

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

S. No.	Name of Noticee	SEBI Registration No.
1	Guiness Securities Ltd.	INZ000167037

Background

- Guiness Securities Ltd. (hereinafter referred to as "the **Noticee/ GSL**") is registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") in following capacity:

Table No. 1

Noticee Name	Type of Intermediary	Registration No.
Guiness Securities Ltd.	Stock Broker	INZ000167037
	Depository Participant	IN-DP-CDSL-4332007
		IN-DPNSDL-239-2004
	Research Analyst	INH0000003390

- NSE had conducted an inspection of Stock Broker activities of GSL and submitted its inspection report to SEBI on November 21, 2018, wherein the period of inspection was from April 01, 2017 to August 31, 2018. Subsequently, SEBI prepared a report dated November 28, 2018, on certain irregularities including misappropriation of clients' securities with respect to GSL (hereinafter referred to as "**SEBI IR**") based on the said report of NSE. Pursuant to which ex parte-ad-interim

order dated December 19, 2018 was passed against GSL and the directions issued vide the said order was confirmed vide confirmatory order dated July 31, 2019.

3. Thereafter, given the nature, extent and tenure of the misappropriation of client securities, SEBI had advised NSE and BSE to carry out Forensic Audit (FA) of GSL and the entities through whom money has been siphoned off during the relevant period.
4. Accordingly, BSE, on April 12, 2019, appointed Borkar & Muzumdar as the Forensic Auditor for GSL and as per the final report submitted by the said auditor to BSE on May 17, 2019, I note that the auditor has communicated its inability to express any opinion due to non-co-operation from GSL.
5. Further, on March 12, 2019, NSE appointed Jayesh Sanghrajka & Co. LLP as the Forensic Auditor for GSL, which had in turn submitted the "Forensic Audit Report (hereinafter referred to as "**FAR**") in the matter, dated October 22, 2019. The audit was conducted with regard to all books of accounts of GSL and its identified related entities.
6. The period considered for the Forensic Audit was from FY 2015-16 to 2017-18 for GSL and from October 2008 to March 2018 for the related entities as referred above. As a result, the total period covered is from October 2008 to March 2018 (hereinafter referred to as "**Examination Period**").
7. On the basis of SEBI IR and FAR, a final order dated June 30, 2022, under Section 11(1), 11(4) and 11B(1), 11B(2), 11D of the SEBI Act, 1992 and Section 12A(1) and 12A(2) of the Securities Contract Regulation Act, was passed against GSL and others.

8. Further, SEBI initiated enquiry proceedings in terms of Regulations 25 and 26 of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”), for alleged violations committed by the Noticee.

Issuance of Show Cause Notice to the Noticee by the Designated Authority:

9. The Designated Authority (hereinafter referred to as “**DA**”) issued a show cause notice dated August 29, 2022 (hereinafter referred to as “**SCN-I**”) to GSL, asking it to show cause as to why suitable action as provided under Regulation 26 of the Intermediaries Regulations, should not be recommended against it. Following allegations/ charges were levelled against the Noticee, through SCN-I:
- 9.1. Misappropriation of Client Securities and Diversion of proceeds from misappropriation of securities to related parties
 - 9.2. Mis-reporting/Non-reporting of data under enhanced supervision to NSE
 - 9.3. Falsification of Books of Account:
 - 9.4. Lack of Solvency of GSL
 - 9.5. Non-settlement of Funds and Securities of clients,
 - 9.6. Funding to clients having debit balances by providing further exposure,
 - 9.7. Non-redressal of investor complaints
 - 9.8. Failure to furnish information to SEBI;
10. The Authorized Representative (AR) of the Noticee, vide e-mail dated November 22, 2022, had confirmed the receipt of the SCN-I. Accordingly, DA had provided an opportunity of personal hearing to the Noticee on December 15, 2022, as conveyed through an e-mail dated December 08, 2022. Subsequently, on request of AR of the Noticee, hearing date was adjourned to December 23, 2022 and later to January 05, 2023. Meanwhile, the Noticee submitted its reply dated December

24, 2022 and the said hearing was attended by the AR of the Noticee as per schedule.

11. On completion of the enquiry proceedings, the DA submitted a report dated January 31, 2023 (hereinafter referred to as "**DAR**") which records that the SCN-I was duly served upon the Noticee on October 26, 2022. Further, the DA held that GSL has violated the following provisions of law during the inspection period:

- 11.1. SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

- 11.2. SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

- 11.3. Rule 15 of Securities Contracts (Regulation) Rules, 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.

- 11.4. Regulation 9 (g) of SEBI (Stock Brokers) Regulation, 1992.

- 11.5. SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

- 11.6. SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

- 11.7. Regulation 9(e) of SEBI (Stock Brokers) Regulations, 1992.

- 11.8. Regulation 21 of the SEBI (Stock Brokers) Regulations, 1992.

- 11.9. Clauses A(I), (2), (3), (4) & (5) and B(6) of Code of Conduct as provided under Schedule II read with Regulation 9 of the SEBI (Stock Brokers) Regulations, 1992.

- 11.10. Section 12A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") r/w Regulation 3(d), 4(1) and

4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003.

11.11. The above violations listed at paras 9 are to be read with Section 27 of SEBI Act, 1992.

12. The DA in his report (DAR), has also made the following recommendation:

“..... in view of the facts and circumstances of the case, materials placed before me and in terms of Regulation 26 of the Intermediaries Regulations, I recommend that the registration of the Noticee, i.e. Guinness Securities Limited, [SEBI Registration No.: INZ000167037] [PAN: AAACG9843L] as a Stock Broker be cancelled in the interest of the securities market...”

Transfer of case from previous authority

The present matter was earlier assigned to another competent authority (CA). Thereafter, pursuant to certain internal transfers, the matter has been taken over by me on April 24, 2023.

Issuance of Post-Enquiry Show Cause Notice to the Noticee by the Quasi Judicial Authority

13. Pursuant to completion of the enquiry proceedings, the enquiry report dated January 31, 2023 was forwarded to the Noticee, vide a show cause notice dated April 19, 2023 (hereinafter referred to as “**SCN-II**”) calling upon the Noticee to show cause as to why the action, as recommended by the DA or any other action as contemplated under regulation 27(1) of Intermediaries Regulations, should not be taken against it.

14. The said SCN-II, sent to the address of GSL at 10, Canning Street, 5th Floor, Kolkata, returned undelivered. However, I note that it was hand delivered at the aforementioned address on May 12, 2023. However, no reply was received from

the Noticee. Thereafter a personal hearing was scheduled at 2:30 pm on June 27, 2023 and the "Hearing Notice" dated June 15, 2023 along with the SCN-II was served on GSL by way of hand delivery at the aforementioned address of the Noticee on June 21, 2023.

15. On the day of the scheduled hearing, i.e. June 27, 2023, neither the Noticee nor any of its representative appeared before me for hearing. Further, the Noticee did not seek any adjournment by way of any written/ oral communication.
16. Therefore, I note that the principles of natural justice (PNJ) have been complied with. Now I proceed with the matter based on the report submitted by the DA, the allegations/ charges levelled in SCN-I and SCN-II, replies and submissions of the Noticee and other material available on record.
17. As discussed at para 10 above, the Noticee had submitted its reply dated December 24, 2022 to the DA through its AR. The relevant extract of the said reply is as follows:
 - a. *Pursuant to interim order dated December 19, 2018 and Confirmatory order dated July 31, 2019, the final order dated June 30, 2022 was passed against GSL along with others and a monetary penalty of Rs. 1.5 Crore u/s 15HA of SEBI Act and Rs. 50 Lacs u/s 23D of SCRA has been imposed in addition to imposing restriction on accessing securities market, on disposal of assets, on debits in Demat and bank accounts etc. Since, penalty has already been imposed on GSL for the said violations, any further action will cause double jeopardy.*
 - b. *It has been provided with incomplete documents.*

Misappropriation of Client Securities and Diversion of proceeds from misappropriation of securities to related parties:

- c. *Rs. 24.79 crores of investment made by group companies in between FY 2009-10 to FY 2010-11 and Rs. 15.41 Crores received by GSL from its group companies, should be subtracted from the figure of Rs. 181.66 crore, alleged to be the value of securities misappropriated and sold in the name of related entities making the balance figure to be Rs. 141.46 Crores, however GSL was solvent to the extent of 158.43 crores. Further, there is no funds outflow from GSL, and on the contrary, funds have flowed into GSL, indicating that not a single penny of funds form proceeds of client's securities has been siphoned off from GSL.*
- d. *No findings regarding misappropriation of client securities findings were given by SBSE and NSE in various inspections carried out by them between 2008 and 2013.*

Mis-reporting/ Non-reporting of data under enhanced supervision to NSE:

- e. *During the relevant period, we reiterate that GSL had sufficient liquidity available to meet its the genuine client liabilities.*
- f. *GSL had to recover 2.57 crores from M/s Lars Securities Pvt Ltd. and Rs. 6.24 crores from M/s Lasvin Finvest Pvt. Ltd. But both clients had filed false complaint claiming Rs 20.78 crores from us and Ld. Member of IGRP had wrongly admitted the false claim of the aforementioned clients. The Arbitral Tribunal and Ld. Commercial Court have dismissed these alleged claims of these two entities. These matters are now pending before the Hon'ble Calcutta High Court and copies of Commercial Court and Arbitral Awards were enclosed with the reply as Annexure D. This explains the findings recorded in sub para (iv and v) of the Notice and the reasons behind non reporting.*

g. With regard to the observation in sub para (vi) of SCN that GSL has not reported securities and fund balance of the 16 clients for the Month of August 2018, such alleged violation has to be viewed in light of the explanation given below:

- i 7 complaints belong to Saraf group are at various stages of litigation,*
- ii With regard to securities and fund balances not reported for balance 9 accounts, it is submitted that 6 of these 9 complaints were resolved as these client had filed false and frivolous complaint against us. The fact of resolution of 6 of these complaints is recorded in e mail dated 22.10.2018 addressed by NSE to SEBI,*
- iii With regard to remaining 3 clients, it may be noted that the matter of Joydep Roy Barman has since been decided in favour of GSL by the Honble Supreme Court. The status of the remaining 2 clients is as below:*

S. No.	Client Name	Remark
1	Mahendra Agarwal	Client has lodged complaint at Golabari P.S. Howrah
2	Rajesh Shukla	Client lodged complaint at Lucknow P.S.

- h. The data for this period was extracted by NSE from servers of GSL, owing to total disarray at our end because of non-availability of adequate staff members and owing to process of reconciliation of client balances.*
- i. Non resolution of frivolous complaints in a few cases or non-intentional erroneous reporting in a few cases cannot be the reason to invoke Regulation 25 of the SEBI (Intermediaries) Regulations, 2008.*

Falsification of Books of Account:

- j. any difference between books of GSL and that of third party is a matter of reconciliation, which pertains only to a certain year and does not mean that assets and liabilities have been overstated or understated.*
- k. As regards the alleged multiple discrepancies in the clients' holding statement, the relevant annexures of the Forensic Audit report were not received. Without prejudice to this contention, there were sufficient funds with GSL to meet any genuine investor complaints.*
- l. the presence of suspense account appears to be a more general observation and appears to have no significance. It is not even clear, nor alleged in the Notice, that any law has been contravened by the presence of Suspense account in the Books of GSL.*
- m. mismatch of trade receivables and trade payables appearing in the books of accounts of GSL and in the books of third parties cannot lead to a conclusion that assets and liabilities have been overstated or understated.*
- n. The change in the figure in the account pertaining to Lasvin Finvest Pvt. Ltd from Rs.0.24 crore as debtor to Rs 6.24 crore as debtor was due to rectification of mistake in entering figures in our Books. The amount showing as outstanding from Lasvin Finvest Private Limited, Rs. 11.94 crores as admitted by IGRP has been subsequently negated by the Arbitral Tribunal, as it was a false claim. Further, the matter, has been disposed off in the Commercial Court which has not disturbed the findings of the Arbitral Tribunal.*

Lack of Solvency of GSL:

- o. The Forensic auditor had not considered the material fact that GSL had taken loans from other NBFCs to raise fund against the clients' indebtedness by pledging client securities, to discharge its exchange obligations in time, which GSL is unable to realise since all its bank accounts and DP accounts are frozen, and are controlled by the Core Settlement Guarantee Fund Committee.
- p. The calculation of funds available has been done on the basis of enhanced supervision provision wherein only the funded portion of the deposits has been considered. However, these figures were extracted by NSE itself from the servers of GSL and GSL later on explained that there is no lack of solvency, and the actual position is as below:

Date	Figures provided as per Notice	Figures as per Exchange and clearing Member files.
31.08.2018	- 1.97 crores	- 8.28 Crores
23.10.2018	- 8.96 Crores	+ 8.54 crores

- q. GSL had a surplus of Rs 16.97 crores even after meeting the maximum liability determined. This amply shows that GSL was solvent and there was no lack of solvency.

Non-settlement of Funds and Securities of clients:

- r. GSL has been regularly complying with SEBI Circular No. SEBI/SE/CIR-19/2009 dated 03.12.2009 regarding periodical settlement of funds and securities of client accounts, and it has a clean track record of settling client account on regular basis till the FY 2016-17, and this is confirmed by various inspections carried out by the Exchanges and SEBI.

- s. *With regard to the allegation of not settling funds of clients at 37 instances, it is submitted that a few clients including HNI did not trade on daily basis but had margin in form of securities also and while settling the accounts of these clients, GSL has been applying 50% haircut on the securities held as margin on those accounts having continuous debit balance and doing occasional trading. Therefore, these client's accounts for the given 37 instances were settled accordingly.*
- t. *The total monetary figure of Rs 19.60 crores, is not a correct figure as balances carried forward from one quarter to another have been added multiple number of times in the total of Rs 19,61,27,381 arrived at. However, the closing balance of one quarter was the opening balance of the next quarter and the Table has made reference to outstanding at the end of several such quarters in respect of almost all the clients.*
- u. *Regarding inactive accounts, that these clients have authorized GSL to treat their securities as margin and do not require settlement of account and hence settlement was not done.*

Funding to clients having debit balances by providing further exposure

- v. *The exposure was granted by GSL to 17 clients is in line with NSE Circular No. 232/2015 dated 08.05.2015 wherein NSE had clarified that further exposure may be granted to the clients under certain circumstances with the intent to allow the clients to reduce their debit balance.*

Non-redressal of investor complaints:

- w. *Out of 10 complaints mentioned in the Notice:*

- (i) 7 complaints belong to Saraf group are at various stages of litigation,
- (ii) 1 complaint of Ram Krishna Saraf, to the tune of 9922 number of shares and Rs 80, 000 as costs was admitted by arbitral tribunal and
- (iii) the Arbitral awards given in cases of Lasvin Finvest Pvt. Ltd. and Lars Securities Pvt. Ltd. have negated the claims made by these 2 entities.

Non-furnishing of information as sought by SEBI:

- the Noticee submitted that it was in total disarray during this period when the information was sought by SEBI and had missed out on some communication inadvertently. However, it had communicated with SEBI on 8 instances between 03.01.2019 to 04.03.2019 and also had appeared before WTM on 12.02.2019 along with voluntary submission of data on 19.11.2018 indicating that GSL had acted with a bonafide intention with SEBI by giving free access of system to the investigation teams as and when required without any obstruction or delay.
- subsequent good conduct of GSL cannot be overlooked just to sustain a false finding of mis-reporting/non-reporting of data, Thus, inadvertent non submission of Information by GSL should be viewed in this light only.
- In view of above, it is submitted that GSL has not committed violation of any of the SEBI Circulars as set out in para 8 of the notice, and we have also not violated any Regulations of SEBI (Stock Brokers) Regulations, 1992, Securities Contracts (Regulation) Rules 1957 or

any provisions of SEBI Act 1992 and as such these proceedings under Regulation 24 (2) of the SEBI (Intermediaries) Regulations, 2008 may be dropped.

Consideration of Issues and Findings:

18. Before I proceed to decide the matter on merits, I would like to pay attention to certain preliminary objections raised by the noticee in its reply to the DA. From the reply, I note that the Noticee had raised an objection with respect of non-furnishing of complete documents. In this regard, I note from the DAR that all relied upon documents had been shared by the DA and further sufficient time was given to the noticee to respond. Further, the Noticee has also filed an exhaustive reply in the matter. Additionally, the complete Forensic Audit Report was once again provided by the DA to the Noticee, vide an e-mail dated January 16, 2023 and adequate time was also granted to the Noticee to make additional submissions, which the Noticee failed to do. In this regard, I note that the DA has referred to the pronouncement of the Hon'ble SAT in the matter of Anant R Sathe Vs. SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, and held that: "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defend.*"
19. I also note from the reply of the Noticee to the DA, objecting the present proceedings on the grounds of double jeopardy. In this regard, I note that the DA has appropriately countered the Noticee's submission that pursuant to interim order dated December 19, 2018 and Confirmatory order dated July 31, 2019, final order dated June 30, 2022 was passed against it along with others and a monetary penalty of Rs. 1.5 Crore u/s 15HA of SEBI Act and Rs. 50 Lacs u/s 23D of SCRA was imposed, in addition to imposition of restrictions like no access to market, no disposal of assets, no debits in Demat and bank accounts etc., and since penalty has already been imposed on it for the sad violations, any further

action will cause double jeopardy. In this regard, I note from the DAR wherein the DA has observed that SEBI is empowered under SEBI Act, 1992, to initiate proceedings under Intermediary Regulations framed by the Board, which is one set of actions in addition to proceedings under Chapter VIA of the Act and / or Section 11 of SEBI Act, as they are independent proceedings and can be initiated for imposing a monetary penalty/ issuing directions in the interest of the market. I further note that the DA has relied upon the decision of the Hon'ble SAT in the matter of Shree Gayatri Shares & Services Pvt. Ltd. Vs. the Adjudicating Officer, where the Hon'ble SAT vide its order dated 4.11.2009, held that ". . . *It appears that the only ground on which the impugned order is now sought to be challenged is that the Board having issued directions under section 11B of the SEBI Act, 1992 (for short the Act) debarring the appellant from accessing the securities market could not initiate adjudication proceedings as that would amount to penalizing the appellant twice for the same wrong. This is not so. The Act specifically empowers the Board to issue directions to any person associated with the securities market with a view to protect the interest of the investors and the market.....For the same wrong doing, the Act empowers the Board to impose monetary Penalty as well as by initiating adjudication proceedings.* "

The DA has further referred to the case of G. V. Films Vs. SEBI, where the Hon'ble SAT vide its order dated 15.02.2021, held that "*We find that under Securities and Exchange Board of India Act, 1992, Powers have been given to the WTM to issue direction under Section 11 and 11B of the SEBI Act. While exercising these powers, direction were issued debarring the company from accessing the securities market for a period of five years. The SEBI Act, further provides powers to the AO to levy penalty for violation of SEBI Act and its Regulations. Thus, the powers of authorities are different and distinct and does not overlap. The law permits the authorities to impose different Penalties and therefore, it is not the case of double jeopardy.*"

In view of the above, I find that the preliminary objections of the noticee have been duly addressed by the DA. Now I proceed to discuss the matter on merits based on available records.

20. The scope of the present proceedings before me is restricted to the disposal of enquiry proceedings initiated against the Noticee under Section 25 and 26 of Intermediaries Regulations and to determine whether the alleged violations by the Noticee have been established or not. If yes, then whether it warrants cancellation of the certificate of registration granted by SEBI or any other action provided under Regulation 23 read with Regulation 27 of the Intermediaries Regulation.
21. Before proceeding further, I would like to reproduce the relevant provisions of Regulations 9 (e), 9 (g), 17 and relevant clauses of the SEBI (Stock Brokers) Regulations, 1992, Section 12A of SEBI Act, 1992, Regulation 3(d), 4(1) and 4(2)(p) of PFUTP Regulations and Rule 15 of SC (R) Rules, 1957, allegedly violated by the Noticee as below:

SEBI (Stock Brokers) Regulations, 1992

"Conditions of Registration

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

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(g) he shall at all times maintain the minimum net worth as specified in Schedule VI

To maintain proper books of account, records, etc.

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

(a) Register of transactions (Sauda Book);

(b) Clients ledger;

(c) General ledger;

(d) Journals;

(e) Cash book;

(f) Bank pass book;

(g) Documents register containing inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of Dematerialized securities;

(h) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members;

(i) Counterfoils or duplicates of contract notes issued to clients;

(j) Written consent of clients in respect of contracts entered into as principals;

(k) Margin deposit book;

(k) Margin deposit book

*(l) *****

*(m) *****

(n) Client account opening form in the format as may be specified by the Board

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

(3) *Without prejudice to sub-regulation (1), every stock broker shall, after the close of each accounting period furnish to the Board if so required as soon as possible but not later than six months from the close of the said period a copy of the audited balance sheet and Profit and loss account as at the end of the said accounting period:*

Provided that, if it is not possible to furnish the above documents within the time specified, the Stock Broker shall keep the Board informed of the same together with the reasons for the delay and the period of time by which such documents would be furnished.

(4)(1) *Subject to the provisions of any other law, even Stock Broker acting as an underwriter shall keep and maintain the following books of account and documents, namely.*

(a) *In relation to an underwriter being a body a copy of the balance sheet and profit and loss account as at the end of each accounting a copy of the auditor's report on the accounts for that period;*

(b) *In relation to an underwriter not being a body corporate—*

(i) records in respect of all sums of money received and expended by them and the matters in respect of which the receipt and expenditure take place; and

(i) their assets and liabilities.

(2) *Every Stock Broker acting as an underwriter shall also maintain the following words with respect to—*

a) *details of all agreements*

b) *total amount of securities of each body corporate subscribed to in Pursuance of an agreement*

c) *such other records as may be specified by the Board for underwriting.*

(5) *Agreement with clients Even stock broker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as*

underwriter and the said agreement shall, amongst other things, provide for the following, namely: —

- a) the period for which the agreement shall be in force;*
- b) the allocation of duties and responsibilities between the underwriter and the client*
- c) the amount of underwriting obligations;*
- d) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;*
- e) the amount of commission or brokerage payable to the underwriter;*
- j) details of arrangements, if any, made by the underwriter fulfilling the underwriting obligations.*

(6) General responsibilities of a Stock Broker as an underwriter

- a) Every Stock Broker acting as an underwriter shall not derive any direct or in direct benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.*
- b) The total underwriting obligations under all the agreements shall not exceed twenty times of the net worth.*
- c) Every Stock Broker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.*

CODE OF CONDUCT FOR STOCK BROKERS -Regulation 9

“A. General.

- (1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*
- (2) Exercise of due skill and care: A stock- broker shall act with due skill, care and diligence in the conduct of all his business.*

(4) *Malpractices: A stock- broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

(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.*

B. Duty to the Investor

(6) *Fairness to Clients: A stock- broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time, that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain a direct or indirect personal advantage from the situation and shall not consider clients' interest inferior to his own. "*

SC (R) Rules, 1957

Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.

"15. (1) Every member of a recognised stock exchange shall maintain and Preserve the following books of account and documents for a period of five years:

(a) Register of transactions (Sauda book).

(b) Clients' ledger.

(c) General ledger.

(d) Journals.

(e) Cash book.

(f) Bank pass-book.

(g) Documents register showing full Particulars of sham and securities received and delivered.

(2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:

(a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.

(b) Counterfoils or duplicates of contract notes issued to clients.

(c) Written consent of clients in respect of contracts entered into as principals."

SEBI Act 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

" 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing

in securities which are listed proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

Contravention by companies

"27. (1) Where a contravention of any of the provision of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such Person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), when an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributed to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be

proceeded against and punished accordingly. Explanation: For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(t) "director", in relation to a firm, means a Partner in the firm."

PFUTP Regulations, 2003

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognised stock exchange in contravention of the provisions of the Act or the rules and the regulations made then under.

4. Prohibition of manipulative, fraudulent and unfair trade Practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade Practice in securities markets. Explanation—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -

(p) an intermediary predating or otherwise falsifying records including contract notes, client instructions, balance of securities statement, client account statements;"

22. As per material available on record including the SEBI IR and the FAR, I note that the Noticee is related to a few entities. The relationship of the Noticee and the said entities are being presented in the table given below:

S. No.	Name of Related Entity	Basis of connection										
A	1. SKB Securities Ltd.	<ul style="list-style-type: none">Shares common Shareholders with GSL viz., Mr. Dharmendra Kumar Kothari, Kamal Kumar Kothari & Sons (HUF), Abhijit Kothari and Anand Kothari.The details of the shareholding of the above individuals in S K B Securities Ltd are provided hereunder: <table><tr><th>Name</th><th>Shareholding in SKB Securities</th></tr><tr><td>Mr. Dharmendra Kumar Kothari</td><td>1.97%</td></tr><tr><td>Kamal Kumar Kothari & Sons (HUF)</td><td>74.36%</td></tr><tr><td>Abhijit Kothari</td><td>5.42 %</td></tr><tr><td>Anand Kothari</td><td>5.42 %</td></tr></table> <ul style="list-style-type: none">Shares common address with GSL.Mr. Hemant Kothari, a Director of S K B Securities Ltd. for the period, November 19, 1999 to July 03, 2012 was a shareholder of GSL.	Name	Shareholding in SKB Securities	Mr. Dharmendra Kumar Kothari	1.97%	Kamal Kumar Kothari & Sons (HUF)	74.36%	Abhijit Kothari	5.42 %	Anand Kothari	5.42 %
Name	Shareholding in SKB Securities											
Mr. Dharmendra Kumar Kothari	1.97%											
Kamal Kumar Kothari & Sons (HUF)	74.36%											
Abhijit Kothari	5.42 %											
Anand Kothari	5.42 %											
B	2. Parmarth Agro Marketing Pvt. Ltd. 3. Apurva Commodities Pvt. Ltd. 4. Param Commodities Pvt. Ltd., 5. Vishnu Krupa Commodities Pvt. Ltd.,	<ul style="list-style-type: none">Mr. Pawan Kumar Modi who was Director in the companies mentioned alongside, was also a Director of Guinness Corporate Advisory Services Pvt. Ltd. (the merchant banking arm of GSL).Mr. Pawan Kumar Modi was also a shareholder in GSL having a 5.24% stake.										

S. No.	Name of Related Entity	Basis of connection
	6. Pawantar Agro Agencies Pvt. Ltd. 7. Sangam Agro Agencies Pvt. Ltd. 8. Kalpa Mercantile Pvt. Ltd. 9. Utkarsh Agro Agencies Pvt. Ltd. 10. Chirayush Agro Marketing Pvt. Ltd. 11. Miatru Agro Marketing Pvt. Ltd. 12. Ever Green Wealth Pvt. Ltd.	<ul style="list-style-type: none"> As per the KYC data submitted by GSL, Mr. Kamal Kumar Kothari, MD of GSL acted as the introducer for the opening of the account of Param Commodities Pvt. Ltd.
C	13. Awadhoot Marketing Pvt. Ltd.	<ul style="list-style-type: none"> Mr. Kamal Kumar Kothari who was a Director of Awadhoot Marketing Pvt. Ltd. for the period September 26, 2011 to April 20, 2013 and was the Managing Director and a shareholder in GSL. Mr. Babulal Nolkha who is one of the shareholders of Awadhoot Marketing Pvt. Ltd. was one of the Directors of GSL. The KYC data of Awadhoot Marketing Pvt. Ltd. submitted by GSL, shows that its Registered address is same as the registered office address of GSL. The introducer for Awadhoot Marketing Pvt. Ltd in the KYC documents was Mr. Rajesh Kothari, brother of Mr. Kamal Kumar Kothari MD of GSL. The Board resolution dated March 08, 2006 of Awadhoot Marketing Pvt. Ltd., authorised Mr. Kamal Kumar Kothari, MD of GSL and Mr.

S. No.	Name of Related Entity	Basis of connection
		Dharmendra Kothari, Director of GSL to deal with GSL on its behalf.
D	14.Display Commercial Pvt. Ltd.	<ul style="list-style-type: none"> Mr. Shyamal Mitra who was Director in the said company was also director in Awadhoot Marketing Pvt. Ltd. which is a related entity of GSL.
E	15.Macro Commoddeal Pvt. Ltd.	<ul style="list-style-type: none"> Mr. Somnath Bhattacharjee and Lipika Bhattacharjee who were directors in the said company were also directors in SKB Securities Ltd. which is a related entity of GSL

23. Now I proceed to examine the allegations as communicated to the Noticee through SCN-I, the reply of the Noticee to the SCN-I (filed by the Authorised Representative (AR) of the Noticee) and the findings/ recommendations of the DA, as below:

23.1. Misappropriation of Client Securities and Diversion of proceeds from misappropriation of securities to related parties:

- I. It has been alleged in the SCN-I that the Noticee had misappropriated securities of its clients which it was holding in fiduciary capacity and was not having lawful authorisation to transfer such securities to any other entity. It is further alleged that the Noticee had unlawfully sold such securities without the knowledge of clients and diverted the sale proceeds for its own benefits.
- II. I note that the basis of the aforesaid allegation is the analysis of "Client Holding Statements" of various clients of the Noticee including its related entities, conducted by the Forensic Auditor for FY 2009-10 to FY 2017-18.
- III. In this regard, I note from Annexure- 6 to the FAR which contains the summarised version of the Holding Statements pertaining to related

entities of GSL. The details of total valuation of the scrips apparently sold by the related entities of GSL between FY 2009-10 and FY 2017-18, as gathered from the material available on records including the FAR are presented in the following table:

Table 1

(INR Crores)

Name of Entity	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Shri Vishnu Krupa Commodities Pvt Ltd	-47.66	-19.56	-1.93	-	-	-	-	-	-
Paramarth Agro Marketin Pvt. Ltd	0.78	-63.31	-27.78	-	2.52	-	-	-	-
Param Commodities Pvt. Ltd	3.22	0.66	-48.62	-	-	-	-	-	-
S K B Securities Ltd.	-	-	-	-19.98	-29.99	-55.83	-56.05	-77.45	-84.97
Superfast Tours and Travels Pvt. Ltd	-	-	-	-61.99	-58.44	-72.99	-66.93	-85.48	-96.69
Awadhoot Marketin Pvt. Ltd.	-	-	-	-	-	1.36	1.67	-	-
Apurva Commodities Pvt. Ltd	1.77		0.1	-	-	-	-	-	-
Pawantar Agro encies Pvt. Ltd		4.63	0.99	-	-	-	-	-	-
Total	(41.89)	(77.58)	(77.24)	(81.97)	(85.91)	(127.46)	(121.31)	(162.93)	(181.66)

IV. It is observed from the above table that GSL has misappropriated client securities through Vishnu Krupa Commodities Pvt Ltd., Paramarth Agro Marketing Pvt. Ltd. and Param Commodities Pvt. Ltd during the FY 2009-10 to FY 2011-12 and through S K B Securities Ltd. and Superfast Tours and Travels Pvt. Ltd. from FY 2012-13 to FY 2017-18.

- V. The FAR has recorded that negative scrip balances appearing in the customer code of Vishnu Krupa Commodities Pvt. Ltd. (-3,17,900), Paramarth Agro Marketing Pvt. Ltd. (11,00,133) and Param Commodities Pvt. Ltd. (-2,58,600) in the holding statement of FY 2011-12 were transferred to the customer code of S K B Securities Ltd (-10,72,533) and Superfast Tours and Travels Pvt. Ltd. (6,04,100) in FY 2012-13, which indicates falsification of holding statement. In this regard reference is made to Annexure 7 to the FAR, from which I note that such transfer of negative balances among the related entities was done in around 63 scrips, indicating that the Noticee had attempted to spread the negative balances of securities to different related entities to hide the fact that the related entities did not hold the securities on a continuous basis, that had been sold from their accounts. This observation stands to further strengthen the allegation that GSL had misappropriated the securities of its clients.
- VI. Further, the FAR has recorded the summary of fund movement between GSL and its related parties during the FY 2008-09 to FY 2017-18, providing the net fund position as on March 31, 2018, as given below:

Table 2

(in INR Crore)

Name of the Company	Payments made by GSL to related entities (A)	Payment received by GSL from related entities (B)	Net Receivable/ (Payable) (A-B)
Apurva Commodities Pvt. Ltd.	7.07	23.96	(16.89)
Awadhoot Marketing Pvt. Ltd.	0.13	5.39	(5.26)
Paramarth Agro Marketing Pvt. Ltd.	122.32	94.66	27.66
Param Commodities Pvt. Ltd.	56.42	11.72	44.70
Pawantar Agro Agencies Pvt. Ltd.	24.47	16.03	8.44

Name of the Company	Payments made by GSL to related entities (A)	Payment received by GSL from related entities (B)	Net Receivable/ (Payable) (A-B)
Shri Vishnu Krupa Commodities Pvt. Ltd.	4.76	61.10	(56.33)
S K B Securities Ltd.	27.59	12.03	15.56
Superfast Tours and Travels Pvt. Ltd.	-	2.46	(2.46)
Total	242.76	227.35	15.41

VII. From the above table, I observe that major fund movements of the Noticee were with Parmarth Agro Marketing Pvt. Ltd., Param Commodities Pvt. Ltd. and S K B Securities Ltd. and the net fund paid to these companies as on March 31, 2018 were INR 27.66 crore, INR 44.70 crore and INR 15.56 crores respectively. Further, as on March 31, 2018, GSL was to receive an amount of INR 15.41 crore from its related entities who were also its own clients. The above observation strengthens the fact that the related entities were paying out huge sums of money to GSL on a continuous basis and those payments could not have been possible but for the sale of the securities from their account that were misappropriated from the accounts of other clients, being serviced by GSL.

VIII. The Noticee, in its reply filed before the DA has contended that the total of INR 24.79 crores of investment made by its related entities in securities between FY 2009-10 and FY 2010-11 (as mentioned at para 3 of FAR) and INR 15.41 crores received by it from its related entities (as mentioned in the table given at page 14 of FAR), should be deducted from the figure of INR 181.66 crore, which is the amount equivalent to securities misappropriated and sold through account of its related entities, thereby reducing the balance figure to INR 141.46 Crores. The Noticee has further claimed that it was solvent to the extent of INR 158.43 crores and that there was no funds outflow from

GSL, and on the contrary, funds have flowed into GSL, indicating that not a single penny of funds from proceeds of clients has been siphoned off from GSL.

- IX. At the outset, I note that the Noticee has, *per se*, not refuted the observation on mis-appropriation of client securities and diversion of same proceeds thereof; the Noticee has only contended in its reply to the DA that an amount of INR 24.79 crores to be reduced from the figure of INR 181.66 crores. However, I note that the Noticee has not submitted any supporting documents or reasons why the said amount has to be reduced, other than by merely citing reference to the FAR. On a closer scrutiny of the FAR I note that the said report vide para no. 3 on page no.3 has clearly mentioned that the related entities did not have any major source of income or paid-up capital to invest the above said amount of INR 24.79 crores and has further observed that the investment could be made out of the mis-appropriation. In view of the observations, adding to the fact that no supporting evidences presented by the Noticee, I find it inappropriate to reduce the sum of INR 24.79 crores from the total of INR 181.66 crores.
- X. I further note that the figure of INR 15.41 crores argued to be deducted from INR 181.66 crores is not acceptable for the reason that the figure of INR 15.41 crores is nothing but a cumulative figure of various years starting from 2008-09 to 2017-18 and in this regard the FAR mentions the year wise mis-appropriation also. However, the same FAR mentions that INR 181.66 crores is the figure that pertains to the FY 2017-18 alone. As a result, it will be inappropriate to deduct the said INR 15.41 crores from INR 181.66 crores as has been claimed by the Noticee.

- XI. I further note that while the Noticee has claimed availability of funds to the tune of INR 158.43 Crores, the statements on excel sheet which have been furnished as evidence are not supported with any document issued by banks, NBFCs, Exchanges or Depositories or for that matter with a net worth certificate issued by an independent Chartered Accountant. Therefore, the argument given by the Noticee lacks substance and cannot be accepted. I note that the DA has also taken a similar stand in this regard.
- XII. I note that under normal circumstances, the securities held in a Demat account on a particular date, is either positive or zero and cannot be negative, however, in the instant matter the forensic auditors have found that the monetary balances of securities held by a number of related entities of GSL were having negative figures, clearly suggesting that such related entities did not had adequate securities for selling and yet securities were sold under their name which in turn strongly indicates that the securities that were sold from their accounts belonged to Demat accounts of other clients being serviced by GSL.
- XIII. In view of above discussion, I concur with the findings of DA that the Noticee has misappropriated clients' securities and diverted the proceeds from misappropriation of such securities to its related entities thereby violating provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

23.2. **Mis-reporting/ Non-reporting of data under enhanced supervision to NSE:**

- I. It has been alleged in SCN-I that GSL has mis-reported/ not reported data under “Enhanced Supervision” to NSE.
- II. In this regard, I note that SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, *inter alia*, requires Stock Brokers to upload information regarding clients’ funds and securities balances to the Stock Exchange System and onward transmission of the same to the clients for better transparency. Subsequently, by way of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, certain aspects of enhanced supervision of Stock Brokers/ Depository Participants were clarified for better effectiveness in its implementation. Therefore, there is a clear obligation on the part of the Stock Brokers to upload information regarding clients’ funds and securities balances to the Stock Exchange System on a regular basis.
- III. From the FAR, I note that the data pertaining to client wise securities balance reported by the Noticee to the Stock Exchanges did not match with the corresponding data as appearing in the security register of Noticee for the month of March 2018. A comparative analysis of the said variation/ discrepancy is presented in the following table:

Table 3

Client Name	UCC	Security Balance	As per Enhanced Report (A)		As per Security Register (B)		Variance (A-B)	
			Total number of ISINs	Total quantity of securities	Total number of ISINs	Total quantity of securities	Total number of ISINs	Total quantity of securities
Prag India	P3731	Positive	482	33,56,607	41	20,69,100	441	12,87,507
Monotype India Ltd.	M3900	Positive	359	72,28,931	8	8,92,978	351	63,35,953
Macro Commodore Pvt. Ltd	M3921	Positive	228	1,62,33,824	103	28,63,871	125	1,33,69,953
Anil Kumar Bothra	AOOI	Positive	329	63,28,287	305	12,35,886	24	50,92,401
Shyam Sundar Chowkhani	S853	Positive	25	29,74,795	4	17,828	21	29,56,967
SKB Securities Ltd.	S894	Positive	15	3,80,869	15	3,80,869		-
		Negative	-	-	-662	(1,12,65,017)	662	1,12,65,017
Superfast Tours And Travels Pvt. Ltd.	S7517	Positive	9	2,73,148	9	273,148	-	-
		Negative	-	-	-667	(1,14,33,360)	667	1,14,33,360

IV. From the above table it is observed that there is large variation in the value of security balance for various clients reported by the Noticee under Enhanced Supervision and the corresponding values as per securities register. Further, in respect of related entities of the Noticee, viz., SKB Securities Ltd. and Superfast Tours and Travels Pvt. Ltd., which had both positive and negative balances as per the security register, it is observed that only the positive positions were reported under the enhanced supervision.

V. The SCN-I further alleges that GSL had not uploaded relevant data under “Enhanced Supervision Framework” with respect to the following 16 clients while reporting client wise securities and fund balance as on August 31, 2018. The details of data not reported are presented in the following table:

Table 4

S. No.	Client Code	Client Name	Credit Balance Payable (INR.)	Value of Securities Returnable (INR)
1	A4436	Aditya Saraf HUF	2,12,301.85	Not Provided
2	J508	Joydeep Roybaman	1,327	5,930
3	1-258	Lalita Saraf	9,37,119.41	Not Provided
4	1284	Lars Securities Pvt. Ltd.	25,69,330	Not Provided
5	L285	Lasvin Finvest Pvt. Ltd.	24,29,506	Not Provided
6	M2732	Mahendra Kumar Agarwal	-	Not Provided
7	N1060	Nathmal Sultania	-	1,439
8	N133	Naw Ratan Derasari	60,240	Not Provided
9	N426	Nayan Mani Derasari	-	44,195
10	P2840	Payal Saraf	-	Not Provided
11	R3710	Rajesh Shukla	27,722	11,454
12	R1948	Ram Krishna Saraf	-	Not Provided
13	R3325	Ram Krishna Saraf	-	Not Provided
14	S5212	Shree Tulsi Properties Pvt. Ltd.	6,715,755	8,073
15	S1299	Sunita Chowkhani	-	12,400
16	U555	Urmila Shastri	10,815	Not Provided
Total			12,964,116	83,491

VI. The SCN-I also alleges discrepancies with respect to data under enhance supervision submitted by the Noticee as on October 31, 2018. In this regard, SEBI IR has recorded that as per data under enhanced supervision, submitted by the Noticee to NSE (as on October 31, 2018), two of its clients namely, M/s Lasvin Finvest Pvt. Ltd. and M/s Lars Securities Pvt. Ltd. owed funds to the Noticee of around INR 6.49 crore and had securities balance of around of 9,35,083 shares. As per information available on record, it is noted that the two aforementioned entities had filed complaints against the Noticee with NSE and as per the minutes of Investor Grievance Resolution Panel ("IGRP") of NSE dated November 05, 2018, these clients had not traded since year 2015, the Noticee had to deliver 2,04,453 shares across 11 scrips amounting to INR 20.48 crore to the said entities, which had not been honoured by it earlier. The

above fact clearly contradicts the submissions made by Noticee in the enhanced supervision report submitted to the exchange stating therein that, as on October 31, 2018, the aforesaid two entities, viz. M/s Lasvin Finvest Pvt. Ltd. and M/s Lars Securities Pvt. Ltd., owed money to GSL to the tune of Rs. 6.49 crores.

- VII. In respect of the above allegations, the Noticee has reiterated that it had sufficient liquidity available to meet genuine liabilities of its client. Further, on the charges of GSL showing no outstanding securities which are returnable to the two complainants i.e. M/s Lasvin Finvest Pvt. Ltd. and M/s Lars Securities Pvt. Ltd., the Noticee submitted that it had to recover INR 6.24 and INR 2.57 crores respectively from said clients, however they had filed false complaint claiming INR 20.78 Crores, which the Ld. Member of IGRP had wrongly admitted. It further submitted that the Arbitral Tribunal and Ld. Commercial Court have dismissed these alleged claims and these matters are now pending before the Hon'ble Calcutta High Court. In this regard, as noted elsewhere, I find that the purpose of reporting balances of funds and securities of clients is to ensure transparency in the operations of the business of the stock broker. There may be situations giving rise to disputes between the broker and the client and the same can be addressed through legally provided means such as IGRP, Arbitration etc. I also note that the Noticee has not submitted any concrete reply in respect of the other clients in respect of whom discrepancies were observed in the reporting other than claiming that some of them belong to Saraf group or matters under dispute. The limited point that has been alleged is whether the reporting to be done by the stock broker to the stock exchange has been done properly or not.

- VIII. With regards to the charges of not reporting securities and fund balance of 16 clients as on August 31, 2018, the Noticee has merely given status of complaints filed by these clients and has not furnished any reasons for not reporting the correct figures.
- IX. From the above submissions of the Noticee, I find that rather than furnishing any material evidence to suggest that it had taken due care to ensure that correct data under “Enhanced Supervision Framework” is submitted to stock exchanges, the noticee has questioned the sanctity for invoking Regulation 25 of the SEBI (Intermediaries) Regulations, 2008, by labelling unresolved complaints to be frivolous and erroneous reporting to be non-intentional. However, considering the magnitude of the discrepancies, which has been clearly brought out in the findings of FAR and SEBI IR, the argument given by the Noticee cannot be considered as a mitigating factor as by no stretch of adjustments, such grave discrepancies can be attributed to non-intentional errors or frivolous complaints, more so when the outcome of many complaints admittedly is yet not decided. I note that the allegation is regarding non-reporting of data under “Enhance Supervision” framework to NSE and the variations observed in the said data as on March 31, 2018, August 31, 2018 and October 31, 2018 and which warranted due justification, the Noticee merely has been arguing having sufficient liquidity to meet liabilities of its genuine clients and has provided status with respect to complaints filed by its clients. In this regard, it is pertinent to note that the SEBI circulars providing guidance for uploading / reporting of clients’ data by the stock brokers for enhanced supervision, have not granted any exemption from reporting / uploading the said data on any grounds. Moreover, in the light of the observations, against the Noticee with respect to mis-utilisation / mis-appropriation of clients funds and securities, the

present allegation of mis-reporting assumes more significance. Considering the above, it becomes difficult to accept the contentions of the Noticee more so in light of the fact that some of the disputes had not been brought to a logical end. Accordingly, I conclude that the charges levelled against the Noticee have been established and the noticee has violated SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

23.3. Falsification of Books of Account:

- I. It has been alleged in SCN-I that GSL falsified its books of account and has violated Rule 15 of Securities Contracts (Regulation) Rules, 1957 (for short "SCRR") and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.
- II. I note that Rule 15 (1) of SCRR mandates that a member of a Stock Exchange is required to maintain and preserve, for a period of five years, the following books of account and documents: (a) Register of transactions (Sauda book); (b) Clients' ledger; (c) General ledger; (d) Journals; (e) Cash book; (f) Bank pass-book; (g) Documents register showing full Particulars of shares and securities received and delivered. Similarly, Rule 15 (2) of SCRR mandates that a Member of a Stock Exchange is required to maintain and preserve, for a period of two years, the following documents: (a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members; (b) Counterfoils or duplicates of contract notes issued to clients;

(c)Written consent of clients in respect of contracts entered into as principals.

- III. From the above, I note that there is a clear obligation on the part of a Stock Broker to maintain and preserve its Books of Account and such obligation contains an inherent duty for the maintenance and preservation of such books in true and correct manner. Various observations regarding falsification of books of account by GSL as observed during the Forensic Audit and SEBI Inspection are discussed in detail in the subsequent paragraphs of this Order.

Overstatement of assets and liabilities

- IV. It has been alleged in the SCN-I that GSL had overstated liabilities in its audited financial statements anywhere between 26 % and 50%. Similarly, it had overstated assets anywhere between 3 % and 21%. The above mentioned observation is made on comparison of the books of GSL and the books of the related entities. An analysis of such overstatement of Assets and Liabilities in the books of accounts of GSL as observed during the examination is captured in the table given below:

Table 5

(in INR crore)

Company	Nature of Balance as per GSL Books	Balance as per GSL Books (A)	Total Debtors/ Creditors as per the Financials of Related Entities (B)	Overstating of Liabilities/ Overstating of Assets (A-B)	Financial Year
Param Commodities Pvt. Ltd.	Creditors	14.07	3.54	10.53	2011-12
Param Commodities Pvt. Ltd.	Debtors	3.38	0.10	3.28	2009-10
Miatru Agro Marketing Pvt. Ltd.	Creditors	10.56	-	10.56	2010-11

Paramarth Agro Marketing Pvt. Ltd.	Creditors	3.95	-	3.95	2010-11
Paramarth Agro Marketing Pvt. Ltd.	Debtors	27.12	7.97	19.15	2011-12
Paramarth Agro Marketing Pvt. Ltd.	Debtors	2.60	0.07	2.53	2012-13
SKB Securities Ltd.	Creditors	5.30	2.00	3.3	2012-13
SKB Securities Ltd.	Creditors	19.36	10.90	8.46	2014-15
Utkarsh Agro Agencies Pvt. Ltd.	Creditors	16.81	0.64	16.17	2011-12
Utkarsh Agro Agencies Pvt. Ltd.	Creditors	2.88	0.73	2.15	2012-13
Shri Vishnu Krupa Comm Pvt. Ltd.	Debtors	3.63	-	3.63	2009-10
Sangam Agro Agencies (P) Ltd.	Debtors	3.11	0.81	2.3	2010-11

V. On the basis of various instances of variations observed in the books of accounts of GSL vis-à-vis in the books of accounts of its related entities, the following table highlights the quantum of year-wise overstatement of assets and liabilities recorded in the books of accounts of GSL:

Table 6

(in INR Crore)

Financial Year	Debtors		% of Overstatement	Credit Balance of Customers		
	Overstatement	Total Debtors as per GSL Financials		Overstatement	Total Credit Balance as per GSL Financials	% of Overstatement
2009-10	6.91	51.59	13.39%	-	-	-
2010-11	2.30	71.95	3.20%	14.51	32.96	44.02%
2011-12	19.15	88.76	21.58%	26.70	53.07	50.31%
2012-13	2.53	63.29	4.00%	5.45	17.78	30.65%
2014-15	-	-	-	8.46	32.22	26.26%

VI. In this regard, I note that the Noticee, in its reply filed before the DA, has stated that Books of accounts of the Noticee are subject to Statutory Audit every year, and any difference between its Books and third party Books is a matter of reconciliation and it does not mean that assets and liabilities have been overstated or understated. The Noticee has further submitted that it did not have any command or

control on the alleged related entities or on the entries in the Books of accounts of these entities. The Noticee claims that Table 5 itself shows that variation between balances appearing in our Books and third party Books pertain to certain year only, and is not repetitive in nature. The Noticee further claims that as per the said table, the variations had occurred between the FY 2009-10 and 2014-15 and were not present thereafter. The Noticee has contended that the variation occurring in one particular year was owing to mismatch of certain entries and the same was reconciled in the following year and this does not mean falsification of Books of Accounts.

- VII. With regards to the above contention of the Noticee, I note that the SEBI IR has clearly demonstrated the *inter-se* connection between the Noticee and the entities mentioned at Table 5. This fact has been further verified and endorsed in the FAR. While the Noticee has referred to these related entities as “certain entities/ third party”, it has not produced anything on record which may convince me to believe that the said entities are not connected to it. Further, the overstatement of assets and liabilities has been observed continuously from FY 2009-10 to FY 2014-15 which highlights that it was repetitive in nature. Moreover, the Noticee has not furnished any material document on record which can demonstrate the reasons for the mismatch and how it were rectified in subsequent FYs as claimed by it. Therefore, the arguments made by the Noticee lacks substance and are without any merits. Hence, the figures with respect to debtors and creditors – clients do not provide the true and fair view.

Falsification of holding statement:

- VIII. It has also been alleged in the SCN-I that multiple discrepancies were observed on verification of client holding statements provided by the

Noticee, which indicates falsification of the same. As concluded at para 23.1 above, the noticee has not only misappropriated client securities but had also sold it in the name of its related entities. The securities of clients being sold should have been duly reflected in the holding statement of the concerned client by way of a necessary debit entry. However, the same has not been done and therefore the holding statement does not provide the true and fair view of the customer security balance.

- IX. Further, on comparison of security holding with respective financial statements of related entities, the securities as per holding statement did not appear as investments, in the audited financial statements of the respective related entity.
- X. In this regard, the Noticee, in its reply filed before the DA, has stated that that Annexure 6 and Annexure 7 to the FAR were not provided to it and that only pages 1-74 of FAR (barring pages 9, 10) were provided to it which did not contain those annexures. The Noticee has further stated that without prejudice to this contention, it had funds available with it which were sufficient to meet any genuine investor complaints.
- XI. With regards to the above contention of the Noticee on non-sharing of certain annexures, I note, at the cost of repetition, that the complete FAR along with all Annexures was once again provided by the DA to the Noticee vide an e-mail dated January 16, 2023 and adequate time was also granted to the Noticee to make additional submissions, however, I note that no additional reply was filed by the Noticee before the DA. As mentioned in the previous paragraph, the Noticee has argued that it had sufficient funds to meet the genuine investor complaints, does not address the allegation levelled against

it. Therefore, I note that the allegations stand established against the Noticee in this regard.

Balances lying in the suspense account

- XII. I note that the FAR has noted Suspense account in the books of GSL from FY 2009-10 to FY 2017-18. This observation was pursuant to verification of its trial balances for the said FYs. This suspense account was grouped under Sundry Creditors in audited Financials. The summary of the suspense account balances is as under:

Table 7

FY	Suspense A/c — Division (in INR Crore)			
	NSE	DP	HO	Total
2009-10	0.28	-	-	0.28
2010-11	0.17	-	-	0.17
2011-12	0.24	-	-	0.24
2012-13	0.39	0.01	-	0.40
2013-14	0.58	0.02	-	0.60
2014-15	0.83	0.02	-	0.84
2015-16	0.67	0.02	-	0.69
2016-17	2.49	0.01	-	2.51
2017-18	0.67	0.01	0.01	0.69

- XIII. From the above table, I note that considerable amount has been appearing in the suspense account in the books of the Noticee and there is a gradual increase in the value appearing in said account in every subsequent FY.
- XIV. In this regard, the Noticee, in its reply filed before the DA, has contended that the SCN-I does not allege contravention of any law

by the presence of Suspense account in the Books of GSL and therefore presence of suspense account in its books does not lead to the conclusion that its assets and liabilities have been overstated or understated.

- XV. With regards to the aforesaid submissions of the Noticee, I note that while the SCN-I and FAR have made a reference to suspense account in the books of GSL, the Noticee instead of providing any clarification as to what forms part of the suspense account, is merely justifying the same as a general accounting practice. Given the magnitude of allegation of misappropriation of clients' securities and overstatement of assets and liabilities as discussed elsewhere, appearance of a suspense account, that too continuously from FY 2009-10 to FY 2017-18, the allegation calls for adequate justification with supporting evidence of the noticee, which the noticee has failed to provide.

Overvaluation of Current Investments

- XVI. It has been alleged in the SCN-I that the Noticee has overvalued its investment in shares as compared with the market value of those shares as on date of balance sheet.
- XVII. As per Significant notes to accounts of audited financial statement of GSL — "Current Investment are carried at lower of cost and fair value determined on class of asset... ". This is a restatement of Accounting Standard 13 which deals with the accounting process to be followed with respect to investments. It essentially means that current investments are to be carried into the financial statements either at the investment's cost or its fair value, whichever is lower.

XVIII. The FAR records that the current investments of GSL were carried at a value which was even higher than the prevailing market price. The details of the same are provided hereunder:

Table 8 (in INR Lakhs)

Current Investment	FY 2015-16			FY 2014-15			FY 2013-14		
	Valuation In BS (A)	Market Value (B)	Over Valuation (A-B)	Valuation In BS (A)	Market Value (B)	Over Valuation (A-B)	Valuation In BS (A)	Market Value (B)	Over Valuation (A-B)
Carewell Industries Ltd.	18.57	14.72	3.85	16.16	11.34	4.82	-	-	-
Eco Friendly Food Processing Park Ltd.	0.66	0.52	0.14	2.52	1.77	0.75	6.22	0.29	5.93
Encash Entertainment Ltd.	4.72	4.42	0.30	2.98	2.54	0.44	-	-	-
Esteem Bio Organic Food Processing Ltd.	1.71	1.71	-	17.56	9.55	8.01	23.25	1.60	21.65
HPC BIO	-	-	-	7.57	5.52	2.05	-	-	-
Jolly Plastic Ltd	-	-	-	-	-	-	60.39	11.38	49.01
Onesource Techmedia Ltd.	6.06	4.62	1.44	8.19	5.43	2.76	10.98	9.00	1.98
P. B. Films Ltd.	25.74	15.00	10.74	-	-	-	-	-	-
Polymac Themofomers Ltd.	2.34	2.15	0.19	1.05	0.75	0.30	-	-	-
RCL Retail Ltd.	-	-	-	3.08	2.65	0.43	7.80	6.20	1.60
Sunstar Realty Development Ltd.	63.24	38.34	24.90	75.04	8.44	66.60	34.20	3.49	30.71
Tarini International Limited	74.69	33.28	41.41	125.94	55.18	70.76	-	-	-
Total	197.73	114.76	82.97	260.09	103.17	156.92	142.84	31.96	110.88

XIX. From the above table, large difference in the values assigned to various investments in the Balance Sheet is noticed as compared to their market values during FY 2013-14 to FY 2015-16 and the differences in percentage terms are as stated below:

Table 8 A

Over valuation during FY 2013-14		Over valuation during FY 2014-15		Over valuation during FY 2015-16	
Rs.	%	Rs.	%	Rs.	%
110.88	347	156.92	152	82.97	72

XX. From the above table, I note that the Noticee has consistently been showing an inflated value of inventory in its books. In terms of percentage, the inflated value ranges from 72% to as high as 347%. I note that the Noticee has not furnished any comments with respect to this allegation, in its reply submitted to the DA. Therefore, I note that the above data stands to prove the allegation of over statement of current investments.

Mismatch in Trade Receivables and Trade Payables:

- I. It has been alleged in the SCN-I that the Trade Receivables and Trade Payables arrived at in the Balance Sheet and Trial Balances of the Noticee do not match with each other.
- II. I note that based on comparison of trial balance and balance sheet of the Noticee from FY 2009-10 to FY 2017-18 (except FY 2011-12), the FAR has recorded following mismatches in trade receivables and trade payables:

Table 9*(in INR Crore)*

Financial Year	Trade receivable			Trade payable		
	Debtors as per Balance Sheet (A)	As per Client TB (B)	Variance (A-B)	Creditors as per Balance Sheet (A1)	As per Client TB (B1)	Variance (A1-B1)
2009-10	51.07	50.88	0.19	16.04	15.95	0.10
2010-11	71.66	71.56	0.10	32.92	31.35	1.57
2011-12	-	-	-	-	-	-
2012-13	62.74	57.21	5.53	17.72	15.40	2.32

Financial Year	Trade receivable			Trade payable		
	Debtors as per Balance Sheet (A)	As per Client TB (B)	Variance (A-B)	Creditors as per Balance Sheet (A1)	As per Client TB (B1)	Variance (A1-B1)
2013-14	59.29	58.40	0.89	16.98	16.28	0.69
2014-15	74.03	73.89	0.14	32.11	31.20	0.91
2015-16	59.99	59.86	0.12	28.27	27.49	0.78
2016-17	76.48	76.31	0.17	27.07	26.18	0.89
2017-18	66.27	66.23	0.03	33.27	32.38	0.89

- III. In this regard, the Noticee, in its reply filed before the DA, has stated that the allegation refers to mismatches in the trade receivables and trade payables, as appearing in its Books of Accounts and in the Books of third parties which has been elaborately explained by it at para 1 at page 12 of its reply submitted to the DA. The Noticee has further contended that such variance does not lead to the conclusion that its assets and liabilities have been overstated or understated.
- IV. In this regard, the Noticee has drawn my attention to its reply in regard to mis-match in assets and liabilities wherein it has agitated for comparing its books of accounts with that of third parties. I, note that the noticee has not given any specific reply for the differences as has been highlighted in the above table. Therefore, I find allegation in regard to mismatch in Trade Receivables and Trade Payables, to have been established.

Submission of incorrect Trial Balance:

- V. The SCN-I further alleges that as per client balance submitted by GSL, as on August 31, 2018, and October 31, 2018, M/s Lasvin Finvest Pvt. Ltd. was shown as debtor with INR 0.24 crore and INR 6.24 crore of funds outstanding respectively. However, there were no

transactions by the said client through the Noticee during the period from August 31, 2018 to October 31, 2018. Further, on November 05, 2018, IGRP admitted claim of INR 11.94 crore of the said client against the Noticee.

- VI. In this regard, the Noticee, in its reply filed before the DA, has submitted that the change in the amount outstanding from M/s Lasvin Finvest Pvt. Ltd. from INR 0.24 crore to INR 6.24 crore was on account of rectification of mistake in entering figures in its books. I note that the Noticee has admitted to the fact that there was a mis-statement in the said figures and had further confirmed rectification of the same. Therefore, I find that the allegation that the said outstanding amount shown in the books of accounts of the Noticee was incorrect, is established.
- VII. In totality of the above discussions, I conclude that the Noticee has overstated the assets and liabilities in the books of accounts, falsified client holding statements, overvalued current investments, falsified trade receivables and payables and submitted incorrect trial balance and thereby has falsified its books of accounts and other records and therefore has violated Rule 15 of Contracts (Regulation) Rules, 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992.

23.4. **Lack of Solvency of GSL:**

- I. It has been alleged in the SCN-I that the Noticee has not complied with the requirement of continuous net worth resulting in the violation of Regulation 9(g) of the Stock Brokers Regulations, 1992.
- II. I note that the SEBI IR has recorded an observation which is based on the analysis of the financials. As per the said observation, there

were shortfalls of funds to the extent of INR1.97 crore and INR 8.96 crore as on August 31, 2018 and October 23, 2018 respectively to cover payment of creditors. The details of the shortfalls observed have been captured in the following table:

Table 10

S. No.	Particulars	As on 31/08/2018 (INR)	As on 23/10/2018 (INR)
a	Balances lying in Client & Settlement bank a/c (as per bank statement)	16,19,975.79	32,15,441.44
b	Balances lying with Clearing Corporations & Exchanges	4,70,75,108.37	3,82,00,108.37
c	Balances lying with Clearing members	23,27,05,687.24	16,06,11,274.51
d	Total Funds available (a+b+c)	28,14,00,771.40	22,89,13,465.79
e	Total Credit <i>Balance of all clients</i>	30,11,43,465.99	31,85,59,602.61
f	Funds unavailable to cover client payables (e-d)	1,97,42,694.59	8,96,46,136.82

- III. In this regard, the Noticee, in its reply filed before the DA, has stated that the calculation of Funds available has been done on the basis of “Enhanced Supervision Framework” wherein only the funded portion of the deposits has been considered and those figures were extracted by NSE itself from its servers. The Noticee further claims that it had later on explained that there was no lack of solvency and the actual position is as given in the following table:

Date of Reporting	Figures provided as per Notice	Figures as per Exchange and clearing Member files.
31.08.2018	- 1.97 crores	- 8.28 Crores
31.10.2018	- 8.96 Crores	+ 8.54 crores

The Noticee has further contended that the above figures and the loans taken by it from various NBFCs (by pledging clients’ securities to discharge exchange obligation) had not been taken in-to account

by the Forensic Audit Report and that it had a surplus of INR 16.97 crores even after meeting the maximum liability determined.

- IV. As observed from Table 10 above, there was shortfall of funds with the Noticee to the extent of INR 1.97 crore on August 31, 2018 and INR 8.96 crore as on October 23, 2018 to cover payment of creditors, which means that the total credit balance of all clients was more than total funds available. In this regard, the Noticee, in its reply submitted to the DA, has claimed availability of funds to the tune of INR 8.54 crore as on 31/10/2018 as against the alleged negative balance of INR 8.96 crores with it. However, the Noticee has not submitted any supporting documents in this regard, which is vital considering the fact that Noticee was declared defaulter by Stock Exchanges. Here, I note that while the SEBI IR has recorded a shortfall of INR 1.97 crore as on August 31, 2018, the Noticee has indicated this shortfall to be of INR 8.28 Crore, making the allegation of lack of solvency even more severe.
- V. As regards to the contention of non-consideration of sums receivable by the Noticee from various NBFCs for solvency calculation and having a surplus of INR 16.97 crores, I note that, it is a basic accounting calculation of net worth whereby liabilities are to reduce net worth and assets have to strengthen the net worth. Even if it is accepted for the sake of argument that the line of credit available with the NBFCs are to be considered, the same has the potential only to further reduce the net worth. Thus, I find no merit in the arguments of the Noticee in this regard more so in light of the fact that the notice has already been declared a defaulter by both the exchanges i.e. BSE and NSE. From available records, I note that NSE has already declared the Noticee a defaulter on May 6, 2019. Further, the Noticee has been declared a defaulter and has also been expelled

as a corporate trading member by BSE w.e.f May 08, 2019. The Noticee has also failed to produce a net worth certificate from an independent Chartered Accountant to strengthen its claim of being solvent or net worth compliant.

- VI. I note that allegations of lack of solvency assumes greater significance, considering that there were at least 10 complaints (pending for more than a month as on 31/10/2018) filed by the clients of the Noticee regarding non-receipt of funds and securities. In view of the above, I conclude that the Noticee being a Stock broker, failed to maintain a specified minimum net worth at all times, thereby violating Regulation 9(g) of SEBI (Stock Brokers) Regulation, 1992.

23.5. Non-settlement of Funds and Securities of clients:

- I. It has been alleged in the SCN-I that the Noticee has not settled the funds and securities of its clients within the stipulated time as prescribed by SEBI.
- II. In this regard, reference is made to Clause 12 of Annexure A of SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 which reads as the follows:
- "Unless otherwise specifically agreed to by a Client, the settlement of funds/ securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject the following conditions:*
- a. The authorization shall renewed at least once a year and shall dated.*

- b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.*
- c. The authorization shall contain a clause that the Client may revoke the authorization at any time.*
- d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/ funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.*
- e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/ deliveries of funds/ securities. The statement shall also explain the retention of funds/ securities and the details of the pledge, if any.*
- f. The client shall bring any dispute arising from the of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/ securities or statement, as the case may be.*
- g. Such periodic settlement of running account may not be necessary:*
 - i for clients availing margin trading facility as per SEBI circular*

- ii *for funds received from the clients towards collaterals/ margin in the form of bank guarantee (BG)/ Fixed Deposit receipts (FDR).*
- h. *The stock broker shall transfer the funds/ securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.*
- i. *There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.*
- j. *These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.*
- III. Similarly, reference is made to Clause 8.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which provides that the stock broker shall ensure that:
- “8.1.1. *There must a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/ Monthly) between two running account settlements.*
- 8.1.2. *For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.*

81.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

81.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/ securities shall be sent within five days from the date when the account is considered to be settled."

- IV. I note that settlement of funds and securities is the last step involved while executing a trade on a recognised stock exchange. Therefore, upon completion of mutual obligations of a buyer (to pay-in purchase value) and a seller (to pay-in securities to be sold), settlement happens whereby the buyer gets the purchased securities and the seller gets the pay-out as sales proceeds. In terms of provisions of SEBI Circulars discussed above, the settlement of funds/ securities has to be done within 24 hours of the payout made to the Clearing Corporation, except where a client specifically agrees for a running account.
- V. However, as recorded in the SEBI IR, the Noticee has not done actual settlement of funds and securities amounting to INR19.61 crore pertaining to 37 instances out of 200 instances which were verified for 23 clients out of 100 clients for the FY 2017-18. SEBI IR further highlights that as on February 28, 2018, funds and securities pertaining to 9,646 inactive clients amounting to INR 6.82 crore were also not settled by the Noticee. The details of the 37 instances with reference to the active clients, where the Noticee had not done actual settlement of funds and securities are given as under:

Table 11

S. No.	Settlement Quarter	UCC	Client Name	Amount not settled (in INR)
1	Q1 (2017-18)	A001	Anil Kumar Bothra	2,86,63,819
2	Q2 (2017-18)	A001	Anil Kumar Bothra	2,43,52,049
3	Q3 (2017-18)	A003	Anil Kr. Jalan	1,10,77,849
4	Q3 (2017-18)	A2968	Abhay Lakhotia	23,31,038
5	Q4 (2017-18)	A2968	Abhay Lakhotia	22,82,025
6	Q4 (2017-18)	A6206	Agarwal Trendz Pvt. Ltd.	2,877,626
7	Q3 (2017-18)	G1447	Incredible Finesse Pvt. Ltd.	11,284,277
8	Q4 (2017-18)	G1447	Incredible Finesse Pvt. Ltd.	1,566,755
9	Q1 (2017-18)	G549	Gourav Maloo	3,486,743
10	Q2 (2017-18)	G549	Gourav Maloo	3,554,907
11	Q1 (2017-18)	G787	Gauri Ganesh Infracore Pvt. Ltd.	5, 140,238
12	Q2 (2017-18)	G787	Gauri Ganesh Infracore Pvt. Ltd.	4,365,220
13	Q1 (2017-18)	J769	Jindal Commercial Pvt. Ltd.	13,555,201
14	Q2 (2017-18)	J769	Jindal Commercial Pvt. Ltd.	10,813,768
15	Q1 (2017-18)	K1694	Koyeli Mukherjee	1,320,021
16	Q2 (2017-18)	K1694	Koyeli Mukherjee	1,336,233
17	Q1 (2017-18)	K2153	Kailash Bihari Bhardwaj	2,483,860
18	Q2 2017-18	K2153	Kailash Bihari Bhardwaj	2,638,548
19	Q3 2017-18	L055	Lupin Vinimay Pvt. Ltd.	3,581,061
20	Q1 (2017-18)	M1303	Manish Kumar Jain	1,245,192
21	Q2 (2017-18)	M1303	Manish Kumar Jain	849,137
22	Q3 (2017-18)	O151	Omkara Vincom Private Limited	2,532,033
23	Q3 (2017-18)	R4080	Ramvilas Goswami HUF	1,028,227
24	Q4 (2017-18)	R4080	Ramvilas Goswami HUF	887,798
25	Q2 (2017-18)	R538	Retsina Marketing Pvt. Ltd.	15,346,253
26	Q3 (2017-18)	S099	Santosh Nahata	5,115,034
27	Q4 (2017-18)	S11285	Sunirmay Vinimay Pvt. Ltd.	2,854,737
28	Q3 (2017-18)	S4899	Saugata Biswas	1 103 304
29	Q4 (2017-18)	S4899	Saugata Biswas	7,23,746
30	Q3 (2017-18)	S6848	Sangita Surana	8,55,808

S. No.	Settlement Quarter	UCC	Client Name	Amount not settled (in INR)
31	Q4 (2017-18)	S6848	Sangita Surana	8,55,808
32	Q1 (2017-18)	WW2495	Vijay Parshuram Churi	31,14,307
33	Q1 (2017-18)	WW2959	Santanu Chatterjee	7,34,160
34	Q3 (2017-18)	WW3178	Abhijit Atmaram Raut	40,33,406
35	Q4 (2017-18)	WW3178	Abhijit Atmaram Raut	37,56 128
36	Q3 (2017-18)	WW3704	Kiran Devi Mohta	68,82,987
37	Q4 (2017-18)	WW3704	Kiran Devi Mohta	74,98,075
Total				196,127,381

VI. In this regard the Noticee, in its reply filed before the DA, has contended that it has periodically settled the clients' account till FY 2016-17 and the same was confirmed by the exchange and SEBI during their inspections as well. With respect to 37 instances where clients' accounts were not settled, the Noticee has stated that a few clients including HNIs were not trading on daily basis but had margins in the form of securities also. Hence, while settling the accounts of these clients, 50% of the securities were held as margin. The Noticee has further stated that the monetary figure of INR19.60 crores is not a correct figure as balance carried forward from one quarter to another have been added multiple times in the total arrived at.

VII. The above arguments given by the Noticee has been considered by the DA as its admission of non-settlement of funds and securities for its clients except for few HNI clients, out of the 37 instances highlighted in the SEBI IR. As regards to the contention of incorrectness of INR 19.60 Crores, I concur with the opinion of the DA that the instant matter is not with regard to quantum of funds and securities not settled but with regards to the fact that the Noticee has

not settled the funds and securities, which is not in line with the aforesaid circulars.

- VIII. With respect to non-settlement of funds and securities of inactive clients, I observe that the Noticee, in its reply filed before the DA, has stated that these clients have authorised the Noticee to treat their securities as margin and that they did not require settlement of account and hence the settlement was not done.
- IX. I note that in cases where a client specifically authorises its stock broker to maintain a running account or treat their securities as margin, I find that as per clause 8 of the SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, actual settlement of funds and securities was required to be done by the Noticee, at least once in a calendar quarter or a month, depending on the preference of the client, which has not been done in at least 37 instances mentioned in Table 11, above. The said circular casts an obligation on the stock-broker for periodic settlement of funds and securities of clients and does not give any option to the client as has been claimed by the Noticee. Even the client has to choose to settle his account at least once in a calendar quarter or a month, this being prudential norms prescribed by SEBI in the interests of investors, so that funds or securities do not remain unsettled by Stock Brokers on any pretext. I therefore note that the arguments given by the Noticee does not fall under the set of exemptions being granted by SEBI Circular while doing settlement of clients funds and securities.
- X. In view of above discussions, I conclude that the Noticee has violated Clause 12 of Annexure A of SEBI Circular No. SEBI/MIRSD/SE/Cir-

19/2009 dated December 03, 2009 and Clause 8.1 of Annexure of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

23.6. Funding clients having debit balances by providing further exposure:

- I. It has been alleged in the SCN-I that the Noticee had granted further / additional exposure to the clients even when such clients had debit balances.
- II. In this regard, I note that SEBI IR has recorded that during financial year 2017-18, out of the 60 clients whose accounts were verified, 17 clients had been given additional exposure even though they had debit balances continuing beyond the 5th day from the date of pay-in. The details in this regard are as below: -

Table 12

S. No.	Client Code	Client Name	Amount Funded (in INR)
1	M3921	Macro Commoddeal Private Limited	199,731,107
2	AOOI	Anil Kumar Bothra	55,592,008
3	P3731	Prag India	44,765,714
4	WW2722	Devkant Synthetics I Pvt.Ltd.	21,865,293
5	M3381	Marshall Mercantiles P Ltd	19,626,565
6	P3900	Palak Bipin Shah	19,074,061
7	P1697	Page 3 Entertainment (I) Pvt.Ltd	15,762,543
8	908	Sarita Bothra	10,812,367
9	A5169	Arihant International Limited	8,155,683
10	S10551	Sushil Kumar Damani	4,950,684
11	WW167	Vinod Kumar Sharma	4,396,558
12	R3997	Rifty Real Estate Pvt. Ltd.	3,901,019
13	M 1907	Sailesh Mishra HUF	3,512,724

S. No.	Client Code	Client Name	Amount Funded (in INR)
14	J163	Jaiprakash Sethia	3,347,874
15	S10063	Syed Mohd Wasif	2,540,526
16	S5954	Surana Bros Pvt. Ltd.	1,571,509
17	D2426	Display Commercial Pvt. Ltd.	702,486
		Total	420,308,728

III. I note that in terms of clause 2.6 of the Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26 September, 2016:

“stockbroker should not grant further exposure to the clients when debit balance arises out of client’s failure to pay the required amount and such debit balance continues beyond the fifth trading day, as reckoned from date of pay-in.”

I further note that the above provision was modified vide clause 2(d) of SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and the same is read as:

"Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time."

IV. With regard to the above allegation the Noticee, in its reply filed before the DA, has contended that, the exposure granted to the

aforesaid 17 clients was in line with the NSE circular dated May 08, 2015, wherein NSE had clarified that further exposure may be granted to the clients under some circumstances. The Noticee has further submitted that the intent behind granting further trading exposure to these clients was to allow the clients to reduce their debit balance.

V. Form the submissions made by the Noticee, I observe that it has justified its act of granting further exposure to its client with debt balances by quoting a circular issued by NSE in 2015 and has contended that NSE had clarified that further exposure could be granted to a client to the extent of availability of excess of fully paid securities over his debit balance, deposited with the Member. In this regard I note that post 2015, SEBI through its Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26 September, 2016, had put a restriction on giving further exposure to the clients when debit balances arise out of client's failure to pay the required amount and if such debit balances continues beyond the fifth trading day. The SEBI IR has made the observations with respect to the FY 2017-18 which period squarely falls after the issuance of SEBI circular dated September 26, 2016 referred *SUPRA*. Thus, reliance placed on a NSE circular issued in 2015 cannot be a justifiable reason to act in violation of the norms prescribed by SEBI subsequently.

VI. In view of the above, I conclude that the Noticee has provided exposure to aforementioned 17 clients even when such clients had debit balances beyond fifth day which is a clear violation of provisions of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26,

2016 and SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

23.7. **Non-redressal of investor complaints:**

- I. The SEBI Inspection Report observed that, as on October 30, 2018, there were ten complaints (pertaining to non-receipt of funds and securities to the extent of INR 22.57 Crore) pending with the Noticee and being a SEBI registered stock broker, the Noticee was required to take adequate steps for redressal of the said investor complaints within one month of the date of receipt of the complaints.
- II. The Noticee, in its reply filed before the DA, has stated that 7 complaints out of the aforesaid 10 complaints belonged to Saraf Group and the remaining 3 complaints belonged to the other entities. Further, it is stated that the complaints filed by Saraf Group are in various stages of litigation and the Arbitral awards given in cases of M/s. Lasvin Finvest Pvt. Ltd. and M/s. Lars Securities Pvt. Ltd. have negated the claims made by these two entities and only one complaint of Ram Krishna Saraf to the tune of 9,922 number of shares has been admitted. Further, the Noticee has provided present status of the said 10 complaints.
- III. With regards to the complaints of M/s. Lasvin Finvest Pvt. Ltd. and M/s Lars Securities Pvt. Ltd., the Noticee has submitted that the Arbitral Tribunal and Ld. Commercial Court have dismissed the claims of the said entities and the matters are now pending before the Hon'ble Calcutta High Court. Further, the Noticee has annexed copy of orders of the Arbitral Tribunal and Commercial Court, as Annexure D to its reply submitted to the DA.

- IV. From the orders of the Arbitral Tribunal (which was later upheld by the Commercial Court), passed in the matter of M/s Lasvin Finvest Pvt. Ltd, I note that the Noticee had assured to resolve the matter amicably but as noted in the order nothing came out of it. The Noticee further had failed to attend proceedings before the Investor Grievance Redressal Panel (“IGRP”) and sought adjournment. Consequently, the Arbitral Tribunal passed ex-parte order in favour of M/s Lasvin Finvest Pvt. Ltd. Contrary to submissions of the Noticee that the Arbitral Tribunal negated the claim of M/s Lasvin Finvest Pvt. Ltd, I note that the Arbitral Tribunal has accepted the claim of M/s Lasvin Finvest Pvt. Ltd as well as counter claim of the Noticee. With regard to the complaint filed by M/s Lars Securities Pvt. Ltd., the Arbitral tribunal has rejected claim of the complainant as well as the counter claim of the Noticee. In both the matters, the commercial court had upheld the orders of the Arbitral tribunal.
- V. In view of the above, I find that the Noticee had presented selective and incomplete facts, in order to give an impression that its hands are clean of any wrong doing. The Noticee has mentioned that the said matters are pending before the Hon'ble Calcutta High Court. In this regard, the limited observation that shall be made is that there were factually incorrect and myopic version of the orders have been presented by the Noticee. To that extent, the replies are unacceptable.
- VI. With respect to the complaint filed by Ram Krishna Saraf, I note that the Arbitral Tribunal has directed the Noticee to transfer 9,922 shares of and cost of INR 80,000/- to Ram Krishna Saraf. Further, I note that the Noticee has not submitted any document with respect to remaining 7 complaints, other than M/s Lasvin Finvest Pvt. Ltd and

M/s Lars Securities Pvt. Ltd and Ram Krishna Saraf, to show that the Noticee resolved remaining 7 complaints within the prescribed time.

VII. From status of 10 complaints pending for more than one month as on October 31, 2018, given by the Noticee, I note that no justification or reason for failure to redress the said complaints within the prescribed time of one month has been given by the Noticee.

VIII. In view of the above, I find that the Noticee has not provided any justification or reason for not redressing 7 complaints within prescribed time of one month. With regard to complaints of M/s Lasvin Finvest Pvt. Ltd, M/s Lars Securities Pvt. Ltd and Ram Krishna Saraf, the Noticee has attempted to justify its inaction by placing reliance on orders of the Arbitral Tribunal and the Commercial Court to contend that the said complaints were false and frivolous. I find that M/s Lasvin Finvest Pvt. Ltd, M/s Lars Securities Pvt. Ltd and Ram Krishna Saraf were compelled to approach the Arbitral Tribunal when the Noticee failed to resolve their complaints within the prescribed time. I find that conduct of non-appearance of the Noticee before the IGRP is also reflective of callous and casual attitude of the Noticee towards redressal of complaints. In view of the above, I find that the Noticee failed to redress 10 complaints within the prescribed period, thereby, the Noticee violated Regulation 9(e) of the Stock Brokers Regulations, 1992.

23.8. Non-furnishing of information as sought by SEBI:

- I. It has been alleged in the SCN-I that the Noticee failed to furnish the information that was sought by SEBI.

- II. As observed from the SEBI IR, the inspection of books of accounts of the Noticee was scheduled to be carried out from November 12-16, 2018. However, despite repeated reminders and calls from SEBI, the Noticee did not submit the complete data, as sought by SEBI vide its letter dated July 24, 2018. The Noticee also failed to furnish inspecting authority with the books, accounts and other documents in its custody along with the statements and information relating to the transactions in securities market.
- III. The Noticee, in its reply filed before the DA, has stated that it was in total disarray during the period when the information was sought by SEBI and that it missed out on some communication inadvertently due to this unwarranted situation. The Noticee has further submitted that it communicated with SEBI on 8 instances between 03/01/2019 to 04/03/2019 through e-mails and approached SEBI as and when directed or required. The Noticee has also claimed that it assisted the investigation team and gave free access of system as and when required without any obstruction or delay and therefore, the subsequent good conduct of GSL cannot be overlooked just to sustain a false finding of mis-reporting/ non-reporting of data. Thus, inadvertent non submission of Information by the Noticee should be viewed in this light only.
- IV. From the above submissions of the Noticee, I find that it has not provided any substantial reasons which constrained/ prevented it from furnishing the data as sought by SEBI through a letter dated July 24, 2018 and the reply is too general without any documentary support. The statement that it was in total disarray during the period when the information was sought by SEBI, appears to be an afterthought considering the various aspects of irregular business operations and magnitude of violations of various statutory and

regulatory provisions as brought out in the FAR. Further, the reply that it had missed out on some communication inadvertently due to the unwarranted situation, is nothing but an admission to the allegation of non-furnishing of information as sought by SEBI.

- V. From the information available on record, I further note that on April 12, 2019, Borkar & Muzumdar was appointed by BSE to conduct the forensic audit of the books of accounts of Noticee and its related entities. The auditor submitted its report on May 17, 2019. From the said audit report I note that the auditors had specifically advised the Noticee to furnish certain information however, the Noticee had claimed that Income Tax Department had sealed the back office of the Noticee resulting into its inability to provide the sought information. The auditor again had specifically advised the Noticee vide email dated April 26, 2019 that there were still certain information which were not sealed by the IT Department and were shareable. To this Mr. Kamal Kothari, Managing Director of the Noticee vide email dated April 27, 2019 had mentioned that the data sought was in encrypted form and required Oracle platform to open the same. Not satisfied with the reply the auditors had again requested the Noticee to furnish the sought information. Owing to non-receipt of information sought, the auditors had clearly expressed inability to express any opinion due to non-co-operation by the Noticee. I perused the panchnama referred to in the reply of the Noticee which carries the address as 10 Biplabi Rashbehari Bose Road, 3rd Floor Burrabazar, Kolkata-700001. Though the Noticee claims that the said premises locked and sealed by IT Department houses the Oracle platform, however, it is difficult to relate the availability of the said software in the said premises, more so, in light

of the specific and unambiguous report of the auditors stating that the Noticee had not co-operated in furnishing the required documents.

VI. I further note that the FAR submitted by Jayesh Sanghrajka & Co. LLP to NSE, has also recorded that complete information was not provided to the auditors to effectively carry out the Forensic Audit. These observations are reflective of the non-cooperative attitude of the Noticee and contradicts its claim of having displayed good conduct or cooperative attitude, more so when the Forensic Audit of the Noticee was conducted by the Exchanges on directions of SEBI.

VII. In view of above discussions, I conclude that the Noticee has failed to furnish documents/ information as sought by SEBI thereby violating Regulation 21 of SEBI (Stock Brokers) Regulations, 1992.

24. I note that Section 12A of the SEBI Act, 1992, inter-alia, prohibits use, engagement or employment of any manipulative and/or deceptive device in respect of issue or purchase or sale or dealing in securities. Regulation 3(d) of the PFUTP Regulations, 2003 prohibits engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the SEBI Act, 1992 or the rules and the regulations made there under. Regulation 4(1) of the PFUTP Regulations, 2003 prohibits indulging in any manipulative, fraudulent or an unfair trade practice in the securities markets. Regulation 4(2)(p) of the PFUTP Regulations, 2003 provides that predating or falsifying of records by an intermediary shall be deemed to be manipulative, fraudulent or an unfair trade practice.

As per discussions at para 23 above, I have concluded that the Noticee has:

- not only misappropriated securities of its clients which it was holding in fiduciary capacity and was not having any lawful authorisation to transfer such securities to any other entity, but also has unlawfully sold such securities without the knowledge of clients (who were the lawful owner of such securities) and diverted the sale proceeds for its own benefits, thereby violating provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
- mis-reported/ not reported data under “Enhanced Supervision” to NSE in violation of violated SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/201764 dated June 22, 2017.
- overstated the assets and liabilities in the books of accounts, falsified client holding statements, overvalued current investments, falsified trade receivables and payables and submitted incorrect trial balance and thereby has falsified its books of accounts and other records and therefore has violated Rule 15 of Contracts (Regulation) Rules, 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992

In view of the above, I find that the aforesaid acts of the Noticee clearly fall under the definition of fraud as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003 as well as Regulation 4(2)(p) of the PFUTP Regulations. Accordingly, I hold that the Noticee has violated Regulations 3(d), 4(1) and 4(2)(p) of PFUTP Regulations, 2003 read with read with Section 12 A of SEBI Act.

25. In view of the aforesaid discussions, it is held that GSL has carried out its stock broking activities during the inspection period in contravention of various

provisions of SEBI Act and Regulations/ Circulars, issued thereunder. I note that a stock broker being a vital securities market intermediary, is strictly prohibited from indulging in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and has to ensure that its interests is not in conflict with that of its clients. In the given facts of the situation, the Noticee has not only failed to fulfil its avowed duty towards its clients as a responsible market intermediary, be it redressing their grievances or settling the funds due to its clients, but has gone to the extent of mis-appropriating its clients' funds and securities. The gravity of lapses and contraventions of the statutory provisions committed by the Noticee as discussed at length in preceding paragraphs, can also be gauged from the fact that the Noticee has been declared a defaulter by both the stock exchanges i.e. NSE and BSE and has further been expelled from the Exchanges since May 2019. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of the Noticee is not in the interest of investors in the securities market, appropriate measure needs to be taken against GSL, else it may lead to loss of investors' trust in the securities market.

26. I note that the DA has recommended that certificate of registration of the Noticee, i.e., Guinness Securities Ltd., as Stock Broker, may be cancelled. Having considered the allegations, the reply of the noticee and material available on records defence advanced with supporting evidence, I find no reason to disagree with the recommendation given by the DA.

Directions:

27. In view of the totality of the matter, I, in exercise of the powers conferred upon me under Sections 12 (3) and 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 (5) of Securities and Exchange Board of India

(Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to Guinness Securities Ltd. (INZ000167037)

28. The Order shall come into force with the immediate effect.

29. A copy of this order shall be forwarded to Guinness Securities Ltd. and all recognized Stock Exchanges.

Date: September 7, 2023

Place: Mumbai

**K. SARAVANAN
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**