

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/AS/RM/2024-25/31192]**

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

In respect of:

Sr. No.	Name	PAN
1.	Fyers Securities Private Ltd	AADCF5513D

**In the matter of Fyers Securities Private Ltd**

**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), had conducted an inspection of the Stock Broker Fyers Securities Private Limited (hereinafter referred to as the “**Company/ Noticee/ Stock Broker**”). The inspection was conducted by SEBI on February 28, 2024. The inspection pertained to the period from April 01, 2023 to December 31, 2023 (hereinafter referred to as the “**IP**”). Pursuant to findings of examination, SEBI initiated adjudication proceedings under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) for the following alleged violations:
  - a) Clause 61.4.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 4.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
  - b) Clause 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, r/w Para 6 (xi) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers Regulations 1992.

- c) Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
- d) Clause 61.7.5 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.5 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Para 6 (xiii) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w NSE/COMP/55936 dated March 10, 2023 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers regulation 1992.

### **APPOINTMENT OF ADJUDICATING OFFICER**

- 2. SEBI appointed Mr. Biju S as the Adjudicating Officer (AO), vide communique dated April 10, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, for the violations alleged to have been committed by the Noticee. Pursuant to the transfer of the erstwhile AO, undersigned was appointed as AO in the matter vide communique dated July 29, 2024.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

- 3. Show Cause Notice No. SEBI/EAD-1/BS/5575/2024 dated April 30, 2024 (hereinafter be referred to as, the "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on Noticee under Section 15HB of the SEBI Act.
- 4. The allegations in respect of the Noticee *inter alia* brought out in the SCN are as under:

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**a. Monitoring Mechanism**

*It is alleged that, the Noticee failed to submit any documentary evidence for quarterly monitoring of peak load in Calendar quarters (April-June 2023, July-September 2023 and October-December 2023). This is stated at para no.2 at page number 6 of the inspection report and in the response submitted by the Noticee through email dated March 20, 2024 to the findings of inspection.*

*On account of failure in submission of documentary evidence of quarterly monitoring of peak load, it is alleged that the Noticee has violated the provisions of Clause 61.4.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 4.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.*

**b. Review of BCP-DR Policy of governing board of the members**

*It is alleged that, the Governing board of the Noticee has not reviewed the implementation of Business Continuity Planning (BCP) and Disaster Recovery (DR) policy for 3 quarters i.e. April- June 2023, July –Sep 2023 and Oct –Dec 2023. This is stated at para no.3 at page number 6 of the inspection report and in the response submitted by the Noticee through email dated March 20, 2024 to the findings of inspection.*

*On account of the same it is alleged that, the Noticee has not complied with Clause 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, r/w Para 6 (xi) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers Regulations 1992.*

**c. Not conducting DR Drill for 1 full trading day:**

*It is alleged that the Noticee has not conducted Disaster Recovery (DR) drill for one full trading day, as required under the framework to address the technical glitches.*

*On account of failure to conduct DR drill, it is alleged that the Noticee has violated the provisions of Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.*

d. **Non – Constitution of Incident and response Team (IRT) and Crisis Management team (CMT)**

*It is alleged that the Noticee has not submitted any documentary evidence for constitution of Incident and Response Team / Crisis Management Team. In view of non-submission of documentary evidence w.r.t constitution of IRT / CMT, it is alleged that the Noticee has violated the provisions of Clause 61.7.5 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.5 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Para 6 (xiii) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w NSE/COMP/55936 dated March 10, 2023 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers regulation 1992.*

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5. The SCN was issued at the last known address of Noticee through Speed Post Acknowledgement Due (SPAD) on April 30, 2024. Subsequently, reminder emails dated June 05, 2024 and July 01, 2024 along with SCN was issued to the Noticee, advising the Noticee to submit the reply to the SCN. The Noticee vide email dated July 09, 2024, submitted reply to the SCN vide letter dated July 09, 2024. Thereafter, in the interest of natural justice, vide hearing notice dated August 07, 2024 an opportunity of hearing on September 03, 2024 was granted to the Noticee. The Noticee sought deferment of the personal hearing to September 06, 2024, which was granted, and the personal hearing was rescheduled. The authorised representatives of the Noticee attended the hearing on September 06, 2024 and reiterated the submissions made by the Noticee vide letter dated July 09, 2024. Further, the Noticees submitted additional submissions in the matter vide letter dated September 16, 2024.
6. With respect to allegations in the SCN, the key contentions of the Noticee made vide letters dated July 09, 2024 and September 16, 2024 are as under:

**Letter dated July 09, 2024:**

<b>S.No</b>	<b>Findings from SCN</b>	<b>SEBI Comments</b>	<b>FYERS Response</b>
1	Monitoring Mechanism	The Noticee failed to submit any documentary evidence for quarterly monitoring of peak load in calendar quarters.(Apr-Jun 2023, Jul-Sep 2023 and Oct-Dec 2023)	We wanted to let you know that we emailed all the documentary evidence on 20-03-2024 at 6:46 PM. For your ready reference, we have attached the Annexures A&B.
2	Review of BCP-DR policy of governing board of the members	The governing body of the noticee has not reviewed the implementation of BCP -DR policy for 3 quarters. i.e. Apr-Jun 2023, Jul-Sep 2023 and Oct-Dec 2023)	We would like to understand your concerns, if any on the same. We would like to reiterate our commitment to remedy any gaps if present.
3	Not conducting DR drill for full trading day	It is alleged that the noticee has not conducting conducted DR drill for one full trading day, as required under the framework to address the technical glitches.	<p>We admit that, we couldn't conduct the live test from the DR Site on time due to the complexity of the setup, delays in delivery of infrastructure components, integration of the same, and testing the new setup during mock before committing the same to production, which caused unexpected delays rather than intentional negligence.</p> <p>We also had to re-prioritize certain activities in the last quarter of 2023 and the first quarter of 2024, due to which focus was shifted to mandatory exchange side activities like the below, which also impacted our preparation and testing of the DR site.</p> <p>A. DR initiated by exchange on a Saturday which replaced the mock with a live trading day on March 2nd, 2024.</p> <p>B. Encryption/ Decryption for interactive message received on March 2023.</p> <p>However we successfully handled live trading from the DR site with 100% client load</p>

			for 4 full working days from April 29th to May 3rd, 2024.
4	Non-constitution of Incident and Response team (IRT) and Crisis management team (CMT)	It is alleged that the noticee has not submitted any documentary evidence for constitution of Incident Response team (IRT) and Crisis management team (CMT)	We wanted to let you know that we emailed all the documentary evidence on 20-03-2024 at 6:46 PM. For your ready reference, we have attached the Annexure C. We would like to understand your concerns, if any on the same. We would like to reiterate our commitment to remedy any gaps if present.

**Letter dated September 16, 2024:**

S.No	Findings from SCN	SEBI Comments	FYERS Response
1	Monitoring Mechanism	The Noticee failed to submit any documentary evidence for quarterly monitoring of peak load in calendar quarters.(Apr-Jun 2023, Jul-Sep 2023 and Oct-Dec 2023)	We assure you that an adequate monitoring system has been established. This process is subject to quarterly reviews, during which a comprehensive report is generated and submitted for management review. These reports have been reviewed and approved by management, with a clear emphasis on the importance of adhering to the established guidelines for continuous monitoring.  We remain committed to addressing any gaps identified throughout this process and ensuring full compliance with all relevant procedures.
2	Review of BCP-DR policy of governing board of the members	The governing body of the noticee has not reviewed the implementation of BCP -DR policy for 3 quarters. i.e. Apr-Jun 2023, Jul-Sep 2023 and Oct-Dec 2023)	We would like to inform you that all documentary evidence is attached as Annexure- I & 2.
3	Not conducting DR drill for full trading day	It is alleged that the noticee has not conducting conducted DR drill for one full trading day, as required under	We acknowledge that we were unable to conduct the live test from the DR Site within the planned timeframe due to several factors. These included the complexity of the setup, delays in the delivery of infrastructure components, the integration of those components, and the need to

		<p><i>the framework to address the technical glitches.</i></p>	<p><i>thoroughly test the new setup during mock trials before committing it to production. These factors led to unforeseen delays rather than any intentional oversight. Additionally, in the last quarter of 2023 and the first quarter of 2024, we had to re-prioritize certain activities. As a result, focus was redirected toward mandatory exchange- related tasks, such as:</i></p> <p><i>A. The DR initiated by the exchange on Saturday, which replaced the mock with a live trading day on March 2nd, 2024.</i></p> <p><i>B. Implementation of encryption/decryption for interactive messages, received in March 2023.</i></p> <p><i>Despite these challenges, we successfully managed live trading from the DR site, handling 100% client load over four full working days from April 29th to May 3rd, 2024.</i></p> <p><i>We would like to inform you that all documentary evidence is attached as Annexure-3</i></p>
4	<p><i>Change Management process, patch management process and BCP- DR policy</i></p>	<p><i>It is alleged that the noticee not has submitted documentary evidence for board approval of change management process, patch management process and BCP-DR policy.</i></p>	<p><i>We assure you that an adequate monitoring system has been established. This process is subject to quarterly reviews, during which a comprehensive report is generated and submitted for management review. These policies have been reviewed and approved by management, with a clear emphasis on the importance of adhering to the established guidelines for continuous monitoring.</i></p> <p><i>We would like to inform you that all documentary evidence is attached as Annexure-4.</i></p>
5	<p><i>Non-constitution of Incident and Response team (IRT) and Crisis management team (CMT)</i></p>	<p><i>It is alleged that the noticee has not submitted any documentary evidence for constitution of Incident Response team</i></p>	<p><i>Specific teams have been established for both IRT and CMT, incorporating senior personnel where applicable, to ensure timely decision-making as required. These teams undergo a quarterly review to update their composition by replacing personnel who may have exited the organization and by adding relevant members where necessary. This review process is reported to management on a</i></p>

		<i>(IRT) and Crisis management team (CMT)</i>	<i>regular basis to maintain alignment and ensure effective oversight.</i>  <i>We would like to inform you that all documentary evidence is attached as Annexure-5.</i>
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7. I now proceed to examine the case based on the facts and circumstances and the material available on record.

### **CONSIDERATION OF ISSUES AND EVIDENCE**

8. I have carefully perused the allegations levelled against the Noticee in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -
- I. Whether the Noticee has violated the provisions of the Act, Regulations and Circulars as indicated at Para 1?***
  - II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?***
  - III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?***
9. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

***SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023***

***61. Framework to address the ‘technical glitches’ in Stock Brokers’ Electronic Trading Systems***

***61.4 Capacity Planning:***

***61.4.2 Stock brokers shall monitor peak load in their trading applications, servers and network architecture. The Peak load shall be determined on the basis of highest peak load observed by***



*the stock broker during a calendar quarter. The installed capacity shall be at least one and halftimes (1.5x) of the observed peak load.*

**61.7 Business Continuity Planning (BCP) and Disaster Recovery Site (DRS):**

*61.7.2 Stock brokers shall put in place a comprehensive BCP-DR policy document outlining standard operating procedures to be followed in the event of any disaster. A suitable framework shall be put in place to constantly monitor health and performance of critical systems in the normal course of business. The BCP-DR policy document shall be periodically reviewed to minimize incidents affecting the business continuity.*

*61.7.4 Specified stock brokers shall conduct DR drills / live trading from DR site. DR drills / live trading shall include running all operations from DRS for at least 1 full trading day. Stock exchanges in consultation with specified stock brokers shall decide the frequency of DR drill / live trading from DR site.*

*61.7.5 Stock brokers, shall constitute responsible teams for taking decisions about shifting of operations from primary site to DR site, putting adequate resources at DR site, and setting up mechanism to make DR site operational from primary data center etc.*

**SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022**

**4. Capacity Planning:**

*4.2 Stock brokers shall monitor peak load in their trading applications, servers and network architecture. The Peak load shall be determined on the basis of highest peak load observed by the stock broker during a calendar quarter. The installed capacity shall be at least 1.5 times (1.5x) of the observed peak load.*

**7. Business Continuity Planning (BCP) and Disaster Recovery Site (DRS):**

*7.2 Stock brokers shall put in place a comprehensive BCP-DR policy document outlining standard operating procedures to be followed in the event of any disaster. A suitable framework shall be put in place to constantly monitor health and performance of critical systems in the normal course of business. The BCP-DR policy document shall be periodically reviewed to minimize incidents affecting the business continuity.*

*7.4 Specified stock brokers shall conduct DR drills / live trading from DR site. DR drills / live trading shall include running all operations from DRS for at least 1 full trading day. Stock exchanges in consultation with specified stock brokers shall decide the frequency of DR drill / live trading from DR site.*

*7.5 Stock brokers, shall constitute responsible teams for taking decisions about shifting of operations from primary site to DR site, putting adequate resources at DR site, and setting up mechanism to make DR site operational from primary data center etc.*

**NSE circular NSE/COMP/54876 dated December 16, 2022**

**6. Business Continuity Planning (BCP) and Disaster Recovery Site (DRS):**

*xi. The Governing Board of the Members shall review the implementation of BCP-DR policy approved by the Governing board of the Members on a Quarterly basis. Further, Members shall conduct periodic training programs to enhance the preparedness and awareness level among its employees and outsourced staff, vendors, etc. to perform as per BCP policy.*

*xiii. The 'Specified Members' shall constitute an Incident and Response Team (IRT) / Crisis Management Team (CMT), which shall be chaired by the Managing Director (MD) of the Member or by the Chief Technology Officer (CTO), in case of non-availability of MD. IRT/CMT shall be responsible for the actual declaration of disaster, invoking the CP and shifting of operations from PDC to DRS whenever required. Details of roles, responsibilities, and actions to be performed by employees, IRT/ CMT and support/outsourced staff in the event of any Disaster shall be defined and documented by the Members as part of BCP-DR Policy Document.*

**NSE/COMP/55936 dated March 10, 2023**

*Noticee's name is in the list of 35 members identified as 'Specified Members' by the exchange.*

**SEBI Stock brokers Regulations 1992**

**SCHEDULE II**

**CODE OF CONDUCT FOR STOCK BROKERS**

**A. General.**

*(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.*

**Issue I - Whether the Noticee has violated the provisions of the Act, Regulations and Circulars as indicated at Para 1?**

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

Monitoring Mechanism and Review of BCP-DR Policy of governing body of the members

11. I note that w.r.t. Monitoring Mechanism, the Noticee has been alleged to have failed to quarterly monitor peak load during April-December 2023, thereby alleged to have violated Clause 61.4.2 of SEBI Master Circular (dated May 17, 2023) read with relevant provisions of SEBI and NSE circulars. Further, w.r.t. Review of BCP-DR Policy, it has been alleged that the Governing Board of the Noticee allegedly did not review the implementation of the Business Continuity Planning (BCP) and Disaster Recovery (DR) policy for three consecutive quarters in 2023, thereby in non-compliance with Clause 61.7.2 of the SEBI Master Circular and related provisions.
12. In regard to aforesaid two issues, Noticee has contended that the Noticee has adequate monitoring system, which is subjected to quarterly reviews by the management, with an emphasis on importance of adhering to the guidelines. The Noticee submitted that the Noticee is committed to remedy any gaps if present. In this regard, Noticee submitted following documentary evidences on records:
  - a) Documents for three Quarters:
    - For April-June 2023:
      - i. AWS DX Bandwidth utilisation graph for the date June 30, 2023.
      - ii. Kafka Disk usage graph for May 19, 2023
      - iii. Unsigned minutes of Management review meeting dated June 02, 2023 considering the agenda items pertaining to Kafka Disk Space and AWS DX bandwidth upgrade issues
    - For July- Sep 2023:
      - i. Email exchanges between Noticee's team and its technology vendor from May 16, 2023 to July 18, 2023 regarding upgrading of storage of servers.

- ii. Email exchanges between Noticee's team and Kambala Solutions from June 24, 2023 to June 26, 2023, for license request for Baga and Anjuna Back Up Server
- iii. Unsigned minutes of Management review meeting dated July 07, 2023 considering the agenda items pertaining to:
  - a) Additional storage for back office servers
  - b) AWS DX bandwidth upgrade issues
  - c) Anjuna Baga redundancy

For Oct-Dec 2023:

- i. CPU Utilisation graph for December 04, 2023
- ii. Unsigned minutes of Management review meeting dated December 04, 2023 considering the agenda items pertaining to:
  - a) DB Reader & writer upgrade
  - b) AWS DX bandwidth upgrade issues

B. Service manual of the Noticee *inter alia* containing Noticee's Business Continuity and Disaster recovery policy, Information Security Incident Management Policy

C. Noticee's undated response to SEBI's administrative warning, which provides updates on the issues and annexed undated minutes of meeting dated April 15, 2024, wherein Noticee's management reviewed (i) the capacity planning for Q1, Q2, Q3 and Q4 of FY 2023-24, and (ii) BCP-DR Policy.

13. I note that as per above mentioned SEBI and NSE Circulars, '*Stock brokers shall monitor peak load in their trading applications, servers and network architecture. The Peak load shall be determined on the basis of highest peak load observed by the stock broker during a calendar quarter. The installed capacity shall be at least one and halftimes (1.5x) of the observed peak load*'. The above, mandates that the

Noticee should have monitored the peak loads on its trading applications, servers and network architecture for the three quarters from April to December 2023, and ensured that its installed capacity is at least one and halftimes (1.5x) of the observed peak load.

14. In this regard, I have perused the documents submitted by the Noticee and other documents available on records, I note that the documents submitted by the Noticee refer to:
  - a) loads on Disk usage, CPU Usage, Bandwidth usage for some specific dates of the three quarters,
  - b) Issues pertaining to capacity upgrade for bandwidth, disk storage, disk writing reader etc.
  - c) Issues pertaining to licenses, redundancy at a site
15. In this regard, I note that the Noticee submitted documents such as load graphs and minutes of management meetings that referenced capacity upgrades for bandwidth, storage, and server issues. However, the evidence provided pertain to isolated metrics on specific dates rather than comprehensive, systematic quarterly monitoring. A review of the minutes reveal that the management discussions were issue-specific and reactive, lacking a structured evaluation of peak load data for trading applications, servers, and network architecture. Furthermore, no evidence has been furnished to demonstrate that peak load monitoring was conducted by the stock broker for review or that the installed capacity met the required 1.5 times threshold of the peak load.
16. The absence of continuous and holistic peak load monitoring undermines the Noticee's ability to ensure robust system capacity planning, which is crucial for maintaining the stability and efficiency of trading operations.

17. In view of the above, I note that the contention of the Noticee that it monitored the peak loads and took decisions regarding installed capacity lacks substantiation. Consequently, it is established **that Noticee has violated the provisions of Clause 61.4.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 4.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.**
18. With regard to review of BCP-DR Policy by governing board of the members, I note that the Noticee submitted minutes from a meeting held on April 15, 2024, indicating a review of capacity planning and BCP-DR policy implementation for FY 2023-24. However, this review occurred after the inspection period (April to December 2023). No evidence was provided to demonstrate that the Governing Board conducted the mandated quarterly reviews during the relevant period. Quarterly reviews of the BCP-DR policy are essential to ensure the resilience of operations and preparedness for unforeseen disruptions. The absence of such reviews compromises the organization's ability to respond effectively to operational risks.
19. In view of the same, since no evidence was provided to demonstrate that the Governing Board conducted quarterly reviews during the inspection period, it is established that the Notice **has not complied with Clause 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, r/w Para 6 (xi) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers Regulations 1992.**

Not conducting DR Drill for 1 full trading day

20. I note that w.r.t. Non-conduct of DR Drill, the Noticee has been alleged to have failed to conduct a Disaster Recovery (DR) drill for one full trading day, violating Clause 61.7.4 of the SEBI Master Circular and related provisions. I note from the replies of the Noticee, that Noticee has acknowledged delays in conducting the live test from the DR site due to operational complexities, including infrastructure delivery, integration issues, and the need for thorough mock trials, change of priorities toward mandatory exchange-related tasks, implementation of encryption/decryption for interactive messages etc. The Noticee has also contended that despite these challenges, the Noticee successfully managed live trading from the DR site, handling 100% client load over four full working days (April 29 to May 3, 2024).
21. I note that the Noticee has acknowledged that it did not conduct the required DR drill during the inspection period, citing operational complexities, infrastructure delivery delays, and priorities related to exchange tasks. While these challenges may be mitigating factors, they do not absolve the Noticee from its regulatory obligations. The purpose of a DR drill is to assess the operational readiness of the DR site under live trading conditions, ensuring the ability to handle disruptions seamlessly. The failure to conduct the drill during the inspection period represents a critical lapse in the organization's risk management practices.
22. In view of the above, I note that, despite the Noticee's operational challenges, its failure to conduct a DR drill during the inspection period constitutes a **violation of the provisions of Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.**

*Non – Constitution of Incident and response Team (IRT) and Crisis Management team (CMT)*

23. I note that w.r.t. Non-Constitution of IRT and CMT, it has been alleged that the Noticee did not provide documentary evidence for the constitution of the Incident and Response Team (IRT) and Crisis Management Team (CMT), thereby violating Clause 61.7.5 of the SEBI Master Circular and other regulatory provisions. In this regard, noticee has contended that Noticee during the three quarters, Noticee had dedicated IRT and CMT teams, comprising senior personnel, to ensure timely decision-making. Further, there were quarterly reviews to update team composition, with reports to management for alignment and oversight.
24. In this regard, I note that the Noticee submitted lists of IRT and CMT teams and a Board approval note dated July 10, 2023, for ISMS policies and procedures. However, the Board approval note did not explicitly mention about the constitution or formal approval of the IRT and CMT teams. The absence of clear documentation linking the Board's directives to the establishment and functioning of these teams undermines the Noticee's claim.
25. Incident and crisis management teams are crucial for ensuring prompt and coordinated responses to operational disruptions. The lack of formal Board approval or clear evidence of team constitution reflects weak governance and oversight mechanisms.
26. In view of the above, I note that the Noticee has not submitted any documentary evidence for constitution of IRT / CMT, and hence it is **established that the Noticee has violated the provisions of Clause 61.7.5 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.5 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Para 6 (xiii) of NSE circular NSE/COMP/54876 dated December 16,**



**2022 r/w NSE/COMP/55936 dated March 10,2023 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers regulation 1992.**

**Issue II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?**

27. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated following provisions:
- a) Clause 61.4.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 4.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
  - b) Clause 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, r/w Para 6 (xi) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers Regulations 1992.
  - c) Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
  - d) Clause 61.7.5 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w para 7.5 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 r/w Para 6 (xiii) of NSE circular NSE/COMP/54876 dated December 16, 2022 r/w NSE/COMP/55936 dated March 10,2023 r/w Clause A (5) of the Code of Conduct as specified at schedule II of SEBI Stock brokers regulation 1992.
28. The aforesaid violations, makes the aforesaid Noticee liable for penalty under Section 15HB of the SEBI Act.

29. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund wherein Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not."*

30. The text of the above referred Section 15HB of SEBI Act is reproduced herein below:

**SEBI Act:**

***Penalty for contravention where no separate penalty has been provided.***

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?**

31. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, which reads as under: -

**SEBI Act**

***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: —*

*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.*

*[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.]*

32. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions is not available. I note that the Noticee has placed on records, wherein it has showcased the Noticee has conducted the DR Drill exercise. The Noticee is in violation of the regulatory requirements and standards expected from listed entity, therefore, the actions of Noticee should be dealt appropriately by imposing monetary penalty as effective deterrence.

## **ORDER**

33. Considering all the facts and circumstances of the case including the submissions of the Noticee and exercising the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty under section 15HB of the SEBI Act on the Noticee:

<b>Sr. No.</b>	<b>Name of the Noticee</b>	<b>Penalty Provisions</b>	<b>Amount of penalty (in ₹)</b>
1	Fyers Securities Private Ltd	Section 15HB of SEBI Act	₹ 4,00,000/- (Rupees Four Lakhs only)

In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

34. 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**

35. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
36. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

**Place: Mumbai**

**Date: February 13, 2025**

**ASHA SHETTY**

**ADJUDICATING OFFICER**