

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER No. Order/AN/PR/2024-25/31348]**

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

In respect of:

**Abhipra Capital Ltd.**

(PAN: AABCA1702F / SEBI Registration Number: INZ000285230)

**In the matter of Abhipra Capital Ltd. (Stock Broker)**

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**A. BRIEF BACKGROUND:**

1. Securities and Exchange Board of India ('SEBI') along with Stock Exchanges (BSE and NSE) carried out a comprehensive joint inspection of Abhipra Capital Limited ('Noticee'/'Entity'/'Broker'/'ACL'/'Member'/'TM'/'Trading Member'/'SB'), which is registered with SEBI as a Broker vide SEBI registration number INZ000285230. The inspection of the Broker was undertaken on May 31, 2022 and June 09, 2022 for the inspection period October 01, 2021 to May 31, 2022 ('Inspection period'/'IP').
2. Pursuant to the inspection, the findings of the inspection were communicated to the Noticee vide letter dated July 07, 2022. Noticee submitted its reply to the findings of SEBI vide its letter dated July 20, 2022 and October 11, 2022.

3. Pursuant to the above, SEBI carried out post inspection analysis. In view thereof, SEBI inter alia observed that Noticee had allegedly violated the following:
- 3.1. Section 23D of Securities Contracts (Regulation) Act, 1956 ['SCRA' / 'SC(R) Act, 1956'], read with Clause 1 of SEBI Circular SMD/SED/CIR/93/ 23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 2 read with clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 Dated June 16, 2021; Clause A1, A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.
  - 3.2. Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
  - 3.3. Clause 12 of Annexure A of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021.
  - 3.4. Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.
  - 3.5. Clause 6 of SEBI circular no. CIR/DNPD/7/2011 dated August 10, 2011 and Clause 4.2 SEBI circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019.
  - 3.6. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and clause 2 of NSE circular NSE/MEMB/2739 dated July 30, 2001.

- 3.7. Clause 7 and 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause A2 & A5 as prescribed under Code of conduct r/w Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992.
- 3.8. Clause 3, 7, 8, 10, 14, 18, 20, 29, 31, 35, 36, 48 and 52 of Annexure 1 of SEBI Circular No. SEBI/HO/MIRSD/CIR/PB/ 2018/147 dated December 03, 2018.
4. In view thereof, SEBI initiated Adjudication proceedings in respect of the Noticee under Section 15 I of the SEBI Act, 1992 and 23 I of SCRA, for the alleged violations of the provisions of law, as stated.

**B. APPOINTMENT OF ADJUDICATING OFFICER:**

5. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated and therefore, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992 read with Section 15I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (SEBI Adjudication Rules) and under Section 23 I of the Securities Contracts (Regulation) Act, 1956 read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (SCRA Adjudication Rules), the Competent Authority appointed the Ms. Soma Majumder, GM as Adjudicating Officer vide order dated April 25, 2023 to inquire into and adjudicate under Section 23D of the SCRA and Section 15HB, 15A(c) of the SEBI Act for the alleged violations by the Noticee. Pursuant to the transfer of the Ms. Soma Majumder, undersigned was appointed as Adjudicating Officer in the instant proceedings vide order dated December 07, 2023. The proceedings of appointment were communicated to the undersigned vide Communique dated December 19, 2023.

## C. SHOW CAUSE NOTICE, REPLY, AND HEARING:

6. A Show Cause Notice No. SEBI/HO/EAD/EAD5/OW/2024/16275 dated May 09, 2024 along with Annexures (SCN) was issued upon the Noticee under Rule 4 of the SEBI Adjudication Rules and SCRA Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15A(c) and 15HB of the SEBI Act, 1992 and Section 23D of the SC(R) Act, for the violations alleged to have been committed by the Noticee.

7. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

- ...
- 4.1. *Finding A: Misuse of clients' funds*
- a) *The value of G is negative for all 7 sample dates indicating misutilization of clients' funds. The average misutilised amount is Rs. 2.13 crore*
  - b) *The value of I is positive for 2 dates (January 27, 2022 and May 10, 2022) indicating misutilization of clients fund towards margin obligations of debit balance clients. The misutilised amount is Rs. 16.04 lacs and Rs. 60.93 lacs respectively.*
  - c) *7 bank accounts are not reported by broker to the stock exchange.*
  - d) *Stock broker has failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent. During analysis of weekly submission of client assets, a pattern of passing journal entries was observed to reduce the actual creditors from trial balance by transferring amount from Broking division to Depository division without any banking transaction on Thursday and reverse the same on subsequent week to willfully hide shortfall of funds in weekly enhanced submission and to avoid actual settlement of clients.*
  - e) *The broker has admittedly shown funds deposited by clients for trading purposes as creditor for DP division to inter alia suppress the actual creditors of broking division. Creditors for DP division amounted to a total of Rs. 55.55 lacs and Rs. 53.57 lacs on 16.03.2022 and 28.04.2022 respectively.*
    - 4.1.1. *In this regard SEBI observed as follows:*
      - 4.1.1.1. *Upon the calculation of the value of G, I and J for 16.03.2022 and 28.04.2022, it is noted that the value of G was negative on both the dates.*

...

      - 4.1.1.2. *The negative value of G indicates utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. Detailed calculation regarding the same is placed at Annexure A1 to IR.*
      - 4.1.1.3. *The broker has admittedly shown funds deposited by clients for trading purposes as creditor for DP division to inter alia suppress the actual creditors of broking division and has thereby falsified its records (Broker's email dated 23.06.2022 at Annexure A2 to IR). Creditors for DP division amounted to a total of Rs. 55.55 lacs and Rs. 53.57 lacs on 16.03.2022 and 28.04.2022 respectively.*
      - 4.1.1.4. *Value of G was negative on all sample dates January 27, 2022, February 09, 2022, March 16, 2022, April 28, 2022, May 10, 2022 and May 30, 2022 in the range from Rs. 0.44 crores to Rs. 4.68 crores. The negative value of G indicates utilization of clients' funds for other purposes i.e. Utilization of funds of credit balance clients either for settlement obligations of debit balance clients or for the stock brokers' own purposes.*
      - 4.1.1.5. *Violations of principal J on January 27, 2022 and May 10, 20 were also observed, which indicate Clients' funds being utilized towards margin obligations of debit balance clients by 16.04 Lac and 60.93 Lac respectively.*
      - 4.1.1.6. *It is observed that the Stock Broker has not reported its' 7 bank accounts on exchange portal. As per books of account of the stock broker, there were 29 active bank accounts, however only 22 bank accounts were reported to stock exchange under enhanced supervision framework.*
      - 4.1.1.7. *During analysis of weekly submission of client assets report under enhanced supervision and financial ledgers of clients, a pattern of passing journal entries was observed to reduce the actual creditors from trial balance and credit given to UDD01 (Depository Division 1) a control account to transfer amount from broking division to Depository division without any banking transaction on Thursday and reverse the same on subsequent week to willfully hide shortfall of funds in weekly enhanced submission and to avoid actual settlement of clients. Total 1224 entries were identified during inspection period. Detail mentioned in Annexure B5 to IR. There are 670 entries of 30.67 crore where debit entries are passed in client financial ledger and there are 554 entries of 26.65 crore where credit entries are passed. Due to above JV entries, stock broker has failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent, hence clients were not communicated with correct fund balance via exchange communication through email/sms.*
      - 4.1.1.8. *The broker has admittedly shown funds deposited by clients for trading purposes as creditor for DP division to inter alia suppress the actual creditors of broking division and has thereby falsified its records. (Annexure A2*

- to IR). Creditors for DP division amounted to a total of Rs. 55.55 lacs and Rs. 53.57 lacs on 16.03.2022 and 28.04.2022 respectively.
- 4.1.1.9. Also, it may be noted that during the limited purpose Inspection conducted by NSE in Dec 2021, it was observed that trading member was misrepresenting the actual creditors of broking books by passing the N entries between clients' ledger and "Inter-branch a/cs.- DEPOSITORY DIVISION I". Abhipra has posted debit journal vouchers entries with the narration "BEING FUND TRANSFER" on December 3, 2021, in the financial ledgers of 84 clients amounting to Rs 3.15 crore, thereby reducing the credit balance (Details as per Annexure C9). Once NSE negated the effect of such identified JVs, there was shortfall of Rs. 3.33 crore as on December 03, 2021 Details as per Annexure C 10 to IR).
- 4.1.2. In this regard NSE observed as follows:
- 4.1.2.1. On verification of client payables as per trial balance as on 09-Feb-2022 & 30-May-22 maintained in broking operation back-office records vis-à-vis funds available with Clearing Corporation as well as with Clearing Member and clients/settlement banks, it was observed that Member had used the funds of credit balance clients for meeting the settlement obligations of debit balance clients or own purpose thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers to the tune of Rs.3.56 Crores on 09-Feb-2022, however no violation observed for Principle 2 & 3. There was positive value of G by 0.04 crores as on 30th May 2022. (Details are as per Annexure C1).
- 4.1.2.2. Further, based on the data submitted as part of SEBI Joint Inspection, while analysing DP division trial balance as on 31st March 22 for Networth working, it was observed that there were significant clients payable amounting to Rs. 53.50 Lakhs for more than 3500 clients.
- 4.1.2.3. On further verification of ledger of sample top 20 clients, it was observed that client credit ledger balances are appearing due to opening balance/ cheque received entry / transfer from broking books. (Details as per Annexure C2 to IR)
- 4.1.2.4. Usually, DP division should not have such significant creditors. Exchange has asked member to explain such long outstanding unsettled trade payables of all the creditors appearing in books of DP division. Trading member replied that majorly such accounts pertaining to small investor who prefer not having too many repetitive transactions and for the sole purpose of easing the procedure. These clients prefer to park their money in their accounts under DP division and use the same for trading as and when desire and fully aware about the same.
- 4.1.2.5. NSE registered clients UCC based on Demat accounts code were identified in DP division trial balance. Accordingly, if we consider such creditors, total clients payable will increase and hence will lead to shortfall of clients' fund amounting to Rs 4.05 crore as on 9th Feb 22 & 0.44 crore as on 30th May 22. (Details are as per Annexure C3 to IR)
- 4.1.2.6. Also, it may be noted that during the limited purpose Inspection conducted by NSE in Dec 2021, it was observed that trading member was misrepresenting the actual creditors of broking books by passing the JV entries between clients' ledger and "Inter-branch a/cs.- DEPOSITORY DIVISION 1". Abhipra has posted debit journal vouchers entries with the narration "BEING FUND TRANSFER" on December 3, 2021, in the financial ledgers of 84 clients amounting to Rs 3.15 crore, thereby reducing the credit balance (Details as per Annexure C9 to IR). Once NSE negated the effect of such identified JVs, there was shortfall of Rs. 3.33 crore as on December 03, 2021 (Details as per Annexure C10 to IR).
- 4.1.3. In this regard BSE observed as follows:
- 4.1.3.1. During verification of details of all Bank accounts submitted by Stock Broker to Exchange, it is observed that the Stock Broker has not reported its 7 bank accounts on exchange portal. Details of Bank Accounts not reported to exchange is mentioned in Annexure B1 to IR. As per books of account of the stock broker, there were 29 active bank accounts, however only 22 bank accounts were reported to stock exchange under enhanced supervision framework.
- 4.1.3.2. During verification of availability of client funds (Principle G) as on 27-01-2022 and 10-05-2022, it is observed that the stock broker has shortfall of funds to pay the creditors amounting to Rs. 4.68 Crore and 57.60 lac respectively. Details is mentioned in Annexure B2 to IR.
- 4.1.3.3. Violations of principal J on both sample dates were also observed, which indicate Clients' funds being utilised towards margin obligations of debit balance clients by 16.04 Lac and 60.93 Lac.
- 4.1.3.4. During analysis of weekly submission of client assets report underenhanced supervision and financial ledgers of clients, a pattern on passing journal entries has been observed wherein the broker by debiting clients ledger to reduce the actual creditors from trial balance and credit given to UDD01 (Depository Division 1) a control account to transfer amount from broking division to Depository division without any banking transaction on Thursday and reverse the same on subsequent week to willfully hide shortfall of funds in weekly enhanced submission and to avoid actual settlement of clients. Total 1224 entries were identified during inspection period. Detail mentioned in Annexure B5 to IR.
- 4.1.3.5. There are 670 entries of 30.67 crore where debit entries are passed in client financial ledger and there are 554 entries of 26.65 crore where credit entries are passed.
- 4.1.3.6. Due to above JV entries, stock broker has failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent, hence client were not communicated with correct fund balance via exchange communication through email/sms.
- 4.1.4. The Noticee in its reply to the findings of Inspection report submitted the following:
- 4.1.4.1. It is pertinent to note here that there has been no "misuse of client funds", there has not been any diversion of funds from client accounts for any purpose as has been mentioned in the observations. Entries mentioned in the observations were executed inter-se between the respective clients' accounts and has not been diverted outside as alleged. There were temporary shortage of funds on account of COVID-19 and loss of key personnel in the Company, however, shortfall was duly recouped with diligent and consistent efforts of the Company. Moreover, the said fund transfers debited from the respective clients trading division and credited to their respective demat accounts, therefore the said funds were never diverted to settle other client's account or for our business needs. Today, the Company has sufficient client funds, which clearly reflects that there has not been any mala fide intent on the Company's part. The abovementioned transaction inter-se between the accounts are belonging to the same client in different units could not be termed as 'Misuse of clients' funds' as it is a serious allegation and would bring dishonor to any entity.
- 4.1.4.2. It has been correctly observed by your good office that the value of G was negative on January 27, 2022, February 09, 2022 and March 16, 2022. It is pertinent to mention here that the same shortfall was highlighted by NSE during its Limited Purpose Inspection during November, 2021. NSE also restricted Abhipra from opening any new account till the funds were recouped. Further, shortfalls on the above mentioned 3 dates were duly recouped on April 01, 2022 to the satisfaction of NSE, post which NSE lifted the ban imposed on the Company from registering of new clients. It is hereby bona fide submitted that after recouping the shortfall there

has not been any shortfall in the client funds. A copy providing details of recouping the shortfalls on April 01, 2022 has been annexed.

- 4.1.4.3. Further, any negative balance in client funds post April 01, 2022 could not be stated as shortfall as these negative balances are on account of DP creditors who are considered as trading client creditors. Thus, merely due to difference in interpretation of DP creditors, your good office has observed that there has been a negative value of G on April 28, 2022, May 10, 2022 and May 30, 2022. Also, DP Creditors are maintained by the Company to avail various services and discounts offered from time to time by the Company. A copy of DP Creditors as on 31.03.2022 has been annexed for your ready reference as this shows that during the inspection period there has not been any increase in the value of DP Creditors, which has been wrongly considered by your good office as Trading Creditors. Due to this wrong interpretation there is difference in the value of trading creditors.
- 4.1.4.4. Negative value of G on April 28, 2022 of 30 lakhs was observed by your good office, in this regard, it is hereby submitted that a FDR (1\*\*\*13\*\*\*\*80 & 1\*\*\*13\*\*\*\*16) of Rs. 10 lacs was with Clearing Corporation, and a request was made to release the same. That, FDR was released but wasn't credited in the settlement account, hence it was observed as shortage. This negative balance was nothing but a transitional value as the funds were duly available with exchange, thus can't be called as a shortfall.
- 4.1.4.5. Further, the shortfall observed on May 30, 2022 is not a shortfall in broking division but it is only on account of the creditors that pertains to DP division which has been wrongly considered as a creditor of the broking.
- 4.1.4.6. It is further submitted that the shortfall on 10.05.22 is due to DP which are not related to broking division. There is shortfall of 1.23 Rs.lacs only which was recouped next day. This shortfall is only on account of increase in debtors due to market fluctuation. The statement for the next day is enclosed..
- 4.1.4.7. It has been alleged that the Company has not reported its certain (seven) bank accounts on exchange, however, these 7 accounts were not related to security business of the Company, thus there was no requirement and obligation to disclose the same.
- 4.1.4.8. Also, details of all these 7 accounts with copy of Bank Statement have already been shared with the inspection team during the time of inspection and a copy of same has been annexed for your good office's ready reference.
- 4.1.4.9. In order to avoid repetition and duplication of entries especially for small clients, which is preferred by clients and is in complete knowledge of them, who have complete access to their balances and account statements. The Company always kept its clients informed about their rights, balances and choices, so it is incorrect and wrong to say that "clients were not communicated with correct fund balances". Rather it is stated that the inspection team verified the communications made by the Company to the clients, containing all such entries. Further, it is stated that each and every accounts of the client are settled as per the Rules and Regulations. Also, there has not been even a single complaint from any of the clients against the Company. It is stated that when NSE objected such transfer entries, we stopped inter segment transferring of funds from 08-Dec-2021. We are enclosing the list of accounts settled from 08-Dec-2021 to 28-July-2022 along with logs of dispatch of settlement statement. We are also enclosing settlement statement of top 10 clients settled during the period. It is pertinent to mention here that NSE conducted a "limited period inspection" and the Company provided the exchange with explanation of transfer entries, a copy of same has been annexed.
- 4.1.4.10. Clearly, the Company has been acting on the instructions of its clients for the convenience of its clients, clearly when the intent is not to misconceive but mere convenience.
- 4.1.4.11. It is stated that the DP creditor Shri Manoj Kumar Singhal having Client ID – 11046339, having highest credit balance of Rs. 6,90,023/- in his account. It is pertinent to mention here that a dispute was raised among family member of constituent on the issue of ownership of shares and one of the family filed complaint before Ballabgarh, Haryana Police Station and police authority instructed us not to release payment and also instructed to freeze demat account. Therefore, this account is credited in the demat account and is pending before Hon'ble High Court. Documents have already submitted for the same and also mentioned in Annexure A2 of the inspection report.
- 4.1.4.12. Parking of funds from trading to Demat Account is for the convenience of the clients. As has already stated above and has already been submitted before exchanges, clients prefer to avoid duplicated and repeated transactions, they prefer to park their funds and make investments when market conditions are preferable. Clearly, the Company has been acting on the instructions of its clients for the convenience of its clients, clearly when the intent is not to misconceive but mere convenience.
- 4.1.4.13. However, as per the instructions of the exchange, we have stopped such transfer entries since 08-Dec-2021.
- 4.1.4.14. It is pertinent to mention here that there has not been any misrepresentation in the transfer entries. All entries were executed to facilitate the client with their due knowledge only. Accounts mentioned in the annexure C9 and C10 have already been settled in accordance with the instructions directed by the exchange. The settlement log has already annexed.
- 4.1.4.15. In response to shortfall, as already explained in subpoint 1 of point 1, there was shortfall on certain dates, however, the same was recouped duly on 01 April, 2022, and since then there has not been any shortfall.
- 4.1.5. However, SEBI in this regard observed as follows:
- 4.1.5.1. The broker has submitted that there were temporary shortages of funds on account of COVID'19 and loss of key personnel in the Company, however, shortfall was duly recouped with diligent and consistent efforts of the Company and as such the same cannot be accepted, hence the violation persists.
- 4.1.5.2. The broker has accepted that G value was negative on these dates.
- 4.1.5.3. The broker has not submitted any supporting documents to substantiate the claim. Hence the violation persists.
- 4.1.5.4. The broker has accepted that G value was negative on these dates.
- 4.1.5.5. The broker has submitted these 7 accounts were not related to security business of the Company, thus there was no requirement and obligation to disclose the same. The broker should have reported the same on exchange portal, as the accounts are / were in the name of the broker, irrespective of whether they are related to security business or not. As such the reply of the broker may not be accepted.
- 4.1.5.6. The broker has submitted that when NSE objected such transfer entries, we stopped inter segment transferring of funds from 08-Dec-2021.
- 4.1.5.7. The broker has failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent, hence clients were not communicated with correct fund balance via exchange communication through email/sms. Hence the violation persists.
- 4.1.5.8. The broker has submitted that they have stopped such transfer entries w.e.f. December 08, 2021, as per the instructions of the exchange, subsequent to limited purpose inspection conducted by NSE in December '2021. As such the violation persists.
- 4.1.5.9. In view of the above, it is alleged that the Noticee had violated the following provisions:

- Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/ 23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (For Finding A: Misuse of clients' funds - a) & b))
  - Clause 2 r/w clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 (For Finding A: Misuse of clients' funds - c)
  - Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Clause 5.3 of SEBI Circular SEBI/HO/MIR SD/DOP/P/CIR/2021/577 Dated June 16, 2021 and Clause A1, A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992 (For Finding A: Misuse of clients' funds - d)
  - Clause 5.3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR /2021/577 Dated June 16, 2021 and Clause A1, A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992 (For Finding A: Misuse of clients' funds - e))
- 4.2. **Finding B: Non-Segregation of Clients' Funds**  
The stock broker has failed to segregate client funds and own funds. Further stock broker has failed to maintain daily reconciliation statement to substantiate that transfer is for legitimate purpose. During verification, 212 instances where funds were transferred between Client/Settlement bank account and own bank account.
- 4.2.1. During verification of Bank Books, it is observed that the stock broker has failed to segregate client funds and own funds. Further stock broker has failed to maintain daily reconciliation statement to substantiate that transfer is for legitimate purpose. During verification, we have observed 212 instances where funds were transferred between Client/Settlement bank account and own bank account. Details mentioned in Annexure B4 to IR.
- 4.2.2. The Noticee in its reply to the findings of Inspection report submitted as that, It is hereby submitted before your good office that the Company maintains clients' funds in complete comprehension with the rules and bye laws and there is a proper segregation of clients' funds. As per practice, clients provide their pay-in obligation vide cheques that takes time in realization. To meet the pay-in obligations, we need to introduce our own funds and upon realization of the amount from the clients, the same is withdrawn. The Annexure B4 annexed is not presenting the true facts. We observe that one entry of transfer of Rs. 50,00,000/- dated 10-02-2022 is repeated 16 times. Hence suggesting that we introduced Rs. (157053035.9 - 64860368.44) = Rs. 9,21,92,667.44. The actual fund withdrawn is Rs. 64,860,368.44 and introduced is Rs. 97,053,035.88. So the net fund introduced is Rs. 3,21,92,667.44 on account of funds recouped during the inspection period. We are enclosing herewith the bank statements and corrected report against Annexure B4 of the inspection report as Annexure A5. Your good office will acknowledge the fact that the Company has not overdrawn even a single penny from its clients' funds and rightly this has not even been pointed out in these observations.
- 4.2.3. SEBI in this regard observed that, With regards to the segregation of clients' funds, the broker has not submitted suitable document to substantiate his claim (Broker has submitted bank statement of Account no. 705010606 in excel format and not in PDF format) Therefore, a broker's reply cannot be accepted. In view of the above, it is alleged that the Noticee had violated the following provisions:  
Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and; Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
- 4.3. **Finding C: Settlement of Client funds**
- a) The Stock Broker has not done actual settlement of client's fund of inactive clients having inactive since last 30 days. Further, the stock broker has not sent retention statement to all inactive clients. Total 13785 instances of 2075 unique clients were observed where total unsettled funds of Rs. 8.15 crore were identified.
- b) During verification of retention statement along with statement of accounts of funds of 10 clients, it is observed that wrong statement of account along with retention statement were being delivered to clients.
- c) The broker has not maintained logs for sending weekly statements in its back office and has not send digitally signed weekly statements to the clients
- 4.3.1. During verification of running account settlement, it is observed that the Stock Broker has not done actual settlement of client's fund of inactive clients having inactive since last 30 days. It is further observed from logs of sending retention statement that the stock broker has not sent retention statement to all inactive clients. Details mentioned as per Annexure B3 to IR. Total 13785 instances of 2075 unique clients were observed where total unsettled funds of Rs. 8.15 crore were identified.
- 4.3.2. In this regard, the Noticee in its reply to the findings of Inspection report submitted as follows:
- 4.3.2.1. That inspection team has erroneously made the observation that the Company has not done actual settlement of client's fund of inactive clients, as clearly, the inspection team has misconstrued trading and demat accounts. It is an established principle that amount lying in demat account is only to meet out the Demat service charges. So far as trading account is concerned, it is settled and nothing is pending. Complete settlement of funds and security log is provided as Annexure A3. Thus, the data that has been compiled and prepared by your good office is factually incorrect, and any observation made on the basis of this cryptic data would never provide fair results.
- 4.3.2.2. It is pertinent to bring your attention to SEBI's Circular - SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated 5 June 16, 2021 which states, "the actual settlement of funds and securities shall be done by the member depending on the mandate of the client and there must be a gap of maximum 90 / 30 days (as per the choice of client viz. Quarterly / Monthly) between two settlements of running account." Thus, SEBI has itself provided an option to settle the accounts either in 90 days or 30 days.
- 4.3.3. During verification of retention statement along with statement of accounts of funds of 10 clients, it is observed that wrong statement of account along with retention statement were being delivered to clients. Sample retention statement and sample statement of account for funds and securities enclosed as per Annexure B7 to IR. Sample statement of account are containing details of JV entries, which has reduced the actual credit of the client in financial ledger.
- 4.3.4. In this regard, the Noticee in its reply to the findings of Inspection report submitted that, The Company has never tried to hide any information nor provided any wrong information to its clients. Company is regularly providing periodical statements having true and correct details to the clients, wherein journal entries are also mentioned. Retention statements as pointed out in the finding are prepared as per the regulations via system and sent to the clients. Retention statement does not contain the margin entries. Secondly the retention statement report is prepared sorted on the settlement date. All the bank related entries are shown after settlement posting entries. Thus, this observation per se is wrong and factually incorrect. It has been incorrectly observed that the Company has reduced the actual credit of the client in the financial ledger.

- 4.3.5. During verification of logs for sending weekly statement of account for funds and securities issued to clients, it is observed that the stock broker has not maintained logs for sending weekly statement of accounts for funds and securities to clients for the inspection period. Further observed that the stock broker has not provided digitally signed statement of account to clients. Further, the broker has admitted to not maintaining logs for sending weekly statements in its back office and not sending digitally signed weekly statements to the clients in its email dated 10.06.2022 (Annexure A7 to IR).
- 4.3.6. In this regard, the Noticee in its reply to the findings of Inspection report submitted that, the inspection report has wrongly noted that the Company is not maintaining the logs for sending weekly statement of accounts for funds and securities. The complete archive of mails sent to the clients are maintained by Company and readily available to extract and verify from the mail server. The inspection team also verified in person the mails sent to the clients. During the inspection official from Shilpi Software was also present and informed that the software does not maintain mail sending logs in case the mails are not digitally signed. We have also noted the same and asked the software team to maintain the logs for non digitally signed mails.
- 4.3.7. SEBI in this regard observed that, the broker has not given any suitable explanation and not submitted any evidence in support of settlement of funds of inactive clients.  
In view of the above, it is alleged that the Noticee had violated the following provisions:  
For Finding C: Settlement of Client funds – a)
- Clause 12 of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
  - Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021
- For Finding C: Settlement of Client funds – b) and c)
- Clause 12 of Annexure - A of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- 4.4. Finding D: Stock reconciliation:  
There was a shortfall of 18 scrips amounting to Rs. 13,69,500 in DP as compared to Back Office holding. There was excess of 3 scrips amounting to Rs. 3987/- in DP as compared to Back Office holding.
- 4.4.1. On reconciling back office holding of securities with securities available in DP as well as with clearing member, it was observed that:
- ...
- 4.4.2. In this regard, Trading Member has explained that differences are in Own securities only and majorly due to sale /Corporate action/ redemption. Such transactions of Own securities were not properly recorded in ROS.
- 4.4.3. The Noticee in its reply to the findings of Inspection report submitted that, Observations regarding the "securities available in DP as well as with the clearing member", in this regard, it is hereby submitted that there has not been any discrepancy or violation of any of the circulars, also there is a proper reconciliation of the stocks, and same can be observed from a copy of scrip wise reply that has been annexed as Annexure A6.
- 4.4.4. SEBI in this regard observed that, Even though the differences are in own securities only and majorly due to sale / corporation action / redemption, the broker should have recorded transactions of own securities in ROS. In view of the above, it is alleged that the Noticee had violated the Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.
- 4.5. Finding E: Reporting and short collection of margin  
The Member has incorrectly reported margin collection in case of 02 clients/ instances amounting to Rs.2,038.
- 4.5.1. On verification of margin collection and reporting in case of 75 clients/ instances, it was observed that Member has incorrectly reported margin collection in case of 02 clients/ instances amounting to Rs.2,038.(Details are as per Annexure C4 to IR)
- 4.5.2. The Noticee in its reply to the findings of Inspection report submitted that, Your good office verified margin collection and reporting in case of 75 clients and observed that member has incorrectly reported margin collection in case of 2 clients amounting to Rs. 2,038. In this regard the Company has two explanations: Firstly, there has not been any short collection of margins, rather, the amount with respect to these 02 clients were received via payment gateway (Billdesk). These entries were posted on next working day. While reporting to the exchange such receipts were taken in to account by the concerned executive. Hence no shortfall was reported. The Billdesk report is annexed as Annexure (A7). Secondly, out of 75 clients observed by your good office, only in relation to 02 clients a negative observation has been expressed, thus this clearly shows that the Company had no faulty intent.
- 4.5.3. SEBI in this regard observed that, The broker has not submitted a suitable/proper document to substantiate his claim (Annexure A7 is an editable excel file). Thus, the broker's reply cannot be accepted.  
In view of the above, it is alleged that the Noticee had violated the following provisions:  
Clause 6 of SEBI circular no. CIR/DNPD/7/2011 dated August 10, 2011 and Clause 4.2 SEBI circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019.
- 4.6. Finding F: Net Worth Verification:  
The net worth of the broker is negative as on 30.09.2021 & 31.03.2022, Rs. -6.32 crores and Rs. -4.09 crores respectively. Further, doubtful debts and advances of Rs. 29.54 crores as on 30.09.2021 and Rs. 27.22 crores on 31.03.2022 have been identified from books of accounts of the broker.
- 4.6.1. On verification of Net-worth certificate submitted by Member, provisional balance sheet, Trial balance and other relevant details for the year ended 31-Mar-2022, it was observed that Trading Member has not deducted certain amounts towards "Doubtful debt & advances" while calculating its Net Worth. As per Net worth certificate provided by the member, amount Rs 1.30 crores was considered against "Doubtful debts and advances". However, Rs 27.22 crores need to be deducted under this head. Post adjustment of such items, Net worth of Abhipra was negative by Rs. 4.09 Crores. Details are as per Annexure C5 to IR.
- 4.6.2. It was observed that net worth of the broker is negative as on 30.09.2021 (Annexure B6 to IR) and 31.03.2022 (Annexure C5 to IR). Net worth (in Rs.) on 30.09.2021: (-) 6.32 crores Net worth (in Rs.) on 31.03.2022: (-) 4.09 crores. Further, doubtful debts and advances of Rs. 29.54 crores as on 30.09.2021 and Rs. 27.22 crores on 31.03.2022 have been identified from books of accounts of the broker.
- 4.6.3. The Noticee in its reply to the findings of Inspection report submitted that, It is hereby submitted before your good office, that Net worth of the Company as per the provisional balance sheets as on 31.03.2022 was Rs 2,183.29 Lacs. A copy having details of net worth calculation is annexed as Annexure B3.
- 4.6.4. With respect to net worth calculation, the Noticee submitted the following:  
While calculating the net worth your good office has not rightly considered two components – Debtors and Long Term Investments, and both of these elements needs to be considered separately while calculating the net worth amount.



Firstly, the Long Term Investments (Loans and Advances) have not been included by your good office while calculating the net worth of the Company. It is pertinent to mention here that the Long Term Investments are not overdue, a regular interest is received on these investments and TDS is deducted. A careful comparison of the financial statements ie balance sheet and Profit and Loss accounts of the Company with calculations made by your good office will clarify that your good office has missed to include the long term investments made by the Company in the calculation of net worth.

Secondly, "Debtors" pertaining to the DP Segment are 100% secured, they are regular costumers of the Company. It is to be noted that the Company has debtors amounting to Rs. 10.54 crores as on 31.03.2022 which are back by securities amounting to more than Rs. 9000 crores, clearly the debtors of the Company are secured and calling them as doubtful would be wrong.

Thus, the Company would like to present its detailed submissions / arguments along with exhibits in the Personal Hearing, as this issue requires some detailed explanations.

4.6.5. SEBI in this regard observed that, The broker has provided same contention during conduct of inspection. Broker in his reply has failed to interpret the circular and clarification issued by the exchange for calculation of networth certificate as per format prescribed by Dr. L C Gupta Committee.

4.6.6. As per Dr. L C Gupta any debts or advances overdue for more than three months and any amount given in the nature of Loans, advances, Inter corporate deposits given to associates including subsidiaries / group companies of the broker shall be deducted from networth whether they are secured or interest bearing. Therefore, reply of the stock broker cannot be accepted.

4.6.7. Further, we would also like to state that said matter has been discussed in several meeting at SEBI NRO, In the meeting held at SEBI Delhi office on June 28' 2022, Broker admitted giving short-term loans /advances to multiple entities and that recovery of these loans / advances was in process. SEBI NRO team directed the broker to submit undertaking from all the directors for stating that all their immovable assets will not be disposed off till further directions. Undertaking was submitted vide email dated July 07' 2022.

In view of the above, it is alleged that the Noticee had violated the following provisions:

Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and Clause 2 of NSE circular NSE/MEMB/2739 dated July 30, 2001.

4.7. Finding G: Reporting of client wise cash & cash equivalent balances to exchange  
There was mismatches in fund balances pertaining to 08 clients as on 30-May-2022 amounting to Rs 2.92 Lacs and 01 client as on 28-Feb-2022 and 30-Apr-2022 amounting to Rs 2.90 Lacs respectively.

4.7.1. On reconciling client wise fund balances reported under cash & cash equivalent submission with trial balance it was observed that:

4.7.1.1. there were mismatches in fund balances pertaining to 08 clients as on 30-May-2022 amounting to Rs 2.92 Lacs.

4.7.1.2. there were mismatches in fund balances pertaining to 01 client as on 28-Feb-2022 and 30-Apr-2022 amounting to Rs 2.90 Lacs.

4.7.2. Trading Member explained that client Abhishek Securities was allotted client code \*\*C and same code was set as Margin with Exchange in Currency division. In case of consolidated Trial, the system has been erroneously generating balance for Margin with Exchange in that code. Also, client \*\*C i.e. Abhishek Securities has not traded since a very long time and their account is standing as dormant account with no balance which is reflecting in its ledger.

4.7.3. With regard to 4.7.1.1., the Noticee in its reply to the findings of Inspection report submitted that, It is herein submitted that the inspection team came to our office in morning on 31st May, 2022 for collection of data. It was clarified to the inspection team that our team is still in the process of reconciling and posting entries for last working days. The reports were extracted, while our work was pending. The differences pointed out in the inspection are on account of the pending Dividend entries posted by the accounts division. We are enclosing herewith ledgers of the accounts mentioned in Annexure C8 of the inspection report as Annexure A8.

4.7.4. With regard to 4.7.1.2., the Noticee in its reply to the findings of Inspection report submitted that, Mismatch in fund balances pertaining to 01 client i.e. Abhishek Securities as on February 28, 2022 and April 30, 2022 amounting to Rs. 2.90 Lacs has been observed due to the following factors:  
Abhishek Securities was allotted a Client code – \*\*C while subscribing for unit 1 i.e. Equity and Future Options. The client didn't opt for Currencies Division, hence, was not allotted any code with respect to currency division. Only recently, the clients' currency division was initiated, and \*\*C Code was continued as Margin with Exchange. A copy of trial of Currency Division is annexed as Annexure 9. Further, in case of consolidated Trial, the system has been erroneously generating balance for Margin with Exchange. The Company has informed the same to Shipli Software and suggested to move \*\*C to Z\*\*C, so that the above error can be rectified and doesn't arise in the future as well. Also, \*\*C i.e. Abhishek Securities has not traded since a very long time and their account is standing as dormant account with no balance. A copy of ledger of Abhishek Securities is annexed as Annexure 10.

4.7.5. SEBI in this regard observed that, The inspection team as compared EOD client wise fund balance (reported by broker to exchange) with actual balance available in ledger. Since, there is difference between reported client balance and actual client balance a broker's reply cannot be accepted.

In view of the above, it is alleged that the Noticee had violated the following provisions:

Clause 7 and 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Clause A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

4.8. Finding H: Cyber security and cyber resilience

Risk register, Risk Assessment and Treatment Plan is not in place nor documented. Roles and responsibilities of CISO and Senior Personnel are not evident as a separate document. Reconciliation (review of user access) is not carried periodically. Internet Access Policy is not evident and there is no encryption evident for Data at rest. A formal DLP Policy and Procedure is required to be developed and implemented for better control and Mobile phones, faxes, photocopiers, scanners have not been included in the Information Security Policy.

SOP and SCD on Network Security Policy, System Security Policy is not documented. Use of Hardened Hardware is ensured by Management is not documented.

Application Security / Safe to Host Certificate for customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications is not evident.

*Intensive regression testing, configuration testing of custom developed / in-house software is not evident. A formal BCP/DR plan is not in place. Standard Operating Procedure for handling and reporting Cyber Security Incidents is not evident.*

*No documented procedure exists for Reporting mechanism to facilitate communication of unusual activities and events. Cyber security and cyber resilience policy is not reviewed by Technology Committee. Quarterly report on incidents of cyber-attacks for July-September 2022 quarter not filed. Cyber Security Weakness and Management policy is not reviewed since December 29, 2017. Further, this policy is not approved by the board of directors.*

**4.8.1. SEBI Observations :**

*There are no adverse in Cyber security audit report by Shri Gaurav Pahuja for FY 2021-22. Cyber audit report has been timely filed with stock exchanges*

**4.8.2. NSE Observations:**

**4.8.2.1.** *Although, the Critical IT Assets are identified and maintained in the list of Critical asset inventory sheet, however risks associated with assets are not identified. Thus, Risk register, Risk Assessment and Treatment Plan is not in place nor documented.*

**4.8.2.2.** *Roles and responsibilities of CISO and Senior Personnel are not evident as a separate document.*

**4.8.2.3.** *Asset List / Register for critical and Hardware and Software is to be maintained in an organized format keeping in mind the industry best practices by capturing details like Asset Name, Identification, Location, Owner, Criticality, Dependence, Softwares installed on the system, Authorised software list, etc.*

**4.8.2.4.** *Currently, the supervision, monitoring and control of personnel with elevated access is done by CISO. Admin rights (Privileged user rights) are restricted to limited users, post approval from CISO for specific duration. The admin rights are revoked once it is no longer needed. However, reconciliation (review of user access) is not carried periodically.*

**4.8.2.5.** *Internet Access Policy is not evident.*

**4.8.2.6.** *There is no encryption evident for Data at rest.*

**4.8.2.7.** *A formal DLP Policy and Procedure is required to be developed and implemented for better control.*

**4.8.2.8.** *Mobile phones, faxes, photocopiers, scanners have not been included in the Information Security Policy.*

**4.8.2.9.** *Processes are in place for timely patching of softwares and firmwares. Yet, the baseline document / Hardening / Configuration document are not created. However, Network Security Policy, System Security Policy are in place, yet the SOP and SCD of the same is not documented. Use of Hardened Hardware is ensured by Management, the process is practiced, but is not documented.*

**4.8.2.10.** *Application Security / Safe to Host Certificate for customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications is not evident.*

**4.8.2.11.** *Intensive regression testing, configuration testing of custom developed / in-house software is not evident.*

**4.8.2.12.** *System backup is taken before applying the patches and updates. There is no testing or UAT environment, all the deployment happens directly on production. Patching and updating activity is planned during off office hours / weekends / holidays so as to have nil/minimum impact on business transaction. In case there is a failure after applying the patch, the restoration to earlier version is done using the backup.*

**4.8.2.13.** *A formal BCP/DR plan is not in place.*

**4.8.2.14.** *Information Security related procedures are evident. Policy for Security Incident Management is in place. However, Standard Operating Procedure for handling and reporting Cyber Security Incidents is not evident.*

**4.8.2.15.** *Reporting mechanism to facilitate communication of unusual activities and events to the Designated Officer is in place. However, no documented procedure exists for the same.*

**4.8.2.16.** *Although the Access Management / Control Policy is evident, however Access Management / Control Procedure has to be defined.*

**4.8.3. BSE Observations:**

**4.8.3.1.** *Cyber security and cyber resilience policy is not reviewed by Technology Committee.*

**4.8.3.2.** *Quarterly report on incidents of cyber-attacks for July-September 2022 quarter not filed.*

**4.8.3.3.** *Cyber Security Weakness and Management policy is not reviewed since December 29, 2017. Further, this policy is not approved by the board of directors*

**4.8.4.** *The Noticee in its reply to the findings of Inspection report submitted that, Yes. Designated officer periodically review based on policies and procedures. It is further submitted that no incidence of cyber attack was reported during the inspection period in the organization. Hence, no reporting was created. Apart from this designated officer is subscribed to , \_ for regular updates on the cyber threats and vulnerabilities reported globally.*

**4.8.5.** *However, SEBI in this regard observed that, The broker should have filed / shared the status and update of occurrence of cyber-attacks to the stock exchange / depositories, even though there is no such incidence.*

*In view of the above, it is alleged that the Noticee had violated the following provisions:*

*Clause 3, 7, 8, 10, 14 18, 20, 29, 31, 35, 36, 48 and 52 of Annexure - 1 of SEBI Circular No. In view of the above, it is alleged that the Noticee had violated the provision of SEBI Circular No. SEBI/HO/MIRSD/CIR/ PB /2018/147 dated December 03, 2018.*

- ...
8. In the interest of principles of natural justice, vide Hearing Notice dated May 27, 2024, Noticee was afforded with an opportunity of hearing on June 03, 2024. Vide email dated May 28, 2024, Noticee sought time to file reply to the SCN and reschedule the hearing. In this regard, vide email dated May 29, 2024, hearing was rescheduled from June 03, 2024 to June 10, 2024. Vide letter dated June 08, 2024, the Noticee submitted its reply to the SCN.

9. On the scheduled date of hearing i.e. on June 10, 2024, the Noticee availed the opportunity of hearing through its Authorised Representative (AR) viz. Adv Goradia Ashmita Umesh. During the hearing, the AR relied upon and reiterated the submissions made by the Noticee vide its letter dated June 08, 2024. Further, the AR sought additional time till June 13, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed. Vide letter dated June 11, 2024, the Noticee submitted its additional submissions.
10. Key submissions of Noticee made vide letter dated June 08, 2024 and June 11, 2024, as its reply and additional submissions to the SCN respectively, are as under:

Submissions dated June 08, 2024:

‘ ...

1. *At the very outset, except as expressly admitted by us, we deny all the allegations contained in the SCN and nothing therein should be deemed to be admitted by us for want of specific traverse. We deny having violated any provisions of SEBI Act, Securities Contracts (Regulation) Act, 1956 ("SCRA"), Securities Contracts Regulation Rules, 2005 ("SCRR"), SEBI (StockBrokers) Regulations, 1992 or SEBI Circulars or any other Rules or Regulations as alleged.*
2. *SEBI carried out a joint inspection with the Exchanges, of the Noticee at its office in Delhi from 31.05.2022 to 9.06.2022 for the period 1.10.2021 to 31.05.2022 ("Inspection Period" / "IP"). SEBI vide letter dated 7.07.2022 communicated its findings to the Noticee. The Noticee vide 20.07.2022 gave its comments to SEBI on the findings. SEBI made a separate audit inspection on 6.10.2022 for cyber security by appointing an auditor. During inspection, SEBI had raised certain queries to which the Noticee gave a written response vide letter dated 11.10.2022. The Exchanges, NSE as well as BSE also issued Letters of observations and Show Cause Notices and imposed fines upon Noticee for same observations. SEBI thereafter carried out a post inspection analysis of the Noticee pursuant to which SEBI issued the present SCN seeking to re-impose penalty arising out of the observations made in the joint inspection.*
3. *At the outset it is submitted that the re-imposition of penalties upon the Noticee by SEBI for the same observations for which the Stock Exchanges has already imposed penalties amounts to double prosecution of the Noticee and is as such unsustainable. It is pertinent to note that a joint inspection was carried out by SEBI along with the stock exchanges. The cause of action is therefore the same for which penalty is already adjudicated by the stock exchanges.*
4. *Moreover, it is submitted that the purpose of inspection is to ensure compliance with the provisions of extant Acts, Rules and Regulations and only in serious lapses may call for initiation of penal proceedings. The Hon'ble SAT in the case of in UPSE Securities Limited vs Securities and Exchange Board of India (Appeal no. 109 of 2011 decided on July 25, 2011) held:-  
"5. 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. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law. Having said this, we leave the matter at that."  
The Hon'ble SAT even in the case of IDBI Trusteeship Services Limited v. SEBI (Appeal no. 186 of 2023) has held that in lapses which are technical and not serious in nature, penalty proceedings are not called for. In the present case, the violations alleged not only have been adjudicated by the stock exchanges once but are technical and venial in nature. There is no fraudulent intention alleged or established by SEBI qua the Noticee. Therefore, SEBI ought not to initiate penal proceedings against the Noticee.*
5. *Without prejudice to the aforesaid submissions of the Noticee, the Noticee submits that SEBI failed to consider the documents submitted by Noticee to SEBI as well as Exchanges pursuant to joint inspection. As such, the SCN has made allegations without due consideration to the submissions already made by the Noticee.  
There has been no misuse of Clients' funds*
6. *SEBI has not considered the submission of the Noticee that the funds were debited from client's trading division to their respective demat accounts and therefore, the transactions were inter se between the accounts belonging to same clients in different division. There was no default in repayment of client liabilities and the clients were aware of the entries made in their accounts. SEBI has not questioned or disputed this fact. The documents inspected by SEBI itself show that the transactions were inter-se. The Noticee is annexing herewith as Exhibit A, a sample of 5 cases to show transfers were in the inter-segment of the same constituent.*
7. *The Noticee submitted to SEBI that there was no shortfall and apparent alleged shortfall was only because of recalling inter-segment transfer from trading account to respective demat account of clients with their knowledge. It is important to note that clients were aware about the transfer and there was no complaint from any investor. NSE during the limited inspections*

- pointed out and objected to such transfers and the noticee immediately stopped transfers and recouped all the funds. It is important to note that during this period i.e. Covid 19, the directors of the Noticee lost a family member, who was also a key personnel, in the Noticee. The Noticee also annexed the details of the same which SEBI failed to consider. It is reiterated that the purpose of the inspection is to ensure compliance which the Noticee has done. The penalty is already imposed by the exchanges and as such penalising the Noticee once again for the same observation causes hardship to the Noticee.
8. The SCN fails to show how the client's funds have been misused. Merely because as per SEBI, the Noticee failed to submit correct financial balance to the exchange due to the inter-segment transfer of funds, all of which were accounted for, it cannot be observed that there was misuse of client funds. There has been no complaint from any of the clients regarding their balances. In any case, the Noticee has stopped such transfer entries w.e.f. 8.12.2021 as per the instructions of the exchange subsequent to limited purpose inspection conducted by NSE in December 2021.
- Noticee maintained proper segregation of clients' funds
9. The Noticee reiterates that it maintained clients' funds in complete comprehension with the rules and byelaws and there is proper segregation of clients' funds. SEBI's document with was annexed in support of the allegation of improper segregation of clients' funds was incorrect. The Noticee in support of its submission annexed the bank statements and the correct report against the annexed document of SEBI. SEBI has however not considered the bank statement as the submission was in excel format. SEBI ought to have considered the contents or sought the pdf format from the Noticee. Simply because an excel sheet was provided and not the pdf, SEBI has rejected the Noticee's submission. This cannot be the basis of holding that the violation persists.
  10. The Noticee in any case, has sought pdf format of the bank statements from its bank. The Noticee craves leave to submit, refer and rely on it as and when produced after receipt from the bank.
  - Settlement of Client funds done by Noticee in accordance with rules and regulations
  11. The Noticee reiterates that the observation of the inspection team that Noticee has not done actual settlement of client's fund is erroneous. SEBI has failed to deal with the submission of the Noticee in response to its allegation post the inspection in its SCN. The Noticee submits that there were fund transfers debited from respective clients' trading division to their respective demat accounts and that upon re-arranging and recovery of funds, all the client accounts were duly settled except for one (Ms. Geeta Chadha), whose express instructions were to not transfer funds as she wanted to trade. The amount payable to the said client was available in the bank client's account. As per SEBI Circular dated 3.12.2009 read with SEBI Circular dated 16.12.2016, if the client instructs and authorises the trading member to not settle her account and maintain a running account. The settlement of the said client was done in accordance with the circulars i.e. within 30 /90 days as per the preference of the client. The letter dated 03.09.2021 of Ms. Geeta Chadha expressly instructing the Appellant to not settle her account post trades is annexed herewith as Exhibit B.
  12. With respect to inactive clients, it is submitted that the Noticee has settled their funds. The statements reflecting the settlement is annexed herewith as Exhibit C.
  13. SEBI failed to also consider that during verification of logs for sending weekly statement of account for funds and securities issued to clients, the inspection team in person verified the mails sent to the clients. It is not the case that weekly statements were not emailed to the clients but only that the same was not digitally signed. During the inspection the official from Shilpi Software was also present and had informed that the software does not maintain not digitally signed mails. Thereafter, the Noticee asked the software team to maintain the logs for non digitally signed emails as well.
  - There is proper reconciliation of stocks
  14. The Noticee had submitted a scrip wise reply to the allegation of SEBI on stock reconciliation. SEBI has accepted such submission of the Noticee, however, in the SCN it has now held that since Noticee's own transactions were not properly recorded in ROS, Noticee has violated the Regulation 17(1)(g) of SEBI (Stock-Brokers) Regulation, 1992. It is submitted that the said regulation is in respect of receipt and delivery of securities as a depository participant in respect of dematerialised securities. It is in respect of the service it provides as a depository participant and does not refer to transaction in its own securities. As such there is no violation as alleged in SCN.
  15. It is also submitted that mismatch is on account of the corporate action in Abhipra's own holding and entries for the same was pending on the date of inspection. The SCN seeks to penalise on the basis of incomplete data. The complete reconciled copy of the securities is annexed herewith as Exhibit D.
  16. It is further submitted that the basis for issuance of SCN is the joint inspection carried out by SEBI and exchanges and the observations made therein. It is submitted that the allegation of violation of Regulation 17(1)(g) of SEBI (Stock Brokers) Regulation, 1992 does not arise from the observations made pursuant to joint inspection and as such cannot be made in the present SCN.
  - Noticee correctly reported margin collection
  17. SEBI has observed incorrect reporting of margin collection in case of 2 clients amounting to Rs. 2,038/-. The Noticee reiterates that the amount in respect of the 2 clients were received via payment gateway (Billdesk) and the entries were posted on the next working day. The Noticee also annexed the billdesk report in its response to SEBI which SEBI has also reproduced in the SCN. Despite receipt of the billdesk report, SEBI erroneously states that proper document in respect of the submission of Noticee is not received. SEBI has rejected the submission merely because the evidence was an excel file. It is submitted that this does not change the fact that Noticee indeed correctly reported margin collection..
  - Net Worth incorrectly calculated in SCN
  18. SEBI has not considered the submission of the net worth calculation given by the Noticee. The Noticee has made the calculation as per the format prescribed by Dr. L.C. Gupta Committee. The difference is due to the interpretational differences. It is submitted that the source of Long Term Investments ("LTI") is the surplus profit and not capital. There is interest being earned on it. The amount therefore cannot be called overdue for more than 3 months. As such the interpretation of SEBI is erroneous.
  19. It is further submitted recall of LTI is underway, as also assured to SEBI in the undertaking dated June 23, 2022. Significantly, INR 6.33 Crores (approx.) has been brought back from 01-04-2022 to 30-09-2022; Rs. 10 crore as on 31-03-2024 (now kept as FDRs); hence, even if it is assumed that net worth was (-INR 4.09 Crores), said plough back of INR 6.33 Crores (out of LTI, and debtors) makes Abhipra's net worth compliant. INR 6.33 Crores was brought back in just three months, highlighting the recoverability and liquidity of LTI and debtors.
  20. An undertaking dated June 23, 2022 (as also indicated above) was provided to SEBI by the Director(s) of Abhipra at request – backed by immovable property worth more than INR 12 Crores. This was done to highlight that Abhipra has a sufficient arrangement to cover future risks and liabilities. SEBI has duly accepted this undertaking, acknowledging the risk mitigation Mismatch in fund balances on account of pending entries at the time inspection conducted
  21. The allegation in SCN is not based on the updated entries but on the basis of the inspection carried out on 31.05.2022 i.e. at the time when the Noticee was updating its entries. The Noticee already submitted the updated ledger to SEBI in its response to findings in the inspection, which SEBI has not considered in the SCN. The Noticee is once again submitting the ledger herewith as Exhibit E.
  22. With respect to mismatch in 2.90 lakhs with respect to 1 client, the Noticee had also submitted the explanation for it which is reproduced in the SCN itself but has not been considered. It is submitted that there was no difference in the client balances.

The currency division is maintained in separate books of account and mistakenly the bookmaster in currency division \*\*C was given foMargin to Exchange Account. But ABC in Equity division was allotted to the client. The client is dormant and no balance was available. The currency division had the balance in \*\*C as 2.90 lacs which were deposited to the exchange. The reporting was only on the same account when consolidated reports for both books were created. We have rectified the account in currency division and separate account is prepared for the Margin to Exchange Account.

- No violations with respect to Cyber Security and Cyber Resilience
23. It is noted in the SCN that there is nothing adverse in the Cyber security audit report by Shri Gaurav Pahuja for FY 2021-22. It is also noted that Cyber audit report has been timely filed with the stock exchanges. It is a fact that there have been no incidences of any cyber-attacks. Therefore, there is nothing to report when there are no such incidents. The framework provided in the SEBI Circular dated 3.12.2018 has been followed by the Noticee.
24. It is also submitted that the joint inspection carried out by SEBI in May and Jun 2022 did not make any observations relating to cyber security. An inspection was carried out in October pursuant to which it was certain comments were sought from the Noticee which the Noticee reverted to. There is no reference made in the SCN to the inspection carried out in October and as such the SCN could not have raised allegations pertaining to Cyber -security.
25. Without prejudice, it is submitted that for technical and venial violations, the Hon'ble Supreme Court in the case of Hindustan Steel Ltd., Vs State of Orissa (1970) 1 SCR 753; (AIR 1970 SC 2563) has held that:- "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of Law or it guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"
- In the present case, it is evident that the Noticee has not acted in deliberate defiance of any law. Violations, if any, are technical, venial breaches without any intention. In such case, it is submitted and requested that your good office considering the observations of Hon'ble Supreme Court not impose any penalty. The Ld. WTM has also in the case of Refex Industries Limited made similar observations with respect to technical and venial breaches.
26. Without prejudice to the submissions made hereinabove, it is submitted that the penalty under Section 15HB of SEBI Act and Section 23H of the SCRA is to be adjudged in accordance with Section 15J of the SEBI Act and 23J. Section 15J of SEBI Act is reproduced as under-
- "15J. Factors to be taken into account by the adjudicating officer. While adjudging the quantum of penalty under section 15I, 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.

*Explanation for the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15 G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

Therefore, Section 15-J essentially requires three factors to be taken into account to adjudge the quantum of penalty – the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; the amount of loss caused to an investor or group of investors as a result of the default; the repetitive nature of the default. Similarly, for penalty under Section 23H of SCRA, the Adjudicating Officer has to impose penalty considering the factors stated in Section 23J, which are the same as that in Section 15J as stated above. In the present case:-

- The Noticee has not made any gains at all or have got any unfair advantage as a result of any default.
- The SCN does not state any loss caused to any investor or group of investors.
- The allegations of such nature are made for the first time against the Noticee by SEBI pursuant to joint inspection.

Therefore, your good office is requested to consider the aforesaid facts and pass the Order.

27. The Supreme Court in the case of SEBI v. Bhavesh Pabari (Civil Appeal no. 11311 of 2013, dt. 28.02.2019) has held that Section 15J gives discretion to the Adjudicating Officer to impose penalty. As such, the Adjudicating Officer may use this discretion to not impose any penalty. Thus, even if the Adjudicating Officer decided that the Noticee has violated extent SEBI provisions, the Adjudicating Officer may consider mitigating circumstances in the present case before imposing any penalty.
28. Therefore, in view of the aforesaid facts and circumstances, the allegations against the Noticee cannot sustain.
29. Please note, the Noticee is desirous of availing an opportunity before the competent authority and requests for a personal hearing in the matter.

.....

## Submissions dated June 11, 2024

.....

With reference to the subject matter wer are submitting a CD Drive having all the documents as enumerated below:

1. Abhipra Reply dt 08.06.2024 and 10.06.2024
2. Ehibit A to Exhibit D (for SCN dt 16281) and Exhibit A to Exhibit E (For SCN dt 16275)

.....

#### **D. CONSIDERATION OF ISSUES AND FINDINGS:**

11. The following issue arises for consideration in the instant matter:

**Issue No. I:** Whether the Noticee has violated the provisions of Securities Contracts (Regulation) Act, 1956, SEBI (Stock Brokers) Regulations, 1992 and SEBI Circulars and NSE circular, as alleged?

**Issue No. II:** If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 23D of Securities Contracts (Regulation) Act, 1956, 15A(c) and 15HB of the SEBI Act, 1992?

**Issue No. III:** If yes, what should be the monetary penalty that can be imposed upon the Noticee?

#### **A – Misuse of clients' funds:**

12. In this regard, SEBI inter alia observed and alleged that:

- a) The value of G was negative for all 7 sample dates indicating misutilization of clients' funds. The average misutilised amount was Rs. 2.13 crore.
- b) The value of J was positive for 2 dates (January 27, 2022 and May 10, 2022) indicating misutilization of clients fund towards margin obligations of debit balance clients. The mistuillised amount was Rs. 16.04 lacs and Rs. 60.93 lacs, respectively.
- c) 7 bank accounts were not reported by broker to the stock exchange.
- d) Stock broker had failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent. During analysis of weekly submission of client assets, a pattern of passing journal entries was observed to reduce the actual creditors from trial balance by transferring

amount from Broking division to Depository division without any banking transaction on Thursday and reverse the same on subsequent week to willfully hide shortfall of funds in weekly enhanced submission and to avoid actual settlement of clients.

- e) The broker had admittedly shown funds deposited by clients for trading purposes as creditor for DP division to *inter alia* suppress the actual creditors of broking division. Creditors for DP division amounted to a total of Rs. 55.55 lacs and Rs. 53.57 lacs on 16.03.2022 and 28.04.2022 respectively.

In view thereof, it was alleged that Noticee had violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/ 23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 2 read with clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 Dated June 16, 2021; Clause A1, A2 & A5 as prescribed under Code of conduct read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

- 12.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which *inter alia* reads as under:

Section 23D of SC(R) Act, 1956:

‘ ...

<sup>121</sup>[Penalty for failure to segregate securities or moneys of client or clients.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be <sup>122</sup>[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

...’

Clause 1 of 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.
- 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 -
- Moneys received from or on account of each of his clients and,
  - 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 -
- money held or received on account of clients;
  - such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;
  - 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;
  - 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 -
- 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;
  - 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;
  - money which may by mistake or accident have been paid into such account in contravention of para C above.
- E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.
- ' ...

Clause 2 read with clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

- ' ...
2. Reporting of Bank and Demat accounts maintained by Stock Broker:
- 2.1. The stockbrokers shall inform the Stock Exchanges of existing and new bank account(s) in the following format:

Name and address of Bank	Name of the Branch	Account Number	IFSC Code	Name of Account	Purpose of Account (Own/Client/Settlement)	Date of Opening

- ... 3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges
- ... 3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:
- A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges
- B-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.
- C-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)



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

E-Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges )

F-Aggregate value of Non-funded part of the BG across Stock Exchanges

P-Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

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

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C) Stock Exchanges shall calculate the difference i.e. G as follows -  
$$G = (A+B)-C$$

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges. Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows: If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G. If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H = |G| - |D|$$

...

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e.  $A+B < C$ ), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e.  $A+B > C$ ), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

...

6.1.1. Monitoring criteria for Stock Brokers

g. Failure to report new bank and demat accounts opened by the stock broker to exchanges within the time specified for reporting of such accounts.

...

j. In case stock broker shares incomplete/wrong data or fails to submit data on time

...

Clause 5.3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 Dated June 16, 2021:

...

5.3. Client's running account shall be considered settled only by making actual payment into client's bank account and not by making any journal entries. Journal entries in client account shall be permitted only for levy / reversal of charges in client's account.

...

Clause A1, A2 & A5 as prescribed under Code of conduct read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992:

...

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

...

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

#### SCHEDULE II

Securities and Exchange Board of India (Stock Brokers 104[\*\*\*]) Regulations, 1992

#### CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

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

...

12.2. In this regard, as regards negative value of G on 7 sample dates, I note the following details from material available on record:

03.12.2021:

Sr No	Particulars	Amount (Rs)	Amount (Rs)
A	Total End of the day balance in all Client Bank Accounts (a)		6,66,333
B (1)	Deposits with Exchanges in form of Cash and Cash Equivalents (b)		82,50,000
B (2)	Deposits with Clearing member in form of Cash and Cash Equivalents (c)		65,93,374
C	<b>Total credit balance of all clients</b>		4,88,35,277
	Credit balance of all the clients as per trial balance	1,73,32,677	
	Debit JVs posted as on 03-Dec-2021 in Financial Ledgers of 84 clients	3,15,02,600	
G	Misuse of clients' funds G = (A+B)-C		(3,33,25,570)

27.01.2022 and 10.05.2022:

Calculation of Principle G		
Particulars	27/01/2022	10/05/2022
	Amount	Amount
Balance available in Client & Settlement Bank	43,86,426	21,70,168
Deposit with Clearing Corporation	82,50,000	1,25,00,000
Deposit with Clearing Member	71,04,398	75,33,918
Total Deposits	1,97,40,824	2,22,04,086
Less: Creditors	6,65,66,652	2,79,63,724
<b>Shortfall of Funds to pay the Creditors (Principle G)</b>	<b>-4,68,25,828</b>	<b>-57,59,638</b>

09.02.2022 and 30.05.2022:

Sr. No.	Particulars	Amount as on Feb 09, 2022 (Rs in Crore)	Amount as on May 30, 2022 (Rs in Crore)	Remark
	<b>Availability of Funds:</b>			
1	- Payable to clients-A	5.26	2.18	
2	-Client Bank and Settlement Bank - B	0.09	0.26	
3	Funds with NCL/ ICL/Other Clearing Corp C	1.60	1.95	
4	<b>Net Available funds D= (B+C-A)</b>	<b>-3.56</b>	<b>0.04</b>	Principle 1 (G calculation)

16.03.2022 and 28.04.2022:

Sr. No.	Date	Total fund balance available in all client bank accounts including the settlement account maintained by the stock broker across stock exchanges AS PER BANK STATEMENTS	B FROM NSE	BG IN B FROM NSE	B GLOBE	BG IN B GLOBE	TOTAL B INCLUDING BG (FUNDED + NON FUNDED)	TOTAL BG	NON FUNDED PORTION OF BG	TOTAL B (EXCLUDING NON FUNDED PORTION OF BG)	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients undecleared cheques deposited by clients and undecleared cheques issued to clients and the margin obligation)	CREDITORS OF DP DIVISION	TOTAL CREDITORS	G(A+B-C)
		A							F	B			C	G
1	16/03/2021	88,58,983.59	#####	25,00,000.00	76,76,026.03	0	2,46,76,026.03	25,00,000.00	-	2,46,76,026.03	3,85,59,767.33	55,55,374.60	4,41,15,141.93	-1,05,80,132.31
2	28/04/2021	25,69,536.76	#####	25,00,000.00	76,39,828.00	0	2,51,39,828.00	25,00,000.00	-	2,51,39,828.00	3,05,42,855.85	53,57,893.66	3,59,00,749.51	-81,91,384.75

- 12.3. In this regard, as regards positive value of J on 2 sample dates, I note the following details from material available on record:

Calculation of Principle J		
Particulars	27/01/2022	10/05/2022
	Amount	Amount
Funds Lying with CC	82,50,000	1,25,00,000
Funds Lying with CM	71,04,398	75,33,918
Less: Margin obligation of credit balance clients (MC)	68,49,271	50,76,140
Less: Free Deposits available with CC/CM	69,01,126	88,64,166
<b>Clients' funds utilised towards margin obligations of debit balance clients (Principle J)</b>	<b>16,04,001</b>	<b>60,93,612</b>

- 12.4. As regards the negative value of G and positive value of J, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI that '*...there has not been any diversion of funds from client accounts for any purpose as has been mentioned in the observations. Entries mentioned in the observations were executed inter-se between the respective clients' accounts and has not been diverted outside as alleged. There were temporary shortage of funds on account of COVID'19 and loss of key personnel in the Company, however, shortfall was duly recouped with diligent and consistent efforts of the Company. Moreover, the said fund*

*transfers debited from the respective clients trading division and credited to their respective demat accounts, therefore the said funds were never diverted to settle other client's account or for our business needs. Today, the Company has sufficient client funds, which clearly reflects that there has not been any mala fide intent on the Company's part....'*

- 12.5. In this regard, SEBI observed that the broker had submitted that there were temporary shortages of funds on account of COVID'19 and loss of key personnel in the Company, however, shortfall was duly recouped with diligent and consistent efforts of the Company and as such the same cannot be accepted.
- 12.6. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that '*...SEBI has not considered the submission of the Noticee that the funds were debited from client's trading division to their respective demat accounts and therefore, the transactions were inter se between the accounts belonging to same clients in different division....It is important to note that clients were aware about the transfer and there was no complaint from any investor. NSE during the limited inspections pointed out and objected to such transfers and the noticee immediately stopped transfers and recouped all the funds...It is important to note that during this period i.e. Covid 19, the directors of the Noticee lost a family member , who was also a key personnel, in the Noticee...*'

In this regard, I note from material available on record that G was negative on seven sample dates and J was positive on two sample dates. I note that in terms of Clause 2 read with clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, negative value of G indicates that the total available fund is less than the ledger credit balance of clients and that the clients' funds were utilised for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance

clients or for the stock brokers' own purposes. Further, the value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This indicates the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

In this regard, I note that Noticee has not demonstrated with sufficient details and documents that value of G was not negative on the seven dates and that value of J was not positive on two dates, as alleged. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

12.7. Further in this regard, I note from the submissions of the Noticee vide its replies dated June 08, 2024 and June 11, 2024 that the Noticee has not made submissions with respect to the following violations i.e. 7 bank accounts were not reported by broker to the stock exchange; failure to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent; and having admittedly shown funds deposited by clients for trading purposes as creditor for DP division to *inter alia* suppress the actual creditors of broking division.

12.8. In this regard, I note that pursuant to the communication of findings of inspection to the Noticee by SEBI, the Noticee had replied that '*...Company has not reported it's certain (seven) bank accounts on exchange, however, these 7 accounts were not related to security business of the Company...*'

In this regard, I note from the text of Clause 2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 that Noticee was required to inform Stock Exchanges of existing and new bank account(s) in the specified format. I note that Noticee has failed to demonstrate with relevant details and documents that any exemption was allowed to the Noticee in this regard.

- 12.9. In view thereof, I find that the allegation that the value of G was negative for all 7 sample dates indicating misutilization of clients' funds; that value of J was positive for 2 dates (January 27, 2022 and May 10, 2022) indicating misutilization of clients fund towards margin obligations of debit balance clients; that 7 bank accounts were not reported by broker to the stock exchange; that Stock broker had failed to submit correct financial balance to the exchange under weekly submission of cash & cash equivalent; and that broker had admittedly shown funds deposited by clients for trading purposes as creditor for DP division to *inter alia* suppress the actual creditors of broking division, as brought out above, stands established. Therefore, I hold that Noticee had violated provisions of Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 2 r/w clause 6.1.1(g), Clause 3 and clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 Dated June 16, 2021; Clause A1, A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

### **B – Non-Segregation of Clients' Funds:**

13. In this regard, SEBI inter alia observed and alleged that the stock broker had failed to segregate client funds and own funds. Further stock broker had failed to maintain daily reconciliation statement to substantiate that transfer was for legitimate purpose. During verification, in 212 instances funds were transferred between Client/Settlement bank accounts and own bank account.

In view thereof, it was alleged that Noticee had violated Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

- 13.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

‘...  
2.4.2. Transfer of funds between "Name of Stock Broker -Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.  
...’  
(emphasis supplied)

- 13.2. In this regard, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI that ‘...*Company maintains clients’ funds in complete comprehension with the rules and bye laws and there is a proper segregation of clients’ funds. As per practice, clients provide their pay-in obligation vide cheques that takes time in realization. To meet the pay-in obligations, we need to introduce our own funds and upon realization of the amount from the clients, the same is withdrawn...*’.
- 13.3. In this regard, SEBI observed that with regards to the segregation of clients’ funds, the broker has not submitted suitable document to substantiate his claim (Broker has submitted bank statement of Account no. 705010606 in excel format and not in PDF format).
- 13.4. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that ‘...*Noticee reiterates that it maintained clients’s funds in complete comprehension with the rules and byelaws and*

*there is proper segregation of clients' funds. SEBI's document with was annexed in support of the allegation of improper segregation of clients' funds was incorrect. The Noticee in support of its submission annexed the bank statements and the correct report against the annexed document of SEBI...'*

In this regard, as regards the submission of the Noticee that to meet the pay-in obligations, it introduces own funds and upon realization of the amount from the clients, the same is withdrawn from clients account, I note that the Noticee has not demonstrated with sufficient details and documents that the fund transfers were made for legitimate purposes in terms of Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. as regards non-acceptance of excel sheet submitted by Noticee as evidence, generally speaking, editable excel sheet may not be sufficient evidence to support its claims with respect to instant allegation. In view thereof, the contentions of the Noticee are devoid of merit and hence not acceptable.

- 13.5. In view thereof, I find that the allegation that Noticee had failed to segregate client funds and own funds. Further stock broker has failed to maintain daily reconciliation statement to substantiate that transfer is for legitimate purpose. During verification, 212 instances where funds were transferred between Client/Settlement bank account and own bank account, stands established. Therefore, I hold that Noticee had violated Section 23D of SC(R) Act, 1956 read with Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

### **C– Settlement of Client funds:**

14. In this regard, SEBI inter alia observed and alleged that:



- a) The Stock Broker had not done actual settlement of client's fund of inactive clients being inactive since last 30 days. Further, the stock broker had not sent retention statement to all inactive clients. Total 13785 instances of 2075 unique clients were observed where total unsettled funds of Rs. 8.15 crore were identified.
- b) During verification of retention statement along with statement of accounts of funds of 10 clients, it was observed that wrong statement of account along with retention statement were being delivered to clients.
- c) The broker had not maintained logs for sending weekly statements in its back office and had not send digitally signed weekly statements to the clients.

In view thereof, it was alleged that Noticee had violated Clause 12 of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021.

- 14.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

Clause 12 of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009:

‘ ...

*Running Account Authorization*

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

- a. The authorization shall be renewed at least once a year and shall be dated.
- b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.
- c. The authorization shall contain a clause that the Client may revoke the authorization at any time.
- d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.
- e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries

- of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.
- f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.
  - g. Such periodic settlement of running account may not be necessary:
    - i. for clients availing margin trading facility as per SEBI circular
    - ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).
  - h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.
  - i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.
  - j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.
- ...

Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

- ...
8. Running Account Settlement
- 8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;
- 8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.
  - 8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.
  - 8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument
  - 8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.
- ...

Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021:

- ...
- 5.4. For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.
- ...

14.2. In this regard, as regards actual settlement of inactive clients, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI that '*...team has erroneously made the observation that the Company has not done actual settlement of client's fund of inactive clients, as clearly, the inspection team has misconstrued trading and demat accounts. It is an established principle that amount lying in demat account is only to meet out the Demat service charges. So far as trading account is concerned, it is settled and nothing is pending....*'.

- 14.3. In this regard, SEBI observed that the broker had not given any suitable explanation and not submitted any evidence in support of settlement of funds of inactive clients.
- 14.4. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that *'...SEBI has failed to deal with the submission of the Noticee in response to its allegation post the inspection in its SCN. The Noticee submits that there were fund transfers debited from respective clients' trading division to their respective demat accounts and that upon re-arranging and recovery of funds, all the client accounts were duly settled except for one (Ms. Geeta Chadha), whose express instructions were to not transfer funds as she wanted to trade....With respect to inactive clients, it is submitted that the Noticee has settled their funds...'*

In this regard, I note that apart from mere statements, the Noticee has not demonstrated with relevant details and documents that it had done actual settlement of client's fund of inactive clients having inactive since last 30 days. In this regard, I note from the text of Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 that for the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

- 14.5. Further, as regards delivering wrong statement of account along with retention statement to clients, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI that *'...Company is regularly providing periodical statements having true and correct details to the clients, wherein journal entries are also mentioned. Retention statements as pointed out in the finding are prepared as per the regulations via system and sent to the clients. Retention statement does not contain the*

*margin entries. Secondly the retention statement report is prepared sorted on the settlement date. All the bank related entries are shown after settlement posting entries....’.*

- 14.6. In this regard, SEBI observed that the broker had not given any suitable explanation and not submitted any evidence in support of settlement of funds of inactive clients. I note that this was also brought out in the SCN served upon the Noticee. I note that Noticee has not made any submissions as part of its reply to the SCN in this regard.
- 14.7. As regards not having maintained logs for sending weekly statements in its back office and not sending digitally signed weekly statements to the clients, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI that ‘...*The complete archive of mails sent to the clients are maintained by Company and readily available to extract and verify from the mail server. The inspection team also verified in person the mails sent to the clients. During the inspection official from Shilpi Software was also present and informed that the software does not maintains mail sending logs in case the mails are not digitally signed. We have also noted the same and asked the software team to maintain the logs for non digitally signed mails...*’.
- 14.8. In this regard, SEBI observed that the broker had not given any suitable explanation and not submitted any evidence in support of settlement of funds of inactive clients.
- 14.9. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that ‘...*SEBI failed to also consider that during verification of logs for sending weekly statement of account for funds and securities issued to clients, the inspection team in person verified the mails sent to the clients. It is not the case that weekly statements were not emailed to the clients but only that the same was not digitally signed. During*

*the inspection the official from Shilpi Software was also present and had informed that the software does not maintain not digitally signed mails. Thereafter, the Noticee asked the software team to maintain the logs for non digitally signed emails as well....'*

In this regard, I note that the contentions of the Noticee that '*the inspection team in person verified the mails sent to the clients. It is not the case that weekly statements were not emailed to the clients ...*' are out of context in so far as the allegation is inter alia about not having maintained the logs for sending weekly statements in its back office. Further, I note that as regards not having digitally signed the weekly statements, the submissions are in the nature of admission in so far as the Noticee has submitted as that '*...only that the same was not digitally signed. During the inspection the official from Shilpi Software was also present and had informed that the software does not maintain not digitally signed mails..*'.

- 14.10. In view thereof, I find that the allegation that Noticee had not done actual settlement of client's fund of inactive clients having inactive since last 30 days, had not sent retention statement to all inactive clients, wrong statement of account along with retention statement were being delivered to clients, had not maintained logs for sending weekly statements in its back office and had not send digitally signed weekly statements to the clients, stands established. Therefore, I hold that Noticee had violated Clause 12 of SEBI Circular SEBI/ MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause 5.4 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021.

## **D – Stock reconciliation:**

15. In this regard, SEBI inter alia observed and alleged that there was shortfall of 18 scrips amounting to Rs. 13,69,500 in DP as compared to Back Office holding. There was excess of 3 scrips amounting to Rs. 3987/- in DP as compared to Back Office holding.

In view thereof, it was alleged that Noticee had violated Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.

- 15.1. Here it would be relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992:

‘ ...

17. (1) Every Stock Broker shall keep and maintain the following books of account, records and documents, namely:—

...’

<sup>48</sup>[(g) Documents register containing, inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities;]

...’

- 15.2. In this regard, the details of alleged instances, as noted from material available on record are as under:

ISIN Code	Scrip Name	ROS Qty	Rate	ROS Value	Own Ben-10041471	Own Ben-10822743	Own Ben-15461	Pool-10005231	Total DP Holding	Diff Qty	Diff Value (Rs.)
INE297D01018	Prime Agro	21,300	28.45	6,05,985	1,934	-	-	-	1,934	19,366	5,50,963
INE754A01055	SUBEXLTD	13,000	30.65	3,98,450	-	-	-	-	-	13,000	3,98,450
INE197D01010	JINDALPOLY	127	1,092.45	1,38,741	-	-	-	-	-	127	1,38,741
INE798F01010	513511	500	136.60	68,300	-	-	-	-	-	500	68,300
INE608A01012	PSB	3,000	15.60	46,800	-	-	-	-	-	3,000	46,800
INE868B01028	NCC	668	62.50	41,750	2	-	-	-	2	666	41,625
INE213A01029	ONGC	400	144.05	57,620	-	-	-	130	130	270	38,894
INE317F01035	NESCO	50	529.15	26,458	-	-	-	-	-	50	26,458

ISIN Code	Scrip Name	ROS Qty	Rate	ROS Value	Own Ben-1004 1471	Own Ben-1082 2743	Own Ben-1546 1	Pool-1000 5231	Total DP Holding	Diff Qty	Diff Value (Rs.)
INE547B01028	531225	400	45.95	18,380	-	-	-	-	-	400	18,380
INE549A01026	HCC	1,200	13.75	16,500	-	-	-	-	-	1,200	16,500
INE542A01039	GSCLCEMENT	250	38.70	9,675	-	-	-	-	-	250	9,675
INE083A01026	MOREPEN LAB	250	40.30	10,075	-	-	100	-	100	150	6,045
INE368A01021	SILVERLINE	4,190	1.00	4,190	-	-	-	-	-	4,190	4,190
INE087H01022	RENUKA	105	44.45	4,667	-	-	-	30	30	75	3,334
INF663L01V07	F00126	724	1.00	724	-	-	-	-	-	724	724
INE256A04022	ZEEL	359	1.00	359	-	-	-	-	-	359	359
INE01RN01014	504717	50	1.00	50	-	-	-	-	-	50	50
INF789F01570	F00095	13	1.00	13	-	-	-	-	-	13	13
INE0CU601026	GMRP&UI	60	21.05	1,263	-	-	4	60	64	(4)	(84)
INE873A01020	517473	500	1.00	500	500	500	-	-	1,000	(500)	(500)
INE105I01020	SELMC	10	1,134.20	11,342	3	-	-	10	13	(3)	(3,403)

15.3. In this regard, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI in this regard that ‘...there has not been any discrepancy or violation of any of the circulars, also there is a proper reconciliation of the stocks, and same can be observed from a copy of scrip wise reply that has been annexed ...’.

15.4. In this regard, SEBI observed that though the differences are in own securities only and majorly due to sale / corporation action / redemption, the broker should have recorded transactions of own securities in ROS.

15.5. In this regard, Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that ‘...it has now held that since Noticee’s own transactions were not properly recorded in ROS, Noticee has violated the Regulation 17(1)(g) of SEBI (Stock-Brokers) Regulation, 1992. It is submitted that the said regulation is in respect of receipt and delivery of securities as a depository participant in respect of dematerialised securities. It is in respect of the service it provides as a depository participant and does

*not refer to transaction in its own securities. As such there is no violation as alleged in SCN...'*

In this regard, I note that Noticee's interpretation is misleading and out of context in so far as the text of Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992 evidently casts responsibility on stock broker contrary to what has been contended by the Noticee. Further in this regard, I note that apart from merely stating so, the Noticee has not demonstrated with relevant details and documents that any exemption was provided to the Noticee with respect to reporting of the securities in the 21 instances, as brought out above. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

- 15.6. In view thereof, I find that the allegation that there was a shortfall of 18 scrips amounting to Rs. 13,69,500 in DP as compared to Back Office holding and excess of 3 scrips amounting to Rs. 3987/- in DP as compared to Back Office holding, stands established. Therefore, I hold that Noticee had violated Regulation 17(1)(g) of SEBI (Stock Brokers) Regulations, 1992.

#### **E – Reporting and short collection of margin:**

16. In this regard, SEBI inter alia observed and alleged that Member had incorrectly reported margin collection in case of two clients/ instances amounting to Rs.2,038.

In view thereof, it was alleged that Noticee had violated Clause 6 of SEBI circular no. CIR/DNPD/7/2011 dated August 10, 2011 and Clause 4.2 SEBI circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019.



16.1. Here it would be relevant to refer to the text of the aforesaid provisions alleged to have been violated, which inter alia reads as under:

Clause 6 of SEBI circular no. CIR/DNPD/7/2011 dated August 10, 2011:

‘...  
6. If during inspection it is found that a member has reported falsely the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment.  
...’

Clause 4.2 SEBI circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019.

‘...  
4.2. Penalty structure for short-collection/non-collection of margins and false/incorrect reporting of margin collection from the clients by TMs/CMS:  
4.2.1. For short-collection/ non-collection of client margins, the Stock Exchanges shall take the disciplinary action as per the framework specified in SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.  
4.2.2. For false/incorrect reporting of margin collection from the clients by TMs/CMS, the Stock Exchanges shall take disciplinary action as per the framework specified in SEBI circular CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019.  
...’

16.2. In this regard, the details of alleged instances, as noted from material available on record are as under:

Date	UCC	Client Name	Cm Tot Mrg	Cm Clctd Mrg Cm	Cm Min Coll Tot Mrg	EOD Ledger Balance	Eod Margin Shortfall	Cm Peak Required	Cm Peak Collected	Cm Min Peak Collected	Peak Ledger Balance	Peak Margin Shortfall
21-Mar-22	***09	*****07P	1,201	1,201	1,201	43	1,158	1,201	1,201	1,201	43	1,158
10-Mar-22	***26	*****91G	1,880	1,880	1,880	1,000	880	1,880	1,880	1,880	1,000	880
						Total	2,038					2,038

16.3. In this regard, pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI in this regard that ‘...there has not been any short collection of margins, rather, the amount with respect to these 02 clients were received via payment gateway (Billdesk). These entries were posted on next working day. While reporting to the exchange such receipts were taken in to account by the concerned executive. Hence no shortfall was reported. The Billdesk report is annexed as **Annexure (A7)**. Secondly, out of 75 clients observed by your good office, only in relation to 02 clients a negative observation has been expressed, thus this clearly shows that the Company had no faulty intent...’

- 16.4. In this regard, SEBI inter alia observed that broker had not submitted a suitable/proper document to substantiate its claim. Thus, the broker's reply was not accepted.
- 16.5. In this regard, Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that *'...amount in respect of the 2 clients were received via payment gateway (Billdesk) and the entries were posted on the next working day. The Noticee also annexed the billdesk report in its response to SEBI which SEBI has also reproduced in the SCN. Despite receipt of the billdesk report, SEBI erroneously states that proper document in respect of the submission of Noticee is not received. SEBI has rejected the submission merely because the evidence was an excel file. It is submitted that this does not change the fact that Noticee indeed correctly reported margin collection.....'*
17. In this regard, as regards non-acceptance of excel sheet submitted by Noticee as evidence, generally speaking, editable excel sheet may not be sufficient evidence to support its claims with respect to instant allegation. I note that the Noticee has not demonstrated with relevant details and documents to evidence that there wasn't any incorrect reporting of margin collection, as alleged. In view thereof, the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

In this regard, I note that the contentions of the Noticee are in the nature of admission in so far as the Noticee has submitted that *'...amount in respect of the 2 clients were received via payment gateway (Billdesk) and the entries were posted on the next working day.... '*

- 17.1. In view thereof, I find that the allegation that the Member had incorrectly reported margin collection in case of 02 clients/ instances amounting to

Rs.2,038, stands established. Therefore, I hold that Noticee had violated Clause 6 of SEBI circular no. CIR/DNPD/7/2011 dated August 10, 2011 and Clause 4.2 SEBI circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019.

#### **F – Net Worth Verification:**

18. In this regard, SEBI inter alia observed and alleged that:

The net worth of the broker was negative as on 30.09.2021 & 31.03.2022 viz., Rs. -6.32 crores and Rs. -4.09 crores respectively. Further, doubtful debts and advances of Rs. 29.54 crores as on 30.09.2021 and Rs. 27.22 crores as on 31.03.2022 had been identified from books of accounts of the broker.

In view thereof, it was alleged that Noticee had violated Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and clause 2 of NSE circular NSE/MEMB/2739 dated July 30, 2001.

- 18.1. Here it would be relevant to refer to the text of the aforesaid provisions alleged to have been violated, which inter alia reads as under:

Clause 6.1.1(j) of Annexure of SEBI Circular  
SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:

‘...  
6.1.1. Monitoring criteria for Stock Brokers  
...  
j. In case stock broker shares incomplete/wrong data or fails to submit data on time  
...’

Rule 33 of Chapter III of the Rules of NSEIL:

‘...  
Continued Admittance  
(33) The relevant authority shall from time to time prescribe conditions and requirements for continued admittance to trading membership which may, inter alia, include maintenance of minimum networth and capital adequacy, renewal of certification, if any, etc. The trading membership of any person who fails to meet these requirements shall be liable to be terminated.  
...’

Clause 2 of NSE circular NSE/MEMB/2739 dated July 30, 2001:

‘...

2. Net worth Certificates (as per annexure C-1) duly certified based on audited accounts.  
(Please refer to our Circulars Ref.NSE/MEM/00184 dated January 22, 1997 and Ref. NSE/MEM/475 dated March 4, 1998 with regard to computation of net worth.)  
In case of trading members who trading cum clearing members (TM-CM) on Futures & Options segment, they are required to submit the networth certificate as per the method of computation prescribed by Dr L.C. Gupta Committee Report (enclosed herewith)

...’

- 18.2. In this regard, I note from material available on record that pursuant to the communication of findings of inspection, the Noticee had replied to SEBI in this regard that ‘...*While calculating the net worth your good office has not rightly considered two components – Debtors and Long Term Investments, and both of these elements needs to be considered separately while calculating the net worth amount. Firstly, the Long Term Investments (Loans and Advances) have not been included by your good office while calculating the net worth of the Company. It is pertinent to mention here that the Long Term Investments are not overdue, a regular interest is received on these investments and TDS is deducted. A careful comparison of the financial statements ie balance sheet and Profit and Loss accounts of the Company with calculations made by your good office will clarify that your good office has missed to include the long term investments made by the Company in the calculation of net worth. Secondly, “Debtors” pertaining to the DP Segment are 100% secured, they are regular costumers of the Company. It is to be noted that the Company has debtors amounting to Rs. 10.54 crores as on 31.03.2022 which are back by securities amounting to more than Rs. 9000 crores, clearly the debtors of the Company are secured and calling them as doubtful would be wrong.*
- 18.3. In this regard, SEBI observed that Broker in his reply had failed to interpret the circular and clarification issued by the exchange for calculation of networth certificate as per format prescribed by Dr. L C Gupta Committee. As per Dr. L C Gupta any debts or advances overdue for more than three months and any amount given in the nature of Loans, advances, Inter

corporate deposits given to associates including subsidiaries / group companies of the broker shall be deducted from networth whether they are secured or interest bearing. Therefore, reply of the stock broker cannot be accepted. Further, in the meeting held on June 28 2022, Broker admitted giving short-term loans /advances to multiple entities and that recovery of these loans / advances was in process.

- 18.4. In this regard, Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that *‘...The difference is due to the interpretational differences. It is submitted that the source of Long Term Investments (“LTI”) is the surplus profit and not capital. There is interest being earned on it. The amount therefore cannot be called overdue for more than 3 months. As such the interpretation of SEBI is erroneous...It is further submitted recall of LTI is underway, as also assured to SEBI in the undertaking dated June 23, 2022. Significantly, INR 6.33 Crores (approx.) has been brought back from 01-04-2022 to 30-09-2022; Rs. 10 crore as on 31-03-2024 (now kept as FDRs); hence, even if it is assumed that net worth was (-INR 4.09 Crores), said plough back of INR 6.33 Crores (out of LTI, and debtors) makes Abhipra’s net worth compliant. INR 6.33 Crores was brought back in just three months, highlighting the recoverability and liquidity of LTI and debtors...’*

In this regard, as regards the contention of the Noticee to consider long term investments for the purpose of calculating net worth, I note that the Noticee has not demonstrated with relevant details and documents that interest was being earned or that the long term investments were not overdue for more than three months, as was alleged.

Further, as regards bringing back of money from long term investments and debtors, the same would not absolve the Noticee from the violations alleged for the relevant period.

In view thereof, the contention of the Noticee are devoid of merit and hence not acceptable.

- 18.5. In view thereof, I find that the allegation that net worth of the broker was negative as on 30.09.2021 & 31.03.2022, Rs. -6.32 crores and Rs. -4.09 crores respectively and that doubtful debts and advances of Rs. 29.54 crores as on 30.09.2021 and Rs. 27.22 crores on 31.03.2022 were identified from books of accounts of the broker, stands established. Therefore, I hold that Noticee had violated Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Rule 33 of Chapter III of the Rules of NSEIL and NSE circular NSE/MEMB/2739 dated July 30, 2001.

**G – Reporting of client wise cash & cash equivalent balances to exchange:**

19. In this regard, SEBI inter alia observed and alleged that there were mismatches in fund balances pertaining to 08 clients as on 30-May-2022 amounting to Rs 2.92 Lacs and 01 client as on 28-Feb-2022 and 30-Apr-2022 amounting to Rs 2.90 Lacs.

In view thereof, it was alleged that Noticee had violated Clause 7 and 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause A2 & A5 as prescribed under Code of conduct r/w Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

- 19.1. Here it would be relevant to refer to the text of the aforesaid provisions alleged to have been violated, which inter alia reads as under:

Clause 7 and 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;  
'...

6.1.1. Monitoring criteria for Stock Brokers

...

j. In case stock broker shares incomplete/wrong data or fails to submit data on time

...

7. Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system

The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member

7.1.1.Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges

7.1.2.End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)

7.1.3.For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities

7.1.4.The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month.

7.2.Each Stock Exchange shall in turn forward this information to clients via Email and/or SMS on the email IDs and mobile numbers uploaded by the stock broker to the Exchange for their clients.

7.3.The above provisions shall be applicable three months from the date of this circular.

...

Clause A2 & A5 as prescribed under Code of conduct read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992:

...

Conditions of registration.

9.Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

...

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

#### SCHEDULE II

Securities and Exchange Board of India (Stock Brokers 104[\*\*\*])Regulations, 1992

#### CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

...

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

..

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him

...

19.2. In this regard, the details of alleged instances, as noted from material available on record are as under:

Sr. No.	UCC	CLIENT NAME	Reported fund Balance (CLEAR)	Fund balance as per Trial Balance	Diff Fund Value (Rs.)	Remark
1	***06	***TYA ***TA UBI- *****8221	3,96,615	3,96,291	324	Difference in only on sample date (I .e. 30-May-2022)
2	***51	***AN *****SAL	432	-	432	Difference in only on sample date (I .e. 30-May-2022)
3	**C6	***HASH ****DRA ***TANI	6,525	6,383	142	Difference in only on sample date (I .e. 30-May-2022)
4	***37	***KSHA ***TANI	2,344	2,202	142	Difference in only on sample date (I .e. 30-May-2022)
5	***90	*****DER ***AR ***KUR	945	-	945	Difference in only on sample date (I .e. 30-May-2022)
6	**78	***KA ****WAL	1,522	1,036	486	Difference in only on sample date (I .e. 30-May-2022)
7	**63	***ISH ***AR ****HA HDFC BK- 20*****165	1,57,202	1,57,013	189	Difference in only on sample date (I .e. 30-May-2022)

8	**C	****SHEK *****ITIES **45-CANRA	-	(2,90,000)	2,90,000	Difference in all sample dates (28-Feb-2022 , 30-Apr-2022, 30-May-2022)
				<b>Total</b>	<b>2,92,659</b>	

- 19.3. In this regard, as regards mismatches in fund balances pertaining to 08 clients as on 30-May-2022, the Noticee as part of its reply dated June 08, 2024, had inter alia contended that '*...The allegation in SCN is not based on the updated entries but on the basis of the inspection carried out on 31.05.2022 i.e. at the time when the Noticee was updating its entries. The Noticee already submitted the updated ledger to SEBI in its response to findings in the inspection, which SEBI has not considered in the SCN...*'.

In this regard, I note from material available on record that the inspection in this regard was undertaken on May 31, 2022. I note from the text of Clause 7 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 that inter alia the data at Para 7.1.1 of the said circular viz., Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges pertains to the last trading day of the month and the stock broker shall submit the aforesaid data within seven days of the last trading day of the month. In view thereof, having regard to the submission of the Noticee, I am inclined to allow benefit of doubt to the Noticee in this regard.

- 19.4. As regard mismatch in fund balances pertaining one client as on 28-Feb-2022 and 30-Apr-2022 amounting to Rs 2.90 Lacs, I note that the submissions of Noticee as part of its reply dated June 08, 2024 are in the nature of admission in so far as the Noticee has submitted that '*...The currency division is maintained in separate books of account and mistakenly the bookmaster in currency division ABC was given foMargin to Exchange Account. But ABC in Equity division was allotted to the client. The client is dormant and no balance was available. The currency division had the*



*balance in ABC as 2.90 lacs which were deposited to the exchange. The reporting was only on the same account when consolidated reports for both books were created. We have rectified the account in currency division and separate account is prepared for the Margin to Exchange Account...'*

- 19.5. In view thereof, I find that the allegation that there were mismatches in fund balances pertaining one client as on 28-Feb-2022 and 30-Apr-2022 amounting to Rs 2.90 Lacs respectively, stands established. Therefore, I hold that the Noticee had violated Clause 7 and 6.1.1 (j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; Clause A2 & A5 as prescribed under Code of conduct read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

#### **H – Cyber security and cyber resilience:**

20. In this regard, SEBI inter alia observed and alleged that Risk register, Risk Assessment and Treatment Plan was not in place nor documented. Roles and responsibilities of CISO and Senior Personnel were not evident as a separate document. Reconciliation (review of user access) was not carried periodically. Internet Access Policy was not evident and there was no encryption evident for data at rest. A formal DLP Policy and Procedure was required to be developed and implemented for better control. Mobile phones, faxes, photocopiers, scanners were not been included in the Information Security Policy.

SOP and SCD on Network Security Policy, System Security Policy was not documented. Use of Hardened Hardware was not documented. Application Security / Safe to Host Certificate for customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications was not evident.

Intensive regression testing, configuration testing of custom developed / in-house software was not evident. A formal BCP/DR plan was not in place. Standard Operating Procedure for handling and reporting Cyber Security Incidents was not evident.

No documented procedure existed for Reporting mechanism to facilitate communication of unusual activities and events, Cyber security and cyber resilience policy was not reviewed by Technology Committee, Quarterly report on incidents of cyber-attacks for July-September 2022 quarter was not filed. Cyber Security Weakness and Management policy was not reviewed since December 29, 2017. Further, this policy was not approved by the board of directors.

In view thereof, it was alleged that Noticee had violated Clause 3,7,8,10,14,18,20,29,31,35,36,48, and 52 of Annexure 1 of SEBI Circular No. SEBI/HO/MIRSD/CIR/PB/ 2018/147 dated December 03, 2018.

- 20.1. In this regard, I note from material available on record that pursuant to the communication of findings of inspection to the Noticee, the Noticee had replied to SEBI in this regard that '*... Yes. Designated officer periodically review based on policies and procedures. It is further submitted that no incidence of cyber attack was reported during the inspection period in the organization. Hence, no reporting was created. Apart from this designated officer is subscribed to \_\_, \_\_ for regular updates on the cyber threats and vulnerabilities reported globally...*'
- 20.2. In this regard, I note from material available on record that SEBI had inter alia observed that broker should have filed / shared the status and update of occurrence of cyber-attacks to the stock exchange / depositories, even though there was no such incidence. As far as Cyber Security, Weakness and Management policy was not approved by the board of director. Hence the broker had allegedly violated SEBI Circular No. SEBI/HO/MIRSD/CIR/PB/ 2018/147 dated December 03, 2018.

- 20.3. In this regard, Noticee, as part of its reply to the SCN, dated June 08, 2024 had inter alia contended that '*...Cyber audit report has been timely filed with the stock exchanges. It is a fact that there have been no incidences of any cyber-attacks. Therefore, there is nothing to report when there are no such incidents. The framework provided in the SEBI Circular dated 3.12.2018 has been followed by the Noticee....There is no reference made in the SCN to the inspection carried out in October and as such the SCN could not have raised allegations pertaining to Cyber -security...*'.

In this regard, I note that there are multiple aspects relating to cyber security and cyber resilience which are alleged to have been violated by the Noticee, however, the Noticee has only replied with respect to one aspect viz., Quarterly report on incidents of cyber-attacks for July-September 2022 quarter was not filed. In this regard, I note that the Noticee ought to have filed / shared the status and update of occurrence of cyber-attacks to the stock exchange / depositories, even though there was no such incidence.

As regards other aspects viz., Risk register, Risk Assessment and Treatment Plan was not in place nor documented, roles and responsibilities of CISO and Senior Personnel were not evident as a separate document. Reconciliation (review of user access) was not carried periodically, Internet Access Policy was not evident and there was no encryption evident for data at rest, formal DLP Policy and Procedure was required to be developed and implemented for better control, Mobile phones, faxes, photocopiers, scanners were not been included in the Information Security Policy, SOP and SCD on Network Security Policy, System Security Policy was not documented, use of Hardened Hardware was not documented, Application Security / Safe to Host Certificate for customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications was not evident, Intensive regression testing, configuration testing of custom

developed / in-house software was not evident, formal BCP/DR plan was not in place, Standard Operating Procedure for handling and reporting Cyber Security Incidents was not evident, no documented procedure existed for Reporting mechanism to facilitate communication of unusual activities and events, Cyber security and cyber resilience policy was not reviewed by Technology Committee, Cyber Security Weakness and Management policy was not reviewed since December 29, 2017 and this policy was not approved by the board of directors, I note that the Noticee has not demonstrated with relevant details and documents that it had complied with requirements in this regard in terms of SEBI Circular No. SEBI/HO/MIRSD/CIR/PB/ 2018/147 dated December 03, 2018.

- 20.4. In view thereof, I find that the allegation with respect to cyber security and cyber resilience, as brought out above, stands established. Therefore, I hold that the Noticee had violated Clause 3,7,8,10,14,18,20,29,31,35,36,48, and 52 of Annexure 1 of SEBI Circular No. SEBI/HO/MIRSD/CIR/PB/ 2018/147 dated December 03, 2018.

**Issue No. II:** If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 23D of Securities Contracts (Regulation) Act, 1956, 15A(c) and 15HB of the SEBI Act, 1992?

21. It has been established in the foregoing paragraphs that Noticee had violated provisions of Securities Contracts (Regulation) Act, 1956 and SEBI Circulars and NSE circular.
22. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia contended that '*...The Exchanges, NSE as well as BSE*

*also issued Letters of observations and Show Cause Notices and imposed fines upon Noticee for same observations. SEBI thereafter carried out a post inspection analysis of the Noticee pursuant to which SEBI issued the present SCN seeking to re-impose penalty arising out of the observations made in the joint inspection...At the outset it is submitted that the re-imposition of penalties upon the Noticee by SEBI for the same observations for which the Stock Exchanges has already imposed penalties amounts to double prosecution of the Noticee and is as such unsustainable...’.*

In this regard, I note that although the Noticee has contended so, however, the Noticee has not brought out with relevant details and documents that the alleged violations in the instant proceedings were squarely covered by NSE and BSE. Further, I note that the proceedings initiated by SEBI under section 15I of SEBI Act and 23I of SCRA Act are independent of any other proceedings initiated by other bodies. However, having regard to the submissions of the Noticee, I am of the view that the above can at best be considered as a mitigating factor.

23. In this regard, the Noticee, as part of its reply to the SCN dated June 08, 2024 had inter alia also contended that *‘...purpose of inspection is to ensure compliance with the provisions of extant Acts, Rules and Regulations and only in serious lapses may call for initiation of penal proceedings....’*. In this regard, Noticee placed reliance on the order of Hon’ble SAT in the case of *in UPSE Securities Limited vs Securities and Exchange Board of India* (Appeal no. 109 of 2011 decided on July 25, 2011) and in the case of *IDBI Trusteeship Services Limited v. SEBI* (Appeal no. 186 of 2023) has held that in lapses which are technical and not serious in nature, penalty proceedings are not called for.

In this regard, in my opinion each case is peculiar in its facts and circumstances based on which the violations are ascertained. Whether Adjudication proceedings are to be initiated in a case would depend on the facts and circumstances of each case. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a

prerogative of SEBI depending upon the outcome of Inspection and the findings thereof. It would also be relevant to state that the subject matter of instant proceedings are as per the Communique of appointment of AO, duly approved by the Competent Authority.

I also note from the text of Hon'ble SAT order dated 16.06.2011 in Appeal No. 23 of 2011 in Religare Securities vs. Securities Exchange Board of India that Hon'ble SAT had inter alia held that *"... This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent..."*.

Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law as are otherwise applicable to the entire category of intermediary viz., Stock Broker in the instant case, and not just about minor procedural aspects limited to Noticee alone. I note that the provisions relating to securities laws, including regulation and circulars issued by the regulator, are mandated inter alia with the objective of orderly functioning of the securities market and its constituents having regard to protection of the interest of the investors, which the Noticee failed to comply with, as dealt with and brought out in the foregoing. In view thereof, the contention of the Noticee in this regard cannot be accepted.

24. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

*"...In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established...."*

25. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section 23D of SCRA, 1956, Section 15A(c) and 15HB of the SEBI Act, 1992 which inter alia reads as under:

## Securities Contracts (Regulation) Act, 1956:

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

## SEBI Act, 1992:

“...  
**Penalty for failure to furnish information, return, etc.**  
15A. If any person, who is required under this Act or any rules or regulations made thereunder,—  
...  
(c) to maintain books of account or records, fails to maintain the same, he shall be liable to [a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]]  
...  
**Penalty for contravention where no separate penalty has been provided.**  
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.  
...”

Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.

**Issue No. III:** If yes, what should be the monetary penalty that can be imposed upon the Noticee?

26. While determining the quantum of penalty under 23D of the Securities Contracts (Regulation) Act, 1956, and under Section 15A(c), 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 23J of Securities Contracts (Regulation) Act, 1956 and Section 15J of the SEBI Act, which reads as under: -

### SCRA, 1956:

“...  
<sup>136</sup> [ 137] **Factors to be taken into account while adjudging quantum of penalty.]**  
23J. While adjudging the quantum of penalty under <sup>138</sup>[section 12A or section 23-I], the <sup>139</sup>[ the Securities and Exchange Board of India or the adjudicating officer] shall have due regard to the following factors, namely:—  
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;  
(b) the amount of loss caused to an investor or group of investors as a result of the default;  
(c) the repetitive nature of the default.]

140[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

...

### **SEBI Act, 1992**

‘...

#### **Factors to be taken into account while adjudging quantum of penalty.**

**15J.** While adjudging quantum of penalty under 15- I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—

- a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b. the amount of loss caused to an investor or group of investors as a result of the default;
- c. the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

....”

27. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee as stock broker are repetitive in nature. I note that Noticee, being a SEBI registered intermediary, was required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce. The Noticee failed to comply with the provisions of law, as brought out in the foregoing, and such failure and non-compliances accordingly needs to be dealt with suitable penalty.

### **E. ORDER:**

28. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under Section 23-I of the SC(R) Act, 1956 and under Section 15-I of the SEBI Act, 1992 r/w Rule 5 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose following penalty, as per details in



Table below, upon the Noticee, for the aforementioned violations, as brought out in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
<b>Abhipra Capital Ltd. (Stock Broker)</b>	15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakhs Only)
	15A(c) of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh Only)
	23D of SC(R) Act, 1956	Rs. 2,00,000/- (Rupees Two Lakh Only)

29. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
31. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 6 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

**PLACE: MUMBAI**  
**DATE: MARCH 28, 2025**

**AMAR NAVLANI**  
**ADJUDICATING OFFICER**