BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 149/2013]

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

In respect of

Finquest Securities Pvt. Ltd.

PAN: AABCB7028F

In the matter of Bank of Rajasthan Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the affairs of Bank of Rajasthan Ltd. (hereinafter referred to as '**BoR**'/ '**the company**') during the period June 2007 to December 2009. Investigations revealed that the shareholding of the promoters of BoR with their PACs had increased from 46.80% in June 2007 to 63.15% in December 2009. Promoters along with their PACs increased their shareholdings by way of acquiring shares on the market. It was also observed that certain brokers, including **Finquest Securities Pvt. Ltd.** (hereinafeter referred to as the '**Noticee**'/ '**broker**') traded for some clients who were related to the promoters of BoR and received third party payments i.e. payment for the trades from entities other than their clients.

2. In view of the above it was alleged that the broker violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of SEBI (Stock Broker and Sub-Broker) Regulations 1992 (hereinafter referred to as the '**Broker Regulations**') and SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 (hereinafter referred to as '**the Circular**'). Consequently, the above violation makes the Noticee liable for monetary penalty under Section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer, vide order dated January 25, 2012, under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under Section 15 HB of the SEBI Act, 1992, the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Accordingly, vide a Notice dated May 16, 2012 (hereinafter referred to as **'SCN'**) issued under Rule 4 of the Rules, the Noticee was asked to show cause as to why an inquiry should not be held against it and penalty be not imposed under Section 15 HB of the SEBI Act for the alleged violations specified in the SCN.

5. The Noticee replied to the SCN vide its letter dated June 11, 2012. Thereafter, the noticee, vide hearing notice dated July 2, 2012, was granted an opportunity of personal hearing before me on July 19, 2012. However, on the request of the Noticee, communicated vide its letter dated July 16, 2012, the hearing was adjourned. The hearing was rescheduled for August 27, 2012, and the Noticee was informed of the same vide letter dated August 8, 2012. On the scheduled date, Mr. Deepak Chavda, the Authorised Representative of the Noticee appeared before me and submitted that the Noticee wished to avail of the Consent Scheme.

6. Thereafter Noticee applied for consent and the instant proceedings were kept in abeyance. Subsequently the High Powered Advisory Committee did not accept the consent terms proposed by the Noticee and the same was communicated to the Noticee. Hence, the proceeding kept in abeyance was commenced against the Noticee.

7. Thereafter, the Noticee, vide hearing notice dated March 21, 2013, was granted an opportunity of personal hearing before me on April 5, 2013 and the Noticee confirmed that it would be attending the same. However, on the date of the hearing, the Noticee requested that it be granted 10 days time as the concerned director was not available. Another opportunity of hearing was given to the Noticee on April 9, 2013. However, the Noticee did not appear for the hearing on the said date. In the interest of natural justice, a final opportunity was given to the Noticee to appear before me on April 15, 2013. On this date the Authorized Representatives of the Noticee, namely Mr. Hardik Patel (Managing Director), Mr. Shaukat Merchant (Legal Adviser) and Mr. Deepak Chavda (Compliance Officer) appeared before me and made submissions. The Noticee was advised to submit copies of its online Bank Account Statements pertaining to the period July 2007- August 2008. Further, the Noticee was also asked to show what due diligence was exercised by it to ensure that payments received through RTGS and Cheques were from the clients of the Noticee and not third parties. The Noticee was also asked to submit details of the source of funds received by it in certain instances. Accordingly, the Noticee made further written submissions vide letter dated April 16, 2013. The submissions of the Noticee made vide letter dated June 11, 2012 and April 16, 2013 are as summarized below:

i) There was no malafide or wrong intention on the Notice's part.

ii) Payments to the exchanges need to be made on a T+2 basis. For faster and efficient operation of their accounts, the clients deposited cheques and confirmed details over the telephone. This makes it impossible to know if the cheque is a third party cheque.

iii) The amount received from third party payments is miniscule compared to the total funds received from all the clients, and there was no reason to suspect any mala fide on part of the clients.

iv) The Noticee, its directors and shareholders are not related to the clients. Further, the Noticee was not aware that the clients are related to Bank of Rajasthan.

v) Due to the deadlines it is nearly impossible to verify each and every payment received.

vi) Since the initial payments were received directly from the clients' bank accounts, the Noticee trusted the clients.

vii) The Noticee cited judgments of the Hon'ble Securities Appellate Tribunal (SAT), including *Samkit Share and Stock Brokers* (dated August 31, 2004), and stated that irregularities like non collection of margin from clients, misuse of client funds and non segregation of clients' accounts, dealing with unregistered sub brokers have been considered merely of a technical nature and they cannot be treated as a very serious irregularity.

viii) The circular dated August 27, 2013 is harsh, oppressive and contrary to regular commercial business dealings. Under the Law of Contracts any third party can discharge the burden of a party to the contract so far as the same is not contrary to law or public interest.

ix) The circular dated August 27, 2003 does not prohibit acceptance of cheques through regular and official banking channels. Having regards to the facts and circumstances of the case acceptance of third party cheques, being exceptional and one of its kind, may be considered as a technical infraction and ought to be waived.

x) The Noticee has exercised due skill and care in ensuring receipt of payments for the transactions effected for and on behalf of clients from the regular and official banking channels.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have examined the SCN, the submissions of the Noticee, made during the personal hearing and in its replies, and the documents available on record. I observe that the allegation against the Noticee is that it accepted payments from entities other than its clients in violation of SEBI's circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003. Further, the Noticee is alleged to have failed to act with due skill, care and

diligence in the conduct of the business and to have violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations.

9. Therefore, the issues that arise for consideration in the present case are :

a. Whether the Noticee violated SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003?
b. Whether the Noticee violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations?
c. Do the above alleged violations, if any, on the part of the Noticee attract monetary penalty under Section 15 HB of the SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

10. Before moving forward, it will be appropriate to refer to the relevant provisions of the Broker Regulations and the Circular, which read as under:

SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003

Sub:- Mode of payment and delivery

3. All payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. However, in exceptional circumstances the broker or sub-broker may receive the amount in cash, to the extent not in violation of the Income Tax requirement as may be in force from time to time.

Broker Regulation

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code Of Conduct For Stock Brokers

A. GENERAL

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

11. I note from the client ledger maintained by the Noticee, the bank account statements of the Noticee and the replies filed by the Noticee, that the Noticee had received certain third party payments in respect of its clients. The details of the same are enumerated below:

Table I: Details of third party payments received by the Noticee

Sr. No.	Date	Name of Client	Name of the entity who made the payment (third party)	Amount Rs.
1.	24/10/2007	Starview Mercantile Company Pvt. Ltd.	Cyber Infosystems and Technologies Ltd.	300 Lakh
2.	20/11/2007		Axon Realpro Pvt. Ltd.	100 Lakh
3.	20/11/2007		NOT AVAILABLE (NA)	90 Lakh
4.	22/11/2007		K-Lifestyle and Industries Ltd. (previously known as Krishna Lifestyle Technologies Ltd.)	100 Lakh
5.	10/12/2007	Pallash Construction Pvt. Ltd.	K-Lifestyle and Industries Ltd.	100 Lakh
6.	17/12/2007		K-Lifestyle and Industries Ltd.	100 Lakh
7.	23/01/2008		Krishna Knitwear Technology Ltd.	72.5 Lakh
8.	31/10/2007	Anoop Multitrade Pvt. Ltd.	Krishna Knitwear Technologies Ltd.	300 Lakh
9.	19/11/2007		Megna Developers Pvt. Ltd.	100 Lakh
10.	19/11/2007		Megna Developers Pvt. Ltd.	100 Lakh
11.	28/11/2007		Cyber Infosystems and Technologies Ltd.	150 Lakh
12.	03/12/2007		Cyber Infosystems and Technologies Ltd.	100 Lakh
13.	05/08/2008		Cyberinfo Zeeboomba .com Ltd.	33.15 Lakh
14.	26/07/2007	Axon Realpro Pvt. Ltd.	NA	150 lakh
15.	27/07/2007		NA	115 lakh
16.	27/07/2007		K-Lifestyle and Industries Ltd.	100 lakh
17.	2/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
18.	3/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
19.	6/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
20.	9/8/2007		K-Lifestyle and Industries Ltd.	100 lakh
21.	10/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
22.	16/8/2007		K-Lifestyle and Industries Ltd.	100 lakh
23.	17/8/2007		K-Lifestyle and Industries Ltd.	100 lakh
24.	24/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
25.	3/9/2007		K-Lifestyle and Industries Ltd.	100 lakh

12. Furthermore, I note that of the above third party payments, several third party payments were received by the Noticee on behalf of its clients through cheques, and the others

through RTGS. Details of third party receipts by the Noticee through cheques are as follows:

Table II: Details of payments received through cheques by the Noticee

Sr. No.	Date	Name of Client	Name of the entity who made the payment (third party)	Amount Rs.
1.	23/1/2008	Pallash Construction Pvt. Ltd.	Krishna Knitwear Technology Ltd.	72.5 Lakh
2.	2/8/2007	Axon Realpro Pvt. Ltd.	K-Lifestyle and Industries Ltd.	200 lakh
3.	3/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
4.	6/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
5.	10/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
6.	16/8/2007		K-Lifestyle and Industries Ltd.	100 lakh

13. The details of third party receipts by the Noticee through RTGS are as follows:

Table III: Details of payments received through RTGS by the Noticee

Sr. No.	Date	Name of Client	Name of the entity who made the payment (third party)	Amount Rs.
1.	24/10/2007	Starview Mercantile Company Pvt. Ltd.	Cyber Infosystems and Technologies Ltd.	300 Lakh
2.	20/11/2007		Axon Realpro Pvt. Ltd.	100 Lakh
3.	22/11/2007		K-Lifestyle and Industries Ltd. (previously known as Krishna Lifestyle Technologies Ltd.)	100 Lakh
4.	10/12/2007	Pallash Construction Pvt. Ltd.	K-Lifestyle and Industries Ltd.	100 Lakh
5.	17/12/2007		K-Lifestyle and Industries Ltd.	100 Lakh
6.	31/10/2007	Anoop Multitrade Pvt. Ltd.	Krishna Knitwear Technologies Ltd.	300 Lakh
7.	28/11/2007		Cyber Infosystems and Technologies Ltd.	150 Lakh
8.	03/12/2007		Cyber Infosystems and Technologies Ltd.	100 Lakh
9.	05/08/2008		Cyberinfo Zeeboomba .com Ltd.	33.15 Lakh
10.	27/07/2007	Axon Realpro Pvt. Ltd.	K-Lifestyle and Industries Ltd.	100 lakh
11.	9/8/2007		K-Lifestyle and Industries Ltd.	100 lakh
12.	17/8/2007		K-Lifestyle and Industries Ltd.	100 lakh
13.	24/8/2007		K-Lifestyle and Industries Ltd.	200 lakh
14.	3/9/2007		K-Lifestyle and Industries Ltd.	100 lakh

14. From the table II above I note that the Noticee received cheques from entities other than its clients. I note that the Circular explicitly mandates that *brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions*. In this regard, the Noticee has submitted that for faster and efficient operation of their accounts, the clients deposited cheques and confirmed details over the telephone. This made it impossible to know if the cheque is a third party cheque. I observe that there

was not one instance but number of instances where the Noticee received cheques from third party. As the above have come to my notice from the documents collected during the investigation, it has not been denied by the Noticee that they allowed third party payments for the clients. Noticee has further submitted that such third party cheques being exceptional and one of its kind, may be considered as a technical infraction and ought to be waived. I note that this activity is not a one off instance, and cannot be considered as a technical infraction.

15. However, what is even more aggravating and pertinent to note is the appalling attitude demonstrated by the Noticee in its reply to the SCN in this matter. The Noticee while accepting the fact of the third party payments far from considering these instances as violations of the SEBI circular has instead in its submissions justified why it has indeed taken the third party payments and has argued before me for justification of the violations to be treated as normal and be waived.

16. It is to be clearly understood that the measures put in by SEBI aim to instill transparency and discipline in the dealings between clients and brokers. It is thus the duty of the registered intermediary to ensure compliance with the Circular. I do not find any effort taken by the Noticee to ensure compliance with the Circular and note the nonchalant and appalling attitude of the entity in justifying the violations. The submissions made by the Noticee are thus devoid of any merit.

17. Further, the Noticee has submitted its Online Bank Statements for the period July 2007 to August 2008. With regard to the RTGS payments received by the Noticee from third parties during this period, I find from the Online Bank Statement, as submitted by the Noticee, the following details appear for the relevant transactions:

a) Third Party Payments on behalf of Anoop Multitrade Pvt. Ltd.

Date	Particulars	Chq No/ Ref No.	Deposit (Rs)
31-Oct-07	RTGS Credit KRISHNA KNITWEAR TECH IndusInd Fort	BOMS71031H001102	30,000,000.00
28-Nov-07	RTGS Credit INFOSYSYTEMS AND TECH IndusInd Fort	BOMS71128H001408	15,000,000.00
03-Dec-07	RTGS Credit CYBER INFOSYSYTEMS AND TECHNOLOGIES IndusInd Fort	BOMS71203H001910	10,000,000.00
05-Aug-08	RTGS Credit CYBERINFO ZEEBOOMBA COM LTD RAGHUVANSHI MILL COMPOUND MUMBAI IndusInd Fort	BOMS80805H003337	3,315,104.00

b) Third Party Payments on behalf of Axon Realpro Pvt. Ltd.

Date	Particulars	Chq No/ Ref No.	Deposit (Rs)
27-Jul-07	RTGS Credit KRISHNA LIFESTYLE TECHONOLOGIES LTD. IndusInd Fort	BOMS70727H000513	10,000,000.00
09-Aug-07	RTGS Credit KRISHNA LIFESTYLE TECH LTD IndusInd Fort	BOMS70809H000327	10,000,000.00
17-Aug-07	RTGS Credit KRISHNA LIFESTYLE TECH IndusInd Fort	BOMS70817H000602	10,000,000.00
24-Aug-07	RTGS Credit KRISHNALIFE STYLE TECHNOLOGY IndusInd Fort	BOMS70824H000625	20,000,000.00
03-Sep-07	RTGS Credit KRISHNA LIFE STYLE TECHNOLOGIES IndusInd Fort	BOMS70903H001646	10,000,000.00

c) Third Party Payments on behalf of Starview Mercantile Company Pvt. Ltd.

Date	Particulars	Chq No/ Ref No.	Deposit (Rs)
24-Oct-07	RTGS Credit CYBER INFOSYSTEMS AND TECHNOLOGIES IndusInd Fort	BOMS71024H000906	30,000,000.00
22-Nov-07	RTGS Credit KRISHNA LIFESTYLE TECHNOLOGY LTD IndusInd Fort	BOMS71122H000830	10,000,000.00

d) Third Party Payments on behalf of Pallash Construction Pvt. Ltd.

Date	Particulars	Chq No/ Ref No.	Deposit (Rs)
10-Dec-07	RTGS Credit KRISHNA LIFESTYLE TECHNOLOGY LTD IndusInd Fort	BOMS71210H001962	10,000,000.00
17-Dec-07	RTGS Credit KRISHNA LIFESTYLE TECHNOLOGY LTD IndusInd Fort	BOMS71217H000355	10,000,000.00

18. From the above extract of the online bank statement of the Noticee for the relevant dates, I note that the creditor of the funds in the RTGS is apparent from the face of the statement itself. A cursory glance of the statement reveals that the payment was received from third party. Hence the Noticee was very much in a position to ascertain from where the funds were received, if it had the willingness to do. Thus I do not find any merit in the argument placed by the Noticee that due to the deadlines it is nearly impossible to verify each and every payment received.

19. The Noticee was asked during the hearing to explain how they exercised due diligence to ensure that the amount has come from its client. The Noticee vide their letter dated April 18, 2013 submitted that as a broker, the Noticee had deadlines for making pay-ins to the Exchanges, and it is impossible to verify each and every payment received. The Noticee, on a sampling basis, verified receipts in the client ledgers with bank accounts statements or bank deposit slips. However, there have been several third party payments through RTGS on behalf of the Notice's clients. The Noticee has not been able to demonstrate how they exercised their due diligence in the instant cases. Moreover, I am of the considered view that in a situation such as the case at hand, where the name of the transferor is apparent from even a bare perusal of the broker's bank statement, such a

submission is irrelevant and cannot be accepted. This further demonstrates that attitude of the Noticee with respect to the third party transfers. The only excuse the Noticee wishes to put forth is that due to the deadlines for making pay-ins to the Exchanges it is impossible to verify each and every payment received. However, this is merely an excuse and does not stand given the attitude of the Noticee as mentioned above. I do not find any merit in the submission of the Noticee.

20. It is the responsibility of the broker to ensure that payments are received directly from relevant clients and not third parties. A plain scrutiny of its bank account statements should have alerted the Noticee that payments were coming in from entities other than its clients. Thereafter, the Noticee should have taken expedient steps to ensure that funds received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party moneys were received. Neither is it the case of the Noticee, nor is there is anything on record to suggest that such steps were indeed taken.

21. It is so blatantly evident that one would needed to be blinded by some other reason not to notice these seemingly obvious information that the transfers were not made by its client, but a third party. Such a conduct, to my mind, borders more on the side of connivance rather than the sheer lack of due diligence and indicates an attitude to merely let things pass until they are adversely noticed by monitoring authorities. Such an attitude, as demonstrated by the registered entity, is reproachable and deserves to be treated in fitting manner. Given the above, the Noticee cannot escape liability.

22. In light of the above, I am of the view that **the Noticee has violated the provisions of SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.**

23. Further, since the Noticee is a registered broker, it was required to adhere to the Code of Conduct prescribed for Stock-Brokers under the Broker Regulations. The conduct of the broker in this case was devoid of due skill, care and diligence, especially since he failed to take any measures to rectify the error, even *post facto*. Further, due to its violation of the Circular, the Noticee has failed to adhere to the aforesaid Code of Conduct prescribed

under the Broker Regulations. In view of the same, I find that the Noticee failed to exercise due care and diligence in discharge of its duty as a broker and **violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations.**

24. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

25. In view of the violation SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 and Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations, **the Noticee is liable for monetary penalty under Section 15 HB of SEBI Act, 1992** which reads as follows:

15HB.Penalty for contravention where no separate penalty has been provided.-
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

26. While determining the quantum of penalty under Section 15 HB of SEBI Act, 1992 it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 which reads as under:-

15J Factors to be taken into account by the adjudicating officer:
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

27. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. However these types of third party payments are

threat to the safety and integrity of market and thus loss to the investors to that extent. I observe that default by the Noticee occurred on several instances hence the default is repetitive.

ORDER

28. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 8,00,000/- (Rupees Eight Lakh only) under Section 15 HB of the SEBI Act, 1992 against the Noticee, which will be commensurate with the violations committed by it.

29. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri B. Rajendran, General Manager, Investigations Department-4, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

30. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **April 25, 2013** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**