BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 57 /2018-19]

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

In respect of:

Ashika Stock Broking Limited

SEBI Registration No. INB/INF/INE-230833437 (NSE)
SEBI Registration No. INB/INF/INE-010833433 (BSE)
SEBI Registration No. INB/INF 260833430 (MCX-SX)
PAN: AACCA7156Q

FACTS OF THE CASE:

1. SEBI conducted inspection of books of accounts and other records of Ashika Stock Broking Ltd. (hereinafter referred to as "Noticee/ Broker"), a SEBI registered Stock Broker for the FY 2010-11 & FY 2011-12 (till 08.01.2012).

2. Based on the findings of the inspection, SEBI initiated adjudication proceedings against the Noticee under Sections 15B, 15C and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"), for the alleged violation of various SEBI circulars, provisions of SEBI (Stock Brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as "Brokers Regulations") and Securities Contracts (Regulation) Rules, 1957 as mentioned in annexures B to U of the show cause notice dated March 5, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI vide order dated February 25, 2014 appointed Shri D Sura Reddy as the Adjudicating Officer under section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (SEBI Adjudicating Rules) to inquire into and adjudge the aforesaid allegations under Section 15B, Section 15C Section and Section 15HB of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-02/A&E/DSR/VVK/7014/2015 dated March 05, 2015 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the SEBI Adjudicating Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15B, Section 15C and Section 15HB of the SEBI Act for the allegations as detailed in the said SCN. The SCN alleged the following:

   a) Deficiencies noticed in Know Your Customer (KYC) forms
   It was alleged that the Noticee have acted in violation of SEBI circular No. CIR/MIRSD/16/2011 dated August 22, 2011 and have entered into client-broker agreements as late as December 2011. Further, 25 new KYCs maintained by the Noticee were also found to be deficient with regard to the date of in-person verification precedes the date of client's application (8 instances), excess number of signatures by the clients, not striking off the relevant boxes where no trading preference has been indicated by the client.

   b) Access to documentation in electronic mode
   It was alleged that access to the designated website / back office to the clients was not given by the Noticee in a secure / encrypted mode.

   c) Allotment of single e-mail id to multiple clients
   It was alleged that the Noticee have issued e-contract notes, statement of accounts and daily margin statement in electronic mode to a single email id for multiple clients.

   d) Execution of trades without uploading client details
   It was alleged that the Noticee executed trades on behalf of its clients without uploading the Unique Client Codes (UCC) to the Stock Exchange.

   e) Computer to computer link mismatch
   The Noticee was required to intimate the details of ID and location of CTCL/IML in the respective exchange or upload it in the exchange system. However, The Noticee had wrongly intimated the details of ID and location of CTCL / IML to the Exchange / intimated the same with delay.

   f) Deficiency in order management
   It was alleged that the Noticee did not have proper order management system in place i.e. the Noticee allegedly failed to maintain record of time when the client had placed the order.

   g) Short collection of margin from clients in derivative segment
   It was alleged that the Noticee had permitted many of the clients to trade in spite of absence of margin money proportionate to the exposures provided to the clients.

h) Client funding

It was alleged that a lot of clients were having huge balances due to the Noticee for a long period. It was further observed that the Noticee was charging 'Penal charges from client' for late payment of the dues. However, during the same period for which the 'Penal charges' were being levied, it has been found that the Noticee have allowed those clients to make net purchases for which the pay-in obligations had been met by the Noticee only. Therefore, it was allegedly construed that the Noticee was basically funding the clients' trades and charging interest thereto in the garb of penal charges for late payment.

i) Unauthorized retention of clients' securities

It was alleged that the Noticee had retained the securities of the clients who were not having debit balance in their respective ledgers maintained by the Noticee. Further, the Noticee did not produce any authorization from the clients in retaining their securities.

j) Non-settlement of Running A/c

It was alleged that in many cases the Noticee did not periodically settle the Running A/c of the clients.

k) Dealing with unregistered sub-brokers

It was alleged that all 176 deemed branches of the Noticee are run by the persons who are neither registered sub-brokers / Authorised Persons / Remisers nor these persons are employees of the Noticee. It was further alleged that the deemed branches / branch managers who are unregistered entities are having trading terminals and, therefore, executing trades for clients on behalf of the Noticee.

l) Unauthorized use of dealer certificates and dealer IDs

It was alleged that the names of 17 dealers located in the head office and in direct branches of the Noticee were not appearing in the list of employees.

m) Internet based trading

It was alleged that the clients who had registered for internet based trading is more than the number of logins purchased by the Noticee from Financial Technologies Ltd.

n) Deficiency in Systems & Procedures pertaining to Prevention of Money Laundering Act, PMLA, 2002.

It was alleged that the Noticee had not done the categorization of CSCs clients w.r.t. High net-worth clients, Non-Governmental Organizations (NGOs) and organizations receiving donations, Companies offering foreign exchange offerings, Clients in high risk countries, etc.

5. The instances of the aforesaid violations were duly mentioned in the SCN issued to the Noticee.

6. Noticee vide letter dated April 15, 2015 made, inter alia, the following submissions:

5.1 With regard to the allegation pertaining to deficiencies noticed in Know Your Customer (KYC) forms, the following may be noted:

a) In terms of the SEBI circular vide CIR/MIRSD/16/2011 majority of our clients had complied with regard to execution of the rights and obligations document. Here it may be pertinent to note that, during the relevant time we had approximately 84,000 clients. Out of the same only 10 instances have been pointed out in the SCN. It must be appreciated that there has been no adverse comment in respect to the other KYCs entered into by us.

b) In this context it is submitted that the impugned cases pertain to the clients who had, pre- August 2011, expressed intention in becoming our clients and had obtained the KYC documents for their perusal and information from us before executing the same. Somewhere, around December 2011, after perusal the said clients had executed the documents and forwarded to our respective offices branches, which had in turn forwarded the same to our Head office. On scrutiny when it was noticed that the old KYC forms have been executed by the clients , the same was pointed out to the clients and revised KYCs were forwarded to them for execution . It may be noted that only on receipt of revised KYC's along with all the probable supporting documents like PAN card, address proof, demat proof, bank proof and income proof we had permitted the clients to trade .

5.2 Deficiencies noticed in 25 new KYC forms maintained by us

With reference to the observation made in the SCN with regard to the alleged deficiencies in the 25 new KYC's it is submitted that we had already taken a notice of the same and will ensure such inadvertent mistakes are not committed in the future.

5.3 With regard to the allegation pertaining to access to documents in electronic mode, the following may be noted:

a) At the outset, it is denied that access to the designated website/back office to the clients is not given in a secure/encrypted mode. It is submitted that the user ID and password for access to the designated website/ back office is sent to the clients and the same is absolutely secure since the password so generated is the PAN of the respective client and this is a onetime login password. Further, it may be noted that the said PAN was nowhere mentioned in the issued welcome letter. Further the User ID and password referred to is for viewing purpose only. The same gives the access to the back office details i.e. the ledger position of the client, margin statements, DP holding statements etc and is not related to their trading instructions. It is also to be noted that the client once logged in through this one time password is required to change the password immediately as per his own preference. It may be pointed out that the client has to change the password after the first login and there are no exceptions to this rule.

b) *It is pertinent to note that, we have already modified the version of the password as comprising of last four characters of trading id followed by first 4 characters of PAN followed by year of birth / incorporation.*

5.4 With regard to the allegation of single e-mail id to multiple clients, it is submitted that:

a) *The email id's are updated based on the instructions of the respective client. It is submitted that under the SEBI circular dated September 8, 2005, there is no bar on common email IDs. The relevant extract of the said circular clearly spells out that "The usual mode of delivery of ECNs to the clients shall be through emails. For this purpose, the client shall provide an appropriate email account to the member which shall be made available at all times for such receipts of the ECNs." Therefore, the choice of the email ID is purely that of the client and as a broker we have to follow the instructions of the client and mail the ECNs to the said email ID as provided by the clients.*

UCC

5.5 Execution of trades on behalf of clients without uploading the UCC to the stock exchange

a) *During the relevant time almost 84,000 (approx.) clients were registered with us across all the Exchanges and segments. Out of the said 84,000 clients only 8 instances have been observed in the SCN. It may be noted that as referred in the SCN, the circular no. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 the same is completely silent about uploading of the clients details. Further with reference to the SEBI circular no. MRD/DoP/SE/Cir-8/2006 dated July 13, 2006 we have conscientiously followed the practice of collecting PAN card copy of the respective client and have verified the same with the website of income tax department and then the UCC is generated which is then uploaded along with the other relevant details of the clients to the concerned Stock Exchange, before placing orders for the clients. In the said 8 instances, it is pertinent to note that the clients were already registered with us and not a new client i.e. they were trading in existing segments.*

b) *Further on specific request from the clients, the trades were executed in other segments wherein inadvertently the details were not uploaded. None of the clients have disputed the trades executed in their respective accounts. In any event, as on date we have been following Maker -Checker mechanism wherein, it is religiously ensured that the details of the clients are uploaded before the commencement of trading by the client.*

5.6 Non-intimation of details of IDs and location of CTCL/IML in the respective exchange or upload in the Stock Exchange's system.

a) *During the relevant time, we were maintaining almost 1600 CTCL terminals on a daily basis. We always ensure that the same to be uploaded to the concerned Exchanges in the timely and concrete manner. Further for any updation or modification in the said details, the same is required to be informed to the stock exchange and that too within a reasonable time frame. In this regard, it is submitted that in some instances, the CTCL/IML was uploaded in a timely manner but due to some venial deficiency, the CTCL/IML location was wrongly mentioned.*

b) *For instance, these venial deficiencies include the error in typing the location details as the same is completely consisting of the numeric data say instead of 700001056115 as required to be uploaded, the same was uploaded as 700010056115. We have ensured*

that the systems have been further strengthened to avoid any repetition of such instances. In this regard we are committed to and have strengthened the surveillance team by taking measures including recruiting more experienced executives. Further we have initiated a maker-checker concept whereby all the uploaded details are further scrutinized to the satisfaction of the checker before execution of any trades from the given uploaded location.

5.7 Deficiency in Order Management system

It is submitted that we have duly complied with the SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997 and maintained record of time when the client has placed the order and reflected in contract note along with the time of execution of order. It is denied that we do not have proper order management system in place. It is submitted that we duly maintain the record of time when the client placed the order. With respect to the Order management system, we record the voice instructions given by our client in case of a telephonic instruction, and in all cases we duly reflect the Order time in the contract note. Further, we duly communicate the order executed on instructions of the clients via SMSs on real time basis to their mobile number as provided by the client. It is further submitted that all the requisite data is preserved at our back office. The time of executing the order is duly reflected in the contract notes as issued to the clients and the same was also shown to the inspection team during inspection.

5.8 Short collection margin from clients in derivative segment

a) Out of the 10 instances as pointed out 7 were pertaining to those period where the shortfall need to be reported within T+2. Since the banking system do requires the robust up gradation as many a times we receive intimation from the concerned clients towards the deposit of the cheque, however the same takes a considerable time to get cleared in our account. For those instances, the credit is not reflected for a brief period of time in the client margin account. However the same not to be construed as non-collection of upfront margins. Many a times due to the volatility in the market, the margin requirements are duly upgraded by the concerned exchanges on the open position of the clients with no prior intimation of the same to the broker. Due to such a stringent measure and a short notice of the time towards confirmation of the margin, the shortfall is duly reported. Here we would like to explicitly point out that we never tried to evade the shortfall and the positions were genuinely reported to the concerned exchanges. It is pertinent to note that, no such instances have ever been pointed out against us during inspections as conducted by the Exchanges viz. NSE and BSE.

b) Further, it is to be noted that the instance of the shortfall in margin collection forms a negligible part of our total margin requirement with that of the total no. of clients traded in the F&O segment of NSE on the given date. Further, it is pertinent to point out that, during the relevant time no complaint towards margin default was received from the strength of 84,000 clients where almost 79,000 clients were regularly trading in the F&O segment. We would like to draw your kind attention towards the fact that there has been no default by us with the stock exchanges in respect to our margin requirements. We have been continuously improving our risk management system whereby new aspiring

team of relationship managers are developed under a competent head. Each Relationship Manager is required to handle a limited number of clients whereby any position exceeding the current margin requirement is immediately brought to the notice of the concerned client. Further, we have tied up various banks towards online fund transfer so as to allow the client to provide requisite shortfall immediately from their designated bank as provided during execution of the KYC.

5.9 Funding clients and charging interest in the garb of penal charges for delayed payment:

a) *The said allegation pertaining to client funding and penal charges for delayed payment are based on incomplete appreciation of facts. Only instances pertaining to 6 clients out of our client base of 84,000 clients, have been highlighted in the SCN. It is not the case that we encourage the clients to trade, or to incur debit etc. Decision to trade and the quantum of trades is entirely of the client. In so far as we are concerned, we do not accept orders from the client in case if he has not provided adequate collaterals to us. We charge penal charges for delayed payment so as to discourage the clients from having debit balance in their account with us. Further, it is to be noted that all clients are not subject to the delayed payment charges and by no stretch of imagination it can be stated that it is a source of income to us. The charges are levied only as a measure to dissuade clients to keep debit balances. Such charges cannot be equated with the interest charges as suggested in the SCN. This is a common market practice and we are no exception to the rule. Further, it may be noted that even in the KYC we have specifically mentioned that the delayed payment charges could be reversed on specific request, past performance and assurance on client's part to be prompt in future payments. Further, there have been no complaints or disputes in respect to the levy of delayed payment charges.*

b) *The delayed payment charges are charged, in line with the explicit authorizations which the client makes in our favour. Further, such charges are levied only for a limited period during which the debit persists in the Client account. Further, the circular issued by NSE bearing no. 20638 dated 26th April 20102 permits the brokers to levy the late payment charges from the clients for the delayed payments. Under the circumstances, the observations that we are funding the client's trades and charging interest thereto in the garb of penal charges for delayed payment are patently wrong. It is reiterated that the penal charges for delayed payment, being charged is to discourage late payments by clients and being in line with authorizations from the Client, which are levied not for a continuous period and being levied only upon the netted position of the Client, can by no stretch of imagination, be viewed as or even attributed as interest, as stated in the SCN.*

c) *It may be pointed out that, now we have further strength our risk management system wherein the respective Relationship Manager are following up with the clients where debits are there for early clearance of the same and also ensuring that the clients are specifically informed and dissuaded from taking any further positions. Further our risk management team also religiously ensures that further exposures are not given to clients having debit balances in their ledger accounts.*

5.10 Retention of securities of the clients who are not having debit balance in their respective ledger:

a) We have stringently followed the practice of immediate transfer of shares to our clients. However, in some instances where the client has a debit balance in his account, the shares bought are held by us and forwarded to the concerned DP of the client and only when the ledger reflects the credit balance, the shares are released. Also, in some cases, the client themselves instruct us to retain their securities so as to avoid the charges levied on them by their DP. The table mentioned in the SCN, is misleading, since in respect to the clients listed therein, some of the clients were in fact having a debit balance due to which we had retained the securities until clearance of their debit balance. Further these have been done based on express authorization. In this regard, the flowing be noted:

b) In case of the other instances mentioned in the said table of the SCN, it is submitted that we had explicit authorization to retain their securities. This was retained in terms of collateral for the trades which the client wished to enter through us as stock brokers. Further, it is submitted that the said clients had provided us with the retention authority letter as executed along with KYC. In this regard, it may also be noted that no complaints have been received by us from our clients.

5.11 Non-settlement of clients account on a periodical basis:

a) At that relevant time we were having have a vast client base of approximately 84,000 registered clients and having 34,000 active clients during the period under inspection. We have been religiously settling client account, based on their preference as to quarterly or monthly settlements. The same is carried out through the system and manually. Further the same is compiled in terms of funds except for the few stray instances as observed during inspection. Our inability to settle the client's accounts in terms of funds and securities can never be construed as a measure to retain the funds/securities of the clients.

b) In this context, it is to be appreciated that out of a total of 34,000 active clients only 6 instances have been enumerated in the SCN. As stated above, due to the manual intervention in the process, there have been some cases where the settlement process has gone beyond the stipulated period. It is reiterated that alleged non settlement of the accounts in the given stray cases was procedural and at times to accommodate the interest of the client. Here it is categorically submitted that the alleged non settled funds/ securities have never been utilized by us for our benefit or used in any manner. Even there is no complaint from any client in this regard.

5.12 Dealing with un-registered Sub- Brokers

a) it is submitted that our branches were merely for client servicing. Infact the services like dispatch of contract notes, quarterly statement, welcome letter etc. were all directly done through the head office. The said branches apart from execution of trades have no other role to play. It is submitted that the activities of the said branches cannot be categorized as unregistered brokers. Further, it is submitted that no such observations pertaining to branch had ever been pointed out during inspections from the respective exchanges. Nevertheless on pointing of the said observation by the SEBI inspection team, out of the 176 branches we have already converted 110 branches into our Authorised Persons. Further, 37 branches have been suspended from operating and the clients operating from the said branches have been permitted to trade directly from our Head Office and

requisite intimation has been communicated to the clients. The rest of the branches are in the process of getting converted into Authorised Persons. Here it may be pointed out that the impugned branches referred to in the para were also within the knowledge of the stock exchanges. With regard to the alleged branches it may be noted that:

b) All such locations were duly reported to the concerned Exchanges as a branch at the time of reporting of the location of the CTCL terminals.

c) All the complaints pertaining to the said branches are duly taken care of by the head office and the said branches have no right to respond to the same at their end. So it is crystal clear that we in terms of the servicing the clients and meeting their requirements are always ensuring the fact that the same is duly met to the utmost satisfaction of the clients.

5.13 unauthorized use of dealer certificate and the dealers IDs/ Logins:

we would like to clarify the fact that since few of the dealers are already in the pay role of the group company but managing the small client base for both equity and commodity, the same was done without any sinister intention. This was merely for the sake of uniformity and ease in the operations. We are in the process of ensuring that all the dealers are under our company's payroll.

5.14 Internet Based Trading:

a) At the outset, it is denied that clients registered for IBT through (ODIN –DEIT) resulting are being deprived of trading at a particular point of time. It is submitted that we have 400 login IDs for each of the exchange segments instead of 150 login IDs as is being incorrectly stated in the SCN.

b) Further, we had produced the correspondence of the "Financial Technology" (i.e. the vendor) wherein it was inter-alia stated that never at any point of time more than 150 login IDs were actives. It is to be appreciated that the alleged login restrictions and AMC requirement are not related to each other. Nevertheless, we have already initiated the process of entering into an AMC with the vendor.

5.15 With regard to the allegation pertaining to Prevention of Money laundering Act, 2002 (PMLA) it is submitted that:

We have a robust system to monitor transactions under the PMLA. Further, we have never had any client registered with us belonging to the classes such as NGOs, companies offering foreign exchange offerings, clients in high risk countries etc. Nevertheless, we have now taken appropriate steps to classify the clients of special category as annexed as.

7. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on July 20, 2017. Noticee vide letter dated July 13, 2017 requested for another opportunity of hearing because of the inability of the authorized representative to attend due to some pre occupation. Another opportunity of hearing was granted to the Noticee on August 04, 2017 vide notice dated July 18, 2017. The authorized representatives appeared on August 04, 2017 and reiterated the submissions made vide letter dated April1 5, 2015.

8. Subsequently, the Noticee had filed for settlement of the matter. As its application got rejected, the Noticee was granted another opportunity of hearing on February 16, 2018.

9. The authorized representatives of the Noticee appeared on the scheduled date to attend the personal hearing and made additional written submission stating, inter alia, the following:

   a) *Deficiencies noticed in KYC forms: In the impugned cases (10 clients), it is respectfully submitted that the clients have shown interest in becoming client pre August 2011 and accordingly KYC forms were forwarded to them at their respective locations. The clients had provided the duly filled KYC to our representative office which in turn was received at our Head office at Kolkata. On verification, when it was found that the same has been executed in old format, requisite action was immediately taken to arrange for the revised supplementary KYC, submitted vide our letter dated 15.04.2015. We have tabulated the date of receipt of the supplementary KYCs below along with the date of first trade of the respective client to substantiate the fact that we have not executed any trade till the receipt of the revised KYC from the client.*

Sl No	Name of the Client	Date of Supplementary KYC	Date of First Trade along with settlement No
1	Girdhar Gopal Rajpurohit	05.12.2011	13.12.2011 - Stt No.111213
2	Gadadhar Dholey	28.12.2011	02.01.2012 - Stt No. 1112188
3	Gitaben Natvarlal Patel	17.12.2011	20.12.2011 - Stt No. 1112179
4	Mamata Chakraborty	05.01.2011	09.01.2012 – Stt No. 2012006
5	Mrugesh Kanubhai Patel	12.12.2011	14.12.2011 – Stt No. 2011235
6	Mahabir Kumar Pawar	05.01.2012	10.01.2012 – Stt No. 1112195
7	Md. Istekhar Ali	No trade as suspended since 12.12.2011	
8	Priyam Khetawat	04.01.2012	05.12.2012 – Stt No. 2012230
9	Rencil Jude Pinto Arputham	No trade as suspended since 09.12.2011	
10	Radha Jalan	09.12.2011	No trade

   b) *From above it can be noticed that first trade of client had been executed by us only after receipt of KYC in new form. In the impugned cases (10 clients), we would like to state that the preference of the client was shown by ticking the appropriate boxes and signing alongside the relevant box as per relevant prescribed formats. SEBI circular No MIRSD/SE/CIR-19/2009 dated 03.12.2009 Annexure A, Clause IV (Mandatory Documents) stating that "The client shall indicate the stock exchange as well as the market segment where he intends his trades to be executed. He shall do so in the KYC form in his own hand and sign against these."*

   c) *It is submitted that the aforesaid circular specifies that the client should indicate his preference in his own hand and sign which has been obtained from the client. Further it has been conventional and operational practice that the trading rights are given to the client based upon his choice of specific segment and exchange. In these cases, the content of the mandatory part of the KYC is as per the prescribed guidelines of the Exchanges and SEBI. So far as voluntary part of KYC is concerned, the signatures have been obtained*

with a view to maintain transparency, clarity and safeguarding the interest of both the parties.

d) *In the impugned cases (8 clients), it is submitted that reason for carrying out in-person verification is to confirm the physical existence of the client. In these cases of verification, new form has been given to client for few corrections which were found during verification, which were subsequently deposited by customers, maximum within a week. Details are as below :*

Sl No	Name of the Client	Date of IPV	Date of KYC
1	Bhanuben Vasantbhai Ravani	10.12.2011	16.12.2011
2	Deval Yogeshkumar Patel	08.12.2011	15.12.2011
3	Dibankar Singha	20.12.2011	24.12.2011
4	Jayesh Chandulal Shah	15.12.2011	22.12.2011
5	Kartik Vasantbhai Ravani	10.12.2011	16.12.2011
6	Ketan Haridas Patel	13.12.2011	19.12.2011
7	Vasantray Chuntilal Ravani	13.12.2011	19.12.2011
8	Vineet Lohia	20.12.2011	27.12.2011

e) *Thus it may be noticed that, in clientele of 84000, only 8 such cases has been found , where new forms has been indented/received for proper KYC process.*

f) *Access to documentation in electronic mode: It is submitted that the user id and password for access to the designated website/ back office is sent to the clients and the same is absolutely secure since the password so generated is the PAN of the respective client and this is a onetime login password. Further, it may be noted that the said PAN was nowhere mentioned in the issued welcome letter. Further the user ID and password referred to is for viewing purpose only. The same gives the access to the back office details i.e. the ledger position of the client, margin statement, DP holding statement etc. and is not related to their trading instructions. It is also to be noted that the client once logged in through this one time password is required to change the password immediately as per his own preference. It may be pointed out that the client has to change the password after the first login which is compulsory to proceed further.*

g) *Further, it is submitted that SEBI in its initial observation letter dated 07.05.2012 has stated "The clients are given limited access to the website / back office of the broker in order to view /access his/ her trading account details (such as funds and securities ledger , margin statements , ECNs etc." which substantiate the fact that accessibility to such information in any case does not give the recipient any accessibility to trade through us or place order with us for trades or place instructions with us with regard to transfer of shares/ funds etc.*

h) *Allotment of single email id to multiple clients: For above, reference is invited to the following circular no MRD/DoP/SE/Cir-20/2005 dated September 08, 2005, Clause 2.2 - "The usual mode of delivery of ECNs to the clients shall be through emails. For this purpose, the client shall provide an appropriate email account to the member which shall be made available at all times for such receipts of ECNs." It indicates that the choice of the email id for the receipt of ECN is choice of the client as per the mandate provided by them.*

i) It is stated that we have issued the required documents i.e. contract notes, daily margin statement, statement of accounts to all traded clients to their respective email id as provided in the ECN mandate.

j) SEBI vide its further circular no CIR/MIRSD/15/2011 dated 02.08.2011 has stated that "Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents", which proves that it was a liberal practice wherein clients can provide common email of their family members for operational ease.

k) As per SEBI observation letter dated 07.05.2012 wherein it is specifically mentioned that "The clients are given limited access to the website / back office of the broker in order to view /access his/ her trading account details (such as funds and securities ledger, margin statements, ECNs etc." which gives the respective client the accessibility to verify their contract notes/ statement of accounts and daily margin statement on daily basis.

l) Execution of trades without uploading of client details: In the impugned instance (8) it is respectfully submitted that the same is observed over the span of 15 months wherein at the relevant time almost 84,000 (approx.) clients were registered with us. Such discrepancies as observed are purely inadvertent operational lapses which are negligible compared to our overall scale of business. We continuously follow the practice as outlined in the SEBI circular No MRD/DoP/SE/Cir-8/2006 dated July 13, 2006. Clients details were received by us but delay in uploading had happened due to technical/ operational issues.

m) CTCL Mismatch: In the given instances, it is respectfully submitted that the same is observed over the span of 20 months data wherein at the relevant time almost 1600 (approx.) CTCL were registered with us. These are venial deficiencies i.e. error in typing the location details as the same completely consist of the numeric data only. It may be noticed that such discrepancy happened due to human error in such voluminous statistics.

n) Deficiency in Order Management: It is submitted that the record of time of the placement of order is maintained and the same is reflected in the contract notes as issued to the clients in synchronization with the SEBI circular no SMD/Policy /IECG/1-97 dated 11.02.1997.

o) *For the 9 cases pertaining to unauthorized trades, we would like to state that all above complaints were resolved in our favour except two. Inspite of negligence of client, same had been settled to maintain the brand and goodwill of our company. From the below table, it may be noticed that unauthorized complaints have reduced considerably with no complaints after 2014*

Year	Unique No. of Complaints recd across all exchanges	Unauthorized Trade Compliant	Status
2012-13	8	4	Resolved
2013-14	6	4	Resolved
2014-15	3	0	Resolved
2015-16	6	0	Resolved
2016-17	4	0	Resolved

p) *Short Collection of Margin from clients in derivative segment: It was the conventional practice as adopted by broking community at large to grant multiple time exposure on initial deposit. Moreover due to the volatility in the market, many a times the client is not willing to square up the position at a loss rather to continue with the same. Under those circumstances, we do not grant further exposure but keep urging to either reduce the existing position or to make payment. SEBI had come up with more stringent norms in terms of levying penalty by exchanges upon brokers against short collection of margin vide its circular no CIR/DNPD/7/2011 dated 10.08.2010. It is to be noted that post implementation i.e. 01.09.2010 of the given circular; the reported shortfall is in only three cases which is negligible as compared to the volume of business carried out by us. It is to be noted that we have reported shortfall in margin to concerned exchange.*

q) *Client Funding: It is respectfully submitted that penal charges are levied for the cases wherein the client has delayed in meeting the pay in requirement. As a broker we need to report the same to the concerned exchanges on a monthly basis as envisaged in their circulars. The levy of delayed payment charges are well within the stipulated guidelines of SEBI as envisaged vide its circular dated MIRSD/SE/Cir-19/2009 dated 03.12.2009. However, for the noted instances, few of the clients were also having fully paid collaterals (shares) in excess of their ledger debit. Further purchases would have increased the total value of collateral parked with us simultaneously increase the total value of collaterals lying with us. Viewing above, it is submitted that the delayed payment charges shall not be considered as Interest. Moreover Sec 194A of the Income Tax Act, requires compulsory deduction of TDS which has not been done by customers as payment from them is delayed payment charges. It is to be noted that the delayed payment charges is levied in terms of the explicit clause i.e. clause D under Policies & Procedure as mentioned in the agreement /KYC (wherever applicable).*

r) *Unauthorized retention of clients' securities: It is respectfully submitted that for the given instances (13) pertaining to 5 clients, where they had provided us with the running account mandate as already submitted vide our earlier reply dated 15.04.2015 wherein they have clarified their choice of settlement of accounts on monthly/quarterly basis rather on bill to bill basis.*

S.No	Name of Client	Payout Date	Pre - Settlement date	Tentative next Settlement due date
1	Arun Kumar Khetan (Quarterly)	20/10/2011	02.08.2011	31.10.2011
2	Arun Kumar Khetan (Quarterly)	16/11/2011	31.10.2011	29.01.2012
3	Arti Jha (Quarterly)	13/05/2010	26.04.2010	15.07.2010
4	Arti Jha (Quarterly)	04/03/2011& 08/03/2011	23.02.2011	24.05.2011
5	Arti Jha (Quarterly)	22/07/2010	13.07.2010	11.10.2010
6	Anurag Mundhra (Monthly)	07/12/2010	18.11.2010	18.12.2010
7	Anurag Mundhra (Monthly)	27/07/2010	20.07.2010	19.08.2010
8	Anurag Mundhra (Monthly)	03/12/2010	18.11.2010	18.12.2010
9	Gopal Das Rathi (HUF) (Quarterly)	03/10/2011 & 10/10/2011	05.09.2011	04.12.2011

10	Gopal Das Rathi (HUF) (Quarterly)	11/10/2011	05.09.2011	04.12.2011
11	Rahul Gupta (Quarterly)	21/10/2011	15.09.2011	14.12.2011
12	Rahul Gupta (Quarterly)	25/08/2011	19.08.2011 (first trade)	17.11.2011
13	Rahul Gupta (Quarterly)	11/11/2011	15.09.2011	14.12.2011

From above, it may be noticed that payout had been done much before the date of next settlement stipulated date (as per choice of client in Agreement for settlement).

s) *Non – Settlement of Running Account: It is submitted that inspite of having a huge client base of approx. 84000 clients we had always strived for settling account accounts based upon the respective mandates as received from them. The settlement process also involves manual intervention which may sometime result into human mistakes.*

t) *Dealing with Unregistered Sub Brokers: It is submitted that the branch agreement as entered by us at the prevalent time were within the stipulated prevailing guidelines only. Moreover since there were no clear norms pertaining to the subject under consideration, our assessment for entering into such agreement was based on different understanding of the subject matter. After observation in the matter, we have taken immediate measure towards conversion to Authorized Person as per our submission dated 15.04.2015. It is never the case that the details of the branches where not uploaded with the concerned exchanges. For any terminals as allotted to them, the CTCL detail clearly specifies the office as our branch. Nevertheless, NSE bylaws nowhere restricts a broker to share brokerage with any person provided they do not fall under the given categories as per the relevant extract of the byelaws of NSE under chapter IX – Transactions and Settlement, clause 33 .*

u) *Unauthorized use of dealer certificates and dealer ids: It is submitted that since we had already converted the branches into Authorised Persons, the dealers of the said branches associated with us are simultaneously upgraded to authorized person. Moreover, as observed that few of the dealers are in the payroll of the group company in commodity business wherein due to similar line of operations and since there has been no specific division into group employees, sometimes they worked with both equity/ commodity terminals. The said employees were already in the process of shifting to Ashika Stock Broking Limited which happened soon in short span of time. It is also to be noted that there can be no other use of the Certificate apart from dealing in FO segment, so there was no double use of the certificate, only delayed process of group transfer resulted into this affair.*

v) *Internet Based Trading: It is respectfully submitted that the total number of clients who are allotted ODIN Diet comprise of both active and inactive clients wherein for inactive clients the IDs can only be activated on receipt of reactivation letter from the respective client. Our surveillance team keeps a constant watch on the total number of active clients allotted with DEIT Odin as can be evidential from the fact that we have vide our reply 15.04.2015 had submitted the complete details of the day wise login wherein the maximum login is far below the breach limit.*

w) *Deficiency in system & procedure pertaining to Prevention: It is respectfully submitted that we have never had any client registered with us belonging to the special categories such as NGOs, companies offering foreign exchange offerings, clients in high risk countries till*

date. We have already incorporated the provisions to classify such categories of client in our back office as per our earlier submission dated 15.04.2015. It is submitted that the lapses pointed out in the Report are more of technical, conventional and procedural in nature. We are committed to complying with the law and request that the procedural lapses be seen in the context of our overall scale of operations handled by us and the various compliance measures adopted by us. Further on becoming aware of the stray instances pointed out during the course of inspection, we have immediately taken steps to rectify the same and avoid their recurrences in future.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the replies to the SCN, oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a) Whether the Noticee have violated the below mentioned SEBI circulars, provisions of Securities Contracts (Regulation) Rules, 1957 and provisions of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992

b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Sections 15B, 15C and 15HB of SEBI Act?; and,

c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act read with respective Adjudication Rules?

11. Before proceeding further, I would like to refer to the relevant provisions of the Regulation 18B and Clause A(2) & A(5) of the Code of Conduct for Stock Brokers in regulation 9, Schedule II of the Stock Brokers Regulations,1992is reproduced as under:-

Reg.18B of Stock Brokers Regulations, 1992:

"Stock Brokers not to deal with unregistered Sub-broker.

18B. The stock broker shall not deal with any person as a sub-broker unless such person has been granted certificate of registration by the Board under sub-regulation (1) of Regulation 12."

"SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

"9.CODE OF CONDUCT FOR STOCK BROKERS

A.General

(2) Exercise of due skill and care: A stock- broker shall act with due skill, care and diligence in the conduct of all his business.

(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."

B. Duty to the Investor.

(2) Issue of Contract Note: A stock -broker shall issue without delay to his client (or client of the sub-broker, as the case may be) a contract note for all transactions in the form specified by the stock exchange."

Findings:

Deficiencies notices in Know Your Customer (KYC) forms

12. SEBI vide Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 had mandated Simplification and Rationalization of Trading Account Opening Process which, *inter alia,* includes replacement of all client-broker agreements with the 'Rights and Obligations' document. The compliance of the circular was to be done latest by September 22, 2011. However, it was observed that the Noticee had entered into client-broker agreements even in December 2011. It is noted that the essence of the member client agreement and that of client rights and obligations document is more or less the same. The Noticee had submitted that clients expressed intention in being their clients before August 2011 and forms were forwarded to them. Around December 2011, the clients had executed the documents and forwarded the same to the Noticee. However, it was observed from the submission of the Noticee that revised KYCs were obtained from the clients and the first trades were executed only after obtaining the revised KYC. In view of the same, I am inclined to take a lenient view and do not hold the Noticee liable for violation of SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

13. Further, I note that the deficiencies that are pointed out in client agreement/ registration forms are mere technical in nature. On perusal of the KYC, it is observed that the client had made his/ her preference clear by ticking the appropriate box, implying his/her disinterest in other segments. Signing too many times in the KYC cannot be termed as a deficiency. Moreover, the main reason for carrying out an in person verification is to confirm the existence of the client. I accept the submission of the Noticee that the marketing team executives meet prospective clients and interact with them. Pursuant to that, if they are convinced, KYC documents are forwarded to them for enrolment. In view of this, the allegation of the non-compliance of provisions of SEBI Circular Nos. SMD/Policy/Cir/5-97 dated Aril 11, 1997, SEBI/MIRSD/DPS-1/Cir-31/2004 dated

August 26, 2004, SEBI Circular No. MIRSD/SE/CIR-19/2009 dated December 3, 2009, CIR/MIRSD/16/2011 dated August 22, 2011 and Clause A (2) & A (5) of Code of Conduct prescribed under Regulation 9 of Brokers Regulations does not stand established.

Access to documentation in electronic mode

14. It was alleged that for giving access to the designated website / back office to the clients, the stock broker intimates the password (which is the PAN no. of the client) and ID to the client through a letter at the time of account opening which is not a secure / encrypted mode. It was observed from the submissions of the Noticee that the PAN was the one time password. The clients are supposed to change the password after a single use. Further the User ID and password referred to is for viewing purpose only. The same gave the access to the back office details i.e. the ledger position of the client, margin statements, DP holding statements etc. and is not related to their trading instructions. The desire of sending password in encrypted mode is to prevent likely unauthorized usage. Hence I do not agree with the contention of the Noticee in the matter.

Allotment of single e-mail id to multiple clients

15. It was alleged that the Noticee had issued e-contract notes, statement of accounts and daily margin statement in electronic mode to a single email id for multiple clients. Some of the email ids have been allotted to even more than or equal to 10 clients, the details of which are as under:

Sr. No.	Email-Id	No. of clients
1	skch_1970@yahoo.co.in	19
2	bijju.ind@gmail.com	17
3	paragoncal@gmail.com	17
4	ykrandar@hotmail.com	16
5	jain.marwar@gmail.com	15
6	kuber.mannadi@saharamutual.com	15
7	anikghosh32@yahoo.com	12
8	femalpatel@gmail.com	12
9	gsureka1960@yahoo.co.in	12
10	nag.chinmoy@rediffmail.com	12
11	rakku.jai@gmail.com	12
12	barwaria@yahoo.co.in	11
13	info@sirohia.com	11
14	minus5144@gmail.com	11
15	vanessa.cnote@gmail.com	11
16	arun_ashika@rediffmail.com	10
17	chandranathr@gmail.com	10
18	subnandy_1@rediffmail.com	10
19	sunil_sukhani@yahoo.co.in	10
20	surekayash143@gmail.com	10

16. I note that 6,621 email-ids have been allotted by noticee to 8,015 clients who have opted for ECN i.e. the total number of e-mail ids allotted by the Noticee is much less than the total number of clients who have opted for ECNs. The Noticee submitted that under the SEBI circular dated September 8, 2005, there is no bar on common email IDs. The relevant extract of the said circular clearly spells out that *"The usual mode of delivery of ECNs to the clients shall be through emails. For this purpose, the client shall provide an appropriate email account to the member which shall be made available at all times for such receipts of the ECNs."* In some cases, the common email IDs are generally found when the clients belong to the same family or group or corporate group. Said common e mail ID's are given by the clients for their own operational convenience.

17. I find that the ECN s are important documents meant for the eyes of the clients only. When more than one person have access to the ECN because of the common email id, such exclusivity cannot be maintained. It is implied in the SEBI circular that each client should have an individual email id. As per SEBI circular no. CIR/MIRSD/15/2011 dated August 2, 2011, "…*under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/ email address for more than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents*". Even if I consider this, I fail to understand how 19/ 17/ 16 people can belong to the same family having the common email id.

18. In view of the above, I find that the Noticee have failed to comply with the provisions of Regulation 9(B)(2) of Schedule II of the Code of Conduct prescribed for stock brokers in Brokers Regulations read with Circular No.MRD/DoP/SE/Cir-20/2005 dated September 8, 2005.

Execution of trades without uploading client details

19. It was alleged that the Noticee have, in few cases, executed trades on behalf of clients without uploading the Unique Client Codes (UCC) to the Stock Exchange. It was alleged the Noticee have violated UC Codes which were noticed during the period from April, 2010 to December, 2011 (period of inspection), are given in the table below:-

Month	No. of UCC violations in NSE CM / NSE F&O / BSE CM / BSE F&O
August 2010	3
September 2010	1
November 2010	1
December 2010	2
October 2011	1
Total	8

20. I observe that during the relevant period the Noticee had 84,000 clients. Of which in 8 instances, the UC Codes were not uploaded. I consider that such were inadvertent

operational lapse. Moreover, reportedly the Internal Auditors had checked that subsequently the details uploaded on the Exchange.

21. In view of the above, the allegation of failure to comply with provisions of SEBI Circular no. MRD/DoP/SE/Cir-8/2006 dated July 13, 2006 and SEBI Circular no. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 does not stand established.

Computer to Computer Link Mismatch

22. It was alleged that the Noticee had wrongly intimated the details of id and location of CTCL/ IML in the respective exchanges.

Month	No. of CTCL violations in NSE CM / NSE F&O / BSE CM / BSE F&O
April 2010	1
May 2010	7
June 2010	7
July 2010	9
August 2010	2
September 2010	13
October 2010	5
November 2010	4
December 2010	5
January 2011	1
February 2011	6
March 2011	5
April 2011	2
May 2011	2
July 2011	1
August 2011	3
September 2011	1
October 2011	6
November 2011	6
Total	86

23. The Noticee admitted that due to some venial deficiency, the CTCL/ IML location was wrongly mentioned. However, the Noticee has now reportedly developed a reporting structure to ensure that any further violation could be brought to the notice immediately and adequate measures could be adopted. In view of the above, during the relevant period, I find that the Noticee failed to comply with the provisions of NSE Circular No. NSE/INSP/2010/111 dated December 24, 2010 read with regulation 9(A) (2) and 9(A)(5) of Schedule II of Code of Conduct prescribed for stock brokers in Brokers Regulations.

Deficiency in order management

24. It was alleged that the Noticee did not have proper order management system in place i.e. the Noticee allegedly failed to maintain record of time when the client had placed the order. It was further alleged that since the Noticee failed to maintain the said order book, the Noticee failed to reduce the number of complaints on unauthorized trading. The Noticee submitted that it had maintained record of time when the client has placed the order and reflected in contract note along with the time of execution of order. The Noticee further submitted that it duly maintain the record of time when the client placed the order. With respect to the Order management system is recorded, the voice instructions given by the client in case of a telephonic instruction, and in all cases the Order time in the contract note is duly reflected. Further, It has confirmed that it duly communicate the order executed on instructions of the clients via SMSs on real time basis to their mobile number as provided by the client. All the requisite data is preserved at the back office. The time of executing the order is duly reflected in the contract notes as issued to the clients.
25. I find that the Noticee have taken care to ensure that a proper order management system is in place. They record the real time of placement of order and its execution. In view of the same, I do not find that the Noticee have failed to comply with the provisions of SEBI Circular no. SMD/POLICY/IECG/1– 97 dated February 11, 1997.

Short collection of margin from clients in derivative segment

26. It was alleged that the Noticee allowed many clients to trade in spite of absence of margin money proportionate to the exposures provided to the clients. Details of few such cases are as follows:

Date	Exchange & Segment	Details of shortfall in margin collection	
		Total shortage Amount	No. of clients paid short margin
10.05.2010	NSE F&O	4,26,10,141	120
13.09.2010	NSE F&O	3,41,50,739	187
01.03.2011	NSE F&O	77,10,154	101
13.04.2011	NSE F&O	86,00,468	84
24.06.2011	NSE F&O	1,67,56,037	105
09.08.2011	NSE F&O	2,21,33,979	123
29.08.2011	NSE F&O	3,04,34,738	87
29.09.2011	NSE F&O	1,65,953	8
10.10.2011	NSE F&O	86,078	11
02.12.2011	NSE F&O	3,61,490	17

27. The total short collection from the aforesaid table is ₹16, 30, 09,778. The Noticee submitted that the table pertains to old clients who have no history of defaults and timely payments. I find that this is not an enough reason to not collect proper margin money. Short-collection of margin results in overleveraging by the clients and exposes

the stock broker and exchange to risks associated with possible defaults. In view of the same, I find that the Noticee have failed to comply with the provisions of SEBI Circular no. SMDRP/POLICY/CIR-33/2000 dated July 27, 2000 and SEBI Circular no. SMD/Policy/Cir-12/2002 dated May 17, 2002

Client funding

28. It has been alleged that a lot of clients were having huge balances due to the Noticee for a long period. The Noticee was charging 'Penal charges from client' for late payment of the dues. However, during the same period for which the 'Penal charges' were being levied, it has been observed that the Noticee have allowed those clients to make net purchases for which the pay-in obligations had been met by the Noticee. Therefore, it is allegedly construed that Noticee was basically funding the clients' trades and charging interest thereto in the garb of penal charges for late payment. It was alleged that it had earned ₹ 2.18 cr during 2010-11 and ₹ 0.73 cr during the first six months of 2011-12 from the aforesaid 'late payment charges'.

29. I refer NSE circular dated April 26, 2012 wherein it had allowed Stock Brokers to charge interest on the delayed payment if debit balance arises out of client's failure to pay such amount for less than fifth trading day reckoned from date of pay-in. I construe from the said circular that brokers can charge interest on delayed payment only if the payment is received within 5th trading day from the pay-in date. I have noted that except on one instance (Devkant Synthetics Private Limited) Noticee has charged interest only for upto 5 trading day reckoned from the pay-in. Hence I do not find the allegation of Client Funding is established in the instant matter.

Unauthorized retention of clients' securities

30. It was alleged that the Noticee had retained the securities of the clients who were not having debit balance in their respective ledgers maintained by the Noticee. Few of such instances are given below:

Sl No	Name of Client	Settlement Date	Transfer Date	Details of Retention	
				Name of Scrip	No of Shares
1	Arun Kumar Khetan	20/10/2011	28/10/2011	Everest Industries L	100
2	Arun Kumar Khetan	16/11/2011	28/11/2011	Mahindra & Mahindra	10
3	Arti Jha	13/05/2010	24/05/2010	Action Const.Equip	300
4	Arti Jha	04/03/2011 & 08/03/2011	28/03/2011	Alok Industries	500
5	Arti Jha	22/07/2010	30/07/2010	Mcleod Russel	50

Sl No	Name of Client	Settlement Date	Transfer Date	Details of Retention	
				Name of Scrip	No of Shares
6	Anurag Mundhra	07/12/2010	15/12/2010	Aqua Logistics Ltd.	100
7	Anurag Mundhra	27/07/2010	12/08/2010 & 18/08/2010	Hindustan Oil Explo	100
8	Anurag Mundhra	03/12/2010	20/12/2010	Rural Elect Corp Ltd	80
9	Gopal Das Rathi (Huf)	03/10/2011 & 10/10/2011	13/10/2011, 14/10/2011 & 19/10/2011	Adani Power	400
10	Gopal Das Rathi (Huf)	11/10/2011	19/10/2011	Anantraj Industry	100
11	Rahul Gupta	21/10/2011	28/10/2011	Onelife Capital Advi	50
12	Rahul Gupta	25/08/2011	09/09/2011	S R F	100
13	Rahul Gupta	11/11/2011	05/12/2011	Simplex Castings	500

31. The Noticee submitted that in some instances where the client had a debit balance in his account, the shares bought are held by the Noticee and forwarded to the concerned DP of the client and only when the ledger reflects the credit balance, the shares are released. Also, in some cases, the client themselves instructed them to retain their securities so as to avoid the charges levied on them by their DP. The Noticee had explicit authorization to retain their securities. This was retained in terms of collateral for the trades which the client wished to enter through them as stock brokers.

32. From the documents submitted by the Noticee, it has been observed that at least in 6 out of 13 instances the clients had credit balances with the Noticee and still the shares were not transferred to them. However I note that these clients have authorized the Noticee to retain their shares (for future transactions) despite having credit balance. I note that SEBI has prescribed periodic reconciliation of running account and Noticee has to adhere to it despite of the fact that clients themselves have authorized broker to retain their securities. Noticee ought to have complied with. In view of the same, I cannot accept the submission of the Noticee that only in case of debit balances, shares were retained by them. Thus, the Noticee have failed to comply with the provisions of SEBI Circular No. SEBI/MRD/Policy/AT/Cir-19/2004 dated April 21, 2004.

Non-settlement of running account

33. It was alleged that in many cases the Noticee have not periodically settled the running account of the clients. The Noticee had admitted that due to the manual intervention in the process, there were some cases where the settlement process has gone beyond the stipulated period. The Noticee also pointed out that out of 34,000 active clients, only 6 instances have been enumerated in the SCN.

34. SEBI has prescribed stringent timelines for settlement of accounts so that there is no scope of wrongdoing. It is expected from all stock brokers that such timelines should be adhered to. Each and every client/ investor is important. I cannot accept the contention that only because there are 6 instances enumerated in the SCN, there is no fault on the part of the Noticee. In view of the above, it is held that the Noticee have failed to comply with the provisions of SEBI Circular no. MIRSD/ SE /Cir-19/2009 dated December 03, 2009.

Dealing with unregistered sub-brokers

35. It was alleged that the Noticee runs the business through its own branches, sub-brokers, Authorised Persons / Remiser and a set of 176 'deemed branches'. It was observed that the direct branches are owned by the Noticee wherein people working are employees under its payroll, whereas the deemed branches are owned by any person engaged in financial service and who has agreed to work on behalf of the Noticee on the basis of incentive or brokerage-sharing. It was also observed that all 176 deemed branches are run by the persons who are neither registered sub-brokers / Authorised Persons / Remisers nor these persons are the employees of the Noticee. It is additionally observed that these deemed branches / branch managers who are unregistered entities are having trading terminals and, therefore, executing trades for clients on behalf of the Noticee. Further, they are handling delivery of shares, collection of dues, etc. between the Noticee and its clients. Consequently, the deemed branches/branch managers receive a part of the brokerage as incentive from the Noticee. Therefore, it was alleged that the activities of the deemed branches are as good as unregistered sub-brokers.

36. The Noticee submitted that the branches were merely for client servicing. The services like dispatch of contract notes, quarterly statement, welcome letter etc. were all directly done through the head office. In all the said branches, all the requisite compliances were made, viz. affixation of the notice board highlighting that it is a branch, name of the branch manager, broking registration details, registered office address, name of the director/compliance officer, etc. All such locations were duly reported to the concerned Exchanges as a branch at the time of reporting of the location of the CTCL terminals. All the complaints pertaining to the said branches are duly taken care of by the head office and the said branches have no right to respond to the same at their end.

37. I observe that for all purposes these 176 deemed branches acted as a sub-broker for the Noticee who worked for the Noticee on the basis of incentive or brokerage sharing. They carried out the trading on behalf of the clients and forwarded the contract notes as issued by the head office. They indeed worked as an unregistered sub-broker of

the Noticee. It may also be pointed out that after the inspection, the Noticee have taken effort to convert the deemed branches into authorized persons. In view of the same, I find that the Noticee have failed to comply with Regulation 18B of Brokers Regulations read with SEBI Circular SMD/Policy/circular/3-97 dated March 31, 1997 and Circular No. Sub-brok/Cir/02/2001 dated January 15, 2001.

Unauthorized use of dealer certificates and dealer IDs

38. It was alleged that 17 dealers located in the head office and in the direct branches were not appearing in the list of employees. The Noticee submitted that this was done without any sinister intention and merely for the sake of uniformity and ease in operations. I find that this was an important oversight by the Noticee. In view of the same, I find that the Noticee have failed to comply with the provisions of regulation 9 read with Clause A(2) & A(5) of the Code of Conduct for Stock Brokers of Brokers Regulations.

Internet based trading

39. It was alleged that the Noticee had allowed internet trading to 1001 clients. The Noticee had two types of Internet trading service providers viz. browser-based and license-based. For license based service providers, the Noticee had taken license (ODIN – DIET) from Financial Technologies Ltd. and for browser based trading license (Trade Anywhere & NOW) from Religare Technologies Ltd. & National Stock Exchange India Ltd. For browser-based trading, there is no restriction for no. of client users. However, it was observed that the number of clients who have been registered for IBT through ODIN-DIET is more than the number of logins purchased by the Noticee from ODIN-DIET. As a result, it is very likely that in case of higher number of clients trading through ODIN-DIET at a particular point of time, some other IBT clients may have been deprived from trading through ODIN-DIET.

40. The Noticee submitted that it had 400 login IDs for each of the exchange segments instead of 150 login IDs as stated in the SCN. In view of this, I do not find that the Noticee had any infrastructural inadequacy. Therefore, the allegation of non-compliance with the provision of regulation 9 read with Clause A(2) & A(5) of the Code of Conduct of Brokers Regulations and SEBI Circular No. SMDRP/POLICY/CIR-06/2000 dated January 31, 2000 does not stand established.

Deficiency in systems and procedures pertaining to prevention of Money Laundering Act, 2002 (PMLA)

41. It was alleged that the Noticee have not done the categorization of CSCs clients w.r.t. High net-worth clients, Non-Governmental Organizations (NGOs) and organizations receiving donations, Companies offering foreign exchange offerings, Clients in high risk countries, etc. The Noticee submitted that it never had any client registered belonging to the classes such as NGOs, companies offering foreign exchange offerings, clients in high risk countries etc. It has now taken appropriate steps to classify the clients of special category.

42. I find that as the Noticee had no clients in the special category earlier, no violation has been done. It is noted that the Noticee has now taken appropriate steps to categorize any future client to any such special category. In view of the same, the allegation of non-compliance with the provisions of SEBI Circular no.ISD / AML / CIR-1 / 2008 dated December 19, 2008 does not stand established.

43. Noticee has quoted the reference of the Hon'ble SAT in the matter of UPSE securities Ltd. v/s SEBI wherein it was observed that

"*the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity.*

44. I note that the instant matter is the not the case where inspection has found minor discrepancies/irregularities. In the instant matter serious lapses on the part of the Noticee are observed, like dealing with unregistered Sub-brokers, non-collection of adequate margin from clients, not reconciling running accounts of clients as mandated, retaining client's securities without adequate reasoning. I am inclined to take lenient view where violations were of technical nature or where remedial steps have been reportedly taken by the Noticee pursuant to inspection, however I find the Noticee liable for penalty for serious violations as stated above..

45. Section 15B of the SEBI Act deals with failure of registered intermediaries to enter into agreement with clients. Section 15C deals with Failure to redress investors' grievance within stipulated time. I find that the instance reported in the SCN for the violation of Section 15B do not qualify as the violation as such. Also there were no instance of non redressal of investor grievances reported in the SCN. In the light of the same find that

the actions of the Noticee does not qualify him to be penalized under Section 15B and 15C of the SEBI Act.

46. In view of the above, I find that the Noticee is liable for penalty under section 15HB of SEBI Act which reads as under:

Penalty for contravention where no separate penalty has been provided

15HB. Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board there under 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 rupees.

47. 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…".

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

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.

49. I find that the inspection report did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors. The default cannot be said to be repetitive in nature. Moreover, the Noticee has also taken measures to address the issues that were pointed out to them during inspection.

ORDER

50. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of ₹ 8,00,000 (Rupees Eight Lakh only) on the Noticee.

51. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties

Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - II [**EFD-DRA-2]** SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

52. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

53. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually	
Bank Name and Account Number from which payment is remitted	
UTR No	

54. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 25, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER