

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
(ADJUDICATION ORDER NO: Order/SV/RM/2024-25/30386-30388)**

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995; AND SECTION 23-I OF THE SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.**

In respect of:

<b>Noticee No.</b>	<b>Name of the Noticee</b>	<b>PAN</b>
1	Goldenmaple Commodities Private Limited	AAJCS8332D
2	Sanjay Kumar Mishra (Director and Compliance Officer)	APNPM0684G
3	Rupesh Kumar (Director)	AMYPK4943N

**In the matter of Goldenmaple Commodities Private Ltd.**

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**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India ('hereinafter referred to as '**SEBI**') conducted inspection in respect of Goldenmaple Commodities Private Ltd. (hereinafter referred to as the '**Noticee 1/ Stock Broker / Member**'). Noticee is registered with SEBI as a Stock Broker (Registration No.: INZ00000638). A comprehensive joint inspection of the Noticee with respect to its stock broking activities was conducted by SEBI along with the Exchanges. The inspection team visited the premises of the Noticee 1 on December 20, 2021 and from December 21-24, 2021 inspection was carried out remotely. The period of inspection was April 01, 2020 to November 30, 2021 (hereinafter referred to as '**inspection period**'). Mr. Sanjay Kumar Mishra (hereinafter referred to as "**Noticee 2**") and Mr. Rupesh Kumar (hereinafter referred to as "**Noticee 3**"), were the designated directors of the member during the period of inspection and were responsible for the day to day operation of the member.

2. Prior to proceeding for inspection, Notice of Inspection along with the pre-inspection questionnaire(s) (PIQ) was sent vide SEBI email dated June 29, 2021 to Noticee, wherein the Noticee was asked to furnish information with regard to SEBI PIQ. Noticee submitted the response to SEBI PIQ vide email dated December 09, 2021.
3. The findings of inspection was communicated to Noticee 1 vide SEBI letter dated March 14, 2022 and Noticee 1 submitted reply to findings of inspection dated March 23, 2022. Based on the findings of inspection and reply of the Noticees, SEBI observed certain non-compliances, inter-alia, of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), Regulations and Circulars made thereunder, Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') by Noticee.
4. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticees for alleged violations, details of which are as follows:

**Table No. 1**

<b>Sr. No.</b>	<b>Alleged violations</b>	<b>Regulatory provisions violated</b>	<b>Enquire and adjudge under</b>
A	Mis-Utilisation of clients' Funds	Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95.	Section 23D of SCRA and Section 15 HB of SEBI Act
B	Non-maintenance of records for Client Order Placement	Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.	

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

5. SEBI appointed Ms. Soma Majumder as Adjudicating Officer in the matter vide order dated August 23, 2023. Pursuant to the transfer of the erstwhile AO, undersigned was appointed as the Adjudicating Officer, vide order dated December 07, 2023, under Section 19 of the **SEBI Act** read with Section 15-I (1)

of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules**') and under section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Adjudication Rules,**') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act and Section 23D of the SCRA for the violations alleged to have been committed by the Noticees.

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

6. Show Cause Notice bearing reference no.- EAD-IO/ADJ/SM/AS/OW/44819/2023 dated November 07, 2023 (hereinafter referred to as '**SCN**') was issued by the erstwhile AO to the Noticees in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SCRA, requiring the Noticees to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticees under Section 15HB of the SEBI Act and Section 23D of the SCRA for the alleged violations. I note that SCN was issued to Noticees, and was duly served upon the Noticees and it was acknowledged by the Noticees. The Noticees submitted response to SCN vide email dated March 22, 2024.
  
7. In the interest of natural justice, vide hearing notice dated April 08, 2024 an opportunity of hearing on April 19, 2024 was granted to the Noticees. Noticee 2 on behalf of himself and as Authorized Representative for Noticee 1 and 3 (hereinafter referred to as "**AR**") attended the hearing on April 19, 2024 through video conference and reiterated the submissions made by the Noticee vide letter dated March 22, 2024. Further AR submitted additional submission vide email dated April 23, 2024.

### **CONSIDERATION OF ISSUES AND FINDINGS**

8. I have carefully perused the charges levelled against the Noticees in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

- I. Whether the Noticees have violated the provisions of the Act, Regulations and Circulars as indicated in table no. 1?
  - II. Does the violation, if any, attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act?
  - III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA read with Rule 5(2) of the SCR Adjudication Rules?
9. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

***SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993:***

*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 to Member broker's account would be allowed are enumerated below.*

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

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

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

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

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

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

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

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

***SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016:  
Annexure***

***3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges***

*3.1. Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.*

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

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

- B-** Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.
- C-** Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)
- D-** Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)
- E-** Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)
- F-** Aggregate value of Non-funded part of the BG across Stock Exchanges
- P-** Aggregate value of Proprietary Margin Obligation across Stock Exchanges
- MC-** Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges
- MF-** Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

3.3. Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:

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

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C) Stock Exchanges shall calculate the difference i.e. G as follows –

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

*If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.*

*Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:*

*If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.*

*If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:*

$$H = |G| - |D|$$

### *3.3.2. Funds of clients used for Margin obligation of proprietary trading:*

*Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:*

*Principle:*

*The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)*

*If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.*

*The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P). If  $P > (G+E+F)$ , then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.*

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

### 3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

*Principle:*

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e.  $A+B < C$ ), then fund lying with the clearing corporation/clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e.  $A+B > C$ ), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.



- 3.4. *Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.*
- 3.5. *Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.*
- 3.6. *Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.*

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**Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.**

***Prevention of Unauthorised Trading by Stock Brokers***

*III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:*

- a. Physical record written & signed by client,*
- b. Telephone recording,*
- c. Email from authorized email id,*
- d. Log for internet transactions,*
- e. Record of messages through mobile phones,*
- f. Any other legally verifiable record.*

*When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.*

10. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticees and circumstances of the case, I record my findings hereunder:

**Issue I. Whether the Noticees have violated the provisions of the Act, Regulations and Circulars as indicated in table no. 1?**

11. At the outset, I find that there are 2 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:

***A. Mis-Utilisation of clients' Funds:***

12. It was alleged in the SCN that 'G' was negative in 18 out of 18 sample instances, indicating that the funds of credit balance clients were misutilised by the Noticee 1 for meeting the obligations of debit balance clients and/or for its own purpose. The alleged misutilised amount ranged from ₹42.94 lakhs to ₹46.53 lakhs and the alleged average misutilised amount was ₹44.52 lakhs.
13. Further, it was also alleged in the SCN that 'I' was negative in 12 out of 18 sample instances, indicating that the funds and securities of clients were misutilised towards margin obligations of proprietary trading by Noticee 1. The alleged misutilised amount ranged from ₹1.96 lakhs to ₹3.51 lakhs and the average alleged misutilised amount was ₹2.41 lakhs.

***B. Non-maintenance of proper order placement records***

14. It was alleged in the SCN that Noticee 1 did not keep order placement call recordings for 21 trades out of sample 25 trades. Further, Noticee 1 did not maintain proper order placement records for all the 25 sample trades.

***Reply of Noticees***

15. With respect to above allegations, Noticees vide email dated March 22, 2024 *inter alia* submitted the following:

*"SIR MR NARESH KUMAR SHARMA MAJOR PARMOTER IN THIS COMPANY , HE GIVEN US SHORTEG CHQ ,AFTER HIS DEATH DUE TO COVID ALL CHQ*

WAS RETURN WE APPROCHED COURT IN LACKNOW MATTER IS PENDING THERE.(sic)

WE STOPED OUR TRADING AFTER APRIL 2020. THIS IS THE FIRST COVID LOCKDOWN WE DON'T HAVE ADEQUET SYSTEM DEALER IS WORKING FROM HOME ,ALL TRADE WAS CONFIRMED BUT WE DON'T HAVE RECORDING , WE HAVE ONLY 20 TO 30 TRADE MAX .I DO ACCEPT MY VOILATION SIR. I TRANSFERRED ALL CLINT FUND SENDED BANK STATEMENT TO MCX ,AS WE SURRENDERED OUR MEMBERSHIP PROCESS IS PENDING IN SEBI . WE PAID 13 LAC PLUSE GST PENELTY TO MCX .SIR THIS WAS MY LAC OF COMPLINCE AWARENESS COVID I AM NOT ABLE TO SURVIVE WITH THIS BUSINESS. (sic)

WE CLOSED ALL OUR OFFICE NOT ABLE TO PAY RENT . (sic)

SIR I ACCEPT MY VOILATION , LAST FOUR YEARS I AM DOING ONLY COMPLINCE WITHOUT EARNING ANY THING , AS OUR INSPECTION IS GOING ON .KINDLY CLOSE OUR MEMBERSHIP SIR . (sic)"

16. Further, the AR also submitted during the personal hearing that all funds and securities of the clients have been returned by Noticee 1, and in support an excel has been shared by the Noticee 1 vide email dated March 23, 2024 outlining 62 transactions claiming return of funds to the clients.

### **Findings**

17. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 the principle is that the total available funds i.e. cash and cash equivalent with the stock broker and with the clearing corporation / clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C). Stock Exchanges shall calculate the difference i.e. G as follows:

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

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

18. Further, as per circular, the sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee

(F) available in the Stock Exchanges, should always be equal to or greater than the Proprietary margin obligations (P).

$$I = P - (G+E+F)$$

If  $P > (G+E+F)$ , then difference 'I' is the amount of proprietary margin obligation funded from clients assets.

19. I have perused the calculation given in inspection report and note that the calculation for the 18 sample dates is as given below in the table:

**Table 2**

Sr. No.	Date	A	B	C	G	D	E	F	P	If G>0, I=P-(G+E+F) If G<0, I=P-(E+F)
1	01/04/2020	531.16	1,85,822.29	45,16,971.00	(43,30,617.55)	15,55,087.00	-	-	2,18,995.10	<b>2,18,995.10</b>
2	03/04/2020	531.16	1,83,475.37	45,20,297.00	(43,36,290.47)	15,55,087.00	-	-	2,15,498.72	<b>2,15,498.72</b>
3	07/04/2020	531.16	2,08,824.94	45,35,388.00	(43,26,031.90)	15,55,087.00	-	-	2,36,699.56	<b>2,36,699.56</b>
4	08/04/2020	531.16	2,30,011.94	45,96,575.00	(43,66,031.90)	15,55,087.00	-	-	2,28,046.07	<b>2,28,046.07</b>
5	09/04/2020	531.16	2,20,692.94	45,87,256.00	(43,66,031.90)	15,55,087.00	-	-	2,23,216.24	<b>2,23,216.24</b>
6	13/04/2020	531.16	2,29,825.94	45,95,153.00	(43,64,795.90)	15,55,087.00	-	-	2,18,088.68	<b>2,18,088.68</b>
7	15/04/2020	1,50,526.44	2,37,141.94	47,52,464.00	(43,64,795.62)	15,55,087.00	-	-	2,12,969.01	<b>2,12,969.01</b>
8	16/04/2020	20,526.44	4,44,047.94	47,59,370.00	(42,94,795.62)	15,55,087.00	-	-	3,37,095.37	<b>3,37,095.37</b>
9	17/04/2020	20,526.44	4,50,835.94	47,66,104.00	(42,94,741.62)	15,55,087.00	-	-	3,51,662.13	<b>3,51,662.13</b>
10	20/04/2020	526.44	4,07,748.94	47,22,884.00	(43,14,608.62)	15,55,087.00	-	-	2,62,204.77	<b>2,62,204.77</b>
11	21/04/2020	526.44	2,62,156.94	45,77,292.00	(43,14,608.62)	15,55,087.00	-	-	2,02,363.15	<b>2,02,363.15</b>
12	22/04/2020	25,526.44	(51,074.06)	45,77,482.00	(46,03,029.62)	15,55,087.00	-	-	1,96,195.35	<b>1,96,195.35</b>
13	23/04/2020	526.44	(52,418.06)	46,01,138.00	(46,53,029.62)	15,55,087.00	-	-	-	-
14	24/04/2020	526.44	(38,923.06)	46,14,212.00	(46,52,608.62)	15,55,087.00	-	-	-	-
15	27/04/2020	526.44	(38,923.06)	46,14,212.00	(46,52,608.62)	15,55,087.00	-	-	-	-
16	28/04/2020	1,526.44	(39,234.14)	45,87,930.00	(46,25,637.70)	18,15,304.00	-	-	-	-
17	29/04/2020	1,526.44	(39,234.14)	45,80,328.00	(46,18,035.70)	18,16,323.00	-	-	-	-
18	30/04/2020	526.44	(74,642.29)	45,79,328.00	(46,53,443.85)	18,16,323.00	-	-	-	-

20. I note from the table above, that the G value was found to be negative for 18 out of 18 sample dates, and value of I was found to be positive for 12 out of 18 sample dates.

21. I note that the Noticees have not disputed the findings with regard to the values of 'G' and 'I' on the sample dates and have accepted the alleged violations in their reply. Further Noticees have submitted that they have transferred funds to clients, and have submitted proof of the same to MCX, and that Noticee 1 is in process of

surrendering the membership/registration. Though no supporting evidentiary documents have been placed on records for the same.

22. In this regard, I note that the Noticees have accepted that on 18 instances there was misutilisation of funds of credit balance clients by the Noticee 1 for meeting the obligations of debit balance clients and/or for its own purpose, as well as Noticees have also accepted that the client funds were misutilised for funding of proprietary margin obligations of Noticee 1.
23. In this regard, I note that the measure taken by SEBI (provisions of the circular) are intended to increase transparency in fund/ client management by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than meeting that specific clients' obligation as permissible under SEBI rules and regulations.
24. In view of the above, I hold that the allegations of misutilisation of funds of clients by the Noticee 1 stands established. Therefore, I hold that Noticee 1 violated the provisions of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
25. Further, in regard to Non-maintenance of proper order placement records, I refer the table below illustrating alleged observations with respect to call recordings of trade placement for 25 sample instances:

**Table 3**

S.No.	DATE	UCC	Mode	Comments
1	03/04/2020	GM609	Call recording	No mention of UCC, client repeatedly telling dealer not to trade without his permission
2	16/04/2020	MG037		No order placement records provided
3	16/04/2020	MG037		
4	17/04/2020	RP001		
5	17/04/2020	MG037	Call recording	client did not specified contract only mentioned to sell natural gas
6	17/04/2020	MG037	Call recording	Dealer called the client and recommended to deal in derivative to which client agreed. Client also sought advice to trade in equities
7	21/04/2020	MG037	Call recording	client did not specified contract only mentioned to sell goldmini, selling price quoted by dealer different than that in contract note
8	23/04/2020	JH004		No order placement records provided

9	23/04/2020	RP001
10	23/04/2020	SM007
11	23/04/2020	GM586
12	23/04/2020	SM007
13	23/04/2020	SM016
14	23/04/2020	SM008
15	23/04/2020	SM009
16	23/04/2020	SM008
17	23/04/2020	SM016
18	23/04/2020	SM009
19	23/04/2020	SM016
20	23/04/2020	GM496
21	23/04/2020	JH005
22	23/04/2020	JH005
23	23/04/2020	GM607
24	23/04/2020	RP001
25	23/04/2020	GM607

26. I observe that the Noticees have contended that all the trades were confirmed but they do not have recordings, and they did not have adequate system in place during first covid lockdown, when the dealers were working from home.
27. I am of the view that COVID 19 cannot be an admissible reason for not keeping adequate system in place for maintaining order placement records, since no such relaxation was provided by SEBI during the days when the trade orders were placed. I also note from the records that for 4 sample trades, call recordings were provided by Noticee 1, hence I note that the Noticee 1 did have a system for recording trade placement calls by clients, but still failed to maintain the call records. Hence, it is established that the Noticee 1 did not keep call records for order placement in case of 21 sample trades.
28. Further, for the remaining 4 trades, I note that the call records were maintained, but there were other discrepancies like non-confirmation of client ID, contract details etc. as mentioned in table above. In this regard, I observe that the discrepancies outlined could be termed as lack of due diligence, which is not alleged in the SCN, hence not before undersigned for adjudication.

29. In view of the above, I hold that Noticee1 did not keep order placement call recordings for 21 trades out of sample 25 trades, hence it is established that Noticee 1 violated Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.
30. Further I note that the Noticee 2 and 3, were the designated directors of the Noticee 1 during the period of inspection and were involved in the day to day activities of Noticee 1, hence in view of Section 24 of SCRA and Section 27 of SEBI Act, they were responsible for the conduct and the violations by Noticee 1, and are found to be in violation of :
- i. Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95.
  - ii. Clause III of the SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

**Issue II. Does the violation, if any, attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act?**

31. In the light of findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that the Noticees have violated the regulatory provisions as indicated in Table no. 1.
32. The object of inspection of a Stock Broker is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SCRA, SEBI Act and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticees had failed to comply with the provisions as mentioned at Table no.1.
33. I find from the observations made in the inspection report and other material available on record that the Noticees have failed in performing their duties as a

registered stock broker and its directors. Noticees have also failed to adhere to high standards of service to its clients. Noticees submitted that death of one of the promoter due to covid, and resultant return of cheques, has resulted into the non-compliances. In this regard, I note that Noticee is a corporate entity with separate legal identity with perpetual succession, and the demise of a promoter cannot be an excuse for misuse of client funds by the Broker. Further, neither the Exchange nor SEBI had granted any relaxation on account of pandemic with regard to compliance of the specific guidelines, circulars, etc., where Noticee's violation has been established. Further, from the nature of violations, I note that violations are not resulted due to Covid or demise of one of the promoter, hence, the contention of Noticees cannot be accepted.

34. Further, the Noticees have submitted that they want to surrender the membership of the exchange and surrender the registration as broker, since they are not earning anything from the business, but only paying fees and penalties. In this regard, I note that the future business plans and the financial conditions of the Noticee, can not be considered as justification for non-imposition of penalty for established violations.

35. Further, the aforesaid violations pertaining to non-maintenance of call records for placement of order by clients, clubbed with mis-utilisation of client funds are serious violations in nature and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act and section 23D of the SCRA.

36. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.



37. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act and section 23D of the SCRA. The contents of the said provisions of law is reproduced herein below:

**Relevant provisions of SCRA:**

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

**23D.** *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Relevant provisions of SEBI Act:**

***Penalty for contravention where no separate penalty has been provided.***

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA1956 read with Rule 5(2) of the SCR Adjudication Rules?**

38. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act and Section 23-J of the SCRA, which reads as under: -

**SEBI Act**

***Factors to be taken into account while adjudging quantum of penalty***

**15J** While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

### **SCRA**

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

**23J.** While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

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

39. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SCRA, SEBI Regulations and

SEBI Circulars is not available. With respect to the repetitive nature of the default, I do not find anything on record.

40. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and circulars / directions issued thereunder, which it failed to do during the inspection period. The conduct of the Noticee in not complying with the provisions of the SCRA, SEBI Regulations and SEBI Circulars cannot be taken lightly. Considering that, the violations by the Noticees are serious, therefore should be dealt with sternly by imposing monetary penalty as effective deterrence.

### **ORDER**

41. Considering all the facts and circumstances of the case including the submissions of the Noticee, factors stipulated in Section 15-J of the SEBI Act and Section 23-J of the SCRA and exercising the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, and section 23-I of the SCRA read with Rule 5 of the SCR Adjudication Rules, 1956, I hereby impose the following monetary penalty under section 15HB of the SEBI Act and section 23D of the SCRA, on the Noticees:

<b>Sr. No.</b>	<b>Penalty Provisions</b>	<b>Name of the Noticee</b>	<b>Amount of penalty (in ₹)</b>
1	Section 15HB of SEBI Act	Goldenmaple Commodities Private Limited	₹ 3,00,000/- (Rupees Three Lakhs Only) Jointly and Severally
		Sanjay Kumar Mishra	
		Rupesh Kumar	
2	Section 23D of SCRA	Goldenmaple Commodities Private Limited	₹ 3,00,000/- (Rupees Three Lakhs Only) Jointly and Severally
		Sanjay Kumar Mishra	
		Rupesh Kumar	

In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**

43. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

44. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, and Rule 6 of the SCR Adjudication Rules, 1995 copy of this order is sent to the Noticee and also to the SEBI.

**Place: Mumbai**

**Date: May 31, 2024**

**SHASHI KUMAR VALSAKUMAR**

**ADJUDICATING OFFICER**