BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 106/2014]

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
Master Share & Stock Brokers Ltd. (PAN: AABCM1077H)

In the matter of
Inspection of Books of Accounts and Records

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an inspection of Master Share & Stock Brokers Ltd. (hereinafter referred to as **"Noticee"**), having SEBI registration no. INSS010820236, to look into the books of accounts and other records. The Noticee is a sub-broker of M/s LSE Securities Ltd. (hereinafter referred to as **"LSESL"**) which is a subsidiary of the Ludhiana Stock Exchange Ltd. The inspection was carried on August 7, 2012 and August 8, 2012 on the basis of book of accounts, records, documents and various other records maintained and furnished by the Noticee.

2. During such inspection, it was observed that the Noticee had allotted trading terminals to the ultimate clients which was in violation of SEBI Circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001. Consequently, it was alleged that Noticee had not exercised proper care and skill in the conduct of its business and had thereby violated the provisions of Clause A (2) of Code of Conduct as prescribed under Regulation 15 of SEBI (Stock Brokers and Sub Brokers) Regulations,

1992 (hereinafter referred to as "**Brokers Sub-Brokers Regulations**") and violated SEBI Circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated August 22, 2013 under Section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") to inquire into and adjudge under Section 15HB of the SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-6/AK/VS/26633/2013 dated October 18, 2013 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HB of SEBI Act for the alleged violation specified in the said SCN. Vide letter dated November 6, 2013, Noticee acknowledged the receipt of the SCN and requested for grant of three weeks time to reply to the SCN.

5. The Noticee vide letter dated November 30, 2013 filed reply to the SCN and *inter alia* made the following submissions:

   a) *That inspection has established beyond doubt that the trading terminals were not utilized for carrying out any unregistered sub-broking activity;*
   b) *That minor and technical irregularities were observed by inspection with respect to installation of 4 terminals at 3 locations. However, it was only after total disclosure and in compliance with all the statutory requirements of LSESL that they had installed terminals at those 3 locations viz. a) HNo23-24 St no 15 Basti*

Tankian Wali, Ferozpur City, b) Krishna Carrier Builders, Near LIC Office, Phillaur and c) 307 B Model Town Extension, Ludhiana;

c) *That on receipt of SCN to clarify the matter and bring on record the true facts, they had requested LSESL to confirm the aforesaid fact and issue them a certificate in this regard. That LSESL after verifying their records had issued a certificate confirming that the terminals were installed after completion of necessary formalities in this regard. The said certificate was annexed to the reply;*

d) *That rent had been paid by them for use of the premises where trading terminals were installed; hence, the same premises were used as their office. Thus, they were in compliance with SEBI Circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001;*

e) *That as regards the terminal allotted to Shri Sanjay Kakkar, who was their business associate, the Noticee has stated that the reasoning for making bold and sweeping allegation that "....the kind of service Shri Kakkar is rendering to the Noticee was of sub-broking (although Shri Kakkar is unregistered sub-broker)" is not clear. The Noticee has submitted that:*

   i) *They themselves are the registered sub brokers of LSESL and full disclosure in this regard was made to all the clients dealing through them from all locations, hence, Shri Kakkar acting as a sub broker becomes a remote possibility;*

   ii) *That all dealings of each and every client are directly handled by LSESL;*

   iii) *That except execution of orders, no other activity was carried out from the premises where the terminals were installed;*

   iv) *That display of notice board, name plates and all relevant information was made available to the clients, as statutorily required, to make them know and understand that they were acting as a sub broker to LSESL;*

   v) *That all investors are aware and were made aware by way of full and complete disclosure as to with whom they were dealing and in what capacity they were representing. Further, that regularly rent was paid for the premises. Hence, the said premises were used as their office. In view of the*

foregoing they were in compliance with the SEBI Circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

f) *That all the dealings of clients viz. Pay in and Pay out of funds and securities were directly carried out by LSESL. The "Member Client Agreement (MCA)" was executed with the Noticee and KYC documents were under their control and record. Further the client wise limit and also the permission whether to execute the order of a particular client or not was decided by their "Internal Risk Management and Surveillance System" and also considering other factors like individual client's risk profile etc. Hence, it is erroneous and incomprehensible to allege that "....the terminals are being used and managed by the clients". At the most, it may be a case that the clients had direct access to the trading terminal. Further, that the aforesaid facility was extended in order to provide better facilities to them so that they can take proper and informed decision before placing any order on the trading terminal of the exchange;*

g) *Further, that not the brokerage, but, professional charges were paid to Shri Rajesh Kakkar for the consulting services rendered by him to the Noticee and not for acting as an Agent in any manner. Even the finding/ observation is inconsistent and contrary to the records/ documents furnished to the Noticee, particularly a copy of the ledger account which also shows payment by way of professional fees;*

h) *That the terminal installed at Ludhiana was managed and controlled by the Noticee from their head office located at Ludhiana. Besides due to poor turnover, they had deactivated the same in the year 2012. It has been pointed out that during the financial year 2011-12, the total volume of business carried out from the aforesaid terminal was Rs. 1.95 lac only and the total brokerage earned was less than Rs. 400/- only;*

i) *That there is no complaint or grievance raised by anyone concerned including LSESL with whom they were affiliated, nor, the Stock Exchanges (BSE and NSE) whose terminals were installed at those three locations;*

j) *That in the judgment of Hon'ble Securities Appellant Tribunal (SAT) decided on September 11, 2013 in the matter of DSE Financial Services Ltd. Vs SEBI, under para 3 it is mentioned that "....every minor discrepancy/ irregularity found during the course of inspection is not culpable and object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant."*

6. In the interest of natural justice an opportunity of hearing was provided to the Noticee on December 18, 2013 vide hearing notice dated December 10, 2013. Shri Prakash K Shah, Authorized Representative (hereinafter referred to as '**AR**') appeared on behalf of the Noticee and *inter alia* reiterated the submissions made by the Noticee vide letter dated November 30, 2013. AR submitted that the reply dated November 30, 2013 is to be considered as the final reply and rent agreements of the Noticee with the clients and the closure of TWS were submitted in addition to the reply. During the hearing, AR was advised to submit the following with documentary evidence in support of the same:
   a) Rent receipts for the F.Y. 2011-2012 given to the clients on whose premises terminals were located;
   b) Details of the bank accounts of the Noticee from which amount of Rs. 55,193 was paid to Shri Kakkar for rendering professional duties;
   c) Balance sheet for the F.Y. 2011-2012;
   d) List of clients who got registered through the alleged three terminals;
   e) Activities carried out at the alleged three terminals;
   f) Any other past non compliance of SEBI Regulations or Circulars.

   The Noticee undertook to submit the same by December 27, 2013.

7. Noticee vide letter dated December 27, 2013 submitted the following information/ documents:
   a) Revised copy of certificate issued by LSESL confirming that the terminals were installed after completion of necessary formalities in original;

b) Rent receipts for the financial year 2011-12 for the use of premises where alleged terminals were installed;

c) Details of bank account from which Rs. 55,193 was paid to Shri. Kakkar for rendering professional services;

d) A copy of balance sheet for the F.Y. 2011-2012 along with schedules and details of brokerages and professional fees paid during 2011-2012;

e) List of clients who got registered through the location from where the alleged three terminals were installed;

f) With regard to the activities being carried out at the alleged three terminals, it was submitted that from these locations, the facility with regard to placement of orders, providing 'On-line' information of the market during live trading hours and investor services were rendered;

g) With regard to the query about past non compliance of SEBI regulations or circulars, it was submitted that Noticee have always complied with all the SEBI regulations and circulars and there has been no non compliance;

h) The Noticee vide the said letter further placed on record the following Orders/ Judgements:

   i) SEBI order No. MO/93/MIRSD/01/06 dated January 12, 2006 against Hem Securities;

   ii) Adjudication Order No. EAD-2/AO/95/2012 dated November 05, 2012 against M/s Pioneer TCP Stock Brokers Ltd.;

   iii) Adjudication Order No. BM/AO-90/2011 dated May 31, 2011 in respect of UPSE Securities Limited;

   iv) Hon'ble SAT Order dated July 25, 2011 in Appeal No. 109 of 2011 in the case of UPSE Securities Limited.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the written submissions wherever submitted by the Noticee, the facts put forth during the hearing and the documents available on

record. The allegation against the Noticee is that the Noticee has violated the provisions of Clause A (2) of Code of Conduct as prescribed under Regulation 15 of Brokers Sub-Brokers Regulations and SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001. Before moving forward, it will be appropriate to refer to the aforesaid provisions, which reads as under:

SEBI Circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001

"Exchanges are advised to grant trading terminals only at the members' registered office, branch offices and their registered sub-brokers' offices….."

SEBI (Stock Brokers and Sub Brokers) Regulations, 1992

General Obligations and Inspection.

15(1). The sub-broker shall:
(a)....
(b) abide by the Code of Conduct specified in Schedule II;

SCHEDULE II
Code of Conduct for Sub-Brokers
A. GENERAL
(1) ....
(2) EXERCISE OF DUE SKILL AND CARE: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business.

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

a) Whether the Noticee has violated Clause A (2) of Code of Conduct as prescribed under Schedule II read with Regulation 15 of Brokers Sub-Brokers Regulations and SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001?
b) Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15HB of SEBI Act?
c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

10. I now proceed with the alleged violations of SEBI Circular and Brokers Sub-Brokers Regulations.

10.1 The issue for consideration is whether the Noticee has violated Clause A (2) of Code of Conduct as prescribed under Schedule II read with Regulation 15 of Brokers Sub-Brokers Regulations and SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001. During inspection, it was observed that 20 terminals of Bombay Stock Exchange Limited (hereinafter referred to as **"BSE"**) and 9 terminals of National Stock Exchange of India Ltd. (hereinafter referred to as **"NSE"**) (Cash and F&O) were allotted to the Noticee. It was further observed that most of the terminals were located in the Ludhiana Stock Exchange Limited (hereinafter referred to as **"LSE"**) building, except the ones mentioned in the 'Table A' below. During inspection, clients list of the Noticee was also sought and scrutinized. Scrutiny of the clients list and the terminals (located outside LSE building) details revealed that the addresses of the clients and the terminal locations were common. Details are given in 'Table A' below:

Table A

S.n	Terminal detail	User/ CTCL login id	Address of the location of terminal	Address of the Client	Name of the Client (Client Code)
1.	BSE	MSB024	H. NO. 23-24 St. No. 15 Bast Tankian Wali, Ferozepur	H. No. 23-24 St. No. 15 Bast Tankian Wali, Ferozepur	• Ms. Veena Sharma (MSBVENS) • Shri Varinder Sharma (MSBFVAS) • Shri Varun Sharma (MSBFVAR
2.	BSE	MSB05	Krishna Carrier Builders near LIC Office, Phillaur	Krishna Carrier Builders near LIC Office, Phillaur	• Shri Sanjay Kakkar (MSBQSAK)

Table A *(continued)*					
S.n	**Terminal detail**	**User/ CTCL login id**	**Address of the location of terminal**	**Address of the Client**	**Name of the Client (Client Code)**
3.	NSE	MSB05	Krishna Carrier Builders near LIC Office, Phillaur	Krishna Carrier Builders near LIC Office, Phillaur	• Shri Sanjay Kakkar (MSBQSAK)
4.	BSE	MSB06	307B Model Town Extension, Ludhiana	307B Model Town Extension, Ludhiana	• Ms. Jasmine Kaur (MSBJMIN) • Ms. Inderjit Kaur (MSBINKU)

10.2 It was further observed that terminals as mentioned at serial nos. (1), (2) and (3) above were located at the premises taken on rent by the Noticee from the clients. It was also observed that brokerage in the form of professional charges of Rs. 55,193/- was paid to Shri. Rajesh Kakkar (Client Code- MSBQRAJ), who was a brother of Shri Sanjay Kakkar. In respect of the terminal allotted to the clients Ms. Jasmine Kaur and Ms. Inderjit Kaur, it was observed that there was no arrangement of lessor-lessee in this case; also no rent whatsoever was paid to them, however that the terminals were used and managed by them.

10.3 The aforesaid findings of the inspection with respect to the aforesaid irregularity were *inter alia* communicated to the Noticee on September 24, 2012 and its reply dated October 08, 2012 was received on October 09, 2012. The observations of the SEBI inspection after taking into consideration the aforesaid reply of the Noticee with respect to the aforesaid finding are as given below:

a) As per the information submitted by the Noticee, the terminal no. MSB024 was located at Ferozepur at the premise of Ms. Veena Sharma, employee of the Noticee, drawing salary of Rs. 10,000/- per month for managing the affairs till 2011. Noticee further submitted that she was no more in employment with them, but, was associated with them in the capacity of consultant. It was also stated by the Noticee vide the aforesaid letter that the rent agreement was executed for utilization of space provided by her

and no professional fees had been paid to her. During inspection it was also found that although Ms. Veena Sharma was not an employee of the Noticee, but, the terminal was still being located at her place, and, rent was also being paid by the Noticee regularly in this regard. In view of the same, it was alleged that the Noticee had violated the provisions of SEBI circular no. SMDRP/Policy/Cir-49/2001 dated October 22, 2001;

b) With respect to terminal no. MSBO5 located at Phillaur, Noticee submitted that the terminal was allotted to Shri Sanjay Kakkar, who was their business associate in the capacity of "Investment Consultant" and who also happens to be their client. The Noticee further submitted that the terminal was installed at Phillaur for the convenience of their clients, so that they get the facility of interacting with a single person at local place, instead of dealing at Ludhiana, which becomes cumbersome for individual clients on daily basis, and, for the same Shri Kakkar who was acting as Investment Consultant on their behalf was being paid professional charges. Noticee further submitted that all the clients registered at Phillaur were the clients of the Noticee, hence, there was no question of mis-utilization of the terminal for unregistered sub-broking activity. However, during the inspection it was found that the kind of service Shri Kakkar was rendering to the Noticee was of sub-broking (although Shri Kakkar is an unregistered sub-broker). In view of the same, it was alleged that the Noticee had violated the provisions of SEBI circular no. SMDRP/Policy/Cir-49/2001 dated October 22, 2001.

c) In view of the above, it was observed that although the rent arrangements had been done by the Noticee with some of the clients for providing the terminals to the clients, the terminals were being used and managed by the clients as submitted by the Noticee. Further, from the records of the Noticee, it was observed that brokerage had also been paid to one Shri

Rajesh Kakkar, who was also a client of the Noticee. Further, in respect of the terminal allotted/ mentioned at Sr. No. (4) of the above 'Table-A', though vide the aforesaid reply the Noticee had stated that the terminal was deactivated and a copy of the letter dated August 09, 2012 sent to LSE requesting to close the BSE/NSE TWS Ids was provided, inspection observed that prior to the same the clients were using and managing these terminals and no rent whatsoever was being paid to them.

10.4 Thus, I note that the charges leveled against the Noticee are that of allotting the terminals to the ultimate clients, in contravention with SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001, which specifies that - *"Exchanges are advised to grant trading terminals only at the members' registered office, branch offices and their registered sub-brokers' offices….."*. Consequently, Noticee was charged for not exercising proper care and skill in the conduct of its business, thereby violating the provisions of Clause A (2) of Code of Conduct as prescribed under Schedule II read with Regulation 15 of Brokers Sub-Brokers Regulations.

10.5 I note that the issue in this case is whether the trading terminals were allotted to the ultimate clients. From the documents on record and submissions made by the Noticee, I note that the addresses of the clients and that of the location of the terminals mentioned at 'Table A' above were the same. The Noticee in its defense, I find, has submitted the rent agreement and rent receipts claiming that the addresses where the terminals were installed were in fact rented to them by persons who appeared to be the ultimate clients. As per the Noticee, same was done to provide better facilities to the clients so that they can take proper and informed decision before placing any order on the trading terminal of the exchange. To substantiate its claim, Noticee has further submitted a certificate dated December 18, 2013 from LSESL wherein I find that LSESL has certified that Noticee had installed terminals through LSESL on the alleged

client's addresses after completion of necessary formalities. The Noticee has also submitted that display of notice board, name plates and all relevant information was made available to the client, and from the alleged premises except execution of orders, no other activity was carried out. With respect to the allegation that brokerage was paid to Shri Rajesh Kakkar, brother of Shri Sanjay Kakkar, Noticee submitted that professional charges were paid to him, and not brokerage, for consulting services rendered by him.

10.6 I, however, note that persons who were operating the 4 trading terminals from the 3 locations as brought out at Table 'A' above, were not the employees of the Noticee at the relevant point of time, but, were acting as Investment Consultants on behalf of the Noticee. The Noticee has further also admitted that they were being paid professional charges by the Noticee. This clearly indicates that the activities of such persons were akin to that of sub-broker and they were carried out with the assistance and full knowledge of the Noticee. Besides, I find that these persons were also the clients of the Noticee having the same address as that where the trading terminal was located.

10.7 I note from the submissions made by the Noticee that Ms. Veena Sharma, Shri Varinder Sharma and Shri Varun Sharma were not the employees of the Noticee at the relevant point of time, but, they were allotted terminal located at Ferozepur in the capacity of consultant. Besides, it is observed that their address as client is the same as the location of the trading terminal. Since Ms. Veena Sharma, Shri Varinder Sharma and Shri Varun Sharma were not the employees of the Noticee at the relevant point of time, appointing them for operating the Noticee's terminal located at Ferozepur is illegal *ab initio*. Thus, it is established without doubt that trading terminal located at Ferozepur was allotted to the ultimate clients by the Noticee. Similarly, Shri Sanjay Kakkar, who was the business associate of the Noticee in the capacity of Investment Consultant and also their client, was also allotted trading terminal located at

Phillaur. Hence it is concluded that trading terminal located at Phillaur was also allotted to the ultimate client by the Noticee. Further, I note that Ms. Jasmine Kaur and Ms. Inderjit Kaur were also not the employees of the Noticee. However, they were allotted the terminal located at Ludhiana. Their address as clients is the same as the location of the trading terminal. The Noticee has stated that they had already deactivated the trading terminal in August 2012; however, prior to the same, it is observed that the clients were using and managing these terminals and no rent was also paid to them. Thus, it is established without doubt that trading terminal at Sr. No. (4) of Table-A, located at Ludhiana was also allotted to the ultimate clients by the Noticee. Thus, I note that the 4 trading terminals at 3 locations as brought out at Table "A" above, were allotted by the Noticee to its ultimate clients in contravention with SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

10.8 Further, the principle of professional competence and due care imposes an obligation on all sub-brokers. Accordingly, I find that Clause A (2) of Code of Conduct as prescribed under Schedule II read with Regulation 15 of Brokers Sub-Brokers Regulations requires every sub-broker to act with due skill, care and diligence in the conduct of all investment business. However, in the case of the Noticee, it is observed from the above that the Noticee had allotted 4 trading terminals at 3 locations to the ultimate clients in contravention to SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001. In view of the same, it further stands established that Noticee has not exercised proper care and skill in the conduct of its business and violated the provisions of Clause A (2) of Code of Conduct as prescribed under Regulation 15 of SEBI Brokers Regulations and SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

10.9 With regard to allegation that brokerage was paid to Shri. Rajesh Kakkar, I note from the ledger details provided by the Noticee that same was paid as a

professional charge to Shri. Kakkar. Noticee submitted that Shri. Kakkar was not acting as unregistered sub broker on their behalf as no facts and evidences are furnished. As per NSE Circular No. 163 dated April 20, 2000 that *"the trading terminal shall be required to be under the direct control of the trading member and be managed either by an authorized employee or by a registered sub-broker of the trading member"*. It further stated that *"If the trading terminal is located in the branch office of the trading member, then the branch office shall be managed and supervised by the trading member's own employee or by a registered sub-broker"*. From the above it is understood that the trading terminal shall be required to be under the direct control of the trading member and be managed either by an authorized employee or by a registered sub-broker of the trading member. Noticee in its reply has submitted that Mr. Kakkar was rendering investment consulting services, despite of not being an employee of the Noticee. Hence, I find that the kind of service Shri. Kakkar was rendering to the Noticee was of sub-broking.

10.10 Further, Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund*[1] 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…".* Hence, I am constrained to take a view in line of the Hon'ble Supreme Court ruling.

10. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15HB of the SEBI Act, which reads as under:

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*

[1] [2006] 68 SCL 216(SC) dated May 23, 2006

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."

11. While determining the quantum of monetary penalty under Section 15HB, I have considered the factors stipulated in Section 15-J of SEBI Act, 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.

12. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. Further, an effective regulatory system requires that every player in the securities market complies with the laid down rules, regulations, circulars, directives etc. issued by the regulator from time to time. The Noticee being an intermediary registered with SEBI is responsible for ensuring such compliance. Violation of circulars issued by SEBI to the intermediaries, poses significant risk to the orderly functioning of the securities market. I note from the above that Noticee was well aware of the fact that 4 terminals at 3 locations as brought out in Table-A above were allotted to their ultimate clients. Thus, I find that the Noticee has willfully defaulted in compliance with SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001 and thereby failed to act with due skill, care and diligence in the conduct of his business.

13. Section 15HB of the SEBI Act provides that any person who indulges in fraudulent and unfair trade practices relating to securities, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. I, however, note that the turnover of the Noticee from NSE terminal MSB05 from March 30, 2012 (since the terminal was allotted to the Noticee on March 30, 2012) till the date of inspection i.e. August 8, 2012 was Rs. 93,09,655 on buy side and Rs. 96,65,424 on sell side. The turnover from BSE terminal MSB024 from January 1, 2011 to March 30, 2012 was Rs. 2,15,26,163 on buy side and Rs. 2,05,88,628 on sell side; from BSE terminal MSB05 from January 5, 2011 to July 12, 2012 was Rs. 13,35,276 on buy side and Rs. 13,14,855 on sell side; and from BSE terminal MSB06 from January 4, 2011 to August 9, 2012 was Rs. 19,65,494 on buy side and Rs. 12,76,972 on sell side. I note that all the 4 terminals at 3 locations were being operated by persons who were not employees of the Noticee, but, were the clients of the Noticee.

14. I further note that during the hearing Noticee has submitted Adjudication Order dated November 05, 2012 against M/s Pioneer TCP Stock Brokers Ltd. On a perusal of the said Order, I note that the Hon'ble Adjudicating Officer has concluded therein that the alleged violation of providing trading terminals at the office address of its clients could not be established beyond doubt, hence, the Hon'ble Adjudicating Officer had exonerated M/s Pioneer TCP Stock Brokers Ltd. On the contrary, in the given case of the Noticee, it is established beyond doubt that by allotting the trading terminal to its Business Associates/ Investment Consultants, who were also its clients, the Noticee had allotted the trading terminals to its ultimate clients. The Noticee, I find, has also referred to the SEBI order dated January 12, 2006 against M/s Hem Securities Limited, a stock broker of BSE. In the said case, I observe that

the Hon'ble Whole Time Member had levied a penalty of censure on the stock broker, though it was found that the broker had *inter alia* violated the provisions of SEBI Circular No. SMDRP/ Policy/ Cir-49/2001 dated October 22, 2001. The Noticee has also referred the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 25, 2011 in the matter of UPSE Securities Limited vs. SEBI. I find that the Hon'ble SAT has set aside the Order of the Hon'ble Adjudicating Officer levying a penalty of Rs. 2 lacs on UPSE Securities Ltd. I, however, note that the allegation of violations that stand established in the said case are different from the allegation of violation that have been established in the present case of the Noticee. Hence, the said case does not stand on the same footing as the given case of the Noticee.

15. Besides, I find that the Hon'ble SAT vide Order dated June 12, 2014 in the matter of M/s. Hybrid Financial Services Limited (Formerly known as Mafatlal Finance Company Ltd.) has observed that: *"……assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted ……..".* I note further that the Act has not included mens rea or deliberate or willful nature of the default as a factor to be considered by the Adjudicating Officer in determining the quantum.

ORDER

16. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lakh Only)** under Section 15 A(b) on the Noticee which will be commensurate with the violations committed by the Noticee, **Master Share & Stock Brokers Ltd.**

17. 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

Amit Pradhan, Regional Manager, SEBI - Northern Regional Office, 5th Floor, Bank of Baroda Building, 16 Sansad Marg, New Delhi - 110001.

18. 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: June 30, 2014 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**