

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/MC/RM/2022-23/16843]**

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UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

*In respect of –*

**Choice Equity Broking Private Limited [PAN AADCC8390B]** having address at –  
Choice House, Shree Shakambhari Corporate Park, Plot No. 156-158, Kanti Nagar, J B Nagar, Andheri (East), Mumbai – 400 099

In the matter of *Choice Equity Broking Private Limited*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) carried out an inspection of broking operations of Choice Equity Broking Private Limited (hereinafter be referred to as, the “**Noticee**”), pursuant to which SEBI initiated adjudication proceedings under Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter be referred to as, the “**SCRA**”) for violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter be referred to as, the “**Circular dated November 18, 1993**”) & SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter be referred to as, the “**Circular dated September 26, 2016**”) read with Regulation 26(xiii) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter be referred to as, the “**Stock Broker Regulations**”) alleged to have been committed by the Noticee.

2. Adjudication order dated May 30, 2019 was passed in the matter imposing penalty of Rs. 10,00,000/-(Rupees Ten Lakh only) upon Noticee, i.e. M/s Choice Equity Broking Private Limited under Section 23D of the SCRA **for violations of Circular dated November 18, 1993**. This order was appealed before the Hon'ble Securities Appellate Tribunal (SAT) by the Noticee vide No. 474 of 2019. Hon'ble SAT vide Order dated May 30, 2019 remitted the matter to AO as given hereunder:

*“.....we set aside the impugned order and remit the matter to the AO to consider the margin applicable to clients and then find out whether there was a mismatch between total credit balance of clients and total funds of clients available with the appellant. It will be open to the appellant to file fresh evidence. The AO will pass a fresh order in accordance with law after considering the new material and after giving an opportunity of hearing to the appellant”.*

#### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Subsequent to the aforesaid SAT order, undersigned received the matter for re-adjudication being the original quasi-judicial authority. Accordingly vide Hearing Notice no. EAD-5/MC/RM/OW/P/2022/14507 dated April 01, 2022 the Noticee was granted opportunity of hearing in the matter, and advised to submit fresh evidence, if any, in the matter.

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

4. A Show Cause Notice No. EAD/EAD5/MC/CB/5250/2019 dated February 26, 2019 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the SCR Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the SCR Adjudication Rules and penalty be not imposed under Section 23D of the SCRA for the alleged violations of Circular dated November 18, 1993 and Circular dated September 26, 2016.
5. Briefly, the allegations levelled against the Noticee in the SCN are summarized as below:

- a) During inspection, an analysis of the data (as produced in the table hereunder), including total fund balance available, collateral deposited with clearing corporation / clearing member, total credit balance of all clients etc. was carried out to ascertain whether funds of credit balance clients were used for settlement obligations of debit balance clients or for own purpose.

Date	Funds Available in client bank accounts and cash/cash equivalent deposits with clearing corporation/ clearing member - across all Stock Exchanges		Clients' Funds as per the client ledger- across all Stock Exchanges	Difference			
	Total of end of the day balance in all Client Bank Accounts	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents*	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques)		Total debit balance (after adjusting for open bills and uncleared cheques)	Amount of funds of one client used for another client	Amount of fund used for own purpose (only if absolute value G is greater than debit balance clients)
	A	B	C	G=(A+B)-C	D	G, if G<D	H=G-D
06/04/2015	19,994,459	185,375,000	350,318,255	(144,948,796)	744,059,090	144,948,796	(599,110,294)
20/04/2015	23,404,818	191,875,000	394,326,576	(179,046,758)	778,481,449	179,046,758	(599,434,691)
21/04/2015	18,705,921	192,375,000	378,411,748	(167,330,827)	776,676,547	167,330,827	(609,345,720)
05/05/2015	18,206,644	179,595,000	316,782,152	(118,980,509)	850,248,029	118,980,509	(731,267,520)
06/05/2015	16,375,585	171,595,000	407,723,223	(219,752,639)	817,900,111	219,752,639	(598,147,472)
08/05/2015	19,333,595	172,095,000	355,365,571	(163,936,976)	815,320,536	163,936,976	(651,383,561)
12/05/2015	18,238,432	196,895,000	353,258,364	(138,124,932)	804,976,372	138,124,932	(666,851,439)
25/08/2015	26,987,691	162,025,000	392,839,945	(203,827,254)	1,047,215,909	203,827,254	(843,388,655)
19/10/2015	20,090,628	140,625,000	295,028,631	(134,313,003)	904,305,559	134,313,003	(769,992,557)
04/11/2015	10,648,731	130,500,000	329,538,141	(188,389,409)	931,670,600	188,389,409	(743,281,191)
18/01/2016	21,957,400	108,625,000	238,718,173	(108,135,774)	801,270,746	108,135,774	(693,134,972)
02/02/2016	7,028,382	109,855,000	198,795,142	(81,911,760)	792,482,723	81,911,760	(710,570,963)
04/04/2016	11,147,547	121,864,940	229,524,334	(96,511,847)	710,468,289	96,511,847	(613,956,442)
05/04/2016	10,956,679	105,864,940	176,996,587	(60,174,968)	750,669,181	60,174,968	(690,494,214)
11/04/2016	15,963,849	108,164,940	223,783,892	(99,655,103)	724,922,756	99,655,103	(625,267,652)
12/04/2016	12,943,663	108,164,940	223,398,750	(102,290,147)	753,727,143	102,290,147	(651,436,996)
13/04/2016	11,318,290	108,164,940	201,118,754	(81,635,524)	741,965,916	81,635,524	(660,330,392)
18/04/2016	18,834,713	108,164,940	267,648,869	(140,649,217)	718,795,035	140,649,217	(578,145,818)
26/04/2016	10,966,718	102,886,940	201,639,075	(87,785,417)	773,693,582	87,785,417	(685,908,165)
27/09/2016	28,617,679	104,793,750	308,272,136	(174,860,707)	958,188,388	174,860,707	(783,327,681)

Since the value of difference between funds available in client bank accounts plus cash/cash equivalent deposits with clearing corporation/clearing member across all stock exchanges and clients' funds as per client ledger is in negative at all the twenty dates (data of which was provided to the Noticee), it was alleged that funds of clients with credit balance were used to meet settlement obligation of clients with debit balance.

- b) During the inspection, to ascertain the amount of usage of funds of clients with credit balance, an analysis of the following data obtained from the Noticee was also carried out:

Date	Difference in funds available in client account and clients credit balance (G)	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) (C)	Percentage (G/C*100)	Funds Misused for Debit Balance Clients	Funds Misused for Own Purpose	% Funds Misused for Debit Balance Clients
	(A+B)-C					
06/04/2015	-144,948,796	350,318,255	41.38	144,948,796	0	41.38
20/04/2015	-179,046,758	394,326,576	45.41	179,046,758	0	45.41
21/04/2015	-167,330,827	378,411,748	44.22	167,330,827	0	44.22
05/05/2015	-118,980,509	316,782,152	37.56	118,980,509	0	37.56
06/05/2015	-219,752,639	407,723,223	53.90	219,752,639	0	53.90
08/05/2015	-163,936,976	355,365,571	46.13	163,936,976	0	46.13
12/05/2015	-138,124,932	353,258,364	39.10	138,124,932	0	39.10
25/08/2015	-203,827,254	392,839,945	51.89	203,827,254	0	51.89
19/10/2015	-134,313,003	295,028,631	45.53	134,313,003	0	45.53
04/11/2015	-188,389,409	329,538,141	57.17	188,389,409	0	57.17
18/01/2016	-108,135,774	238,718,173	45.30	108,135,774	0	45.30
02/02/2016	-81,911,760	198,795,142	41.20	81,911,760	0	41.20
04/04/2016	-96,511,847	229,524,334	42.05	96,511,847	0	42.05
05/04/2016	-60,174,968	176,996,587	34.00	60,174,968	0	34.00
11/04/2016	-99,655,103	223,783,892	44.53	99,655,103	0	44.53
12/04/2016	-102,290,147	223,398,750	45.79	102,290,147	0	45.79
13/04/2016	-81,635,524	201,118,754	40.59	81,635,524	0	40.59
18/04/2016	-140,649,217	267,648,869	52.55	140,649,217	0	52.55
26/04/2016	-87,785,417	201,639,075	43.54	87,785,417	0	43.54
27/09/2016	-174,860,707	308,272,136	56.72	174,860,707	0	56.72

On the basis of the analysis reproduced hereinabove, it was observed that 34% to 57.17% of the funds of clients with credit balance were alleged to have been used for the purpose of settling the obligations of clients with debit balance by the Noticee.

- c) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 relating to “Regulation of Transactions between Clients and Brokers” *inter alia* requires a stock broker to withdraw money from clients’ accounts only when money is required for payment to or on behalf of clients or towards payment of debt due to the Member from clients or money drawn on client’s authority, or money in respect of which there is a liability of clients to the member, provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such each client.
- d) Similarly, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 relating to “Enhanced Supervision of Stock Brokers / Depository Participants” *inter alia* requires that the total available funds, i.e. cash and cash equivalents with the stock broker and with the clearing corporation / clearing member (A+B) should always be equal to or greater than clients’ funds as per ledger balance.
- e) Therefore, it was alleged that the Noticee, by misusing the funds of the clients with credit balance to settle the obligations of clients with debit balance, had violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 & SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Regulation 26(xiii) of the Stock Broker Regulations.

6. It was stated in the SCN that the aforesaid alleged violation of Circular dated November 18, 1993 and Circular dated September 26, 2016, if established, would make the Noticee liable for monetary penalty under Section 23D of the SCRA, text of which is reproduced as under:

**SCRA**

***“23D. Penalty for failure to segregate securities or moneys of client or clients. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.”***

7. Pursuant to Hon'ble SAT order dated January 12, 2022 and SEBI Hearing Notice dated April 01, 2022, Noticee vide letter dated May 12, 2022 and email dated May 28, 2022 submitted the following:
8. While issuing the Order dated May 19, 2019, it was erroneously concluded that the Noticee is in non-compliance of the SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as “1993 Circular”). The aforesaid conclusion had been allegedly reached on the basis that though the Noticee had made submissions that the total credit balance as arrived by the Investigation Team through included the credit balance of all clients, the same was calculated without taking into account the margin applicable to the clients, however, the aforesaid submission of the Noticee was not backed by any documentary evidence.
9. In regard to the 1993 Circular, the Noticee submits that the money which is received from the clients are to be paid into client accounts and are not utilized to meet the proprietary obligation of the Noticee. The amount which has been withdrawn by the Noticee is towards the brokerage earned by the Noticee from these clients. It is once again submitted that the Noticee has not withdrawn any money from the client account for any other purpose other than to meet clients' obligation to the exchange. The Noticee categorically submits that it has not utilized the funds of the credit balance client to meet the obligation of the debit balance clients. Other than providing the calculation in the SCN, SEBI has not provided any specific incident which could conclude that the funds of the credit

balance clients have been utilized for proprietary obligation or to meet the obligations of the debit balance clients.

**10.** In this regard, it is pertinent to mention here that the 1993 Circular, categorically specified what moneys are to be paid into client accounts and also what moneys are to be withdrawn from client accounts and clearly spell out that no other moneys could be paid or withdrawn from client accounts. The 1993 Circular allowed withdrawal of moneys from client account towards the following purpose:

- a) money properly required for payment to or on behalf of clients, or
- b) for or towards payment of a debt due to the broker from clients, or
- c) money drawn on client's authority, or
- d) money in respect of which there is a liability of clients to the broker, or provided that money so drawn in pursuance of (a) to (d) shall not in any case exceed the total of the money so held for the time being for such each client; or
- e) such money belonging to the broker as may have been paid into the client account.
- f) money which may by mistake or accident have been paid into such account

**11.** In this regard the Noticee reiterates that the funds which are deposited in to the client account are the money of the clients. The Noticee confirms that the money withdrawn from the client account only pertain to meeting the obligation of the clients either towards the Exchange and/or the Noticee itself, or that the money is drawn on client's authority. The circular states that no money shall be drawn from client accounts other than for the aforesaid purpose and no instance has been identified either by the Inspection Team or SEBI which would indicate the utilization of the funds in the clients' accounts any other purpose other than the specified purpose.

**12.** In this regard, it is submitted that the Noticee complied with the said requirements by keeping separate client accounts for funds and securities from its own proprietary account. The two accounts were never mixed nor were there any transactions between the two accounts during the period under consideration. Rightly so, no observation in this regard has been made by the Inspection Team.

**13.** The Noticee would like to point out that multiple inspections conducted by various exchanges (as produced below) have not pointed out any violation of the 1993 Circular nor have they cautioned the Appellant for the same:

Sr. No.	Exchange	Period		Inspection Month
		From	To	
1)	NSE	01-Apr-14	31-Mar-15	June 2016
2)	NSE	01-Apr-12	31-Mar-13	November 2013
3)	BSE	01-Apr-14	31-Mar-15	October 2015
4)	BSE	01-Apr-13	31-Mar-14	October 2014
5)	BSE	01-Apr-12	31-Mar-13	January 2014

**14.** Further, with respect to the table allegedly containing instances of 20 sample dates where a working of alleged difference between available funds with the Noticee to meet its obligations and credit balance of clients is mentioned. This is apparently based on what is presented by the inspection team. This is also understood to be based on the working prescribed by SEBI circular no. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 ("2016 Circular"). In this regard, the Noticee submits that the Order dated May 30, 2019 proceed on the assumption that the principles enumerated in 2016 Circular, i.e. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose flow from the Circular dated November 18, 1993 itself.

**15.** The 2016 Circular inter alia requires that, "The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation / clearing member (A+B) should always be equal to or greater than Clients' funds



as per ledger balance.” Similarly, the 2016 Circular requires that “Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)”

**16.** Noticee submits that in the present case, the total credit balance as arrived by the Respondent in its report has not adjusted the margin obligations across the client. It is due to this very reason that the negative difference has been noted in the funds available with the Noticee and the total credit balance of all clients as per the trial balance. Had the margin obligation of the clients been taken into consideration then the total funds of clients available with the Noticee would not be lesser than the total credit balance of all clients of the Noticee.

**17.** Accordingly, the Noticee submits that there was no short fall of funds with the Noticee, nor were the funds of the credit balance clients used for meeting the obligations of the debit balance clients. The negative difference in the funds available with the Noticee and the total credit balance of all clients as per the trial balance is noted due to the error in calculation of the said difference. Accordingly, the Noticee hereby provides the duly rectified calculation of the difference between the funds available with the Noticee and the total credit balance of all clients as per the trial balance while taking in to consideration the margin obligations of the clients.

<b>Date</b>	<b>Total Credit balances of all clients as obtained from trial balance across stock exchanges (Without Margin)</b>	<b>Total Margin required against credit balance clients across stock exchanges</b>	<b>Difference between Total Credit balances of all clients as obtained from trial balance across stock exchanges (Without Margin) and Total Margin required against credit balance clients across stock exchanges</b>	<b>Bank Balances + Collateral deposited with clearing corporations and Clearing Members</b>	<b>Total fund available with the Appellant after deduction of margin of credit balance client</b>
06/04/2015	350318255	47,00,75,231	-11,97,56,976	20,53,69,459	8,56,12,483
20/04/2015	394326576	49,15,40,249	-97213673	21,52,79,818	11,80,66,145
21/04/2015	378411748	45,90,97,476	-80685728	21,10,80,921	13,03,95,193
05/05/2015	316782152	37,73,64,899	-60582747	19,78,01,644	13,72,18,897

06/05/2015	407723223	37,87,14,143	29009080	18,79,70,585	21,69,79,665
08/05/2015	355365571	37,55,12,865	-20147294	19,14,28,595	17,12,81,301
12/05/2015	353258364	37,98,20,294	-26561930	21,51,33,432	18,85,71,502
25/08/2015	392839945	34,38,64,004	48975941	18,90,12,691	23,79,88,632
19/10/2015	295028631	38,06,03,341	-85574710	16,07,15,628	7,51,40,918
04/11/2015	329538141	45,90,05,644	-12,94,67,503	14,11,48,731	1,16,81,228
18/01/2016	238718173	35,94,14,105	-12,06,95,932	13,05,82,400	98,86,468
02/02/2016	198795142	22,15,91,384	-22796242	11,68,83,382	9,40,87,140
04/04/2016	229524334	31,33,73,754	-83849420	13,30,12,487	4,91,63,067
05/04/2016	176996587	27,52,95,452	-98298865	11,68,21,619	1,85,22,754
11/04/2016	223783892	29,21,72,130	-68388238	12,41,28,789	5,57,40,551
12/04/2016	223398750	28,51,22,323	-61723573	12,11,08,603	5,93,85,030
13/04/2016	201118754	29,10,64,544	-89945790	11,94,83,230	2,95,37,440
18/04/2016	267648869	27,77,60,372	-10111503	12,69,99,653	11,68,88,150
26/04/2016	201639075	23,03,53,727	-28714652	11,38,53,658	8,51,39,006
27/09/2016	308272136	22,47,43,784	83528352	13,34,11,429	21,69,39,781

**18.** With regard to the aforesaid calculation, the Noticee submits that during the course of the investigation all the necessary documents were provided by the Noticee to the Investigation Team to enable it to calculate the difference between the funds available with the Noticee and the total credit balance of all clients as per the trial balance while including the margin obligation of the clients across all segments of the exchanges and accordingly there was no requirement on part of the Noticee to provide any further details and documents to support of the calculation especially while pointing out that there was an error while doing the aforesaid calculations and rightly so necessary observations to this accord have been made by the Hon'ble Tribunal in its Order dated January 12, 2022.

**19.** Without prejudice to the aforesaid, the Noticee has provided on records the following documents to independently verify the aforementioned calculation:

- a) Copy of the extract of the trial balance detailing the credit balance clients whose names get featured in the aforementioned trial balance which has been used for arriving at the total of end of day balance in all clients' account

- b) As, regard the margin obligations of the relevant clients on each day, the same is generated by the exchanges and the same can be downloaded by the Noticee from the portal of the exchanges. Extract of the credit balance clients' margin obligation details and documents in support of same as on the relevant dates is placed on records.
- c) Copy of the bank statements of the showing the balance as on the relevant dates along with the list of the relevant bank statements is placed on records.
- d) Copy of the collateral deposits kept with the clearing corporation/clearing member by the Noticee as on the relevant dates is placed on records.
- e) Copy of the collateral deposits kept with the Exchanges by the Noticee as on the relevant dates is placed on records.

**20.** In regard to the bank balances and collaterals, it is submitted that the Noticee was not informed as to how the Inspection has reached the conclusions towards the data as provided in the SCN. Accordingly, when the Noticee, as on date, tried to verify the date and find the necessary supporting, some difference was noted by the Noticee with regard to the collateral and bank balances as maintained by the Noticee on the relevant days. In this regard, the Noticee submits that the difference may have arisen due to the fact they are presently unable to get the accounts statements of a bank account previously maintained with HDFC Bank and are accordingly unable to include the balances as on date of the aforesaid bank account while verifying and proving the necessary proof in support of the balances. The other reason could be that due to the passage of time the company is unable to identify all the accounts whose balance was used to reach the aforesaid balance. No negative inference in this regard should be drawn against the Noticee considering the fact the figures arrived in the SCN by the Inspection Team were duly supported by necessary documents and no objection to that accord was also raised by the Noticee previously.

- 21.** Noticee submits that even when there are discrepancies in the evidence presently gathered by the Noticee due to the lapse of time, the deposits and balanced with the clearing members and corporations and the exchanges are still sufficient to meet the credit balance requirement of the Noticee as on the particular date.
- 22.** Considering the abovementioned calculation and the documents annexed to the present submissions for perusal, it can be ascertained that the Noticee had maintained sufficient balances in its accounts as required by the Circulars and has followed the mandate of the law in letter and spirit as a consequence of which the allegation of the Noticee having violated the requirements of the law is non-est and does not warrant any adverse finding or imposition of penalty.
- 23.** In this regard, attention is also drawn to SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009 which prescribes the manner of Dealings between a client and a stock broker (trading members included) especially in relation to the running account settlement of the clients. As per the aforesaid circular, for the clients who are availing the running account settlement from the Noticee, it is noted that for the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.
- 24.** As per the exemption towards the retention of funds and /or securities provided by SEBI, it can be noted that similar consideration is required to be considered while calculating obligation of the credit balance client or the alleged utilization of the amount of the credit balance towards the obligation of the debit balance clients on any particular day. On any given day, the funds of the credit balance clients will be required to meet their margin obligations for the trades executed on that day and the settlement of which will be required to be done after two working days. It is further submitted that on the basis of the credit balance

available in the account of the client that the stock broker will give the exposure to such clients and allow such client to trade to their exposure limit.

- 25.** From the aforesaid it can be noted that the funds of the credit balance clients available with the Noticee on any given day were utilized to meet the upcoming obligations of such clients and that it is on the basis of their credit balance such clients are allowed to take the said exposure.
- 26.** Had the details of the margin obligation of the clients arising from the transactions executed during the course of the respective day been taken into consideration, the aforesaid error in the calculation of the funds available with the client would not have happened.

Post hearing additional submissions of the Noticee is summarized as follows:

- 27.** During the course of the hearing, it was observed that there was difference in the date pertaining to margin obligation utilized on behalf of the various credit balance clients on the relevant dates in the details as submitted by the Noticee during the course of the investigation proceedings in 2017 and the subsequent submissions made by the Noticee before the Hon'ble Securities Appellate Tribunal and the Additional submission dated May 12, 2022.
- 28.** Upon perusal of the both the aforesaid data in respect to margin obligation utilization, it was observed that the difference was observed due to the fact that the margin utilized on behalf of various credit balance clients towards the trades executed on their behalf on BSE Limited was not taken into consideration while providing the margin obligation utilization in the Additional Submissions.
- 29.** Noticee submits that if the margin utilized for the trades executed on BSE Limited considered, difference in the margin obligation utilization during the relevant dates as recorded in various submission can be duly reconciled. In support of the aforesaid submissions made by the Noticee, the necessary documents in support of the margin obligation utilization on behalf of its clients having credit balance across all exchanges is placed on record.

**30.** Table below provides the calculation of the funds available with the Noticee to meet its obligation towards the credit balance clients on the basis of the revised figures of the margin utilization for them across all exchanges as under. the Noticee has also included the comparison of the margin utilization data as per the Additional Submissions dated May 12, 2022.

Date	Total credit balances of all clients as obtained from trial balance across stock exchanges	Margin required against credit balance clients across stock exchanges (as per 12.05.2022 submissions)	Margin required against credit balance clients across stock exchanges (as per inspection submissions)	Difference	Revised difference taking into consideration the margin as submitted during inspection	Bank Balances + Collateral Deposited with clearing corporations and Clearing members	Total fund available with the Noticee after deduction of margin (as per 12.05.2022 submissions)	Total fund available with the Noticee after deduction of margin (as per inspection submissions)
(A)	(B)	(C)	(D)	(E = B – C)	(F = B – D)	(G)	(H = G + E)	(I = G + F)
06/04/2015	35,03,18,255	47,00,75,231	49,40,76,055	-11,97,56,976	-14,37,57,800	20,41,65,208	8,44,08,232	6,04,07,408
20/04/2015	39,43,26,576	49,15,40,249	51,58,17,621	-9,72,13,673	-12,14,91,045	22,06,13,885	12,34,00,212	9,91,22,840
21/04/2015	37,84,11,748	45,90,97,476	48,33,56,365	-8,06,85,728	-10,49,44,617	21,07,14,531	13,00,28,803	10,57,69,914
05/05/2015	31,67,82,152	37,73,64,899	40,15,82,463	-6,05,82,747	-8,48,00,311	20,57,36,502	14,51,53,755	12,09,36,191
06/05/2015	40,77,23,223	37,87,14,143	40,30,18,868	2,90,09,080	47,04,355	20,00,65,849	22,90,74,929	20,47,70,204
08/05/2015	35,53,65,571	37,55,12,865	39,97,81,344	-2,01,47,294	-4,44,15,773	19,83,37,533	17,81,90,239	15,39,21,760
12/05/2015	35,32,58,364	37,98,20,294	40,41,84,373	-2,65,61,930	-5,09,26,009	21,89,08,285	19,23,46,355	16,79,82,276
25/08/2015	39,28,39,945	34,38,64,004	35,54,68,877	4,89,75,941	3,73,71,068	19,35,75,596	24,25,51,537	23,09,46,664
19/10/2015	29,50,28,631	38,06,03,341	40,17,46,923	-8,55,74,710	-10,67,18,292	19,06,24,835	10,50,50,125	8,39,06,543
04/11/2015	32,95,38,141	45,90,05,644	48,04,22,812	-12,94,67,503	-15,08,84,671	19,01,60,345	6,06,92,842	3,92,75,674
18/01/2016	23,87,18,173	35,94,14,105	36,04,72,266	-12,06,95,932	-12,17,54,093	13,05,82,400	98,86,468	88,28,307
02/02/2016	19,87,95,142	22,15,91,384	22,15,91,384	-2,27,96,242	-2,27,96,242	11,37,80,488	9,09,84,246	9,09,84,246
04/04/2016	22,95,24,334	31,33,73,754	31,33,73,754	-8,38,49,420	-8,38,49,420	18,37,66,986	9,99,17,566	9,99,17,566
05/04/2016	17,69,96,587	27,52,95,452	27,52,95,452	-9,82,98,865	-9,82,98,865	11,81,31,884	1,98,33,019	1,98,33,019
11/04/2016	22,37,83,892	29,21,72,130	29,21,72,130	-6,83,88,238	-6,83,88,238	11,83,82,809	4,99,94,571	4,99,94,571
12/04/2016	22,33,98,750	28,51,22,323	28,51,22,323	-6,17,23,573	-6,17,23,573	11,70,74,947	5,53,51,374	5,53,51,374
13/04/2016	20,11,18,754	29,10,64,544	29,10,64,544	-8,99,45,790	-8,99,45,790	11,57,88,946	2,58,43,156	2,58,43,156
18/04/2016	26,76,48,869	27,77,60,372	27,77,60,372	-1,01,11,503	-1,01,11,503	12,29,37,090	11,28,25,587	11,28,25,587
26/04/2016	20,16,39,075	23,03,53,727	23,03,53,727	-2,87,14,652	-2,87,14,652	11,55,47,373	8,68,32,721	8,68,32,721
27/09/2016	30,82,72,136	22,47,43,784	22,56,07,837	8,35,28,352	8,26,64,299	12,67,11,047	21,02,39,399	20,93,75,346

**31.** Here it is important to note that the correct margin obligations for various clients was reported to the stock exchanges however only due to the aforesaid omission of considering data pertaining to BSE trades that the difference was noted.

**32.** The tabulation below provides the margin utilized for the trades executed through different segments of the exchanges for the credit balance clients as under. Further the same has been compared with the margin utilization details as provided by the Noticee during the course of the inspection to the Inspection Team.

Date	NSE FO	NSE CDS	BSE FO	Total	Margin required against credit balance clients across stock exchanges (as per inspection submissions)
06-04-2015	47,00,13,355.70	8,30,990.53	2,32,31,706.30	49,40,76,052.53	49,40,76,055.00
20-04-2015	49,12,24,476.49	12,12,963.17	2,33,80,181.21	1,58,17,620.87	51,58,17,621.00
21-04-2015	45,88,69,969.64	10,74,088.95	2,34,12,306.42	48,33,56,365.01	48,33,56,365.00
05-05-2015	37,66,26,797.01	14,22,894.33	2,35,32,770.97	40,15,82,462.31	40,15,82,463.00
06-05-2015	37,78,83,226.91	15,03,854.91	2,36,31,785.38	40,30,18,867.20	40,30,18,868.00
08-05-2015	37,42,31,145.06	19,52,932.73	2,35,97,266.09	39,97,81,343.88	39,97,81,344.00
12-05-2015	37,84,81,178.47	20,50,212.73	2,36,52,981.54	40,41,84,372.74	40,41,84,373.00
25-08-2015	34,42,66,274.66	6,63,437.86	1,05,39,165.18	35,54,68,877.70	35,54,68,877.00
19-10-2015	38,00,08,330.14	5,95,010.98	2,11,43,581.92	40,17,46,923.04	40,17,46,923.00
04-11-2015	45,84,17,611.25	5,91,155.33	2,14,14,044.67	48,04,22,811.25	48,04,22,812.00
18-01-2016	35,81,68,276.33	12,45,830.50	10,58,160.13	36,04,72,266.96	36,04,72,266.00
02-02-2016	22,06,30,881.98	9,60,470.50	-	22,15,91,352.48	22,15,91,384.00
04-04-2016	31,27,26,123.80	6,47,646.59	-	31,33,73,770.39	31,33,73,754.00
05-04-2016	27,46,94,085.50	6,01,367.66	-	27,52,95,453.16	27,52,95,452.00
11-04-2016	29,15,40,590.60	6,31,544.82	-	29,21,72,135.42	29,21,72,130.00
12-04-2016	28,47,69,971.89	3,52,351.14	-	28,51,22,323.03	28,51,22,323.00
13-04-2016	29,04,52,759.12	6,11,801.18	-	29,10,64,560.30	29,10,64,544.00
18-04-2016	27,71,45,213.89	6,15,168.51	-	27,77,60,382.40	27,77,60,372.00
26-04-2016	22,95,34,658.80	8,19,068.63	-	23,03,53,727.43	23,03,53,727.00
27-09-2016	20,86,57,989.43	1,69,49,848.22	-	22,56,07,837.65	22,56,07,837.00

**33.** Upon the perusal of the aforesaid table, it can be clearly identified that the difference in the margin obligation utilization was only due to the non-consideration of the margin utilized for the trades executed on the BSE Limited platform.

- 34.** The contradiction in the submission made by the Noticee during the course of the Inspection to the Inspection Team and the submissions made by the Noticee vide Additional submissions dated May 12, 2022 was discussed during the personal hearing. The total of the credit balance clients obtained from the transaction executed on the platform of all stock exchanges as submitted by the Noticee during the course of the Inspection included the margin utilization on behalf of the credit balance clients and while submitting the same data vide Additional Submission dated May 12, 2022 the Noticee is submitting that the margin utilized on behalf of the credit balance clients for the trades executed on the respective trade dates is not included in the said credit balance.
- 35.** The Inspection Report in the table at Pages 7 to 10 in table notes in column 2 “Total credit balance of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to the clients and margin obligation)”. However, it is the submission of the Noticee that the margin obligation of such credit balance client is not considered in the aforesaid data.
- 36.** Noticee submits that once this contradiction was pointed to the Noticee, the Noticee once again verified the ledgers and trial balance of the credit balance. Upon the same it can be concluded that the margin obligation arising for the trades executed on behalf of the credit balance clients across all exchange has not been included in the total of the credit balance clients arrived on the respective dates. The nomenclature of the table of column 2 in the Inspection Report is erroneous. The aforesaid submission of the Noticee can be independently verified from the ledger of each of the clients constituting the credit balance on the respective dates is placed on records.
- 37.** The details of the margin obligation for credit balance clients was separately provided to the Inspection Team and the same is recorded in column 9 of the aforementioned table.



- 38.** As regard the aforementioned discrepancy of the total of credit balance clients, during hearing it was inquired whether the impugned processed data was provided by the Noticee or whether the impugned data as provided in the Inspection Report at Pages 7 to 10 was arrived upon independent processing by the Inspection Team on the basis of the information provided by the Noticee. In this regard, the Noticee submits that since the matter pertains to the inspection being carried out in 2017, the Noticee is not aware whether the processed impugned data as presented in the Inspection Report was provided by the Noticee or not.
- 39.** Noticee submits that the Compliance Officer of the Noticee changed twice during the interim period and accordingly at different times different people were handling the matter, therefore the Noticee cannot be sure in regard to the manner in which the relevant data was provided to the Inspection Team.
- 40.** However, as submitted hereinabove, from the perusal of the ledger statement of all the entities forming part of the total credit balance as on the relevant dates, it can be observed that it is a mistake in the nomenclature of the column 2 of the table of the said data which records that the margin utilization was already included in the said total.
- 41.** Noticee submits that impact of the margin utilization for the trades executed on the relevant dates is recorded on the next trading day subsequent to the day on which the trades are executed. Accordingly, no negative inference in this regard should be drawn against the Noticee in this regard.
- 42.** The Noticee once again submits that upon the perusal of the data submitted by the Noticee, it can be noted that the margin obligation utilization of the credit balance clients was not taken into consideration while calculating the funds available with the Noticee and it is due to this omission the erroneously conclusion that the Noticee did not have sufficient funds to meet its obligation towards the credit balance clients was arrived at.

43. Accordingly, in light of the submissions as provided by the Noticee, it can be concluded that no such violation existed as on the relevant dates as the Noticee had sufficient funds to meet its obligation towards its credit balance clients. In fact, the Noticee had additional liquidity to meet any other unforeseen liability which could have arisen during the relevant period. Noticee had in no way violated the provisions of the SEBI Circular bearing no. SMD/SED/CIR/93/23321 dated November 18, 1993 and accordingly it does not require levy of any penalty on the Noticee.
44. Accordingly, in light of the above, the SCN against the Noticee for the violation SEBI Circular bearing no. SMD/SED/CIR/93/23321 dated November 18, 1993 cannot be sustained as the allegations in the SCN does not flow out of the factual position and therefore, it cannot be legally sustained to warrant any penalty against the Noticee.
45. Since inquiry in the instant matter has been concluded, I proceed to decide the case on merit taking into consideration allegations mentioned in the SCN, submissions of the Noticee and material available on record.

## **CONSIDERATION OF ISSUES AND FINDINGS**

46. The issues that arise for consideration in the instant matter are:

- Issue No. I** Whether the Noticee violated Circular dated November 18, 1993 by misusing funds of the clients with credit balance to settle the obligations of clients with debit balance?
- Issue No. II** If yes, whether the failure, on the part of the Noticee attracts monetary penalty under Section 23D of the SCRA?
- Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA read with Rule 5 (2) of the SCR Adjudication Rules?

**Issue No. I. Whether the Noticee violated Circular dated November 18, 1993 by misusing funds of the clients with credit balance to settle the obligations of clients with debit balance?**

- 47.** During the inspection of the Noticee, an analysis of the data including total fund balance available, collateral deposited with clearing corporation/clearing member, total credit balance of all clients etc. was carried out to ascertain whether funds of credit balance clients were used for settlement obligations of debit clients. Upon analysis since it was observed that the value of difference between funds available in client bank accounts plus cash/cash equivalent deposits with clearing corporation/clearing member across all stock exchanges and clients' funds as per client ledger is in negative for all the twenty sample dates, it was alleged that the Noticee has used the funds of clients with credit balance to meet settlement obligation of clients with debit balance.
- 48.** The Noticee has mainly contended that the difference i.e. 'G' is coming negative, since the margin obligations of Credit Balance Clients have not been considered by SEBI while calculating the fund difference on sample dates; and if the margin obligations of the clients are considered while calculating the value of 'G' on the sample dates, the value will be positive, indicating that there was no such misuse of funds of credit balance clients.
- 49.** In this regard, it is noted from the records in respect if the inspection retrieved from SEBI show that the information and figures used by the inspection team while calculating the value of 'G', was submitted by the Noticee itself. Further, it is also noted that the column representing value 'C' referred 'Total Credit balance of all clients (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations).
- 50.** Now, the Noticee has contended that the aforesaid details provided by it during inspection did not adjust for the margin obligations of the clients and hence the

'G' is becoming negative. In this regard, I note that the detailed working of calculation done by inspection team is not available in the records, to verify whether the margin obligations of credit balance clients were adjusted while calculating the total balance of the credit balance client. Further, the dump of the inspection data collected by inspection team is also not available on the records, to cross verify the tables and calculations with the supporting documents.

**51.** In view of the same, to evaluate the contention of the Noticee, I have relied upon on the calculations provided by the Noticee in its reply along with the supporting documents placed on records by the Noticee. I have perused the day-wise detailed working of margin obligations of credit balance client for the sample dates along with the supporting files for margin obligations exchange wise segment wise submitted by the Noticee. The data submitted by the Noticee during inspection also included the figures for the margin utilized for the positions of credit balance clients across exchanges, however the same was not adjusted in column 'C' at the time of inspection.

**52.** The Noticee has provided the calculation of the funds available with the Noticee to meet its obligation towards the credit balance clients after adjusting the margin utilization for them across all exchanges as under:

Date	Total credit balances of all clients as obtained from trial balance across stock exchanges	Margin required against credit balance clients across stock exchanges	Revised difference taking into consideration the margin as submitted during inspection	Bank Balances + Collateral Deposited with clearing corporations and Clearing members	
	(C*)	(M)	(C = C*-M)	(A+B)	G = (A+B)-(C)
<b>06/04/2015</b>	35,03,18,255	49,40,76,055	-14,37,57,800	20,41,65,208	34,79,23,008
<b>20/04/2015</b>	39,43,26,576	51,58,17,621	-12,14,91,045	22,06,13,885	34,21,04,930
<b>21/04/2015</b>	37,84,11,748	48,33,56,365	-10,49,44,617	21,07,14,531	31,56,59,148
<b>05/05/2015</b>	31,67,82,152	40,15,82,463	-8,48,00,311	20,57,36,502	29,05,36,813
<b>06/05/2015</b>	40,77,23,223	40,30,18,868	47,04,355	20,00,65,849	19,53,61,494

<b>08/05/2015</b>	35,53,65,571	39,97,81,344	-4,44,15,773	19,83,37,533	24,27,53,306
<b>12/05/2015</b>	35,32,58,364	40,41,84,373	-5,09,26,009	21,89,08,285	26,98,34,294
<b>25/08/2015</b>	39,28,39,945	35,54,68,877	3,73,71,068	19,35,75,596	15,62,04,528
<b>19/10/2015</b>	29,50,28,631	40,17,46,923	-10,67,18,292	19,06,24,835	29,73,43,127
<b>04/11/2015</b>	32,95,38,141	48,04,22,812	-15,08,84,671	19,01,60,345	34,10,45,016
<b>18/01/2016</b>	23,87,18,173	36,04,72,266	-12,17,54,093	13,05,82,400	25,23,36,493
<b>02/02/2016</b>	19,87,95,142	22,15,91,384	-2,27,96,242	11,37,80,488	13,65,76,730
<b>04/04/2016</b>	22,95,24,334	31,33,73,754	-8,38,49,420	18,37,66,986	26,76,16,406

**53.** Noticee has provided the margin obligation files for all the 20 sample dates for the credit balance clients across segments of exchange, additionally Noticee has provided the ledger of each of the clients constituting the credit balance on the 20 sample dates. I have perused the supporting documents and find the figures given in column C\* and M in the table above is corroborated with margin obligation files and ledger files for the respective sample dates. Further the Column A+B in the above table, is total of aggregate fund balances in all client Bank accounts (including settlement account) and aggregate value of collateral deposited with clearing corporations and Clearing members. The value in column A+B matches with the figures given for these fund categories by the inspection team. Taking these figures into consideration, I find that the value of 'G' for all the 20 sample dates are positive. Hence, the revised value of G does not indicate any misutilisation of credit balance client funds.

**54.** Considering that the revised data does not indicate the misutilisation of credit balance client funds by the Noticee, the allegation of violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 by Noticee does not survive.

**55.** As, the violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 is not established, issues II and III do not merit consideration.

**ORDER**

**56.** In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticee vide SCN dated February 26, 2019 are disposed of.

**57.** Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules

**DATE: May 31, 2022**

**PLACE: MUMBAI**

**MANINDER CHEEMA**

**ADJUDICATING OFFICER**