

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO: Order/GR/AE/2019-20/6192]**

---

**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) RULES, 1995**

In respect of:

**Finquest Securities Private Limited**  
**(PAN: AABCB7028F)**  
**SEBI Registration No. INZ000268435**

---

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted inspection of books of accounts, documents and other records of M/s Finquest Securities Private Limited, (hereinafter referred to as '**Finquest**' / '**the Noticee**'), a registered stock broker of BSE, NSE and MCX SX, on February 29, 2016, March 08 and 14, 2016 (for the period April 1, 2014 till date of inspection i.e. March 14, 2016). The inspection was for limited purpose to examine whether Noticee had complied with the provisions of SEBI circulars no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI/MIRSD/Cir/01/2011 dated May 13, 2011 in respect of running account settlement.
2. Based on the findings of the inspection, SEBI initiated Adjudication Proceedings against the Noticee under Section 15HB of the SEBI Act, 1992 for the alleged violation of the following Provisions:
  - i. Clause (A2), and (A5) of the Code of Conduct as specified in Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as '**Broker Regulations**'),
  - ii. SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009,
  - iii. SEBI circular no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011.

## **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer (hereinafter referred to as '**AO**') under Section 19 read with Section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") vide Order dated July 26, 2019 to inquire into and adjudge the violation committed by the Noticee, under Section 15HB of the SEBI Act, 1992.

## **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A Show Cause Notice bearing ref. no. EAD-4/ADJ/GR/AE/OW/25024/1/2019 dated September 24, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 of Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of Rules and penalty be not imposed under Section 15HB of SEBI Act, 1992, for the violation alleged to have been committed by it.
5. It was alleged in the SCN that the Noticee had failed to settle the accounts of its clients during/ prior to the inspection period. The Noticee was advised to file a reply to the SCN within 14 days from the receipt of the SCN but it failed to do so. The Noticee, vide its letter dated October 16, 2019, while acknowledging the receipt of SCN, requested to grant time of two weeks to reply to SCN.
6. Subsequently, in the interest of natural justice and in terms of Rule 4 (3) of Rules, the Noticee was given an opportunity of personal hearing on November 14, 2019, which was communicated vide letter dated October 25, 2019. In reply to the said hearing Notice, the Noticee vide letter dated November 12, 2019 requested an adjournment for the same. Hence, the Noticee was granted another opportunity of personal hearing on November 18, 2019 vide email dated November 13, 2019. However, once again the Noticee requested for adjournment of personal hearing vide its email dated November 16, 2019. The Noticee was granted on November 27, 2019 vide email dated November 18, 2019 but the Noticee failed to appear for the same. Subsequently, the Noticee vide its email dated November 30, 2019 confirmed their availability to attend the

hearing in the following week and requested to grant another date for the personal hearing. Thus, the Noticee was granted another opportunity of personal hearing on December 06, 2019 vide email dated December 03, 2019. Once again, the Noticee failed to appear for the said hearing on December 06, 2019, however vide its reply dated December 05, 2019 the Noticee made submissions in the matter which is reproduced below –

*“The following are the findings of the SEBI Inspection team.*

- 1. Process of Actual Settlement of Funds & Securities.*
- 2. Deficiencies observed in Running Account Authorization.*
- 3. Statement of Accounts.*

*- We refer to the finding no.1, please take into the consideration that NSE have conducted Inspection in the end of the Month of September 2019. NSE Inspection Team did not found a single observation in Process of Actual Settlement of Funds & Securities. We are attaching data related to the working of Actual Settlement of Funds & Securities which we had submitted to NSE Inspection Team. We also like to inform you that we have improved our system in Settlement of Funds & Securities of the Clients.*

*- We refer to the finding no.2, we would like to inform you that NSE Inspection Team did not found a single observation related to finding 2.*

*- We refer to the finding no.3, we would like to inform you that we have provided all the supporting related to Statement of Accounts sent to our clients. Here also NSE Inspection Team did not found single observation.*

*Further, we acknowledge that the inspection carried out by inspection team always acts as a pointer towards lapses in the organization and gives opportunity to trading member to plug such lapses. We take this opportunity to assure you of taking necessary remedial steps to further strengthen our compliance system.”*

## **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that it had failed to comply with the provision of SEBI Circulars dated December 3, 2009 and May 13, 2011 by not carrying out settlement of funds and securities of its clients. After

perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of SEBI Circulars dated December 3, 2009 and May 13, 2011, and Clauses A (2) & A (5) of the code of conduct specified under Schedule II read with Regulation 9(f) of the Broker Regulations?
- II. Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992 ?
- III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

**ISSUE-I: Whether the Noticee has violated the provisions of SEBI Circular dated December 3, 2009 and May 13, 2011 and Clauses A (2) & A (5) of the code of conduct specified under Schedule II read with Regulation 9(f) of the Broker Regulations?**

8. With a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers, SEBI had issued a Circular on December 3, 2009, which inter-alia requires the Stock Brokers to carry out settlement of funds and securities of the clients at least once in a calendar quarter or month, depending on the preference of the client. Subsequently, SEBI vide circular no. SEBI/ MIRSD /Cir/ 01/ 2011 dated May 13, 2011, inter alia specified that the stock brokers, while sending periodical statement of accounts to the clients, shall mention therein that their running account authorization would continue until it is revoked by the clients.
9. I note that it was alleged in the SCN that the Noticee had failed to settle the accounts of its clients during/ prior to the inspection period. Further, I also note that pursuant to analyzing the reply of the Noticee vis-à-vis the findings of inspection, it is observed that the Noticee was not settling the accounts of both

active as well as inactive clients as per SEBI Circular ref.no. MIRSD/SE/Cir-19/2009 dated December 3, 2009. The details of which are furnished here under:

Quarterly settlement	Total number of clients during the period	Number of active clients during the period	Number of inactive clients during the period	No of Clients balance > 10000	No of clients required to be settled	No. of clients settled	No. of clients unsettled
April 2014 to June 2014	1586	269	1317	72	72	0	72
July 2014 to Sep 2014	1524	212	1312	69	69	0	69
Oct 2014 to Dec 2014	1541	203	1338	79	79	0	79
Jan 2015 to Mar 2015	1483	174	1309	17	17	10	7
April 2015 to June 2015	1513	153	1360	37	37	33	4
July 2015 to Sep 2015	1488	162	1326	13	13	7	6
Oct 2015 to Dec 2015	1510	136	1374	38	38	32	6

10. From the above, it is observed that the settlement of funds and securities of clients had been carried out almost after delay of five years from the date of the aforesaid circular. Further, I also noted that the inspection team observed during the inspection that a sample of 20 out of 33 active clients, funds/securities were not settled, the details of which are shown here under :

Sr No.	Date of Settlement	Quarter Ended	Account Code	Account Name	Value of Funds to be Returned	Value of Securities to be Returned	Funds actually returned	Securities Actually returned
1	3/31/2015	Mar-15	FS002	SHIVANI TEJAS TRIVEDI	5,20,29,518.00	89165680.00	Settled	Not settled
2	3/31/2015	Mar-15	FV003_B	VELLAPPALLIL THEYYAMMA	9,525.15	0	Not Settled	NA
3	3/31/2015	Mar-15	FB034	BHARAT HARILAL PARIKH	9,260.56	0	Not Settled	NA
4	3/31/2015	Mar-15	FD050	DANIEL ELISHA PEZARKAR	9,116.19	0	Not Settled	NA
5	3/31/2015	Mar-15	PUS001	SHALINI VIVEK MAKAR	9,107.47	0	Not Settled	NA
6	6/26/2015	Jun-15	FA091	ACIRA CONSULTANCY PRIVATE LIMITED	34,08,66,401.00	6,20,54,175.00	Settled less of Rs. 3.7 Lacs	Not settled
7	6/26/2015	Jun-15	FT001	TEJAS B. TRIVEDI	30,94,00,598.00	3,13,54,594.00	Settled	Not settled
8	6/26/2015	Jun-15	FH032	HRIDAYNATH CONSULTANCY PRIVATE LIMITED	26,16,46,482.00	4,01,80,013.00	Settled	Not settled
9	6/26/2015	Jun-2015	FS002	SHIVANI TEJAS TRIVEDI	19,67,44,165.00	4,46,73,420.00	Settled	Not settled

10	6/26/2015	Jun-15	FV003_B	VELLAPPALLIL THEYYAMMA	9,525.15	0	Not Settled	NA
11	6/26/2015	Jun-15	FB034	BHARAT HARILAL PARIKH	9,260.56	0	Not Settled	NA
12	9/29/2015	Sep-15	FH032	HRIDAYNATH CONSULTANC Y PRIVATE LIMITED	33,26,93,733.00	5,80,18,113.00	Settled less of Rs.4.43 crs	Not Settled
13	9/29/2015	Sep-15	FN012	NILESH ASHOK SARVAIYA	9,643.50	46,410.00	Not Settled	Not settled
14	9/29/2015	Sep-15	FV003_B	VELLAPPALLIL THEYYAMMA	9,525.15	0	Not Settled	NA
15	9/29/2015	Sep-15	FB034	BHARAT HARILAL PARIKH	9260.56	0	Not Settled	NA
16	12/24/2015	Dec-15	FH032	HRIDAYNATH CONSULTANC Y PRIVATE LIMITED	26,90,59,858.00	2,13,32,378.00	Settled less of Rs.40 lacs	Not Settled
17	12/24/2015	Dec-15	HA027	PREM KUMARI CHOWDHARY	9,696.79	0	Not Settled	NA
18	12/24/2015	Dec-15	FV003_B	VELLAPPALLIL THEYYAMMA	9,525.15	0	Not Settled	NA
19	12/24/2015	Dec-15	FB034	BHARAT HARILAL PARIKH	9,260.56	0	Not Settled	NA
20	12/24/2015	Dec-15	PUA036	AMBRISH DALAL	9,176.00	0	Not Settled	NA

11. Further, I noted that as found by inspection team, the Noticee had not settled the accounts of its inactive clients as well. It was also observed that the same credit balance over two consecutive quarter suggest that the clients were inactive and their accounts were not settled. The gist of such analysis of unsettled amounts in respect of inactive clients as on the last trading day of each of the quarters of the inspection period (FY 2014-15 till 3rd quarter of FY 2015-16) by the inspection team are as under:

Sr. No	During Quarter ending	Inactive Not Settled				
		Average Amount (in Rs.)	Min. Amount (in Rs.)	Max. Amount (in Rs.)	Total Amount (in Rs.)	No. of clients*
1	Mar 14 to Jun 14	10755.09	0.01	1,43,90,066.00	1,95,74,263.00	1820
2	Jul 14 to Sep 14	12402.00	0.01	1,43,90,066.00	2,25,34,431.00	1817
3	Oct 14 to Dec 14	307667.72	0.77	39,38,017.86	39,99,680.00	13
4	Jan 15 to Mar 15	12290.99	0.01	1,43,90,066.00	2,20,62,331.00	1795
5	Apr 15 to Jun 15	659.19	0.01	67,248.59	12,02,359.00	1824
6	Jul 15 to Sep 15	733.24	0.01	1,33,302.00	13,18,377.00	1798
7	Oct 15 to Dec 15	642.39	0.01	67,248.59	11,61,443.00	1808

\*the number of unique clients for whom the accounts not settled were 2007.

12. Further, it also noted that the quantum of amount not settled prior and during the inspection period to the inactive clients are significant, the details of which are shown here under:

Inactive Client Not Settled		
	Quarter ended	Total Amount in Rs.
Prior to inspection period	Sep-10	39,35,441
	Dec-10	42,47,969
	Mar-11	54,12,461
	Jun-11	77,65,347
	Sep-11	87,62,705
	Dec-11	2,02,23,839
	Mar-12	1,89,51,338
	Jun-12	2,24,16,369
	Sep-12	3,11,28,085
	Dec-12	3,83,86,311
	Mar-13	2,38,04,013
	Jun-13	7,82,62,792
	Sep-13	9,89,27,287
	Dec-13	4,15,41,875
Mar-14	2,16,22,266	
During Inspection Period	Jun-14	2,90,78,461
	Sep-14	2,38,77,905
	Dec-14	3,39,93,852
	Mar-15	2,20,62,331
	Jun-15	12,02,359
	Sep-15	13,18,377
	Dec-15	11,61,443

13. In this case, it is established that the Noticee was not settling accounts of its active as well as inactive clients. The purpose of the aforesaid requirement of the aforesaid circulars is to ensure that the funds and securities of clients, especially the inactive clients, do not remain with the stock broker as idle balance and are not misused by the stock broker. Further non settlement of funds and securities of inactive client by the Noticee exposes the system to unauthorized trading. The aforesaid circulars are intended to curb such possible. The non-serious and casual approach on the part of the Noticee towards timeframe laid down by SEBI for implementation of the running account authorization/settlement procedure as found in this case is unbecoming a conduct of a Noticee.

14. It is pertinent to note that the rationale for coming out with Circular dated December 3, 2009 by SEBI was to instill greater transparency and discipline in the dealings between the clients and the stock brokers, so as to avoid misuse of (a) client funds and securities and (b) running account authorisation, by stock brokers. In such scenario, the Noticee is expected to comply with the statutory requirements in totality. However, I note that the Noticee failed to ensure compliance of regulatory requirements.

15. From the foregoing facts and findings, I conclude that the Noticee had not carried out settlement of funds in respect of its clients during the period June 2015 and thereby violated the provisions of SEBI Circular ref.no., SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009 and SEBI Circular ref. no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011, and Clauses A(2) and A(5) of the Code of Conduct for stock brokers contained in Schedule II read with Regulation 9(f) of Broker Regulations.

**ISSUE-II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992?**

16. The object of inspection of the books of accounts and records of any intermediary is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter take necessary corrective steps for orderly, fair and transparent conduct of market participants.

17. From the foregoing, I find that the Noticee had failed to comply with the provisions of quarterly / monthly settlement of funds and securities of clients on various occasions. I am of the view that the interest of investors are foremost and cannot be compromised by Stockbrokers with their acts. Therefore, I conclude that the Noticee by carrying out its business in the manner mentioned in the abovesaid paragraphs has violated the SEBI Circular ref. no., SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009 and SEBI Circular ref. no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011. Also, since it is necessary that the registered intermediaries follow the various procedures and practices prescribed for smooth and transparent functioning of the securities market and

the Noticee has failed to act with skill, care and diligence in the conduct of its business as a stock broker, I hold that the Noticee has also violated the provisions of Clauses A(2) and A(5) of the Code of Conduct for stock brokers contained in Schedule II read with Regulation 9(f) of Broker Regulations. I note that the Hon'ble Supreme Court of India in the matter of **SEBI v/s 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..."*

18. Therefore, I am of the view that monetary penalty needs to be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 the provisions of which are reproduced hereunder.

#### **Section 15HB of SEBI Act, 1992**

***"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 shall not be less than one lakh rupees but which may extend to one crore rupee"*

**ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?**

19. While determining the quantum of monetary penalty under Section 15HB of SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of SEBI Act, 1992 which reads as under:

#### **Section 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.*

20. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

21. I find that the Noticee being a registered intermediary, acting in a fiduciary capacity of clients, is required to comply with the various Circulars, and Regulations as prescribed by the Regulator to ensure smooth functioning of the capital market. SEBI Circular dated December 3, 2009 made it mandatory for all stock brokers to settle running accounts of its clients on a monthly / quarterly basis and to send such statements to facilitate clients to identify all transactions reflected in such accounts and also to identify and report any possible misuse of funds / securities at the end of broker. Therefore, any failure on the part of the Noticee to comply with the regulatory requirements of mandatory settlement of funds and securities of clients periodically cannot be viewed leniently. In view of above, I consider it necessary to impose appropriate penalty on the Noticee which would act as a deterrent in future.

## **ORDER**

22. In view of the foregoing, after taking into consideration all the facts and circumstances, observations and in exercise of power conferred upon me under Section 15 I of the SEBI Act, 1992 read with rule 5 of the Rules, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) on the Noticee viz., Finquest Securities Private Limited, under Section 15HB of SEBI Act, 1992 for violation of the provisions of SEBI Circular ref. no. SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009, SEBI Circular ref. no. SEBI/MIRSD/Cir/01/2011 dated May 13, 2011 and Clauses A(2) and A(5) of the Code of Conduct for stock

brokers contained in Schedule II read with Regulation 9(f) of Broker Regulations, which will be commensurate with the violations committed by the Noticee.

23. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → Orders → Orders of AO → PAY NOW.**

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding Demand Draft / payment information:

- a. Name and PAN of the Noticee
- b. Name of the case / matter
- c. Purpose of Payment – Payment of penalty under AO proceedings
- d. Bank Name and Account Number
- e. Transaction Number

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

**Date: December 20, 2019**  
**Place: Mumbai**

**Shri G Ramar**  
**Adjudicating Officer**