregistered sub-brokers, the Noticee has contended that a separate account for clients Securities was maintained by it. The Securities in Member's Beneficiary Account were exclusively for the Securities of Clients*

*only. Further, since the Noticee never traded at its own Account whether in 'Pro Account' or otherwise, there cannot be any question of distinguishing securities of the Member Broker from the clients Securities. It is therefore amply clear that transfer of securities from Pool Account to the Beneficiary Account were wholly and exclusively for clients' securities only, being a separate Account for keeping clients securities.*

- (xx) With respect to the allegation of transferring of trades executed for a constituent to another, the Noticee has contended that the observation of the Inspecting Authorities is not a "definite" observation. It is to be noted that after considering the Noticee's reply dated 15th February, 2007 the inspecting authority has used the word "it appears". Thus the observation is not a definite observation.*
- (xxi) The Noticee further contended that it had merely acted upon the written directions and of its clients, which the Noticee is legally bound to act upon by virtue of provisions of Member-client agreement entered into with the clients.*
- (xxii) The observation given in Inspection Report compares the cases where the respective clients have given specific written instructions to the Member Broker that they have appointed the concern namely Perpetual Finvest Lease Pvt. Ltd. As an agent to act for and on their behalf and accordingly authorized the Member Broker to receive/ transfer the pay-in/payout of securities from/to the agent.*
- (xxiii) The Noticee further contended that merely because the clients have instructed the Member Broker to accept their pay-in obligations from some other accounts or to pay their pay-out obligation to some accounts (which the member Broker was legally bound to act upon their such written instructions) does not mean and cannot be constructed that the parties, from whose accounts such deliveries or funds have been remitted to the Member Broker for and on behalf of its clients, were functioning as " Unregistered Sub-broker".*

- (xxiv) *In this regard, the Noticee contended that it never acted upon the instructions of any third party or the said concerns, whether relating to trade in securities or relating to pay-in / pay-out of funds/ securities pertaining to the transactions of the clients through the Noticee. The Noticee had entertained/recognized instructions only from the respective clients and not from anybody else.*
- (xxv) *In this regard, the Noticee attempted to explain the transactions given in the inspection report:*
- a. the transaction appearing in the Demat Account of M/s AJC Securities & Finance Pvt. Ltd. (a family owned company) with M/s V N Capital Pvt. Ltd., pointed out in Table 26 of Inspection report. It is submitted that M/s V. N. Capita] Pvt. Ltd. is a Stock Broker, to whom the said Family Owned concern - M/s AJC Securities & Finance Pvt. Ltd., had transferred the under reference shares as Margins for doing Share Transactions through the said Broker. Since the terms with the said broker could not be materialized, the under reference shares were subsequently returned back by the said Broker.*
  - b. In respect of the transactions appearing in the Demat Account of Smt. Sushma Kapur, exhibited in table 27-28 of inspection report, it is submitted that the said transactions were independent transactions carried out by the said person with other brokers in her individual capacity having no relation with the Stock Broking Activities of the Member Broker.*
  - c. In respect of the transaction in the Demat Account of Shri D. K. Kapur, exhibited in Table 30-31 of Inspection report, it is submitted that the said transactions were independent transactions carried out by M/s DPK Stock & Securities, through Mr. D. K. Kapur as Karta of HUF, through the Broker namely M/s India Bulls Securities Ltd. Your will kindly appreciate that all such receipt and transfer of the securities*

*were from / to the said Broker only i.e. M/s India Bulls Securities Ltd.*

- (xxvi) We further draw your kind attention that in Annexure II (e) at page 70 of the Inspection Report, the Inspecting Team has themselves observed that all these Group Companies were dealing with other Brokers.*
- (xxvii) With regard to the allegation of not having any code for insider trading, the Noticee contended that Stock Broking activity of the Noticee is very small sized, having no Branch network. The Member has only few staff and, therefore, the day to day business activities including matters relating to all vital information are looked after by the Directors themselves who are qualified CA. The total number of Active Clients were 36 only and this figure includes 15 Group companies leaving 21 outside clients only.*
- (xxviii) The Noticee has provided and explained to its staff the contents of the Model Code of Conduct specified in Schedule I of SEBI (Prohibition of Insider Trading) Regulations, 1992 and had made them apprised about the relevant provisions of the same and also the consequences for not observing the same. The Noticee also organizes periodical Meeting of the Staff with a view to monitoring them and to keep abreast with the new development and changes.*
- (xxix) With regard to the allegation of settling the margin requirement of one Group Company with that of other group companies, the Noticee contended that all the transactions as per Table 37 of Inspection Report were bona-fide and legitimate transactions. The Noticee merely acted on the express and written instructions of the clients. In such cases where the Family Owned Concerns have met their payment obligations through some other account, the same were under the written authorizations given by them to the Noticee, duly endorsed and consented to by the other party from whose accounts remittances have been made.*

## CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material on record, including the observations made in the IR and the various replies/submissions of the Noticee.
9. Before moving forward, the relevant extracts of the provisions of law allegedly violated by the Noticee are mentioned as under- :

### **SEBI Act**

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

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

### **SCR Rules**

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

*(1) No person shall be eligible to be elected as a member if—*

*(f) he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business:*

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

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

## **SEBI (Stock Brokers & Sub Brokers) Rules, 1992**

### ***Conditions for grant of certificate to stock-broker.***

*4. The Board may grant a certificate to a stock-broker subject to the following conditions namely:*

*(b) he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member;*

### **Stock Broker Regulations**

*7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.*

## **SCHEDULE II**

### **CODE OF CONDUCT FOR STOCK BROKERS**

#### **A. GENERAL**

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

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

*(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.*

*D. (1) A stock broker, shall enter into an agreement as specified by the Board with his client.*

### ***To maintain proper books of account, records, etc.***

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

**SEBI (Prohibition of Insider Trading) Regulations, 1992**

**Code of internal procedures and conduct for listed companies and other entities.**

12. (1) *All listed companies and organisations associated with securities markets including:*

*(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*

*shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.*

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

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

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

- i. money held or received on account of clients;*
- ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*



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

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

***SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004***

### ***1.3 Eligibility requirements for brokers to provide margin trading facility to clients***

***1.3.1 Only corporate brokers with a "net worth" of at least Rs.3.00 crore would be eligible to offer margin trading facility to their clients. The "net worth" for the purpose of margin trading facility would mean "Capital" (excluding preference share capital) plus free reserves less non allowable assets, i.e fixed assets, pledged securities, member's card, non-allowable securities, bad deliveries, doubtful debts and advances (including debts and advances overdue for more than 3 months or given to associates), pre-paid expenses, intangible assets and 30% of the marketable securities."***

### ***1.5 Source of Funds for the broker for providing margin trading facility to his clients and maximum permissible borrowing by any broker***

*For the purpose of providing the margin trading facility, a broker may use his own funds or borrow from scheduled commercial banks and/or*

*NBFCs regulated by RBI. A broker shall not be permitted to borrow funds from any other source.*

***SEBI Circular SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003***

- 3. All payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. However, in exceptional circumstances the broker or sub-broker may receive the amount in cash, to the extent not in violation of the Income Tax requirement as may be in force from time to time.*
- 4. Similarly in the case of securities also giving / taking delivery of securities in “demat mode” should be directly to / from the “beneficiary accounts” of the clients except delivery of securities to a recognized entity under the approved scheme of the stock exchange and / or SEBI.*

***SEBI Circular No. SMD-I/3118 dated December 27, 1993***

*Your attention is drawn to Section 12 of SEBI Act which requires the sub-brokers to get registered with SEBI for doing business in securities. The stock brokers are not supposed to deal with those sub-brokers who are not registered with SEBI.*

***SEBI Circular No. SMD/Policy/Cir/3/ 97 dated March 31, 1997***

*No broker shall deal with a person who is acting as a sub-broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub-broker unless he is registered with SEBI as sub-broker or is recognised by the stock exchange as a remisier.*

10.I will now proceed to discuss the various allegations levelled against the Noticee, the replies submitted by the Noticee and record my observations/ findings as under:-

**A. Allegation w.r.t. Noticee indulging in Fund based business activity.**

**B. Allegation w.r.t. Noticee dealing with Unregistered Sub brokers**

**C. Allegation w.r.t. Noticee settling the margin requirement of one group company/entity from the account of other group companies/entities**

**D. Allegations regarding Noticee indulging in unauthorized margin funding of its clients**

- a) It is alleged in the SCN that the Noticee has indulged in large scale movement of funds with its group companies without any corresponding securities transactions giving an impression that the Noticee was indulging in fund based business activity. In view of the same, it is alleged that Noticee has violated the provisions of Rule 8(1)(f) and 8(3)(f) of the SCR Rules.
- b) It is further alleged that the Noticee has routed the funds w.r.t its clients' transactions through its group company viz. Perpetual Finvest Lease Pvt. Ltd. This has resulted in the violation of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004.
- c) It is also alleged that the group companies of the Noticee were acting as unregistered sub-brokers of the Noticee and the Noticee was constantly dealing with them in its capacity as a stock broker. This has resulted in the violation of Section 12(1) of the SEBI Act, 1992 and Rule 3 of SEBI (Stock brokers and Sub-brokers) Rules, 1992 read with SEBI circular nos. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, SMD-I/3118 dated December 27, 1993 and SMD/Policy/Cir/3/ 97 dated March 31, 1997.

- d) It is also alleged that the Noticee was regularly settling the margin requirement of one group company from the account of other group companies which resulted in the violation of the provisions of Clause A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers & Sub-brokers) Regulations, 1992.

**Noticee's reply:**

- e) Noticee has denied the aforesaid allegation and submitted that the transactions mentioned in Table 12 of the Inspection Report (page 13) were carried out at its Registered Office, New Delhi and the same were out of its own funds. Further, the Noticee has also highlighted that no securities transactions were carried out at its Delhi Office.
- f) The Noticee has further contended that the transactions with its group/associate companies/entities, as mentioned above, were carried out at its Registered office/ Head Office, Delhi, which were made for the purpose of settling their old ledger balances and, therefore, there existed no corresponding entry of the Securities. In light of this, the Noticee denied that it has violated the provisions of Rule 8(1)(f) and Rule 8(3)(f) of the SCR Rules.
- g) With respect to the allegation of having routed the funds for client transactions through its group company i.e. Perpetual Finvest Lease Pvt. Ltd., the Noticee contended that M/s Perpetual Finvest Lease Pvt. Ltd. and all other family owned firms/entities were independent legal entities. The Noticee is neither the Proprietor nor holding any shares of these families owned companies/firms/entities. They are carrying out various activities during their normal course of business since the last 10-15 years with various purposes and are being assessed by the Income Tax authorities independently. Further, these transactions have nothing to do with any transactions relating to the Noticee and its clients.

- h) The Noticee has contended that it has never provided any margin trading facility to any of its clients. Therefore, there has been no contravention of the provisions of SEBI Circular No. SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004.
- i) Further, the Noticee has also contended that the transactions pointed out in Annexure - II (f) of the Inspection report fall prior to the date of enforceability of the under reference SEBI Circular. The aforementioned SEBI Circular came into effect from 10th February, 2006, as informed by NSE to its Members vide Circular No. NSE/INSP/2005/42, dated 9th December, 2005. The above said SEBI Circular, therefore, has no applicability w.r.t the transactions referred to by your goodself. From a careful reading of this circular dated 9th December 2005 of NSE, it is evident that, although the SEBI Circular was referred, the NSE instructed its members to desist from the violation not later than 10th February, 2006 (i.e. on a much later date from the date of Circular).
- j) With respect to the allegation regarding dealing with unregistered sub broker, the Noticee has contended that it has merely acted upon the written directions of its clients, which the Noticee is legally bound to act upon by virtue of the provisions of the member-client agreement entered into with the clients.
- k) The observations made in the Inspection Report comprises of the cases wherein the respective clients have given specific written instructions to the Member Broker that they have appointed the concerned entity i.e. Perpetual Finvest Lease Pvt. Ltd as an agent to act for and on their behalf and they accordingly authorized the Member Broker to receive/ transfer the pay-in/payout of securities from/to the agent.
- l) The Noticee further contended that merely because the clients have instructed the Member Broker to accept their pay-in obligations from some other accounts or to pay their pay-out obligation to some

accounts (which the member broker was legally bound to act upon their written instructions) does not mean and cannot be construed that the parties, from whose accounts such deliveries or funds have been remitted to the Member Broker for and on behalf of its clients, were functioning as " Unregistered Sub-broker".

- m) In this regard, the Noticee has contended that it has never acted upon the instructions of any third party or the said concerns, whether relating to trading in securities or relating to pay-in / pay-out of funds/ securities pertaining to the transactions of the clients through the Noticee. The Noticee had entertained/recognized instructions only from the respective clients and not from anybody else.
- n) With regard to the allegation of settling the margin requirement of one group company with that of other group companies, the Noticee contended that all the transactions as per Table 37 of Inspection Report were bona-fide and legitimate transactions. The Noticee stated that it has merely acted on the express and written instructions of its clients. In such cases where the family owned concerns have met their payment obligations through some other account, the same were under the written authorizations given by them to the Noticee, duly endorsed and consented by the other party from those accounts remittances have been made.

**Findings:**

- o) From the reply of the Noticee, as aforesaid, I find that the Noticee has admitted to the fact that the transactions mentioned in Table 12 of the inspection report were undertaken by it and importantly, these transactions were not backed by any securities. The Noticee has also admitted to the fact that these transactions had nothing to do with the securities market and they were carried out at its Head Office, Delhi, which were in the nature of receipt/payment towards the settlement of

old ledger balances of these entities and, therefore, there existed no corresponding entry of the securities. In this regard, I have perused the transactions mentioned in Table 12 of the IR and I find that there are entries showing both receipt and payment of funds made by the Noticee to various entities/parties during the period April 21, 2004 to March 22, 2006. As per Noticee's own admission, these transactions were not backed by any purchase or sale of securities. A gist of such transactions are shown as per the Table below :-

Date	From/To	Receipt / Payment	Amount
21-4-04	DPK Stock & Securities Ltd.	Receipt	2,00,000
30-4-04	APM Financial Consultants Ltd	Payment	50,000
20-5-04	Shivam Investments	Payment	35,50,000
21-5-04	Hindon Sales Pvt Ltd	Receipt	30,000
25-5-04	Shivam Investment	Receipt	35,50,000
28-5-04	APM Financial Consultants Ltd	Payment	50,000
29-6-04	APM Financial Consultants Ltd	Payment	50,000
10-07-04	DPK Stock & Securities Ltd.	Payment (Cr)	19,205
29-7-04	APM Financial Consultants Ltd	Payment	50,000
30-8-04	APM Financial Consultants Ltd	Payment	50,000
2-9-04	DPK Stock & Securities Ltd.	Receipt	25,000
15-9-04	APM Financial Consultants Ltd	Receipt	55,000
23-9-04	DPK Stock & Securities Ltd.	Payment	28,00,000
27-9-04	DPK Stock & Securities Ltd.	Receipt	25,00,000
30-9-04	APM Financial Consultants Ltd	Payment	50,000
28-10-04	APM Financial Consultants Ltd	Payment	50,000
29-11-04	APM Financial Consultants Ltd	Payment	50,000
28-12-04	APM Financial Consultants Ltd	Payment	50,000
30-3-05	APM Financial Consultants Ltd	Receipt	4,50,000
7-1-06	APM Financial Consultants Ltd	Payment	8,00,000
7-3-06	APM Financial Consultants Ltd	Receipt	1,75,000
20-3-06	DPK Stock & Securities Ltd.	Receipt	2,816
22-3-06	APM Financial Consultants Ltd	Payment	1,00,000

- p) The Noticee has contended that the above transactions were done with its group/associate companies and were in respect of receipt/payment of old ledger balances from these entities. In this regard, it is pertinently observed that the Noticee has failed to substantiate its statement made above and also failed to produce any evidence in support of its contention that the above mentioned transactions were pertaining to the

settlement of the pending ledger balances of these entities as a result of their trading in securities through the Noticee. Further, as per Noticee's own admission, these transactions were not backed by any corresponding entry of securities and therefore, Noticee's contention that the transactions were to settle their existing ledger balances is without any merit. On the contrary, I am of the view that these transactions are nothing but short term finance/loan facility extended by the Noticee to these entities. The same is clearly corroborated from the manner in which funds were paid and received back by the Noticee within close proximity of dates which can be observed from the above Table.

q) Further, the following illustrations makes it amply clear that the Noticee was actually undertaking fund based activity in the course of its business :-

- The Noticee has contended that Rs. 30,000/- which was received from M/s Hindon Sales Pvt. Ltd. was towards the recovery of the old balances. However, no evidence of such old balances due from Hindon Sales was submitted by the Noticee to the inspection team and/or during the course of the proceedings.
- The Noticee has contended that the transaction with M/s Shivam Investments was pertaining to security deposit towards the property owned by its proprietor Ms. Sushma Kapur (also a director of the Noticee) and used by the Noticee. However, from the bank statement submitted by the Noticee, I note that an amount of Rs. 35,50,000/- was deposited into the bank account of M/s Shivam Investment on May 20, 2004, which was reverted back to the Noticee's account on May 25, 2004 i.e. after five days. Clearly, the above transaction can be seen as a short term loan facility extended to Shivam Investments by the Noticee. Further, as already stated, the Noticee could not produce any convincing evidence to show that



the above amount was paid towards the settlement of the ledger balances of Shivam Investments. In any case, the payment and receipt of Rs 35,50,000/- within a period of 5 days and the Noticee's admission that they were not backed by securities clearly points out to the fact that Noticee has lent a short term loan facility to its associate entity.

- Similarly, with M/s DPK Stock & Securities, the Noticee has contended that an amount of Rs 28 lakhs was the money paid to DPK towards the security deposit for the use of premises. However, I find that an amount of Rs. 28,00,000/- was transferred by the Noticee to DPK on September 23, 2004 and out of this, an amount of Rs. 25,00,000/- was reverted back to the account of the Noticee within 4 days. Again, from the pattern of this transaction, I am convinced that the said movement of funds was nothing but a short term loan facility extended by the Noticee to DPK.
- Further, the Noticee has contended that the money paid to M/s APM Financial Consultant Pvt. Ltd. was towards the part payment for the purchase of vehicle. However, firstly, there was no evidence to show that purchase of such vehicle has been provided by the Noticee. I further observe from the copy of the ledger statement of the Noticee that it had given 9 installments of Rs. 50,000/- each to M/s APM Financial Consultants Pvt. Ltd during the FY 2004-05 and the same were received back by the Noticee on March 30, 2005 i.e. the second last day of FY 2004-05. Therefore, from the pattern of these transactions, there is ample evidence to indicate that Noticee has extended short term loans/facility to its group entities.

r) In view of the above observations wherein funds were paid and received back by the Noticee within a short period of time and without any backing of securities transactions, I am convinced that these transactions are nothing but short term loan facility extended by the

Noticee to its group/associate entities and therefore, Noticee has indulged in fund based business activity. As a stock broker, Noticee was expected to undertake only securities market transactions. However, admittedly, Noticee has mentioned that these transactions were not backed by any securities. The Noticee could also not produce any plausible evidence in support of its contention that these transactions were as a result of payment/receipts towards the settlement of the pending ledger balances of these entities arising out of their trading in shares through the Noticee. Further, from the pattern of the above transactions, there is strong evidence to point out that these transactions were indeed fund based transactions (in the form of short term loans/ICDs) which were extended to/from Noticee's account from/to the account of the above mentioned group entities. In this regard, I observe that Noticee has vide its letter dated April 9, 2010, which was addressed to the then Adjudicating Officer, mentioned that these transactions were in the nature of ICDs.

- s) Therefore, from the above observations/findings, I hold that Noticee has indulged in fund based business activity which has resulted in the violation of the provisions of **Rule 8(1)(f) and Rule 8(3)(f) of the SCR Rules.**
- t) With regard to the allegation that Noticee was settling the margin requirement of one group company/entity with that of its other group companies/entities, the Noticee has contended that all the transactions as per Table 37 of the Inspection Report were bonafide and legitimate transactions. The Noticee mentioned that it has merely acted on the express and written instructions of its clients. The Noticee contended that in such cases where the family owned concerns have met their payment obligations through some other account, the same were made as per the written authorization given by the respective entities / family owned concerns. I am not inclined to agree with the contentions put

forth by the Noticee. I observe that SEBI Circular Ref SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004 [clause 1.5 (2)] has expressly stated that a stock broker shall not use the funds of any clients for providing the margin trading facility to another client, even if the same is authorized by the client. In this regard, I note that in respect of the margin obligation of Panther Finvest Pvt Ltd on March 31, 2006, funds to the tune of Rs 4.35 lakhs was utilized from the account of the Noticee. Similarly, on April 2, 2005, funds to the tune of Rs 2 lakh was paid from the account of Supreme Lease Finvest Pvt Limited against the margin obligation of Sapna Kapur. Therefore, from the above observations, I am convinced that Noticee has violated the provisions of the aforementioned SEBI Circular dated March 19, 2004 r/w with the provisions of Clause A (5) of the Code of Conduct prescribed for Stock Brokers contained in the Stock Broker Regulations.

- u) I also note from the records/material made available that Noticee was receiving the securities from its group company i.e. Perpetual Finvest Lease Pvt. Ltd (Perpetual) against the delivery obligation of its trading clients. Similarly, it was observed that Noticee was transferring the securities to the Demat account of Perpetual against the purchases of its trading clients. The Noticee has contended that Perpetual is an independent legal entity within the same group and Noticee has nothing to do with the business activities of Perpetual.
- v) From the reply of the Noticee, vide its letter dated May 30, 2013, I observe that the Noticee has admitted to the fact that Perpetual is one of the “closely held family owned group companies” of the Noticee wherein the shareholders/directors were from the same family i.e. from the family of Pee Dee Kapur group and the shareholders/directors of Perpetual were also on the Board of the Noticee. I further note that Perpetual is also a trading client of the Noticee. It is pertinently observed that Noticee has vide its letter dated April 9, 2010, which was

addressed to the then Adjudicating Officer, SEBI had mentioned that the transactions with Perpetual were in the nature of ICDs.

w) In this context, it is relevant to mention the observations made by NSE in its inspection report of the Noticee wherein NSE has, *inter alia* observed that the Trading Member (i.e. the Noticee in the context of the present proceeding) –:

- was a party to the agreement or arrangement, directly or indirectly, entered into between their clients and M/s Perpetual Finvest Lease Pvt. Ltd., group company to fund the transactions executed by the trading members on behalf of their clients and recognized & acted in accordance with such agreement or arrangement entered into by the clients with M/s Perpetual Finvest Lease Pvt. Ltd.
- had entertained instructions to trade in securities or transfer funds or securities, from M/s Perpetual Finvest Lease Pvt. Ltd., by prior arrangement or otherwise to facilitate financing clients' transactions.
- had acted as a conduit or front for financing such secondary market transactions entered into by their clients, directly or indirectly, except in accordance with the regulatory provisions of Margin Trading Facility and Securities Lending and Borrowing.

- Undertaking from client

It was observed that 19 clients registered with the Trading Member were availing finance from M/s Perpetual Finvest Lease Pvt. Ltd., a group company of the Trading Member where the shareholders and directors are common, by entering into an agreement with a financing company and by giving POA in favour of the financing company. The Trading Member had

obtained letter of authorization from such clients obtaining authority to transfer all funds payout, all securities payout to the financing company and also to receive funds and securities from the financing company, and to forward copies of contract notes, bills and other trade related documents to such financing company and to receive direction for sell, purchase of securities, to transfer balance to financing company.

- x) I note that a complete list of all the financial transactions which were entered into between the trading clients of the Noticee and Perpetual is mentioned at Annexure II (f) of the IR, a copy of which was also provided to the Noticee during the course of the present proceedings. I further note that the Noticee has not disputed these transactions and has merely feigned ignorance by arguing that Perpetual is a separate legal entity.
- y) Apart from the above transactions, it was observed that Noticee has accepted securities from the Demat account of Perpetual against the delivery obligations of its trading clients and has also transferred the shares to the Demat account of Perpetual against the purchase obligation of its trading clients. In other words, Noticee was receiving/making third party deliveries against the obligation of its clients. A sample list of such transactions were mentioned at Table 21 of the IR.
- z) The observations made above clearly points out to the fact that the Noticee was not only transferring the shares to the demat account of Perpetual in respect of the purchases made by its trading clients but was also receiving the shares from the demat account of Perpetual against the delivery obligation of its clients. In view of the above, it was alleged in the SCN that Noticee had dealt with an unregistered sub broker and therefore, violated the provisions of Section 12(1) of SEBI

Act, 1992 and Rule 3 of SEBI (Stock brokers and Sub-brokers) Rules, 1992 read with SEBI circular nos. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, SMD-I/3118 dated December 27, 1993 and SMD/Policy/Cir/3/ 97 dated March 31, 1997.

aa) In this context, I find from the submissions made by the Noticee that it has admitted to the fact that its group entity viz. Perpetual was extending finance facility to its trading clients in respect of their trading obligations. It is also an admitted fact by the Noticee that it was transferring the shares to the account of Perpetual against the purchases made by its trading clients and was receiving the shares directly from the Demat account of Perpetual against the delivery obligation of its clients. In other words, Perpetual, which was not a registered NBFC with RBI was engaged in unauthorized margin funding activity on behalf of the Noticee and the Noticee was receiving/transferring the shares to Perpetual instead of transferring them to the respective account of its clients. The Noticee's submission that the same was done as per the financing arrangement and instructions of its clients clearly defeats the instructions of SEBI Circulars dated August 27, 2003 & March 19, 2004. In view of the same, I am convinced that Noticee has violated the provisions of SEBI Cir no. SEBI/MRD/SE/SU/CIR-15/04 dated March 19, 2004, specifically, the provisions of Clauses 1.3 and 1.5 of the above said Circular r/w clauses A(2) and A (5) of the Code of Conduct prescribed for stock brokers contained in Regulation 7 of the Stock Broker Regulations. Further, in the context of making/receiving third party deliveries to/from Perpetual in respect of its client's obligations, the Noticee has also violated the provisions of Circular ref SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, which clearly stipulates the mode of payment and delivery to be made by stock brokers r/w clauses A(2) and A (5) of the Code of Conduct for Stock Brokers contained in the Stock Broker Regulations.

bb) The allegation in the SCN that Perpetual's activities were akin to undertaking sub broking activities and were carried out by Perpetual without appropriate registration and also the allegation that the Noticee had dealt with an unregistered sub broker etc. cannot sustain in the facts and circumstances of the case. There is nothing on record to show that Perpetual was placing the orders on behalf of the trading clients of the Noticee. Further, the IR has also not brought out any evidence/observations on the following aspects i.e. (i) whether there was any brokerage/commission sharing arrangement between Perpetual and the Noticee (ii) whether Perpetual had issued bills to the clients of the Noticee w.r.t their trades (iii) whether there was any tripartite agreement that existed in the said matter for the purpose of securities transaction of the clients etc. Further, the Noticee in its submission has confirmed that it had issued the contract notes to its trading clients and had not issued the same in the name of Perpetual. Therefore, the allegation that Noticee has dealt with Perpetual and in the process, dealt with an unregistered sub broker cannot sustain in view of the above observations/findings. In my opinion, this is a clear case of the Noticee indulging in unauthorized margin funding activity to facilitate its clients through its associate company viz. Perpetual and in the process, Noticee has failed to follow the proper procedures laid down under SEBI Circular dated August 27, 2003 w.r.t mode of delivery of securities. Accordingly, in view of the above observations/findings, I discharge the Noticee from the specific allegation levelled against it that it has dealt with unregistered sub brokers.

cc) Therefore, in view of the above observations/findings, I am convinced that Noticee has violated the provisions of Rule 8(1)(f) and 8(3)(f) of the SCR Rules and also the provisions of SEBI Circulars viz. Cir ref SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 and Cir no. SEBI/MRD/SE/SU/CIR-15/04 dated March 19, 2004. Further, the Noticee has also failed to exercise skill, care and diligence which was

reasonably expected from a SEBI registered intermediary and also failed to comply with the regulatory requirements of the provisions of law. Therefore, Noticee has also violated the provisions of Clauses A(2) and A(5) of the Code of Conduct prescribed for stock brokers contained in Schedule II read with Regulation 7 of Stock Broker Regulations.

**E. Allegations w.r.t. inclusion of misleading statements in the Client Registration Agreement / forms and irregularities observed in the Client Registration forms and agreements**

- a) It is alleged that the client registration agreement of the Noticee was outdated and the same did not contain certain important clauses mandated by SEBI vide Circular No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 wherein SEBI had introduced the model client registration forms and member-client agreement. It is also alleged that the Noticee was using a single client registration form for both its corporate and non-corporate entities despite the fact that SEBI has prescribed a separate client registration form for corporate and non-corporate entities.
- b) It is further alleged that the Noticee has included misleading statements in its member-client agreement forms which gave a false impression that the Noticee was also providing other services such as Depository Participant, Portfolio Management Services, and Securities Lending Activities in addition to stock broking activity when it was actually not providing these services.
- c) It is alleged that the Noticee continued to execute the client agreement forms in its old name despite change in its name. Further, the clients of the Noticee were trading in the derivatives segment through it but the member-client agreement did not mention the SEBI Registration No. of the Noticee in the Derivative Segment.



**Noticee's reply:**

- d) With respect to the allegation regarding irregularities in the Client Registration forms and agreements, the Noticee has contended that the 'Uniform Requirement' was prescribed vide Circular No. SEBI/MIRSD/DPS-1/CIR-31/2004 dated August 26, 2004. Since the client registration form and the Member-Client agreements were printed initially in the year 2002, hence, the requisite details viz. Clients Investments/Trading experience as pointed out in Table 14, Trading preference etc. were not mentioned in the booklets issued by the Noticee which were examined by the Inspecting Team. However, the said details were collected by the Member Broker from its Clients and the same were produced before the Inspecting Team separately.
- e) The Noticee has contended that for the purpose of convenience and control, consolidated client registration forms were prepared for all its clients whether corporate or non-corporate and the relevant details of the clients were filed-in at the appropriate column in the said form; for e.g. in the column provided for date of birth, the corporate client fills-in its date of incorporation. Further, in addition to the above, a corporate client is also obliged to furnish a copy of the 'Certificate of Incorporation' and Memorandum of Association together along with list of directors/partners with their residential address and the same were duly obtained accordingly.
- f) Further, with regard to the observation that the Noticee has changed its name from Pee Dee Kapur Securities Ltd to Pee Dee Kapur Stock & Securities Ltd w.e.f 22nd November, 2005, whereas, the agreements entered into by the Member Broker with its Clients after the said date were still executed in its old name i.e. Pee Dee Kapur Securities Ltd., Noticee submitted that although its name was changed in the record of Registrar of Companies (ROC) with effect from November, 2005; but

after constant and much pursuance, NSE enabled the new name of the Noticee on Stock Exchange's Trading System w.e.f 27th June, 2006 only. Hence, in order to avoid any mismatch between the documents, member-constituent agreements were executed in the name of Pee Dee Kapur Securities Ltd. Since, the Member Broker is a Corporate entity; hence, the same did not lead to many legal infirmities or was prejudicial to anybody's interest.

**Findings:**

- g) I am of the view that client registration form and member-client agreement are vital documents which captures important details/information w.r.t the clients of a stock broker. Also, the details/information captured in these forms, act as an important source of information to the clients especially w.r.t the Noticee and its business model. It is for these reasons that SEBI has prescribed the model client registration documents and member-client agreement vide its Circular Ref No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 and made it mandatory for all the registered members of the stock exchanges to follow the same.
- h) In this regard, I am of the view that the submission made by the Noticee that it has continued with the old member-client agreement forms that were printed in 2002 defeats the very purpose of the mandatory requirement prescribed through the above mentioned Circular. Therefore, the contentions of the Noticee, as stated above, is devoid of any merit. There cannot be any excuse on the part of the Noticee for not following the updated model member-client agreement which provides for all the relevant clauses mandated by SEBI. Moreover, it is also a regulatory requirement which the Noticee was duty-bound to follow. I observe that the Noticee has failed to comply with these requirements.

- i) I further observe that the Noticee was not having a separate client registration form for its corporate and non-corporate entities/clients. The Noticee's contention that the same forms were used for both corporate and non-corporate clients as a matter of convenience and in order to have a better control is absurd and cannot be accepted. I am of the view that there is considerable difference in the information that is made/disseminated by corporate and non-corporate entities. It is necessary that Noticee follows the prescriptions of SEBI carefully, as statutory requirements cannot be done away with by citing flimsy reasons such as convenience on its part etc. Therefore, in view of the above observations and the blatant admission by the Noticee that it has not complied with the above observation, I am convinced that Noticee has violated the provisions of SEBI Circular No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004.
- j) The SCN has also alleged that the Noticee has made misleading statements in the member client agreement forms which gave an impression that the Noticee apart from providing stock broking services was also providing plethora of other activities such as, Depository Participant, Portfolio Management services and Securities Lending Activities. In this regard, Noticee's submission that it was earlier in the process of applying for registration to undertake these activities and therefore, such statements were made/retained in its client agreement forms is baseless and cannot be accepted. A clause of such kind made in the agreement forms can easily mislead the investors as they would be under the impression that Noticee is actually providing these activities under the same roof. In my view, such clauses should be embedded in the client agreement forms only after the Noticee has obtained valid registration to undertake these activities. I am of the view that the member-client agreement is a very important statutory document and it cannot contain vague and misleading statements as

mentioned above. I have also taken note of the fact that the Noticee has not disputed the said allegation levelled against it in the SCN.

- k) I further observe that Noticee did not depict its new name in the member-client agreement forms despite the fact that the name of the Noticee was changed and was also registered as per the records of Register of Companies. In this regard, the submission of the Noticee that NSE did not change the Noticee's name in its records and therefore, the client registration forms contained its old name is devoid of any merit and therefore unacceptable. I am of the view that the official name of any company always emanates from the records of Register of Companies and the same is considered as final in case of any dispute. Therefore, the above submission of the Noticee only shows its callous attitude towards complying with the true spirit of the regulatory requirements regarding member-client agreement forms.
- l) In view of the above observations/findings, I hold that Noticee has failed to exercise proper skill, care and due diligence which was expected from a prudent stock broker registered with SEBI. Therefore, I hold that the Noticee has violated the provisions of SEBI Circulars ref.. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004, SMD/Policy/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir-5/97 dated April 11, 1997 r/w Clauses A(2), A(5) and D(1) of the Code of Conduct specified under Regulation 7 of SEBI(Stock Brokers & Sub-brokers) Regulations, 1992.

**F. Allegation w.r.t. Noticee not maintaining separate account for holding client securities**

- a) It is alleged that Noticee has not maintained a separate account for holding the securities of its clients and the same were transferred in its own beneficiary account which were against the provisions of SEBI Circular No. SMD/SED/cir/93/23321 dated November 18, 1993.

**Noticee's reply:**

- b) The Noticee has contended that a separate account for keeping the securities of its clients was maintained by it. The beneficiary account which was maintained by the broker in its name was exclusively to hold the securities of its clients. Further, since the Noticee has never traded in its own account whether in 'Pro Account' or otherwise, there cannot be any question of distinguishing the securities of the Member Broker from that of the securities of its clients. It is therefore amply clear that transfer of securities from the pool account of the broker to the beneficiary account held in its name was wholly and exclusively to hold clients securities only and the same was treated as a separate margin account for keeping clients shares only.

**Findings:**

- c) The Noticee has contended that it has maintained a separate account for the purpose of holding/housing the clients securities and the same was done by the Noticee by opening a separate demat account in its own name. The shares received by the Noticee from its clients towards their margin obligations were exclusively kept in this account. I observe that the Noticee has also confirmed that it does not have any proprietary trading/own trading. In these circumstances and given the fact that Noticee has confirmed that it was not undertaking any proprietary transactions/own trades, the question of the Noticee mixing its own shares with that of its clients securities in the said designated margin account may not arise. In view of the same, I am not inclined to penalize the Noticee for its alleged violation of the provisions of SEBI Circular No. SMD/SED/cir/93/23321 dated November 18, 1993.

**G. Allegations w.r.t. Noticee's failure to frame Code of Conduct for Prevention of Insider Trading**

- a) It is alleged that the Noticee has not framed the Code of Conduct for prevention of insider trading which was required under the provisions of Regulation 12(1) of the SEBI (PIT) Regulations.

**Noticee's reply:**

- b) The Noticee has contended that the stock broking activity of the Noticee is very small sized, having no branch network. The Member has only few staff and, therefore, the day to day business activities including matters relating to all vital information are being looked after by the Directors themselves who are qualified CAs. The total number of active clients were 36 only and this figure includes 15 group companies leaving 21 outside clients only.
- c) The Noticee has also submitted that it had provided and explained to its staff the contents of the Model Code of Conduct specified in Schedule I of SEBI (Prohibition of Insider Trading) Regulations, 1992 and had also apprised them about the relevant provisions of the same and also the consequences for not observing the same. The Noticee also organizes periodical meeting of its staff with a view to monitoring their activities and to also keep them abreast with the new developments and changes.

**Findings:**

- d) I observe that the Noticee has admitted to the aforementioned allegation that it had not framed a code of conduct for prevention of insider trading on the lines of the Model Code of Conduct as given in Part A of Schedule I of the PIT Regulations. Therefore, I hold that the Noticee has violated Regulation 12(1) of the PIT Regulations read with Clauses A(2) and A(5) of the Code of Conduct for stock brokers

specified in Schedule II to Regulation 7 of the Stock Brokers Regulations.

**H. Allegations w.r.t. not intimating SEBI about place of maintenance of its books of accounts/records.**

- a) It is alleged in the SCN that the Noticee has failed to intimate SEBI about the place of maintenance of books of accounts and records in terms of Regulation 17(2) of Stock Broker Regulations read with Section 209 of the Companies Act, 1956.

**Noticee's reply:**

- b) In this regard, the Noticee has submitted that it is on the records of SEBI that the Dealing Office of the Noticee, where the pay-in and pay-out of funds and securities are being settled is situated at Mumbai since inception.
- c) Further, the Noticee stated that it had also informed SEBI vide its letter dated July 01, 2006 that only the Registered Office of the Noticee is in Delhi and therefore, only the statutory records and the records for financial transaction of own funds are being maintained and kept at the Delhi office of the Member Broker. The Noticee also mentioned that all the books of account, clients' records, and all other records related to its capital market operation are available at its Mumbai Office only. Therefore, the Noticee requested SEBI to start the Inspection at Mumbai. However, the request was rejected by SEBI.

**Findings:**

- d) In view of the above observations / submissions of the Noticee that it had informed SEBI about the place of maintenance of its books w.r.t its capital market operations, I am inclined to drop the aforementioned allegation levelled in the SCN and discharge the Noticee of the same.

**I. Allegations w.r.t Noticee not entering into rental agreement w.r.t its corporate office and registered office.**

- a) It is alleged that the Noticee has failed to enter into a definitive rental agreement for both its registered office at Delhi and Corporate Office at Mumbai. In this regard, it is observed that large amount of money was transferred to its director's account as security deposits without any corresponding agreement. Therefore it is alleged that the Noticee has failed to exercise due skill, care and diligence as it has failed to enter into proper rental agreements before transferring funds as Security Deposits.

**Noticee's reply:**

- b) In this regard, the Noticee submitted that the office premises occupied and used by the Noticee, both at Mumbai & Delhi, were owned by its Directors and the premises were owned by their family owned concerns. Therefore, Noticee contended that no monthly rent was paid to them. Noticee further contended that there was no reason to draw a formal rent agreement for the same. Further, only refundable security deposit to the respective owners was paid without any monthly rental obligation.

**Findings:**

- c) In view of the above observation/submissions by the Noticee, I am not inclined to make any adverse finding/observation against the Noticee.

**J. Allegations w.r.t. withdrawal of large cash and receipt of cash.**

- a) It was alleged that Noticee had made several cash transfers/transactions between its Delhi and Mumbai branch office and the same money was not transferred through proper banking channel viz. Account Payee cheques, RTGS etc.

**Noticee's reply:**

- b) In its reply, Noticee has contended that most of the transitions between the two branch offices of the Noticee were through banking channel and



only 3 transactions for total of Rs. 12.75 lacs and 7 transactions for total of Rs. 7.36 lacs were in cash during the year 2004 - 2005 and 2005 - 2006 respectively and these were out of Cash Balance in hand. Further, on few occasions when the funds transfer in cash took place, they were due to the business necessity and the urgency etc., the same was duly deposited in bank by the receiving office on the very next day.

**Findings:**

- c) In view of the submissions by the Noticee, I am not inclined to make any adverse finding against the Noticee.

**K. Allegations w.r.t Noticee misusing the client accounts by moving funds between its business and client accounts.**

- a) It was observed during the inspection that the Noticee had transferred funds between its business account and client's accounts quite regularly. In view of the same, it is alleged that the Noticee had misused the client's account by moving funds from/to it to its own business account, which has resulted in the violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Rule 4(b) of SEBI (Stock Brokers & Sub Brokers) Rules, 1992 and provisions of para A(5) of Schedule II specified under Regulation 7 of Stock Brokers Regulations.

**Noticee's reply:**

- b) The Noticee has contended that it had, vide its letter dated February 15, 2007, clarified such transactions and also placed on record certain details by way of an annexure. In the annexure to its letter dated February 15, 2007, the Noticee has explained the nature of all the debit entries that were appearing in the client account (cash segment) and all debit entries that were appearing in the client account (Derivatives Segment). In the said Annexure, the Noticee placed on record the nature and purpose behind these transactions. I note from the reply of

the Noticee that it has contended that the funds out of client bank accounts were transferred to its business account only for two reasons as under:

- (i) Amount on account of brokerage and other statutory levies being collected from client.
- (ii) Returning back the amount to business account, that was being transferred from business account to client account on as earlier date (to meet out short term requirements), which is allowed under SEBI Circular dated November 18, 1993.

**Findings:**

- c) In view of the above submissions by the Noticee, I am not inclined to make any adverse observations against the Noticee.

**L. Allegations w.r.t Noticee transferring/shifting trades executed for one constituent to another constituent- Shifting of client code.**

- a) It is alleged that the Noticee had transferred a total of 1769 trades between two constituents. The allegation is that Noticee has shifted the client codes, which has resulted in violation of Clause A(1) and A(2) of the code of conduct specified under Schedule II to Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

**Noticee's reply:**

- b) The Noticee has contended that this observation that was made in the Inspection Report is not an independent finding of the SEBI Inspection Team and the same was part of the finding of the NSE Team which was made by NSE in its report dated 24th August, 2006.
- c) In this regard, Noticee has submitted that a penalty of Rs. 1,08,200/- was imposed on it by the NSE on account of the above observation regarding wrong client code. Thereafter, based on a detailed representation filed by the Noticee before the Disciplinary Committee of NSE along with the documentary evidences that were submitted, NSE

had also waived off the penalty and refunded to the Noticee the penalty amount of Rs. 1,07,900/.

**Findings:**

d) In view of the above submissions made by the Noticee, I am not inclined to take any adverse view on the Noticee w.r.t the said finding/allegation.

11. It is necessary that registered intermediaries follow the various procedures and practices prescribed for smooth and transparent functioning of the securities market. As a registered stock broker, the Noticee was expected to act diligently and comply with all the statutory requirements of law. A stock broker is expected to play the role of a gatekeeper and not conduct its business in a mechanical manner wantonly flouting the various provisions of law prescribed by the Regulator from time to time. The large number of fund based transactions, irregularities observed in the KYC documents/client agreement forms, not following the proper procedures while receiving/making delivery of shares to/from client accounts and in the process making third party delivery/receipt of securities, indulging in unauthorized margin funding etc. are serious observations and goes beyond the realm of due diligence and care undertaken by the Noticee. The irregularities committed by the Noticee, gist of which has been mentioned in the Table below, are serious in nature, and cannot be viewed leniently. Hence, the violations committed by the Noticee deserves to be penalized appropriately. In sum, Noticee has committed the following violations of the provisions of law:

S. No.	Violation observed	Provisions of Law violated
1.	Indulging in Fund based business activity.	Rule 8(1) (f) and 8 (3)(f) of SCR Rules, 1957
2.	Settling the margin requirement of one group company/entity from the	SEBI/MRD/SE/SU/Cir-15/04 dated March 19, 2004 r/w Clause A(5) of Code of Conduct for Stock Broker

	account of other group companies/entities	under Schedule II r/w Regulation 7 of Stock Broker Regulations
3.	Indulging in unauthorized margin funding of its clients	SEBI Cir no. SEBI/MRD/SE/SU/CIR-15/04 dated March 19, 2004 r/w clauses A(2) and A (5) of the Code of Conduct for Stock Brokers r/w Regulation 7 of the Stock Broker Regulations
4.	Making/receiving third party deliveries from the Demat account of Perpetual and not following the prescribed procedure for making/receiving delivery	SEBI Circular ref SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 r/w clauses A(2) and A (5) of the Code of Conduct for Stock Brokers contained in the Stock Broker Regulations.
5.	Incomplete/misleading information in the Client Registration Forms	SEBI Circulars Nos. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004, SMD/Policy/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir- 5/97 dated April 11, 1997 r/w Clauses A(2), A(5) and D(1) of the Code of Conduct specified under Regulation 7 of Stock Brokers Regulations.
6.	Not framing code of conduct for prevention of insider trading	Regulation 12(1) of the PIT Regulations read with Clauses A(2) and A(5) of the Code of Conduct for stock brokers specified in Schedule II to

		Regulation 7 of Stock Brokers Regulations
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12. As the violations of the statutory provisions of law, as brought out above, has been established, I am convinced that it is a fit case for imposing monetary penalty on the Noticee under the provisions of sections 15F & 15HB of the SEBI Act, 1992 and also under Section 23H of the SCR Act.

13. In this context, I would like to place reliance on the observations of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* {[2006]} 5 SCC 361} – wherein it was observed by Hon'ble SC 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.....”

14. In view of the violation of the statutory provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of section 15 HB of the SEBI Act and under section 23 H of the SCR Act, which reads as under:

### **SEBI Act**

#### **Penalty for default in case of stock brokers.**

**15F.** *If any person, who is registered as a stock broker under this Act,—*

*(b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

#### **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 may extend to one crore rupees.*

### **SCR Act**

**23H.** *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

15. In this regard, the provisions of Section 15J of the SEBI Act r/w Adjudication Rules, 1995 and Section 23J of the SCR Act r/w Rule 5 of the Adjudication Rules, 2005 require that while adjudging the quantum of penalty, 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.*

16. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the inspection conducted by SEBI in the said matter has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor/clients or group of investors/clients as a result of the default by the Noticee. I am of the view that the abovementioned lapses on the part of the Noticee cannot be viewed lightly as they are serious in nature and have wide ramifications in the financial markets.

**ORDER:**

17. Having considered all the facts and circumstances of the case, the material available on record, the replies of the Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act r/w Adjudication Rules 1995 and Section 23-I of the SCR Act read with Rule 5 of the Adjudication Rules, 2005, hereby impose a total penalty of Rs. 3,00,000/- (Rupees Three lakh only) on the Noticee viz. Pee Dee Kapur Stock & Securities Ltd for its violation of the various provisions of law, as mentioned at para 11 above. The details of the penalty imposed on the Noticee under the relevant provisions of SEBI Act and SCRA are mentioned as under :-

- Rs 1,00,000/- (Rupees One lakh only) under section 15 HB of the SEBI Act.
- Rs 1,00,000/- (Rupees One lakh only) under the provisions of section 15F of the SEBI Act , and
- Rs 100,000/- (Rupees One Lakh only) under the provisions of section 23H of SCRA

18. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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 e-payment facility into the 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 Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of Enforcement Department (EFD) of SEBI. The format for forwarding details / confirmation of the e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is mentioned as under:

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 terms of the provisions of Rule 6 of the Adjudication Rules, 1995 and Adjudication Rules, 2005, copies of the order are sent to the Noticee viz. M/s Pee Dee Kapur Stock & Securities Limited and also to Securities and Exchange Board of India.

**Place: Mumbai**  
**Date: March 25, 2019**

**SURESH B. MENON**  
**ADJUDICATING OFFICER**