

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/54320	Date: November 04, 2022
Circular Ref. No: 161/2022	

To All NSE Members,

Sub: SEBI Order in the matter of SEBI Order in the matter of Allied Financial Services Pvt. Ltd.

This is with reference to NSE circular no. NSE/INVG/40326 dated February 27, 2019, referring to SEBI Order no. WTM/AB/SEBI/NRO/22/2019 dated February 27, 2019, and NSE circular no. NSE/INVG/41034 referring to SEBI Order no. WTM/AB/SEBI/MIRSD/NRO/06/2019-20.

SEBI now vide its Order No. WTM/AB/MIRSD/MIRSD-SEC-4/21079/2022-23 dated November 04, 2022, has hereby restrained the below mentioned entities from accessing the securities market in any manner and are also prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of 7 years.

Sr. no.	Entity Name	PAN
1.	Allied Financial Services Pvt. Ltd.	AAACA2020K
2.	Awanish Kumar Mishra	AGOPM7538H
3.	Jitendra Kumar Tiwari	ALBPT6629A

It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone pursuant to the Interim Order No. WTM/AB/SEBI/NRO/22/2019 read with the Confirmatory Order No. WTM/ AB / SEBI / MIRSD/ NRO / 06/ 2019-20 shall be taken into consideration and set off from period mentioned above.

Further, the directions issued under paragraph 8 of the Interim Order read with the Confirmatory Order in so far as it relates to below mentioned entities, shall stand vacated. This is without prejudice to the directions against the said entities contained in the SEBI orders dated July 02, 2021 , August 09, 2021, and February 18, 2022.

National Stock Exchange of India

Sr No.	Entity Name	PAN
1.	Money Mishra Financial Services	AAZFM1357R
2.	Money Mishra Overseas Pvt. Ltd	AAJCM8612N
3.	M/s Digi locker	ABJFM9337L
4.	Pankaj Garg, Partner, M/s Digi locker	AERPG5388J
5.	Jitender Malhotra, Partner, M/s Digi locker	ALRPM2119G

The order comes into force with immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Darshan Bhandarkar (Extension: 25507), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: SEBI Order in the matter of Allied Financial Services Pvt. Ltd.

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

Under Sections 11(1), 11(4), 11B(1), 11B(2) and 11D of the Securities and Exchange Board of India Act, 1992, read with Section 15HA of Securities and Exchange Board of India Act, 1992, and Section 12A(1) and 12A(2) of Securities Contracts (Regulation) Act, 1956 read with Section 23D of Securities Contracts (Regulation) Act, 1956 in the matter of Allied Financial Services Pvt. Ltd..

IN RESPECT OF

Sr. No.	NOTICEE	PAN
1.	Allied Financial Services Pvt. Ltd.	AAACA2020K
2.	Awanish Kumar Mishra	AGOPM7538H
3.	Jitendra Kumar Tiwari	ALBPT6629A
4.	Money Mishra Financial Services	AAZFM1357R
5.	Money Mishra Overseas Pvt. Ltd	AAJCM8612N
6.	M/s Digi locker	ABJFM9337L
7.	Pankaj Garg, Partner, M/s Digi locker	AERPG5388J
8.	Jitender Malhotra, Partner, M/s Digi locker	ALRPM2119G

(The aforesaid entities are hereinafter referred to by their respective names / serial numbers or collectively as "the Noticees")

BACKGROUND:

- Allied Financial Services Pvt. Ltd. (hereinafter referred to as "**AFSPL**") was a registered member of the National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") with registration number INZ000164832. AFSPL is also a Depository Participant of National Securities Depository Ltd. with registration number IN-DP-387-2018.
- SEBI received an email dated February 23, 2019, from NSE, whereby NSE forwarded an interim report (hereinafter referred to as "**NSE-IR**") containing its preliminary

observations of the inspection of AFSPL. The NSE-IR also included a summary of the funds and securities available with Noticee No. 1. Based on the observations made in the NSE-IR, SEBI, by way of an *Ex Parte-Ad-Interim Order* dated February 27, 2019 (hereinafter referred to as "**Interim Order**"), pending completion of forensic audit initiated by NSE, issued the following directions:-

- "a. Allied Financial Services Private Ltd., Rajeev Kumar Asopa, Lalit Agarwal, Rajendra Prasad Basia, Awanish Kumar Mishra, Jitendra Kumar Tiwari, Money Mishra Financial Services, Money Mishra Overseas Pvt. Ltd., Pankaj Garg and Jitender Malhotra are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;*
- b. The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*
- c. The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of SEBI/NSE.*
- d. The aforesaid Noticees are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of this order.*
- e. Till further directions in this regard, the assets of the Noticees mentioned at para 8(c) of this order shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/investors under the supervision of the NSE.*
- f. The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees and persons except for the purpose mentioned in sub-para (e) after confirmation from NSE.*
- g. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of NSE.*
- h. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.*
- i. Since AFSPL is a DP with NSDL having Registration nos. IN-DP-387-2018, NSDL is also directed to closely monitor the activities of AFSPL as a DP."*

3. Thereafter, vide Order No. WTM/AB/SEBI/MIRSD/NRO/06/2019-20 dated May 17, 2019 (hereinafter referred to as "**Confirmatory Order**"), the directions issued vide the Interim Order were confirmed against all the persons covered therein other than Rajeev Kumar Asopa, Lalit Agarwal and Rajendra Prasad Basia, for whom the directions stood vacated.
4. Subsequent to the passing of the Confirmatory Order, NSE submitted a forensic audit report (hereinafter referred to as "**FAR**") in the matter to SEBI on September 18, 2019. The period covered under the FAR was from April 1, 2017, to January 31, 2019. Noticee No. 1 was also declared a defaulter and expelled by NSE on November 4, 2019, for the following reasons:-
- a) *Dealing with unregistered entities*
 - b) *Misuse of client funds*
 - c) *Shortfall in net worth*
 - d) *Non-availability of client accounts*
 - e) *Non-resolution of investor complaints*
5. SEBI, thereafter, issued a Show Cause Notice (hereinafter referred to as "**SCN**") dated October 29, 2021, alleging the following,-
- a. *Non-availability of client funds*
 - b. *Non-availability of client securities*
 - c. *Non-settlement of funds and securities of clients*
 - d. *Non-segregation of transaction between own and 'client bank account'*
 - e. *Misuse of clients' funds*
 - f. *Dealing with unregistered entities*
 - g. *Non maintenance of sufficient Net worth*
 - h. *Incorrect margin reporting collection to the exchange in F&O segment*
 - i. *Assured returns offered to clients*
 - j. *Mis-reporting / Non-reporting of data under enhanced supervision to NSE*
 - k. *Income details not declared in client registration document of the clients*
 - l. *Disproportionate exposure provided to clients*
 - m. *Incorrect reporting under weekly enhanced supervision report to the Exchange.*

6. Subsequent to the issuance of SCN, an opportunity of personal hearing was granted to the Noticees on July 22, 2022. Noticee No. 2 appeared in person on behalf of Noticees No. 1, 2, 4 and 5 and requested an adjournment on the grounds that certain documents, including the copy of the SCN, were not served on the Noticees. Noticee No. 2 also submitted that as he was under arrest in connection with a complaint filed by Dalmia Bharat Group alleging siphoning of securities, he had not received the notices sent by SEBI. Considering the submissions made by Noticee No. 2, it was directed that a copy of the SCN and other relevant material be immediately furnished to the Noticees. Thereafter, another opportunity of hearing was granted on August 5, 2022, wherein the said Noticees entered appearance through Divyanshu Goyal, Advocate, and again sought an adjournment. The said adjournment request was also granted, and the Noticees were provided another opportunity of hearing on August 10, 2022.
7. On the said date, Shikha Sinha, Advocate, appeared on behalf of the Noticees and submitted that the Noticees have already filed written submissions dated August 10, 2022, and have no additional submissions to make in the matter. Despite the submissions made by the counsel representing the Noticees, considering that the Noticees had earlier contented that all the relevant documents have not been provided, an opportunity of inspection was granted to the Noticees. The Authorised Representative of the Noticees was informed that they could examine all the material available with SEBI on any date prior to August 17, 2022, and thereafter, submit final written submissions, if any, within one week from the date of availing the inspection. I, however, note from the records that the Noticees neither availed the opportunity of inspection nor submitted any further replies.
8. Noticees Nos. 6 to 8 availed the opportunity of hearing granted on July 22, 2022. The Noticees entered appearance through Amit Gupta, Advocate. They subsequently filed written submissions dated August 8, 2022. The summary of the written and oral submissions made by the Noticees is given below:-
- Noticee Nos. 1, 2, 4 and 5**
- a. It was submitted that the SCN alleges the same violations and is based on the very same facts as taken up by SEBI WTM while exercising powers under Section 11 of the SEBI Act pursuant to which Order dated February 27, 2019, was passed.
- b. The allegations with respect to the violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations,

2003 ("PFUTP Regulations") have already been covered in the Order dated July 2, 2021.

- c. The Noticees placed reliance on the Order of the Hon'ble Securities Appellate Tribunal in the matter of *Vital Communications Ltd. vs. SEBI*¹, wherein it was held as under:-

"The Order dated July 31, 2014 was passed under Section 11 and 11B of the SEBI Act. The impugned Order dated September 28, 2018 has been passed again under Section 11 and 11B of the SEBI Act for the same cause of action and therefore, it is barred by the principles of res judicata.

From the aforesaid, it is clear that the Supreme Court held that the doctrine of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties on the principle that no person should be vexed twice in a litigation for the same cause of action." (Emphasis supplied)

- d. It was further submitted that the present SCN is identical to the show cause notice dated May 5, 2022, bearing no. EAD-10/SM/S./19089/1/2022 issued by SEBI. The Noticees contended that the allegations and facts in the aforesaid SCN are a verbatim copy of the present SCN and thus, overlapping proceedings are being carried out by the Adjudicating Officer on the very same cause of action.
- e. It was also submitted that Noticees had not received any annexures with the SCN.
- f. It was further contended that the SCN is based on the following documents:
- (i) NSE Inspection Report.
 - (ii) SEBI Order dated February 27, 2019.
 - (iii) SEBI Order dated May 17, 2019.
 - (iv) Forensic Audit Report and Annexures.
- g. It was submitted that apart from the said documents, which are merely earlier Orders and NSE reports, the records of AFSPL have been considered for verification of the allegations. It was stated that, upon perusal of the allegations in the SCN, the Noticees have identified various grave errors and misreporting by NSE, especially with respect to funds available and payable to clients, which has led to inaccurate reporting and exaggerating the alleged non-availability of funds of ₹94.42 Crores.

¹ 2021 SCC OnLine SAT 2595

- h. It was also submitted that the present SCN has wrongly arrayed Noticees No. 4 and 5 as parties to the proceedings. It was stated that the said entities are not SEBI registered entities nor members of any stock exchange, and their operations are not under the supervision of SEBI in any manner whatsoever. It was therefore contended that no action could be initiated against the said entities due to lack of jurisdiction.

Noticee Nos. 6 to 8

- a. The Noticees submitted that the present matter was barred by the principle of Res-Judicata. It was contended that the Noticees had already been penalized by SEBI for the same cause of action, i.e. Alleged facilitation of transfer of MF units valued ₹21,70,04,737 from NEPL (Navjoy Emporium Pvt. Ltd.), vide Interim Order dated February 27, 2019, Confirmatory Order dated May 17, 2019, and Final Order dated August 9, 2021.
- b. On merits, it was submitted that Jitender Malhotra (Noticee No. 8) and Pankaj Garg (Noticee No. 7) were only employees of Awanish Kumar Mishra (Noticee No. 2). It was submitted that they initially worked for Money Mishra Financial Services (Noticee No. 4) and later joined Allied Financial Services Pvt. Ltd. (Noticee No. 1).
- c. The Noticees submitted that Awanish Kumar Mishra, misusing his power as an employer, made Noticees No. 7 and 8 sign certain blank documents. Using the said documents, Awanish Kumar Mishra formed Noticee No. 6.
- d. It was also contended that Awanish Kumar Mishra took PAN of Noticee no. 6 by forging the signatures of Noticees No. 7 and 8.
- e. It was further submitted that the demat account of Noticee No. 6 was opened by Noticee No. 2 without informing Noticees No. 7 and 8. Further, Awanish Kumar Mishra, by misusing the demat account of Noticee No. 6, had allegedly facilitated the transfer of MF units valued at ₹21,70,04,737 from NEPL (Navjoy Emporium Pvt. Ltd.) Demat account to Demat accounts of Money Mishra Financial Services and Awanish Kumar Mishra.
- f. The Noticees have not benefitted from such alleged transfer of mutual fund units of NEPL.

CONSIDERATION

9. Before considering the issues on merit, I would like to address the preliminary objections raised by the Noticees. The Noticees have contended that multiple proceedings have been

initiated by SEBI on the same cause of action. In this regard, I note that the Interim and Confirmatory Orders were passed by SEBI, in exercise of powers under sections 11B, 11D and 11(4), to prevent the affairs of the Noticee No.1 from being conducted in a manner which is detrimental to the interest of investors in the securities market. These were interim measures based on prima facie findings, and thereafter, the SCN, which is under consideration, came to be issued pursuant to the completion of the forensic audit in the matter. In view of the same, I have find no merit in this preliminary objection raised on behalf of the Noticees.

10. In respect of the preliminary objections raised by Noticees in respect of the allegation in the SCN pertaining to dealing with unregistered entities by Noticees (para 8(f) of the SCN), I note the said issue has already been covered in the Orders dated July 2, 2021², August 9, 2021,³ and February 18, 2022⁴, passed by SEBI. In view of the same, said contravention alleged in the SCN would be outside the scope of the present proceedings and will not be considered. The preliminary objection raised by the Noticees in this respect is being accepted. I also note that only allegations in respect of Noticees No. 4 to 8 in the SCN was contained para 8(f) of the SCN. In view of the same, there will not be any directions against the said Noticees in this order.
11. In respect of the submission made on behalf of Noticees No. 1 and 2 that certain documents have not been provided, I note that the said Noticees were provided with an additional opportunity of inspection pursuant to the hearing held on August 10, 2022. It was also directed that all documents sought by the said Noticees be made available to them on the date of such inspection. Having failed to avail of the said opportunity of inspection, I do not see any merit in the Noticee's contention that their interests have been prejudiced as certain documents have not been made available.
12. I am now proceeding to consider the issues on merit. Having considered the material available on record, the SCN issued in the matter, and the written and oral submissions made by the Noticees, I note that Noticees No. 1 and 2 have not replied on merits to many of the allegations made in the SCN. Further, Noticee No. 3 has neither appeared for the

² Passed against Noticees No. 1 to 3

³ Passed against Noticees No. 6 to 8

⁴ Passed against Noticees No. 2 to 5

personal hearing nor submitted any written submission. I note from the records that the SCN was duly served on the Noticee No. 3. In view of the same, I will be constrained to record my findings on issues where the Noticees have not replied on merit on the basis of the material available on record.

13. I propose to consider the three violations alleged in the SCN (Non-availability of client funds, Non-segregation of transactions and Misuse of client funds) together, as the legal provisions alleged to have been violated are common across these violations. I note that SEBI has issued Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, to prevent the misuse of clients' funds by the stock brokers. Clause 1 of the said circular provides as under:-

"It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

- i. Moneys received from or on account of each of his clients and,*
- ii. the moneys received and the moneys paid on Member's own account.*

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than:

- i. money held or received on account of clients;*

- ii. *such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii. *money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv. *a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

- i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
- ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;*
- iii. money which may by mistake or accident have been paid into such account in contravention of para C above.*

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account."

14. Further, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides for uploading of clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system, provides that:-

"Transfer of funds between "Name of Stock Broker -Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred."

A. NON-AVAILABILITY OF CLIENT FUNDS

15. I note from the records that as on January 31, 2019, there were client payables amounting to ₹138.78 Crore against which funds amounting to only ₹44.36 Crore was available with Noticee No. 1, in its bank account / with clearing member / clearing corporation and exchange. Noticee No. 1 had a shortage of funds amounting ₹94.42 Crore, which was payable to the clients as on January 31, 2019, the details of which are given in the table below:-

TABLE 1		
Sr. No.	PARTICULAR	AMOUNT (IN ₹ CRORE)
1.	CREDITORS PAYABLE-A	138.78
2.	DEPOSITS AVAILABLE WITH IL&FS SECURITIES SERVICES LTD (ISSL) (CLEARING MEMBER)	42.42
3.	AMOUNT AVAILABLE WITH EXCHANGE	1.10
4.	BANK BALANCE	0.86
5.	TOTAL FUNDS AVAILABLE (2+3+4)	44.36
NON-AVAILABILITY OF FUNDS (1-5)		94.42

16. Noticee No. 1, in its reply filed before me, has disputed this figure and stated that the figure of ₹94.42 Crores has been arrived at without a proper scrutiny of its records. I, however, note that other than making this bland assertion, the Noticee has not submitted any documentary records or evidence before me to support this claim. Further, the Noticee has only disputed the quantum of the shortfall of client funds. It is also pertinent to note that the Noticee in its earlier reply dated October 5, 2020, filed before SEBI has in fact admitted to diverting client funds to third parties.
17. The circulars quoted above have been issued by SEBI to protect the interest of investors and to ensure that the monies of the clients available with a stock broker are segregated and identified separately from the own funds of the broker. This has been done to ensure that client funds are utilised only for permissible activities, as provided under the relevant circulars, and not used for meeting the liquidity needs of the broker or its other clients and to also prevent diversion of such funds. In view of the above, considering the shortfall reflected in the books and admission on the part of Noticee No. 1 that it has diverted funds

to third parties, I have no hesitation in holding that AFSPL has misappropriated client funds and transferred it to third parties in contravention of the provisions of securities laws and thus, violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

B. NON-SEGREGATION OF TRANSACTIONS BETWEEN OWN AND '*CLIENT BANK ACCOUNT*'.

18. I note from the records that the Inspection had identified 44 instances in which AFSPL had not segregated transactions between own and '*client bank account*'. It was noted that an amount of ₹19.72 Crores has been transferred from the '*client bank account*' to own bank account, and ₹3.89 Lakhs has been transferred from own to '*client bank account*', resulting in a net transfer of ₹19.68 Crores from clients' to own bank account, in contravention of the provisions of the aforementioned SEBI circulars.
19. I note that the SEBI circulars dated November 18, 1993 and September 26, 2016, permit the transfer of funds between '*client bank account*' and own bank account of the stock broker only for specific limited purposes provided by the said circular. However, as stated above, it is noted that the Inspection identified that Noticee No. I transferred a net amount of ₹19.72 Crores from the clients' accounts to own account for extraneous reasons, which was not permitted under aforesaid circulars issued by SEBI. Further, it is noted that Noticee No. 1 has also not maintained a daily reconciliation statement recording the reason for the transfer of funds between own and clients' bank/beneficiary accounts as required under SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
20. In view of the above, I hold that the AFSPL has not segregated own and clients' bank accounts and also has not maintained a daily reconciliation statement for funds and thus, violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

C. MISUSE OF CLIENTS' FUNDS.

21. It was observed during the Inspection that Noticee No. 1 had transferred funds from the '*client bank account*' to its own bank account and thereafter mis-utilized such funds in contravention of provisions of the SEBI Circulars. I note from the records that client funds to the tune of ₹17.76 Crores, which were transferred from the '*client bank account*' to Noticee No. 1's bank account, were utilized for buying property, making donations, etc. The details of the same are provided below:-

- (a) AFSPL invested ₹15.92 Crore in property.
- (b) AFSPL donated ₹50 lakh each to Avanee Foundation and Serendipity Arts.
- (c) Certain payments amounting to ₹0.84 Crore have been made to an event management company.
- (d) AFSPL has also made payment for the purchase of software from Optoss Technologies amounting to ₹1.43 Crore.

22. I further note from the records that during the Forensic Audit, the proprietary (hereinafter referred to as "**PRO**") ledger balance of Noticees No. 1 for sample dates was inspected and it is observed that on all 5 sample dates client funds were used to meet the PRO obligation, amounting to ₹88.29 Crores, the details of which are given in the table below:-

TABLE 2					
DATE	PRO LOSS (A)	CLIENT LOSS (B)	NET (C=A-B)	PRO LEDGER BALANCE (D)	FUNDS OF CLIENTS USED FOR PRO OBLIGATION (E=D-A) IF D IS POSITIVE OR VALUE OF A
28-12-2017	-75434384	-142594879	-218029263	-146315552.6	75,43,43,84
31-01-2018	-515173563	515192238	18,674.75	122464385.4	39,27,09,178
08-02-2018	-334749368	364614943	29865575.25	-98028619.47	33,47,49,368
16-10-2017	-91941240	87247715	-4693525.5	54856871.55	3,70,84,368
24-11-2017	-79889035	43000491	-36888544	-79372846.04	4,30,00,491
TOTAL					88,29,77,789

23. It is further noted from the FAR that for the period April 1, 2017, to February 18, 2019, excess payments to the tune of ₹87.56 Crores were made to the following entities by AFSPL :-

TABLE 3			
Sr. No	NAME OF ENTITY	EXCESS PAYMENT (IN ₹ CRORE)	REMARKS
1.	COINTRIBE TECHNOLOGIES PVT. LTD.	22.70	RELATED PARTY OF OCL INDIA LTD / DALMIA BHARAT LTD. EXCESS AMOUNTS RECEIVED WERE TRANSFERRED TO ANTORDAYA COMMERCIAL AND HOLDINGS PVT LTD AND GLOW HOMES TECHNOLOGIES PVT. LTD., WHICH FURTHER TRANSFERRED IT TO AFSPL
2.	VINIMAY DEVELOPERS PVT. LTD.	0.90	RELATED PARTY OF OCL INDIA LTD / DALMIA BHARAT LTD. AMOUNT RECEIVED WERE FURTHER TRANSFERRED TO ANTORDAYA COMMERCIAL AND HOLDINGS PVT. LTD, WHICH FURTHER TRANSFERRED IT TO COINTRIBE TECHNOLOGIES AND SOME OF THE FUNDS WERE UTILISED FOR THE PURCHASE OF MUTUAL FUND UNITS BY THEM.
3.	MONEY MISHRA FINANCIAL SERVICES	36.11	RELATED PARTY OF AFSPL. AMOUNTS RECEIVED BY MONEY MISHRA FINANCIAL SERVICES WERE UTILISED FOR MAKING REGULAR PAYMENTS TO REGISTERED CLIENTS AND OTHER ENTITIES.
4.	ENMAR PORTFOLIO LLP	2.42	FUNDS RECEIVED WERE FURTHER TRANSFERRED TO VARIOUS PARTIES WHO WERE ALSO REGISTERED CLIENTS OF AFSPL
5.	JJ TRADELINKS PVT. LTD	14.31	
6.	PRIMARC PROJECTS PVT. LTD.	6.00	FUNDS RECEIVED WERE TRANSFERRED TO CHARAK AYURMEDICA PV, GIRDHAR TRACOM PVT LTD AND OTHERS PARTIES.
7.	AWAL PORTFOLIO LLP	4.75	AMOUNTS RECEIVED WERE UTILISED FOR MAKING INTEREST PAY OUTS TO REGISTERED CLIENTS AND OTHER ENTITIES OF AFSPL.
8.	BIJAY KUMAR AGARWAL	0.37	EMAIL OF BIJAY KUMAR AGARWAL HAS BEEN ASSOCIATED WITH GLOW HOMES TECHNOLOGIES PVT. LTD. IN THE CLIENT MASTER OF AFSPL. CONTRACT NOTES AND OTHER CORRESPONDENCES HAVE BEEN SENT TO GLOW HOMES TECHNOLOGIES PVT LTD ON THE EMAIL ID OF BIJAY KUMAR AGARWAL. BIJAY KUMAR AGARWAL WAS A DIRECTOR IN ANTORDAYA COMMERCIAL & HOLDINGS PVT. LTD. AND AN AUTHORIZED SIGNATORY IN SOME OF THE DALMIA GROUP COMPANIES.
	TOTAL	87.56	

24. As stated in the preceding paragraphs, Noticee No. 1, in its earlier reply before SEBI, had admitted to diverting client funds to third parties. I note that such mis-utilisation of client funds by a broker is a grave violation of the provisions of the SEBI circulars, which seek to safeguard funds entrusted by clients with brokers and has a chilling effect on investor confidence. Such acts by registered intermediaries call into question the faith reposed by the investors in market institutions and negatively impact investor participation in the markets. In view of the above, it is noted that AFSPL has misused clients' funds amounting to ₹17.76 Crores for purposes other than those specified in the SEBI circulars, misused clients' funds amounting to ₹88.29 Crores for proprietary obligations, and also made excess

payments to other clients amounting to ₹87.56 Crores in contravention of the provisions of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

D. NON-AVAILABILITY OF CLIENT SECURITIES

25. To prevent the misuse of clients' securities by the stock broker, Clause 2 of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, provides that:-

"It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-

- a. Securities received for sale or kept pending delivery in the market;*
- b. Securities fully paid for, pending delivery to clients;*
- c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);*
- d. Securities that are fully paid for and are held in custody by the Member as security/ margin etc. Proper authorization from client for the same shall be obtained by Member;*
- e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc."*

26. Also, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on enhanced supervision provides for uploading clients' fund balance and securities balance by the Stock Brokers on the Stock Exchange system. The said Circular provides that:

"Transfer of securities between "Name of the Stock Broker - Client Account" and individual client's BO account, "Name of the Stock Broker – Pool Account" and "Name of the Stock Broker – Collateral Account" is permitted. Transfer of securities between "Name of the Stock Broker - Client Account" to "Name of the Stock Broker - Proprietary Account" is permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc. For such transfer of securities, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred."

27. It is noted from the records that as on January 31, 2019, securities amounting to ₹0.34 Crore recorded in the register of securities were not available in the DP account or with Clearing Member of Noticee No. 1. Further, securities amounting to ₹0.35 Crore, which were reflected in the DP account of AFSPL, were not found to have been recorded in the register of securities.

Table 4	
Particulars	Amount (in ₹ Crore)
Value of Securities as per register of securities as on January 31 2019	387.09
Value of Securities in Beneficiary accounts	0.75
Value of Security with Clearing Member- IL&FS Securities Services Ltd. (ISSL)	386.36
Total Value of Securities Available	387.11
Non-availability of Securities	0.34
Excess securities available in DP	0.35

28. I note that Noticee No. 1 has not made any submission before me in respect of this allegation, and therefore I am constrained to record my findings on the basis of the material available on record. I note that there has been a shortfall in securities recorded in the name of the clients in the register of securities of Noticee No. 1 than what was actually reflected in the DP account/available with the clearing member of the said Noticee. In view of the same, I hold that AFSPL had misappropriated client securities and thus violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

E. NON-SETTLEMENT OF FUNDS & SECURITIES OF CLIENTS

29. Clause 12 of Annexure A of SEBI Circular no. SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009, provides that:-

"Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

- a. The authorization shall be renewed at least once a year and shall be dated.*

- b. *The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.*
- c. *The authorization shall contain a clause that the Client may revoke the authorization at any time.*
- d. *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.*
- e. *The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.*
- f. *The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.*
- g. *Such periodic settlement of running account may not be necessary:*
 - i. *for clients availing margin trading facility as per SEBI circular*
 - ii. *for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).*
- b. *The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/ Clearing Corporation.*
- i. *There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.*
- j. *These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them."*

30. Clause 8.1 of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, provides that the stock broker shall ensure that:-

"8.1.1. There must be a gap of maximum 90/ 30 days (as per the choice of client viz. Quarterly/ Monthly) between two running account settlements.

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/ securities shall be sent within five days from the date when the account is considered to be settled."

31. It is observed from the trial balance and register of securities as on November 30, 2018, that funds and securities worth ₹37.48 Crores of 102 inactive clients, who had not traded in the preceding three months, have not been settled. The illustrative list is provided in the table below:-

TABLE 5						
Sr. No.	Client Code	CR BALANCE AS ON NOVEMBER 30, 2018 (AMOUNT IN ₹)	DR BALANCE AS ON NOVEMBER 30, 2018 (AMOUNT IN ₹)	SECURITIES VALUE AS ON NOVEMBER 30, 2018 (AMOUNT IN ₹)	TOTAL FUNDS AND SECURITIES (AMOUNT IN ₹)	LAST TRADE DATE
1	C4597	198,190,046.18	-	-	198,190,046.18	23/AUG/2018
2	C4615	35,667,205.11	-	-	35,667,205.11	13/AUG/2018
3	C4731	9,400,000.00	-	-	9,400,000.00	NOT TRADED
4	C4711	7,571,858.48	-	-	7,571,858.48	NOT TRADED
5	C4568	1,090,495.44	-	4,773,176.80	5,863,672.24	14/AUG/2018
6	C4729	3,040,200.80	-	2,810,447.06	5,850,647.86	NOT TRADED
7	C4596	4,425,753.57	-	-	4,425,753.57	22/DEC/2017
8	C4539	3,594,821.88	-	-	3,594,821.88	5/APR/2018
9	C4654	3,136,488.48	-	325,445.67	3,461,934.15	13/AUG/2018
10	C4646	3,157,224.71	-	-	3,157,224.71	27/JUN/2018

32. I note that as per the SEBI circular dated December 03, 2009, the actual settlement of funds and securities has to be done by the stock broker at least once in a calendar quarter or once in a month, depending on the preference of the client. However, it is noted from the table above that Noticee No. 1 has failed to periodically settle the accounts of a large number of its clients as mandated under the SEBI circular.
33. The periodic settling of accounts is a prudential norm prescribed by SEBI in the interest of investors so that their funds are not kept unsettled by the stock broker for indefinite periods. In view of the above, I hold that Noticee No. 1 has failed to settle the funds and

securities of clients and thus violated SEBI Circular no. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

F. NON MAINTENANCE OF SUFFICIENT NET WORTH

34. Regulation 9 of SEBI (Stock Brokers) Regulation, 1992 (hereinafter referred to as "Stock Brokers Regulations") lays down the conditions subject to which a certificate of registration is granted by SEBI. These conditions, I note, have to be complied with by a stock broker as long as they hold a valid certificate of registration. One of the conditions specified in Regulations 9 (Clause g) is that a registered stock broker must at all times satisfy the net worth criteria laid down by SEBI. Further, SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, provides for monitoring of the net worth of stock brokers via submission of a half yearly certificate to the stock exchange.
35. I note that the SCN alleges that during the Inspection, it was noted that Noticee No. 1 was not meeting the net worth requirements as it had not adjusted proprietary losses and unrecoverable/doubtful debts from the net worth, which resulted in a negative net worth of ₹41.71 Crores, the details of which are given in the table below:-

TABLE 6		
PARTICULARS	AMOUNT IN ₹	AMOUNT IN ₹
SHARE CAPITAL & FREE RESERVES (A)		5,55,09,398
RESERVE (B)		
LESS: LOSSES FOR THE PERIOD APRIL 01, 2017 TILL JULY 30, 2018	42,08,91,277	
ADJUSTED FREE RESERVES		-42,08,91,277
SHARE CAPITAL + FREE RESERVE (C=A+B)		-36,53,81,879
LESS:- NON ALLOWABLE ASSETS		
FIXED ASSETS	76,93,682.39	
NON-ALLOWABLE SECURITIES (UNLISTED SECURITIES)	0	
PREPAID EXPENSES, LOSSES	0	
30% OF MARKETABLE SECURITIES	0	

DOUBTFUL DEBTS & ADVANCES	4,41,09,348	
TOTAL NON-ALLOWABLE ASSETS (D)		5,18,03,030
TOTAL NET WORTH (E=C-D)		-41,71,84,909

36. I note that the Noticee has failed to provide any reply on merits on this issue, and therefore I am constrained to conclude that Noticee has no reply to offer and the allegations made in the SCN in this regard are true. In view of the same, I hold that AFSPL has failed to comply with the continuous net worth requirement and thus violated Regulation 9 (g) of SEBI (Stock Brokers) Regulation, 1992, and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

G. ASSURED RETURNS OFFERED TO CLIENTS

37. I note from the records that while examining complaints received from the clients regarding failure to return their credit balance lying with Noticee No. 1, it was observed from the bank books and client ledgers maintained by AFSPL that it had made payments amounting to ₹19.55 Crores, during the period April 1, 2017, to February 18, 2019, to clients from the 'client bank account' maintained by it. It was noted that these payments, paid at regular intervals (mostly monthly), were made to all 44 clients who had complained against the Noticee regarding non-receipt of credit balance. It was also observed that the payments made to the individual clients were in co-relation with their credit balance of securities/funds available in the books of the AFSPL and had no relation to the pay-out requirements arising out of the transactions executed on behalf of such clients. In view of the above, it was alleged in the SCN that Noticee No. 1 was offering assured returns to clients on credit balances maintained with it in contravention of the provisions of securities laws.
38. Before proceeding to give a finding on merits on this issue, it would be appropriate to refer to the provisions of securities laws applicable in this regard, which are reproduced below:

Section 12(1) of SEBI Act, 1992

"No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in

accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993

"No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations"

Regulation 42(3) of SEBI (Portfolio Managers) Regulations, 2020

"(3) After the repeal of Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."

Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992

"f. a stock broker shall at all times abide by the Code of Conduct as specified in Schedule II."

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

"(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(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) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(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

"(4) Business and Commission:

(a) A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

(b) A stock-broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby.

(6) Fairness to Clients: A stock-broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time, that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain a direct or indirect personal advantage from the situation and shall not consider clients' interest inferior to his own.

(7) Investment Advice: A stock-broker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon the basis of the facts, if disclosed by such a client as to his own security holdings, financial situation and objectives of such investment. The stock-broker should seek such information from clients, whenever he feels it is appropriate to do so.

(8) Competence of Stock-Broker: A stock-broker should have adequately trained staff and arrangements to render fair, prompt and competence services to his clients."

Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR")
"No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (k) of the proviso to sub-rule (4)."

39. It can be noted from the above that in terms of rule 8 of SCRR, registered stock brokers are not permitted to engage in any other business pertaining to the securities market other than as a broker. Therefore, Noticee No. 1, by providing its clients with assured monthly returns, was engaging in activities which were beyond the scope of regulated activities a registered stock broker can carry out. Providing returns to clients based on the credit balance of funds/securities, as opposed to returns from trading activities, is more akin to activities carried out by a portfolio manager. Further, Noticee No. 1, by engaging in such activities, has failed to conform to the code of conduct applicable to stock brokers, which among other things, casts an obligation on the Noticee to be fair in its transactions with clients, show high standards of integrity and also comply with all applicable provisions of securities laws.
40. In view of the above, I am of the considered view that by making regular payments to clients, which were not commensurate to their trading activity, Noticee No. 1 has engaged in business other than broking activity and, thus, indulged in malpractice, not maintained integrity and fairness and not exercised due skill and care in the conduct of its business, in contravention of the provisions of Clauses A (1), (2), (3), (4) & (5) and B (4), (6), (7) & (8) of Code of Conduct as provided under Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992 and Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957. I also note that Noticee No. 1 carried out activities covered under the definition of portfolio manager with holding a valid registration and thus violated Section 12(1) of SEBI Act, 1992, read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993, and Regulation 42 of SEBI (Portfolio Managers) Regulations, 2020.

H. INCORRECT MARGIN REPORTING COLLECTION TO THE EXCHANGE IN F&O SEGMENT.

41. SEBI has issued a circular numbered CIR/DNPD/7/2011 dated August 10, 2011, providing the penalties to be levied by stock exchanges on trading members for short-collection/non-collection of margins from clients in Equity and Currency Derivatives segments. I note that it has been alleged in the SCN that AFSPL has done incorrect margin reporting in 7 instances in the F&O segment and thus violated SEBI Circular dated August 10, 2011.

42. I am, however, unable to agree with this charge alleged in the SCN. I note that the circular only provides an enabling framework for stock exchanges to levy penalties in case of short/non-collections and there may not be a case for SEBI to allege a violation of the circular in case of short collection by stock brokers. In view of the same, I do not record any adverse findings against Noticee No. 1 in respect of this alleged contravention.

I. INCOME DETAILS NOT DECLARED IN THE CLIENT REGISTRATION DOCUMENTS

43. I note from the records that during the inspection ten client registration documents of AFSPL was examined on a sample check basis. It was observed that in 3 instances, the income details were not captured by AFSPL in the client registration document. The details of the three clients are given in the table below:-

TABLE 8	
CLIENT CODE	CLIENT NAME
C4709	MONEY MISHRA OVERSEAS PVT LTD
C4516	ENNR PORTFOLIO LLP
C4624	AWAL PORTFOLIO LLP

44. I note from the table above, that the list contains a related entity of Noticee No.1 - Money Mishra Overseas Pvt Ltd - which also happens to be a Noticee in the present proceedings before me. These lapses show a lack of due diligence while opening client accounts and the lackadaisical approach adopted by the Noticee No. 1 in complying with regulatory norms. In view of the above, I note that AFSPL has failed to failed to act with due skill, care and diligence in the conduct of its business and thus violated Clauses A (2) & A (5) of the Code of Conduct as specified in Schedule II of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

J. DISPROPORTIONATE EXPOSURE PROVIDED TO CLIENTS

45. Clause 2.6 of Annexure of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 dated September 26, 2016, provides that "*Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.*"

46. Further, as already stated above, Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 provides that a stock broker shall at all times abide by the Code of Conduct as specified in Schedule II and Clause A(5) of Schedule II provides that 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.
47. It is noted from the records that on verification of books and records of Noticee No. 1 pertaining to the income vs. exposure given to clients, it was observed that in 9 out of 11 clients verified as sample cases, there have been instances of disproportionate exposure granted, the details of which are given in the table below:-

TABLE 9				
CLIENT CODE	CLIENT NAME	INCOME LEVEL	FO MARGIN	FO MARGIN DATES
C4536	MONEY MISHRA FINANCIAL SERVICES	1-5 LAKH	2,11,93,96,420	6-DEC-2017
C4639	AWANISH KUMAR MISHRA	5-10 LAKH	1,67,64,43,845	17-JUL-2018
C4615	JAISRI PROPERTIES AND EXPORTS PVT.LTD.	1-5 LAKH	14,52,10,711	13-DEC-2017
C4716	PRIMARC PROJECTS PVT. LTD.	10-25 LAKH	34,99,95,756	31-JUL-2018
C4629	PUSHP STEELS AND MINING PVT LTD	1-5 LAKH	5,63,29,086	23-MAR-2018
C4595	TEJSWI IMPEX PVT.LTD.	5-10 LAKH	8,38,47,963	6-DEC-2017
C4709	MONEY MISHRA OVERSEAS PVT LTD	INCOME NOT DECLARED IN KYC	25,74,42,257	17-JUL-2018
C4516	ENNAR PORTFOLIO LLP	INCOME NOT DECLARED IN KYC	9,72,05,714	6-DEC-2017
C4624	AWAL PORTFOLIO LLP	INCOME NOT DECLARED IN KYC	4,29,22,740	7-MAR-2018

48. I note that Noticee No. 1 has been granting margins to clients which were significantly higher than their recorded income levels. Such actions on the part of the Noticee can have serious systemic issues as the ability of such clients to meet margin calls in case of short fall is suspect. In view of the above, I note that AFSPL has granted disproportionate exposure to clients and thus violated SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, and clause A (5) of the code of conduct as specified in Schedule II of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

K. INCORRECT REPORTING UNDER WEEKLY ENHANCED SUPERVISION REPORT TO THE EXCHANGE

L. MIS-REPORTING / NON-REPORTING OF DATA UNDER ENHANCED SUPERVISION TO NSE

49. In terms of Clause 3.2 of Annexure of SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stock brokers are required to submit certain data to the exchanges on a weekly basis. The text of the said provision is reproduced below:-

"Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A - Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B - Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (Across Stock Exchanges). Only funded portion of the BG, i.e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C - 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)

D - Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

E - Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

F - Aggregate value of Non-funded part of the BG across Stock Exchanges

P- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

MC - Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

MF - Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges"

50. Apart from the weekly disclosure of data, which was dealt with in the preceding paragraphs, the SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, also requires stock brokers to submit certain data to the stock exchanges on a monthly basis. The relevant portion of the said circular is reproduced below:-

"The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member

7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges

7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)

7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities

7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month."

51. It is noted from the records that during the Inspection, on verification of weekly data submitted towards monitoring of client funds, it was observed that AFSPL has wrongfully reported the clients' funds and collaterals that are available, the details of which are provided in the table below:-

TABLE 10		
PARTICULARS	TOTAL END OF THE DAY BALANCE IN ALL CLIENT BANK ACCOUNTS	COLLATERAL DEPOSITED IN FORM OF CASH AND CASH EQUIVALENTS
REPORTED	8,538,873.97	4,312,831,848.06
ACTUAL	2,517,217.53	883,183,000.00
EXCESS/ INCORRECT AMOUNT REPORTED TO EXCHANGE	6,021,656.44	3,429,648,848.06

52. It was also observed during the Inspection that as on July 27, 2018, AFSPL had wrongly reported details of client's securities under the monthly enhanced supervision report in case of 32 instances pertaining to 31 clients involving an amount of ₹65.59 lakhs, not reported

securities details of 7 clients amounting to ₹102.96 lakhs and misreported having pledged client securities in case of 2 clients.

53. It is observed that as on July 27, 2018, AFSPL has reported a nil balance for all clients for the month ending July 27, 2018. However, it has 251 clients as debtors amounting to ₹281.45 Crore and creditors amounting to ₹45.11 Crores as on July 27, 2018.
54. In view of the above, it was alleged in the SCN that AFSPL has wrongly reported funds balance in '*client bank account*' and collateral deposited in form of cash and cash equivalents for the weekly and monthly reports submitted to NSE. I note from the records that Noticee No.1 has not filed any reply refuting the above mentioned observations noted during the Inspection, which is based on the examination of documentary evidence. I also note the enhanced surveillance framework has been put in place by SEBI to track the position of client funds and securities lying with stock brokers, and this enables the exchange to monitor such activities. Noticee No. 1, I note, has sought to provide wrong information to the exchange to avoid scrutiny and conceal the true position from regulatory authorities. In view of the same, I hold that AFSPL has mis-reported data under enhanced supervision to NSE and thus violated SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
55. Having recorded my findings on the contraventions that have been alleged against Noticee No. 1, the next issue that arises for consideration is the liability of the directors of AFSPL for the contraventions established in the preceding paragraphs. Noticees No. 2 and 3 were directors of AFSPL during the period under question. I note that when violations of the magnitude that have been detailed in the preceding parts of the this order stands established against a company, then it becomes necessary to ensure that persons in charge of the company during the relevant period are held accountable. Directors are responsible for the day to day management of a company and have duty to ensure that the company is complying with applicable regulatory norms. I, therefore, note that directors in such cases cannot escape from the liability arising out of contraventions by the company.
56. I shall now proceed to consider the directions that should be issued against Noticees No. 1 to 3 that would be commensurate with the violations committed by them. A stock broker plays a critical role in the securities market as it acts as an interface for retails investors, and

is therefore required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings, and uphold the trust reposed by investors who hold their funds and securities with it. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and ensure that their rights are protected. Noticees No. 1 to 3 have shown blatant disregard to applicable regulatory norms, which has resulted in not just losses being suffered by its clients but has also shaken the faith reposed by the average investor in market institutions. I am, therefore, of the considered view that such actions on the part of a registered intermediary needs to be dealt with a stern hand to protect the integrity of the securities market.

57. I also note the instant proceedings also provide for imposing of monetary penalty, apart from the issuance of directions, in terms of relevant provisions of laws for the violation alleged in the SCN. The relevant penalty provisions are reproduced below:

Section 23 D of the SCRA, 1956:

“Penalty for failure to segregate securities or moneys of client or clients.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 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 which shall not be less than one lakh rupees but which may extend to one crore rupees.”

Section 23J of the SCRA

“Factors to be taken into account while adjudging quantum of penalty.

23J. While adjudging the quantum of penalty under section 12A or section 23 - I, the Securities and Exchange Board of India or 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.*

Explanation: — For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.”

58. Upon a consideration of the penalty provisions, I find that Noticee No. 1, by failing to segregate securities/moneys of its clients and diverting such funds/securities to third parties, has failed in performing its statutory and fiduciary obligations. The facts enumerated in this Order have adequately demonstrated the gravity of the violations committed by Noticee No. 1 and I therefore note Noticee No. 1’s actions make it liable for imposition of monetary penalty under section 23D of the SCRA.

DIRECTIONS

59. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1), 11B(2) read with Section 19 of the Securities and Exchange Board of India Act, 1992, and Section 12A of the Securities Contract (Regulation) Act, 1956, pass the following directions:

- a. *Notices No. 1 to 3* are hereby restrained from accessing the securities market in any manner and are also prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of **7 years**.
- b. It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone pursuant to the Interim Order read with the Confirmatory Order shall be taken into consideration and set off from period mentioned above.
- c. Noticee No. 1 shall also be liable to pay monetary penalty, as specified hereunder:-

NOTICEE	PROVISIONS UNDER WHICH PENALTY IMPOSED	PENALTY AMOUNT (IN RUPEES)
NOTICEE NO. 1	SECTION 23D OF THE SCRA	50 LAKHS

- d. The directions issued under paragraph 8 of the Interim Order read with the Confirmatory Order in so far as it relates to *Notices No. 4 to 8*, shall stand vacated. This is without prejudice to the directions against the said Noticees contained in the SEBI orders dated July 02, 2021⁵, August 09, 2021,⁶ and February 18, 2022⁷.
- e. *Noticee No. 2 and 3* are hereby restrained from holding the post of director or any managerial position or associating themselves in any capacity with any listed public company or any public company which intends to raise money from the public, or any securities market intermediary registered with SEBI for a period of **7 years**.
- f. *Notices No. 1, 2 and 3* shall, jointly and severally, be liable to repay / refund the monies due to investors / clients of Noticee No. 1, under the supervision of NSE.

⁵ Passed against Noticees No. 1 to 3

⁶ Passed against Noticees No. 6 to 8

⁷ Passed against Noticees No. 2 to 5

- g. *Notices No. 1, 2 and 3* shall, jointly and severally, be liable to return the securities due to the investors / clients of Noticee No. 1 or their monetary value as on the date of actual payment of money in lieu of shares, under the supervision of NSE.
 - h. *Notices No. 1, 2 and 3* shall not dispose of or alienate any of their assets, whether movable or immovable (including funds in their bank accounts), or create any interest or charge in any such assets, till such time the refunds / repayments as directed at paragraphs 59 (f) and 59(g) above are completed.
 - i. The Banks are directed to ensure that no debits are made in the bank accounts held by *Notices No. 1, 2 and 3*, except for the purpose of payment of money to the clients/investors under the written confirmation of NSE, till such time the refunds / repayments as directed at paragraphs 59 (f) and 59(g) above are completed.
 - j. NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated Demat account where all the securities lying in the Demat accounts of *Noticee No. 1* shall be transferred.
 - k. The NSE Defaulters Committee shall open and operate dedicated interest bearing bank account(s) with a Nationalized Bank where all the funds lying in various bank accounts held in the name of *Notices No. 1* shall be transferred.
 - l. The modalities of selling the assets, depositing the proceeds thereof in the Escrow Account(s) opened in accordance with the directions contained in paragraphs 59 (j) and 59 (k) above and disbursing the amounts to the clients / investors after verifying the claims shall be worked out by NSE. NSE shall have a lien on the remaining amount, if any, lying in the Escrow Account(s), after satisfying the claims of the investors/clients. The lien shall be up to the extent of total money disbursed by the Exchange out of its Investor Protection Fund accounts to the clients/investors of Noticee No. 1.
 - m. NSE shall deal with the claims of the clients / investors in accordance with its bye-laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism.
 - n. NSE shall proceed with the recovery of funds and securities from the assets of the *Notices* to cover any shortfall in funds and securities in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.
60. The Order shall come into force with the immediate effect.

61. A copy of this order shall be forwarded to the Noticees, all the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents for ensuring compliance with the above directions.

Place: Mumbai
Date: November 04, 2022

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA