

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. AO/SG-VS/EAD/ 30/2017

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of
M/s Pune E-Stock Broking Pvt. Ltd
(PAN No. – AAEC2962K)
1198, Shukrawar Peth, Subhash Nagar,
Lane No. 3, Nr. Hirabaug
Pune – 411 002.

FACTS OF THE CASE

1. M/s Pune E-Stock Broking Pvt. Ltd. (hereinafter referred to as “PESB” / “Noticee”) is a trading member of BSE Limited (hereinafter referred to as “BSE”) having registration number INB/F 011289239, National Stock Exchange Ltd. having registration number INB/F/E 231289233 and MCX-SX having registration number INB/F 261289236.
2. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) conducted an inspection of books of accounts and other records of the Noticee on June 04, 2014 for the period from April 01, 2012 to March 31, 2014 (hereinafter referred to as “Inspection period”).
3. During the course of inspection, the following was observed:

Segregation of Client’s Fund:

- a) On the analysis of the top funds transfers from client bank accounts during the financial years 2012-13 and 2013-14 , it was observed that the funds were

transferred from client's bank accounts to PESB's own bank account on several instances. One of such instances is as under:

Date	Level	Axis BSE Client Acct no. 30597 (Rs in lacs)	Axis NSE F&O Client Acct no. 30621 (Rs in lacs)	Yes Bank BSE Client Acct no. 553 (Rs in lacs)	Yes Bank own Acct no. 871 (Rs in lacs)	Remarks
15\01\2013	1	254.00	254.00			Own acct overdraft balance is Rs 312.46 lacs before deposit of Rs 110.00 lacs from client accounts.
15\01\2013	2		104.00	104.00		
15\01\2013	3			110.00	110.00	

- Level 1 indicates the fund transfer from first mentioned bank account to second mentioned bank account. i.e. Rs. 254.00 lacs has been transferred from "Axis bank BSE Client account no. 30597" (first mentioned bank account) to Axis bank NSE F&O Client account no. 30621 (second mentioned bank account).
- Level 2 indicates the fund transfer from second mentioned bank account to third mentioned bank account. i.e. Rs 104.00 lacs has been transferred from "Axis bank NSE F&O Client account no. 30621" (second mentioned bank account) to "Yes Bank BSE Client account no. 553" (third mentioned bank account).
- Level 3 indicates the fund transfer from third mentioned bank account to forth mentioned bank account. i.e. Rs 110.00 lacs has been transferred from "Yes Bank BSE Client account no. 553" (third mentioned bank account) to "Yes bank OWN account no. 871" (forth mentioned bank account).
- The remark indicates that the Overdraft (hereinafter referred to as "OD"/"Overdraft") balance (Noticee's Own OD Account No. 871) is Rs 312.86 lacs before transfer of Rs 110.00 lacs from client's bank account. Thus, it was alleged that Noticee's own OD account has been reduced by using client's fund.

b) Circuitous fund transfer among client's bank accounts and PESB's own

bank accounts: During the course of inspection, circuitous fund transfer among PESB own bank accounts and various client bank accounts were observed without any rationale. The time gap in such fund transfers was less than 2 seconds and funds were ultimately moved in from where it originated.

One of such observations has been explained below:-

Sr. no.	Date	Level	Time	Yes Bank own Account 871 (Rs in lakhs)	Yes Bank BSE Client Account 553 (Rs in lakhs)	Yes Bank NSE Client Account 565(Rs in lakhs)
1	30\03\2013	1-forth	18:51:45	300.00	300.00	
2	30\03\2013	2-forth	18:52:05		300.00	300.00
3	30\03\2013	3-back	18:52:25	300.00		300.00

- The 'level 1-forth' & 'level 2-forth' indicated that fund is moving from first mentioned bank account to second mentioned bank account and from second mentioned bank account to third mentioned bank account, respectively. 'Level 3-back' indicated that fund is moving back from third mentioned bank account.
- Therefore, it was alleged that the Noticee had been mixing the clients' funds with own fund without any reason and such activities complicate the audit trail.

c) Transfer of Client's Fund to Associates/Group entities dealing in

Commodities business: During the course of inspection, Noticee allegedly stated that there were no instances of the fund transfer from client bank accounts to the associate / group entities of the Noticee dealing in commodity business during the inspection period. However, upon scrutiny of the bank statements of PESB, it was observed that funds were transferred to Pune E Commodities Broking Pvt. Ltd., a group company(hereinafter referred to as "PECB") from client's bank account (Axis Bank-BSE Client account 30597) routed through Noticee's Own bank account (Axis Own Account 28121). Such instances are as given below:-

Date	Fund received in Own account no. 28121 from client account no. 30597	Fund transferred from Own account no. 28121 to-Pune E Commodities Broking Pvt. Ltd	Remarks
	Amounts (Rs in lakhs)	Amounts(Rs in lakhs)	
30\07\2012	20.00	20.00	Fund in Own bank account before receipt of

Date	Fund received in Own account no. 28121 from client account no. 30597	Fund transferred from Own account no. 28121 to-Pune E Commodities Broking Pvt. Ltd	Remarks
	Amounts (Rs in lakhs)	Amounts(Rs in lakhs)	
			fund from client accounts is Rs. 1.41 lakhs only.
28\09\2012	14.00	14.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.35 lakhs only.
16\10\2012	69.00	70.00	Fund in Own bank account before receipt of fund from client accounts is Rs 3.21 lakhs only.
24\01\2013	17.00	17.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.49 lakhs only.
30\01\2013	11.00	11.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.47 lakhs only.
1\02\2013	12.25	12.25	Fund in Own bank account before receipt of fund from client accounts is Rs 0.45 lakhs only.
5\02\2013	11.00	10.50	Fund in Own bank account before receipt of fund from client accounts is Rs 0.44 lakhs only.
14\02\2013	8.00	8.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.55 lakhs only.
15\02\2013	13.00	13.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.55 lakhs only.
20\02\2013	2.00	2.00	Fund in Own bank account before receipt of fund from client accounts is Rs 0.54 lakhs only.
22\03\2013	13.00	13.00	Fund in Own bank account before receipt of fund from client accounts is Rs 1.24 lakhs only.
27\05\2013	14.00	14.00	Fund in Own bank account before receipt of fund is Rs 0.71 lakhs only.
13\06\2013	9.00	5.00	Fund in Own bank account before receipt of fund from client accounts is Rs 1.25 lakhs only.
14\06\2013	16.00	16.00	Fund in Own bank account before receipt of fund is Rs 1.32 lakhs only.

Date	Fund received in Own account no. 28121 from client account no. 30597	Fund transferred from Own account no. 28121 to-Pune E Commodities Broking Pvt. Ltd	Remarks
	Amounts (Rs in lakhs)	Amounts(Rs in lakhs)	
25\06\2013	10.00	10.00	Fund in Own bank account before receipt of fund from client accounts is Rs 5.12 lakhs only.
01\08\2013	3.50	3.50	Fund in Own bank account before receipt of fund from client accounts is Rs 1.65 lakhs only.

4. Therefore, it is alleged that PESB has failed to maintain the segregation between clients' funds and own funds and has failed to exercise due skill and care in conduct of its business and has failed to comply with statutory requirements and has made false/misleading statement with regard to the transfer of clients' funds to the associate/group entities dealing in commodity business. Hence it is alleged that the Noticee acted in violation of the provisions of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as "Circular"), the provisions of clauses A(2), A(5) and C(6) of the Code of conduct specified under schedule II read with regulation 9(f) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations") and Regulation 26(xiii) of Broker Regulations. The said alleged violations by the Noticee, if established, make it liable for monetary penalty under Sections 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA").

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer, vide Order dated June 11, 2015 under Section 15I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") and Section 23-I of SCRA & Rule 3 of SCR (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "SCR(AO) Rules, 2005") to inquire into

and adjudge under the provisions of Section 15HB of the SEBI Act and 23D of SCRA, the alleged violations by the Noticee as observed during the inspection.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice no. EAD/SG/AK/12307/2016 ("SCN") dated April 29, 2016 in terms of the provisions of Rule 4 of Rules and Rule 4 of SCR(AO) Rules, 2005 was issued to the Noticee, calling upon the Noticee to show cause why an inquiry should not be held against it under rule 4 of the Rules read with section 15-I of SEBI Act & rule 4 of SCR(AO) Rules, 2005 read with section 23-I of SCRA for the alleged violations as specified in the SCN and penalty be not imposed under Section 15HB of SEBI Act and Section 23D of SCRA. The SCN was served through registered post AD and the same was delivered as per India Post website tracking details.. However no reply was received from the Noticee. Therefore, in the interest of Natural Justice and in order to conduct inquiry in terms of rule 4(3) of Rules and rule 4(3) of SCR(AO) Rules, 2005, a hearing notice dated May 30, 2016 was served on the Noticee advising the Noticee to submit a reply to the SCN on or before June 17, 2016 and appear for hearing on July 01, 2016 at SEBI, Head Office, Mumbai.

7. In response to the said hearing notice, the Noticee vide its letter dated June 08, 2016 submitted a reply to the SCN wherein it *inter alia* submitted as follows:

"

2. Thus, we submit that during course of inspection, we had extended our full cooperation and furnished all relevant information, documents and records as required by SEBI's Inspection Team and also complied with & abided by all statutory requirements of SEBI without any lapse or delay on our part.
3. At the outset, we state that in accordance with SEBI / Exchange rules and regulations, we have maintained separate bank account to deposit / withdraw clients funds and Own fund so as to ensure that there is proper segregation of clients' fund and own fund. Accordingly, bank accounts in which client funds are deposited are opened with the word "**Client**" in its nomenclature. Besides as aforesaid, to have Exchange wise proper segregation, we have maintained separate client Bank account for each Exchange i.e. NSE, BSE, MCX-SX.
4. Invariably, clients are required to issue cheques / DDs in name of "Pune e-stock Broking Pvt Ltd." (hereinafter, "**PESB**") only and they are deposited in client's bank

account only. Further, we ensure that funds from clients are received through their bank accounts which are registered with us. We do not accept any third party fund. Also, pay out of funds to clients is done from client's bank account only. Whereas, PESB own bank account i.e. bank account in which we deposit / withdraw own funds is used to mitigate business expenses only and fulfill pay-in obligation of PESB. Thus, we have ensured that there exist appropriate system and control for proper segregation of Clients' funds and Own funds and thereby utilization of client fund is purely done for valid purpose only. We empathetically submit that funds which are transferred to own bank account from client's bank is for valid reason only & such funds belongs to own (PESB) only.

5. Following are reasons for transfer of funds between client's accounts and own account & vice versa:

i. **In case where client does not pay its obligations within time limit as prescribed by Exchanges**

- a. As per Exchange rules & regulation, clients are required to pay its pay-in obligations as per settlement schedule. We have an adequate follow up & recovery mechanism which ensures that client's dues are collected as early as possible. In the normal course, we ensure that client pays its obligation within time limit as prescribed by Exchanges. However, in few cases, clients may not be able to pay its pay-in obligations within prescribed time limit. In such cases, PESB is required to pay clients obligations through own fund. For same, we are required to transfer funds from own bank account to client bank account.
- b. Once client pays fund towards its obligation which were earlier paid through own fund, PESB retransfers such funds from client bank to own bank account (as the same was earlier transferred from own bank account to client bank account). Therefore, there is a no scope for mis-utilization of client funds since there exist a 'control account' (which was provided at the time of inspection).
- c. We invariably ensure that client fund to extent of obligations which were earlier satisfied through own fund are only transferred back to own bank account. We state that from control account, it can be monitored that no excess funds are transferred from client bank account to own bank account. Thus, by following proper accounting system we always ensure that client funds are utilized for fulfilling their obligation only and not for any other reason.

ii. **Brokerage**

As mentioned earlier, client's funds are received in client's bank account only. Clients also pay brokerage and its other obligation (such as pay-in/margin etc) through single cheque only. Out of which the amount to extent of pay-in obligation/margin goes to Exchange and amount to the extent of Brokerage is transferred to own bank account. Such Brokerage amounts are transferred on periodically basis and for same, funds are being transferred from client bank account to own bank account.

iii. **Transfer between one client bank to another client account for valid reason only**

Reason for transfer between one client bank account to another client bank account of another/same Exchange is that client issues single cheque only for obligations in different Exchanges. In fact, Clients are required to pay funds for its obligation in terms of pay-in and margin obligation in respective Exchanges. We insist clients to provide separate cheque for respective Exchange obligations. However, as an industry practice & due to practical difficulties, clients are providing single cheque only towards its obligation for different exchanges. Clients do not provide separate cheque for respective Exchanges. As an industry practice and on practical ground; we accept single cheque from client for its obligation in different Exchanges. The above practice is being followed across industry and same is well accepted by Exchanges. In view of above, we are required to transfer fund from that client bank account in which client cheque deposited to respective exchange's client bank account to extent of client obligations. For same, clients have also provided authorization to us to effect transfer fund across exchange & its segments as required.

iv. **Pay-in / Payout obligation of PESB (Own account)**

The payout of own trades received in client bank account are transferred to own bank account and in same way, own funds are transferred to client bank account in case of pay-in for own account. Hence to meet with pay-in / payout of own trades, funds are transferred from own bank account to client bank account and vice-versa.

6. *On the subject matter of segregation of Client's funds and own funds, allegations made in SCN are on following grounds:*

- i. *Transfer of funds from client bank accounts to own bank accounts.*
- ii. *Circuitous fund transfer among client account and own account*
- iii. *Transfer of client's fund to associate/ group entities dealing in commodity business*

7. *In this regard, our Para-wise submissions are as under:*

i. **Transfer of funds from client bank accounts to own bank accounts**

With regard to transfer of funds from client bank accounts to own bank accounts the details of which are furnished in Annexure 1 of SCN, we submit that said funds lying in client account were invariably our own funds which were re-transferred to own account as and when required. In order to substantiate our claim we submit as under:

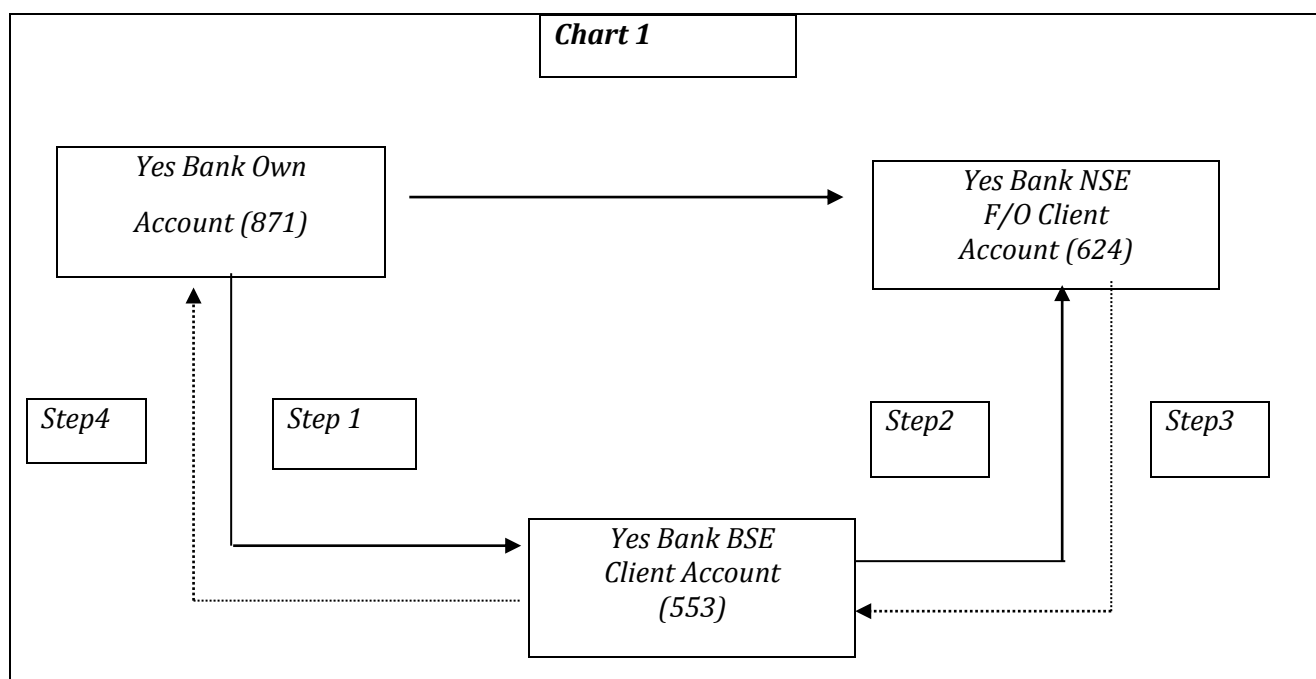
- a. *A detailed date-wise/ entry-wise explanation of transfer of our own funds to clients account is provided in sheet titled as "Sheet 1" which is enclosed to present reply. The supporting and relevant bank statements w.r.t. our explanations in Sheet 1 are attached as "Annexures"*
- b. *On perusal of Sheet 1, it can be observed that before funds were retransferred from Client account to Own account, the same were invariably transferred from Own account to Client's account. Thus, funds*

that originally belonged to own account was re- transferred back as and when needed.

ii. Circuitous funds transfer among client account and own account.

With regard to allegation that there were circuitous fund transfer among clients account and own account without any rationale we submit that out of two years (730 days) of investigation period, alleged circuitous transactions are merely on two days i.e 13.09.2012 and 30.03.2013. Further, there are mere 8 transactions of said nature as mentioned in Annexure 2 of SCN wherein alleged circuitous transactions are observed. In this regard, we submit as under:

- a. The entries at Sr. No 1 to 22 (7 transactions) pertain to year ending 30.03.2013. Possibly due to financial year end pressure; we believe the person handing funds might have inadvertently affected said entries. We submit with humility that they are 3 year old transaction and though we are confident that there would have been a rationale of affecting said transactions currently due to passage of time we are constrained to provide concrete justifications on the same.
- b. The entry at Sr. No. 23 to 26 w.r.t fund transfer of Rs. 4.00 crore on 13.09.2012 is explained in Chart 1 herein- below for ease of understanding:



- Step 1 - We desired to transfer an amount of Rs 4.00 crores from Yes Bank Own account to Yes Bank NSE F/O Client account. However, our accountant inadvertently transferred said amount to Yes Bank BSE Client account.
- Step 2 - In order to rectify error the accountant transferred said amount of 4.00 crore from Yes Bank BSE Client account to desired Yes Bank NSE F/ O Client account.

- *Step 3 - In order to maintain proper segregation of account and have clear audit trail, he thought it pertinent to reserve entry in same step as it was effected i.e from Yes Bank F/O Client account to Yes Bank BSE Client account.*
 - *Step 4 – Then again from Yes Bank BSE Client account to Yes Bank Own account so that net effect of erroneous entry is nil and status –quo restored.*
- c. *In any case, we submit with humility that none of Transaction mentioned in Annexure 2 are in violation of SEBI Circular dated 18.11.1993 (which is alleged to have been violated by us) or any other rule or regulation prescribed by regulator. Thus, we request Your Honor to kindly take pragmatic and sympathetic view of same and no adverse inference be drawn in this regard.*

iii. **Transfer of client's fund to associate / group entities dealing in commodity business**

With regard to allegation of transfer of Client's fund to associate / group entities dealing in commodity business ; at the outset we clarify that all 16 entries mentioned under Tabular data on page No.6 and 7 of SCN pertains to transfer of funds from Own account to Pune-E commodities Broking Pvt. Ltd. and not from Client's account as erroneously insinuated in SCN. However, on presumption it is assumed that corresponding funds in own account are clients funds since there was transfer entry from Client's account. In this regard, we submit as under:

- a. *As explained in detail herein-above, we transfer only our own fund from client's bank account to own bank account. We submit that only those funds belonging to PESB which were lying in client bank account were re-transferred. Therefore, it is wrong and erroneous to insinuate that we are routing clients fund to own bank account and then transferring it to commodity business.*
- b. *Besides, we would like to submit that PESB is also a client of Pune E-Commodities Pvt. Ltd. Accordingly, PESB has to maintain margin requirement and fulfill pay-in obligation through its own bank account for its trades carried out on commodities exchange. Thus, as and when required, our own funds lying in clients account are pulled out from client bank account to PESB's overdraft account (own account).*
- c. *In order to substantiate our claim and further clarify our stand, a detailed date-wise/ entry-wise explanation of transfer of our own funds to client's account is provided in sheet titled as "**Sheet 2**" which is enclosed to present reply. The supporting and relevant bank statements w.r.t our explanations in Sheet 2 are attached as "Annexures."*
- d. *On perusal of Sheet 2, it can be observed that before funds were re-transferred from Client account to Own account, the same were invariably transferred from Own account to Client's account. Thus, funds that originally belonged to own account was re-transferred back as and when needed for meeting margin requirement, fulfilling pay-in obligation or other business requirements.*

8. With regard to erroneous observation that we had made false-misleading statement w.r.t transfer of client's funds to associate /group entities dealing in commodity business, we submit as under:

- i. It is pertinent to mention that in Inspection Report furnished to us, there was no mention or allegation about making any false or misleading statement w.r.t transfer of clients' funds to the associate/group entities dealing in commodity business. Therefore we are greatly impaired in responding to such contrary allegations leveled against us.
- ii. Speaking for ourselves, we state that we have provided and furnished all relevant information, documents and statements sought by SEBI's Inspection Team. In fact, even in present SCN issued on facts of case, there is no finding which is contrary to what has been furnished by us to Inspection Team.
- iii. However, under –Para 3.1.3.1 of SCN it is mentioned as under:

“.....During the course of inspection, PESB stated that there are no instances of the fund transfer from client bank accounts to the associate / group entities of the broker dealing in commodity business during the inspection period. However, upon scrutiny of the bank statements of PESB, it was observed that funds were transferred to Pune E Commodities Broking Pvt. Ltd (group company) from client's bank (Axis Bank-BSE client account 30597) routed through Own bank account (Axis Own Account 28121).”

Thereafter, under Tabular data on Page 6 and 7 of SCN, details of certain fund transfer from PESB own account to PESB E-Commodities have been reproduced. We submit that Bank entries reproduced under said Table pertains to fund transfer from 'Own' account to associate / group entity viz. Pune E Commodities Broking Pvt. Ltd. Hence, factually no incorrect information was provided to Inspection Team SEBI.

- iv. Be that as it may, we understand that from data/ details provided by us, merely because there was fund transfer entry from client account (30597) to own account (28121) SEBI's Inspection Team has erroneously drawn inferences that funds were transferred from client account to associate / group entity. Thereby, grave and serious allegation of making false and misleading statement is leveled against us. In this regard, we clarify that:
 - a. In 'Sheet 2' attached to present reply we have clearly elucidated and established that transfer of funds from client account to our account were out of our funds lying in the client account.
 - b. The said funds were own funds i.e. it belonged to PESB itself and did not belong to client. Thus, funds that originally belonged to own account was re-transferred back from clients account as and when needed for meeting business requirement.
- v. In view of aforesaid, we submit with humility that such grave and devastating allegation that we have made false/misleading statement lacks credentials and ought to be withdrawn at threshold itself.

9. We would like to humbly submit that aforesaid 'payment' and 'withdrawal' is done in due compliance of SEBI Circular dated 18.11.1993, the relevant part of which is reproduced hereunder for ready reference:

Quote

"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"*

Unquote

As elucidated in detail hereinabove, we submit that all the withdrawal/ debits from clients account were carried out in compliance to Para D (ii) aforesaid Circular.

10. Legal Submissions

- i. We submit that vide our letter dated 11.12.2014 we had, in detail, furnished our response to SEBI w.r.t to findings of inspection. In pursuance to SEBI's letter dated 17.04.2015 (MIRSD-2/INSP/DB/SKS/10513/2015) we had placed findings of inspection, corrective steps taken by us to rectify all deficiencies and communication before our Board of Directors and forwarded our response to SEBI by letter dated 10.05.2015. However, present proceeding has been initiated qua us which may culminate into penal consequences. In this regard, we would like to point your kind attention to case of DSE Financial Services Ltd. v/s SEBI (Appeal No.153 of 2012) decided on 11.09.2012 wherein Hon'ble SAT observed under :*

[Reference Para 3 of said Order]

Quote

"....every minor discrepancy/irregularity found during the course of inspection is not culpable and object of the inspection could well be achieved by pointing out the

irregularities/deficiencies to the intermediary at the time of inspection and making it compliant."

Unquote

- ii. *Similarly, in case of UPSE Securities Ltd. v/s SEBI (Appeal No. 109 of 2011) decided on 25.07.2011; Hon'ble SAT observed under :*

[Reference Para 5 of said Order]

Quote

"...Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity..."

Unquote

- iii. *We further submit that the provisions for penalty under Chapter VI of Broker Regulation of which Regulation 26(xiii) forms a part, is prescribed u/r 25 (1) which stipulates that for contravention of provision of same monetary penalty stipulated under Chapter VIA of SEBI Act, 1992 shall be attracted. The Chapter VIA of SEBI Act, 1992 makes a person liable to be penalized u/s 15HB of SEBI Act, 1992 and not Section 23D of SCRA, 1956. Even then, the provisions of Section 23D of SCRA, 1956 are attracted in present case.*
- iv. *Be that as it may, assuming without admitting, we submit that alleged provision of Code of Conduct for Brokers and Regulation 26(xiii) are corollary to one another. So, violation of one would automatically attract violation of another. Thus, an intermediary cannot be held liable for monetary penalty under 2 different provisions viz. Section 23D of SCRA, 1956 and Section 15HB of SEBI, Act 1996. In this regard, we would like to draw your kind attention to case of Vitro Commodities Pvt. Ltd. vs SEBI (Appeal No. 118 of 2013) wherein Hon'ble SAT observed as under:*

Quote

"16. It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.

17. In view totality of circumstances and in interest of justice we are of the considered view that it is adequate to impose a token penalty of Rs. 1 lac on

appellant for technical and inadvertent violation of Regulation 7(1) of Takeover Regulations, 1997 and for violation of Regulation 13(1) of PIT Regulations, 1992."

11. Denials of alleged violation of law

- i. *We submit that we had exercised due skill, care and diligence in conduct of our business by properly segregating clients' funds & own funds. As explained hereinabove we have maintained separate & distinct bank and financial accounts at all point of time. Thus, we deny that we had failed to exercise due skill, care and diligence and thereby we deny alleged violation of Clause A (2) of Code of Conduct for Stock Brokers.*
- ii. *We submit that we have always abided by all provisions of SEBI Act, rules, regulations made thereunder and circulars issued thereto as applicable to us from time to time. As elucidated hereinabove, all payments and withdrawal from clients' account and own account were done in due compliance of rules and regulations as prescribed by regulator. Thus, we deny alleged violation of Clause A (5) of Code of Conduct for Stock Brokers.*
- iii. *We have not neglected or failed or refused to submit required returns or not made any false or misleading statement on any return required to be submitted to Board and stock exchange. In fact, nowhere in the SCN it is established that we had deliberately or intentionally not complied or refused to submit return or made misleading statement to Board and stock exchange. Therefore we deny alleged violation of Clause C (6) of Code of Conduct for Stock Brokers.*
- iv. *We reiterate that we had followed the philosophy of segregating clients funds with own funds in letter and spirit and we have carried out all the measures as statutorily required from time to time. We have exhaustively clarified that we have maintained proper segregation of clients' funds & own funds and thus we vehemently deny alleged violation of Regulation 26(xiii) of Broker Regulation.*
- v. *As elucidated in detail hereinabove, we submit that we have followed all the norms and principles as laid down and contained in SEBI's circular dated 18.11.1993 (Ref: No. SMD/SED/CIR/ 93/23321) and we strongly deny violation of same.*

12. Summary

In summary, we would like to submit as under:

- i. *We have maintained proper segregation of own account and clients account in compliance to rules and regulations prescribed by regulator from time to time.*
- ii. *The transfer of funds from clients' account to our account was out of our funds lying in client account.*
- iii. *The fund transfers from PESB own account to PESB E- Commodity Broking Ltd has been erroneously construed as transfer from client account to PESB E- Commodity Broking Ltd account.*
- iv. *Assuming without admitting, we submit with humility that in case there is non-compliance of single item of SEBI's circular, no penalty should be levied for a lapse which had express and/or implied consent of the clients.*

- v. *We submit with humility it is settled law that purpose of carrying out inspection is not punitive and the object is to make the intermediaries comply strictly the procedural requirements.*
- vi. *None of alleged transaction have caused any loss, harm and injury to anyone and market at large. We believe that there is no complaint or grievance of any of our client in this regard.*
- vii. *We have an unblemished track record in broking business and we have earned high reputation and built our goodwill on the basis of excellent performance record. We have always acted with integrity in conduct of its business affairs and dealings with all our constituents.*
- viii. *Speaking for ourselves, we state that we have always followed and complied with all rules, regulation, bye laws, procedure and statutory requirements of the capital market as prescribed by stock exchanges and SEBI.*

13. **Prayer**

Taking totality view of the facts and circumstance of our case and particulars submissions and denials as aforesaid, we submit that we have been wrongly roped into the present penal proceedings; hence humbly request that proceeding initiated against us be dropped and SCN qua us be disposed without issuing any penal directions against us.

14. *We crave leave, to file further and additional submissions, as and when required, in the course of present proceedings.*

.....”

8. The Noticee vide its another letter dated June 08, 2016 confirmed its attendance for the hearing scheduled on July 01, 2016 and informed that it has authorized M/s Prakash Shah and Associates, Advocate High Court, Mumbai to appear on its behalf. However, vide its letter dated June 28, 2016, the Noticee requested to grant another date of personal hearing submitting that its Counsel was unable to attend the hearing scheduled on July 01, 2016 due to some personal difficulty. In view of the same, the Noticee was granted another opportunity of personal hearing on August 02, 2016 vide notice dated July 13, 2016 at SEBI, Head Office, Mumbai. Mr. Prakash Shah, Advocate High Court, Mumbai, Authorized Representative (“AR”) and Mr. Jatin Gandhi, Director appeared on behalf of the Noticee. At the time of hearing the undersigned explained to the AR, the purpose of the hearing and the charges / offences leveled against the Noticee. Thereafter, during the hearing, the AR reiterated the submissions made in Noticee’s letter dated June 08, 2016 and sought 10 working days time to submit additional written submissions. Noticee’s request

was acceded to and time was allowed till August 18, 2016 for the same and the hearing proceeding was concluded.

9. The Noticee vide its letter dated August 12, 2016 made the following additional submissions wherein it *inter alia* submitted as follows:

“

2. *In continuation thereto and in addition to our written submissions dated 08.06.2016, we reiterate that we have always maintained proper segregation of own account and clients account and transfer of funds from client's accounts to own account was only out of our funds lying in client account. In order to substantiate our claim we hereby attach Certificate from our Statutory Auditor elucidating that whenever the funds were transferred from client account to own account, the same were out of our own funds lying in client account. The Certificate from our Statutory Auditor is enclosed hereto marked as 'Annexure 1' and 'Annexure 2' respectively for your kind perusal.*

3. *We would like to submit that relevant dates in aforementioned Certificate from our Statutory Auditor is taken as under:*

i. **Certificate – 1** (enclosed as Annexure 1)

The relevant date is taken on basis of Annexure – 1 of captioned Show Cause Notice dated 29.04.2016 bearing reference no. EAD/SG/AK/12307/2016

ii. **Certificate – 2** (enclosed as Annexure 2)

The relevant date is taken on basis of para 3.1.3.1 on Internal Page No. 6 of captioned Show Cause Notice dated 29.04.2016 bearing reference no. EAD/SG/AK/12307/2016

4. *On perusal of same, it can be noticed that funds lying in clients' account were invariably our own funds which were re-transferred to own account as and when required. Hence, we submit that we have followed all rules, regulation, bye laws, procedure and statutory requirements of the capital market and thus no adverse inference be drawn against us in this regard.*

.....”

ISSUES FOR CONSIDERATION

10. I have carefully perused the submissions made by the Noticee and documents made available on record. The issues that arise for consideration in the present matter are:
- I. Whether the Noticee has violated the relevant provisions of the Circular by failing to carry out segregation of funds?
 - II. Whether the Noticee has violated the provisions of Regulation 26(xiii) of Broker Regulations?
 - III. Whether the Noticee has violated the provisions of Clauses A (2), A (5) and C (6) of Schedule II read with Regulation 9 (f) of Broker Regulations?
 - IV. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA?
 - V. If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and Section 23J of SCRA?

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated the relevant provisions of the Circular by failing to carry out segregation of funds?

12. As noted in paras 3 and 4 above, it is alleged that the Noticee has *inter alia* acted in violation of the provisions of the Circular by failing to maintain the segregation of funds as mentioned below:
- i) Transfer of Funds from clients account to Own account
 - ii) Circuitous fund transfer among client's bank accounts and Noticee's Own bank accounts and
 - iii) Transfer of Clients' Fund to Associates/Group entities dealing in Commodities business

i) Transfer of Funds from clients account to Own Account

13. On the analysis of top funds transfers from clients bank accounts during the Inspection Period, it is alleged that funds were transferred from clients bank accounts to Noticee's own bank account (overdraft account) on several instances as set out in Annexure-1 to the SCN. Thus it was alleged that Noticee's own overdraft account's balance had been reduced by using clients fund.

14. The submissions of the Noticee vide its letters dated June 08, 2016 and August 12, 2016 are duly noted at pre-paras no. 7, 8 and 9 respectively. With respect to transfer of funds from clients account to Noticee's Own account, Noticee has submitted that the funds that were lying in clients accounts were invariably its own and the same were retransferred to Noticee's Own account as and when required. To substantiate its claim, the Noticee has submitted the following vide its reply dated June 08, 2016:

*"a. A detailed date-wise/ entry-wise explanation of transfer of our own funds to clients account is provided in sheet titled as **"Sheet 1"** which is enclosed to present reply. The supporting and relevant bank statements w.r.t. our explanations in Sheet 1 are attached as **"Annexures"***

b. On perusal of Sheet 1, it can be observed that before funds were transferred from Client account to Own account, the same were invariably transferred from Own account to Client's account. Thus, funds that originally belonged to own account was re- transferred back as and when needed."

15. Further, the Noticee vide its reply dated August 12, 2016 has submitted certificates from its Statutory Auditor (M/s RMR Shah & Company, Chartered Accountants) in order to substantiate its abovementioned claim.

16. On perusal of the allegations and the submissions made by the Noticee, the following is observed:

Sr. No.	Date of Transfer of Funds from Client Bank Account to Own Bank Account	Remarks as per Annexure-1 to SCN	Details of transfer of funds from the Own Bank account to Client Bank Account (As per	As per the certificate from the statutory Auditor(Annexure-1 to reply dated August 12, 2016)	
				Own funds (in Rs.)lying in Client Bank A/c at the time of fund transfer	Own funds(in Rs.) lying in clients A/c after transfer

			Noticee)	from Client A/c to Own A/c	
1.	03.09.2012	Own acct OD bal is Rs.384 lacs just before deposit of Rs. 420 lacs from client bank accts.	Rs. 445 lacs transferred from 21.08.2012 to 28.08.2012	14,10,90,772	9,90,90,772
2.	31.07.2012	Own acct OD bal is Rs.254.08 lacs just before deposit of Rs. 312.00 lacs from client accts.	Rs. 340 lacs transferred from 21.07.2012 to 26.07.2012	17,27,79,253	14,15,79,253
3.	11.12.2012	Own acct OD bal is Rs.399.98 lacs just before deposit of Rs. 200.00 lacs from client accts	Rs.305 lacs transferred from 10.12.2012 to 11.12.2012	9,69,57,080	7,69,57,080
4.	16.10.2012	1)Own acct OD bal is Rs. 399.12 lacs before deposit of Rs. 188.00 lacs from cli accts 2)Own acct bal Rs.3.21 lacs before deposit of Rs. 69.00 lacs from cli accts. Rs. 70.00 lacs transferred to Commodity arm of broker.	Rs.456 lacs transferred from 10.10.2012 to 12.10.2012	14,58,31,068	12,01,31,068
5.	27.02.2013	Own acct OD bal is Rs. 394.91 lacs before deposit of Rs.282.00 lacs from client accts	Rs.300 lacs transferred from 26.02.2013 to 27.02.2013	3,44,68,167	62,68,167
6.	26.02.2014	Own acct OD bal is Rs.183.39 lacs before deposit of Rs.185.00 lacs from client accts	Rs.187 lacs transferred on 24.02.2014	20,18,63,002	18,33,63,002
7.	11.03.2014	Own acct OD bal is Rs.225.99 lacs before deposit of Rs.225.00 lacs from client bank accts	Rs.230 lacs transferred from 10.03.2014 to 11.03.2014	20,16,41,436	17,91,41,436
8.	06.01.2014	Own acct OD bal is Rs.376.15 lacs just before deposit of Rs.303.00 lacs from client accts	Rs.305 lacs transferred from 03.01.2014 to 06.01.2014	19,00,00,012	15,97,00,012
9.	06.03.2014	Own acct OD bal is Rs.227.85 lacs	Rs.151 lacs transferred	20,01,06,383	18,57,06,383

		before deposit of Rs.144.00 lacs from client accts	from 03.03.2014 to 04.03.2014		
10.	23.12.2013	Own acct OD bal is Rs.356.70 lacs before deposit of Rs.267.00 lacs from client accts	Rs.269 lacs transferred from 17.12.2013 to 20.12.2013	18,68,41,601	16,01,41,601
11.	15.02.2013	Own acct OD bal is Rs.448.00 lacs before deposit of Rs.450.00 lacs from client accts	Rs.505 lacs transferred from 13.02.2013 to 15.02.2013	5,75,51,725	1,25,51,725
12.	15.01.2013	Own acct OD bal is Rs.312.46 lacs before deposit of Rs.110.00 lacs from client accts	Rs. 182 lacs transferred on 14.01.2013	10,35,24,952	9,25,24,952
13.	28.12.2012	Own acct OD bal is Rs.444.96 lacs before deposit of Rs.231.00 lacs from client accts	Rs.241 lacs transferred from 24.12.2012 to 27.12.2012	12,28,66,415	9,97,66,415
14.	11.12.2013	Own acct OD bal is Rs.244.50 lacs before deposit of Rs.246.00 lacs from client accts	Rs.280 lacs transferred from 10.12.2013 to 11.12.2013	15,27,96,468	12,81,96,468
15.	27.08.2013	Own acct OD bal is Rs.32.06 lacs before deposit of Rs.50.00 lacs from client accts	Rs.60 lacs transferred on 26.08.2013	8,97,56,310	8,47,56,310
16.	31.01.2013	Own acct OD bal is Rs.163.98 lacs before deposit of Rs.170.00 lacs from client accts	Rs.220 lacs transferred from 04.05.2012 to 07.05.2012	7,85,74,286	6,15,74,286
17.	02.04.2013	Own acct OD bal is Rs.377.88 lacs before deposit of Rs.107.00 lacs from client accts	Rs. 115 lacs transferred on 02.04.2013	6,56,90,818	5,49,90,818
18.	12.07.2013	Own acct OD bal is Rs.399.44 lacs before deposit of Rs.100.00 lacs from client accts	Rs.113 lacs transferred from 11.07.2013 to 12.07.2013	10,04,05,164	9,04,05,164
19.	31.01.2013	Own acct OD bal is Rs.398.73 lacs before deposit of Rs.338.00 lacs from client accts	Rs.400 lacs transferred (from Yes Bank own acct 871 to Yes Bank NSE FO Client A/c 565) on 31.03.2012	7,85,74,286	4,47,74,286

20.	31.03.2014	Own acct OD bal is Rs.388.49 lacs before deposit of Rs.170.00 lacs from client accts	Rs.188 lacs transferred from 08.01.2014 to 23.01.2014	18,86,34,721	17,16,34,721
21.	15.02.2013	Own acct OD bal is Rs.448.00 lacs before deposit of Rs.450.00 lacs from client accts	Rs.457 lacs transferred from 13.02.2013 to 14.02.2013	5,75,51,725	1,25,51,725
22.	01.04.2013	Own acct OD bal is Rs.351.83 lacs before deposit of Rs.352.00 lacs from client accts	Rs.380 lacs transferred from 30.03.2013 to 31.03.2013	3,72,75,548	20,75,548
23.	27.05.2013	Own acct OD bal is Rs.399.76 lacs before deposit of Rs.297.00 lacs from client accts	Rs.306 lacs transferred from 23.05.2013 to 24.05.2013	12,13,16,755	9,16,16,755

17. Thus, from the above table which is derived from the allegations and submissions of the Noticee including Statutory Auditor's certificate submitted by the Noticee, it is noted that on each of the 23 instances alleged in the SCN, Noticee's own funds were lying in the clients accounts both before and after transfer of funds from the clients accounts to Noticee's own account. Further I note that the Noticee has submitted the reasons for transfer of funds between client's accounts and own and vice versa which is duly noted at para 7.5 at page numbers 7 & 8 above.

18. I note that the Circular provides for 'regulation of transactions between Clients and Brokers'. It, *inter alia*, provides for 'what moneys to be paid into Clients account' and 'what moneys to be withdrawn from Clients account'. Para 1 of the Circular reads as under:

"REGULATION OF TRANSACTIONS BETWEEN CLIENTS AND BROKERS

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.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member –

- i. Moneys received from or on account of each of his clients and,
- ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

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.
-"

19. On perusal of the material available on record, I note that the transfer of funds from clients account to Own account of the Noticee is not in dispute. However,

as demonstrated by the Noticee, the same is in accordance with para 1D (ii) of the Circular. Hence, Noticee's submission in this regard is acceptable.

ii) Circuitous fund transfer among clients bank accounts and Noticee's Own bank accounts

20. The SCN alleged that there were 26 transactions resulting in 8 instances of circuitous nature on 2 days during a Period of 24 months. Further, the amount involved in such transactions is approximately Rupees 20 crore. The Noticee in its submissions has admitted that circuitous fund transfers had taken place on two days i.e. 13.09.2012 and 30.03.2013 out of 730 days and has furnished the reason that the same have taken place due to inadvertent act of the person handling funds. Further, the 'last level-back' transaction was made so that net effect of erroneous entry is nil and status – quo is restored.
21. I note that during the 2 years' Inspection Period, a total of 8 instances have been noted on 2 days i.e. 7 instances on March 30, 2013 and 1 instance on September 13, 2012. As per inspection funds have been transferred from Noticee's Own account to Client's accounts and back within a span of 41 seconds on 6 instances, within 1 minute 20 seconds on 1 instance and within 2 minutes and 10 seconds on the remaining 1 instance.
22. Further, considering that the inspection has brought out the time of such transactions upto seconds, I do not agree with the allegation that such activities complicate the audit trail.
23. In view of the short span of about 2 minutes of reverse entry on its own by the Noticee, I have no material to differ with the Noticee's contention that these transactions occurred due to the inadvertent error at its end. I also note that such transactions are covered under paras 1 D (iii) and 1 C (iii) of the Circular, which has been referred at para 18 above.

iii) Transfer of Client's Fund to Associates/Group entities dealing in Commodities business

24. The SCN alleged that the transfer of funds were made on 16 occasions from Clients bank account to PESB's Own Bank account and further from its Own account to PECB account, same day on each occasion. The Noticee in its submissions has stated that the funds were transferred from its Own account to Client's account previously on each aforesaid 16 occasions. Noticee has submitted that only those funds belonging to the Noticee and lying in Client's bank account were retransferred from the clients account. On perusal of the submissions of the Noticee substantiated by the Statutory Auditor's certificate submitted by it, I note that Noticee's own funds were lying in the clients accounts, both before and after transfer of funds from the clients accounts to Noticee's own account, which were subsequently transferred to PECB account.
25. On perusal of the material available on record, I note that the transfer of funds from clients account to Own account of the Noticee is not in dispute. However, as demonstrated by the Noticee, the same is in accordance with para 1D (ii) of the Circular. Hence, Noticee's submission in this regard is acceptable.

ISSUE II. Whether the Noticee has violated the provisions of Regulation 26(xiii) of Broker Regulations?

26. In view of the findings at paras 19, 22, 23 and 25, it can be concluded that the Noticee has not violated the provisions of Regulation 26(xiii) of Broker Regulations.

ISSUE III: Whether the Noticee has violated the provisions of Clauses A (2), A(5) and C(6) of Schedule II read with Regulation 9 (f) of Broker Regulations?

27. In view of the findings at paras 19, 22, 23, 25 and 26 it can be concluded that the Noticee has not violated the provisions of Clauses A (2), A(5) and C(6) of Schedule II read with Regulation 9 (f) of Broker Regulations.

ISSUE IV. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA?

28. Based on the findings arrived at paras 19, 22, 23, 25, 26 and 27, it can be concluded that the Noticee is not liable for monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA.

ISSUE V. If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and Section 23J of SCRA?

29. Since, the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

30. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against M/s Pune E-Stock Broking Pvt. Ltd. vide Show Cause Notice dated April 29, 2016.

31. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995 and Rule 6 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005, a copy each of this order is being sent to Pune E-Stock Broking Private Limited having office at 1198, Shukrawar Peth, Subash Nagar, Lane No. 3, Pune – 411 002 and also to the Securities and Exchange Board of India, Mumbai.

Date: 23.02.2017
Place: Mumbai

Suresh Gupta
Adjudicating Officer