WTM / ASB / NRO / NRO / 29349 / 2023–24

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

IN RESPECT OF –

SR. NO.	NOTICEES	PAN
1.	CPR CAPITAL SERVICES LIMITED	AAACC3235A
2.	PAWAN KUMAR GARG	AAPPG1517R
3.	ANUJ GARG	AHEPG5644F
4.	DINESH KUMAR	ABKPK0853A
5.	CHP FINANCE PVT. LTD.	AABCC5031H
6.	IFL PROMOTERS LTD.	AAACI5322C
7.	CPR COMMODITIES SERVICES PVT. LTD.	AACCP5984B
8.	SHASHI GARG	AIGPG7786F

IN THE MATTER OF CPR CAPITAL SERVICES LIMITED

BACKGROUND

1. The present proceedings before me emanate from various inspections conducted by National Stock Exchange (hereinafter referred to as **"NSE"**) conducted with respect to the business activities of CPR Capital Services Ltd. (hereinafter referred to as "**CPR Capital / Noticee no. 1**") observing therein various irregularities. CPR Capital is a Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") registered intermediary in the following categories:
    a) As a Stock Broker in the equity segment of the National Stock Exchange of India Ltd. ("**NSE**") having registration No. INB230876935.
    b) As a Stock Broker in the equity derivative segment of NSE having registration No. INF230876935.
    c) As a Stock Broker in the currency derivative segment of NSE having registration No. INE230876935.
    d) As a Stock Broker in the equity segment of the Bombay Stock Exchange Ltd. ("**BSE**") having registration No. INB010876937.

e) As a Stock Broker in the equity derivative segment of BSE having registration No. INF010876937.

f) As a Stock Broker in the currency derivative segment of BSE having registration No. INE010876937.

g) As a Stock Broker in the equity segment of the Metropolitan Stock Exchange of India Ltd. ("**MSEI**") having registration No. INB260876934.

h) As a Stock Broker in the equity derivative segment of MSEI having registration No. INF260876934.

i) As a Stock Broker in the currency derivative segment of MSEI having registration No. INE260876934.

j) As a Depository Participant of the Central Depository Services Ltd. ("**CDSL**") having registration No. IN–DP–CDSL–472–2008.

2. SEBI had earlier received a reference dated March 29, 2016, from NSE, containing its observations from the limited purpose inspection of CPR Capital, as conducted by the Exchange (hereinafter referred to as "***1st NSE Inspection***"). Upon a consideration of the aforesaid reference and in view of the serious violations detailed therein, SEBI carried out a comprehensive inspection of CPR Capital in December 2016, covering the period from April 1, 2015–December 5, 2016, (hereinafter referred to as "***SEBI Inspection***").

3. Vide an e–mail dated February 14, 2017, NSE informed SEBI that based on violations observed during the *NSE Inspection,* the Disciplinary Action Committee of the Exchange (hereinafter referred to as "***DAC***") had levied a monetary penalty of ₹12.60 Lakh on CPR Capital in addition to imposing a suspension of five (5) trading days from February 27–March 3, 2017.

4. Thereafter, another inspection of CPR Capital covering the period from March 1, 2016–February 28, 2017, was carried out by NSE in March 2017 and the findings therein were communicated to SEBI vide an e–mail dated August 9, 2017 (hereinafter referred to as "***2nd NSE Inspection***").

5. Post the *2nd NSE Inspection*, a letter of observation ("**LO**") covering all the observations from the Inspection was issued to CPR Capital vide NSE's letter issued in August 2017. Despite several reminders issued by NSE vide emails/ letters dated August 16, 2021, August 21, 2017 and August 29, 2017, CPR Capital failed to provide a response to the LO. Consequently, a show cause notice dated October 31, 2017 (hereinafter referred to as "**NSE SCN**") was

issued to CPR Capital asking it to show cause as to why disciplinary action(s) should not be initiated against the said stock broker for the violations alleged therein.

6. From the material available on record, it is noted that at time of the *NSE Inspection*, the Directors of CPR Capital were as under:

TABLE 1		
SR. NO.	**NAME**	**TENURE**
1.	**PRESENT DIRECTORS**	
a.	PAWAN KUMAR GARG	APPOINTED W.E.F. 26.05.1995
b.	ANUJ GARG	APPOINTED W.E.F. 1.04. 2006
c.	DINESH KUMAR	APPOINTED W.E.F. 28.09.1999
2.	**PAST DIRECTORS**	**TENURE**
a.	SHASHI GARG	5.12.1999 TO 1.04.2016
b.	VIJAY PAL SINGH	9.01.2015 TO 1.10.2015
c.	ANITA MANN	1.01.2007 TO 1.10.2015

7. As on September 13, 2023, from the information obtained from the MCA website, *MCA21Portal*, the present Directors of CPR Capital are as under:

TABLE 2		
SR. NO.	**NAME**	**TENURE**
3.	**PRESENT DIRECTORS**	
a.	PAWAN KUMAR GARG	APPOINTED W.E.F. 26.05.1995
b.	SHASHI GARG	APPOINTED W.E.F. 8.10.2017
c.	PARUL GARG	APPOINTED W.E.F. 6.12.2022

8. The following findings /observations against CPR Capital, as contained in the aforementioned *SEBI Inspection,* were communicated to CPR Capital vide SEBI letter dated November 8, 2017:

   a) CPR Capital (i) failed to carry out verifications with respect to income sources /financial details of their clients, (ii) failed to carry out identification of beneficial owner in cases of corporate clients, (iii) failed to ensure recording of income in the Know Your Client ("**KYC**") and back office software w.r.t. three clients, viz. N162, S276 and R57.

   b) CPR Capital failed to ensure settlement of accounts for active and inactive clients.

   c) CPR Capital failed to ensure segregation of its own securities and funds from those of its clients.

   d) CPR Capital mis–utilized client securities by transferring them to its related parties.

e) CPR Capital omitted the words *"Client A/C"* in the nomenclature of eight *client bank accounts*.

f) CPR Capital raised funds by pledging securities of clients having NIL or credit balances.

g) CPR Capital failed to co–operate with the Inspecting Authority, SEBI.

9. CPR Capital replied to SEBI vide letter dated November 27, 2017 (received at SEBI on January 4, 2018).

10. In continuation with the proceedings emanating from the NSE SCN (as referred to paragraph no. 5 of this Order), the DAC in its meeting held on January 12, 2018, noted that CPR Capital had indulged in misuse of clients' funds and securities. The same being a serious violation, the DAC had recommended expulsion from membership, of CPR Capital. Accordingly, on March 5, 2018, CPR Capital was expelled by NSE from its membership. Thereafter, vide a Public Notice dated March 8, 2018, NSE had invited claims, if any, from clients of Noticee no. 1. NSE accepted claims for a period of 3 years and 3 months i.e. till June 5, 2021, receiving a total of 137 claims (new + reviewed) amounting to approximately ₹7.48 Crore (discussed later in this Order).

11. Subsequently, on March 6, 2018, BSE and MSEI had also expelled CPR Capital from the exchanges' membership.

12. On the basis of the findings /observations contained in the *SEBI and NSE Inspections*, which *prima facie* revealed serious violations of the provisions of securities law, SEBI issued an *Ex–parte Ad Interim Order No. WTM/MPB/SEBI/NRO/44/2018 dated September 25, 2018 (*hereinafter referred to as *"**Interim Order**"),* against CPR Capital and its Directors as under:

a) CPR Capital, Pawan Kumar Garg ("**Noticee no. 2**"), Anuj Garg ("**Noticee no. 3**"), Dinesh Kumar ("**Noticee no. 4**"), CPR Commodities Services Pvt. Ltd. ("**CPR Commodities /Noticee no. 7**"), Shashi Garg ("**Noticee no. 8**"), Vijay Pal Singh and Anita Mann, 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 entities and persons 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 entities and persons 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 these directions.

d) The aforesaid entities and persons are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.

e) Till further directions in this regard, the assets of these entities 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 concerned stock exchange(s).

f) The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid entities and persons except for the purpose mentioned in sub–para (e) after confirmation from the concerned stock exchange in this regard.

g) Registrar and Transfer Agents are also directed to ensure that the securities (including mutual fund units) in physical form, held jointly or severally, by the aforesaid entities and persons are not transferred /redeemed except for the purpose mentioned in sub–para (e) after confirmation from the concerned stock exchange in this regard.

h) The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by CPR Capital Services Ltd., except for the purpose of payment of money to the clients /investors under the written confirmation of the concerned stock exchange(s).

i) CHP Finance Pvt. Ltd. (hereinafter referred to as "**CHP Finance /Noticee no. 5**") and IFL Promoters Ltd. (hereinafter referred to as "**IFL Promoters /Noticee no. 6**") are directed to deposit ₹2.77 Crore and ₹1.36 Crore, respectively (i.e. the amount of securities of clients of CPR Capital

received by them off-market from CPR /sold by CHP and IFL without possessing the same, as on February 28, 2017) in an interest bearing Escrow Account held with a Nationalized Bank, within 30 days from the date of receipt of this order. In the event, CHP Finance Pvt. Ltd. and IFL Promoters Ltd. fail to comply with the above directions, they shall, from the 31st day of receipt of this Order, be restrained from accessing the securities market and shall also be 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.

13. In the meantime, CPR Capital had challenged its expulsion from membership by NSE before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). Vide an Order dated May 9, 2019 in Misc. Application No. 87 of 2018 and Appeal No. 94 of 2018, the Hon'ble SAT had remanded the matter to the DAC for considering afresh the review application filed by CPR Capital against the decision to expel it from membership of NSE.

14. Subsequently, the review application remanded by SAT was placed before the Member and Core Settlement Guarantee Fund Committee (formerly Defaulters' Committee), NSE, which in its meeting held on August 26, 2019, found no merit in the request for review made by CPR Capital and accordingly, rejected the same.

Subsequent to the Interim Order, SEBI directed NSE and BSE to appoint a forensic auditor to examine the issues covered therein and also to examine the extent of siphoning /mis–utilization of securities, ascertain the value of funds raised by CPR Capital through pledging of securities belonging to its clients along with looking into the role of the designated Directors of CPR Capital in its actions / inactions. In this regard, NSE had appointed S. Panse & Co. LLP (Charted Accountants) as forensic auditor. Similarly, BSE appointed SARB & Associates (Chartered Accountants) as forensic auditor in the matter. However, from the forensic audit report submitted by BSE vide letter dated May 14, 2019, it is observed that the forensic auditor i.e. SARB & Associates was unable to comment on whether or not any fraudulent transactions had been undertaken by CPR Capital in view of the broker's refusal to co–operate with its auditor and

that the auditor had closed the forensic audit report citing limitations of inadequate documents and on account of non–cooperation by CPR Capital.

15. Pursuant to an opportunity of hearing being granted to the entities mentioned in the Interim Order, SEBI confirmed the directions against Noticees no. 1 to 8 vide Order No. WTM/AB/MIRSD/NRO/30/2019–20 dated October 25, 2019 (hereinafter referred to as "**Confirmatory Order**"). The Interim Order however, was revoked against Vijay Pal Singh and Anita Mann.

16. CPR Capital was declared a defaulter by BSE and NSE on November 5, 2019 and December 23, 2019 respectively, *inter alia* on the grounds that the clients' claims had exceeded the assets of the CPR Capital.

17. NSE submitted the forensic audit report dated January 21, 2020 (hereinafter referred to as "**FAR**" / "**NSE Audit Report**"), as prepared by its appointed auditor i.e. S. Panse & Co. LLP, to SEBI. The aforesaid Report, which covered the period from April 2015 to August 2015 and April 2016 to February 2017, contained the following observations:

    a) CPR Capital's Client Account (TM/CM–Pool account) and Own Beneficiary Account (Stock Broker–Proprietary Account) revealed non–availability of securities worth ₹35.98 Crore as on August 31, 2015 and ₹2.62 Crore as on February 28, 2017.

    b) CPR Capital had the following transactions with its related parties:

        (i) With CPR Commodities, payments and receipts worth ₹249 Crore during the period April 1, 2015 to August 31, 2015 and ₹668.11 Crore during the period April 1, 2016 to February 28, 2017. The net amount of ₹419.1 Crore received from CPR Commodities was mainly transferred by CPR Capital to settlement accounts or to various clients / client bank accounts.

        (ii) With CHP Finance, payments and receipts worth ₹16.74 Crore during the period April 1, 2015 to August 31, 2015 and ₹89.50 Crore during the period April 1, 2016 to February 28, 2017. The net amount of ₹72.73 Crore received from CHP Finance was mainly transferred by CPR Capital to settlement accounts or to various clients / client bank accounts.

        (iii) With IFL Promoters, payments and receipts worth ₹6.26 Crore during the period April 1, 2015 to August 31, 2015 and ₹76.49 Crore

during the period April 1, 2016 to February 28, 2017. The net amount of ₹70.23 Crore received from IFL Promoters was mainly transferred by CPR Capital to settlement accounts or to various clients / client bank accounts.

c) Amount transferred between *client bank accounts* and non–clients: During the periods April 1, 2015 to August 31, 2015 and April 1, 2016 to February 28, 2017, amounts worth ₹297.36 Lakhs were received in various *client bank accounts* from non–clients and amounts worth ₹275.89 Lakhs were paid from the *client bank accounts* to non–clients.

d) CPR Capital pledged clients' securities with various lenders /financiers for raising ₹8.62 Crore.

e) Funds transferred between *client bank account* and business bank account:

   (i) During the period April 1, 2015 to August 31, 2015, ₹10.93 Crore was transferred from CPR Capital's business bank account to the *client bank account* while at the same time, ₹18.43 Crore was transferred from the *client bank account* to CPR Capital's business bank account;

   (ii) Similarly, during the period April 1, 2016 to February 28, 2017, ₹12.66 Crore was transferred from CPR Capital's business bank account to the *client bank account* while at the same time, ₹12 Crore was transferred from the *client bank account* to CPR Capital's business bank account.

f) As per the trail balance dated February 28, 2017, amounts receivable /advances from parties grouped as Sundry Debtors by CPR Capital amounted to ₹39.95 Crore, majority of which was recoverable from 17 different entities, out of which 9 entities (recoverable amount of ₹15.09 Crore) were found to be connected to CPR Capital, 4 entities (recoverable amount of ₹8.84 Crore) had a common address and 4 entities who could not be traced to be not connected with CPR Capital (recoverable amount of ₹7.67 Crore). The aforesaid amount of ₹15.09 Crore to be recovered from 9 entities connected to CPR Capital included ₹3.94 Crore recoverable from IFL Promoters and ₹0.70 Crore recoverable from CPR Commodities.

g) As per records of NSE, the registered office of CPR Capital was at the address '6 Basement, Convenience Shopping Centre, Valley View Estate, Gurgaon–Faridabad Road, Gwal Pahari, Haryana–122003', however, there was no office of CPR Capital at the aforementioned address. Instead a unisex salon, namely 'MV Hair Studio', was at from the aforementioned address.

18. Vide an e–mail dated October 25, 2021, SEBI had sought the status of compliance with the direction issued vide paragraph 11 of the Confirmatory Order i.e. "*In its written submissions dated August 08, 2019, Noticee no.1 has submitted that it wishes to settle the claims of its clients for which it claims that adequate securities are available with Noticee no.1, however, due to the freeze/debarment imposed vide the interim order, it is unable to do so. Having regard to the interest of investors, NSEIL is directed to consider the request, if any, made by the Noticee no. 1 in this regard, in accordance with law."* Vide replies dated October 28, 2021 and November 1, 2021, NSE informed SEBI that necessary information /details of claims were provided to CPR Capital.

Show Cause Notice, Reply and Hearing

19. Based on the above narrated findings, a common show cause notice dated October 31, 2021 (hereinafter referred to as "**SCN**") was issued to Noticees no. 1 to 8, wherein the following violations were alleged based on observations contained in the *SEBI Inspection* and *NSE Audit Report*:

Allegations against Noticee no. 1 and its past and present Directors, viz. Noticees no. 2, 3, 4 and 8

a) Failure to ensure compliance with KYC and Anti–money laundering (hereinafter referred to as "**AML**") norms which was in violation of:

(i) Clauses 5.1(f) and (g) of the SEBI Master Circular No. CIR/ISD/AML/3/2010 dated December 31, 2010 (hereinafter referred to as "**Circular dated December 31, 2010**").

(ii) Clauses 3 and 4 of the SEBI Circular No. CIR/MIRSD/2/2013 dated January 24, 2013 (hereinafter referred to as "**Circular dated January 24, 2013**").

(iii) Clause 4 of Annexure 4 of the SEBI Circular No. CIR/MIRSD/16/2021 dated August 22, 2011 (hereinafter referred to as "**Circular dated August 22, 2011**").

b) Non–settlement of clients' funds and securities, which amounted to a violation of:
   (i) Clauses 12(d) and (e) of Annexure A of the SEBI Circular No. MIRSD/SE/Cir–19/2009 dated December 3, 2009 (hereinafter referred to as "**Circular dated December 3, 2009**");
   (ii) Clause 33 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011.
   (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the SEBI (Stock Brokers and Sub–brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations, 1992**").

c) Non–segregation of clients' funds and securities, which was in violation of:
   (i) Clauses 1 and 2 of the SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 (hereinafter referred to as "**Circular dated November 18, 1993**") and Clauses 1 and 2.4 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (hereinafter referred to as "**Circular dated September 26, 2016**").
   (ii) Clause 15 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011.
   (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992.

d) Availing of Loan against securities (hereinafter referred to as "***LAS***") facility by pledging securities belonging to clients with NIL or credit balance in violation of:
   (i) Circular dated November 18, 1993 and Clause 2.5 of the Annexure to the Circular dated September 26, 2016.
   (ii) Clauses 2.1 and 4 of the SEBI Circular No. MRD/DoP/SE/Cir – 11/2008 dated April 17, 2008 (hereinafter referred to as "**Circular dated April 17, 2008**").

(iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992.

e) Non–cooperation with SEBI and the Forensic Auditor appointed by BSE thereby violating:
   (i) Regulation 26(ii) of the Stock Brokers Regulations.
   (ii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations.
   (iii) Conditions of registration as specified under Regulations 9(b) and (f) of the Stock Brokers Regulations, 1992.

f) Failure to redress investor grievances in violation of:
   (i) Regulation 26(iv) of the Stock Brokers Regulations, 1992.
   (ii) Conditions of registration as specified under Regulation 9(e) of the Stock Brokers Regulations, 1992.

Allegations against Noticees no. 5, 6 and 7:

g) The SCN also alleged that entities related to CPR Capital i.e. Noticees no. 5 (CHP Finance), 6 (IFL Promoters) and 7 (CPR Commodities), failed to ensure compliance with the Interim Order. In addition, Noticees no. 5, 6 and 7 were alleged to have directly/ indirectly aided and abetted Noticee no. 1 and its Directors, viz. Noticees no. 2, 3, 4 and 8, in the misutilisation of clients' securities, pledging securities of clients with credit/ NIL balances, non-settlement of clients funds and securities, and non-segregation of client funds and securities.

20. Vide the SCN, the Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, should not be issued /imposed against them for the violations alleged therein. Along with the SCN, the following documents were provided to the Noticees as Annexures:

TABLE 3	
NO.	**PARTICULARS**
ANNEXURE 01	COPY OF SEBI INTERIM ORDER DATED SEPTEMBER 25, 2018
ANNEXURE 02	COPY OF SEBI CONFIRMATORY ORDER DATED OCTOBER 25, 2019
ANNEXURE 03	COPY OF COMMUNICATION OF OBSERVATIONS TO CPR CAPITAL'S LETTER DATED NOVEMBER 8, 2017
ANNEXURE 04	COPY OF CPR CAPITAL'S REPLY DATED NOVEMBER 27, 2017
ANNEXURE 05	COPY OF NOTICES/ NOTIFICATIONS BY NSE
ANNEXURE 06	COPY OF NOTICES/ NOTIFICATIONS BY BSE
ANNEXURE 07	COPY OF NOTICE/ NOTIFICATION BY MS EL

ANNEXURE 08	COPY OF FORENSIC AUDITOR REPORT FROM SARB & ASSOCIATES
ANNEXURE 09	COPY OF FORENSIC AUDITOR REPORT FROM S PANSE & CO LLP (WITH ANNEXURE)
ANNEXURE 10	CPR CAPITAL'S POLICIES AND PROCEDURES ON SEGREGATION
ANNEXURE 11	ANALYSIS OF SECURITIES SETTLEMENT
ANNEXURE 12	OVERALL POSITIONS OF PLEDGING BY CPR CAPITAL'S AS SUBMITTED BY ENTITIES
ANNEXURE 13	COPIES OF E–MAILS AND LETTERS TO CPR CAPITAL'S
ANNEXURE 14	COPIES OF E–MAILS FROM EXCHANGES REGARDING INVESTOR COMPLAINTS AND CLAIMS
ANNEXURE 15	TRADE DETAILS AS PROVIDED BY NSE

21. The SCN was served upon the Noticees at their addresses available on record with SEBI. Noticees no. 1, 2, 5, 6 and 7 filed respective undated replies to the SCN, which were received at SEBI in December 2021.As regards Noticees no. 3, 4 and 8, a final opportunity to reply to the SCN was granted vide letter dated January 04, 2022. Subsequently, vide email dated January 14, 2022, the Noticees (past and present Directors of CPR Capital) along with Noticee no. 1 informed SEBI that they were making efforts to settle claims made by the clients. Further, the aforementioned Noticees also assured SEBI that within 15 days, all claims of the clients will be settled after examining their genuineness. However, no reply on merits was received from Noticees no. 3, 4 and 8.

22. Vide email dated January 24, 2022, NSE informed SEBI that it had forwarded the updated list of claims received by the Defaulter's Section, NSE, against CPR Capital post its expulsion, to the said broker, vide email dated January 20, 2022.

23. Subsequently, in compliance with the principles of natural justice, all the Noticees were provided with an opportunity of personal hearing on July 15, 2022 wherein Noticee no. 2 appeared on behalf of all the Noticees and broadly argued on the lines of the replies filed by the Noticees (which are reproduced and discussed in the subsequent paragraphs). The hearing accordingly, stood concluded on the aforementioned date.

Consideration of Issue and Findings

24. I have considered the SCN, the replies filed by the Noticees along with all the material available on record. I shall now proceed to deal with the allegations levelled in the SCN in light of the replies submitted by the Noticees.

25. I note that Noticees no. 3, 4 and 8 have not filed any reply on merits, to the SCN or made any submission for consideration during the course of these proceedings despite the opportunities granted to them. Accordingly, in this context, I rely upon the observations of the Hon'ble SAT in the matter of ***Sanjay***

Kumar Tayal & Ors. vs. SEBI (Order dated February 11, 2014 in Appeal no. 68 of 2013), wherein it had observed: *"… Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices."* Even though the Noticees have remained *ex parte*, I nonetheless find it relevant that I should be guided by the documents available on record as laid down by the Hon'ble SAT in the matter of ***Shri B. Ramalinga Raju vs. SEBI (Order dated May 12, 2017 in Appeal No. 286 of 2014)***.

Allegations against Noticees no. 1 and its past and present Directors viz. Noticees no. 2, 3, 4 and 8

A. **KYC AND AML NORMS**

In the SCN, the Noticees have been alleged to have failed to ensure compliance with KYC and AML norms in violation of (i) Clauses 5.1(f) and (g) of the Circular dated December 31, 2010, (ii) Clauses 3 and 4 of the Circular dated January 24, 2013 and (iii) Clause 4 of Annexure 4 of the Circular dated August 22, 2011. Before dealing with the issues framed above, it would be appropriate to refer to the aforesaid relevant provisions of law alleged to have been violated in the matter, extract of which are reproduced below:

Clauses 5.1(f) and (g) of the Master Circular dated December 31, 2010.

"5. Client Due Diligence …

5.1 (f) Conduct ongoing due diligence and scrutiny, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the registered intermediary's knowledge of the client, its business and risk profile, taking into account, where necessary, the client's source of funds; and

(g) Registered intermediaries shall periodically update all documents, data or information of all clients and beneficial owners collected under the CDD process."

Clauses 3 and 4 of the Circular dated January 24, 2013.

"3. Further, the Prevention of Money Laundering Rules, 2005, also require that every banking company, financial institution and intermediary, as the case may be, shall identify the beneficial owner and take all reasonable

steps to verify his identity. The Government of India in consultation with the regulators has now specified a uniform approach to be followed towards determination of beneficial ownership. Accordingly, the intermediaries shall comply with the following guidelines.

4. Where the client is a person other than an individual or trust, viz. company, partnership or unincorporated association /body of individuals, the intermediary shall identify the beneficial owners of the client and take reasonable measures to verify the identity of such persons …"

Clause 4 of Annexure 4 of the Circular dated August 22, 2011.

"Annexure – 4 Rights and Obligations of Stock Brokers, Sub-Brokers and Clients as prescribed by SEBI and Stock Exchanges:

4. The stock broker shall continuously satisfy itself about the genuineness and financial soundness of the client and investment objectives relevant to the services to be provided.

26. I note that in their replies, Noticees no. 1 and 2 have submitted as under:

a) *At that time, risk categorization was not done in real sense. If a client pays the margin applicable and fulfills all the KYC formalities, then he was considered eligible for trading in (the securities) market. This practice of risk categorization is taken seriously only nowadays. CPR Capital was a small concern and never did risk categorization at a high standard /level.*

b) *The income level of a client was not compared with his paying capacity if he was making the payment regularly through the bank. The net payment made by the clients to the broker cannot be commensurate with the declared income of the client. It is the responsibility of the client to make the payment required for the trading done by him and it is his prerogative to see whether the declared income is commensurate with the payments made by him during the year. Further, it is very impossible for us to verify how much trading is going to be made by him and how much payment he is going to make during the year. Further, to enquire about the source of income of a client is next to impossible for a broker.*

c) *The supporting documents for identification of beneficial ownership in case of corporate clients, viz. C173, C182, 505022 and 505213, are available with us and are attached herewith for your reference.*

d) The income proof of N162, S276 and R57 is available with us and is attached herewith. As submitted earlier, our staff did the KYC of all the said 3 codes and the same were of our old clients who had a good reputation in the market. In the back office software, necessary entries may not be available due to carelessness of the staff.

e) *Taking all the things and circumstances under consideration and lenient view, there is no violation of Master Circular committed by us.*

27. From the material available on record, the following is observed:

a) A sample of 44 clients were inspected and it was observed that the risk categorization of the said clients to indicate whether they were low, medium or high risk clients, was not available in the back office software maintained by CPR Capital.

b) Further, with regard to 21 out of the aforementioned 44 sample clients, upon an examination of the KYC and back office software, it was observed that the net funds paid by such clients to CPR Capital during the relevant financial year, did not commensurate with the income declared by such clients and were quite higher than the declared income, as noted below:

TABLE 4 – AML OBSERVATION OF SELECTED CLIENTS			
SR. NO.	CLIENT CODE	NET FUNDS PAID TO BROKER	INCOME AS PER KYC
1.	C173	61,20,12,000	<1 LAKH
2.	C182	4,23,00,000	<1 LAKH
3.	505022	1,79,06,26,568	NW = 3.66 CRORE
4.	C151	18,85,86,896	NW = 78,000
5.	15	2,48,82,01,945	10–25 LAKH
6.	A188	36,80,19,713	>25 LAKH
7.	C154	73,98,31,599	<1 LAKH
8.	505214	1,44,60,000	<25 LAKH
9.	R344	1,03,00,000	1–5 LAKH
10.	GN15	650,000	<1 LAKH
11.	R290	28,35,000	2–5 LAKH
12.	505213	1,64,45,000	>25 LAKH
13.	A129	9,07,35,700	1–5 LAKH
14.	MB71	12,58,550	1–2 LAKH
15.	121179	20,86,30,000	1–5 LAKH
16.	P34	1,66,70,000	1–5 LAKH
17.	C195	2,50,00,000	1–5 LAKH
18.	V660	20,00,000	1–5 LAKH
19.	P4	1,67,43,050	5–10 LAKH
20.	J483	7,70,000	<1 LAKH
21.	P105	8,30,000	1–2 LAKH

c) As regards the identification of beneficial ownership for corporate clients, in four of such corporate clients mentioned at Table 3, viz. C173, C182, 505022 and 505213, the supporting documents pertaining to identification of the beneficial owner was not available as part of the KYC documents.

d) Further, in 3 out of the 44 clients, details of income were not available either in the KYC or the back office software.

28. From the aforesaid table and the observations, I note huge anomalies in terms of income captured by CPR Capital while onboarding the clients and the value for which the trades were undertaken by such clients through CPR Capital. For instance, the declared income as per KYC client having client code C173 was less than ₹1 lakh, however, the said client made after trading made net payout to CPR Capital to the tune of ₹61.20 crore. Similar anomalies have been observed with other 20 clients.

29. I observe that despite categorically codifying the obligations of the stock broker towards its clients by way of the afore discussed circulars, certain entities like the Noticee no. 1, do not wish to comply with the said provisions, neither in letter nor in spirit. From the replies of the Noticees, it is noted that Noticees no. 1 and

2 have admitted to the fact the risk categorization was not carried out. Further, the said Noticees have also admitted to the fact that client's income was not compared with their paying capacity. In addition to the above, the Noticees have submitted that the non–availability of documents pertaining to the income proof of N162, S276 and R57 during the *Inspections* was on account of the carelessness of its staff. In these proceedings, although the Noticees have submitted supporting documents for identification of beneficial owner and for income proof, the non–availability of such documents at the relevant time during the *Inspection* clearly indicate their lackadaisical approach towards ensuring compliance with KYC and AML norms. In my view, the acts of transgression on the part of the Noticees, as recorded above have actually resulted into violation of SEBI Circulars for which the Noticees have offered no *bonafide* explanation in their defence.

30. In view of the above and having regard to the admissions made by Noticees no. 1 and 2, I am of the considered view that Noticee no. 1 had violated (i) Clauses 5.1(f) and (g) of the Circular dated December 31, 2010, (ii) Clauses 3 and 4 of the Circular dated January 24, 2013 and (iii) Clause 4 of Annexure 4 of the Circular dated August 22, 2011.

B. <u>NON–SETTLEMENT OF CLIENTS' FUNDS AND SECURITIES</u>

31. The SCN has alleged that the Noticees failed to ensure settlement of clients' funds and securities in violation of (i) Clauses 12(d) and (e) of Annexure A of the Circular dated December 3, 2009, (ii) Clause 33 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011 and (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992:

a) **Clauses 12(d) and (e) of Annexure A of the Circular dated December 3, 2009.**

*"**Annexure A:** Running Account Authorization …*

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

…

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."*

b) **Clause 33 of Rights and Obligations of Stock Brokers, Sub-Brokers and Clients as prescribed Annexure – 4 of SEBI Circular no. CIR/MIRSD/16/2011 dated August 22, 2011.**

*"**33**. The stock broker shall make pay out of funds or delivery of securities, as the case may be, to the Client within one working day of receipt of the pay-out from the relevant Exchange where the trade is executed unless otherwise specified by the client and subject to such terms and conditions as may be prescribed by the relevant Exchange from time to time where the trade is executed."*

c) Stock Brokers Regulations, 1992 – Code of Conduct for Stock Brokers [Regulation 9]

"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.

(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.

32. I note that the Noticees, in their replies, have submitted that "*for non–settlement of clients' funds and securities or not adhering to NSE and SEBI norms from time to time, the Exchange has penalized us and we have paid the penalty and also promised to adhere to the rules and regulations in future*."

33. From the material available on record, it is noted that in response to the information sought during the *SEBI Inspection* on quarter–wise settlement compliance, Noticee no. 1 had submitted details of both active and inactive clients whose settlement was done and whose settlement was not done during the relevant Quarters. Details of the same are placed in the subsequent paragraphs.

34. **Active Clients:** With regard to the active clients, Noticee no. 1 had failed to settle clients' dues for several quarters. Further, amongst the clients whose dues remained unsettled, many of them were observed to have had credit balance of more than ₹10,000. Such details are tabulated below:

TABLE 5 – ACTIVE CLIENTS UNSETTLED

QUARTERLY SETTLEMENT	TOTAL NUMBER OF ACTIVE CLIENTS DURING INSPECTION PERIOD	NO OF CLIENTS REQUIRED TO BE SETTLED	NO. OF CLIENTS SETTLED	NO. OF CLIENTS UNSETTLED	NO OF CLIENTS HAVING CONTINUOUS CREDIT BALANCE MORE THAN ₹10,000 FOR MORE THAN 90 DAYS	ACTIVE CLIENTS WHO REMAIN UNSETTLED (IN %)
JUNE 2015	450	450	288	162	135	30%
SEPTEMBER 2015	468	468	303	165	138	29%
DECEMBER 2015	387	387	266	121	97	25%
MARCH 2016	419	419	278	141	42	10%
JUNE 2016	400	400	258	142	81	36%
SEPTEMBER 2016	429	429	257	172	74	17%

35. **Inactive Clients:** Noticee no. 1 had not settled the funds of 21 inactive clients and securities of 10 inactive clients during the inspection period as under:

TABLE 6 – INACTIVE CLIENTS' FUND BALANCE			
QUARTER ENDING	**AMOUNT NOT SETTLED (₹)**	**CC**	**AMOUNT NOT SETTLED (₹)**
JUNE 2015	45,47,768	C158	29,00,000
		R443	6,88,232
		P204	3,66,843
		J73	2,99,085
		S582	2,93,608
SEPTEMBER 2015	27,52,296	R443	6,87,932
		S622	6,77,428
		C174	5,20,093
		V415	5,00,000
		P204	3,66,843
DECEMBER 2015	24,53,648	V163	9,99,960
		V415	5,00,000
		P204	3,66,843
		S582	2,93,608
		V416	2,93,237
MARCH 2016	12,41,211	M103	9,54,401
		K19	1,14,408
		K645	77,297
		AF562	53,322
		D124	41,783
JUNE 2016	42,88,016	L29	39,91,989
		K19	1,15,408
		K645	77,297
		AF562	53,322
		I68	50,000
SEPTEMBER 2016	24,61,324	A485	10,00,039
		C501	9,80,000
		P264	2,72,229
		K19	1,15,908
		C186	93,148
TOTAL AMOUNT NOT SETTLED FOR SAMPLE CLIENTS			**CUMULATIVE: ₹1,77,44,263** **MAX UNSETTLED: ₹39,91,989**

TABLE 7 – INACTIVE CLIENTS' SECURITIES BALANCE			
QUARTER ENDING	**DEMAT STOCK**	**CC**	**NOT SETTLED**
JUNE 2015	39,84,385	C164	22,31,045
		AF562	10,94,783
		S298	2,52,527
		K18	2,08,505
		R126	1,97,526
SEPTEMBER 2015	44,62,700	C164	26,02,886
		AF562	9,28,128
		R233	3,14,653
		N536	3,11,177
		S298	3,05,857
DECEMBER 2015	44,62,700	C164	26,02,886
		AF562	9,28,128
		R233	3,14,653
		N536	3,11,177
		S298	3,05,857
MARCH 2016	20,56,169	AF562	9,37,846
		S298	3,33,615
		N536	2,99,044
		R233	2,68,119
		U3	2,17,544
JUNE 2016	62,38,708	C183	36,50,903
		AF562	10,04,944
		M268	9,85,400
		N536	3,11,899
		R233	2,85,563
TOTAL AMOUNT NOT SETTLED FOR SAMPLE CLIENTS			**CUMULATIVE: ₹2,12,04,665** **MAX UNSETTLED: ₹36,50,903**

36. In their replies, Noticees 1 and 2 have submitted that they have already been penalized by the Exchanges with respect to the violation pertaining to the failure to ensure settlement of clients' funds and securities. It is pertinent to mention here that the said proceedings by the stock exchanges were carried under the bye–laws administered by the Exchanges in view of the fact that Noticee no. 1 was a member of the said Exchanges and the said proceedings are different and separate from the instant proceeding, which is for determining whether or not the Noticees had violated the provisions of law administered by SEBI in their capacity as a registered intermediary.

37. It is reiterated that Noticees no. 1 and 2 have merely submitted that they have already been penalized by the Exchanges without actually denying the fact that such lapses had occurred. It is important to mention here that the last step involved in executing a transaction on the Stock Exchange is settlement of

securities and funds. So, once the mutual obligations of the buyer and seller are determined, settlement happens whereby the buyer gets the purchased securities by paying-in the purchase value and the seller gets the pay-out as sales proceeds. As per SEBI Circular dated December 3, 2009, the actual settlement of funds and securities has to be done by the stock broker, at least once in a calendar quarter or in a month, depending on the preference of the client. However, it is observed from the above Tables 4–6 that during the period June 2015 to September 2016, there were substantial number of clients having significant outstanding credit balances in their trading accounts that remained unsettled. Further, in the case of inactive clients, Noticee no. 1 should not have continued to retain their funds and securities in the absence of any trading and consequential obligations of such clients towards the stock broker. By failing to settle the funds and securities of inactive clients, Noticee no. 1 not only used such clients' funds and securities but also ensured the exposure of such accounts to the risk of unauthorised trading /fraud. Further, I would like to record here that a stock broker has to frame appropriate internal policies in accordance with the Circulars /Regulations framed by SEBI so as to ensure strict compliance with regulatory instructions. Adopting policies which are not in line with the legal requirements cannot be justified on any grounds whatsoever. The non-settlement of clients' funds or securities is a serious irregularity and is not a mere technical lapse since the client remains in the dark about the state of affairs of his account, and the explanation furnished by the Noticees is completely beyond the laid down legal framework.

38. Therefore, it is evident from the above that actual settlement of securities/funds of the clients has not been done by CPR Capital as per the extant circulars and instructions of SEBI. In view of the above, I am of the considered view that that Noticee no. 1 had violated (i) Clauses 12(d) and (e) of Annexure A of the Circular dated December 3, 2009, (ii) Clause 33 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011 and (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992.

C. NON–SEGREGATION OF CLIENTS' FUNDS AND SECURITIES

39. The SCN has alleged that the Noticees failed to ensure segregation of clients' funds and securities in violation of (i) Clauses 1 and 2 of the Circular dated November 18, 1993 and Clauses 1 and 2.4 of Annexure to Circular dated September 26, 2016, (ii) Clause 15 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011 and (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992:

a) **Circular dated November 18, 1993.**

"Regulation of Transactions between Clients and Brokers

1. 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 t 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; such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

ii. 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.

2. 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:

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.;

f. Securities given on Vyaj-badla: Member shall obtain authorization from clients for the same.

b) **Clause 1 and 2.4 of the Annexure to the Circular dated September 26, 2016.**

Clause 1. Naming/Tagging of Bank and Demat Accounts by Stock Broker:

1.1. Bank accounts and Demat accounts maintained by all stock brokers shall have appropriate nomenclature to reflect the purpose for which those bank/demat accounts are being maintained.

1.2. The nomenclature for bank accounts and demat accounts to be followed is given as under:

1.2.1. Bank account(s) which hold clients' funds shall be named as "Name of Stock Broker - Client Account".

1.2.2. Bank account(s) which hold own funds of the stock broker shall be named as "Name of Stock Broker - Proprietary Account".

1.2.3. Demat account(s) which hold clients' securities shall be named as "Name of Stock Broker- Client Account".

1.2.4. Demat account(s), which hold own securities of the stock broker, shall be named as "Name of Stock Broker-Proprietary Account".

1.2.5. Demat account(s), maintained by the stock broker for depositing securities collateral with the clearing corporation, shall be named as "Name of Stock Broker-Collateral Account".

1.2.6. Demat account(s) held for the purpose of settlement would be named as " Name of Stock Broker - Pool account".

1.2.7. Bank account(s) held for the purpose of settlement would be named as " Name of Stock Broker - Settlement Account"

Clause 2.4. In line with the prevalent regulatory requirement, it is reiterated that;

2.4.1. Stock Broker shall not use client funds and securities for proprietary purposes including settlement of proprietary obligations.

2.4.2. 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.

2.4.3. 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.

2.4.4 The Stock Exchanges shall monitor compliance with the above requirements, during inspections and the same shall be reviewed by the internal auditor of the broker during the half yearly internal audits.

c) **Clause 15 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011.**

"Clause 15. TRANSACTIONS AND SETTLEMENTS

The stock broker shall ensure that the money/securities deposited by the client shall be kept in a separate account, distinct from his/its own account or account of any other client and shall not be used by the stock broker for himself/itself or for any other client or for any purpose other than the purposes mentioned in Rules, Regulations, circulars, notices, guidelines of SEBI and/or Rules, Regulations, Bye-laws, circulars and notices of Exchange."

40. In their replies, the Noticees submitted as under:

a) ***Non–segregation of client funds and securities:*** *The non–segregation of securities was due to the reason that we were in arbitrage business and most of the stock was from proprietary account and it becomes very difficult for the staff to segregate the stock first and then to do the pay–in and pay–out of securities on a daily basis. The lack of staff resulted in non–segregation of client and proprietary stock.*

b) ***For funds settlement:*** *As stated above, our main business was arbitrage business and most of the payout of funds was for proprietary account and hence, it becomes almost impossible for segregating the funds as proprietary or client funds. This resulted in non–segregation of funds as proprietary or client funds and client bank account and proprietary account were not used properly in true sense. Same was the case in pay out of funds from exchange.*

c) *As stated earlier, for arranging funds through sale of shares with other brokers, CPR Capital used to transfer its own stock to CHP Finance and IFL Promoters for selling the stock with some other brokers and getting the funds on the same day from the brokers through them. In this way, temporary shortage of funds was met out but the stock sold with other brokers through CHP Finance and IFL Promoters was to be purchased by CPR Capital in other accounts called Group accounts /related party accounts. This resulted in complete mismatch of stocks and also a deviation in following the accounting system. This also resulted in negative liquidity position for which CPR Capital failed to induce the funds in the system. Also Disciplinary Action Committee of NSE and BSE had already penalized us and it is reiterated that we paid the said penalty.*

d) Similarly, as stated earlier, a similar thing occurred when transferring the funds from Client Account to Own Account.

*e) **Nomenclature of accounts:** Client bank account with incorrect nomenclature – As stated earlier, this mistake was from our banker side which was rectified immediately.*

*f) **Non–availability of securities in client /own beneficiary account:** As stated earlier, there was a shortage of ₹2.62 Crore on February 28, 2017, which we failed to reconcile by infusing the funds in to the system despite the fact that opportunity was being granted to us by the exchange. Due to this only, we suffered a heavy penalty being imposed by DAC and finally, we were (expelled) from the exchange.*

g) *Transactions with related parties from business account to client bank account during April 1, 2015 to August 31, 2015 and April 1, 2016 to February 28, 2017 – As stated earlier, this had occurred on account of transfer by the bank, which had temporarily given overdraft facility to CPR Commodities.*

41. As stated earlier, the SCN has alleged that the Noticees have failed to ensure segregation of clients' funds and securities. In this context, on perusal of policies and procedures for segregation of proprietary and client funds and securities submitted by Noticee no. 1, it was observed that no segregation was maintained between own and clients' funds and securities since its own securities were kept in Client Beneficiary account along with clients' securities. Further, it was observed that own funds of Noticee no. 1 were kept in client bank account along with the funds of the clients. The systems and procedures adopted by Noticee no. 1 for segregation of proprietary (i.e. own/ PRO) and client funds and securities are listed below:

a) For securities settlement,

- in case of pay–in of securities to exchange:
  - **For clients' trades:** In case the shares of the client were lying with Noticee no. 1, then pay–in was made from client Ben A/c no. 1205870000000016. In other cases, client transferred the shares from its own beneficiary account to client Ben A/c of Noticee no. 1 or directly to pool account (NSE: 1205870000000020 or BSE 1205870000000041).

- **For own trades:** Noticee no. 1 kept its own shares in client Ben A/c 1205870000000016. Shares were transferred from the said A/c to pool account (NSE: 1205870000000020 or BSE 1205870000000041).

➢ In case of pay–out of securities from exchange,

- **For the clients' securities:** Shares were transferred from Pool Account (NSE: 1205870000000020 or BSE 1205870000000054) to client Ben account 1205870000000016. Clients' securities were thereafter transferred to their demat account after checking their financial ledger. In case of debit, securities in proportion of debit balance in financial ledger were retained by CPR.
- **For own securities:** Shares purchased for own trades were transferred from Pool Accounts to Client Ben account 1205870000000016.

b) For Funds settlement:

➢ In case of pay–in of funds to Exchange

- **For clients:**

  F&O and CM segment: Clients transferred funds to company's various client accounts. These funds were transferred to settlement bank accounts as per need. The main client bank accounts of CPR were IndusInd NSE A/c no. 200999458367, IndusInd BSE A/c no. 200999458381 and IndusInd CDS A/c no. 200999458404.

- **For the own trades:**

  F&O and CM segment: Funds of the broker were kept in client bank accounts and pay–in for own trades was made from client bank accounts. Funds were transferred from business bank account to client bank account as per need. The broker also submitted that it transferred the funds from different bank accounts to client bank account to meet the pay–in requirement of pro trades.

- In case of pay out of funds from Exchange:
  - **For clients:**

    F&O and CM segment: Funds were received in the client bank accounts and were kept with the broker on the basis of running account authorization obtained from all clients. In case any client demands pay–out of funds, CPR checked the client's financial, margin and demat holding position. If the same was found to be satisfactory, pay–out was transferred to the client.
  - **For the own trades:**

    F&O and CM segment: Funds were received into the main client bank accounts (IndusInd NSE A/c no. 200999458367, IndusInd BSE A/c no. 200999458381 and IndusInd CDS A/c no. 200999458404) and were transferred to business account as per business need, otherwise funds were retained there.

42. During the examination, it was observed that pay–in of own shares of Noticee no. 1 was made from Client Ben A/C (1205870000000016) and then shares were transferred for pay–in from Client Ben A/c to pool account. It was further observed that in majority of instances examined during the inspection, shares were first received from A/c no. 1205870000009967, which was the account of CHP Finance (Noticee no. 5), a related party of Noticee no. 1, into the Client Ben A/c of such Noticee and thereafter, transferred to pool account**.**

43. Further, from an analysis of the selected scrips in the demat statement of Client Ben A/c no. 1205870000000016 revealed that in most cases, shares purchased from the market were transferred to the account of CHP Finance (Noticee no. 5), on the same day. Thereafter, the same were received back from CHP Finance for the purpose of pay–in and transferred to pool account. In some cases, shares were also observed to be transferred and received back at the time of pay–in to the A/c of IFL Promoters (Noticee no. 6), another related party of Noticee no. 1. On various occasions, shares purchased by clients have been transferred to the account of CHP Finance from the Client Beneficiary account of Noticee no. 1. Details of some such transfer of shares (on a sample basis) as observed during the inspection are tabulated below:

TABLE 8 – TRANSFER OF CLIENT SECURITIES								
SETTLEMENT NO.	DATE OF TRADE	SCRIP	BUY CLIENT CODE	NET PURCHASE QTY.	QTY. RECEIVED IN CLIENT BEN A/C NO. 1205870000000 016	DATE OF RECEIPT	QTY. TRANSFERRED TO A/C OF CHP FINANCE A/C NO. 1205870000009 967	DATE OF TRANSFER
2016009	13-JAN-16	BANK OF INDIA	N907	100	740*	15-JAN-16	740*	15-JAN-16
2017017	24-JAN-17	GOA CARBON LTD.	C182	400	400	27-JAN-17	400	27-JAN-17
2017027	08-FEB-17	SAIL	S26	100	100	10-FEB-17	100	10-FEB-17
2017062	31-MAR-17	GOA CARBON LTD.	A702	1150	1150	05-APR-17	1150	05-APR-17
2017062	31-MAR-17	GOL OFFSHORE LTD.	K672	1000	1000	05-APR-17	1005	05-APR-17
* INCLUDES 640 SHARES PURCHASED BY CHP FINANCE LTD.								

44. It is evident from the aforesaid illustration that clients' shares were transferred by Noticee no. 1 to the account of CHP Finance. In addition, during the *SEBI Inspection,* Noticee no. 1 had admitted that CHP Finance and IFL Promoters were related parties and that funds had been raised from these related parties and towards this purpose, shares had been given as collateral. Such shares belonged to both clients and Noticee no. 1 (in his proprietary capacity). As observed from the submissions of the broker, Noticee no. 1 kept its own securities in the Client Ben A/C, thus indicating non–segregation of own securities from clients' securities. Further, based on analysis of the demat statements and data obtained from NSE, it is observed that Noticee no. 1 had also mis–utilized client securities by transferring the same to its related parties.

45. Similar observations were also noted in the FAR regarding non–segregation of funds i.e. there were instances of transfer of funds from clients' bank accounts to business bank account and vice versa. It was also stated that the exact nature of transactions and purpose thereof were not understood from the narration recorded in the books and that the amounts also included settlement of own trades.

TABLE 9– AMOUNTS TRANSFERRED TO/ FROM CLIENT ACCOUNT AND FROM/ TO BUSINESS ACCOUNT		
PERIOD	FROM BUSINESS A/C TO CLIENT A/C (₹IN CRORE)	FROM CLIENT A/C TO BUSINESS A/C (₹IN CRORE)
1.4.2015-31.8.2015	10.93	18.43
1.4.2016-28.2.2017	12.66	12

46. From the aforesaid, it is evident that on various occasions, funds were transferred from clients' bank accounts to business bank account of the Noticee no. 1 and vice versa, which were not in line the with laid down guidelines.

47. **Nomenclature of accounts:** The SCN alleges that during the course of inspection, it was observed the word *'Client A/C'* was not mentioned in the nomenclature of eight client bank accounts maintained by Noticee no. 1, as listed below:

TABLE 10 – CLIENT BANK ACCOUNTS WITH INCORRECT NOMENCLATURE			
S. NO.	BANK ACCOUNT NO.	NAME OF BANK AND BRANCH	PURPOSE
1.	2577201017471	CANARA BANK, CONNAUGHT CIRCUS , NEW DELHI, 110001	CLIENT
2.	00030340002185	HDFC BANK, K.G. MARG, NEW DELHI-110001	CLIENT
3.	05250340000098	HDFC BANK LTD, AMBALA ROAD, KAITHAL, HARYANA -1360	CLIENT
4.	200999458367	INDUSIND BANK, BARAKHAMABA ROAD, DELHI - 110001	NSE CLIENT
5.	200999010657	INDUSIND BANK, BARAKHAMABA ROAD, DELHI- 110001	CLIENT
6.	200999458381	INDUSIND BANK, BARAKHAMABA ROAD, DELHI-110001	BSE CLIENT
7.	200999458404	INDUSIND BANK, BARAKHAMABA ROAD, DELHI - 110001	NSE CDS CLIENT
8.	1399009300039851	PNB, PREET VIHAR, DELHI – 110092	CLIENT

48. From the above records, I note that there were 8 such accounts which were not properly nomenclated by the Noticee no.1 In this regard, I find it necessary to mention at this stage itself, that the requirement of assigning proper nomenclature to the bank accounts, where clients' money is kept by a stock broker, was introduced as one of the tools to prevent misuse of clients funds and for the purpose of ease of regulatory oversight for SEBI as well as the stock exchanges, as this would make it easy to identify such accounts on the basis of their nomenclature, and examine the misuse of such clients' funds lying in those accounts, if any. At the same time, it becomes difficult for an errant stock broker to hide such accounts in which it had deposited clients' funds and had misused the same.

49. I note that pursuant to communication of inspection findings, Noticee no. 1 vide its reply dated November 27, 2017 (received by SEBI on January 4, 2018) stated that the said accounts were old client bank accounts and that the word *'Client A/c'* was mentioned in all the new bank accounts. Noticee no. 1 further submitted that it was now applying to banks for inserting the word *'Client A/c'* where the same was not mentioned. However, no evidence was provided by Noticee no. 1 in support of its claim. Therefore, from the perusal of the evidence available on record, I find that the Noticee no. 1 was in violation of the provisions

of Clause 1(B) of SEBI 1993 Circular and SEBI Circular dated September 26, 2016, in respect of which a total of 8 such bank accounts were identified by SEBI during Inspection wherein the Noticee no. 1 had kept clients' money and withdrew the same and yet without properly nomenclating the said bank accounts in the manner prescribed by SEBI 1993 Circular. Further, the Noticee had itself admitted that it is in the process of adding *'Client A/c'* and has itself implicitly admitted that it was not in compliance with the provisions of Clause 1(B) of SEBI 1993 Circular for a considerable point of time.

50. Non-availability of securities in client/ own beneficiary account: As observed in the FAR comparison value of securities as per Register of Securities (ROS) with value of securities held in Own/ Client Beneficiary Demat accounts with Holding statements of Globe Capital Market Ltd., Globe Fincap Ltd., Windpipe Finvest Pvt. Ltd. and Canara Bank on sample 2 days, differences were noticed as shown below:

TABLE 11: NON–AVAILABILITY OF SECURITIES IN CLIENT/ OWN BENEFICIARY ACCOUNT		
SAMPLE DATE	31.8.2015	28.2.2017
NO OF SECURITIES IN ROS	1,535	1,462
NO OF SECURITIES IN DEMAT A/C	1,277	982
VALUE OF SECURITIES IN ROS (A)	76,62,41,758.00	28,68,53,851.00
VALUE OF SECURITIES IN DEMAT ACCOUNTS (B)	15,19,72,622.00	9,96,19,851.00
VALUE OF SECURITIES NOT IN DEMAT ACCOUNTS (A-B)- (1)	61,42,69,136.00	18,72,34,000.00
VALUE OF SECURITIES WITH GLOBE CAPITAL MARKET LTD. (C)	- 10,14,78,867.00	5,87,95,234.00
VALUE OF SECURITIES WITH GLOBE FINCAP LTD. (D)	6,69,42,800.00	8,64,09,124.00
VALUE OF SECURITIES WITH WINDPIPE FINVEST (E)	1,99,95,793.00	30,74,186.00
VALUE OF SECURITIES WITH CANARA BANK (F)	6,60,36,732.00	1,27,98,645.00
(C + D + E + F) - (2)	25,44,54,190.00	16,10,77,188.00
DIFFERENCE 1-2	35,98,14,946.00	2,61,56,812.00

51. Before moving further, it is important to give a brief about ROS. Stock exchanges have prescribed that Every Trading Member / Stock Broker shall maintain a Register or ledger account of Securities, client wise and security wise, giving inter alia, the details such as date of receipt of the security, quantity received, party from whom received, purpose of receipt, date of delivery of the security, quantity delivered, party to whom delivered and purpose of delivery etc. Therefore, in simple terms, the ROS is a register maintained by a stock broker recording various details of securities received from client by the stock broker.

52. From the aforesaid table and on the basis of the records available before, I note that there was a shortfall of clients' securities worth ₹35.98 Crore on 31.8.2015. Similarly, on reconciliation shortfall of clients' securities worth ₹2.62 Crore was observed on 28.2.2017. Thus, securities were being moved out of demat accounts without being accounted for in the books which implies misappropriation of client securities by CPR.

53. Mis-utilization of client securities by transferring to related parties: It has been alleged that the Noticee no. 1 has mis-utilized clients' securities by transferring them to related parties. I note from the FAR that:

a) **CPR Commodities (Noticee no. 7):** Two Directors of Noticee no. 1, viz. Pawan Kumar Garg (Noticee no. 2) and Anuj Garg (Noticee no. 3), were also Directors of CPR Commodities (Noticee no. 7). The registered office address of Noticee no. 1 and CPR Commodities was the same. CPR Commodities was a client of Noticee no. 1 (UCC: 08769-P1-F). However, CPR Commodities did not have any trades through Noticee no. 1 during FY 2016-17.

b) **CHP Finance (Noticee no. 5):** Pawan Kumar Garg (Noticee no. 2), Director of Noticee no. 1 and CPR Commodities and Vipin Gupta who was shareholder of Noticee no. 1 are Directors of CHP Finance. CHP Finance was a client of Noticee no. 1 (UCC: 8769-5050522-X).

c) **IFL Promoters (Noticee no. 6):** Pawan Kumar Garg (Noticee no. 2), Director of Noticee no. 1, CPR Commodities (Noticee no. 7) and CHP Finance (Noticee no. 5) holds directorship in IFL Promoters (Noticee no. 6). IFL Promoters is a client of CPR (UCC: 8769-15-C/F/X).

54. Now moving on to the transaction with related parties from business a/c and client bank account during 1.4.2015 to 31.8.2015 and 1.4.2016 to 28.2.2017, as mentioned in the FAR, the receipts and payments to related parties are tabulated below:

TABLE 12 – TRANSACTIONS WITH RELATED PARTIES

	PARTY	PAID BY CPR (₹IN CRORE)	RECEIVED BY CPR (₹IN CRORE)	NET AMT. RECEIVED (₹IN CRORE)
1.	CPR COMMODITIES (NOTICEE NO. 7)	249.01	668.11	419.10
2.	CHP FINANCE (NOTICEE NO. 5)	16.74	89.47	72.73
3.	IFL PROMOTERS (NOTICEE NO. 6)	6.26	76.49	70.23
TOTAL		**272.01**	**834.07**	**562.06**

55. It has been noted above that the Noticee no. 1 has not refuted the allegations *inter alia* about its connection with Noticees no. 5, 6 and 7. It is further observed that the aforesaid facts pertaining to the connections have also been not disputed by any of the Noticees including Noticees no. 2, 3, 5, 6 and 7. In fact, there is nothing on record to show otherwise that the Noticees no. 5, 6 and 7 were not connected / related to Noticee no. 1.

56. Amounts transferred from and received in client bank account to /from certain entities who were not registered as client: As mentioned in the FAR, during the period 01.04.2015 to 31.08.2015 and 01.04.2016 to 28.02.2017, ₹297.36 Lakh were received in various clients' bank accounts and ₹275.89 Lakh were paid from various clients' bank accounts to entities who were not registered as clients with CPR. The clients' funds were routed/ diverted to non-client entities and the said amounts are tabulated below:

TABLE 13 – TRANSACTIONS BETWEEN CLIENT AND NON–CLIENT ACCOUNTS		
PERIOD 1.4.2015- 31.8.2015	**AMOUNT PAID BY CPR (₹IN LAKH)**	**AMOUNT RECEIVED BY CPR (₹IN LAKH)**
	229.91	218.90
PERIOD 1.4.2016 TO 28.2.2017	**AMOUNT PAID BY CPR (₹IN LAKH)**	**AMOUNT RECEIVED BY CPR (₹IN LAKH)**
	45.98	78.46
TOTAL	**275.89**	**297.36**

57. The above shows that the client funds were routed/ diverted to non–client entities. This amounts to misutilisation of funds and rationale behind such transactions were unknown from the available records.

58. The Noticees no.1 and 2 have not denied the fact the clients securities and funds are not segregated. I note that Noticee no. 1 claims to have been recovering dues of clients having debit balances by selling the securities belonging to such clients, not by itself, but selling those securities through its own group companies. I note that such *modus operandi* of Noticee no. 1 raises suspicion on the genuineness of such transactions, as to why would Noticee no. 1 was selling the securities through Noticees no. 5 or 6, rather than selling it by itself and recovering the clients' dues directly. It is also pertinent to mention here that, Noticee no. 1 has not furnished any proof/details about the names of client whose securities were sold for recovery, their actual debit balances, the value and names of securities belonging to the client, the value and names of

securities actually sold for recovery, the amount of money realized, the date of sale of securities, the date of receipt of money into its own bank account, bank statement showing receipt of corresponding funds from Noticees no. 5 or 6.

59. It is reiterated that Noticee no. 1 had transferred funds from own account to client bank account, to meet pay-in obligations of client, but Noticee no. 1 has failed to provide any documentary proof to substantiate its claims. Further, no documentary evidence is provided by Noticee no. 1 in its replies/additional submissions to show a particular client pay-in obligation on a particular day and corresponding bank entry from own bank account to particular client bank account.

60. The allegation here is about the huge shortage of client fund/misutilisation of client funds by Noticee no. 1 which anyway cannot be responded to, by stating that the clients had agreed to financially help Noticee no. 1. As Noticee no. 1 had a mandatory obligation to settle its client's funds first, it should have first settled their accounts, refunded them their credit balances and then, it could have entered into any other financial transaction with them separately to take financial held form them. If Noticee no. 1 had settled its clients' funds, then there would have been no shortage of funds in its records.

61. Having gone through the record and submissions made by the Noticees, I note that the regulatory provisions categorically prescribe the purpose for which the funds and securities of clients can be utilized by stock broker and the alleged acts of appropriating the clients' securities under the grab of taking financial help from clients do not fall under any of the instances/purpose so mentioned in the relevant provisions.

62. The submission made by the Noticee no. 1 and no. 2, regarding nomenclature of client's bank account, shows that Noticees are not denying observations made in this regard, I note that the requirement of naming and tagging of client bank account applies for all accounts held by the broker for client purposes, in accordance with the SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. Thus, as observed in the Interim Order, Noticee no. 1, by not giving proper nomenclature to client bank account, is in *prima facie* violation of the aforesaid Circular. Therefore, the Noticees' contention in this regard is untenable.

63. It shows that Client funds have been routed/diverted to entities that were not CPR's trading client and in the absence of any justification furnished by the Noticees to substantiate such transactions, it certainly amounts to mis-utilization of client funds. I note that the Noticees no. 1 and 2 admitted the amounts transferred from and received in client bank account to /from certain entities who were not registered as client. It is stated that amount has to be transferred from own account to client account for introduction of funds in to the company.

64. It is pertinent to note that SEBI vide Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, has laid down detailed guidelines for stock brokers to deal with clients' securities and funds so as to prevent misuse of clients' securities and funds. With regard to the aforesaid allegations pertaining to misappropriating clients' securities and funds, misuse of clients' securities and funds, selling of clients' securities through other non-clients, etc., I note that the Noticees in their written and oral submissions which have been already highlighted in the preceding paragraphs of this Order, have not denied the fact that securities of the clients of CPR have been misappropriated and sold through various related entities of CPR. It is important to note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he operates. Such a person is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not to be motivated purely by prospects of personal financial gain by misappropriating clients' funds and securities. However, in the instant matter, by indulging into acts of misusing its clients' securities and funds the CPR has definitely not acted in a manner that is expected from a registered intermediary. Therefore, acts of CPR in misappropriating and unlawfully selling the shares of the innocent non-defaulting clients are nothing short of flagrant violation of law and code of conduct prescribed for a registered stock broker.

65. Here, it would be appropriate to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *ISS Enterprise Ltd.* vs. *NSE* decided on February 23, 2023 wherein the Hon'ble tribunal held as follows:

"Having heard the learned counsel for the parties, we find that misuse of client's funds is a serious violation. Twice on January 22, 2021 and again on May 07, 2021 the appellant has utilized the funds of clients having credit balance towards margin obligation of the clients having debit balance to the tune of Rs. 8.64 crores and Rs. 6.95 crores respectively… In view of the gross irregularities found by the Committee which is admitted by the appellant, we find that the penalty imposed to the tune of 3% of the misuse of Rs. 8.64 crores was just and proper. The impugned order does not suffer from any error of law…"

66. Hence, I find that the above acts by Noticee no. 1 certainly violate the provisions of (i) Clauses 1 and 2 of the Circular dated November 18, 1993 and Clauses 1 and 2.4 of Annexure to Circular dated September 26, 2016, (ii) Clause 15 of the Rights and Obligations document for Stock Broker, Sub–brokers and Clients as specified in Annexure 4 of the Circular dated August 22, 2011 and (iii) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992.

D. AVAILING OF LAS FACILITY BY PLEDGING SECURITIES BELONGING TO CLIENTS WITH NIL OR CREDIT BALANCE

67. The SCN has alleged that the Noticees had availed of LAS facility by pledging securities belonging to clients with NIL or credit balance in violation of Circular dated November 18, 1993 and Clause 2.5 of the Annexure to the Circular dated September 26, 2016, Clauses 2.1 and 4 of the SEBI Circular No. MRD/DoP/SE/Cir – 11/2008 dated April 17, 2008, Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992. For the facility of reference, the afore-stated provisions of law are reproduced below:

a) **Clause 2.5 of the Annexure to the Circular dated September 26, 2016.**

"2.5. As per existing norms, a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants)

Regulations, 1996. To strengthen the existing mechanism, the stock brokers shall ensure the following:

2.5.1. Securities of only those clients can be pledged who have a debit balance in their ledger.

2.5.2. Funds raised against such pledged securities for a client shall not exceed the debit balance in the ledger of that particular client.

2.5.3. Funds raised against such pledged securities shall be credited only to the bank account named as "Name of the Stock Broker - Client Account".

2.5.4. The securities to be pledged shall be pledged from BO account tagged as "Name of the Stock Broker - Client Account".

2.5.5. Stock Brokers shall send a statement reflecting the pledge and funding to the clients as and when their securities are pledged/unpledged."

b) **Clause 2.1 and 4 of the Circular dated April 17, 2008.**

"2.1 Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements / pay-ins. Brokers should also maintain records to ensure proper audit trail of use of client collateral.

4. In case client collateral is found to be mis-utilised, the broker would attract appropriate deterrent penalty for violation of norms provided under Securities Contract Regulation Act, SEBI Act, SEBI Regulations and circulars, Exchange Byelaws, Rules, Regulations and circulars "

68. I note that in their replies, Noticees no. 1 and 2 have submitted as under:

a) Securities pledged for availing LAS limit was either our own stock or stocks of only those clients who had debit balances in their financial account. There were only a few clients whose securities were pledged for getting LAS.

b) *The total shortage of securities was around ₹2.50 Crore only. For meeting the shortage of funds of ₹2.50 Crore approx., stock of clients was used for raising funds against shares. We are ready to pay to the exchange if opportunity to pay is being granted to them.*

69. During the Inspection, Noticee no. 1 had informed SEBI and NSE that it had availed LAS facility from financial institutions, viz. Aditya Birla Finance Ltd.

("**ABFL**"), ECL Finance Ltd. ("**ECL**"), Canara Bank and Windpipe Finvest Pvt. Ltd. ("**WFPL**"). Further, Noticee no. 1 submitted copies of Agreements with ABFL and ECL. With respect to WFPL, Noticee no. 1 had submitted that there was no formal agreement between Windpipe and CPR and there was a business arrangement for taking LAS, which was terminated in March 2016. Further, Noticee no. 1 did not submit any agreement with Canara Bank. Since Noticee no. 1 had informed that it had raised funds from its related parties also, it was advised to submit copies of Agreements executed with them. In this regard, Noticee no. 1 submitted a copy of an Agreement executed with CHP Finance.

70. During the inspection, Noticee no. 1 was advised to provide two dates in each financial year on which highest limit was availed by it on LAS account. The dates provided by Noticee no. 1 are as below:

TABLE 14 – LIMITS AVAILED ON LAS ACCOUNT			
2015–16		2016–17	
DATE	AMOUNT RAISED	DATE	AMOUNT RAISED
30-09-2015	11,65,17,310	31-07-2016	12,04,55,856
31-03-2016	11,46,90,458	31-08-2016	12,25,31,455

71. Out of the above, the date on which highest LAS was availed was selected for each year i.e. 30.09.2015 and 31.08.2016. In this context, SEBI had advised Noticee no. 1 to provide details concerning (a) total value of shares pledged and amount availed, (b) client–wise details of securities pledged and (c) financial ledger balance of such clients.

72. Noticee no. 1 however, submitted only partial data to the SEBI. Based on the analysis of the same, observations in respect of each date are as below:

TABLE 15 – OBSERVATIONS REGARDING LAS ACCOUNT					
DATE	TOTAL AMOUNT RAISED	NO. OF CLIENTS WHOSE SECURITIES PLEDGED (A)	OUT OF A, NO. OF CLIENTS WITH CREDIT BALANCE/ NIL BALANCE WHOSE SECURITIES WERE PLEDGED	TOTAL VALUE OF SECURITIES PLEDGED (B)	OUT OF B, VALUE OF SECURITIES PLEDGED OF CLIENTS WITH CREDIT BALANCE / NIL BALANCE
30-09- 2015	11,65,17,310.60	233	76*	34,47,73,281.10	17,60,65,813.97
31-08- 2016	12,25,31,455.18	246	132	42,45,54,994.84	34,71,71,362.53
*THE BROKER PROVIDED LEDGER BALANCES ONLY IN RESPECT OF 112 CLIENTS, OUT OF WHICH 76 HAD POSITIVE LEDGER BALANCES. IN RESPECT OF BALANCE 121 CLIENTS, NO LEDGER BALANCES WERE PROVIDED					

73. It is seen that the broker raised funds by pledging securities of clients with NIL or credit balances. In response to the findings of Inspection, Noticee no. 1

submitted that it checked the share pledging details and released some shares to those clients which had nil or positive balance in their client account and it would release the shares of remaining clients soon. Noticee no. 1 submitted that a list of clients whose shares had been released had been annexed to its reply. However, no such list was found along with the reply of Noticee no. 1. Further, the other proof submitted regarding release of shares, as annexed by Noticee no. 1, was found to be insufficient to support its claim.

74. In order to verify the overall positions of pledging done by CPR with various entities, SEBI sought details from ABFL, ECL, Canara Bank, Globe Fincap Ltd. ("**GFL**"). The overall position of pledging done by CPR as submitted by these entities was as under:

TABLE 16 – POSITION OF CPR AS SUBMITTED BY ENTITIES		
SI. NO.	**ENTITY NAME**	**OUTSTANDING POSITION (₹)**
1	ADITYA BIRLA FINANCE	NIL
2	EDELWEISS CAPITAL LTD.	2.78 LAKH
3	CANARA BANK	13.50 CRORE
4	GLOBE FINCAP LTD.	8.68 CRORE

75. Also, overall position of pledging done of CHP Finance Pvt. Ltd. and IFL Promoters were sought from GFL. While stating that it had no transaction with regard to IFL Promoters, GFL furnished details of the position w.r.t. to CHP Finance as under:

TABLE 17 – POSITION OF CHP FINANCE AS SUBMITTED BY GLOBE FINCAP LTD.	
ENTITY NAME	**OUTSTANDING POSITION (₹)**
GLOBE FINCAP LTD.	6.54 CRORE

76. From the FAR, I note that net amount (including interest) of ₹4.38 Crore was repaid during the period 1.04.2015 to 31.08.2015 and 1.04.2016 to 28.02.2017, which were raised by pledging clients' securities to ABFL, ECL and WFPL. Party wise details of amount received and repaid during the period mentioned above are tabulated below:

TABLE 18 – OBSERVATIONS REGARDING LAS ACCOUNT IN FAR				
SI. NO.	**ENTITY NAME**	**PAID**	**RECEIVED**	**NET RECEIVED/PAID**
1	ADITYA BIRLA FINANCE	1.51	1.01	0.50
2	EDELWEISS CAPITAL LTD.	6.69	5.01	1.68
3	WINDPIPE FINVEST PVT. LTD.	4.80	2.60	2.20
TOTAL		**13.00**	**8.62**	**4.38**

77. From the aforementioned Table, it observed that funds to the tune of ₹8.62 Crore were raised by Noticee no. 1 by pledging clients' securities for meeting the shortage of funds faced by the stock broker. One must note that the securities lying with the stock broker are held by the stock broker in a fiduciary capacity. The stock broker has to credit the securities to the demat account of its clients if the securities are fully paid. Even for some reason, if the securities of the clients are lying with the stock broker, the stock broker has been prohibited under law from using those securities for its own purpose. In the instant case, Noticee no. 1 has on numerous occasions, blatantly violated the aforementioned prohibition by illegally pledging securities of clients with NIL or credit balance. It is pertinent to note that pledging of shares of debit balance clients is allowed only to the extent of the debit balance of such client. Such an act seriously questions not only its integrity but also the fairness in the conduct of its stock broking business. The act of CPR in dealing with the shares of its clients without their authorisation, is an act which has hampered the interests of its clients. Such actions of CPR, which led to disappearance of clients' securities from their demat accounts due to its act of misappropriation of clients' securities, defies the purpose that SEBI is trying to achieve through its circulars pertaining to handling of client's securities by the stock brokers. Such actions of diversion and misappropriation of clients' securities as have been committed by CPR, have to be viewed seriously.

78. Noticee no. 1, in dealing with the shares of its clients in a deceitful manner, has acted in severe detriment to interest of its clients. Noticees no. 1 and 2 have not denied the fact that client securities were pledged for raising funds towards meeting the shortage of funds of Noticee no. 1. Further, no explanation has been furnished by the Noticees rebutting or disputing the above findings from the *SEBI and NSE Inspections* and the consequent allegations made in the SCN. In addition, the Noticees have not provided to SEBI and NSE, any details of clients that had debit balances, the amount of debit balance, the amount raised after pledging, etc.

79. In view of the above, I find that that Noticee no. 1 had violated (i) Circular dated November 18, 1993, (ii) Clause 2.5 of the Annexure to the Circular dated September 26, 2016, (iii) Clauses 2.1 and 4 of the SEBI Circular No. MRD/DoP/SE/Cir – 11/2008 dated April 17, 2008 and (iv) Clauses A (1), (2) and

(5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992.

E. NON–COOPERATION WITH SEBI AND THE FORENSIC AUDITOR APPOINTED BY BSE

80. The SCN has alleged that the Noticees failed to cooperate with SEBI and the Forensic Auditor appointed by BSE thereby violating (a) Regulation 26(ii) of the Stock Brokers Regulations, 1992, (b) Clauses A (1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulation 9 of the Stock Brokers Regulations, 1992 and (c) Conditions of registration as specified under Regulations 9(b) and (f) of the Stock Brokers Regulations, 1992. For facility of reference, these provisions are reproduced hereunder:

a) **Regulation 26(ii) of the Stock Brokers Regulations**, 1992**.**

"26. A stock broker shall be liable for monetary penalty in respect of the following violations, namely –

(ii) Failure to furnish any information, books or other documents within 15 days of issue of notice by the Board."

b) **Conditions of registration as specified under Regulations 9(b) and (f) of the Stock Brokers Regulations, 1992.**

"9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

(b) he shall abide by the rules, regulations and bye–laws of the stock exchange which are applicable to him.

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II."

81. In their replies, Noticees no. 1 and 2 submitted as under:

a) Noticees have always cooperated during the SEBI Inspection and all documents which were sought at the relevant time, were provided. Noticees never did anything which shows that we are non-cooperative with the inspecting authority

b) The only instance of non–compliance was the failure to honor the commitment that ₹2 Crore shall be brought into the business for meeting the shortfall. Further, the Director of the Noticee no. 1 who was looking after the administration underwent a major surgery and was advised to take complete rest for three months. Hence, there was a delay in furnishing some information sought by SEBI.

82. From the material available on record, I note that:

a) A meeting dated August 9, 2017 was held at SEBI–Northern Regional Office (NRO) with Pawan Kumar Garg, Director of Noticee no. 1, wherein the broker was advised to submit certain information latest by August 14, 2017. The same was also reiterated vide e–mail dated August 9, 2017. However, the Noticee no. 1 failed to submit the requisite information. In this regard, a reminder email dated August 22, 2017, advising Noticee no. 1 to submit the desired information latest by August 23, 2017 was issued. Thereafter, vide and e–mail dated August 24, 2017, Noticee no. 1 requested for extension until September 15, 2017 which was also granted. Vide an e–mail dated September 11, 2017, Noticee no. 1 was again advised to ensure that its response reaches SEBI latest by September 15, 2017. Since no response was received even after the extended date, vide an e–mail dated September 25, 2017, Noticee no. 1 was advised to appear at SEBI–NRO on September 25, 2017. However, no one appeared on behalf of Noticee no. 1. In compliance of principles of natural justice, another opportunity was provided to Noticee no. 1 vide e–mail dated September 25, 2017, advising it to appear on September 27, 2017. No one appeared on behalf of Noticee no. 1 nor any extension was sought in this respect. Thereafter, vide a letter dated September 28, 2017, was sent to Noticee no. 1 providing it with a final opportunity to submit the information sought latest by October 5, 2017. Noticee no. 1, vide an e–mail dated October 18, 2017, informed that it would submit its reply within 2–3 days. However, no response was received from the Noticee no. 1.

b) The findings of the SEBI Inspection were communicated to Noticee no. 1 vide letter dated November 8, 2017. The same were also forwarded by e–mail dated November 9, 2017. As no reply to the same was submitted by Noticee no. 1, reminder letters dated November 24, 2017 and December 22, 2017, were sent to it. Finally, the comments of Noticee no. 1 on the Inspection findings were received on January 4, 2018. However, no submission was made by Noticee no. 1 with respect to the information sought at the meeting held on August 9, 2017 and called for vide subsequent reminder e–mails.

83. It is noted from the Report submitted by SARB and Associates (BSE appointed Forensic Auditor) that:

a) *"As per the engagement letter, our representative/ auditor, made his first visit to the Brokers's office located at A-66, 2nd floor, Gurunanak Pura, Laxmi Nagar, Vikas Marg, New Delhi-110092, on 20th March, 2019 and after having discussion, initial data requirement was shared with the Director via e–mail (mail id: dp@cprtrade.com) on the same day i.e. 20th March 2019. Few information/ data has been shared with us such as list of clients & few DP account number's details on the same day and the Director has assured us of sharing the rest of data by 27th March 2019.*

b) *However, the balance data were not provided on 27th March 2019. Thus, a reminder via e–mail was sent on 28th March, 2019 and several phone calls were also made. Further, upon our second visit to broker's office on 29th March 2019, we were requested to grant some more time and were assured providing the data within 2 days i.e. by 1st April, 2019. We once again sent a reminder via e–mail on 2nd April, however only a few documents were received on 2nd April, 2019 and 4th April, 2019 but the complete data was not shared by the company and this time even no assurance was given to us in this regard.*

c) *Upon our third visit to the broker's office on 6th April 2019, again complete data was not provided to us resulting into hampering of the audit and wastage of productive time of our team.*

d) *We have issued the last & final reminder letter to the member on 12th & 13th April 2019 through courier and Speed post with AD respectively. However, we have not received the initial data completely till 30th April 2019.*

e) *In light of the above circumstances, we are unable to comment whether or not any fraudulent transactions have been taken by the Member. Hence, we close this Report with limitations of inadequate documents and non–cooperation of the Member."*

84. Further, it is also noticed that the Noticees did not comply with the directions given at paragraph 19(c) of the Interim Order for providing 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 these directions, have not been followed.

85. As noted from the above, despite multiple reminders/ opportunities being issued/ granted by SEBI, the information/ compliance sought was never received from Noticee no. 1 contrary to the assertions made by Noticees no. 1 and 2. The reasons furnished by the Noticees (health issues faced by one of its Directors) is not an acceptable reason for a registered intermediary to fail in its regulatory requirements. I therefore find no merit in this contention and the same is rejected.

From the afore-stated factual chronology, it can safely have concluded that the Noticee no. 1 had failed to cooperate with SEBI, with the forensic auditor appointed by BSE and is non- compliant towards the directions in the Interim Order. Therefore, I hold that the failures by Noticee no. 1 to furnish the information sought by SEBI, co–operate with the auditor appointed by BSE and comply with the Interim Order were in contravention of the provisions of Regulation 26(ii), Clauses A(1), (2) and (5) of the Code of Conduct specified for Stock Brokers read with Regulations 9(b) and (f) of the Stock Brokers Regulations, 1992.

F. <u>FAILURE TO REDRESS INVESTOR GRIEVANCES</u>

86. The SCN has alleged that the Noticees have failed to redress investor grievances thereby violating (a) Regulation 26(iv) of the Stock Brokers Regulations, 1992, (b) Conditions of registration as specified under Regulation 9(e) of the Stock Brokers Regulations, 1992, which reads as under:

a) **Regulation 26(iv) of the Stock Brokers Regulations, 1992.**

"26. A stock broker shall be liable for monetary penalty in respect of the following violations, namely –

(iv) Failure to redress the grievances of investors within 30 days of receipts of notice from the Board."

b) **Conditions of registration as specified under Regulation 9(e) of the Stock Brokers Regulations, 1992.**

"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 redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board.

87. I note from the records that It is noted that Noticee no. 1 had failed to resolve the complaints of its clients. As per the SCN, the number of the complaints and the value of the claim pending against Noticee no. 1 was as under:

TABLE 19 – DETAILS OF COMPLAINTS NOT REDRESSED			
EXCHANGE		NO. OF COMPLAINTS	VALUE OF CLAIM (₹ CR.)
NSE	AS ON JULY 4, 2018	112	6.41
	AS ON JANUARY 8, 2020	36	2.86
BSE	AS ON JULY 4, 2018	61	1.73
	AS ON DECEMBER 13, 2019	70	1.93

88. In their replies, the Noticees no. 1 and 2 submitted as under:

a) As on March 5, 2018, not a single investor grievance was pending with Noticee no. 1. All the pending investor grievances were filed subsequent to the aforementioned date when we were declared a defaulter.

b) Even then we tried our best to redress the grievances of our clients and requested the Exchanges to allow us to transfer the stock from our DP Account to our clients only under the supervision of the Exchange. We also requested the Exchanges after received the Interim Order form SEBI in which the liberty to clear the outstanding dues of our clients was granted to us with the direction to the Exchanges. However, we have not received a response for the Exchanges to our application for giving us the list of final clients paid or settled by the Exchanges along with who are pending for settlement so that we may reimburse the amount paid by Exchanges out of the Investor Grievance Cell.

89. I note that the Regulation 9 (e) of the Stock Brokers Regulations, 1992 requires a Stock Broker registered with SEBI to take adequate steps for redressal of grievances of the investors within a period of one month from the date of receipt of the complaint. I note from the records that Noticee no. 1, CPR Capital, was declared a defaulter by BSE, w.e.f. November 5, 2019 and also by NSE, on December 23, 2019. Even prior to Noticee no. 1 being declared a defaulter, as noted from the table above, as of July 4, 2018, the total number of grievances pending (NSE + BSE) was 173 investor grievances which related to claims amounting to ₹8.14 Crore. In view of the same, I find no merit in the submissions

made by the Noticees in this regard and hold that that Noticee no. 1 had failed to redress investor grievances within the stipulated time and thereby contravened the provisions of Regulation 26(iv) and Regulation 9(e) of the Stock Brokers Regulations, 1992.

G. **TRANSACTIONS WITH RELATED/ CONNECTED PARTIES**

90. The SCN has alleged that the entities related to CPR Capital i.e. CHP Finance, IFL Promoters and CPR Commodities, failed to ensure compliance with various directions of the Interim Order including directions to deposit monies with CPR. In addition, the SCN has alleged that Noticees no. 5, 6 and 7 directly/ indirectly aided and abetted Noticee no. 1 and its Directors, viz. Noticees 2, 3, 4 and 8, in the misutilisation of clients' securities, pledging securities of clients with credit/ NIL balances, non–settlement of clients funds and securities, and non–segregation of client funds and securities.

91. In their replies, Noticees no. 1 and 2 have submitted as under:

a) *"Connected entity – Though CHP Finance: Did not deposit ₹2.77 Crore in Escrow Account but paid to Noticee no. 1's clients. A sum of ₹ 2.50 Crore has been paid so far towards claims made by Noticee no. 1's clients. Moreover, CHP Finance was to pay a sum of ₹18 Lakh only to Noticee no. 1 as on September 30, 2018.*

b) *IFL Promoters – Noticee no. 1 has to receive a sum of ₹1.52 Crore as on March 31, 2018. As far as trading by IFL Promoters through Ishta Securities is concerned, it was due to ignorance only. As soon as they were informed about the same, they immediately closed out the position.*

c) *CPR Commodities – The person who is making complaint against Noticee no. 1 and CPR Commodities is the person from whom we have to recover a sum of ₹3.60 Crore approximate and cases under Section 138 of the Negotiable Instruments Act, 1881, are pending against the complainant.*

d) *Regarding the allegation of non–submission of inventory of the assets, movable or immovable, to the Exchange, it is submitted that there was no asset which was free from any encumbrances either from bank or other financial institutions. Further, all demat accounts were already frozen by the Exchange.*

e) *Regarding the allegation that CHP Finance, IFL Promoters and CPR Commodities had aided and abetted Noticee no. 1 and its Directors in*

misutilisation of clients funds and securities, the same is wrong. The accounts of the aforementioned 3 Noticees were used for arranging funds for Noticee no. 1 from time to time."

92. Noticee no. 5 i.e. CHP Finance, submitted as under:

a) *"It was client of CPR Capital and was also NBFC Company. CHP Finance arranged funds for CPR Capital from time to time and her client account was frequently used for selling the stock provided by CPR Capital to her through another broker and getting the pay out of shares sold on the same day for meeting out the temporarily requirement of fund of CPR Capital.*

b) *This transfer of stock by CPR Capital in the account of CHP Finance has created many problems in books of accounts of CPR Capital as far as SEBI guidelines are concerned. We somehow tried to arrange the funds from outside sources for infusing the same in to our company for avoiding all these problems along with meeting our net worth short fall position also. However, by the time we managed to do so we were declared defaulter and our business was closed.*

c) *The figure stated by the Auditor is arbitrary and hypothetical as the full data was not provided to them by the Exchange. Net amount of ₹72.73 Crore received from CHP Finance and as stated by them is transferred from CHP Finance account to various bank accounts of CPR Capital. Whereas in Interim Order, a net amount of ₹2.77 Crore was stated to be payable to CPR Capital by CHP Finance. The said amount was to be deposited by CHP Finance in Escrow Account to be utilized for settling the claims of creditors /clients of CPR Capital.*

d) *As per books of accounts, the amount payable to CPR Capital by CHP Finance is NIL as on March 31, 2018. CHP Finance paid (not through Escrow Account) almost ₹2.50 Crore to CPR Capital's clients whose claims were to be settled by Exchange but on our request to the Exchange, these accounts have been settled directly by us so you need not to settle the claims of these parties."*

93. Noticee no. 6 i.e. IFL Promoters, submitted as under:

a) *"IFL Promoters Ltd. is an NBFC company and was a client of CPR Capital. Being associated with CPR Capital, we provided temporary help to Noticee no. 1 by providing funds through sales of shares transferred by CPR Capital*

off markets in our DP Account, to be sold in open market in our trading account maintained with other brokers like Globe Capital Market Ltd., Share India Share and Securities P Ltd., ANG Capital Services Ltd. and Vishwas Fincap Pvt. Ltd. These brokers provided us funds on the same day when the shares are sold which in turn was transferred to CPR Capital for meeting out its requirements.

b) *Net amount of ₹70.23 Crore received from IFL was transferred to CPR Capital as stated by the Auditors, in its concurrent Audit Report. This amount as stated earlier was the amount out of the sales proceeds of shares transferred off market by CPR Capital to be sold in open market for getting funds as stated earlier. These shares were sold with other brokers in our account and funds received in turn were transferred to CPR Capital immediately.*

c) *Regarding non–deposit of ₹1.36 Crore in Escrow Account maintained with a nationalized bank, we would like to state that it is the difference amount received out of sale proceeds of off market stock transferred in our account and amount paid to CPR Capital. It is stated that we never hold any amount from the sales proceeds of such stock sold but always paid the full amount of sales proceeds and further also paid /advanced sums as far as possible to help him out of the financial crisis being faced by CPR Capital.*

d) *The amount receivable, as per the FAR, ₹3.94 Crore from CPR Capital by IFL is also not possible as there was always a debit balance recoverable from CPR Capital by IFL. As on March 31, 2018, there was a recoverable amount of ₹1.62 Crore from CPR Capital. Moreover, we are still helping CPR Capital by making payments to its clients whose accounts are to be settled by CPR Capital."*

94. Noticee no. 7 i.e. CPR Commodities, submitted as under:

a) *"CPR Commodities is no doubt the associate concern of CPR Capital but was never the client of CPR Capital. Sometimes amount was transferred for temporary need to CPR Capital or vice versa but not as a client. There were also transactions by IndusInd Bank for granting overdraft limit facility to CPR Commodities.*

b) *As per Auditor's version, there were payments and receipts worth ₹249 Crore during the period April 2015 to Aug 31, 2015; and worth ₹668.11 Crore during*

April 2016 to Feb 28, 2017. The net amount of ₹419.1 Crore was received from CPR Commodities. Here we would like to state that about ₹ 2.75 Crore was transferred daily from CPR Commodities Client account to CPR Capital by IndusInd Bank as temporary overdraft sanctioned by Bank and was reversed in the evening to set off the overdraft limit facility given by the Bank. This practice continued for some time resulting in transfer of amount in the morning and reversing the same in the evening.

c) *Attaching herewith the copy of account in the books of CPR Capital along with copy of bank statement showing all the transactions. The net amount payable by CPR Capital to CPR Commodities is ₹0.70 Crore only.*

d) *Regarding the charge that CHP Finance, IFL, CPR Commodities having aided and abetted CPR Capital and its Directors in mis–utilization of client fund and clients' securities, the same is wrong and unjustified. On the other hand, their accounts are being used for arranging funds for CPR Capital from time to time."*

95. From the material available on record, the following is noted:

a) The amount of securities of Noticee no. 1's clients received by CHP Finance through off–market transactions from CPR Capital/ sold by CHP Finance without possessing the same was ₹2.77 Crore. Further, in accordance with the directions contained in the Interim Order, CHP Finance failed to deposit ₹2.77 Crore in an interest bearing Escrow Account held with a nationalized bank, within 30 days from the date of the Interim Order.

b) The amount of securities of Noticee no. 1's clients received by IFL Promoters through off–market transactions from CPR Capital/ sold by IFL Promoters without possessing the same was ₹1.36 Crore. Further, in accordance with the directions contained in the Interim Order, IFL Promoters failed to deposit ₹1.36 Crore in an interest bearing Escrow Account held with a nationalized bank, within 30 days from the date of the Interim Order.

c) Further, IFL Promoters had traded with/ through Ishta Securities in CM segment amounting to ₹1.02 Crores (till August 9, 2019) and in F&O segment amounting to ₹1 Crores (till October 11, 2018) after September 25, 2018. Despite directions in the Interim Order dated September 25, 2018, IFL Promoters traded in the securities market till August 2019. IFL Promoters

has therefore, failed to ensure compliance with the directions contained in the Interim Order.

d) CPR Commodities failed to submit a full inventory of all their assets, whether movable or immovable, or any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments in accordance with the directions contained in the Interim Order. Further, as per the FAR, based on the trial balance dated February 28, 2017, ₹0.70 Crore was recoverable from CPR Commodities.

96. In their replies/ submissions before me, I note that Noticees no. 5, 6 and 7 have not specifically refuted the charges in the SCN nor denied being connected to Noticee no. 1. On the contrary, Noticees no. 5 and 6 have merely stated that they were helping Noticee no. 1 in paying off outstanding dues of its clients while Noticee no. 7 has said that amounts were received from/ transferred to Noticee no. 1 were for temporary needs.

97. In view of the above, I find that Noticee no. 5, 6, and 7 had failed to ensure compliance with the directions contained in the Interim Order dated September 25, 2018. In addition, I find that Noticees no. 5, 6 and 7 had directly/ indirectly aided and abetted Noticee no. 1 in the misutilisation of clients' securities, pledging securities of clients with credit/ NIL balances, non–settlement of clients funds and securities, and non–segregation of client funds and securities.

98. It is also pertinent to note that vide the Confirmatory Order, SEBI had directed NSE to consider the representations made by no. 1 and its Directors for settlement of the claims of its clients. However, vide replies dated October 25, 2021 and November 1, 2021, NSE informed SEBI that necessary information /details of claims were provided to CPR Capital but it had not come back to NSE with the proposal of settlement so that the Exchange can take necessary action on the directions issued by SEBI.

99. Thereafter, vide an e–mail dated July 25, 2022, Noticee no. 1 had provided NSE with details of 7 clients, who dues amounting to approximately ₹77.08 Lakh have been settled. Further, vide an e–mail dated April 3 NSE informed SEBI that considering the amount settled against the above 7 clients and amount paid from IPF, around ₹2.75 Crore is to be paid by Noticee no. 1 to NSE.

100. Similarly, BSE vide an e–mail dated September 05, 2023, informed SEBI that it has paid around ₹98.56 lacs to the clients of the Noticee no. 1 out of the total

admissible claims of ₹116.09 lacs. BSE further informed that in addition to the aforesaid payment of ₹98.56 lacs made from the IPF, ₹76,306/- is to be paid by Noticee no. 1 to BSE.

LIABILITY OF NOTICEES NO. 2, 3, 4 AND 8 – PAST AND PRESENT DIRECTORS OF NOTICEE 1.

101. The allegations made against the Noticees no. 2, 3, 4 and 8 are the same as those allegations made against Noticee no. 1, owing to their positions as directors in CPR. In this regard, the SCN has recorded the details of the directorships of the present Noticees and the same is reproduced hereunder:

TABLE 20- DIRECTORS OF NOTICEE NO. 1	
PRESENT DIRECTORS	**TENURE**
PAWAN KUMAR GARG	26.05.1995 till date
ANUJ GARG	01.04. 2006 till date
DINESH KUMAR	28.09.1999 till date
PAST DIRECTORS	**TENURE**
SHASHI GARG	05.12.1999 TO 01.04.2016 08.10.2017 till date
Vijay Pal Singh	9/01/2015-01/10/2015
Anita Mann	01/01/2007- 01/10/2015

102. I can observe that the afore-named natural persons have been impleaded being a Director of CPR and have been allegedly held responsible as they were apparently in charge of and responsible for the conduct of the business of the Company (CPR). It is a settled principle of law that, though a company is a separate and distinct legal entity, it has no mind of its own. Normally, it acts and performs its duties through Board of Directors which is the repository of wisdom and knowledge and has decision taking abilities to govern the affairs of the company in the manner it likes, unless person is alternatively specifically entrusted by the Board to perform all such work/duties specifically. In common parlance, 'corporate liability' or the liability of the corporations is governed by the principles either flowing specifically from statutes and/or from judicial pronouncements. Dealing with liability of a Director or a person in charge for managing the affaires of a company, the Hon'ble Supreme Court of India in the mater of *Sunil Bharti Mittal v. Central Bureau of Investigation (2014) 4 SCC 609* has held as follows:

"42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If

such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction."

103. From the above, it is clear that where a statute provides for the doctrine of vicarious liability, by specifically incorporating such a provision, the liability of Director, manager or person in charge would have to be determined by the deeming fiction. In this respect, it is noted that similar to Section 141 of the NI Act, Section 27 of the *SEBI Act, 1992* also, *inter alia,* fastens persons who are in charge of or responsible for the conduct of business of a company with vicarious liability for the contraventions of the provisions of the *SEBI Act, 1992* and regulations made thereunder. On a plain reading of the said provision under Section 27 of the *SEBI Act, 1992*, it can be understood that if a person which commits any violation is a company, the company as well as every person in charge of and responsible for the affairs of such company at the time of the

alleged commission of violation, shall be deemed to be guilty of the said violation of provisions of law, rules and regulations as alleged against them. Having gone through the relevant provisions of law which fasten vicarious liability on a Director of a company who was at the helms of affairs at the time of the said alleged wrongdoing, I note that the Noticee no. 2, 3 and 4 were Directors of *CPR* and are still continuing as its Directors. Similarly, Noticee no. 8 was associated with CPR for almost 17 years i.e. from05.12.1999 TO 01.04.2016. The aforesaid tenure of the Noticees as Directors of CPR has not been disputed by any of these Noticees.

104. One of the foremost duties of a Director is exercising due diligence and care in managing the affairs of the company. Further, Directors have a duty cast upon them to attend the board meetings. This principle finds resonance in Section 167 (1) (b) of the Companies Act, 2013 which states that the failure to attend Board Meetings for a continuous period of one year would be a ground for the vacation of office by the concerned Director, regardless of leave of absence being given by the Board for the meetings held during the year.

105. The consideration of the liability of Directors, especially Executive Directors/ Whole time Directors has to be on the touchstone of the above duties. In this regard, reliance is placed on the case of *Re. City Equitable Fire Equitable Fire Insuarnce Co. (1925)*, which states,

> "*If directors act within their powers, if they act with such care as is reasonable expected of them having regard to their knowledge and experience and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as legal duty to the company.*"

106. Thus, for a Director to discharge his duty towards the company he must a) act with such care as is reasonably expected considering his knowledge and experience and b) act honestly for the benefit of the company. This in my view cannot be the standard of care that is expected from Directors, especially those that have been enrolled to the board on their "professional" abilities. Considering the above, I find that the above-named Noticees have clearly not acted with the due-diligence and care that is required from a Director

107. Under no circumstances, any unauthorised transfer of shares from the demat account of the clients to the account of the *related entities* and selling those securities and mis-appropriating the proceeds can be justified under the pretext of any bonafide action in good faith. Similarly, the aforesaid Directors while steering the affairs of CPR have committed gross breaches of regulations and inspections of SEBI in the matter of Non - Segregation of Client Funds and Securities, Mis-utilization of client securities by transferring to related parties, non-compliance with KYC and AML norms, etc. Besides, these Noticees through various acts of omissions and commissions of CPR have not been able to redress the clients' complaints within the prescribed time nor has he extended the cooperation to the SEBI's inspecting team thereby impeding the inspection exercise conducted by SEBI. All the aforesaid acts of irregularities and misconduct have been demonstrated with the support of factual information as brought out in detail in the preceding paragraphs and have been found to be established. Under the circumstances, considering the fact that the Noticees no. 2, 3 ,4 and 8 were acting as Directors in CPR Capital doing the relevant time when the violations were committed, the aforesaid Noticees were also responsible and liable for the acts of Noticee no. 1 and resultantly, had also violated the provisions of law detailed earlier in this Order.

108. I shall now proceed to consider the directions that should be issued against Noticees no. 1 to 8 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 8 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, its Directors and related/ connected entities needs to dealt with a stern hand to protect the integrity of the securities market.

DIRECTIONS

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

a) Noticees no. 1 and its past and present Directors, viz. Noticees no. 2, 3, 4 and 8 and Noticees no. 5, 6 and 7 are hereby 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, 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) Noticees no. 1, 2, 3, 4 and 8, shall, jointly and severally, be liable to repay / refund the monies due to investors / clients of Noticee no. 1, under the supervision of NSE and BSE.

d) Noticees no. 1, 2, 3, 4 and 8, 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 and BSE.

e) Noticee no. 5 and Noticee no. 6 are directed to deposit ₹2.77 Crore and ₹1.36 Crore, respectively (i.e. the amount of securities of clients of CPR Capital received by them off-market from CPR /sold by CHP and IFL without possessing the same, as on February 28, 2017) in an interest bearing Escrow Account held with a Nationalized Bank, within 30 days from the date of receipt of this Order.

f) Noticees no. 1, 2, 3, 4 and 8 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 sub-paragraphs (c) and (d) above are completed. Similarly, Noticees no. 5 and 6 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 direction at sub-paragraph (e) above is completed.

g) The Banks are directed to ensure that no debits are made in the bank accounts held by Noticees no. 1, 2, 3, 4 and 8, except for the purpose of payment of money to the clients/investors under the written confirmation of NSE and BSE, till such time the refunds / repayments as directed at sub-paragraphs (c) and (d) above are completed. The Banks are directed to ensure that no debits are made in the bank accounts held by Noticees no. 5 and 6, except for the purpose of opening of escrow account as directed at sub-paragraph (e) above is completed. Such direction of no debits qua Noticee no. 5 and 6 shall continue till the direction of opening an escrow account as directed at sub-paragraph (e) above is completed.

h) NSE Defaulters Committee and BSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated Demat account where all the securities lying in the Demat accounts of Noticees no. 1, 2, 3, 4 and 8, shall be transferred.

i) The NSE Defaulters Committee and BSE 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 Noticees no. 1, 2, 3, 4 and 8, shall be transferred.

j) The modalities of selling the assets, depositing the proceeds thereof in the account opened in accordance with the directions contained in sub-paragraphs (h) and (i) above and disbursing the amounts to the clients / investors after verifying the claims, shall be worked out by NSE and BSE by their mutual co-ordination. NSE and BSE 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 Noticees no. 1, 2, 3, 4 and 8.

k) NSE and BSE 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.

l) NSE and BSE shall proceed with the recovery of funds and securities from the assets of the Noticees (including the funds lying in the escrow account opened as directed at sub-paragraph (e)), to cover any shortfall in funds and securities

in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.

110. The Order shall come into force with the immediate effect.

111. 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.

DATE: SEPTEMBER 20, 2023
PLACE: MUMBAI

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA