



**Before the
Member and Core Settlement Guarantee Fund Committee
("MCSGFC"/"Committee")
of
National Stock Exchange of India Limited
Exchange Plaza, Bandra-Kurla Complex, Bandra East, Mumbai – 400051
held on March 25, 2022**

In the matter of the Trading Member M/s. Sunness Capital India Pvt. Ltd.

CORAM:

Ms Mona Bhide	- Chairperson
Mr K Narasimha Murthy	- Committee Member
Ms Anuradha Rao	- Committee Member
Mr Ranganayakulu Jagarlamudi	- Committee Member
Mr Vikram Limaye	- Committee Member

ALSO PRESENT:

Mr Suresh Nair	- Vice President – Enforcement
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BACKGROUND

1. **M/s Sunness Capital India Pvt. Ltd. ("Noticee")** is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**"/"**NSEIL**") and enabled for trading in the Capital Market ("**CM**") and Futures & Options ("**F&O**") segment since February 2017.
2. The Noticee is disabled in the F&O segment with effect from August 20, 2021, due to non-adherence of the regulatory provisions and the directions issued by the relevant authority of the Exchange and disabled in the CM segment with effect from August 23, 2021, due to a shortfall in deposits.

SHOW-CAUSE NOTICE DATED JULY 7, 2021 (SCN-1)

3. The Exchange conducted a limited purpose inspection of the Noticee's books of accounts and records in June 2021 to verify the data submitted by the Noticee towards the weekly monitoring of clients' funds under the Enhanced Supervision of Stockbrokers as of April 9, 2021, April 16, 2021, April 23, 2021, April 30, 2021, and May 7, 2021, concerning shortfall of clients' funds. Post-inspection, the Exchange observed that the Noticee misused the clients' funds. Therefore, the Exchange issued a show-cause notice dated July 7, 2021 ("**SCN-1**") to the

Noticee for the observed non-compliances with the regulatory provisions. The Noticee, vide email dated July 19, 2021, submitted its reply to the SCN-1.

4. The observation/alleged violation mentioned in the SCN-1 is summarized hereunder:

4.1 Misuse of clients' funds, i.e., funds of credit balance clients used for meeting the settlement obligations of debit balance clients and own purposes to the extent of Rs.3.69 crores, Rs.3.60 crores, Rs.5.57 crores, Rs.6.02 crores, and Rs.5.88 crores as of April 9, 2021, April 16, 2021, April 23, 2021, April 30, 2021, and May 7, 2021, respectively.

REFERENCE TO SEBI CIRCULAR DATED JULY 1, 2020

5. SEBI, vide circular No. SEBI/HO/MIRSD/DPIEA/CIR/P2020/115 dated July 1, 2020, specified the standard operating procedure enumerating the actions to be taken by the stock exchanges/clearing corporations/depositories in such cases where the stock exchange/clearing corporation is of the view that the Trading Member/Clearing Member is likely to default in repayment of funds or securities to its clients ("**SEBI SOP Circular**").
6. As per Clause 4 of the SEBI SOP Circular, on analysis of early warning signals or any of the following triggers, if the Stock Exchange/Clearing Corporation is of the view that the Trading Member/Clearing Member is likely to default in the repayment of funds/securities to its clients and/or fail to meet the settlement obligations to the Clearing Member/Clearing Corporation, where:
- There is a shortage of funds/securities payable to the clients by Rs.10 crores (stock exchange may have their own criteria) and/or
 - Trading Member/Clearing Member has failed to meet the settlement obligations to Clearing Member/Clearing Corporation and/or
 - There is a sudden increase in the number of investor's complaints against the Trading Member/Clearing Member for non-payment of funds and/or transfer of securities,

the Initiating Stock Exchange shall take the actions laid down in the said circular.

Given the pendency of 35 investor complaints involving Rs.98 lakhs as of November 26, 2021, the Exchange initiated the steps prescribed under the SEBI SOP Circular against the Noticee on November 26, 2021.

SHOW-CAUSE NOTICE DATED FEBRUARY 14, 2022 (SCN-2)

7. Given the improper use of clients' funds, the Exchange appointed a forensic auditor Grant Thornton Bharat LLP (formerly Grant Thornton India LLP), to conduct a forensic audit of the Noticee. The period for review was April 1, 2018, to August 31, 2021. Post-forensic audit, the Exchange issued a show-cause notice dated February 14, 2022 ("**SCN-2**") to the Noticee for the observed non-compliances. The Noticee, vide email dated March 7, 2022, submitted its reply to the SCN-2. Upon perusing the reply, the Exchange observed that the Noticee failed to provide any documentary evidence or substantive explanations for the observations/alleged violations mentioned in the SCN-2. Therefore, the Exchange, vide email dated March 17, 2022, requested the Noticee to provide further explanation/documents. However, the Noticee failed to submit any further explanation/documents to the Exchange to date.
8. The observations/alleged violations mentioned in SCN-2 are summarized hereunder:
 - 8.1 Engagement in unauthorized Portfolio Management Services (PMS)
 - 8.2 Misleading information provided to the Exchange
 - 8.3 Misrepresentation/falsification of bank payment entries
 - 8.4 Mismatches in entries in client ledgers vis-à-vis trade data received from the Exchange
 - 8.5 Misuse of clients' funds
 - 8.6 Incorrect fund balances in the ledgers of 3,768 clients as of August 31, 2021
 - 8.7 Incorrect data submitted for weekly client-level cash and cash equivalent balances
 - 8.8 Shortfall of clients' funds amounting to Rs.1,849.67 lakhs as of August 31, 2021

- 8.9 Non-reconciliation of clients' securities
- 8.10 Incorrect data submitted in the weekly holding statement
- 8.11 Shortfall in securities
- 8.12 Non-maintenance of the pre-order confirmation
- 8.13 Failure to obtain approval for change in shareholding
- 8.14 Non-cooperation during the inspection

MCSGFC PROCEEDINGS PERTAINING TO SCN-1

9. The SCN-1 was placed before the Committee on the following dates:

9.1 August 3, 2021

- a. The Exchange, vide email dated July 29, 2021, granted the Noticee an opportunity for a personal hearing before the Committee. Upon considering the oral submissions, the SCN-1, and the reply to the SCN-1, the Committee issued the following interim directions:
 - i. To infuse funds of Rs.2.70 crores and submit documentary evidence to the Exchange within 15 days from the date of direction, failing which the Noticee will be restrained from onboarding new client registration, and trading terminals of the Noticee in the F&O segment will be disabled.
 - ii. To infuse funds towards the balance shortfall and submit documentary evidence to the Exchange within the next 15 days, failing which the Noticee will be restrained from onboarding new client registration and terminals of the Noticee in the F&O segment will be disabled.
 - iii. To settle the funds and securities of all clients and submit documentary evidence to the Exchange within 30 days from the date of the direction.
 - iv. To resolve all the pending investor complaints within one week from the date of the direction.

- v. To contact the respective management of Sri Guru Sarvabhauma Souharda Credit Co-operative Ltd. and create a lien on the deposits of Rs.8,00,37,500/- in favor of the National Stock Exchange of India Ltd. and to inform the Exchange about the said lien by the end of August 4, 2021. The Exchange shall release the lien as soon as the Noticee recoups the shortfall of client funds.
 - vi. To submit a list of all unencumbered assets held in the name of the Noticee/Directors by the end of August 4, 2021.
- b. The Exchange, vide email dated August 3, 2021, communicated the said interim directions to the Noticee.
 - c. The Noticee failed to comply with the interim directions. Therefore, to protect the interest of the clients/investors, the Committee issued the following interim directions:
 - i. The trading terminals of the Noticee in the F&O segment will be disabled with immediate effect until further notice.
 - ii. The Noticee is restrained from registering fresh clients across segments until further direction.
 - d. The Exchange, vide email dated August 19, 2021, forwarded the interim order dated August 19, 2021, to the Noticee.

Developments Post MCSGFC Meeting

- e. The trading terminals in the F&O segment were disabled with effect from August 20, 2021, owing to non-adherence to the regulatory provisions and the directions issued by the relevant authority of the Exchange. Simultaneously, the trading terminals in the CM segment were disabled with effect from August 23, 2021, owing to a shortfall in deposits lying with the Exchange.
- f. The Noticee, vide email dated September 3, 2021, requested the Exchange to grant additional 60 days to settle the clients' funds. The Noticee, vide email dated September 21, 2021, informed the Exchange as under:

- i. Out of Rs.5.40 crores, the Noticee mobilized funds to the tune of Rs.48.98 lakhs and deposited the same in the respective client's account. The Noticee sought additional time of at least 60 days to mobilize the balance funds.
- ii. Out of the IFSD of Rs.70 lakhs, Rs.40 lakhs was set off against trade settlements towards the cash segment. The Noticee would replenish the deposit by paying Rs.40 lakhs and thereby requested to activate the trading terminal in the CM segment to enable it to commence trade.
- iii. The majority of the complaints are due to the inactive trading terminals and stocks being held by Indian Clearing Corporation Ltd. (ICCL). If the trading terminal is activated, the Noticee will be able to resolve the majority of the complaints. The Noticee has resolved 3 complaints as of date, and if the stocks are released pursuant to activation of the trading terminals, the Noticee will be able to resolve at least 9 more complaints.
- iv. The activation of trading terminals will enable the Noticee to raise funds in the form of equity, without which it will be a challenge to raise funds. Thus, the Noticee requested the Exchange to activate the terminals at the earliest.
- v. The Noticee provided supporting documents, viz. consolidated pay-outs and funds infusion details, client pay-outs details, bank statement of the Noticee, and bank statements of the clients' accounts.

9.2 September 22, 2021

- a. The Committee noted that the Noticee failed to comply with the interim directions dated August 3, 2021, despite granting adequate opportunity. Therefore, the Committee decided to grant a final opportunity to the Noticee to comply with the said interim directions.
- b. Given the above, the Committee issued the following interim directions:

- i. The trading terminals of the Noticee shall continue to be disabled in all segments until further notice.
 - ii. The Noticee shall be restrained from registering fresh clients in all segments until further direction.
 - iii. The Noticee shall recoup the shortfall of clients' funds and settle the clients' funds and securities within 60 days from the date of the direction and submit documentary evidence to the Exchange.
 - iv. The Noticee shall settle all the pending investor complaints within 60 days from the date of the direction.
- c. The Exchange, vide email dated September 24, 2021, communicated the said interim directions to the Noticee.

MCSGFC PROCEEDINGS PERTAINING TO SCN-1 & 2

10. The SCN-1 and SCN-2 were placed before the Committee on the following dates:

10.1 March 8, 2022

- a. The Exchange, vide email dated March 2, 2022, granted the Noticee an opportunity for a personal hearing before the Committee. The Noticee, vide email dated March 7, 2022, requested the Exchange to grant an adjournment.
- b. The Committee noted that the Noticee failed to comply with the interim directions dated September 24, 2021.
- c. The Committee noted that pursuant to the Committee's direction, the trading terminals of the Noticee continue to be disabled, and the Noticee is restrained from registering fresh clients in all segments.
- d. Given the above, the Committee granted one last opportunity to comply with the interim directions dated September 24, 2021, by

March 15, 2022, failing which disciplinary action, viz. expulsion under Rule 1 and Rule 2 of Chapter IV of NSEIL Rules and declaration of default under Chapter XII of NSEIL Byelaws shall be initiated against the Noticee.

- e. The Exchange, vide email dated March 10, 2022, communicated the said interim directions to the Noticee.

10.2 March 25, 2022

The Exchange vide email dated March 17, 2022, granted the Noticee an opportunity for a personal hearing before the Committee in its meeting held on March 25, 2022. Mr S. P. Shreeshha, Managing Director, on behalf of the Noticee, appeared for the personal hearing and made the following oral submissions before the Committee:

- a. The Noticee expressed its consent to create a secondary pledge on the assets and enforce the said pledge if the Trading Member is declared a defaulter.
- b. The Noticee shall provide an undertaking and power of attorney for mortgaging the properties of the Noticee and its Directors.
- c. The Noticee sought time till June 2022 to recoup the shortfall of clients' funds.

10.3 The Committee noted its interim direction dated August 3, 2021, wherein the Noticee was directed to submit the list of unencumbered assets held in the name of the Noticee/Directors and noted that the Noticee failed to provide the said list. Therefore, during this meeting, the Committee directed the Noticee to provide details of the assets of the Noticee/Directors, and the lien on the said assets, along with documentary evidence. Subsequently, the Noticee, submitted the details of assets as under:

- a. Fixed deposit of Rs.21 lakhs dated March 31, 2018, with Sri Guru Raghavendra Sahakara Bank.

- b. Fixed deposit of Rs.8 crores in Gurusarvabhauma Co-operative Society, wherein the Noticee availed the loan of Rs.7.20 crores against a lien on the said deposits. Therefore, Rs.80 lakhs is available for liquidation.
- c. Individually directors have jointly registered immovable property at No.994, Service Road, WOC Road, RPC Layout, Vijayanagar, Bengaluru, measuring 5400 sq. ft. As Tote, the market value of the said property is around Rs.12 crores. The Noticee availed the property loan of Rs.7.50 crores. After the loan and interest, the rest of the value will give second mortgage to the Exchange (if 1st party of bank permitted).
- d. There are 2 BHK residential flats at Nagarabhavi, Bengaluru, in the name of Director Padmajyothi Shreesha. The said property's market value is around Rs.80 lakhs and the loan availed against this property is Rs.1.15 crores.
- e. In the name of Director Shreesha S.P. having the property agricultural land with registering with the three members group (1/3 share). The said land value is around Rs.20 lakhs situated at Sakaleshpura Hassan Dist. Karnataka.
- f. The Noticee has another two ROC registered firms i.e. Sunness Trade Limited, and Sunness Infrastructure Pvt. Ltd. and there are no assets in said companies.

The Noticee communicated its consent to the Exchange to create a secondary pledge on the asset mentioned above and enforce the asset if the Noticee is declared a defaulter.

REGULATORY PROVISIONS PERTAINING TO SCN-1 AND SCN-2

11. At the outset, it is appropriate to refer to the relevant regulatory provisions which the Committee finds that the Noticee has violated. The extracts whereof are reproduced below:

11.1 Rule 8(3) (f) of Securities Contracts (Regulation) Rules, 1957

8. *The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:*

- (3) *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 a 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.*

11.2 Rule 17 of Chapter III of NSEIL Rules

(17) *The relevant authority may at any time from the date of admission to the trading membership of the Exchange cancel the admission and expel a trading member if he has in or at the time of his application for admission to membership or during the course of the inquiry made by the relevant authority preceding his admission:*

- (a) *made any willful misrepresentation; or*
- (b) *suppressed any material information required of him as to his character and antecedents; or*
- (c) *has directly or indirectly given false particulars or information or made a false declaration.*

11.3 Rule 3 (b) and (g) of Chapter IV of NSEIL Rules

Misconduct

(3) *A trading member shall be deemed guilty of misconduct for any of the following or similar acts or omissions namely:*

(b) *Violation: If it has violated provisions of any statute governing the activities, business and operations of the Exchange, trading members and securities business in general;*

(g) *Failure to testify or give information : If it neglects or fails or refuses to submit to the relevant authority or to a Committee or an officer of the Exchange authorized in that behalf, such books, correspondence, documents and papers or any part thereof as may be required to be produced or to appeal and testify before or*

cause any of its partners, attorneys, agents, authorized representatives or employees to appear and testify before the relevant authority or such Committee or officer of the Exchange or other person authorized in that behalf.

11.4 Rule 4 (f) of Chapter IV of NSEIL Rules

Unbusinesslike Conduct

(4) A trading member shall be deemed guilty of unbusinesslike conduct for any of the following or similar acts or omissions namely:

(f) Unwarrantable Business: If it engages in reckless or unwarrantable or unbusinesslike dealings in the market or effects purchases or sales for its constituent's account or for any account in which it is directly or indirectly interested which purchases or sales are excessive in view of its constituent's or his own means and financial resources or in view of the market for such security.

11.5 Regulation 3.2.1 of NSEIL Regulations (CM Segment) and Regulation 3.4.1 of NSEIL Regulations (F&O Segment)

Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof.

Notwithstanding the above, wherever the order instructions are received from clients through the telephone, Members shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

11.6 Regulation 4.5.1 of NSEIL Regulations (CM and F&O Segments)

4.5.1 ADHERENCE TO SEBI CODE OF CONDUCT

The Trading Member shall at all times subscribe to the Code of Conduct as prescribed by the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992.

11.7 Regulation 4.5.3 of NSEIL Regulations (CM and F&O Segments)

No Trading Member or person associated with a Trading Member shall make improper use of the constituent's securities or funds.

11.8 Regulation 7.3 of NSEIL Regulations (CM and F&O Segments)

7.3 Obligations of a Trading Member on inspection

7.3.1 It shall be the duty of every director, officer and employee of the Trading Member, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control or arrange to produce where such books, accounts and other documents when they are in any other person's custody or control and furnish him such statements and information within such time as the said inspection authority may require.

11.9 Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 2020

Registration as portfolio manager

3. No person shall act as a portfolio manager unless it has obtained a certificate of registration from the Board under these regulations.

11.10 Clause A (5), Schedule II, SEBI (Stockbroker) Regulation, 1992

A. General

(5) Compliance with statutory requirements: A stockbroker 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.

11.11 Byelaw 2(h) of Chapter V of NSEIL Byelaws

h. Trading members shall extend full co-operation and furnish such information and explanation as may be required for the purpose of any inspection or audit authorized by the relevant authority or other authorized official of the Exchange into or in regard to any trades, dealings, their settlement, accounting and/or other related matters.

11.12 Exchange Circular No. NSE/INSP/10605 dated April 21, 2008

The records should be periodically reconciled with the actual collateral deposited with the broker.

11.13 Exchange Circular No. NSE/INSP/29096 dated March 11, 2015

Members are advised to ensure that the funds & securities available in the client bank/s and client beneficiary account/s together with balances available with clearing Member and funds with clearing corporation are not less than the funds and securities payable to the client at all times.

11.14 Exchange Circular No. NSE/INSP/29096 dated March 11, 2015

The Members are advised to reconcile client beneficiary account/s and the register of securities on a quarterly basis and maintain a complete audit trail & documentation of such reconciliation.

11.15 Exchange Circular No. NSE/INSP/33276 dated September 27, 2016

3.3.1 Funds of credit balance clients used for settlement obligation of debit clients or own purpose:

Principle 1

The total available funds, i.e. cash and cash equivalents, with the stockbroker and with the clearing corporation/clearing member (A + B), should always be equal to or greater than Clients' funds as per ledger balance (C)

$$G = (A+B) - C$$

11.16 Exchange Circular No. NSE/INSP/35929 dated September 27, 2017

All brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of

physical record written & signed by client, telephone recording, email from authorized email id, log for internet transactions, record of sms messages and any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

11.17 Exchange Circular NSE/INSP/38743 dated August 30, 2018

In order to standardize the maintenance of books of accounts / records and to ensure uniformity across all Members, a standard format for register of securities, holding statement, bank book and client ledger is prescribed herewith.

The revised formats shall be applicable w.e.f. December 01, 2018. Members are advised to make necessary changes in their back office in order to comply with requirements.

Members may further note that non-maintenance of Register of Securities, Holding Statement, Bank Book and Client Ledger in the prescribed format is a violation of the provisions of the Securities Contracts (Regulation) Rules 1957 / Regulations of the Exchange and will attract appropriate disciplinary action as per Rule 1 and 2 of Chapter IV of NSEIL Rules.

11.18 Exchange Circular No. NSE/COMP/39726 dated December 20, 2018

IV. Change in Shareholding:

A. Prior Approval of Exchange for change in shareholding:

Once a corporate trading member nominates/determines a group of shareholders as its DPG, it is to be ensured that the DPG always maintains among themselves the minimum required shareholding as specified above at all points of time. Members are required to seek prior approval from the Exchange for any change in the

shareholding/sharing pattern of the trading member corporate/firm or the corporate shareholder (s)/identified as dominant promoter (s).

11.19 Exchange Circular No. NSE/INSP/39855 dated January 3, 2019

All Members were advised to comply with the requirement and upload the holding statement data electronically for all calendar days of the reporting week on or before the next four trading days of the subsequent week through the Inspection module in the Member portal. The procedure for submission of the data was given in Annexure-1 of this circular.

11.20 Exchange Circular No. NSE/INSP/43926 dated March 23, 2020

1. *Day-wise upload of Client Level Cash & Cash Equivalent Balances on a weekly basis for all calendar days of that week except Sunday (i.e. Monday to Saturday).*
2. *Day-wise upload of bank balances (as per the bank statement) of all bank accounts on a weekly basis for all the calendar days of that week except Sunday (i.e. Monday to Saturday)*

The aforesaid data/details shall be required to be submitted on or before the next four trading days of the subsequent week.

CONSIDERATION & FINDINGS FOR SCN-1 & SCN-2

12. The observations/alleged violations mentioned in SCN-1 & SCN-2, the replies of the Noticee, and the findings of the Committee are as under:

SCN-1

12.1 Misuse of clients' funds

- a. The Exchange verified the data submitted by the Noticee towards the weekly monitoring of clients' funds for the week ended April 9, 2021, April 16, 2021, April 23, 2021, April 30, 2021, and May 7, 2021, under the Enhanced Supervision of Stockbrokers, the Exchange observed that the Noticee used the funds of credit balance clients for meeting the settlement obligations of debit clients or own purpose to the extent of Rs.3.69 crores, Rs.3.60 crores, Rs.5.57 crores, Rs.6.02 crores, and

Rs.5.88 crores, on the respective dates (Principle 1 of the Enhanced Supervision of Stockbrokers).

b. In reply to the SCN-1, the Noticee submitted as under:

- i. The Noticee inadvertently created a separate designated fixed deposit account instead of directly linking the client bank account to create a fixed deposit.
- ii. Reserve Bank of India (RBI) issued directions under 35A read with Section 56 of the Banking Regulation Act, 1949, against Sri Gururaghavendra Sahakara Bank Niyamitha, Bengaluru, and Sri Guru Sarvabhauma Souharda Credit Cooperative, Bengaluru, wherein these fixed deposits were maintained. In view of the RBI directions, the Noticee is unable to transact, and its funds are blocked.
- iii. The Noticee shall take all the necessary steps to recoup the shortfall of clients' funds into the client accounts within 60 days.

c. The Committee finds as under:

- i. The Committee granted adequate opportunities to the Noticee to recoup the shortfall of clients' funds; however, the Noticee failed to recoup the said shortfall.
- ii. The Noticee is a repeat violator. The Committee levied monetary penalties of Rs.7,88,400/- and Rs.10,05,000/- for the financial year 2018-19 and 2019-20/2020-21, respectively.
- iii. Regulation 4.5.3 of NSEIL CMFO Regulations prohibits the Trading Member from making improper use of client funds and securities. Further, Exchange Circular No. NSE/INSP/33276 dated September 2017, explicitly states that the clients' funds lying with the Clearing Corporation/Clearing Member should be less than or equal to the sum of credit clients' margin obligations and free collateral deposits available with the Clearing Corporation/Clearing Member.

- iv. Thus, based on the material available on record, the Committee finds that the Noticee has violated Regulation 4.5.3 (e) of the NSEIL Regulations (F&O and CM Segments) and Exchange Circular No. NSE/INSP/33276 dated September 27, 2016.

SCN-2

12.2 Engagement in unauthorized Portfolio Management Services (PMS)

- a. Upon review of the emails and imaged desktops of the employees, it is observed that the Noticee is engaged in providing unauthorized PMS to its clients through two schemes, viz. Equity Investment Plan (EIP) and Investment Portfolio Services (IPS). The schemes differ in terms of the minimum amount to be invested, lock-in period, etc.
- i. *Email review:* Email dated May 28, 2018, sent by Mr Nikhil Shelar to Mr Hariprasad C.P. (Chief General Manager), marking a copy to Mr Shreesha (Director), stated that the 1st EIP client has been logged in by Mumbai team from the marketing activity conducted in 'Godrej Hill Society' and that the team is trying to convert maximum accounts in EIP and IPS clients.
- ii. *Presentation of EIP/IPS schemes:* From the presentations attached to the email dated May 26, 2018, sent by Mr Hariprasad C.P. to Mr Shreesha, marking a copy to Mr Manjunath Hegde, it is observed that participation in the IPS scheme requires a minimum investment of Rs.5 lakhs subject to a minimum lock-in period of 1 year. Moreover, the IPS scheme, while not offering any future assured returns, states that the expected returns based on past analysis and future performance may be in the range of 20% - 22% year on year.

It is also observed that under the EIP scheme, participants can invest any amount monthly. The Noticee shall, in turn, invest the amount in a diversified portfolio. While the EIP scheme does not offer any fixed assured returns, it assures returns based on past analysis and future performance, which could be 20% every year.

- iii. *Welcome emails to clients:* The Noticee sent multiple emails to different clients confirming their participation in the EIP/IPS schemes and welcoming them as new customers.
- iv. *SEBI registration:* As per the website of SEBI, the Noticee is not a registered Portfolio Manager. However, the Noticee entered into an agreement with the clients representing that it is a registered Portfolio Manager. This is evident from the email dated May 24, 2019, circulated internally between the Noticee's employees, containing an agreement purportedly executed by the Noticee with Mr Santhanam Antony David, Tamil Nadu (Client Code: EIP0034).
- v. *Number of clients enrolled under the schemes:* From the emails listed below, it is observed that 427 clients were active under the EPI and IPS schemes from April 1, 2018, to September 30, 2021.
 - Email dated May 22, 2020, issued by Mr Ajit Hegde (Executive, RMS Team) to Mr Manohar Bhat (IT Infrastructure Leader), marking a copy to Mr Manjunath, with the subject: 'FW: EIP and IPS client list'.
 - Email dated June 2, 2020, sent by Mr Ajit to the employees of the RMS Team, with the subject: 'RE: IPS CLIENT LIST FOR MAY-20'.
 - Email dated September 3, 2021, sent by Ms Roopashree P. (Senior Executive, RMS Team) to a potential personal email ID: manjugh2408@gmail.com, marking a copy to Mr Manjunath, with the subject: 'list of active IPS clients'
- vi. *Quantum of funds raised:* From the client ledgers, it is observed that the Noticee raised funds amounting to Rs.4,719.02 lakhs from 427 clients from April 1, 2018, to August 31, 2021. Out of the inflow of Rs.4,719.02 lakhs as per the client ledger, Rs.4,465.88 lakhs (94.64%) are reflected in the bank account statements. Similarly, out of the outflow of Rs.4,120.69 lakhs as per the client ledger, Rs.3,987.34 lakhs (96.76%) are reflected in the bank account statements.

- vii. *Email seeking advice on the EIP scheme:* From the email dated October 25, 2018, sent by Mr Rajesh Hegde (Senior Manager – RMS) to Mr Shreesha, it is observed that Mr Rajesh Hegde intimated Mr Shreesha about the reduction in the holding value and sought Mr Shreesha’s advice on whether they should pause or continue investing in stocks.

Given the above, the Noticee is engaged in an unwarrantable business. The Noticee is actively running the unauthorized PMS and thus engaged in activities other than stockbroking business.

- b. In reply to the SCN-2, the Noticee submitted as under:
- i. It did not engage in any investment portfolio services or equity investment plan. The nomenclature used was for internal identification and classification of company clients, i.e., to classify normal investor clients and high net worth individual investor clients. The Noticee did not run any scheme or program. The terminology used in the email is not “EIP” in the literal sense but merely an internal nomenclature used by the Noticee as stated above. The presentation was prepared for study and internal evaluation purposes only.
 - ii. Though the nomenclature may be similar, the Noticee did not offer any EIP or IPS in the literal sense or enter into any such agreement with the clients.
- c. The Committee finds as under:
- i. The Noticee denied the observation/alleged violation regarding the running of any EIP or IPS scheme. However, based on the presentation attached in the email dated May 26, 2018, sent by Mr Hariprasad (CGM) to Mr Shreesha, it is observed that the Noticee was running two schemes, viz. EIP and IPS. The said schemes had a fixed return on the investments depending on the past performance. The Noticee invested the funds in a diversified portfolio.
 - ii. The Noticee did not have registration under the SEBI (Portfolio Managers) Regulations.

- iii. The Noticee sent various emails to clients confirming its participation in IPS and EIP schemes. Based on the copy of the agreement attached in the email dated May 24, 2019, circulated internally among the Noticee's employees, it is observed that the Noticee purportedly entered into a PMS agreement with Mr Santhanam Antony David, Tamil Nadu (Client Code: EIP0034).
- iv. Based on the emails attached with the SCN-2, it is observed that 427 clients were active under EPI and IPS schemes from April 1, 2018, to September 30, 2021.
- v. Upon verification of the client ledgers, it is observed that the Noticee raised funds amounting to Rs.4,719.02 lakhs from 427 clients from April 1, 2018, to August 31, 2021. Out of the inflow of Rs.4,719.02 lakhs as per the client ledger, Rs.4,465.88 lakhs (94.64%) are reflected in the bank account statements. Similarly, out of the outflow of Rs.4,120.69 lakhs as per the client ledger, Rs.3,987.34 lakhs (96.76%) are reflected in the bank account statements.
- vi. Apart from bare denial, the Noticee did not provide any specific reply to the observations/alleged violations mentioned in the SCN-2.
- vii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957, Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 2020, Clause A (5), Schedule II, SEBI (Stockbroker) Regulation, 1992, Regulation 4.5.1 of NSEIL Regulations (CM and F&O Segments), Rule 3(d) of Chapter IV of NSEIL Rules.

12.3 **Misleading information provided to the Exchange**

- a. The Noticee provided incorrect information to the forensic auditor by denying the existence of EIP/IPS schemes. The forensic auditor sought certain details and clarification from Noticee regarding the EIP/IPS schemes. The Noticee, vide email dated November 8, 2021, responded to the forensic auditor.

The information sought, and the Noticee's responses are as per the Table given below:

Sr. No.	Information Sought	Noticee's Response
1	Are EIP / IPS schemes registered with SEBI / any other regulatory authority? If yes, request you to provide the scheme registration number.	All accounts are general accounts. No plans/schemes in our company
2	Date of initiation of both schemes	NIL
3	A brief background on both schemes	NA
4	List of clients (currently active as well as all clients) who have invested in these schemes	NIL
5	Agreement entered with these clients	NA
6	Amount invested by these clients in both these schemes	NIL
7	Modus operandi of these schemes – how is the sum raised from the client utilized	NA
8	Are any of these schemes currently active?	NIL

Given the above, the Noticee is providing misleading information to the Exchange.

- b. In reply to the SCN-2, the Noticee submitted that it did not provide misleading information.
- c. The Committee finds as under:
 - i. The Noticee denied the observation/alleged violation. The Noticee did not provide any reasoning except bare denial to the queries raised by the forensic auditor.
 - ii. Thus, based on the material available on records, the Committee finds that the Noticee has violated Rule 17 of Chapter III of NSEIL Rules and Rule 4 (f) of Chapter IV of NSEIL Rules, and Rule 4 (f) of Chapter IV of NSEIL Rules

12.4 **Misrepresentation/Falsification of bank payment entries**

- a. There are client inflows amounting to Rs.12.54 crores in 3518 instances and client outflows amounting to Rs.8.13 crores in 1431

instances in the client ledgers. The said inflows and outflows are not reflected in the bank account statements.

i. Bank payment entries passed in the client ledger without actual fund outflow

On review of the Noticee's books of accounts, it is observed that in the case of 356 clients, the Noticee posted bank payment entries in the clients' ledgers on June 30, 2021, and July 27, 2021, aggregating to Rs.103.93 lakhs; however, the said entries are not reflected in the bank account statements. This is evident from the records pertaining to Mr Vijay Dinanath Joshi (Client Code MH1444), who had a credit balance of Rs.14.68 lakhs in June 2021. On July 27, 2021, the client ledger was debited for Rs.14.72 lakhs; however, the said entry was not reflected in the bank account statement.

ii. Bank payment entries passed in the client ledger without actual fund inflow

On verification of the ledger of Mrs Padmajyothi Shreesha (Client Code BA006) for FY 20-21, it is observed as under:

- On September 10, 2020, a buy trade (value Rs.38.34 lakhs) was executed on BSE Ltd. CM segment (Settlement No.: 2021113W; Settlement Date: September 14, 2020).
- Post execution of this buy transaction, the running balance of the client was Rs.37.58 lakhs debit. The Noticee passed three journal voucher entries aggregating to Rs.37.60 lakhs credit on September 14, 2020, September 16, 2020, and September 18, 2020, to settle the debit balance.
- Furthermore, the narration of these journal voucher entries in the client ledger was "AXIS BANK (BSE CM) CLIENT A/C – 29778 – NEFT RECEIVED FROM BA006". There were no entries in the bank statement, despite entry narration in the client ledger indicating receipt of funds. Therefore, the Noticee attempted to disguise these credit journal voucher entries as bank inflows from the client.

On verification of the ledger of Mr Shreesha (Client Code BA009) for FY 20-21, it is observed as under:

- The credit journal voucher entries were passed in the client ledger in September 2020 and October 2020 without any appropriate supporting documents/rationale amounting to Rs.75.65 lakhs to set off the buy transactions amounting to Rs.63.11 lakhs.

Given the above, the Noticee passed journal credit entries in the clients' ledgers without corresponding entries in the bank account statements and thus manipulated the books of accounts.

b. In reply to the SCN-2, the Noticee submitted as under:

- i. The Noticee processed bulk payment entries like axis-to-axis bank. The Noticee sent some clients' pay-in and pay-out entries to the Exchange auditors during the inspection. The Noticee could not find out the rest of the clients as the employees have left the company.
- ii. The Noticee debited pay-out from the client's ledger but did not pay the clients due to a shortage of funds and the disablement of trading terminals by Exchanges.
- iii. Client Codes: BA006 and BA009 are the Noticee's own accounts. The debit and credit were given for trading purposes.

c. The Committee finds as under:

- i. The Noticee accepted that it debited the client ledgers but did not pay the clients due to a shortage of funds.
- ii. In Exhibit 8 to the SCN-2, the Exchange provided the debit and credit entries in client ledgers (Rs. 8.12 crores debit and 12.53 crores credit). The said debit and credit entries were not available in the bank statements of the Noticee.

- iii. In Exhibit 9 to the SCN-2, the Exchange provided the list of clients whose accounts were debited, but payments amounting to Rs.1.03 crores were not released to clients.
- iv. In Exhibit 10 to the SCN-2, the Exchange provided the list of clients in whose accounts journal voucher entries were passed, but no actual funds amounting to Rs.1.13 crores were received.
- v. The Exchange requested the Noticee to provide an entry-wise reply to Exhibits 8, 9, and 10 to SCN-2 with supporting documents. In the absence of a specific entry-wise reply, it is inferred that the Noticee has no further submissions to make.
- vi. Thus, based on the material available on record, the Committee finds that the Noticee has violated Rule 17 of Chapter III of NSEIL Rules, and Exchange Circular NSE/INSP/38743 dated August 30, 2018.

12.5 **Mismatches in entries in client ledgers vis-à-vis trade data received from the Exchange**

- a. Upon verification of the client ledgers for 5 sample clients, i.e., Ms Rashmi Shenvi (Client Code KA1972), Mr Ajay Bhauwala (Client Code BA620), Mr Koratagere Narasimhaswamy (Client Code BA103), Mr Shishir Lall (Client Code BA602), and Mr Shreesha Sasitota (Client Code BA009), it is observed that certain entries in the client ledgers were not available in the trade data received from the Exchange. Furthermore, the entries recorded in the client ledger but not available in the trade data of the Exchange are categorized as follows:
 - i. *Reversing entries*: Entries that are reversed after a few days, thereby nullifying their effect on the client balance at the end of the review period, though temporarily affecting the client balance – subsequently referred to as 'Type A' entries.
 - ii. *Non reversing entries*: Entries that are not reversed, affecting client balance at the end of the review period – subsequently referred to as 'Type B' entries. Such entries have been passed for 42 clients to the tune of Rs. 713.19 lakhs (debit balance).

Such entries were recorded in the client ledgers from December 2020 onwards and were pre-dominant in FY 2021-22.

The net effect of such entries passed for most of the clients is debit, thereby reducing client balances.

Financial Year	No. of Entries (Type A + Type B)	Value – Rs. in lakhs (Type A + Type B)		
2018-19	-	-	-	-
2019-20	-	-	-	-
2020-21	868	4643.77	3917.58	726.19 (debit)
2021-22	5978	13950.19	13963.20	13.00 (credit)
Total	6846	18593.96	17,880.77	713.19 (debit)

In view of the above, the Noticee posted entries in the client ledgers which were not available as per the trade data of the Exchange. Thus, the Noticee manipulated the financial data in the client ledger resulting in misrepresentation of the books of accounts.

- b. In reply to the SCN-2, the Noticee submitted that the observed accounts are Noticee's own accounts. The credit was given for a trading purpose, and the entries were debited at the same time by the Noticee.
- c. The Committee finds as under:
 - i. The Noticee did not provide any specific reply to the observation/alleged violation. In the absence of any specific entry-wise reply, it is inferred that the Noticee has no further submissions to make for the observed violation.
 - ii. In Exhibit 11 of SCN-2, the Exchange provided a list of 6846 debit and credit entries in client ledgers for the period 2020-21 and 2021-22 for executing trades on Exchange, but no such trades are found on the Exchange platform. The net effect of these debit and credit entries is a debit of Rs. 7.13 crores in client ledgers.

- iii. The Exchange requested the Noticee to provide an entry-wise reply to Exhibits 11 to SCN-2 with supporting documents. In the absence of a specific entry-wise reply, it is inferred that the Noticee has no further submissions to make to the observation/alleged violation.
- iv. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/38743 dated August 30, 2018.

12.6 **Misuse of clients' funds**

- a. On verification of the Noticee's books of accounts and fixed deposits receipts, it is observed that the Noticee maintained fixed deposits amounting to Rs.8 crores with Sri Guru Sarvabhauma Souharda Credit Cooperative. The Noticee created fixed deposit receipts amounting to Rs.4 crores from March 27, 2019, to April 23, 2019. Out of Rs.4 crores, funds for creating the fixed deposits have been withdrawn from the Noticee's client bank account to the extent of Rs.2.36 crores.

Furthermore, the Noticee offered the fixed deposits of Rs.8 crores created from the clients' funds as collateral for the loan of Rs.7.20 crores availed by its sister concern Sunness Infrastructure Pvt. Ltd. ("**SIPL**") from Sri Guru Sarvabhauma Souharda Credit Cooperative. Hence, the said fixed deposits are under lien against the loan advanced by Sri Guru Sarvabhauma Souharda Credit Cooperative to SIPL.

SIPL had raised funds to the tune of Rs.10.45 crores (Rs.7.20 crores in the form of loan from Sri Guru Sarvabhauma Souharda Credit Cooperative and Rs.3.25 crores in the form of loan from other related parties) and thereafter extended the loans and advances to related parties (unsecured) to the extent of Rs.8.50 crores. Out of the said Rs.8.50 crores advanced as loans to related parties, Rs.6.78 crores have been advanced to Mr Shreesha and Mrs Padmajyothi Shreesha, Directors of the Noticees.

On verification of the balance sheets of Mr Shreesha for 2017-18 to 2019-20 and Mrs Padmajyothi Shreesha for 2018-19 to 2019-20, there has been a substantial increase in assets as well as borrowings (both secured and unsecured) of Mr Shreesha and Mrs Padmajyothi Shreesha. This increase is on account of receipt of funds from its sister concerns viz. SIPL and STPL, which is evident from the balance sheets of its sister concerns. It is observed that in FY 2019-20, STPL advanced a loan of Rs.150.72 lakhs to Mr Shreesha, while in FY 2018-19, SIPL advanced a loan of INR 678.00 lakhs to Mr Shreesha and Mrs Padmajyothi Shreesha. From the analysis of the balance sheets of Mr Shreesha and Mrs Padmajyoti Sreesha, it can be inferred that the funds received by them were out of the fixed deposits created out of clients' funds, and the same were utilized towards investment in real estate and the sister concerns (SIPL and STPL).

Given the above, the Noticee used the clients' funds for creating fixed deposits. Against these fixed deposits, SIPL used the loan proceeds to meet the business expenses and advanced further unsecured loans to the Noticee's directors, Mr. Shreesha and Mrs. Padmajyothi Shreesha.

- b. In reply to the SCN-2, the Noticee submitted that it had not invested in any real estate or any investments. The amount is used for business operations and business establishment purposes only. As per the closing balance, the Noticee should refund the amount to the directors.
- c. The Committee finds as under:
 - i. The Noticee created fixed deposits amounting to Rs.8 crores from client funds and kept these deposits as collateral with Sri Guru Sarvabhauma Souharda Credit Co-operative against the loan of Rs. 7.20 crores availed by its sister concern Sunness infrastructure Pvt. Ltd. Further, these amounts were given as loans to the directors of the Noticee.
 - ii. In the absence of any satisfactory reply, it is inferred that the Noticee has no further submissions to make to the observation/alleged violation.

- iii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Regulation 4.5.3 of NSEIL Regulations (CM and F&O Segments).

12.7 Incorrect fund balances in the clients' ledgers

- a. Upon client balance reconstruction for all the clients for the period April 1, 2018, to August 31, 2021, it was observed that the derived closing balances of 3,768 clients as of August 31, 2021, were as under:

Particulars	Number of Clients	Derived Balance (Rs)	Balance Reported by the Noticee (Rs)	Difference (Rs)
Closing Credit balance	1,662	20,43,02,115.79	4,74,36,230.96	15,68,65,884.80
Closing Debit balance	1,479	-14,82,15,627.99	(Credit) 54,04,268.94	-15,36,19,896.93

- i. The derived creditors' closing balance of Rs.2,043.02 lakhs belong to 1,662 clients as of August 31, 2021. However, the credit balance as per the client ledger of the said 1,662 clients as of August 31, 2021, was Rs. 474.36 lakhs, leading to a difference of Rs.1,568.66 lakhs.
- ii. The derived debtors' closing balance of Rs.1,482.16 lakhs belongs to 1479 clients as of August 31, 2021. However, the balance as per the client ledger of the said 1479 clients as per client ledger was Rs.54.04 lakhs credit balance, leading to a difference of Rs.1,536.20 lakhs.

Given the above, it was alleged that the Noticee posted incorrect fund balances in the clients' ledgers.

- b. In reply to the SCN-2, the Noticee submitted as under:
- i. As per the records maintained by the Noticee, the closing credit balance was Rs.17 crores whereas as per the auditor's report, the closing balance was Rs.20 crores.

- ii. The Noticee debited Rs.10 crores towards brokerage and other charges due to funds' shortage, but the same was not considered. Hence, there was a difference in the closing credit balance as per the auditor's report.
- c. The Committee finds as under:
 - i. In the absence of any satisfactory reply, it is inferred that the Noticee has no further submissions to make to the observation/alleged violation.
 - ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/38743 dated August 30, 2018.

12.8 **Incorrect data submitted towards weekly client level cash and cash equivalent balances**

- a. The Exchange verified the details submitted by the Noticee towards client-level cash and cash equivalent balances vis-à-vis the reconstructed ledger balances as of August 31, 2021. Upon verification, it is observed that the Noticee submitted incorrect data as under:
 - i. Mismatch in the balances reported by the Noticee vis-à-vis the reconstructed ledger balances – 1,936 instances involving Rs.26.73 crores
 - ii. Client balances not reported by the Noticee – 1,161 instances involving Rs.3.90 crores

In view of the above, it was alleged that the Noticee uploaded incorrect data towards weekly cash and cash equivalent balances.

- b. In reply to the SCN-2, the Noticee reiterated its earlier submission pertaining to the debit amount of Rs.10 crores towards brokerage and other charges not being considered.

c. The Committee finds as under:

- i. In the absence of any satisfactory reply, it is inferred that the Noticee has no further submissions to make to the observation/alleged violation.
- ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/46960 dated March 23, 2020.

12.9 Shortfall of clients' funds

- a. The Exchange verified the trial balance of the Noticee. Upon verification, it is observed that the total deposits of the Noticee with Clearing Corporation and Clearing Member was Rs.166.25 lakhs and Rs.25.50 lakhs, respectively, and the total bank balances available of the Noticee was Rs.2.67 lakhs. Thus, the Noticee had a shortfall of funds of Rs.1,849.67 lakhs as of August 31, 2021.

Particulars	Amount (Rs)
Creditors balance as of August 31, 2021	20,44,09,390.52
Total deposits available with the Exchange – BSE, NSE, MCX	1,66,25,000.00
Total deposits available with the Clearing Member	25,50,000.00
*Bank balance available with the Noticee as of August 31 2021	2,67,397.86
Shortfall of funds	18,49,66,992.66

*Closing balance as well as fixed deposits with Sri Guru Sarvabhauma Souharda Credit Co-operative have not been considered.

In view of the above, the Noticee had a shortfall of clients' funds.

- b. In reply to the SCN-2, the Noticee reiterated its earlier submission pertaining to the debit amount of Rs.10 crores towards brokerage and other charges not being considered.

c. The Committee finds as under:

- i. The Noticee contended that as per the records maintained by the Noticee, the closing credit balance was Rs.17 crores whereas as per the auditor's report, the closing balance was Rs.20 crores. The Noticee further contended that it debited an amount of Rs.10 crores towards brokerage and other charges. However, the Noticee failed to provide any documentary evidence in support of its contention.
- ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/29096 dated March 11, 2015, and Exchange Circular No. NSE/INSP/33276 dated September 27, 2016.

12.10 **Non-reconciliation of clients' securities**

- a. As per the PAN-wise summary of the reconstructed register of securities for the period April 1, 2020, to August 31, 2021:
 - i. Value of securities receivable - Rs.34.59 crores for 557 clients
 - ii. Value of securities payable - Rs.26.04 crores for 208 clients

The value of the shares lying in the demat account maintained by the Noticee as of August 31, 2021, was Rs.16,754.32.

In view of the above, the Noticee failed to reconcile the securities.

- b. In reply to the SCN-2, the Noticee submitted that it furnished the clients' securities details to the auditors. However, the Noticee was unable to send complete details to the auditor as its employees had left the firm. Further, the Noticee claimed there was no difference in securities as per its records.
- c. The Committee finds as under:
 - i. In Exhibit 15 of SCN-2, the Exchange provided a PAN-wise difference in securities. The Exchange vide email dated March 17,

2022, requested the Noticee to provide instance-wise reply. However, the Noticee failed to reply to date.

- ii. The Noticee expressed its inability to submit the information on the ground that its employees had left the firm. The Trading Member is required to maintain and preserve the records in accordance with the regulatory requirements. The Noticee cannot attribute its inability to reconcile the clients' securities to the non-availability of its employees and is required to comply with the regulatory provisions.
- iii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/10605 dated April 21, 2008, and Exchange Circular No. NSE/INSP/29096 dated March 11, 2015.

12.11 **Incorrect data submitted in the weekly holding statement**

- a. Upon review of the weekly holding statement as of August 31, 2021, submitted by the Noticee to the Exchange, it was observed that the Noticee reported 1 ISIN: INE212I01016 (20 quantity). However, as per the PAN-wise summary of the reconstructed register of securities for the period April 1, 2020, to August 31, 2021:
 - i. Value of securities receivable = Rs.34.59 crores for 557 clients
 - ii. Value of securities payable = Rs.26.04 crores for 208 clients

Given the above, it was alleged that the Noticee submitted incorrect data in the weekly holding statement.

- b. In reply to the SCN-2, the Noticee denied the observation and submitted that there was no incorrect reporting.
- c. The Committee finds as under:
 - i. The Noticee denied the observation/alleged violation.

- ii. In Exhibit 15 of SCN-2, the Exchange provided client PAN-wise difference in securities reported by the Noticee. The total value of securities payable was 26.04 crore for 208 clients. The Exchange vide email dated March 17, 2022, requested the Noticee to provide instance-wise reply. However, the Noticee failed to provide instance wise reply to the Exchange.
- iii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/39855 dated January 3, 2019.

12.12 **Shortage in securities**

- a. As per the PAN-wise summary for the reconstructed register of securities for the period April 1, 2020, to August 31, 2021:
 - i. Value of securities payable = Rs.26.04 crores for 208 clients

The value of the shares available in the demat account of the Noticee was Rs.16,754.32/- as of August 31, 2021.

In view of the above, the Noticee had a shortfall of clients' securities.

- b. In reply to the SCN-2, the Noticee denied the observation and submitted that there was no shortage in securities.
- c. The Committee finds as under:
 - i. The Noticee denied the observation/alleged violation.
 - ii. In Exhibit 15 of SCN-2, the Exchange provided client PAN-wise difference in securities reported by the Noticee. The total value of securities payable was 26.04 crore for 208 clients. The Exchange vide email dated March 17, 2022, requested the Noticee to provide instance-wise reply. However, the Noticee failed to provide instance wise reply to the Exchange.

- iii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/INSP/29096 dated March 11, 2015.

12.13 **Non-maintenance of pre-order confirmation**

- a. On review of the trade data, it was observed that out of 27 trades, no pre-order confirmation was provided for 21 orders.

In view of the above, it was alleged that the Noticee did not maintain pre-order confirmation for the trade transactions undertaken by clients.

- b. In reply to the SCN-2, the Noticee submitted that its employee had left the job and did not hand over the responsibilities. Hence, the Noticee was unable to provide the order confirmation details to the auditors.
- c. The Committee finds as under:
 - i. The Noticee's contention that the order confirmation details could not be provided as the employee had left the firm is not tenable as irrespective of the employee's exit from the company, the Noticee should ensure timely compliance with the Exchange requirements.
 - ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Regulation 3.2.1 of NSEIL Regulations (CM Segment) and Regulation 3.4.1 of NSEIL Regulations (F&O Segment), and Exchange Circular No. NSE/INSP/35929 dated September 27, 2017.

12.14 **Approval for change in shareholding**

- a. The Noticee did not obtain prior/post-facto approval from the Exchange for changes in shareholding. The Exchange, vide email dated August 3, 2021, sought an explanation from the Noticee. However, the Noticee did not respond to the Exchange in this regard.

Name of the Shareholder	As per Exchange Records as of 20-Dec-2015		Shareholding as of 31-Mar-2017		Shareholding as of 31-Mar-2019	
	No. of Shares @ Rs.10 each	% of Total	No. of Shares @ Rs 10 each	% of Total	No. of Shares @ Rs 10 each	% of Total
Sunness Infrastructure Pvt. Ltd.	500	0.25	5000	1.67	5000	1.25
Padmajyothi Shreesha	11300	5.65	46800	15.60	46800	11.70
Sasitota Prabhakara Shreesha	188200	94.10	248200	82.73	348199	87.05
Total	200000	100.00	300000	100.00	399999	100.00

In view of the above, the Noticee had changed the shareholding without prior/post-facto approval from the Exchange.

- b. In reply to the SCN-2, the Noticee submitted that it was unaware of the requirement of prior approval for change in shareholding. The Noticee claimed to have submitted the reports to the Exchange post change in shareholding on half yearly and yearly basis along with the net worth certificate.
- c. The Committee finds as under:
 - i. The Noticee accepted the observation/alleged violation.
 - ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Exchange Circular No. NSE/COMP/39726 dated December 20, 2018.

12.15 **Non-cooperation from the Noticee**

- a. The Noticee has failed to co-operate with forensic auditors during the audit as under:
 - i. **Register of securities**
 - The Noticee did not provide the register of securities for the complete audit period from April 1, 2018, to August 31, 2021.

- The Noticee did not provide the client-wise details of shortages, client-wise details of shares lying in its demat accounts as of August 31, 2021, and corporate actions.

ii. Financial statements linked with the trial balance

The Noticee did not provide the financial statements linked with the trial balance as of August 31, 2021, and March 31, 2021. Hence, the net worth could not be computed.

iii. Potential outflow of funds to multiple individuals without supporting documents

The Noticee was requested to provide supporting documents for a sample of 16 sub-brokers / authorized persons pertaining to remiser expenses. An indicative list of the supporting documents requested for review are as follows:

- List of clients introduced by sample 16 sub-brokers / authorized persons
- Agreement signed with sample 16 sub-brokers / authorized persons
- KYC documents of sample 16 sub-brokers / authorized persons
- Working sheets/computation sheets for determining the amount of remiser expenses payable to sample 16 sub-brokers / authorized persons

Except for F.Y. 2020-21, the Noticee did not provide supporting documents to the forensic auditor to verify the amount of remiser expenses booked towards sub-brokers / authorized persons.

Given the above, the Noticee did not co-operate with the forensic auditor.

b. In reply to the SCN, the Noticee submitted as under:

- i. Register of securities – The Noticee furnished the register of securities maintained by it to the auditors.

- ii. Financial statements linked with the trial balance – The Noticee provided the financial statement and trial balance separately to the auditor. However, the Noticee has not linked the financial statement with the trial balance.
 - iii. Potential outflow of funds to multiple individuals without supporting documents – The Noticee furnished the list of clients, AP form, KYC documents and working sheet for 1 year to the auditor. The Noticee does not have any other data.
- c. The Committee finds as under:
- i. The Noticee has not provided the register of securities and financial statements linked with the trial balance to the auditors. Further, except for the financial year 2020-21, the Noticee did not provide any supporting documents to verify the amount of remisier expenses booked towards sub-broker/Authorised Person
 - ii. Thus, based on the material available on record, the Committee finds that the Noticee has violated Regulation 7.3 of NSEIL Regulations (CM and F&O Segments), Byelaw 2 (h) of Chapter V of NSEIL Byelaws, and Rule 3 (g) of Chapter IV of the NSEIL Rules.

In view of the above, the Noticee is charged with several violations such as shortfall of clients' funds and securities, misuse of clients' funds, engagement in unauthorized portfolio management services, misrepresentation/falsification of bank payment entries, mismatch in entries in client ledgers vis-à-vis trade data of the Exchange, incorrect fund balances in clients' ledgers, change in shareholding without the approval of the Exchange, non-cooperation with the Exchange during inspection etc.

CONCLUSION

1. There was a sudden increase in the number of investor complaints from 2 investor complaints involving Rs.7 lakhs as of August 3, 2021, to 57 investor complaints involving Rs.1.38 crores as of March 17, 2022. The Noticee failed to redress the investor complaints despite granting adequate opportunities.

In terms of clause 9(e) of SEBI (Stock Broker) Regulations 1992, any registration granted by the SEBI shall be subject to a condition that the Trading Member take adequate steps for the redressal of investor grievances. The relevant extracts are reproduced below:

National Stock Exchange Of India Limited | Exchange Plaza, C-1, Block G, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051, India
+91 22 26598100 | www.nseindia.com | CIN U67120MH1992PLC069769

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

(e) he shall take adequate steps for the redressal of grievances of the investors within one month of the date of receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received from such investors.

In terms of SEBI Circular No. CIR/MIRSD/18/2011 dated August 25, 2011, the Trading Members are liable for penal action for non-redressal of investor grievances. The relevant extracts are reproduced below:

2. The stockbrokers and sub-brokers shall take adequate steps for the redressal of grievances within one month from the date of receipt of the complaint and keep the investor/stock exchange(s) duly informed of the action taken thereon. Failure to comply with the said requirement will render the stockbroker liable for penal action.

2. The Noticee has engaged in unauthorized portfolio management services. Further, the Noticee does not have registration under the SEBI (Portfolio Managers) Regulations for portfolio management services.
3. The Noticee is a repeat violator. The Committee levied monetary penalties of Rs.7,88,400/- and Rs.10,05,000/- for the financial year 2018-19 and 2019-20/2020-21, respectively. The shortfall of clients' funds was Rs.6.02 crores as of April 30, 2021; however, upon conclusion of the forensic audit and reconstruction of clients' ledgers, the actual shortfall of clients' funds was Rs.18.50 crores as of August 31, 2021. By not maintaining proper books of accounts, the Noticee suppressed the actual shortfall of clients' funds. The Committee granted several opportunities to the Noticee to recoup the shortfall of clients' funds. However, the Noticee disregarded the Committee's directions. Such non-compliance constitutes misconduct within the meaning of Rules 3(e) of Chapter IV of Exchange Rules and, therefore, liable for disciplinary action under Rules 1 and 2 of Chapter IV of Exchange Rules. The relevant extracts are reproduced below:

Disciplinary Jurisdiction

(1) The relevant authority may expel or suspend and/or fine under censure and/or warn and/or withdraw any of the membership rights of a trading

member if it be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Byelaws, Rules and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the relevant authority or any other Committee or officer of the Exchange authorized in that behalf or of any conduct, proceeding or method of business which the relevant authority in its absolute discretion deems dishonorable, disgraceful or unbecoming a trading member of the Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name or welfare of the Exchange or prejudicial or subversive to its objects and purposes.

Penalty for Misconduct, Unbusinesslike Conduct and Unprofessional Conduct

(2) In particular and without in any way limiting or prejudicing the generality of the provisions in Rule (1) above, a trading member shall be liable to expulsion or suspension or withdrawal of all or any of its membership rights and/or to payment of a fine and/or to be censured, reprimanded or warned for any misconduct, unbusinesslike conduct or unprofessional conduct in the sense of the provision in that behalf contained herein.

Misconduct

(3) A trading member shall be deemed guilty of misconduct for any of the following or similar acts or omissions, namely:

(e) Failure to comply with Resolutions: If it contravenes or refuses or fails to comply with or abide by any resolution, order, notice, direction, decision or ruling of the relevant authority or of any Committee or officer of the Exchange or other person authorized in that behalf under the Bye Laws, Rules and Regulations of the Exchange;

4. In terms of Byelaw 1(a) of Chapter XII of Exchange Byelaws, a Trading Member may be declared a defaulter if it fails to fulfil its obligations. The relevant extracts are reproduced below:

Declaration of Default

(1) A trading member may be declared a defaulter by direction/circular/notification of the relevant authority of the trading segment if –

(a) he is unable to fulfil his obligations

5. The Noticee provided details of the assets of the Noticee/Directors, and the lien on the said assets, along with documentary evidence. Upon perusal of the said details, it is observed that all the assets are encumbered and subject to charge of various financial institutions. It is, therefore, evident that the Noticee does not have any wherewithal to recoup the shortfall of clients' funds and settle the clients' accounts. No purpose would be served in granting any further opportunities, as requested by the Noticee, since the Noticee did not take any steps to raise funds and revive its business.
6. The Noticee failed to provide a satisfactory reply to the show-cause notices and documentary evidence in support thereof. The Noticee failed to take corrective actions to fulfil its financial obligation to the clients or redress the investor complaints thereby demonstrating a complete disregard in complying with the directions of this Committee despite being afforded multiple opportunities. In the circumstances, the continuance of membership of the Noticee on the Exchange is detrimental to the interest of investors in the securities market. The Committee is of the view that this is a fit case for taking disciplinary action, viz. declaration of default and expulsion of the Noticee.

DECISION

7. Considering the facts and circumstances of the case, M/s. Sunness Capital India Pvt. Ltd. be expelled from the membership of the Exchange under Rules 1 and 2 of Chapter IV of NSEIL Rules and declared a defaulter under Byelaw 1(a) of Chapter XII of the NSEIL Byelaws with immediate effect.

Sd/-
Mona Bhide
(Chairperson)

Sd/-
Anuradha Rao
(Committee Member)

Sd/-
K Narasimha Murthy
(Committee Member)

Sd/-
Ranganayakulu Jagarlamudi
(Committee Member)

Sd/-
Vikram Limaye
(Committee Member)

Date: April 23, 2022