

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/AS/RM/2024-25/31201]**

**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.      | Finvasia Securities Private Limited | AABCF6759K |

**In the matter of Finvasia Securities Private Limited**

**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), had conducted an inspection of Finvasia Securities Private Limited (herein after referred to as the ‘**Noticee**’ / ‘**Finvasia**’ / ‘**broker**’). The inspection pertained to the period from April 01, 2022 to December 31, 2023 (herein after 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 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, 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 Regulation 1992.
  - b) Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.

- c) Clause 61.7.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
- d) Clause 61.6.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 6.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, Para 5.i 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 Regulation 1992.

### **APPOINTMENT OF ADJUDICATING OFFICER**

- 2. SEBI appointed Mr. Shashi Kumar Valsakumar as the Adjudicating Officer (AO), vide communique dated April 05, 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/HO/EAD-8/SKV/RM/15007/1-2/2024 dated April 23, 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. BCP, DR site and DR drill**

Findings of Inspection:

7. SEBI circular on “Framework to address the technical glitches in stock brokers electronic trading systems” dated Nov 25, 2022 read with Para 6 (xi) of NSE circular on “Framework to address the technical glitches in stock brokers electronic trading systems” dated Dec 16, 2022 states that “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”.
8. During inspection it was noted that Governing Board of Noticee has not reviewed the implementation of BCP-DR policy for quarters April- June 2023, July–Sep 2023 and Oct–Dec 2023. In view of the same it is alleged that the Noticee is non-compliant to aforementioned clause.
9. Para 7.4 of SEBI circular on “Framework to address the technical glitches in stock brokers electronic trading systems” dated Nov 25, 2022 states that “Specified stock brokers shall conduct DR drills/live trading from DR site. DR drill /live trading shall include running all operations from DRS for atleast 1 full trading day.” During the inspection, it was noted that the Noticee has not conducted live DR drill. In this regard, Noticee’s response to Question no. 10 of Pre-Inspection Questionnaire (enclosed herewith as **Annexure - 5**) may be referred.
10. Para 7.1 of SEBI circular on “Framework to address the technical glitches in stock brokers electronic trading systems” dated Nov 25, 2022 read with NSE circular on “Framework to address the technical glitches in stock brokers electronic trading systems” dated Dec 16, 2022 states that “Specified stock brokers shall mandatorily setup BCP/DR setup”.
11. During the inspection, it was noted that the Noticee is yet to have BCP/DR setup. In this regard, Noticee’s response to Question no. 5(ii) of Pre-Inspection Questionnaire (enclosed herewith as **Annexure - 5**) may be referred.

Reply of Noticee:

12. With regard to above observations, Noticee inter alia submitted that :
- a. as we have know that drill ensure that the systems can seamlessly switch to the backup site in case of an outage at the primary location for which we will be taking active actions to conduct the same on upcoming mock session of exchange and make sure that all operations from DRS will be fully operational.
  - b. As it's completed, we will test it in the upcoming mock session on 1st week of April and will confirm about the same.

Observations and Allegations:

13. There was no reply submitted by broker w.r.t. observation pertaining to non-review of implementation of BCP-DR policy for quarters April- June 2023, July –Sep 2023 and Oct –Dec 2023 by Governing Board of Broker. Therefore, Noticee is alleged to be non-compliant 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 Clause 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, 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 Regulation 1992.
14. W.r.t. inspection observation of broker not conducting DR drills/live trading from DR site, the broker has submitted that they will conduct the same on upcoming mock session of exchange. In view of the same, broker is alleged to be non-compliant with Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
15. As per inspection observation, broker does not have BCP/DR setup. In this regard, broker submitted that as it is completed, they will test it in upcoming mock session. In view of the same, it is alleged that broker is non-compliant with Clause 61.7.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.

**B. Monitoring Mechanism**

Findings of Inspection:

16. During inspection, it was observed that Para 6 of SEBI circular on "Framework to address the technical glitches in stock brokers electronic trading systems" dated Nov 25, 2022 read with Para 5.1 NSE circular on "Framework to address the technical glitches in stock brokers electronic trading systems" states that "Specified member shall build LAMA to allow stock exchanges to monitor key parameters of critical systems".
17. In this regard during the inspection it was observed that Noticee has not connected all their critical systems with LAMA. In this regard, Noticee's email dated February 23, 2024 (enclosed herewith as Annexure - 6) may be referred.

Reply of Noticee:

18. With regard to above observation, Noticee inter alia submitted that all critical systems will be incorporated to LAMA, as Noticee is testing the same on one of its live server and will get done by March 2024 end.

Observations and Allegations:

19. In this regard, it is observed that Noticee submitted that all critical systems will be incorporated to LAMA by March 2024. In view of the above, Noticee is alleged to be non-compliant with Clause 61.6.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 6.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, Para 5.i 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 Regulation 1992.

- .....'
5. The SCN was issued at the last known address of Noticee through Speed Post Acknowledgement Due (SPAD) and email on April 23, 2024. The Noticee vide email dated May 06, 2024 confirmed that the SCN was received by Noticee on April 26, 2024. Vide aforesaid email, the Noticee also requested for inspection of documents. The Noticee was granted an opportunity of inspection on May 10, 2024. The Noticee withdrew the request for inspection vide email dated May 07, 2024 and requested that the documents sought may be provided over email.

Accordingly, the documents sought were provided vide email dated May 14, 2024. Vide Hearing Notice dated May 16, 2024 an opportunity of hearing on June 03, 2024 was granted to the Noticee. The Noticee vide email dated May 28, 2024 sought deferment of the personal hearing as the Noticee intended to file settlement application. Vide email dated May 29, 2024 Noticee was informed that as per SEBI (Settlement Proceedings) Regulations, 2019, that filing of settlement application does not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of; and accordingly, the personal hearing was postponed to June 14, 2024. The Settlement application was filed by the Noticee on June 25, 2024. Noticee submitted the reply to SCN vide letter dated May 28, 2024. The authorised representatives of the Noticee attended the hearing on June 14, 2024 and reiterated the submissions made by the Noticee vide letter dated May 28, 2024. Further, the Noticees submitted that in case the settlement application of Noticee is rejected by SEBI or is withdrawn by the Noticee, an opportunity may be provided to the Noticee for making additional submission, along with another personal hearing in the matter.

6. As per documents available on records, the Noticee's settlement application was rejected. Hence pursuant to Noticee's request made during personal hearing dated June 14, 2024, Noticee was provided opportunity for making additional submissions vide email dated December 10, 2024 and for a personal hearing on December 20, 2024. Noticee vide letter dated December 18, 2024 submitted additional submissions in the matter, and the authorised representatives of the Noticee attended the hearing on December 20, 2024 and reiterated the submissions made by the Noticee vide letters dated May 28, 2024 and December 18, 2024. Further, the Noticees made additional submissions in the matter vide letter dated January 06, 2025.

7. With respect to allegations in the SCN, the key contentions of the Noticee made vide letters dated May 28, 2024, December 18, 2024 and January 06, 2025 are as under:

**Letter dated May 28, 2024:**

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**Re: Alleged Non-Compliance: Failure to establish BCP-DR setup, quarterly review of the BCP-DR policy and conduct DR drills/live trading from the DR site.**

9. As per the captioned SCN, it is alleged that the Company did not have a BCP-DR setup, leading to alleged non-compliance with Clause 61.7.1 of the SEBI Master Circular, read in conjunction with Clause 7.1 of the SEBI Circular. It is further alleged that the governing board of the Company failed to conduct quarterly reviews of the implementation of the BCP-DR policy for the quarters of April-June 2023, July-September 2023, and October-December 2023, leading to alleged non-compliance with Clause 61.7.2 of the SEBI Master Circular, read with Clause 7.2 of the SEBI Circular, and Paragraph 6(xi) of the NSE Circular, read with Clause A(5) of the Code of Conduct specified in Schedule II of the Brokers Regulations. Additionally, it is alleged that the Company did not conduct DR drills/live trading from the DR site, leading to non-compliance with Clause 61.7.4 of the SEBI Master Circular, read with Clause 7.4 of the SEBI Circular. All the aforementioned allegations are addressed herein collectively to your esteemed office as they are interconnected.
10. In accordance with Clause 7.1 of the SEBI Circular, read with Clause 61.7.1, stock brokers with a minimum client base across exchanges, as specified by the stock exchanges from time to time, must mandatorily establish a BCP-DR setup. The detailed procedures and requirements related to the BCP-DR setup are outlined under Clause 6 of the NSE Circular. The provisions related to the BCP-DR setup in the SEBI Circular and NSE Circular became effective on April 01, 2023.
11. In terms of Clause 6 of the NSE Circular, the requirements for implementing the BCP-DR are broadly as follows:
- (a) **Develop a Comprehensive BCP-DR Policy:** Draft a policy document outlining standard operating procedures for handling disasters. This document should cover: definitions of disaster scenarios, including a 45-minute disruption of critical systems, procedures for

declaring a disaster and shifting operations to the DR site ("**DRS**"), roles and responsibilities of team members and decision-making processes.

- (b) **Establish Disaster Recovery Setup (DRS):** Set up the DRS, preferably in a different seismic zone from the Primary Data Centre (PDC). If not possible, ensure a minimum separation of 250 kilometers. Ensure that the DRS is accessible from the PDC for data syncing and operational continuity.
- (c) **Ensure System Compatibility and Availability:** Maintain a one-to-one correspondence between hardware, software, applications, network, and security devices at both the PDC and DRS. Make sure adequate resources are available to handle operations at both sites.
- (d) **Set Recovery Objectives:** Establish a Recovery Time Objective (RTO) of 2 hours for critical systems. Establish a Recovery Point Objective (RPO) of 15 minutes to limit data loss.
- (e) **Conduct DR Drills and Live Trading:** Perform DR drills or live trading from the DR site every six months. These drills should run all operations from the DRS for at least one full trading day. Document the results and observations from these drills for audit purposes.
- (f) **Constitute Responsible Teams:** Formulate teams responsible for decision-making and operational shifts between the PDC and DRS. Include an Incident and Response Team (IRT) or Crisis Management Team (CMT) chaired by the MD or CTO to handle disaster declarations and operations transitions.
- (g) **Regular Policy Review and Training:** Review the BCP-DR policy annually and conduct ad-hoc reviews for major system changes or technical issues. Conduct periodic training programs for employees and outsourced staff to ensure preparedness.
- (h) **Governing Board Oversight:** Ensure the BCP-DR policy is approved by the Governing Board and review its implementation quarterly.
- (i) **System Audit:** Include BCP-DR preparedness in the annual System Audit. The auditor should verify the capability to shift operations to the DRS and review documented results of DR drills.
- (j) **Continuous Improvement:** Regularly update and improve the BCP-DR setup based on audit feedback, technological advancements, and evolving risks.

12. In terms of the above requirements, the Company needed to evaluate their current IT infrastructure, including hardware, software, network configurations, and data storage, to identify critical systems and processes that must remain operational during a disaster. Furthermore, the Company had to ensure that the DRS has the same hardware, system software, application environment, network, and security devices as the PDC. The Company also had to establish robust and secure network connections between the PDC and DRS to



*facilitate real-time data synchronization. It is unreasonable to expect the same level of infrastructure at the DRS as at the PDC within the given timeframe. Developing a fully functional DRS within three months is not feasible, as the NSE Circular was issued on December 16, 2023. Setting up a DRS involves multiple teams, resources, consultants, and IT staff, and expecting us to hire and deploy everything within three months is not reasonable. Establishing a PDC takes more than a year, and setting up a similar DRS requires at least a year as well.*

- 13. We respectfully submit to your esteemed office that upon the issuance of the NSE Circular in December 2022, the Company promptly initiated the procedures to complete the BCP-DR setup. However, the team required additional time to procure the necessary hardware. Additionally, the Company's Primary Data Center (PDC) is situated in Mumbai, where most vendors are also located. This presented a challenge in complying with the requirement of having the PDC and the DRS in two separate seismic zones or a gap of 250KM between both. Consequently, it took additional time to decide upon a suitable location for the DRS. The Company was committed to selecting the best service provider capable of efficiently resolving any potential issues, which further contributed to the delay.*
- 14. Additionally, establishing a fully functional BCP-DR setup involves a comprehensive analysis of the current operational workflows and dependencies. This analysis requires significant time to ensure that all critical functions are adequately mapped and that appropriate failover mechanisms are implemented. Given the complexity and scale of our operations, this process cannot be expedited without compromising the integrity and reliability of the BCP-DR setup.*
- 15. Procuring the necessary hardware and software to mirror the PDC environment at the DRS is a time-consuming process. The procurement cycle includes vendor selection, negotiation, acquisition, and deployment, all of which typically span several months. Moreover, integration of these new systems into our existing infrastructure requires careful planning and execution to avoid disruptions to our ongoing operations.*
- 16. Training our personnel to manage and operate the DRS effectively is another critical aspect that requires substantial time. Our staff needs to be proficient in handling disaster scenarios, which necessitates detailed training programs and simulation exercises. These training initiatives are essential to ensure that our team can respond swiftly and effectively during an actual disaster, but they cannot be completed within a short timeframe. The requirements for the BCP-DR setup were novel at that time, and the team needed time to fully comprehend the repercussions and implications of the NSE Circular. Improper compliance constitutes non-*

compliance; thus, the Company took all necessary efforts to implement the required setup properly including discussion with all stakeholders. Despite these efforts, we faced uncontrollable factors that impeded timely implementation. We respectfully request your understanding and consideration of these circumstances in evaluating our compliance efforts in implementing the NSE Circular with effect from April 01, 2023.

17. Regulatory compliance and audits are integral parts of setting up a BCP-DR framework. Ensuring that our DRS meets all regulatory requirements involves rigorous internal and external audits, which are time-intensive processes. Given the stringent standards set by SEBI and NSE, rushing through these audits would likely result in non-compliance, defeating the purpose of the BCP-DR setup.
18. The synchronization of data between the PDC and DRS must be continuous and seamless to maintain data integrity. Setting up real-time data replication mechanisms involves intricate configurations and extensive testing to ensure data consistency and security. This process cannot be abbreviated without risking data loss or corruption, which would undermine the effectiveness of the disaster recovery plan.
19. Collaborating with external vendors in disaster recovery is essential to build a robust BCP-DR setup. These vendors bring valuable insights and best practices that enhance the resilience of our infrastructure. However, engaging with these vendors, scheduling their involvement, and incorporating their recommendations into our setup is a lengthy process that extends beyond the initial three-month window provided by the NSE Circular. We initially engaged in discussions with Yotta Data Services Private Limited ("Yotta") based in Mumbai for setting up the server. However, the said vendor only had the capacity to establish the server in Mumbai, which did not comply with the SEBI Circular's condition of having the PDC and DRS in separate seismic zones or condition of gap of 250 KM. Securing a suitable server location that also accommodates our office requirements is a complex and challenging task. Ultimately, it was decided to set up the server in Hyderabad to meet the conditions stipulated in the NSE Circular. We engaged in extensive discussions with Yotta through emails and calls over a period of 2-3 months, and even completed the full setup. However, due to the specific requirements imposed by the NSE Circular, we were unable to proceed further for BCP-DR setup. Furthermore, in August 2023, we received an email from Sify Technologies on behalf of STT Global Data Center Private Limited ("STT") stating that they would not deliver the router to Hyderabad if the GST location of the Company was in Mumbai. Consequently, we had to take delivery in Mumbai and then arrange for the router to be sent to Hyderabad. This logistical issue also contributed to the delay in implementation. Copies of certain exchanges with Yotta,

provided on a sample basis, and the email from STT are collectively enclosed herewith and marked as "**Annexure A**" for your records and future reference.

20. Lastly, the financial implications of setting up a DRS equivalent to the PDC are significant. Securing the necessary funding, budgeting for the project, and ensuring that expenditures align with our financial planning cycles adds another layer of complexity. Such substantial investments require board approvals and careful financial planning, which cannot be rushed without jeopardizing our financial stability.
21. Given these multifaceted challenges, it is evident that developing a fully functional BCP-DR setup within three months is impractical. We request your good office to consider these constraints and grant leniency in this matter. We humbly submit to your esteemed office that the BCP-DR setup has now been fully operationalized without any issues in consultation with NSE and our vendors.
22. In this context, it's essential to consider that the law does not expect us to accomplish the impossible, particularly given the scale and complexity of operations of the Company. As a company of considerable size and scope, the task of establishing a fully functional BCP-DR setup within the three-month timeframe stipulated by the NSE Circular presents inherent challenges that cannot be feasibly overcome. The legal doctrine of impossibility recognizes that performance under a contract may be excused when circumstances arise that render performance objectively impossible. Considering the multifaceted nature of our business operations, along with the intricate technical, logistical, and regulatory requirements involved in implementing a BCP-DR setup, achieving full compliance within the prescribed timeline is impractical. The sheer magnitude of resources, both human and financial, required to evaluate, procure, implement, and test a comprehensive BCP-DR infrastructure within such a compressed timeframe is substantial. Rushing through these critical processes increases the risk of errors, inefficiencies, and potential non-compliance, ultimately undermining the effectiveness of the BCP-DR setup. **Rushing through these crucial phases compromises the quality and effectiveness of the BCP-DR setup, thereby defeating its intended purpose of safeguarding business continuity during disruptions.** Considering these factors, it is evident that the expectation of achieving full compliance with the BCP-DR requirements within the prescribed timeframe is unreasonable. As such, we urge your esteemed office to take into account the practical challenges the Company face and to take a lenient view in this regard.

23. *Generally, when new requirements are introduced, it is not always feasible for all entities to implement them at the same pace considering the complexities involved. The Company planned resource utilization including negotiating with vendors of internet, data centers, connections with exchanges lease lines, network, application, etc.*
24. *We humbly submit that taking adverse action based on the procedural issues to meet the requirements of the NSE Circular within the stipulated timeframe could set a detrimental precedent in the capital market. While regulatory compliance is paramount, it's crucial to recognize the practical challenges in swiftly implementing complex infrastructure changes. Granting some leniency or allowing for an extended timeline to achieve full compliance with the BCP-DR requirements would not only acknowledge the inherent difficulties but also foster a more conducive environment for all market participants to adapt and adhere to regulatory standards effectively. Moreover, penalizing companies for genuine efforts to comply, albeit within a reasonable timeframe, may deter innovation and investment in critical areas such as risk management and business continuity planning. Therefore, a balanced approach that considers the unique circumstances of each entity and allows for reasonable adjustments in compliance timelines would better serve the interests of market integrity and stability in the long run.*
25. *While it might be theoretically possible for the Company to implement the BCP-DR setup within the prescribed three-month timeframe, practical considerations must also be taken into account. Merely meeting a deadline for the sake of compliance, without ensuring that the implemented measures adequately address the Company's practical needs and operational requirements, would be of little value. Rushing through the implementation process without thorough planning and consideration of the Company's unique circumstances could result in subpar outcomes that fail to provide the intended resilience and continuity during disruptions.*
26. *While the importance of establishing a BCP-DR setup is acknowledged, it's imperative to recognize the practical challenges associated with managing day-to-day operations alongside the implementation of such a setup, particularly with our existing resources. Our primary focus has always been on ensuring seamless service delivery to our clients, and while we fully understand the significance of the DRS and BC setup, the resources required for its immediate implementation were not sufficient.*
27. *We humbly pray your esteemed office to not take any adverse action against the Company based on its inability to fully comply with the requirements of the NSE Circular within the prescribed timeframe. Recognizing the genuine efforts and constraints faced by the Company,*

*we respectfully urge SEBI to exercise leniency and consider the practical challenges involved in implementing complex infrastructure changes.*

- 28. As per Clause 6(xi) of the NSE Circular, 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. It is alleged that the governing body of the Company has not allegedly review the implementation of the BCP policy on a quarterly basis for the quarters of April-June 2023, July-September 2023, and October-December 2023.*
- 29. In relation to the above, we humbly submit that the BCP-DR policy has been shared with your esteemed office previously. It's essential to recognize that while drafting a policy is one aspect, the implementation of said policy is another intricate process that requires meticulous planning and execution. While drafting the policy itself may feasibly be accomplished within the three-month timeframe, ensuring its effective implementation necessitates additional time and resources. The board of directors of the Company on April 01, 2023 constituted governing body namely "BCP-DR Committee" for reviewing the implementation of the NSE Circular. Furthermore, BCP-DR committee reviewed the quarterly implementation status of NSE Circular for the quarters ended April-June 2023, July-September 2023, and October-December 2023. These reviews were conducted on July 31, 2023, October 09, 2023, and January 19, 2024, respectively. Hence, the allegation that the Company failed to complete the review of the BCP policy implementation on a quarterly basis for the aforementioned periods is unfounded. We humbly submit that any delay in submitting this information earlier was due to a lack of clarity earlier regarding the specific requirements outlined. The certified true copy of the resolution passed by the Board of Directors of the Company is enclosed herewith and marked as "**Annexure B**" for your records and future reference.*
- 30. We respectfully pray for the reconsideration and dropping of the allegation concerning the quarterly review of the BCP-DR policy. Our sincere efforts to diligently review and monitor the implementation of the BCP policy were undertaken, with thorough assessments conducted by the BCP-DR Committee for the quarters ended April-June 2023, July-September 2023, and October-December 2023. We humbly seek your understanding and favorable consideration in this matter.*
- 31. While we acknowledge the absence of a fully implemented and operationalized BCP -DR setup, it's important to note that the BCP policy was subject to quarterly review as part of the implementation process. Despite the ongoing efforts to establish the BCP-DR infrastructure, the policy itself underwent evaluation by governing body of the Company.*

32. *In accordance with Clause 7.4 of the SEBI Circular and Clause 6(v) of the NSE Circular, specified stock brokers are obligated to conduct DR drills or live trading from the DRS. These drills or live trading sessions must encompass the operation of all activities from the DRS for a duration of at least one full trading day on half yearly basis. It is alleged that the Company has not conducted any such drills or live trading sessions from the DRS as required by the aforementioned regulatory provisions.*
33. *We respectfully submit to your esteemed office that it was not feasible for the Company to conduct the required drill or live trading prior to the implementation of the BCP-DR setup. As previously mentioned, the Company encountered numerous challenges in establishing the BCP-DR infrastructure, rendering it impractical to conduct such drills or live trading within the stipulated timeframe.*
34. *It is paramount to emphasize that while the regulatory provisions mandate the conduct of DR drills or live trading from the DRS on a half-yearly basis, the Company's inability to fulfill this requirement stemmed from genuine challenges encountered during the establishment of the BCP-DR setup. These challenges were multifaceted and significantly impeded our ability to conduct the prescribed drills or live trading sessions within the specified timeframe. Despite the inability to conduct DR drills or live trading as mandated by regulatory provisions, it is imperative to highlight the proactive steps taken by the Company to address the underlying issues and expedite the implementation of the BCP-DR setup. The Company diligently engaged with relevant stakeholders, allocated necessary resources, and expedited the procurement and deployment of infrastructure to facilitate compliance with regulatory requirements.*
35. *It is crucial to highlight that the Company's delay in conducting the prescribed DR drills or live trading sessions should be viewed in the context of the considerable efforts and investments made towards establishing a robust BCP-DR infrastructure. While the Company acknowledges the importance of regulatory compliance, we respectfully urge your esteemed office to consider the extenuating circumstances and grant appropriate leniency in this matter.*
36. *On March 2, 2024, the DR Site was officially made operational by the Company. Furthermore, the Company has diligently conducted live drills from the DR site on May 18, 2024. For evidential purposes, detailed log information regarding the live drill conducted at the DR site can be accessed through this link: [https://drive.google.com/drive/folders/1ENqnCywFBjXYYfEtzJFJhoA9v8gzlgSO?usp=drive\\_link](https://drive.google.com/drive/folders/1ENqnCywFBjXYYfEtzJFJhoA9v8gzlgSO?usp=drive_link) and the same is not attached due to size limitation.*

37. We respectfully submit that the BCP-DR setup, including the establishment of a DR site, has been successfully implemented by the Company. In light of these developments, we earnestly request a lenient consideration regarding any potential action under the SCN. We humbly pray for the SCN to be dropped, taking into account the proactive measures taken by the Company to ensure compliance and operational resilience.
38. We respectfully urge your esteemed office to refrain from imposing any penalty and to consider a lenient approach by issuing an administrative warning only. The Company has diligently implemented a BCP-DR setup, including conducting DR drills on a half-yearly basis. In light of these remedial actions, we believe that a penalty would be disproportionate, particularly considering this is the first instance of non-compliance. We draw your attention to the decision of the Hon'ble Securities Appellate Tribunal in the case of **National Highway Authority of India vs SEBI (Appeal No. 232 of 2020, Order dated August 27, 2020)** wherein it was held that:
39. "23. In the light of the aforesaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty **but the law also provides and gives power to the respondent to relax the strict enforcement of the Regulations. We are of the opinion that the Adjudicating Officer failed to take into consideration the mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty.**
24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, **we are of the opinion that the imposition of penalty of Rs.7 lakhs in the given circumstances was harsh and excessive. Thus, the imposition of Rs.7 lakhs upon the Appellant cannot be sustained and is substituted with a warning with a further condition that in the event the Appellant violates Regulation 52 of the LODR Regulations in future it will be open to the Respondent to initiate proceedings under the Act/LODR Regulations and proceed in accordance with law.** In view of the aforesaid, the appeal is allowed in part. The penalty of Rs.7 lakhs is substituted with a warning. In the circumstances of the case, there shall be no order as to costs."

**Re: Alleged non-compliance 2: Failure to mandatorily establish API based LAMA to allow stock exchanges to monitor the 'Key Parameters' of the 'Critical Systems'**

40. *It is alleged that the Company has not connected all critical systems with LAMA, leading to non-compliance under Clause 61.6.1. of SEBI Master Circular read with Clause 6.1 of the SEBI Circular, Para 5.i of the NSE Circular read with Clause A(5) of the Code of Conduct as specified in Schedule II of the Brokers Regulations.*
41. *As per the aforementioned circulars, stock exchanges have to build an API based LAMA to be operated between stock exchanges and specified stock brokers' trading systems. Under this mechanism, the members shall monitor key systems & functional parameters to ensure that their trading systems function in a smooth manner. Stock exchanges shall, through the API gateway, independently monitor 'Key Parameters' of the 'Critical Systems' as specified in the NSE Circular to gauge the health of the trading systems of the specified stock brokers.*
42. *On March 31, 2023, the Company received an email from NSE regarding the login credentials of the LAMA API for the live environment at 11:07 PM, less than 11 hours before it was to be enabled on April 01, 2023. However, upon attempting to use the provided credentials, they were found to be non-functional. Subsequently, on June 22, 2023, the Company notified NSE via email that they were unable to access the live LAMA API from IP 43.204.247.107, attaching the error encountered. Despite this, there was no response from NSE, prompting a follow-up email on July 06, 2023. NSE's response on July 07, 2023, requested further details on the error response. The Company promptly replied on July 10, 2023, referencing the earlier email and error report. Continued efforts to resolve the issue included responses from both parties on July 11, 13, 14, 18, and 24, 2023, with NSE providing the header key and remarks on July 25, 2023. The Company further highlighted the persisting issues to NSE on July 25 and 26, 2023, and followed up again on August 03 and 09, 2023. The purpose of detailing these correspondences is to underscore the Company's diligent efforts to fully implement the LAMA system, despite encountering obstacles. It is crucial to note that the integration of LAMA is not a simple plug-and-play API process; rather, it requires consultation and guidance from NSE. As NSE issues were gradually resolved, critical systems were successfully integrated into LAMA. As of now, critical systems of LAMA have been integrated, marking significant progress in the Company's compliance efforts. The emails referred above are collectively enclosed herewith and marked as "**Annexure C**" for your records and future reference.*
43. *We respectfully submit that the term "critical systems" has not been exhaustively defined, but rather encompasses all IT systems related to trading applications and trading-related services, as per the NSE Circular. Given the broad scope of this definition, it becomes challenging to precisely identify the components that constitute critical systems. If NSE had provided a clearer definition of critical systems, the Company would have promptly instructed the technical team*



to integrate these systems accordingly. The lack of specific guidance on critical systems has contributed to the delay in integration efforts. Therefore, we request your understanding of this ambiguity and urge for leniency in evaluating the Company's compliance efforts in this regard.

44. The Company installed the LAMA system on September 11, 2023 when NSE resolved all the issues and two critical system – hardware and application were integrated thereafter. Regrettably, despite our efforts, only 2 critical systems (Database & Network), as viewed by NSE as critical, could not be integrated into the LAMA system. One of the critical systems is the database, and one of the required metrics for this system is the Replication Bandwidth Utilization (in %) according to the threshold provided by NSE. The Replication Bandwidth Utilization could not be accurately measured as it is interconnected with the BCP-DR setup, which was not in place at the time. Therefore, it was impossible for us to integrate the database into LAMA initially. The integration was completed later, once the BCP-DR setup was fully implemented. The threshold details provided by NSE are enclosed herewith and marked as "**Annexure D**" for your records and future reference. For the network as a critical system, the challenge arose from determining threshold values for key parameters within the LAMA system, particularly concerning network components. We needed to insert the threshold values for the network, for which we were dependent on the vendor, Sify. Unfortunately, Sify did not provide the necessary threshold values and were trying to seek information from Sify from 2023.
45. We respectfully submit to your esteemed office that the implementation of LAMA critical systems in 2023 was hindered by unresolved issues encountered during that period. Despite our earnest efforts, timely resolution of these issues proved elusive, thereby impeding our ability to fully integrate the critical systems of LAMA within the specified timeframe. Given the complex nature of the task and the requisite guidance from exchanges, our ability to proceed with the implementation was contingent upon timely resolution of the aforementioned issues. We wish to clarify that our intention is not to put anything on exchanges. We understand that exchanges have to manage a multitude of brokers and their respective requirements. However, we highlight the issue to bring to your attention that the delay in implementing LAMA critical systems was beyond our control. It is important to emphasize that, given optimal conditions, the implementation of LAMA could have been accomplished well in advance.
46. We have successfully integrated all "Critical Systems" into LAMA based on the guidance provided by NSE. The log details to show the indicators that the Critical Systems are connected to LAMA are enclosed herewith and marked as "**Annexure E**" for your records and future reference.

47. We humbly submit to your esteemed office that the allegations mentioned in the SCN pertain to issues beyond the control of the Company. The Company is also dependent on other stakeholders, including NSE and vendors such as Kamabala Solutions, Sify, STT, and Yotta, for the implementation of LAMA and BCP-DR. If these matters had been within the Company's control, the Company would accept responsibility. However, the Company was completely reliant on the resolution of issues by NSE and the aforementioned vendors. The law does not expect us to accomplish the impossible, especially when the factors contributing to the delay are not within our control. It is pertinent to note here that the lease line for BCP-DR was ordered in June 2023. Therefore, it cannot be held that the Company did not implement the BCP-DR setup. The Company took necessary steps to initiate the process after thoroughly understanding the requirements under the NSE Circular.
48. We draw your attention to the following judgments passed by Hon'ble Supreme Court and Hon'ble SAT for levying penalty as follows:
- a. **Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)** - The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."
  - b. **Akbar Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579** - It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that: Para 61: "We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shatna Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, **wherein it has been held that in imposing penalty the requisite mensrea has to be established**".
49. Penalties are penal in nature, and there must be an element of proof of willful default or willful disobedience of the Brokers Regulations. Mere delay in implementing the setup which is not due to the controllable factors cannot give rise to adjudication proceedings. It must be willful and deliberate defiance of the Brokers Regulations. The mere unintended technical violations cannot be a subject matter of adjudication proceedings. This is also the view taken by the **Hon'ble SAT in Cobat International Capital Corpn. vs. SEBI in reported 2004(51) SCL 307.**

50. In this regard, it is apt to site view of Hon'ble Securities Appellate Tribunal (SAT) in Housing Development Finance Corporation [(2000) 28 SCL 289 Page 5 of 16 (SAT)], that **"default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum"**. However, in the instant case no loss has been caused to any client of the Company and NSE has not initiate any action against the Company as NSE understood the practical difficulties in implementing the NSE Circular. No tangible loss has been inflicted upon any stakeholders, and Company has not gained any undue advantage. Additionally, the relevant portion of the judgment of the Hindustan Steel limited vs. State of Orissa, judgment dated August 4, 1969 is reproduced wherein the Hon'ble Supreme Court provided clear-cut guidelines in this regard.
51. "An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and **penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so.** Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."
52. It is settled law that inadvertent and bona fide mistakes should not be penalized, especially if of a small or technical nature. Going by the law established in the case of Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata (Civil Appeal No. 6924 of 2012), it is entirely possible that even important corporations or entities can make bona fide and inadvertent errors, and imposition of penalty is not justified in these cases. The relevant portion of the judgment is provided as under –
- "19. It appears to use that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the

absence of due care, in a case such as the present, does not mean the assessee is guilty of furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified”

53. Hon’ble SAT in the matter of **Cabot International Capital Corporation Vs. Adjudicating Officer, Securities & Exchange Board of India (Appeal No. 24/2000)** held as given below:

“On a perusal of section 151 it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable significance, especially in view of the guidelines provided by the legislature in 15J "the Adjudicating Officer shall have due regard to the factors" stated in this section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 151, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case.”

.....’

**Letter dated December 18, 2024:**

‘ .....

**Re: Alleged Non-Compliance: Failure to establish BCP-DR setup, quarterly review of the BCP-DR policy and conduct DR drills/live trading from the DR site.**

9. As per the captioned SCN, it is alleged that the Company did not have a BCP- DR setup, leading to alleged non-compliance with Clause 61.7.1 of the SEBI Master Circular, read in conjunction with Clause 7.1 of the SEBI Circular. It is further alleged that the governing board of the Company failed to conduct quarterly reviews of the implementation of the BCP-DR policy for the quarters of April-June 2023, July-September 2023, and October-December 2023, leading to alleged non-compliance with Clause 61.7.2 of the SEBI Master Circular, read with Clause 7.2 of the SEBI Circular, and Paragraph 6(xi) of the NSE Circular, read with Clause A(5) of the Code of Conduct specified in Schedule II of the Brokers Regulations. Additionally, it is alleged that the Company did not conduct DR drills/live trading from the DR site, leading to non-compliance with Clause 61.7.4 of the SEBI Master Circular, read with Clause 7.4 of the SEBI Circular. All the aforementioned allegations are addressed herein collectively to your esteemed office as they are interconnected.

10. *In accordance with Clause 7.1 of the SEBI Circular, read with Clause 61.7.1, stock brokers with a minimum client base across exchanges, as specified by the stock exchanges from time to time, must mandatorily establish a BCP-DR setup. The detailed procedures and requirements related to the BCP-DR setup are outlined under Clause 6 of the NSE Circular. The provisions related to the BCP- DR setup in the SEBI Circular and NSE Circular became effective on April 01, 2023.*
11. *In terms of Clause 6 of the NSE Circular, the requirements for implementing the BCP-DR are broadly as follows:*
- (a) Develop a Comprehensive BCP-DR Policy: Draft a policy document outlining standard operating procedures for handling disasters. This document should cover: definitions of disaster scenarios, including a 45- minute disruption of critical systems, procedures for declaring a disaster and shifting operations to the DR site (“DRS”), roles and responsibilities of team members and decision-making processes.*
  - (b) Establish Disaster Recovery Setup (DRS): Set up the DRS, preferably in a different seismic zone from the Primary Data Centre (PDC). If not possible, ensure a minimum separation of 250 kilometers. Ensure that the DRS is accessible from the PDC for data syncing and operational continuity.*
  - (c) Ensure System Compatibility and Availability: Maintain a one-to-one correspondence between hardware, software, applications, network, and security devices at both the PDC and DRS. Make sure adequate resources are available to handle operations at both sites.*
  - (d) Set Recovery Objectives: Establish a Recovery Time Objective (RTO) of 2 hours for critical systems. Establish a Recovery Point Objective (RPO) of 15 minutes to limit data loss.*
  - (e) Conduct DR Drills and Live Trading: Perform DR drills or live trading from the DR site every six months. These drills should run all operations from the DRS for at least one full trading day. Document the results and observations from these drills for audit purposes.*
  - (f) Constitute Responsible Teams: Formulate teams responsible for decision- making and operational shifts between the PDC and DRS. Include an Incident and Response Team (IRT) or Crisis Management Team (CMT) chaired by the MD or CTO to handle disaster declarations and operations transitions.*
  - (g) Regular Policy Review and Training: Review the BCP-DR policy annually and conduct ad-hoc reviews for major system changes or technical issues. Conduct periodic training programs for employees and outsourced staff to ensure preparedness.*

*(h) Governing Board Oversight: Ensure the BCP-DR policy is approved by the Governing Board and review its implementation quarterly.*

*(i) System Audit: Include BCP-DR preparedness in the annual System Audit. The auditor should verify the capability to shift operations to the DRS and review documented results of DR drills.*

*(j) Continuous Improvement: Regularly update and improve the BCP-DR setup based on audit feedback, technological advancements, and evolving risks.*

*12. In terms of the above requirements, the Company needed to evaluate their current IT infrastructure, including hardware, software, network configurations, and data storage, to identify critical systems and processes that must remain operational during a disaster. Furthermore, the Company had to ensure that the DRS has the same hardware, system software, application environment, network, and security devices as the PDC. The Company also had to establish robust and secure network connections between the PDC and DRS to facilitate real-time data synchronization. It is unreasonable to expect the same level of infrastructure at the DRS as at the PDC within the given timeframe. Developing a fully functional DRS within three months is not feasible, as the NSE Circular was issued on December 16, 2023. Setting up a DRS involves multiple teams, consultants, and IT staff, and expecting us to hire and deploy everything within three months is not reasonable. Establishing a PDC takes more than a year, and setting up a similar DRS requires at least a year as well.*

*13. We respectfully submit to your esteemed office that upon the issuance of the NSE Circular in December 2022, the Company promptly initiated the procedures to complete the BCP-DR setup. However, the team required additional time to procure the necessary hardware. Additionally, the Company's Primary Data Center (PDC) is situated in Mumbai, where most vendors are also located. This presented a challenge in complying with the requirement of having the PDC and the DRS in two separate seismic zones or a gap of 250KM between both. Consequently, it took additional time to decide upon a suitable location for the DRS. The Company was committed to selecting the best service provider capable of efficiently resolving any potential issues, which further contributed to the delay.*

*14. Additionally, establishing a fully functional BCP-DR setup involves a comprehensive analysis of the current operational workflows and dependencies. This analysis requires significant time to ensure that all critical functions are adequately mapped and that appropriate failover mechanisms are implemented. Given the complexity and scale of our operations, this process cannot be expedited without compromising the integrity and reliability of the BCP-DR setup.*

15. *Procuring the necessary hardware and software to mirror the PDC environment at the DRS is a time-consuming process. The procurement cycle includes vendor selection, negotiation, acquisition, and deployment, all of which typically span several months. Moreover, integration of these new systems into our existing infrastructure requires careful planning and execution to avoid disruptions to our ongoing operations.*
16. *Training our personnel to manage and operate the DRS effectively is another critical aspect that requires substantial time. Our staff needs to be proficient in handling disaster scenarios, which necessitates detailed training programs and simulation exercises. These training initiatives are essential to ensure that our team can respond swiftly and effectively during an actual disaster, but they cannot be completed within a short timeframe. The requirements for the BCP- DR setup were novel at that time, and the team needed time to fully comprehend the repercussions and implications of the NSE Circular. Improper compliance constitutes non-compliance; thus, the Company took all necessary efforts to implement the required setup properly including discussion with all stakeholders. Despite these efforts, we faced uncontrollable factors that impeded timely implementation. We respectfully request your understanding and consideration of these circumstances in evaluating our compliance efforts in implementing the NSE Circular with effect from April 01, 2023.*
17. *Regulatory compliance and audits are integral parts of setting up a BCP-DR framework. Ensuring that our DRS meets all regulatory requirements involves rigorous internal and external audits, which are time-intensive processes. Given the stringent standards set by SEBI and NSE, rushing through these audits would likely result in non-compliance, defeating the purpose of the BCP-DR setup.*
18. *The synchronization of data between the PDC and DRS must be continuous and seamless to maintain data integrity. Setting up real-time data replication mechanisms involves intricate configurations and extensive testing to ensure data consistency and security. This process cannot be abbreviated without risking data loss or corruption, which would undermine the effectiveness of the disaster recovery plan.*
19. *Collaborating with external vendors in disaster recovery is essential to build a robust BCP-DR setup. These vendors bring valuable insights and best practices that enhance the resilience of our infrastructure. However, engaging with these vendors, scheduling their involvement, and incorporating their recommendations into our setup is a lengthy process that extends beyond the initial three-month window provided by the NSE Circular. We initially engaged in discussions with Yotta Data Services Private Limited (“Yotta”) based in Mumbai for setting up the server. However, the said vendor only had the capacity to establish the server in Mumbai, which did not comply with*

the SEBI Circular's condition of having the PDC and DRS in separate seismic zones or condition of gap of 250 KM. Securing a suitable server location that also accommodates our office requirements is a complex and challenging task. Ultimately, it was decided to set up the server in Hyderabad to meet the conditions stipulated in the NSE Circular. We engaged in extensive discussions with Yotta through emails and calls over a period of 2-3 months, and even completed the full setup. However, due to the specific requirements imposed by the NSE Circular, we were unable to proceed further for BCP-DR setup. Furthermore, in August 2023, we received an email from Sify Technologies on behalf of STT Global Data Center Private Limited ("STT") stating that they would not deliver the router to Hyderabad if the GST location of the Company was in Mumbai. Consequently, we had to take delivery in Mumbai and then arrange for the router to be sent to Hyderabad. This logistical issue also contributed to the delay in implementation. Copies of certain exchanges with Yotta, provided on a sample basis, and the email from STT are collectively enclosed herewith and marked as "Annexure A" for your records and future reference.

20. Furthermore, to substantiate our connection with STT, the details of our DRS setup location in Hyderabad and internet protocol address ("IP Address") are provided below. We have leased server storage racks from STT for link termination and server installation. Copies of the invoice(s) are provided on a sample basis, for the ordered racks, dated May 26, 2023, and the cross-connection charge for link termination, are enclosed herewith and marked as "Annexure B" for your records and future reference.

21. To further validate that our DRS setup is connected to all stock exchanges through STT, we established connections with the Bombay Stock Exchange (BSE) on July 27, 2023, the National Commodity & Derivatives Exchange Limited (NCDEX) on August 9, 2023, the National Stock Exchange (NSE) on October 7, 2023, and the Multi Commodity Exchange of India Limited (MCXINDIA) on October 25, 2023. Copies of the email communications between our Company and the above-mentioned stock exchanges are collectively enclosed herewith and marked as "Annexure C" for your records and future reference.

22. Details of STT location and IP Address:

| <b>STT Address</b>   |
|--|
| STT Global Data Centres India Private Limited, Videsh Sanchar Bhavan, CFC-1, Software Units Layout, Madhapur, Telangana 500081 Contact: Gaurav Pandav 8850414102 |



| <b>Rack Details:</b>   |  |  |  |  |  |
|--|--|--|--|--|--|
| Finvasia Securities Private Limited. Rack Number: CR004, Tile Number: D3,<br>Floor: HYD-DC1-B1-GF-Q1, Hyderabad DC |  |  |  |  |  |

| <b>Exchange</b> | <b>Link</b> | <b>Link Circuit ID</b>  | <b>Wan IP</b>         | <b>Lan IP</b>                           | <b>Subnet Mask</b>  |
|-----------------|-------------|-------------------------|-----------------------|---|---------------------|
| NSE             | TCL         | 091HYDE1258A0<br>115968 | 10.244.179.1<br>62    | 10.244.179.1<br>62                      | 255.255.255.25<br>2 |
| BSE             | TCL         | 091HYDE6230A0<br>108598 | 172.25.240.2<br>10/30 | 10.171.142.3<br>-<br>10.171.142.2<br>54 | 255.255.255.19<br>2 |
| MCX             | AIRTEL      | 14436161                | 172.46.255.1<br>02/30 | 10.170.152.2<br>-<br>10.170.152.6<br>0  | 255.255.255.19<br>2 |
| NCDEX           | TCL         | 091HYDE6230A0<br>107275 | 10.126.139.4<br>6/30  | 10.200.6.130<br>-<br>10.200.6.190       | 255.255.255.19<br>2 |

23. Given these multifaceted challenges, it is evident that developing a fully functional BCP-DR setup within three months is impractical without compromising the integrity of the BCP-DR setup. We request your good office to consider these constraints and grant leniency in this matter. We humbly submit to your esteemed office that the BCP-DR setup has now been fully operationalized without any issues in consultation with NSE and our vendors.
24. In this context, it's essential to consider that the law does not expect us to accomplish the impossible, particularly given the scale and complexity of operations of the Company. As a company of considerable size and scope, the task of establishing a fully functional BCP-DR setup within the three-month timeframe stipulated by the NSE Circular presents inherent challenges that cannot be feasibly overcome. The legal doctrine of impossibility recognizes that performance under a contract may be excused when circumstances arise that render performance objectively impossible. Considering the multifaceted nature of our business operations, along with the intricate technical, logistical, and regulatory requirements involved in implementing a BCP-DR setup, achieving full compliance within the prescribed timeline is impractical. The sheer magnitude of resources, both human and financial, required to evaluate, procure, implement, and test a comprehensive BCP-DR infrastructure within such a compressed timeframe is substantial. Rushing through these critical processes increases the risk of errors, inefficiencies, and potential non-compliance, ultimately undermining the effectiveness of the BCP-DR setup. Rushing through these

*crucial phases compromises the quality and effectiveness of the BCP-DR setup, thereby defeating its intended purpose of safeguarding business continuity during disruptions.*

25. *Considering these factors, it is evident that the expectation of achieving full compliance with the BCP-DR requirements within the prescribed timeframe is unreasonable. As such, we urge your esteemed office to take into account the practical challenges the Company face and to take a lenient view in this regard.*
26. *It is respectfully submitted that the implementation of a BCP-DR setup generally requires a transitional window, as it involves substantial coordination among multiple stakeholders. In this case, the delay was further compounded by the time taken by NSE to respond to the Company's queries. It is pertinent to note that the BCP-DR setup is not a simple plug-and-play solution that the Company could have immediately deployed by merely incurring expenditure. Instead, its implementation was contingent on various external factors, including inputs and actions from NSE. In light of these circumstances, initiating action against the Company solely on account of the delay would be unduly harsh, particularly as the delay was due to factors beyond the Company's control. We humbly submit that taking adverse action based on the procedural issues to meet the requirements of the NSE Circular within the stipulated timeframe could set a detrimental precedent in the capital market. While regulatory compliance is paramount, it's crucial to recognize the practical challenges in swiftly implementing complex infrastructure changes. Granting some leniency or allowing for an extended timeline to achieve full compliance with the BCP-DR requirements would not only acknowledge the inherent difficulties but also foster a more conducive environment for all market participants to adapt and adhere to regulatory standards effectively. Moreover, penalizing companies for genuine efforts to comply, albeit within a reasonable timeframe, may deter innovation and investment in critical areas such as risk management and business continuity planning. Therefore, a balanced approach that considers the unique circumstances of each entity and allows for reasonable adjustments in compliance timelines would better serve the interests of market integrity and stability in the long run.*
27. *While it might be theoretically possible for the Company to implement the BCP- DR setup within the prescribed three-month timeframe, practical considerations must also be taken into account. Merely meeting a deadline for the sake of compliance, without ensuring that the implemented measures adequately address the Company's practical needs and operational requirements, would be of little value. Rushing through the implementation process without thorough planning and consideration of the Company's unique circumstances could result in subpar outcomes that fail to provide the intended resilience and continuity during disruptions.*

28. *It is respectfully submitted that regulatory frameworks must strike a balance between achieving policy objectives and acknowledging the practical challenges faced by entities operating in diverse and complex environments. The doctrine of regulatory proportionality, recognized by courts and regulators globally, mandates that measures imposed must be necessary, suitable, and proportionate to their intended purpose. In this case, the stringent timeline for implementing a full-fledged BCP-DR setup within three months does not account for industry-specific constraints, supply chain dependencies, or the criticality of ensuring seamless integration with ongoing operations. Such expectations risk creating undue burdens on entities striving for compliance in good faith.*
29. *Establishing a BCP-DR setup in compliance with SEBI and NSE guidelines involves intricate processes that are unparalleled in scale and scope. Benchmark studies and practices in comparable jurisdictions indicate that setting up such infrastructure typically requires a phased approach spanning 12 to 18 months. This includes site selection, procurement, hardware and software installation, network testing, staff training, and conducting simulations. The imposition of a compressed timeline disregards these industry norms and imposes impractical constraints that may inadvertently hinder the development of robust compliance mechanisms.*
30. *Without prejudice to our earlier submissions, we submit that the Company has demonstrated consistent efforts to meet compliance requirements. This includes securing vendor support, allocating substantial financial resources, engaging experienced personnel, and conducting internal reviews to align operations with regulatory mandates.*
31. *We humbly pray your esteemed office to not take any adverse action against the Company based on its inability to fully comply with the requirements of the NSE Circular within the prescribed timeframe. Recognizing the genuine efforts and constraints faced by the Company, we respectfully urge SEBI to exercise leniency and consider the practical challenges involved in implementing complex infrastructure changes.*
32. *Further, as per Clause 6(xi) of the NSE Circular, 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. It is alleged that the governing body of the Company has not allegedly review the implementation of the BCP policy on a quarterly basis for the quarters of April-June 2023, July-September 2023, and October-December 2023.*
33. *In relation to the above, we humbly submit that the BCP-DR policy has been shared with your esteemed office previously. It's essential to recognize that while drafting a policy is one aspect, the implementation of said policy is another intricate process that requires meticulous planning and*

execution. While drafting the policy itself may feasibly be accomplished within the three-month timeframe, ensuring its effective implementation necessitates additional time and resources. The board of directors of the Company on April 01, 2023 constituted governing body namely "BCP-DR Committee" for reviewing the implementation of the NSE Circular. Furthermore, BCP-DR committee reviewed the quarterly implementation status of NSE Circular for the quarters ended April- June 2023, July-September 2023, and October-December 2023. These reviews were conducted on July 31, 2023, October 09, 2023, and January 19, 2024, respectively. Hence, the allegation that the Company failed to complete the review of the BCP policy implementation on a quarterly basis for the aforementioned periods is unfounded. We humbly submit that any delay in submitting this information earlier was due to a lack of clarity earlier regarding the specific requirements outlined. The certified true copy of the resolution passed by the Board of Directors of the Company with the minutes of meeting of the BCP-DR Committee is enclosed herewith and marked as "Annexure D" for your records and future reference.

34. We respectfully pray for the reconsideration and dropping of the allegation concerning the quarterly review of the BCP-DR policy. Our sincere efforts to diligently review and monitor the implementation of the BCP policy were undertaken, with thorough assessments conducted by the BCP-DR Committee for the quarters ended April-June 2023, July-September 2023, and October- December 2023. We humbly seek your understanding and favorable consideration in this matter.
35. While we acknowledge the absence of a fully implemented and operationalized BCP -DR setup, it's important to note that the BCP policy was subject to quarterly review as part of the implementation process. Despite the ongoing efforts to establish the BCP-DR infrastructure, the policy itself underwent evaluation by governing body of the Company. Therefore, the allegation that the governing body of the Company failed to review the implementation of the BCP-DR Policy for the quarters ending April-June 2023, July-September 2023, and October- December 2023 is incorrect.
36. In conclusion, we respectfully request your good office to take into consideration the detailed explanation and the steps taken by the Company to comply with the NSE Circular. We remain committed to further enhancing the BCP-DR setup and ensuring that all future reviews are conducted within the prescribed timeframes. The Company continues to act in good faith and in compliance with all regulatory expectations, and we request your favorable view on the matter.
37. In accordance with Clause 7.4 of the SEBI Circular and Clause 6(v) of the NSE Circular, specified stock brokers are obligated to conduct DR drills or live trading from the DRS. These drills or live trading sessions must encompass the operation of all activities from the DRS for a duration of at

*least one full trading day on half yearly basis. It is alleged that the Company has not conducted any such drills or live trading sessions from the DRS as required by the aforementioned regulatory provisions.*

- 38. We respectfully submit to your esteemed office that it was not feasible for the Company to conduct the required drill or live trading prior to the implementation of the BCP-DR setup. As previously mentioned, the Company encountered numerous challenges in establishing the BCP-DR infrastructure, rendering it impractical to conduct such drills or live trading within the stipulated timeframe.*
- 39. It is paramount to emphasize that while the regulatory provisions mandate the conduct of DR drills or live trading from the DRS on a half-yearly basis, the Company's inability to fulfill this requirement stemmed from genuine challenges encountered during the establishment of the BCP-DR setup. These challenges were multifaceted and significantly impeded our ability to conduct the prescribed drills or live trading sessions within the specified timeframe. Despite the inability to conduct DR drills or live trading as mandated by regulatory provisions, it is imperative to highlight the proactive steps taken by the Company to address the underlying issues and expedite the implementation of the BCP-DR setup. The Company diligently engaged with relevant stakeholders, allocated necessary resources, and expedited the procurement and deployment of infrastructure to facilitate compliance with regulatory requirements.*
- 40. It is crucial to highlight that the Company's delay in conducting the prescribed DR drills or live trading sessions should be viewed in the context of the considerable efforts and investments made towards establishing a robust BCP- DR infrastructure. While the Company acknowledges the importance of regulatory compliance, we respectfully urge your esteemed office to consider the extenuating circumstances and grant appropriate leniency in this matter.*
- 41. On March 2, 2024, the DR Site was officially made operational by the Company. Furthermore, the Company has diligently conducted live drills from the DR site on May 18, 2024. For evidential purposes, detailed log information regarding the live drill conducted at the DR site can be accessed through this link: [https://drive.google.com/drive/folders/1ENqnCywFBjXY\\_YfEtzJFJhoA9v8gzlgSO?usp=drive\\_link](https://drive.google.com/drive/folders/1ENqnCywFBjXY_YfEtzJFJhoA9v8gzlgSO?usp=drive_link) and the same is not attached due to size limitation.*
- 42. We respectfully submit that the BCP-DR setup, including the establishment of a DR site, has been successfully implemented by the Company. In light of these developments, we earnestly request a lenient consideration regarding any potential action under the SCN. We humbly pray for the SCN to be dropped, taking into account the proactive measures taken by the Company to ensure compliance and operational resilience.*

43. We respectfully urge your esteemed office to refrain from imposing any penalty and to consider a lenient approach by issuing an administrative warning only. The Company has diligently implemented a BCP-DR setup, including conducting DR drills on a half-yearly basis. In light of these remedial actions, we believe that a penalty would be disproportionate, particularly considering this is the first instance of non-compliance. We draw your attention to the decision of the Hon'ble Securities Appellate Tribunal in the case of National Highway Authority of India vs SEBI (Appeal No. 232 of 2020, Order dated August 27, 2020) wherein it was held that:

*"23. In the light of the aforesaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the respondent to relax the strict enforcement of the Regulations. We are of the opinion that the Adjudicating Officer failed to take into consideration the mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty.*

*24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, we are of the opinion that the imposition of penalty of Rs.7 lakhs in the given circumstances was harsh and excessive. Thus, the imposition of Rs.7 lakhs upon the Appellant cannot be sustained and is substituted with a warning with a further condition that in the event the Appellant violates Regulation 52 of the LODR Regulations in future it will be open to the Respondent to initiate proceedings under the Act/LODR Regulations and proceed in accordance with law. In view of the aforesaid, the appeal is allowed in part. The penalty of Rs.7 lakhs is substituted with a warning. In the circumstances of the case, there shall be no order as to costs."*

**Re: Alleged non - compliance 2: Failure to mandatorily establish API based LA MA to allow stock exchanges to monitor the ' Key Parameters' of the 'Critical Systems'**

44. It is alleged that the Company has not connected all critical systems with LAMA, leading to non-compliance under Clause 61.6.1. of SEBI Master Circular read with Clause 6.1 of the SEBI Circular, Para 5.i of the NSE Circular read with Clause A(5) of the Code of Conduct as specified in Schedule II of the Brokers Regulations.

45. As per the aforementioned circulars, stock exchanges have to build an API based LAMA to be operated between stock exchanges and specified stock brokers' trading systems. Under this mechanism, the members shall monitor key systems & functional parameters to ensure that their

*trading systems function in a smooth manner. Stock exchanges shall, through the API gateway, independently monitor 'Key Parameters' of the 'Critical Systems' as specified in the NSE Circular to gauge the health of the trading systems of the specified stock brokers.*

46. *On March 31, 2023, the Company received an email from NSE regarding the login credentials of the LAMA API for the live environment at 11:07 PM, less than 11 hours before it was to be enabled on April 01, 2023. However, upon attempting to use the provided credentials, they were found to be non-functional. Subsequently, on June 22, 2023, the Company notified NSE via email that they were unable to access the live LAMA API from IP 43.204.247.107, attaching the error encountered. Despite this, there was no response from NSE, prompting a follow-up email on July 06, 2023. NSE's response on July 07, 2023, requested further details on the error response. The Company promptly replied on July 10, 2023, referencing the earlier email and error report. Continued efforts to resolve the issue included responses from both parties on July 11, 13, 14, 18, and 24, 2023, with NSE providing the header key and remarks on July 25, 2023. The Company further highlighted the persisting issues to NSE on July 25 and 26, 2023, and followed up again on August 03 and 09, 2023. The purpose of detailing these correspondences is to underscore the Company's diligent efforts to fully implement the LAMA system, despite encountering obstacles. It is crucial to note that the integration of LAMA is not a simple plug-and-play API process; rather, it requires consultation and guidance from NSE. As NSE issues were gradually resolved, critical systems were successfully integrated into LAMA. As of now, critical systems of LAMA have been integrated, marking significant progress in the Company's compliance efforts. The emails referred above are collectively enclosed herewith and marked as "Annexure E" for your records and future reference. As of date hereof, the Company installed the LAMA system on September 11, 2023, following the resolution of all outstanding issues by the NSE. Subsequently, two critical systems — hardware and application — were integrated and later on other two critical systems — database & network, as viewed by NSE as critical — were integrated. Therefore, the Company has successfully integrated all "Critical Systems" into the LAMA system in accordance with the guidance provided by the NSE on December 16, 2023.*
47. *We respectfully submit that the term "critical systems" has not been exhaustively defined, but rather encompasses all IT systems related to trading applications and trading-related services, as per the NSE Circular. Given the broad scope of this definition, it becomes challenging to precisely identify the components that constitute critical systems. If NSE had provided a clearer definition of critical systems, the Company would have promptly instructed the technical team to integrate these systems accordingly. The lack of specific guidance on critical systems has contributed to the delay*

*in integration efforts. Therefore, we request your understanding of this ambiguity and urge for leniency in evaluating the Company's compliance efforts in this regard.*

- 48. The Company installed the LAMA system on September 11, 2023 when NSE resolved all the issues and two critical system – hardware and application were integrated thereafter. Regrettably, despite our efforts, only 2 critical systems (Database & Network), as viewed by NSE as critical, could not be integrated into the LAMA system. One of the critical systems is the database, and one of the required metrics for this system is the Replication Bandwidth Utilization (in %) according to the threshold provided by NSE. The Replication Bandwidth Utilization could not be accurately measured as it is interconnected with the BCP-DR setup, which was not in place at the time. Therefore, it was impossible for us to integrate the database into LAMA initially. The integration was completed later, once the BCP-DR setup was fully implemented. The threshold details provided by NSE are enclosed herewith and marked as "Annexure F" for your records and future reference. For the network as a critical system, the challenge arose from determining threshold values for key parameters within the LAMA system, particularly concerning network components. We needed to insert the threshold values for the network, for which we were dependent on the vendor, Sify. Unfortunately, Sify did not provide the necessary threshold values and were trying to seek information from Sify from 2023.*
- 49. We respectfully submit to your esteemed office that the implementation of LAMA critical systems in 2023 was hindered by unresolved issues encountered during that period. Despite our earnest efforts, timely resolution of these issues proved elusive, thereby impeding our ability to fully integrate the critical systems of LAMA within the specified timeframe. Given the complex nature of the task and the requisite guidance from exchanges, our ability to proceed with the implementation was contingent upon timely resolution of the aforementioned issues. We wish to clarify that our intention is not to put anything on exchanges. We understand that exchanges have to manage a multitude of brokers and their respective requirements. However, we highlight the issue to bring to your attention that the delay in implementing LAMA critical systems was beyond our control. It is important to emphasize that, given optimal conditions, the implementation of LAMA could have been accomplished well in advance.*
- 50. We have successfully integrated all "Critical Systems" into LAMA in accordance with the guidance provided by the NSE. We have notified the NSE of this integration via email and have requested confirmation regarding any outstanding issues or pending requirements. The copy of email(s) referred above are collectively enclosed herewith and marked as "Annexure G" for your records and future reference. Furthermore, the log details to show the indicators that the all Critical Systems*



are connected to LAMA are enclosed herewith and marked as "Annexure H" for your records and future reference.

51. We humbly submit to your esteemed office that the allegations mentioned in the SCN pertain to issues beyond the control of the Company. The Company is also dependent on other stakeholders, including NSE and vendors such as Kamabala Solutions, Sify, STT, and Yotta, for the implementation of LAMA and BCP-DR. If these matters had been within the Company's control, the Company would accept responsibility. However, the Company was completely reliant on the resolution of issues by NSE and the aforementioned vendors. The law does not expect us to accomplish the impossible, especially when the factors contributing to the delay are not within our control. It is pertinent to note here that the lease line for BCP-DR was ordered in June 2023. Therefore, it cannot be held that the Company did not implement the BCP-DR setup. The Company took necessary steps to initiate the process after thoroughly understanding the requirements under the NSE Circular.
52. We draw your attention to the following judgments passed by Hon'ble Supreme Court and Hon'ble SAT for levying penalty as follows:
- a. *Reliance Industries Ltd. v SEB I* (SAT Appeal No. 39/2002 ) - The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."
  - b. *Akbar Badrudin Jiwani V. Collector of Customs, Bombay* AIR 199 0 SC 1579 - It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that: Para 61: "We refer in this connection the decision of *Merck Spares v. Collector of Central Excise & Customs, New Delhi*, 1983 ELT 1261, *Shatna Engine Valves Ltd., Bombay v. Collector of Customs, Bombay* (1984) 18 ELT 533 and *Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay*, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".
53. Penalties are penal in nature, and there must be an element of proof of willful default or willful disobedience of the Brokers Regulations. Mere delay in implementing the setup which is not due to the controllable factors cannot give rise to adjudication proceedings. It must be willful and deliberate defiance of the Brokers Regulations. The mere unintended technical violations cannot be a subject matter of adjudication proceedings. This is also the view taken by the Hon'ble SAT in *Cobat International Capital Corpn. vs. SEBI* in reported 2004(51) SCL 307.

54. In this regard, it is apt to site view of Hon'ble Securities Appellate Tribunal (SAT ) in Housing Development Finance Corporation [(2000) 28 SC L 289 Page 5 of 16 (SAT)] , that "default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum". However, in the instant case no loss has been caused to any client of the Company and NSE has not initiate any action against the Company as NSE understood the practical difficulties in implementing the NSE Circular. No tangible loss has been inflicted upon any stakeholders, and Company has not gained any undue advantage. Additionally, the relevant portion of the judgment of the Hindustan Steel limited vs. State of Orissa, judgment dated August 4, 1969 is reproduced wherein the Hon'ble Supreme Court provided clear- cut guidelines in this regard.

*"An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

55. It is settled law that inadvertent and bona fide mistakes should not be penalized, especially if of a small or technical nature. Going by the law established in the case of Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata (Civil Appeal No. 6924 of 2012) , it is entirely possible that even important corporations or entities can make bona fide and inadvertent errors, and imposition of penalty is not justified in these cases. The relevant portion of the judgment is provided as under –

*"19. It appears to use that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean the assessee is guilty of furnishing inaccurate particulars or attempting to conceal its income."*

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified”

56. Hon’ble SAT in the matter of Cabot International Capita I Corporation Adjudicating Officer, Securities & Exchange Board of India (Appeal No. 24/2000) held as given below:

“On a perusal of section 151 it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable significance, especially in view of the guidelines provided by the legislature in 15J "the Adjudicating Officer shall have due regard to the factors" stated in this section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 151, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case.”

.....’  
**Letter dated January 06, 2025:**

‘ .....

**Re: BCP- DR Setup**

4. In accordance with Clause 7.1 of the SEBI Circular SEBI/HO/ MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 (“SEBI Circular”), read with Clause 61.7.1, stock brokers with a minimum client base across exchanges, as specified by the stock exchanges from time to time, must mandatorily establish a BCP-DR setup. The detailed procedures and requirements related to the BCP-DR setup are outlined under Clause 6 of the NSE Circular NSE/COMP/54876 dated December 16, 2022 (“NSE Circular”). The provisions related to the BCP-DR setup in the SEBI Circular and NSE Circular became effective on April 01, 2023.
5. We respectfully submit to your esteemed office that upon the issuance of the NSE Circular in December 2022, the Company promptly initiated the procedures to complete the BCP-DR setup. In compliance with the SEBI Circular, the Company commenced an internal evaluation of its BCP-DR framework at its head office in Mohali in January 2023. This assessment was critical as all exchange links were primarily managed from the Mohali location. During the course of this evaluation, the Company identified several technical impediments in establishing Mohali as the designated DR site. A primary concern was the issue of potential latency that clients could experience due to the geographical distance of the Mohali site from the relevant exchanges, which could result in order rejections. Further, the Company discovered that the proposed physical data center in Mohali was incompatible with its existing cloud-based data center infrastructure located

*in Mumbai. This incompatibility posed significant risks in terms of seamless integration and real-time data synchronization between the primary site in Mumbai and the DR site in Mohali. Additionally, it was noted that Mohali lacked direct-connect or cross-connect options with major cloud service providers, exacerbating the latency concerns and impacting client operations adversely. To address these critical issues, the Company convened multiple meetings with its technical team and relevant stakeholders to explore viable alternatives. A feasibility report dated March 17, 2023, was prepared, detailing these challenges and potential solutions. The copy of the feasibility report is enclosed herewith and marked as "Annexure A" for your records. Based on these discussions, a subsequent meeting was held where it was unanimously decided to establish the DR site at another place.*

- 6. The Company's Primary Data Center (PDC) is situated in Mumbai, where most vendors are also located. This presented a challenge in complying with the requirement of having the PDC and the DRS in two separate seismic zones or a gap of 250KM between both. Consequently, it took additional time to decide upon a suitable location for the DRS. The Company was committed to selecting the best service provider capable of efficiently resolving any potential issues, which further contributed to the delay.*
- 7. Additionally, establishing a fully functional BCP-DR setup involves a comprehensive analysis of the current operational workflows and dependencies. This analysis requires significant time to ensure that all critical functions are adequately mapped and that appropriate failover mechanisms are implemented. Given the complexity and scale of our operations, this process cannot be expedited without compromising the integrity and reliability of the BCP-DR setup.*
- 8. Procuring the necessary hardware and software to mirror the PDC environment at the DRS is a time-consuming process. The procurement cycle includes vendor selection, negotiation, acquisition, and deployment, all of which typically span several months. Moreover, integration of these new systems into our existing infrastructure requires careful planning and execution to avoid disruptions to our ongoing operations.*
- 9. Training our personnel to manage and operate the DRS effectively is another critical aspect that requires substantial time. Our staff needs to be proficient in handling disaster scenarios, which necessitates detailed training programs and simulation exercises. These training initiatives are essential to ensure that our team can respond swiftly and effectively during an actual disaster, but they cannot be completed within a short timeframe. The requirements for the BCP-DR setup were novel at that time, and the team needed time to fully comprehend the repercussions and implications of the NSE Circular. Improper compliance constitutes non-compliance; thus, the*

*Company took all necessary efforts to implement the required setup properly including discussion with all stakeholders. Despite these efforts, we faced uncontrollable factors that impeded timely implementation. We respectfully request your understanding and consideration of these circumstances in evaluating our compliance efforts in implementing the NSE Circular with effect from April 01, 2023.*

- 10. Regulatory compliance and audits are integral parts of setting up a BCP- DR framework. Ensuring that our DRS meets all regulatory requirements involves rigorous internal and external audits, which are time-intensive processes. Given the stringent standards set by SEBI and NSE, rushing through these audits would likely result in non-compliance, defeating the purpose of the BCP-DR setup.*
- 11. The synchronization of data between the PDC and DRS must be continuous and seamless to maintain data integrity. Setting up real-time data replication mechanisms involves intricate configurations and extensive testing to ensure data consistency and security. This process cannot be abbreviated without risking data loss or corruption, which would undermine the effectiveness of the disaster recovery plan.*
- 12. Collaborating with external vendors in disaster recovery is essential to build a robust BCP-DR setup. These vendors bring valuable insights and best practices that enhance the resilience of our infrastructure. However, engaging with these vendors, scheduling their involvement, and incorporating their recommendations into our setup is a lengthy process that extends beyond the initial three-month window provided by the NSE Circular. We initially engaged in discussions with Yotta Data Services Private Limited ("Yotta") based in Mumbai for setting up the server. However, the said vendor only had the capacity to establish the server in Mumbai, which did not comply with the SEBI Circular's condition of having the PDC and DRS in separate seismic zones or condition of gap of 250 KM. Securing a suitable server location that also accommodates our office requirements is a complex and challenging task. Ultimately, it was decided to set up the server in Hyderabad to meet the conditions stipulated in the NSE Circular. This location offered cloud connectivity options that were absent in Mohali, thereby mitigating the identified latency issues and ensuring smoother integration with the existing infrastructure. Pursuant to this decision, the Company initiated the process of setting up the DR site in Hyderabad, with a focus on ensuring compliance with regulatory requirements and safeguarding client interests through an optimized, resilient DR framework.*
- 13. We engaged in extensive discussions with Yotta through emails and calls over a period of 2-3 months, and even completed the full setup. However, due to the specific requirements imposed by the NSE Circular, we were unable to proceed further for BCP-DR setup. Furthermore, in August*

2023, we received an email from Sify Technologies on behalf of STT Global Data Center Private Limited ("STT") stating that they would not deliver the router to Hyderabad if the GST location of the Company was in Mumbai. Consequently, we had to take delivery in Mumbai and then arrange for the router to be sent to Hyderabad. This logistical issue also contributed to the delay in implementation.

14. Furthermore, to substantiate our connection with STT, the details of our DRS setup location in Hyderabad and internet protocol address ("IP Address") are provided below. We have leased server storage racks from STT for link termination and server installation.

15. To further validate that our DRS setup is connected to all stock exchanges through STT, we established connections with the Bombay Stock Exchange (BSE) on July 27, 2023, the National Commodity & Derivatives Exchange Limited (NCDEX) on August 9, 2023, the National Stock Exchange (NSE) on October 7, 2023, and the Multi Commodity Exchange of India Limited (MCXINDIA) on October 25, 2023.

16. Details of STT location and IP Address:

| <b>STT Address</b>   |
|--|
| STT Global Data Centres India Private Limited, Videsh Sanchar Bhavan, CFC-1, Software Units Layout, Madhapur, Telangana 500081 Contact: Gaurav Pandav 8850414102 |

| <b>Rack Details:</b>  |
|---|
| Finvasia Securities Private Limited. Rack Number: CR004, Tile Number: D3, Floor: HYD-DC1-B1-GF-Q1, Hyderabad DC |

| <b>Exchange</b> | <b>Link</b> | <b>Link Circuit ID</b> | <b>Wan IP</b>     | <b>Lan IP</b>                 | <b>Subnet Mask</b> |
|-----------------|-------------|------------------------|-------------------|-------------------------------|--------------------|
| NSE             | TCL         | 091HYDE1258A0115968    | 10.244.179.162    | 10.244.179.162                | 255.255.255.252    |
| BSE             | TCL         | 091HYDE6230A0108598    | 172.25.240.210/30 | 10.171.142.3 - 10.171.142.254 | 255.255.255.192    |
| MCX             | AIRTEL      | 14436161               | 172.46.255.102/30 | 10.170.152.2 - 10.170.152.60  | 255.255.255.192    |
| NCDEX           | TCL         | 091HYDE6230A0107275    | 10.126.139.46/30  | 10.200.6.130 - 10.200.6.190   | 255.255.255.192    |

17. Given these multifaceted challenges, it is evident that developing a fully functional BCP-DR setup within three months is impractical without compromising the integrity of the BCP-DR setup. The email exchanges, communications, and invoices have already been provided in prior submissions.

Therefore, to avoid redundancy and ensure brevity, they have not been included with this submission.

18. Upon resolution of the aforementioned issues, we duly complied with the BCP-DR setup requirements. The installation and configuration process were not a straightforward "plug-and-play" arrangement that could be completed at any time. Instead, it required coordinated efforts with the stock exchanges to meet their technical and procedural requirements. Furthermore, once the BCP-DR application is submitted to the stock exchange, the exchange takes additional time to review, approve, and establish the necessary linkages. The process involves multiple stages of verification and setup by the exchanges, which are beyond our control. The major events related to the BCP-DR setup, along with corresponding evidence, are detailed below, and the supporting documents are enclosed in "Annexure B" for your reference.

| <b>S. No.</b> | <b>Date</b> | <b>Event</b>                           | <b>Details/Action Taken</b>  | <b>Mode of Communication</b> | <b>Reference/ File Name</b>       |
|---------------|-------------|--|--|------------------------------|-----------------------------------|
| 1             | 26-05-2023  | NEW DR Site Hyd STT Datacenter Ordered | We have ordered rack space in the STT Datacenter in Hyderabad to accommodate our growing client base and future infrastructure needs   | Mail                         | Digital sign Order Form           |
| 2             | 25-07-2023  | NEW DR Site Hyd STT DC Commission      | The new Disaster Recovery (DR) site at the STT Datacenter in Hyderabad has been successfully commissioned & The rack power has been activated, and the initial phase of Rack setup is complete | Invoice                      | DC RACKS Power commission Invoice |
| 3             | 25-05-2023  | MCX DR Link Application                | The application for the MCX Link at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad has been submitted to Exchange  | Mail                         | MCX New Link Application Mail     |
| 4             | 30-05-2023  | MCX DR Link Feasibility                | MCX DR Link Feasibility mail confirmation from exchange  | Mail                         | MCX Link Feasibility Mail         |
| 5             | 31-05-2023  | BSE Link Application                   | The application for the BSE Link at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad has been submitted to Exchange  | Mail                         | BSE Link Application Mail         |
| 6             | 21-06-2023  | NSE Link Applied for DR Site           | The application for the NSE Link at our new Disaster Recovery (DR) site located at the STT   | Portal                       | NSE Portal Screenshot             |

|    |            |  |  |               |                                    |
|----|------------|--|--|---------------|------------------------------------|
|    |            |  | <i>Datacenter in Hyderabad has been submitted to Exchange through NSE Portal</i>   |               |                                    |
| 7  | 23-06-2023 | <i>NCDEX Link Application</i>              | <i>The application for the NCDEX Link at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad has been submitted to Exchange</i> | <i>Mail</i>   | <i>NCDEX Link Application Mail</i> |
| 8  | 27-06-2023 | <i>NCDEX Demarcation Details</i>           | <i>Demarcation Details has been shared by ISP</i>  | <i>Mail</i>   | <i>NCDEX Link Demarcation Mail</i> |
| 9  | 26-07-2023 | <i>BSE Link Ready</i>                      | <i>The BSE Link has successfully gone live at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad</i>                           | <i>Portal</i> | <i>BSE Portal Screenshot</i>       |
| 10 | 28-07-2023 | <i>NCDEX Router Shipping</i>               | <i>NCDEX Router shipped to our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad</i>  | <i>Mail</i>   | <i>NCDEX DR Router Shipping</i>    |
| 11 | 10-08-2023 | <i>NCDEX Link Ready</i>                    | <i>The NCDEX Link acceptance at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad</i>   | <i>Mail</i>   | <i>NCDEX Link Acceptance</i>       |
| 12 | 14-08-2023 | <i>MCX AIRTEL CONFIGURATION PENDING</i>    | <i>MCX CONFIGURATION PENDING</i>   | <i>Mail</i>   | <i>MCX Router Config Pending</i>   |
| 13 | 14-08-2023 | <i>MCX AIRTEL CONFIGURATION RECEIVED</i>   | <i>MCX CONFIGURATION RECEIVED</i>  | <i>Mail</i>   | <i>MCX Router Config Received</i>  |
| 14 | 18-08-2023 | <i>MCX DR Link Cross-connect</i>           | <i>MCX Link Cross-connect from ISP MUX to our Rack</i>   | <i>Mail</i>   | <i>MCX Cross-Connect</i>           |
| 15 | 21-08-2023 | <i>MCX Router sent to DR STT</i>           | <i>MCX Router Shipped to our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad</i>  | <i>Mail</i>   | <i>MCX Router Shipping</i>         |
| 16 | 21-08-2023 | <i>NSE Link Apply (NI TEAM IS WORKING)</i> | <i>The status of the application is "NI TEAM IS WORKING" on the NSE portal. The status will changed to "Activated" as the NSE Link has</i>                 | <i>NA</i>     | <i>NA</i>                          |



|    |            |   |   |      |                                |
|----|------------|---|---|------|--------------------------------|
|    |            | (ETA 30th Sep)  | been successfully commissioned, so we don't have the evidence   |      |                                |
| 17 | 29-08-2023 | MCX Router Mounted in Rack & WAN port is UP                                 | The MCX DR Router has been successfully mounted in the rack and the WAN port is active  | Mail | MCX DR Router Mount            |
| 18 | 29-08-2023 | MCX Router configuration pending on ISP End.                                | The MCX connection at our new DR Site in STT Datacenter, Hyderabad, is currently pending from ISP   | Mail | ISP Configurati on Pending     |
| 19 | 04-09-2023 | NSE Demarcation Details has been received                                   | NSE Link ISP Mux Details has been received  | Mail | NSE DR link Mux details        |
| 20 | 06-09-2023 | NSE Confirmation is awaited from BSO on further link delivery               | we were awaiting confirmation from BSE on the delivery of the NSE Link for our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad   | Mail | Link Pending from BSO          |
| 21 | 08-09-2023 | NSE Cable extension work completed till demark rack by service provider end | The NSE cable extension work has been completed by the service provider up to the demark rack at the STT Datacenter in Hyderabad  | Mail | NSE DR Link Cable extension    |
| 22 | 11-09-2023 | NSE Mux Details Recived by Sify, CX done                                    | The establishment of an NSE link cross-connect from the ISP MUX (Multiplexer) to our server rack  | Mail | NSE DR Link Cross-connection   |
| 23 | 12-09-2023 | MCX ISP Advance Configuration   | The MCX Advance Configuration has been successfully completed as per the planned specifications. All necessary steps have been carried out and verified to ensure the system is fully operational | Mail | MCX ISP Advance Configurati on |
| 24 | 15-09-2023 | NSE Router has been dispatched by Sify Team to location                     | Router has been successfully dispatched by the Sify Team to our Mumbai Office   | Mail | NSE Router Shipping            |

|    |                          |  |  |          |                             |
|----|--------------------------|--|--|----------|-----------------------------|
| 25 | 28-09-2023 to 21-10-2023 | MCX LAN Port Testing                                   | The MCX DR Link Testing was successfully completed on 21st October 2023 as scheduled. All tests were carried out without any issues, and the link has been validated to meet the required operational standards. | Mail     | MCX Link Testing            |
| 26 | 30-09-2023               | NSE Router Configuration                               | NSE Router configured for new Link at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad done  | Mail     | NSE Router Configuration    |
| 27 | 09-10-2023               | NSE Link Handover                                      | NSE A2 New link handover at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad confirmed over email  | Mail     | NSE Link Handover           |
| 28 | 17-10-2023               | MCX DR Link Ready                                      | The MCX Link has successfully gone live at our new Disaster Recovery (DR) site located at the STT Datacenter in Hyderabad  | Mail     | MCX Link Acceptance         |
| 29 | 30-11-2023               | Secondary internet Leased Line application             | The successful completion of the installation of the Airtel secondary internet line.   | Mail     | Secondary ILL               |
| 30 | 16-12-2023               | Server Delivered at STT DC Hyderabad.                  | The DR Trading Server has been successfully delivered following the completion of the necessary configuration  | Document | Server Delivery             |
| 31 | 17-12-2023               | Firewall, Switch, LAN Cables were delivered at STT DC. | The network devices have been successfully delivered to STT Datacenter in Hyderabad  | Mail     | Network Devices Delivery    |
| 32 | 20-12-2023               | AWS Direct Connect for STT DC Hyderabad.               | The AWS LOA document has been successfully submitted   | Mail     | AWS DC Cross connect        |
| 33 | 22-12-2023               | Airtel CrossConnect Requested at STT DC Hyderabad      | The Internet Leased Line cross-connect from the Mux to our rack has been successfully established  | Mail     | Airtel ILL Cross connection |
| 34 | 26-12-2023               | Tata ILL KYC   | The Primary Internet Link has been successfully applied, and   | Mail     | Tata KYC                    |

|    |            |  |   |                 |                                   |
|----|------------|--|---|-----------------|-----------------------------------|
|    |            | <i>Document Signed</i>   | <i>the eKYC process has been completed</i>  |                 |                                   |
| 35 | 28-12-2023 | <i>Server and Networking Devices are mounted.</i>  | <i>The server and networking devices have been successfully mounted in the DR site rack at the STT Datacenter, Hyderabad</i>  | <i>Mail</i>     | <i>Infra Mounted in Rack</i>      |
| 36 | 03-02-2024 | <i>BSE Connected in Mock session, NSE Connected but due to Trading rights issue on New ID unable to place order.</i> | <i>BSE Exchange connected successfully, and orders were placed from the DR location at STT Hyderabad during the Mock session. However, while the NSE Exchange connection was established, orders could not be placed due to a trading rights issue with the new ID</i>                    | <i>Document</i> | <i>BSE Mock Session Snaps</i>     |
| 37 | 17-02-2024 | <i>NSE Mock Participation</i>  | <i>NSE Exchange connected successfully, and orders were placed from the DR location at STT Hyderabad during the Mock session.</i>   | <i>Document</i> | <i>NSE Mock Session Snaps</i>     |
| 38 | 16-03-2024 | <i>Live DR Syncing</i>   | <i>The synchronization process has been initiated from the Live Trading Server to the DR Trading Server to ensure data consistency and real-time replication between both systems.</i>  | <i>Document</i> | <i>DR Sync in Mock Session</i>    |
| 39 | 04-05-2024 | <i>NSE &amp; BSE Mock Participation orders executed.</i>   | <i>The NSE and BSE Exchanges have been successfully connected, and orders were placed from the DR location at STT Hyderabad during the Mock Session. The connection was tested, and order placements were successfully processed to validate the trading setup in the DR environment.</i> | <i>Document</i> | <i>DR Mock Participation</i>      |
| 40 | 11-05-2024 | <i>NSE &amp; BSE Mock Participation orders executed.</i>   | <i>The NSE and BSE Exchanges have been successfully connected, and orders were placed from the DR location at STT Hyderabad during the Mock Session. The connection was tested, and order placements</i>  | <i>Log</i>      | <i>DR Mock Participation logs</i> |

|    |            |                         |   |     |                             |
|----|------------|-------------------------|---|-----|-----------------------------|
|    |            |                         | <i>were successfully processed to validate the trading setup in the DR environment.</i>   |     |                             |
| 41 | 18-05-2024 | NSE & BSE Live DR Drill | <i>The NSE and BSE Live DR Drill participation orders were successfully executed. The orders were placed and processed in the Disaster Recovery (DR) environment, ensuring seamless operation and validation of the live trading setup under DR conditions.</i> | Log | NSE & BSE Live DR Drill Log |
| 42 | 17-06-2024 | MCX Live DR Drill.      | <i>The MCX Live DR Drill participation orders were successfully executed. The orders were placed and processed in the Disaster Recovery (DR) environment, ensuring seamless operation and validation of the live trading setup under DR conditions.</i>         | Log | MCX Live DR Drill Log       |

19. *We request your good office to consider these constraints and grant leniency in this matter. We humbly submit to your esteemed office that the BCP-DR setup has now been fully operationalized without any issues in consultation with NSE and our vendors and live drills have been conducted.*
20. *In this context, it's essential to consider that the law does not expect us to accomplish the impossible, particularly given the scale and complexity of operations of the Company. As a company of considerable size and scope, the task of establishing a fully functional BCP-DR setup within the three- month timeframe stipulated by the NSE Circular presents inherent challenges that cannot be feasibly overcome. The legal doctrine of impossibility recognizes that performance under a contract may be excused when circumstances arise that render performance objectively impossible. Considering the multifaceted nature of our business operations, along with the intricate technical, logistical, and regulatory requirements involved in implementing a BCP-DR setup, achieving full compliance within the prescribed timeline is impractical. The sheer magnitude of resources, both human and financial, required to evaluate, procure, implement, and test a comprehensive BCP-DR infrastructure within such a compressed timeframe is substantial. Rushing through these critical processes increases the risk of errors, inefficiencies, and potential non-compliance, ultimately undermining the effectiveness of the BCP-DR setup. Rushing through these*

*crucial phases compromises the quality and effectiveness of the BCP-DR setup, thereby defeating its intended purpose of safeguarding business continuity during disruptions.*

- 21. Considering these factors, it is evident that the expectation of achieving full compliance with the BCP-DR requirements within the prescribed timeframe is unreasonable. As such, we urge your esteemed office to take into account the practical challenges the Company face and to take a lenient view in this regard.*
- 22. It is respectfully submitted that the implementation of a BCP-DR setup generally requires a transitional window, as it involves substantial coordination among multiple stakeholders. In this case, the delay was further compounded by the time taken by NSE to respond to the Company's queries. It is pertinent to note that the BCP-DR setup is not a simple plug-and-play solution that the Company could have immediately deployed by merely incurring expenditure. Instead, its implementation was contingent on various external factors, including inputs and actions from NSE. In light of these circumstances, initiating action against the Company solely on account of the delay would be unduly harsh, particularly as the delay was due to factors beyond the Company's control. We humbly submit that taking adverse action based on the procedural issues to meet the requirements of the NSE Circular within the stipulated timeframe could set a detrimental precedent in the capital market. While regulatory compliance is paramount, it's crucial to recognize the practical challenges in swiftly implementing complex infrastructure changes. Granting some leniency or allowing for an extended timeline to achieve full compliance with the BCP- DR requirements would not only acknowledge the inherent difficulties but also foster a more conducive environment for all market participants to adapt and adhere to regulatory standards effectively. Moreover, penalizing companies for genuine efforts to comply, albeit within a reasonable timeframe, may deter innovation and investment in critical areas such as risk management and business continuity planning.*
- 23. While it might be theoretically possible for the Company to implement the BCP-DR setup within the prescribed three-month timeframe, practical considerations must also be taken into account. Merely meeting a deadline for the sake of compliance, without ensuring that the implemented measures adequately address the Company's practical needs and operational requirements, would be of little value. Rushing through the implementation process without thorough planning and consideration of the Company's unique circumstances could result in subpar outcomes that fail to provide the intended resilience and continuity during disruptions.*
- 24. It is respectfully submitted that regulatory frameworks must strike a balance between achieving policy objectives and acknowledging the practical challenges faced by entities operating in diverse*

and complex environments. The doctrine of regulatory proportionality, recognized by courts and regulators globally, mandates that measures imposed must be necessary, suitable, and proportionate to their intended purpose. In this case, the stringent timeline for implementing a full-fledged BCP-DR setup within three months does not account for industry-specific constraints, supply chain dependencies, or the criticality of ensuring seamless integration with ongoing operations. Such expectations risk creating undue burdens on entities striving for compliance in good faith.

25. Establishing a BCP-DR setup in compliance with SEBI and NSE guidelines involves intricate processes that are unparalleled in scale and scope. Benchmark studies and practices in comparable jurisdictions indicate that setting up such infrastructure typically requires a phased approach spanning 12 to 18 months. This includes site selection, procurement, hardware and software installation, network testing, staff training, and conducting simulations. The imposition of a compressed timeline disregards these industry norms and imposes impractical constraints that may inadvertently hinder the development of robust compliance mechanisms.
26. Without prejudice to our earlier submissions, we submit that the Company has demonstrated consistent efforts to meet compliance requirements. This includes securing vendor support, allocating substantial financial resources, engaging experienced personnel, and conducting internal reviews to align operations with regulatory mandates.
27. We humbly pray your esteemed office to not take any adverse action against the Company based on its inability to fully comply with the requirements of the NSE Circular within the prescribed timeframe. Recognizing the genuine efforts and constraints faced by the Company, we respectfully urge SEBI to exercise leniency and consider the practical challenges involved in implementing complex infrastructure changes.

**Re: Governing board of the Company failed to conduct the quarterly reviews of the implementation of the BCP-DR policy for the quarters of April-June 2023, July-September 2023, and October-December 2023**

28. As per Clause 6(xi) of the NSE Circular, 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. It is alleged that the governing body of the Company has not allegedly review the implementation of the BCP policy on a quarterly basis for the quarters of April-June 2023, July-September 2023, and October-December 2023.
29. In relation to the above, we humbly submit that the BCP-DR policy has been shared with your esteemed office previously. It's essential to recognize that while drafting a policy is one aspect, the

implementation of said policy is another intricate process that requires meticulous planning and execution. While drafting the policy itself may feasibly be accomplished within the three-month timeframe, ensuring its effective implementation necessitates additional time and resources. The board of directors of the Company on April 01, 2023 constituted governing body namely “BCP-DR Committee” for reviewing the implementation of the NSE Circular. Furthermore, BCP-DR committee reviewed the quarterly implementation status of NSE Circular for the quarters ended April-June 2023, July-September 2023, and October-December 2023. These reviews were conducted on July 31, 2023, October 09, 2023, and January 19, 2024, respectively. Hence, the allegation that the Company failed to complete the review of the BCP policy implementation on a quarterly basis for the aforementioned periods is unfounded. The certified true copy of the minutes of meeting of the BCP-DR Committee were submitted in the previous submissions. The table below provides a summary of the key actions reviewed by the governing board in connection with the implementation of the BCP-DR setup, outlining the steps completed to ensure compliance with the relevant requirements:

| <b>Sr. No</b> | <b>Date</b>      | <b>Event Details / Action Taken</b>  |
|---------------|------------------|--|
| 1.            | April 1, 2023    | The Board of Directors of the Company constituted the BCP-DR Committee as the governing body, in compliance with SEBI and NSE circulars.   |
| 2.            | July 31, 2023    | A meeting of BCP-DR Committee was held to review updates on the Disaster Recovery (DR) site setup and the progress of the LAMA application implementation.   |
| 3.            | October 9, 2023  | The BCP-DR Committee discussed updates on leased line installation, DR site setup, and ongoing discussions with M/s. Kambala Solutions Private Limited regarding the LAMA application, code development requirements, and changes in IT infrastructure.  |
| 4.            | January 19, 2024 | The Committee reviewed the progress of the leased line installation, noting that the application was submitted on June 6, 2023, and confirmation of implementation was received on September 8, 2023. Discussions with M/s. Kambala Solutions Private Limited regarding LAMA continued. Partial implementation of the DR site was completed, and the BCP-DR Plan document was approved by the Board. |

30. We respectfully pray for the reconsideration and dropping of the allegation concerning the quarterly review of the BCP-DR policy. Our sincere efforts to diligently review and monitor the implementation of the BCP policy were undertaken, with thorough assessments conducted by the BCP-DR Committee for the quarters ended April-June 2023, July-September 2023, and October-December 2023. We humbly seek your understanding and favorable consideration in this matter.
31. While we acknowledge the absence of a fully implemented and operationalized BCP -DR setup, it's important to note that the BCP policy was subject to quarterly review as part of the implementation process. Despite the ongoing efforts to establish the BCP-DR infrastructure, the policy itself underwent evaluation by governing body of the Company. Therefore, the allegation that the governing body of the Company failed to review the implementation of the BCP-DR Policy for the quarters ending April-June 2023, July-September 2023, and October-December 2023 is incorrect.
32. In conclusion, we respectfully request your good office to take into consideration the detailed explanation and the steps taken by the Company to comply with the NSE Circular.

**Re: Failure to conduct DR drills/live trading from the DRS**

33. In accordance with Clause 7.4 of the SEBI Circular and Clause 6(v) of the NSE Circular, specified stock brokers are obligated to conduct DR drills or live trading from the DRS. These drills or live trading sessions must encompass the operation of all activities from the DRS for a duration of at least one full trading day on half yearly basis. It is alleged that the Company has not conducted any such drills or live trading sessions from the DRS as required by the aforementioned regulatory provisions.
34. We respectfully submit to your esteemed office that it was not feasible for the Company to conduct the required drill or live trading prior to the implementation of the BCP-DR setup. As previously mentioned, the Company encountered numerous challenges in establishing the BCP-DR infrastructure, rendering it impractical to conduct such drills or live trading within the stipulated timeframe.
35. It is paramount to emphasize that while the regulatory provisions mandate the conduct of DR drills or live trading from the DRS on a half-yearly basis, the Company's inability to fulfill this requirement stemmed from genuine challenges encountered during the establishment of the BCP-DR setup. These challenges were multifaceted and significantly impeded our ability to conduct the prescribed drills or live trading sessions within the specified timeframe. Despite the inability to conduct DR drills or live trading as mandated by regulatory provisions, it is imperative to highlight the proactive



steps taken by the Company to address the underlying issues and expedite the implementation of the BCP-DR setup. The Company diligently engaged with relevant stakeholders, allocated necessary resources, and expedited the procurement and deployment of infrastructure to facilitate compliance with regulatory requirements.

36. As detailed in the table above, the implementation of the BCP-DR setup followed a structured and chronological process, in line with the requirements under the NSE Circular. The process involved multiple stages, including selecting a suitable location for the DR site as per the NSE guidelines, resolving logistical challenges such as the rejection of the Mumbai GST registration by STT, returning the server from Mumbai to Hyderabad, and subsequently entering into agreements for setting up the necessary infrastructure. Further, applications were submitted to the relevant stock exchanges (BSE, NSE, and MCX), followed by addressing various technical issues and ongoing coordination with the exchanges to ensure compliance and obtain their approvals. Had the setup been a simple "plug-and-play" solution, the live drill would have been conducted within the timelines prescribed under the SEBI Circular. However, due to the complexity of the process and the technical and procedural dependencies involved, the live drill was conducted at a later stage, as explained in the table above.
37. On March 2, 2024, the DR Site was officially made operational by the Company. Furthermore, the Company has diligently conducted live drills from the DR site on May 18, 2024.
38. We respectfully submit that the BCP-DR setup, including the establishment of a DR site, has been successfully implemented by the Company. In light of these developments, we earnestly request a lenient consideration regarding any potential action under the SCN. We humbly pray for the SCN to be dropped, taking into account the proactive measures taken by the Company to ensure compliance and operational resilience.
39. We respectfully urge your esteemed office to refrain from imposing any penalty and to consider a lenient approach by issuing an administrative warning only. The Company has diligently implemented a BCP-DR setup, including conducting DR drills on a half-yearly basis. In light of these remedial actions, we believe that a penalty would be disproportionate, particularly considering this is the first instance of non-compliance. We draw your attention to the decision of the Hon'ble Securities Appellate Tribunal in the case of National Highway Authority of India vs SEBI (Appeal No . 232 of 2020 , Order dated August 27, 2020) wherein it was held that:

"23. In the light of the aforesaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the

respondent to relax the strict enforcement of the Regulations. We are of the opinion that the Adjudicating Officer failed to take into consideration the mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty.

24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, we are of the opinion that the imposition of penalty of Rs.7 lakhs in the given circumstances was harsh and excessive. Thus, the imposition of Rs.7 lakhs upon the Appellant cannot be sustained and is substituted with a warning with a further condition that in the event the Appellant violates Regulation 52 of the LODR Regulations in future it will be open to the Respondent to initiate proceedings under the Act/LODR Regulations and proceed in accordance with law. In view of the aforesaid, the appeal is allowed in part. The penalty of Rs.7 lakhs is substituted with a warning. In the circumstances of the case, there shall be no order as to costs.”

**Re: Alleged non - compliance 2 : Failure to mandatorily establish API based LAMA to allow stock exchanges to monitor the ‘Key Parameters’ of the ‘Critical Systems’**

40. It is alleged that the Company has not connected all critical systems with LAMA, leading to non-compliance under Clause 61.6.1. of the SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 (“SEBI Master Circular”), read with Clause 6.1 of the SEBI Circular, Para 5.i of the NSE Circular read with Clause A (5) of the Code of Conduct specified in Schedule II of the SEBI (Stock Brokers) Regulations, 1992 (“Brokers Regulations”).
41. As per the aforementioned circulars, stock exchanges have to build an API based LAMA to be operated between stock exchanges and specified stock brokers’ trading systems. Under this mechanism, the members shall monitor key systems & functional parameters to ensure that their trading systems function in a smooth manner. Stock exchanges shall, through the API gateway, independently monitor ‘Key Parameters’ of the ‘Critical Systems’ as specified in the NSE Circular to gauge the health of the trading systems of the specified stock brokers.
42. On March 31 , 20 23 , the Company received an email from NSE regarding the log in credentials of the LAMA API for the live environment at 11:07 PM, less than 11 hours before it was to be enabled on April 01 , 2023 . However, upon attempting to use the provided credentials, they were found to be non - functional. Subsequently, on June 22, 2023, the Company notified NSE via email that they were unable to access the live LAMA API from IP 43.204.247.107, attaching the error encountered. Despite this, there was no response from NSE, prompting a follow-up email on July 06, 2023. NSE's response on July 07, 2023, requested further details on the error response. The

Company promptly replied on July 10, 2023, referencing the earlier email and error report. Continued efforts to resolve the issue included responses from both parties on July 11, 13, 14, 18, and 24, 2023, with NSE providing the header key and remarks on July 25, 2023. The Company further highlighted the persisting issues to NSE on July 25 and 26, 2023, and followed up again on August 03 and 09, 2023. The purpose of detailing these correspondences is to underscore the Company's diligent efforts to fully implement the LAMA system, despite encountering obstacles. It is crucial to note that the integration of LAMA is not a simple plug-and-play API process; rather, it requires consultation and guidance from NSE. As NSE issues were gradually resolved, critical systems were successfully integrated into LAMA. As of now, critical systems of LAMA have been integrated, marking significant progress in the Company's compliance efforts. The emails referred above have been circulated with your office already in our previous submissions. The Company installed the LAMA system on September 11, 2023, following the resolution of all outstanding issues by the NSE. Subsequently, two critical systems — hardware and application — were integrated and later on other two critical systems — database & network, as viewed by NSE as critical — were integrated. Therefore, the Company has successfully integrated all "Critical Systems" into the LAMA system in accordance with the guidance provided by the NSE on December 16, 2023. Below is the summary of email exchanges in chronological order for your reference:

| <b>S. No</b> | <b>Date</b>              | <b>Event Details / Action Taken</b>   | <b>Mode of communication</b> |
|--------------|--------------------------|---|------------------------------|
| 1.           | Friday, 31 March, 2023   | In reference to the NSE circular NSE/COMP/54876 dated December 16, 2022, development and implementation of a LAMA Gateway was specified. In this regard, the NSE sent a mail to the Company with the login credentials for the live environment, along with attached document for password encryption. The same shall be enabled w.e.f. April 1, 2023. Note: The Company received an email from NSE regarding the login credentials of the LAMA API for the live environment at 11:07 PM, less than 11 hours before it was to be enabled on April 01, 2023. | E-mail                       |
| 2.           | Thursday, 22, June, 2023 | The Company sent a mail to NSE, stating that "we unable to access live LAMA API from IP 43.204.247.107 . Kindly whitelist the same from your end. Kindly check the attachment for the error."   | E-mail                       |

|     |                               |  |        |
|-----|-------------------------------|--|--------|
| 3.  | Thursday,<br>July 6,<br>2023  | The company sent a follow-up mail on urgent basis to NSE on the update of the aforementioned mail stating "Any update on this ? We are unable to connect LAMA API from AWS network (IP 43.204.247.107) but able to connect it with outside network. We would request you to treat this as urgent."   | E-mail |
| 4.  | Friday,<br>July 7,<br>2023    | NSE responded to the above mail and asked the Company to share the error response received for further analysis.   | E-mail |
| 5.  | Monday,<br>July 10,<br>2023   | Company responded to the aforementioned mail of NSE and shared the document for the same.  | E-mail |
| 6.  | Monday,<br>10 July<br>2023    | Received reply from NSE "Requests from AWS IP - 43.204.247.107 are getting denied at WAF due to missing headers which are marked as below"   | E-mail |
| 7.  | Tuesday,<br>July 11,<br>2023  | Mail to NSE for asking queries "We are not sending the first three headers on UAT but it's working on UAT but same is not working on production. Please find the attached curl command log (with full verbose enabled), postman screenshot from developer machine. Also please confirm if we have to mandatory add these headers in order to work in live. We can add these headers but its working on UAT without these headers." | E-mail |
| 8.  | Thursday,<br>July 13,<br>2023 | Mail to NSE, asking for update on the query which was sent in the trailing mail.   | E-mail |
| 9.  | Friday,<br>July 14,<br>2023   | Mail to NSE, asking for update on the query which was sent in the trailing mail.   | E-mail |
| 10. | Monday,<br>July 24,<br>2023   | Mail to NSE, asking for update on the query which was sent in the trailing mail.   | E-mail |
| 11. | Tuesday,<br>July 25,<br>2023  | Received mail from NSE, on update at the query which was sent in the trailing mail.  | E-mail |
| 12. | Tuesday,<br>July 25,<br>2023  | Mail to NSE, asking further queries as the issue could not be solved from the Company as there was no clarity.   | E-mail |
| 13. | Friday,<br>July 26,<br>2023   | After a phone call, mail to NSE to confirm on the doubts of the queries  | E-mail |

|     |                          |  |        |
|-----|--------------------------|--|--------|
| 14. | Thursday, August 3, 2023 | Mail to NSE, asking for update on the query which was sent in the trailing mail.             | E-mail |
| 15. | Friday, August 9, 2023   | Mail to NSE, asking for update and clarity on the query which was sent in the trailing mail. | E-mail |

*The copies of the above emails have been shared with your good office in earlier emails.*

43. *We respectfully submit that the term "critical systems" has not been exhaustively defined, but rather encompasses all IT systems related to trading applications and trading-related services, as per the NSE Circular. Given the broad scope of this definition, it becomes challenging to precisely identify the components that constitute critical systems. If NSE had provided a clearer definition of critical systems, the Company would have promptly instructed the technical team to integrate these systems accordingly. The lack of specific guidance on critical systems has contributed to the delay in integration efforts. Therefore, we request your understanding of this ambiguity and urge for leniency in evaluating the Company's compliance efforts in this regard.*
44. *The Company installed the LAMA system on September 11, 2023 when NSE resolved all the issues and two critical system – hardware and application were integrated thereafter. Regrettably, despite our efforts, only 2 critical systems (Database & Network), as viewed by NSE as critical, could not be integrated into the LAMA system. One of the critical systems is the database, and one of the required metrics for this system is the Replication Bandwidth Utilization (in %) according to the threshold provided by NSE. The Replication Bandwidth Utilization could not be accurately measured as it is interconnected with the BCP-DR setup, which was not in place at the time. Therefore, it was impossible for us to integrate the database into LAMA initially. The integration was completed later, once the BCP-DR setup was fully implemented. For the network as a critical system, the challenge arose from determining threshold values for key parameters within the LAMA system, particularly concerning network components. We needed to insert the threshold values for the network, for which we were dependent on the vendor, Sify. Unfortunately, Sify did not provide the necessary threshold values and were trying to seek information from Sify from 2023.*
45. *We respectfully submit to your esteemed office that the implementation of LAMA critical systems in 2023 was hindered by unresolved issues encountered during that period. Despite our earnest efforts, timely resolution of these issues proved elusive, thereby impeding our ability to fully integrate the critical systems of LAMA within the specified timeframe. Given the complex nature of the task and the requisite guidance from exchanges, our ability to proceed with the implementation was contingent upon timely resolution of the aforementioned issues. We wish to clarify that our intention is not to put anything on exchanges. We understand that exchanges have to manage a*

*multitude of brokers and their respective requirements. However, we highlight the issue to bring to your attention that the delay in implementing LAMA critical systems was beyond our control. It is important to emphasize that, given optimal conditions, the implementation of LAMA could have been accomplished well in advance.*

- 46. We have successfully integrated all "Critical Systems" into LAMA in accordance with the guidance provided by the NSE. We have notified the NSE of this integration via email and have requested confirmation regarding any outstanding issues or pending requirements.*
- 47. We respectfully submit to your esteemed office that the implementation of LAMA critical systems has been duly communicated to the NSE. Through various emails, we have consistently sought confirmation regarding any outstanding issues or pending requirements related to the integration of LAMA within our infrastructure. Most recently, we reached out via email on June 10, 2024, December 30, 2024, and January 2, 2025. However, to date, no confirmation or response has been received from the NSE. The copies of the said emails are enclosed herewith and marked as "Annexure C" for your records and future reference.*
- 48. We humbly submit to your esteemed office that the allegations mentioned in the SCN pertain to issues beyond the control of the Company. The Company is also dependent on other stakeholders, including NSE and vendors such as Kamabala Solutions, Sify, STT, and Yotta, for the implementation of LAMA and BCP-DR. If these matters had been within the Company's control, the Company would accept responsibility. However, the Company was completely reliant on the resolution of issues by NSE and the aforementioned vendors. The law does not expect us to accomplish the impossible, especially when the factors contributing to the delay are not within our control.*
- 49. We draw your attention to the following judgments passed by Hon'ble Supreme Court and Hon'ble SAT for levying penalty as follows:*
  - a. Reliance Industries Ltd. v SEBI (SAT Appeal No . 39 /2 002) - The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."*
  - b. Akbar Badrudin Jiwani V. Collector of Customs , Bombay AIR 1990 SC 1579 - It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that: Para 61: "We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi,*

1983 ELT 1261, *Shatna Engine Valves Ltd., Bombay v. Collector of Customs, Bombay* (1984) 18 ELT 533 and *Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay*, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".

50. Penalties are penal in nature, and there must be an element of proof of willful default or willful disobedience of the Brokers Regulations. Mere delay in implementing the setup which is not due to the controllable factors cannot give rise to adjudication proceedings. It must be willful and deliberate defiance of the Brokers Regulations. The mere unintended technical violations cannot be a subject matter of adjudication proceedings. This is also the view taken by the Hon'ble SAT in *Cobat International Capital Corpn. vs. SEBI* in reported 2004(51) SCL 307.

51. In this regard, it is apt to site view of Hon'ble Securities Appellate Tribunal (SAT) in *Housing Development Finance Corporation [(2000 ) 28 SCL 289 Page 5 of 16 (SAT)]*, that "default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum". However, in the instant case no loss has been caused to any client of the Company and NSE has not initiate any action against the Company as NSE understood the practical difficulties in implementing the NSE Circular. No tangible loss has been inflicted upon any stakeholders, and Company has not gained any undue advantage. Additionally, the relevant portion of the judgment of the *Hindustan Steel limited vs . State of Orissa*, judgment dated August 4, 1969 is reproduced wherein the Hon'ble Supreme Court provided clear-cut guidelines in this regard.

"An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

52. It is settled law that inadvertent and bona fide mistakes should not be penalized, especially if of a small or technical nature. Going by the law established in the case of *Price Water house Coopers Pvt . Ltd . v. Commissioner of Income Tax , Kolkata (Civil Appeal No . 6924 of 2012 )*, it is entirely possible that even important corporations or entities can make bona fide and inadvertent errors,

*and imposition of penalty is not justified in these cases. The relevant portion of the judgment is provided as under –*

*“19. It appears to use that all that has happened in the present case is that return, failed to add the provision for gratuity to its total income. This can through a bona fide and inadvertent error, the assessee while submitting its only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean the assessee is guilty of furnishing inaccurate particulars or attempting to conceal its income.*

*20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified”*

*53. Hon’ble SAT in the matter of Cabot International Capital Corporation Vs . Adjudicating Officer, Securities & Exchange Board of India (Appeal No . 24/2000) held as given below:*

*“On a perusal of section 151 it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable significance, especially in view of the guidelines provided by the legislature in 15J "the Adjudicating Officer shall have due regard to the factors" stated in this section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 151, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case.”*

*.....’*

8. I now proceed to examine the case based on the facts and circumstances and the material available on record.

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

9. 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?**
10. 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**

**61.6 Monitoring mechanism:**

**61.6.1** Proactively and independently monitoring technical glitches shall be one of the approaches in mitigating the impact of such glitches. In this context, the stock exchange shall build API based Logging and Monitoring Mechanism(LAMA) to be operated between stock exchanges and specified stock brokers' trading systems. Under this mechanism, specified stock brokers shall monitor key systems & functional parameters to ensure that their trading systems function in a smooth manner. Stock exchanges shall, through the API gateway, independently monitor these key parameters to gauge the health of the trading systems of the specified stock brokers.

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

**61.7.1** Stock brokers with a minimum client base across the exchanges, as may be specified by stock exchanges from time to time, shall mandatorily establish business continuity/DR set up.

**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 1full trading day. Stock exchanges in consultation with specified stock brokers shall decide the frequency of DR drill / live trading from DR site.

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

**6. Monitoring mechanism:**

**6.1** Proactively and independently monitoring technical glitches shall be one of the approaches in mitigating the impact of such glitches. In this context, the stock exchange shall build API based Logging and Monitoring Mechanism (LAMA) to be operated between stock exchanges and specified stock brokers' trading systems. Under this mechanism, specified stock brokers shall monitor key systems & functional parameters to ensure that their trading systems function in a smooth manner. Stock exchanges shall, through the API gateway, independently monitor these key parameters to gauge the health of the trading systems of the specified stock brokers.

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

**7.1** Stock brokers with a minimum client base across the exchanges, as may be specified by stock exchanges from time to time, shall mandatorily establish business continuity/DR set up

**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.

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

**5. Monitoring mechanism - Applicable to 'Specified Members'**

i. Proactively and independently monitoring technical glitches shall be one of the approaches in mitigating the impact of such glitches. In this context, the 'Specified Members' shall build API-based Logging and Monitoring Mechanism (LAMA) to allow stock exchanges to monitor the 'Key Parameters' of the 'Critical Systems'. Under this mechanism, 'Specified Members' shall monitor key systems & functional parameters to ensure that their trading systems function in a smooth manner. Stock exchanges will, through the API gateway, independently monitor these key parameters in real-time to gauge the health of the 'Critical Systems' of the 'Specified Members'.

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

*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.*

**SEBI (STOCK-BROKERS) REGULATIONS, 1992**

**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?**

11. 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:

**BCP, DR site and DR drill**

12. It is alleged that the Noticee failed to conduct quarterly reviews of the BCP-DR policy for the quarters of April-June 2023, July-September 2023, and October-December 2023. This alleged non-compliance pertains to Clause 61.7.2 of the SEBI Master Circular dated May 17, 2023, read with Clause 7.2 of the SEBI Circular dated November 25, 2022, and Para 6(xi) of the NSE Circular dated December 16, 2022, along with Clause A(5) of the Code of Conduct specified in Schedule II of SEBI Stock Brokers Regulations, 1992. These provisions mandate that the governing board of specified members must review the implementation of the BCP-DR policy on a quarterly basis to ensure effective risk management and operational preparedness. During the inspection, it was observed that no such quarterly reviews were conducted for the aforementioned quarters, leading to this allegation of non-compliance.

13. In this regard, Noticee has contended that it constituted a BCP-DR Committee on April 1, 2023, specifically to oversee the implementation of the NSE Circular and the BCP-DR policy. It submitted that the reviews were conducted by this BCP-DR Committee as required, as the Committee conducted quarterly reviews on the following dates:
- a) July 31, 2023: Focused on updates regarding the DR site setup and Local Area Monitoring Application (LAMA) implementation.
  - b) October 9, 2023: Discussed leased line installation, DR site setup, and IT infrastructure changes with Kamabala Solutions.
  - c) January 19, 2024: Reviewed progress on leased line installation, ongoing discussions with Kamabala Solutions, and approved the BCP-DR Plan document.
14. From the documents placed by the Noticee on records, I note the following:
- a) Noticee constituted a BCP-DR Committee, which comprised of:
    - i. Mr. Shailendra Singh, RMS Head,
    - ii. Mr. Pawan Kumar, Compliance Head, and
    - iii. Mr. Sumit Roy, IT Department;
  - b) The BCP-DR committee conducted three meetings in three quarters in which it discussed:
    - i. Update on Disaster Recovery Site
    - ii. Update on LAMA Application Implementation
    - iii. Authorization for document signing
15. The Noticee's contention that a BCP-DR Committee was constituted, and reviews were conducted by it is supported by the minutes of the meetings provided. However, it is to be noted that the regulatory requirement as per NSE Circular No. NSE/Comp/54876 dated December 16, 2022 is for the 'Governing Board' of the

Noticee to conduct the quarterly reviews of the implementation of the BCP-DR Policy to ensure strategic oversight and effective risk management. The Noticee has not demonstrated that the governing board itself conducted these reviews. Further, the agenda items of the meetings of BCP-DR Committee didn't include review of BCP-DR Policy document, as mandated by Clause 61.7.2 of the SEBI Master Circular dated May 17, 2023 and clause 7.2 of SEBI Circular dated November 25, 2022.

16. While it is acceptable for a committee to oversee operational aspects of the BCP-DR policy, the ultimate responsibility for reviewing its implementation rests with the governing board. The purpose of this provision is to ensure that the highest level of management is directly involved in assessing the entity's preparedness for business continuity and disaster recovery. Delegation to a committee does not absolve the governing board of this responsibility.
17. Moreover, the Noticee did not place on record any communication with SEBI or NSE, clarifying the role of the committee or seeking clarification on whether such delegation met the regulatory requirements. If the Noticee was uncertain about the compliance expectations, it was incumbent upon it to seek guidance from SEBI or NSE. The absence of such communication reflects a lack of engagement with the regulators. Since, Noticee is in violation of aforesaid provisions, the Noticee is consequently in violation of Clause A(5) of the Code of Conduct specified in Schedule II of SEBI Stock Brokers Regulations, 1992.
18. In view of the above, it is noted that the Noticee has not demonstrated that the governing board itself conducted the reviews of implementation of the BCP-DR Policy, hence the **non-compliance of Clause 61.7.2 of the SEBI Master Circular dated May 17, 2023, read with Clause 7.2 of the SEBI Circular dated November 25, 2022, and Para 6(xi) of the NSE Circular dated December 16,**

**2022, along with Clause A(5) of the Code of Conduct specified in Schedule II of SEBI Stock Brokers Regulations, 1992 by the Noticee is established.**

19. It is alleged in the SCN that the Noticee did not have a functional BCP-DR setup at the time of inspection, thus violating Clause 61.7.1 of the SEBI Master Circular dated May 17, 2023, read with Clause 7.1 of the SEBI Circular dated November 25, 2022. These provisions require specified stock brokers to establish a Business Continuity Plan-Disaster Recovery (BCP-DR) setup to ensure trading continuity, including real-time data replication, operational readiness through periodic testing, and live drills. The inspection revealed that the Noticee had not established a separate DR site from its Primary Data Center, lacked real-time data replication mechanisms, and had not conducted live trading or DR drills from the proposed DR site.
20. The Noticee has contended that it conducted an initial evaluation at Mohali, revealing potential latency issues due to geographical distance from relevant exchanges, risking order rejections. It further contended that the physical data center at Mohali was incompatible with its existing cloud-based infrastructure in Mumbai, posing integration challenges and risks of data synchronization failures. The Noticee claimed that Mohali lacked direct-connect or cross-connect options with major cloud service providers, exacerbating latency concerns, leading to the decision to shift the DR site to Hyderabad.
21. In this regard, I note that while the Noticee has detailed the technical challenges faced, it is observed that these issues are typical in setting up complex infrastructure, especially for stock brokers with nationwide operations. The requirement to establish a functional BCP-DR setup, including separate seismic zones for PDC and DRS, was explicitly stated in the SEBI and NSE Circulars issued well in advance. The Noticee, being a significant market participant, was

expected to conduct a thorough feasibility analysis and identify suitable locations during the initial planning phase. The selection of Mohali as the initial DR site without ensuring compatibility with its existing cloud infrastructure indicates inadequate due diligence. Furthermore, no records have been submitted to demonstrate any communication with SEBI or NSE regarding the latency issues or challenges encountered at Mohali. This suggests a lack of proactive engagement with the regulators to seek guidance or request extensions.

22. The Noticee has contended that establishing real-time data replication mechanisms involved intricate configurations and extensive testing to maintain data integrity. It contended that shortening this process would risk data loss or corruption, making it infeasible to comply within the regulatory timeframe.
23. In this regard, I note that while the Noticee's argument regarding the complexity of data synchronization is valid, it is also a known requirement in setting up BCP-DR systems, particularly for stock brokers dealing with high-frequency trading operations. The SEBI and NSE Circulars clearly mandated real-time data replication to ensure operational continuity. The Noticee should have anticipated this complexity and initiated the necessary steps for integration and testing earlier in the process. Moreover, the Noticee has not provided any documentation to demonstrate that it informed SEBI or NSE about the synchronization challenges or sought additional time to comply.
24. The Noticee has contended that its Primary Data Center (PDC) was in Mumbai, where most vendors were also located, making it challenging to comply with the requirement to establish the PDC and DRS in separate seismic zones or at least 250 km apart. It further contended that selecting a suitable location for the DRS was time-consuming due to seismic zoning regulations and technical requirements.

25. In this regard, I note that it is acknowledged that the requirement to establish the PDC and DRS in separate seismic zones poses logistical challenges, particularly for entities with large-scale operations. It is noted that the Noticee ordered rack space in the STT Datacenter in Hyderabad in May, 2023. However, the SEBI Circular was issued in November 2022, and the provisions became effective on April 1, 2023, providing the Noticee with adequate time to assess its existing infrastructure and select a compliant DRS location. The Noticee's argument regarding the complexity of selecting a suitable location does not justify the delay, as this requirement was clearly outlined in the Circular. Additionally, no evidence has been submitted to show that the Noticee communicated its logistical challenges to SEBI or NSE. The Noticee's contention does not absolve it of the obligation to comply within the regulatory timeframe.
26. The Noticee in its contentions has attributed delays to external vendors, including Yotta Data Services and Sify Technologies, and highlighted logistical issues related to GST location constraints and delivery detours. It contended that dependency on third-party service providers significantly impacted the setup timeline. In this regard, I note that the reliance on third-party vendors for infrastructure setup is common practice. However, this reliance does not absolve the Noticee of its regulatory obligations. The Noticee, as the principal entity, was responsible for ensuring timely compliance. The challenges related to vendor logistics and GST constraints should have been anticipated during the planning phase, given the stringent timelines specified in the Circulars. The Noticee has not provided any correspondence with SEBI or NSE to demonstrate that it communicated these vendor-related challenges or sought additional time for compliance.



27. While vendor delays may have contributed to the overall timeline, the Noticee was ultimately responsible for complying with the regulatory requirements within the stipulated period. The argument that vendor dependencies impacted the setup timeline does not negate the fact that non-compliance occurred.
28. The Noticee in its contention has invoked the legal doctrine of impossibility, arguing that compliance within the three-month timeframe was objectively impossible due to technical, logistical, and regulatory challenges. Noticee has also cited regulatory proportionality, arguing that measures must be necessary, suitable, and proportionate to their intended purpose. The Noticee has requested leniency on the grounds of proactive efforts and genuine challenges faced.
29. In this regard, I note that the doctrine of impossibility applies when performance is objectively impossible, not merely difficult or costly. In this case, the challenges cited by the Noticee were foreseeable and stemmed from the inherent complexities of setting up a BCP-DR infrastructure. As a designated 'specified member' by the exchange, it is expected that the Noticee should be aware of these complexities and initiate the process with adequate planning and foresight. Additionally, no records have been provided to show that the Noticee informed SEBI or NSE of the impossibility of compliance or requested an extension.
30. Regarding regulatory proportionality, SEBI's mandate to establish a BCP-DR setup is aimed at ensuring system resilience and protecting investor interests. The Noticee's argument does not justify the failure to comply within the stipulated timeline. Furthermore, the sufficiency of the timeline given for the compliance by SEBI is not a subject matter for adjudication before the undersigned but the issue is whether the Noticee complied with the regulatory requirements.

31. The Noticee has provided a comprehensive explanation of the challenges faced in setting up the BCP-DR setup. However, the contentions primarily highlight operational difficulties and vendor dependencies, which do not absolve the Noticee of its regulatory obligations. Further, the Noticee did not provide any records of communication with SEBI or NSE to explain its inability to comply or to seek regulatory guidance/exemption of extension. In view of the above, it is found that the **Noticee is in violation of Clause 61.7.1 of the SEBI Master Circular dated May 17, 2023, read with Clause 7.1 of the SEBI Circular dated November 25, 2022.**
32. It is alleged in the SCN that the Noticee failed to conduct mandatory Disaster Recovery (DR) drills or live trading from the DR site, violating Clause 61.7.4 of the SEBI Master Circular dated May 17, 2023, read with Clause 7.4 of the SEBI Circular dated November 25, 2022. These provisions require specified stock brokers to conduct live trading from the DR site at least once every six months to ensure operational readiness and system resilience. During the inspection, it was observed that the Noticee did not conduct any DR drills or live trading from the DR site.
33. The Noticee has contended that conducting DR drills or live trading was impractical before the full implementation of the BCP-DR setup due to technical and logistical challenges. It contended that establishing the DR site involved multiple stages, including location selection, logistical hurdles, and technical issues with stock exchanges. The Noticee also cited complex procedural dependencies and coordination issues for compliance and approval, leading to delays in conducting the required drills.
34. It is acknowledged that without a fully operational BCP-DR setup, conducting the mandatory DR drills or live trading would not have been feasible. However, the

regulatory framework under Clause 61.7.4 of the SEBI Master Circular and Clause 7.4 of the SEBI Circular required adherence to specific timelines for conducting DR drills. If the Noticee faced genuine challenges that impacted compliance, it was incumbent upon the Noticee to communicate these challenges to SEBI or NSE and seek exemptions or relaxation from the prescribed deadlines. This would have demonstrated proactive compliance and may have resulted in regulatory guidance or flexibility.

35. The Noticee, however, did not place on record any communication with SEBI or NSE explaining the challenges faced or requesting an extension. Without this, the Noticee effectively assumed the risk of non-compliance. Any relaxation from compliance deadlines could only have been granted by SEBI or the relevant exchanges.
36. It is also pertinent to note that conducting DR drills is not merely a regulatory formality but a crucial measure to ensure that the Noticee, as a specified member handling significant client volumes, is prepared to maintain business continuity in the event of a disaster. The regulatory mandate to conduct live DR drills every six months is preventive, ensuring operational continuity and protecting investor interests during technical disruptions. The Noticee's contention of impracticality owing to it not able to set up BCP-DR Site within prescribe timeline, therefore, does not diminish the importance of this requirement.
37. At the adjudication stage, the sufficiency of the timeline provided by SEBI is not under consideration. The primary issue for adjudication is whether the Noticee complied with the mandated requirement to conduct DR drills or live trading within the stipulated timeframe. In this case, the Noticee failed to do so, establishing non-compliance.

38. The Noticee submitted that it undertook proactive measures, including resource allocation and stakeholder engagement, to expedite the implementation of the BCP-DR setup. It further stated that the DR site became operational on March 2, 2024, and live drills were conducted on May 18, 2024, demonstrating eventual compliance. The Noticee has requested leniency, emphasizing that the delays were due to complex technical dependencies and logistical challenges beyond its control. It also highlighted that this was its first instance of non-compliance and that no client loss or undue advantage occurred.
39. In this regard, I note that while the Noticee's proactive efforts and eventual compliance are acknowledged, regulatory compliance necessitates adherence to the prescribed timelines. Conducting DR drills or live trading at least once every six months is mandatory to ensure operational readiness and system resilience. The Noticee's argument of eventual compliance does not negate the fact that it failed to comply within the prescribed timeframe. Regulatory compliance is based on continuous and timely fulfillment of obligations, not on eventual adherence. The argument that no client loss or undue advantage occurred does not absolve the Noticee of non-compliance, as the requirement is preventive, aimed at mitigating systemic risks.
40. The Noticee has contended that it encountered complex procedural dependencies and coordination issues with stock exchanges, impacting its ability to conduct the required DR drills within the prescribed timeframe. It contended that these dependencies significantly affected its compliance efforts. I note that while the intricacies involved in establishing a DR site and obtaining necessary approvals from multiple stock exchanges are acknowledged, regulatory compliance requires adherence to prescribed timelines regardless of procedural dependencies. The Noticee, as a regulated entity, was responsible for anticipating these dependencies and coordinating with the exchanges well in advance to ensure compliance.

41. From the above, I note that the Noticee provided detailed explanations of the challenges faced in conducting DR drills or live trading within the specified timelines, and eventually conducted DR Drill on May 18, 2024. However, **Noticee failed to conduct DR drills/live trading from DR site within the timeline specified, and therefore is in violation 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 Clause 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.**

**Monitoring Mechanism**

42. It is alleged in the SCN that the Noticee failed to connect all critical systems to the Local Area Monitoring Application (LAMA) by the stipulated deadline of March 2024. This alleged non-compliance pertains to Clause 61.6.1 of the SEBI Master Circular dated May 17, 2023, read with Clause 6.1 of the SEBI Circular dated November 25, 2022, and Para 5(i) of the NSE Circular dated December 16, 2022, along with Clause A(5) of the Code of Conduct specified in Schedule II of SEBI Stock Brokers Regulations, 1992. LAMA is designed to ensure real-time monitoring of trading systems to maintain system integrity and operational transparency. The inspection revealed that the Noticee had not connected all critical systems to LAMA within the prescribed timeframe, leading to this allegation of non-compliance.
43. The Noticee has contended that the delay in connecting all critical systems to LAMA was due to technical and operational complexities. Noticee has contended that integrating critical systems with LAMA required extensive technical configurations and testing to ensure system compatibility and operational transparency. The Noticee emphasized that the delay was unintentional and resulted from technical dependencies beyond its control.

44. While the Noticee's contention regarding the technical complexities involved in integrating critical systems with LAMA is acknowledged, it is pertinent to note that Clause 61.6.1 of the SEBI Master Circular and Clause 6.1 of the SEBI Circular clearly mandated timely integration of critical systems to ensure real-time monitoring and regulatory oversight. The requirement to connect critical systems to LAMA is preventive, aimed at maintaining the integrity of trading systems and mitigating operational risks.
45. The Noticee, being a regulated entity handling significant trading volumes, was expected to anticipate potential technical challenges and initiate the integration process well in advance. It should have allocated adequate resources, conducted detailed feasibility analysis, and coordinated with vendors and exchanges to ensure compliance within the stipulated timeline.
46. The Noticee has contended that it actively followed up with NSE regarding the integration issues and made continuous efforts to resolve the technical challenges. It contended that it regularly communicated with NSE to address the complexities and dependencies impacting the integration process. The Noticee also highlighted that it took proactive steps towards integration and demonstrated good faith efforts to comply with the regulatory requirements.
47. While the Noticee's proactive efforts and continuous follow-up with NSE are acknowledged, it is essential to distinguish between communication with exchange for the technical issues it faced, and formal communication with SEBI and exchanges regarding exemption / relaxation / extension of timeline for regulatory compliance.

48. The Noticee contended that the delay was unintentional and resulted from technical dependencies beyond its control. It argued that the complexities involved in integrating critical systems with LAMA were unprecedented, and it made genuine efforts to resolve the challenges. The Noticee requested leniency on the grounds that the delay was not willful or deliberate and that it acted in good faith.
49. While the Noticee's argument regarding the unintentional nature of the delay and its good faith efforts are noted, regulatory compliance necessitates adherence to the prescribed timelines. The argument of unintentional delay does not absolve the Noticee of the obligation to comply within the stipulated timeframe. It is also essential to recognize that the complexity of integrating critical systems is acknowledged. However, as a regulated entity, the Noticee was expected to anticipate such challenges and initiate the integration process with adequate planning and foresight. Regulatory compliance is based on continuous and timely fulfillment of obligations, not on eventual adherence.
50. As claimed by the Noticee, that it faced genuine technical dependencies, issues etc. that impacted its ability to comply, it was incumbent upon the Noticee to communicate these challenges to SEBI or NSE and seek exemptions or relaxation from the prescribed deadline. However, the Noticee did not provide any records of communication with SEBI or NSE, informing them of the technical challenges or requesting an extension. Any exemption from compliance deadlines could only have been granted by SEBI or the relevant exchanges. By failing to engage with the regulators and not seeking an extension, the Noticee effectively assumed the risk of non-compliance.
51. The requirement to connect critical systems to LAMA is preventive, ensuring system integrity and operational transparency. It is also pertinent to note that at the adjudication stage, the sufficiency of the timeline provided by SEBI is not for

consideration. The primary issue under adjudication is whether the Noticee complied with the mandated requirement to connect all critical systems to LAMA within the stipulated timeframe. In view of the above, it is established that the Noticee did not incorporate all its critical systems to LAMA by March 2024, and therefore **Noticee is in violation of Clause 61.6.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 6.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, Para 5.i 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 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?**

52. 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 61.7.2 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.2 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, 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 Regulation 1992.
  - b) Clause 61.7.4 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.4 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.
  - c) Clause 61.7.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 7.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022.



d) Clause 61.6.1 of SEBI Master Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023 r/w Clause 6.1 of SEBI Circular SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, Para 5.i 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 Regulation 1992.

53. The aforesaid violations, makes the aforesaid Noticee liable for penalty under Section 15HB of the SEBI Act.

54. 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 made by the defaulter with guilty intention or not."*

55. 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?**

56. 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.]*

57. 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 that it failed multiple technical and operational issues, and put up lots of efforts to comply with the regulatory requirements, but was unable to comply with the same, within the timeline. The violations are established, however the efforts undertaken by the Noticee, and the circumstances illustrated by the Noticee are considered as mitigating factors. Since, the Noticee is found to be in non-compliance of regulatory requirements, therefore, monetary penalty is imposed on the Noticee as effective deterrence.

## ORDER

58. 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:

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

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

59. 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**

60. 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.
61. 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 20, 2025**

**ASHA SHETTY**

**ADJUDICATING OFFICER**