BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-115/2015]

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

M/s Greshma Shares and Stocks Limited
(PAN: AADCG5220E)

FACTS OF THE CASE

1 Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an inspection of the books of accounts and other records of M/s. Greshma Shares & Stocks Limited (hereinafter referred to as '**the Noticee/GSSL'**) to examine *inter alia* compliance to the provisions with respect to segregation of client funds and securities, particularly whether any utilization of assets of the clients other than for the purposes specified in SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993. The Noticee is a trading member of Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**), National Stock Exchange of India Ltd. (hereinafter referred to as **'NSE'**) and Multi Commodity Exchange of India Limited (hereinafter referred to as **'MCX-SX'**) having registration numbers INB011352631, INB/F/E 231352635, and INB/F261352638 & INE261352635 respectively. The Inspection was carried out on December 30, 2013 and the period of inspection was from April 1, 2012 till the date of inspection i.e. December 30, 2013 *(*hereinafter referred to as '**Inspection Period'***).*

2 Inspection observed that the Noticee/GSSL by utilising/withdrawing funds from client bank account and/ or receiving funds in the client bank accounts with/ without authorisation, in a manner other than that stipulated vide SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 had violated the said SEBI circulars, thereby also violating clauses A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992

(hereinafter referred to as **'Brokers Regulations'**). The aforesaid alleged violations by the Noticee, if established, make it liable for penalty under Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

3 The undersigned was appointed as the Adjudicating Officer Order dated October 21, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **SEBI Rules**) to inquire into and adjudge under Section 15HB of the SEBI Act for the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4 A Show Cause Notice (hereinafter referred to as '**SCN'**) Ref. No. EAD-6/AK/11636/2015 dated April 27, 2015 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of the SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 and Clause A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Brokers Regulations.

5 I note that the Noticee vide letter dated May 12, 2015 has *inter alia* referred to and relied on its earlier submissions made to SEBI in the matter vide letters dated April 24, 2014 (to be read as March 24, 2014), October 13, 2014 and January 27, 2015. Hence, the submissions made by the Noticee vide letters dated March 24, 2014, October 13, 2014 and January 27, 2015 have been *inter alia* brought out below:

5.1 Vide letter dated March 24, 2014, the Noticee has *inter alia* submitted as follows:

- *That as regards 17 instances of amounts less than Rs. 5,000/- in FY 2012-13, wherein Inspection observed that the Noticee had transferred Rs. 19,344.65 without any authorization from the clients, Noticee submitted that the said amount was transferred as per the resolution passed by the Board in the Board Meeting held on April 08, 2011. It was further stated that as per the new Board Resolution dated March 22, 2014, irrespective of amount, all funds to be transferred from the Noticee/ GSSL to other group company is done only after getting authorization from*

respective clients. A certified true copy of the resolution passed by the Board of Directors at its meeting held on March 22, 2014 was provided;

- *With regard to mismatch of signature of the authorized signatory as per KYC and the signature on the authorization letter for transfer of funds in the case of M/s. Grebal Capital Services Private Ltd. in FY 2012-13, the Noticee has submitted that the authorization letter was delivered personally by the client, however, in* future *further care shall be taken;*
- *With regard to 2 instances brought out by Inspection wherein Inspection had observed that client Mr. J. Jayaraj had given authorization for transfer of funds from NSE cash account to its group company dealing in commodity business viz. M/s. Greshma Commodities Pvt. Ltd. (hereinafter referred to as **'GCPL'**) account, but, the Noticee had transferred funds from NSE F&O account to GCPL account in FY 2012-13, Noticee has stated that in the fund transfer letter there was only mention of Exchange and no segments. Further, that to simplify, they have now added an additional column for segment in Fund Transfer letters and copy of the new format was provided;*
- *That as regards 15 instances of amounts less than Rs. 5,000/- in FY 2013-14, wherein Inspection had observed that the Noticee/GSSL had transferred Rs.2,73,291.67 without any authorisation from client and in respect of two clients viz.Ms. Nagamani Sheela and Mr. Vijayakumar, wherein Inspection had observed that the Noticee had not obtained any authorization for transfer of Rs. 66,443.15 and Rs.1,90,990.28 respectively, the Noticee submitted that the said amounts were transferred as per the resolution passed by the Board in the Board Meeting held on April 08, 2011. It was further stated that as per the new Board Resolution dated March 22, 2014, irrespective of amount, all funds to be transferred from the Noticee/ GSSL to other group company is done only after getting authorization from the respective clients. A certified true copy of the resolution passed by the Board of Directors at its meeting held on March 22, 2014 was provided;*
- *That again as regards 22 instances in FY 2013-14, wherein Inspection had observed that the clients had given authorization for transfer of funds from NSE cash account to GCPL account, however, the Noticee had transferred funds from NSE F&O account to GCPL, the Noticee has stated that in the fund transfer letters there was only mention of Exchange and no segments. Further, that to simplify, they have now added an additional column for segment in Fund Transfer letters and copy of the new format was provided;*

- *That as regards 4 clients, viz, Mr. Raja N S, Mr. S K Mahalakshmi, Mr. Thiruvai Rajagopalan Lakshmi and Mr. Rajesh Krishnan R, wherein Inspection had observed that the signature on authorisation letters were different from that in KYC, the Noticee has stated that the authorization letter was delivered personally by the client, however, in future further care shall be taken.*

5.2 Vide letter dated October 13, 2014, it is noted that the Noticee has *inter alia* highlighted the following issues/ difficulties faced by the Noticee/ GSSL in complying with the requirements of SEBI circular:

- *That the Noticee had many clients having trading account in both - GSSL and GCPL (subsidiary of GSSL);*
- *That while trading in both segments, many a times situations arose whereby client had credit in one company and debit in the other company. Often clients did not clear their debits for a long time leaving no option, but, to collect equivalent amount from other group company where client had credit in his ledger. In such cases, clients insists to collect amount from other group company where the client has credit and they do not have any objection and insist that their funds be transferred on their instruction. Further that the same practice is followed by many Broking Houses and if this arrangement is not allowed, clients stop trading and they lose their business. Also that all such transfers have been affected only after taking written requests from the clients;*
- *That in Noticee's case the amount transferred by the Noticee from Share Broking Company GSSL to Commodity Company GCPL is only towards debit of client in commodity. Further the amount transferred is the exact amount to the extent of debit balance, no extra fund is transferred and such fund is not utilized for any other purpose;*
- *That similarly the amount transferred from Commodity Company GCPL to Share Broking Company GSSL in majority of the cases is towards AMC charges, for having demat account in Share Broking Company GSSL where the amount is just Rs. 337/-;*
- *That to comply with SEBI circular, if the Noticee does not transfer such amounts and hold equivalent amount in other company where the client has credit, on completion of three months, respective exchange will charge penalty for not doing quarterly settlement of client. Hence, the Noticee is penalized for holding/collecting their own money.*

5.3 Further, the Noticee vide letter dated January 27, 2015 has *inter alia* submitted as follows:

- *That the Noticee maintains two separate accounts – one for Clients Fund and Securities and other for Own Funds and Securities;*
- *That the Noticee never used or transferred any funds or securities from clients account, except brokerage earned or tax liabilities payable to different authorities and regulatory bodies;*
- *That the Noticee has never used any clients funds or securities for own purpose;*
- *That funds transferred from one sister concern to another, to clear clients debit were only done after taking written consent of the client;*
- *That on receipt of SEBI's letter matter was kept before the Board of the Noticee on January 23 2015 and the Board advised that no transfer of funds between sister companies will take place under any circumstances.*

6 Further, the Noticee vide letter dated May 12, 2015 in reply to the SCN while denying the allegations has *inter alia* further submitted as follows:

- *That the SCN alleges, without any reasonable grounds, violation of provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and Circular No. MRD/SE/Cir-33/2003/27/08 dated 27.08.2003 and Clause A (2) and (5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Broker Regulations;*
- *That this part reply is filed without prejudice to the right to seek and obtain complete inspection/ copy of documents referred to and relied upon in the said notice/ inspection report. Only on receiving copies/ inspection of all the documents, which have been relied upon in the inspection report, they would be in a position to submit their complete reply;*
- *that it should not be construed to have accepted or admitted anything stated in the SCN, except save and except where the same has been expressly admitted in the reply;*
- *That the Order dated December 18, 2014 appointing the Adjudication Officer deals with the alleged violation of SEBI circular No. SMD/SED/CIR/93/23321 dated* November 18, 1993 *only, whereas the SCN wrongly proceeds on the assumption of alleged violation of SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 also, as such, the SCN issued exceeds the mandate granted in the Order appointing the Adjudication Officer. Under the circumstances, the SCN ought to be withdrawn on account of non-application of mind;*

- *That at certain places, the term 'GPCL' used in the SCN appears to be a typographical error and should in fact read as 'GCPL';*
- *That the findings of inspection has failed to appreciate that transfer of funds to GCPL is material, and not the number of occasions that this is done to clear the debit balance of the client in GCPL;*
- *That they had transferred money from GCPL to GSSL after taking consent letter from clients for all amounts above Rs.5000/-;*
- *That as stated in their reply dated March 24, 2014, they had in place a Board Resolution dated April 08, 2011 authorizing the Noticee to transfer to GCPL/ other group companies, when the amount did not exceed Rs. 5000/-. Further appreciating the need for better compliance, they had vide Board Resolution dated March 22, 2014 mandated that all such transfers, irrespective of the amount required client authorisation. They are in compliance of SEBI Circular dated November 18, 1993 as the said Circular acknowledges what moneys that may be paid in to client account and what money may be withdrawn from client account and they are not in violation of regulation of transaction between clients and brokers, which inter alia requires that the broker shall withdraw funds from the clients account towards payment of the debt due to the broker from clients, or, money drawn on clients authority, or, money in respect of which there is a liability of clients to the broker. There has not been any observation of mis-utilisation of funds in the Inspection Report, the transfers were undertaken to facilitate the clients and further under their instructions;*
- *That all transfers were at the instance of clients. They had merely executed the instructions of their clients in good faith and in the ordinary course of business and therefore, it cannot be inferred that they are a part of the alleged violations;*
- *That as regards the code of conduct, they had exercised due skill, care and diligence in the conduct of their business; they had taken all care, which is required to be taken about the creditability and financial soundness of their clients; and they have abided 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 applicable;*
- *That they had not committed any act in defiance of any regulations or any provisions of law and the alleged irregularity has not harmed the interests of any investor or has resulted in an unfair gain or advantage to the Noticee. Also, none of the alleged irregularity/ lapse has affected the security and stability of the capital market;*

- *That as regards SEBI circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, it has been stated that had it been the case of manipulation in transfer of funds from and to their account from GCPL/ other group companies, they would have definitely been alerted and vigilant in the transfer of funds. But the fact that all the transfers were executed at the instructions of the clients, they had exercised proper and due skill and care in the conduct of their business;*
- *That the SCN had failed to establish any intent either on the part of their clients or on their part for the alleged transfers. Further, there is no allegation in the SCN that they had benefited in any manner because of the alleged transfers, nor, has any client made any complaint of wrong transfers from their accounts.*

7 It was noted that the Noticee vide letter dated May 12, 2015 had stated that the Order dated December 18, 2014 appointing the Adjudication Officer deals with the alleged violation of SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 only, however, the SCN wrongly proceeds on the assumption of alleged violation of SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 also, as such, the SCN issued exceeds the mandate granted in the Order appointing the Adjudication Officer. In view of the same, a copy of the Appointment Order of the Adjudicating Officer dated December 18, 2014 was once again forwarded to the Noticee vide letter dated May 21, 2014 for perusal and to bring to the notice of the Noticee that at Para 1(ii) of the Appointment Order, the Adjudicating Officer has been appointed to *inter alia* enquire into and adjudicate upon the alleged violation of SEBI circular dated August 27, 2003.

8 In accordance with the principle of natural justice and in order to provide a fair chance to the Noticee to put forth its case, an opportunity of personal hearing was granted to the Noticee on August 07, 2015 vide hearing notice dated July 09, 2015. Mr. Anil Shah (Solicitor), Mr. Sameer Parekh (Director of the Noticee) and Mr. Dinesh Shah, appeared as Authorized Representatives of the Noticee (**ARs**) before the undersigned on August 07, 2015. During the hearing it was clarified to the ARs that as pointed out vide Noticee's letter dated May 12, 2015 'GPCL' in the SCN may be read as 'GCPL'. The ARs reiterated the submission made in the reply dated May 12, 2015 and agreed to the fact that the SCN did not exceed the mandate granted in the Order appointing the Adjudicating Officer. The ARs further requested that the Noticee's letter dated January 27, 2015 to SEBI may be taken on record. The ARs confirmed that there has been no past non-compliance

of the SEBI Act and Regulations other than the extant adjudication proceeding and that no action has been taken by SEBI in the past against the Noticee. The ARs sought to make further submissions by August 21, 2015 in the matter. The Noticee vide letter dated August 17, 2015 *inter alia* submitted that they reiterate the submissions made vide letter dated May 12, 2015 in the matter.

9 It was noted that the Noticee vide letter dated May 12, 2015 had sought complete inspection/ copies of documents referred to and relied upon in the Inspection Report/ SCN. Further, it was stated therein that only upon receiving copies/ inspection of all documents which had been relied upon in the Inspection Report, the Noticee would be in a position to submit a complete reply to the SCN. However, neither vide the said letter, nor at the time of hearing, the details of such specific documents which the Noticee sought to inspect were listed out. Further, all documents that were relied upon while framing charges against the Noticee were sent to the Noticee along with the SCN, including a copy of the Inspection Report.

10 Hence vide email dated December 15, 2015, the Noticee was *inter alia* advised to provide by December 16, 2015, the list of such specific documents in respect of which copies/ inspection was still required by the Noticee. The Noticee was also advised to confirm whether reference to letter dated April 24, 2014 made at page 11 of submissions dated May 12, 2015, actually refers to letter dated March 24, 2014. The Noticee vide reply email dated December 15, 2015 confirmed that no additional copies/ inspection of documents is required and that the submissions made vide their letters dated May 12, 2015 and August 17, 2015 are the final submissions in the matter. The Noticee further also confirmed that reference to letter dated April 24, 2014 at page 11 of their submissions dated May 12, 2015, actually refers to letter dated March 24, 2014. Further, vide email dated December 17, 2015, the Noticee forwarded a copy of the Extract of the Board Meeting held on January 23, 2015.

CONSIDERATION OF ISSUES

11 I have carefully perused the written submissions made by the Noticee, the submissions put forth during the hearing and the documents available on record. The issues that therefore arise for consideration in the present case are:

a. Whether the Noticee has violated the provisions of SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003?
b. Whether further the Noticee has violated the provisions of Clause A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Brokers Regulations?
c. Does the violations, if any, attract monetary penalty under Section 15HB of 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?

FINDINGS

12 Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 and Clause A(2) and A(5) as specified in Schedule II read with regulation 9(f) of the Brokers Regulations, which reads as under:

The relevant portion of the SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 is provided below:

Regulation Of Transactions Between Clients And Brokers

.....

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than - i. money held or received on account of clients; ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account; iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below; iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than - i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client; ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above; iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

.....

The relevant portion of the SEBI circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 is provided below:

Sub:- Mode of payment and delivery

1. *Please refer to SEBI circular No.SMD/SED/CIR/93/23321 and letter No. SMD-1/23341 dated November 18, 1993 regarding regulation of transactions between clients and brokers.*

2. *It is reiterated that brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and / or give cash against sale of securities to the clients.*

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.*

.....

Conditions of registration.

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

(a) ....;

(b) ....;

(c) ....;

(d) ....;

(e) ...;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

SCHEDULE II

SECURITIES AND EXCHANGE BOARD OF INDIA

(STOCK BROKERS AND SUB-BROKERS) REGULATIONS, 1992

CODE OF CONDUCT FOR STOCK BROKERS

A. GENERAL

(1).....

(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.

(3)....

(4).....

(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.

13 We will now examine the allegations against the Noticee. I note that the Inspection findings are based on analysis of samples and test checking of various books of accounts and other records as well as written/oral submissions of the Noticee/ GSSL & its officials to the inspection team. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive.

14 On inspection of instances of transfer of client's funds between client accounts maintained with Noticee/ GSSL and its group company dealing in commodity business GCP, Inspection *inter alia* observed the following for FY 2012-13 and FY 2013-14:

A. FY 2012-2013

i. That there were a total of 65 instances of payments amounting to Rs.36,94,510.34 which were made from client bank account of the Noticee/ GSSL to its group company dealing in commodities market GCPL during the financial year. Inspection observed that the Noticee had taken authorization from client wherein the amount involved was more than Rs.5,000/-;

ii. That from the above, there were 17 instances wherein the Noticee/GSSL transferred Rs.19,344.65 without any authorization from the client. The amount transferred in each such case was less than Rs.5,000/-;

iii. That in respect of client M/s. Grebal Capital Services Private Limited (client code: 1110GL001), there was a mismatch of signature of the authorized signatory as per KYC and the signature on the authorization letter for transfer of funds amounting to Rs. 5,25,000/- and Rs.3,00,000/- to the Noticee's group company dealing in commodity business GCPL;

iv. That for client Mr. J. Jayaraj (client code: 218RJ0009), in 2 instances client had given authorization for transfer of funds from NSE cash account to GCPL account, but, the Noticee had transferred funds from NSE F&O account to GCPL account.

B. FY 2013-2014

i. That there were a total of 78 instances of payments amounting to Rs.72,23,653.77 which were made from client bank account of the Noticee/ GSSL to GCPL during the said financial year. The Noticee had taken authorization from the clients wherever the amount involved was more than Rs.5000/-;

ii. That from the above, there were 13 instances wherein the Noticee/GSSL transferred Rs.15,858.24 without any authorisation from client. The amount transferred in each case was less than Rs.5000/-;

iii. That in respect of two clients viz., Ms. Nagamani Sheela (client code: 2151SV030) and Mr. Vijayakumar (client code: 2151VS05), the Noticee had not obtained any authorization for transfer of Rs. 66,443.15 and Rs.1,90,990.28 respectively;

iv. Further for the client Mr. Vijayakumar, the Noticee submitted vide email dated February 04, 2014 that the client had a huge debit in commodity account and even after transferring the said amount, he still had an uncleared debit of Rs. 4,42,750/- and the Noticee was in the process of taking legal action against the client for recovery of the outstanding amount. Further, for client Ms. Nagamani Sheela, the Noticee submitted vide email dated February 04, 2014 that the client was not responding to calls and was not traceable;

v. That for 22 instances, clients had given authorization for transfer of funds from NSE cash account to GCPL account. However, the Noticee had transferred funds from NSE F&O account to GCPL;

vi. That further for 4 clients, Mr. Raja N S (client code: 215ARS016), Mr. S K Mahalakshmi (client code: 2CHAM0001), Mr. .Thiruvai Rajagopalan Lakshmi (client code: 218DL0004) and Mr. Rajesh Krishnan R (client code: 2180R0016), the signature on authorization letters were different from that in the KYC.

15 Further certain discrepancies in the data were pointed out by the Noticee/GSSL to SEBI vide email dated March 18, 2014. In the matter, SEBI clarified to the Noticee vide email dated April 25, 2014 that as per point no. III (2b) of the Inspection Report, there were 13 instances in FY 2013-14 wherein Rs. 15,858.24 were transferred without any authorization from client and the amount transferred in each case was less than Rs. 5,000/-. Also, that in two other instances in FY 2013-14, Rs. 2,57,433.43 was transferred without authorization from clients and details of these two

instances were at point III 2(c) of the Inspection Report. Hence, it was clarified that for a total of 15 instances, Rs. 2,73,291.67 was transferred without authorization in FY 2013-14.

16 I find that there were a total of **282 instances (136 clients)** amounting to **Rs. 213.06 lacs** of transfer of funds (payments and receipts) between GSSL client bank account and GCPL during FY 2012-2013 and 2013-2014. Further that out of these fund transfers, there were a total of **143 instances**, amounting to **Rs. 109.18 lacs** of payments made from the Noticee's client bank account to GCPL and **139 instances** amounting to **Rs. 103.88 lacs**, where funds were received in GSSL client bank accounts from GCPL.

17 I note that out of the 143 instances of payments mentioned as above, there were a total of **32 instances** amounting to **Rs. 2.92 lacs** where transfers were done from client bank accounts to GCPL during the FY 2012-2013 and 2013-2014 without any authorization from the clients,. I find here that the Noticee has submitted that as regards the instances in FY 2012-13 and 2013-14, with respect to amounts below Rs. 5,000/- transferred without any authorization from the clients, the said amounts were transferred as per the resolution passed by the Board in the Board Meeting held on April 08, 2011. Further, I find that the Noticee has stated that they were in compliance with SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 as the circular stated that the broker shall withdraw funds from the client account towards payment of the debt due to the broker from the clients, or, money drawn on client's authority, or, money in respect of which there is liability of clients to the broker.

18 In the matter, I find it pertinent to mention here that the circular dated November 18, 1993 categorically specified what moneys to be paid into client accounts and what moneys to be withdrawn from client accounts and clearly spelt out that no other moneys could be paid or withdrawn from client accounts. I note that circular allowed withdrawal of moneys from client account towards (i) money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the broker from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the broker, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client; (ii) such money belonging to the broker as may have been paid into the client account under para 1 C [ii] or 1 C [iv] of the circular; (iii) money which may by mistake or accident have

been paid into such account in contravention of para C of the circular. The circular states that no money shall be drawn from client accounts other than for the aforesaid purpose.

19 Thus, I note that the circular does not permit moneys to be withdrawn from the clients account for or towards payment of debt due to the group company of the broker from the client, or, money in respect of which there is liability of client to the group company of the broker. The debt/ liability of the client towards the group company of the client cannot become the debt/ liability of the Noticee with the client. In fact from the Noticee's point of view, I find that the account of client with the group company of the Noticee carries a different identity, other than as the 'client' of the Noticee. And when the circular, in itself, did not permit withdrawal of funds other than as a client of the Noticee and for the purposes specified therein, the question of withdrawing money on client's authority towards debt/ liability due to the group company of the Noticee from the client does not arise. The Noticee by withdrawing funds from the clients account on client's authority, to adjust towards debt/ liability of the client towards its group company, has in my opinion built a new edifice which the circular did not provide for, to achieve indirectly what could not be achieved directly.

20 When a thing is specifically prohibited directly, it cannot be done indirectly. The Hon'ble Supreme Court has been consistently of the view that what cannot be done directly, cannot be done indirectly. I note that in ***Jagir Singh Vs. Ranbir Singh(1979 AIR 381),*** **the Hon'ble Supreme Court** has held that what cannot be done directly, cannot be allowed to be done indirectly as that would be an evasion of the statute. The Supreme Court has held that it is a well known principle of law that the provisions of law cannot be evaded by shift or contrivance, and that the objects of a statute cannot be defeated in an indirect or circuitous manner. (As per Abbott C.J. in Fox v. Bishop of Chester (1824) 2 B & C 635 "*To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined")*

21 In the extant case, when the circular did not allow withdrawal of funds from client account towards debt/ liability of the group company of the broker, it was not correct on the part of the Noticee to withdraw moneys from the client account with the client's authority, which the circular

provides for, to circumvent what the circular did not provide for i.e. to adjust with the debt/ liability of the client with the group company of the Noticee.

22 Further, SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 states that brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and/or give cash against sale of securities to the clients. It further states that 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 circular states that 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.

23 Thus, it is clear from all of the above that SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 did not allow transfer of funds (payments and receipts) between Noticee/ GSSL and its commodity company GCPL.

24 In the matter, I find that the Noticee has submitted that as regards 17 instances and 13 instances of amounts less than Rs. 5,000/- that were alleged to have been transferred in FY 2012-13 and FY 2013-14 from Noticee/ GSSL to GCPL amounting to Rs. 19,344.65 and Rs.15,858.24 respectively, without any authorisation from client, and in respect of two clients viz. Ms. Nagamani Sheela and Mr. Vijayakumar, wherein Inspection had observed that the Noticee had not obtained any authorization for transfer of Rs. 66,443.15 and Rs.1,90,990.28 respectively, the Noticee has submitted that the said amounts were transferred as per the resolution passed by the Board in the Board Meeting held on April 08, 2011. I note from a copy of the minutes of the meeting of the Board of Directors held on April 08, 2011, as made available by the Noticee, that the Board had *inter alia* unanimously carried out the following resolution moved at the said meeting:

"Resolved that in case if there is any outstanding debit in client's account, no authorization is required for transfer of client's money up to Rs. 5,000/- from any of the group companies (to the

extent the client has credit balance in other company) to Greshma Shares & Stocks Ltd. or vice versa. All amounts exceeding Rs. 5,000/- that are to be transferred will require written request from client."

25 Firstly, I note from the above that the transfer of funds amounting to Rs. 66,443.15 and Rs.1,90,990.28 respectively in respect of two clients viz. Ms. Nagamani Sheela and Mr. Vijayakumar, was even in violation of Noticee's own Board Resolution. Besides, I note that the Board Resolution passed as above in 2011 permitting transfer of client's moneys from/ to any of its group companies, with/ without authorization, in itself, was in violation of SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, as the circulars did not permit a broker to transfer its clients moneys from/ to a group company of the broker.

26 I find further that the Noticee has stated that appreciating the need for better compliance, they had vide Board Resolution dated March 22, 2014 mandated that all such transfers, irrespective of the amount, required client authorisation. I note from the certified true copy of the resolution passed by the Board of Directors at its meeting held on March 22, 2014 that the Board after discussion passed the following resolution:

"Resolved that in case if there is any outstanding debit in client's account in any of the group companies, proper written Authorization will be taken for transfer of funds from Greshma Shares & Stocks Ltd. to other group companies irrespective of debit amount."

27 However as has been brought out above, it is once again reiterated that SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 did not permit transfer of client moneys from/ to a group company of the broker with/ without authorization.

28 Further though the Noticee has submitted that receipt of fund in GSSL was towards AMC charges, Inspection observed that there were **139 instances** amounting to **Rs. 103.88 lacs** of receipt of fund from GCPL to GSSL, out of which, only 46 instances amounting to Rs. 0.15 lacs were towards AMC charges. Hence, the said submission of the Noticee too does not hold any merit.

29 Further, I find that such transfers too were done in a lackadaisical manner. Inspection had observed that atleast in **24 instances**, when the client had given authorization for transfer of moneys from its NSE cash account to GCPL account, the Noticee had transferred the moneys from NSE F&O account to GCPL account. Further, there were a total of **6 instances** of payment amounting *to* **Rs. 20.79 lacs** from client bank accounts to GCPL during FY 2012-13 and 2013-14, which were done without proper authorization from clients i.e. there was either a signature mismatch or the authorization letter was not signed by the authorized person. Though the Noticee has stated that in the fund transfer letters, the clients had only mentioned Exchange and no segments, it becomes obvious that the Noticee without seeking such clarification from the client had gone ahead and carried out the adjustments in a seemingly random manner. The Noticee has stated that they have now added an additional column for segment in Fund Transfer letters. Also, the Noticee has stated that in future care shall be taken with respect to matching of signatures. However such arguments too are devoid of any merit, when such adjustments in the first place itself are prohibited by SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.

30 I further note that the Noticee has submitted that it has many clients having trading accounts in both GSSL and GCPL. The Noticee has submitted that the amount transferred by the Noticee/ GSSL from GSSL to GCPL is only towards debit of client in GCPL, and that if the Noticee does not transfer such amounts and holds equivalent amount in other company where the client has credit, on completion of three months, respective exchange will charge penalty for not doing quarterly settlement of client. Hence, the Noticee is penalized for holding/collecting their own money. I find it necessary to point out here that a system which is put in place by the Regulator is with a clear focus on investor protection. Intermediaries have to adapt themselves to the regulatory systems put in place, rather than finding means to getting around such systems. In fact, it is important that intermediaries put such mechanisms in place that complement the compliance standards set by the Regulator. The intent of running account quarterly settlement is to instill greater transparency and discipline in dealings between the clients and stock brokers. In case the group company of the Noticee had debt/ liability from the client of the Noticee, it was for the group company to put certain mechanisms in place that would ensure that such debt/ liability is recovered by such client, but, without circumventing the regulations already in place.

31 I find from letter dated January 27, 2015 sent by the Noticee to SEBI that Board of the Noticee on January 23 2015 has advised that no transfer of funds between sister companies will take place under any circumstances. Thus, I note that to that extent the Noticee has accepted that transfer of client's moneys from/ to any of its group companies under any circumstances, with/ without authorization cannot take place. Hence, admittedly transfer of funds (payments and receipts) undertaken between Noticee/ GSSL and its commodity company GCPL during the Inspection period was in violation of SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003. Hence, I conclude that the Noticee has admittedly violated SEBI Circular dated November 18, 1993 and August 27, 2003 **for a total of 282 instances** (136 clients) **for a total amount of Rs. 213.06 lacs**, and thereby also violated Clause A(2) and A(5)of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Brokers Regulations in the matter.

32 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…".*

33 In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15 HB 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 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."

34 While determining the quantum of monetary penalty under Section 15 HB, 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."

35 In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I have taken note of the Noticee's submission that it has never used any clients funds or securities for its own purpose. I have also taken note of the fact that the Inspection Report does not make any observation of misutilisation/ manipulation of funds by the Noticee through such transfers. I, however, note that the default of the Noticee was repetitive in nature.

36 I further note that the Noticee has argued that the alleged irregularity has neither harmed the interests of any investor, nor, has resulted in an unfair gain or advantage to the Noticee. Further that no client had made any complaint of wrong transfers from their accounts and neither has the alleged irregularity/ lapse affected the security and stability of the capital market.

37 I note here that SEBI Circulars dated November 18, 1993 and August 27, 2003 *inter alia* strictly laid down what moneys to be paid into "clients account" and what moneys to be withdrawn from "clients account", so as to reduce the opportunity for systemic risk that may arise from investors who are active in more than one market. The intent was, thus, to promote securities market stability. And in this endeavor of the regulator, it was in the interest of the Noticee to comply with the same and not put itself at risk by transferring of its clients moneys between markets.

38 I also find from records that the Noticee, in the past, has already been issued an administrative warning vide letter dated November 11, 2013 pursuant to inspection of books and records on June 07, 2013, in view of discrepancies noted therein.

ORDER

39 After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lac only)** on the **Noticee viz. Greshma Shares & Stocks Limited** under Section 15HB of the SEBI Act, 1992 for violation of the provisions of SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, and thereby violating Clauses A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992., which will be commensurate with the violations committed by the Noticee.

40 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 Mr. Sujit Prasad, Chief General Manager, MIRSD, Securities and Exchange Board of India (SEBI), SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

41 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: December 23, 2015 **Anita Kenkare**
Place: Mumbai **Adjudicating Officer**