Before the

MEMBER AND CORE SETTLEMENT GUARANTEE FUND COMMITTEE

Of

NSE Clearing Limited

Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai – 400051

held through Video Conferencing

In the matter of Professional Clearing Member

M/s Edelweiss Custodial Services Ltd

CORAM:

Mrs Bhagyam Ramani	-	Chairperson of the Committee
Mr. N.K.Maini	-	Committee Member
Mr Harun R Khan	-	Committee Member
Mr. Vikram Kothari, (MD)	-	Committee Member

Also Present:

Mr. Dhawal Shah - Head - Compliance

Ms. Jinal Shah - Chief Manager

Ms Shivani Dalvi – Chief Manager

Ms. Divya Potdar- Manager

Invitee:

Mr Ravindra Bathula – General Counsel, NCL

I. BACKGROUND

1. Edelweiss Custodial Services Limited ("**Noticee**"), having its registered office at Tower 3, Wing 'B', Kohinoor City Mall, Kohinoor City, Kirol Road, Kurla (West), Mumbai 400070, is registered as a Professional Clearing Member (PCM) with NSE Clearing Limited ("**NCL**") (SEBI Registration No. INZ000177437).

2. NCL conducted a Limited Purpose Inspection ("**LPI**") of the Noticee's books, registers, records and other relevant documents in the F&O segment with respect to Anugrah Stock and Broking Pvt. Ltd. (**"Anugrah"**) covering the period from January 01, 2020 to July 19, 2020.

II. LPI FINDINGS: -

3. The following is a summary of the findings and details of violations by the Noticee as observed in the LPI report dated September 18, 2020: -

A. Findings

(i) The Noticee executed Clearing Member-Trading Member Agreement (CM-TM Agreement) on June 24, 2016 in Futures & Options Segment with Anugrah for providing clearing services.

(ii) The Noticee was required to upload details of Trading Member wise - client wise securities details to NCL in accordance with NCL circular No. NCL/COMP/41068 dated May 20, 2019. This report was a weekly submission, wherein details pertaining to securities received as collaterals from Trading Member such as Trading Member Name, Trading Member PAN, client UCC, Client PAN, ISIN, Security Type and Quantity have to be provided for each holding date. The Noticee had uploaded the securities details pertaining to Anugrah for the period under review i.e. January 2020 to July 2020. The Noticee was, therefore, aware that the securities provided by Anugrah as collaterals were belonging to the clients of Anugrah.

(iii) During the period January 2020 to July 2020, the ledger balance of Anugrah in the books of the Noticee reflected large debit balances on multiple dates on account of losses made by Anugrah as a Trading Member (having only client positions). In order to recover the outstanding balances, on 25 different dates, the Noticee sold securities worth Rs 460.32 crore during the period January 2020 to June 2020. Details of the said sales were provided by the Noticee.

(iv) In order to ascertain whether the Noticee performed adequate due diligence while handling client securities and ensured that the client securities were utilized only for meeting respective client obligations, information was sought in respect of: -

a) Communications exchanged between the Noticee and Anugrah with reference to sale of securities.

b) Client Codes for which the securities had been liquidated, ISIN, Scrip Name, quantity sold, amount of sale of securities, whether these clients had debit balances and the correspondence made with Anugrah in this regard.

(v) On the basis of the information sought vide emails dated August 31, 2020, September 04, 2020 and during the course of the LPI, the following observations were made regarding the securities sold: -

Sr No	**Summary of email correspondence between Anugrah and Noticee and observation there on in regard to sale of securities**	**Amount of securities sold in Rs. / Cr**
1	No instruction for liquidation from Anugrah to the Noticee but shares sold by the Noticee (without details of the clients and corresponding debit balances)	252.09
2	Instructions from Anugrah to the Noticee for sale of shares specifying on account of debit balance of clients (without providing details of client details and debit balances)	37.9
3	Instructions for sale of shares by Anugrah to Noticee (without specifying which clients and the details of debit balances)	149.26
4	Instructions from Anugrah to Noticee specifying liquidation for MTM (not clarifying whose MTM and without any client details or their debit balances)	21.07

	Total value of shares sold by the Noticee	**460.32**

(vi) Vide email dated September 16, 2020, information was sought from the Noticee requesting further details of sale of securities under 9 different columns. The Noticee provided the information regarding ISIN, Scrip Name, Quantity and Amount of securities sold. However, with respect to information as to for which clients the securities have been sold and whether there were debit balances for such clients, the Noticee responded as under: -

"Client Code & Client ledger balance information:

"ECSL is a Professional Clearing Member carrying out clearing activity for the Trading Member with the Clearing Corporation. The collaterals are received from TM and we do not have client level information relating to collaterals except to the extent of weekly reporting of collaterals done by TM as per his books and records which we have no capability to validate. Similarly details of limits given to various clients, their ledger balance and the settlement obligations at client level are not known to us. In view of this we regret our inability to fill in the two columns."

The said two columns referred to by the Noticee above, are "Client Code" and "Whether the client had debit balance and informed by Anugrah".

(vii) The National Stock Exchange ("**NSE**") had vide its email dated April 02, 2020 specifically instructed the Noticee as under:

"This has reference to M/s Anugrah Stock Broking Limited ('Anugrah") which is understood to be clearing its trades in derivatives segment through you i.e Edelweiss Custodial Services Ltd. It has come to the notice of the Exchange that Anugrah had significant settlement obligations/losses in recent times and consequently securities deposited by it were liquidated by you for meeting the unpaid obligation. As per the financial ledgers submitted by you, it is observed that Anugrah has an outstanding debit of Rs. 132.75 crores as on March 31, 2020 in your books.

Further in terms of NCL circulars NCL/COMP/41068 dated May 20, 2019, NCL/COMP/41500 dated July 03, 2019 and NCL/CMPL/43201 dated January 10, 2020 and the terms & condition of the TM/CM Agreement, it is understood that you are in possession of the client wise details of the securities deposited by Anugrah with you.

In view of the above and with an objective of safeguarding the client assets, you are, in accordance with the rules & regulation of SEBI/Exchange/CC and the TM/CM Agreement, advised to perform adequate due diligence while handling client assets and ensure that client securities/collateral are utilised only for meeting the respective client's obligations."

(viii) Further, NCL had vide email dated April 02, 2020 specifically directed the Noticee to ensure that the directives as specified by NSE are complied at all times.

(ix) Subsequent to the receipt of directions by NSE/NCL on April 02, 2020, there were 14 instances (dates) where the Noticee had disposed of clients securities worth Rs 96.34 crore during the period April 03, 2020 to June 02, 2020 without ascertaining whether the clients were defaulting clients or not and the extent of their default.

B. Violations observed

(i) It was observed that the Noticee had violated the following Circulars / Provisions of the Securities and Exchange Board of India ("**SEBI**") / NCL:

a) SEBI Circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 regarding handling of clients' securities by Trading Members/ Clearing Members ("**2019 SEBI Circular**") ; SEBI Circular no. MRD/DOP/SE/Cir-11/2008 dated April 17, 2008 ("**2008 SEBI Circular**') ; NSE Circular no. NSE/INSP/2008/66 dated April 21, 2008 ("**2008 NSE Circular**") ; and Regulation 10.2.4 of the NCL F&O Segment Regulations ("**NCL Regulations**").

b) Non-adherence to NCL and NSE directives (i.e. violations of Clause 1 and Clause 2 read with Clause 3(1)(b) and Clause 3(1)(c) of Chapter V of NCL Rules)

(ii) The Noticee had been uploading to NCL on a weekly basis, client-wise and ISIN-wise details of securities placed by Anugrah with it. As per the details uploaded by Noticee, the securities that it had received from Anugrah belonged to clients of Anugrah and details of the same were known to the Noticee. In order to

comply with 2008 and 2019 SEBI Circulars and to ensure that client securities are sold only for the purpose of meeting the respective clients' own obligations, the Noticee ought to have ascertained which clients of Anugrah had debit balance and to what extent the clients had debit balances and which securities belonged to such clients with debit balances before liquidation of securities. However, the Noticee had failed to identify the securities which belonged to such defaulting clients before proceeding to sell off the securities. Therefore, it was observed that the Noticee had failed to comply with the above referred SEBI Circulars and NCL Regulations by selling off securities belonging to clients without even checking whether the respective clients were defaulting clients or not.

(iii) It was observed that there were 14 instances (dates) subsequent to the date of receipt of the aforesaid e-mail directions dated April 02, 2020 by NSE / NCL, where the Noticee had failed to act in accordance with the directions of NSE and NCL and had disposed of clients' securities without ascertaining whether the clients' were defaulting clients or not. The objective of the directive was to safeguard the client securities and, therefore, the Noticee ought to have acted with due diligence while handling the client securities by identifying the defaulting clients and only selling their securities to the extent of their respective defaults / obligations. However, despite being directed to safeguard the client securities, the Noticee had failed to comply with the directions of NSE and NCL and had sold securities worth Rs 96.34 crore during the period April 03, 2020 to June 02, 2020 without carrying out proper due diligence.

III. Show Cause Notice: -

4. A Show Cause Notice dated September 19, 2020 ("**SCN**") was issued to the Noticee calling upon it to show cause as to why appropriate disciplinary action in terms of Rule 1 and Rule 2 of Chapter V of Rules of NCL (F&O) should not be initiated against the Noticee for the non-compliances / violations as were mentioned in the SCN. The said SCN referred to the contents of the aforesaid LPI and, inter alia, observed the following non-compliances / violations against the Noticee:-

(i) Misuse of Client Securities (Violation of SEBI Circular No MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular No CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019, NSE Circular No NSE/INSP/2008/66 dated April 21, 2008 and Regulation 10.2.4 of NCL FO Regulations)

(ii) Non-adherence to NCL and NSE directives (Violation of Clause 1 and Clause 2 read with Clause 3(1)(b) and Clause 3(1)(c) of Chapter V of NCL Rules)

5. In terms of the SCN, the Noticee was also provided an opportunity of personal hearing before the Membership Core Settlement Guarantee Fund Committee of NCL ("**Committee**") on October 06, 2020. The Noticee furnished its reply, vide its letter dated September 28, 2020 ("**Reply**"). The Noticee, through its authorized representatives, appeared for the personal hearing before the Committee on October 06, 2020. However, despite sufficient advance notice of the hearing, the Noticee appeared but sought an adjournment primarily on the ground that the Sr. Advocate engaged by them was not available. In the interest of fairness, the Noticee was given another opportunity to present its case on October 08, 2020.

6. At the personal hearing before the Committee in its meeting held on October 08, 2020, the Noticee was represented by Mr. Gaurav Joshi, Senior Counsel , Mr. Ashish Ahuja and Mr. Sameer Pandit, Advocates, and Ms. Kamala K- Group Chief Compliance & Governance Officer, Mr. Shiv Sehgal- President, Mr. Prashant Mody – Head Legal & Compliance, Mr. Atul Bapna – SVP. On the same date, just before the start of the hearing, the Noticee submitted written submissions in support of the arguments being made before the Committee **("Written Submissions")**. Mr Gaurav Joshi, Senior Counsel, representing the Noticee made his representation before the Committee. However, since Mr Gaurav Joshi could not continue with his representations post 5.00 p.m. reportedly due to his other scheduled appointments, he requested that he may be given time on the next day to continue with his submissions. The Committee acceded to his request and the Noticee was allowed to continue their representation on Friday, October 9, 2020 at 3 P.M. Subsequent to the meeting on October 9, 2020, the Noticee has also filed Additional Submissions which were forwarded to NCL by the Noticee's Advocates, vide their email dated October 12, 2020 at 22:35 Hrs ("**Additional Written Submissions**"). The Committee is herein below summarizing the submissions of the Noticee and the Committee's findings thereon.

IV. Submissions made by the Noticee: -

7. Noticee's Preliminary Submissions (i.e. submissions made prior to October 08, 2020): -

The Noticee has denied all the allegations contained in the SCN and has made the following preliminary submissions: -

(i) The Noticee is a Professional Clearing Member ("**PCM**"), and does not play any role in execution of trades by a Trading Member ("**TM**") on its own behalf or on behalf of the TM's clients, but only clears and settles trades executed by its constituents, viz, the TMs. Reference was drawn inter alia to Regulation 4.5.1 of the NCL's Regulations.

(ii) The reference to "clients" of a PCM would necessarily mean the TMs and not the end investors or clients of a TM.

(iii) A PCM does not have any contractual relationship or dealings of whatsoever kind with the end-clients of the TM. The word "*constituent*" referred to in the provisions in NCLs Bye-laws and Regulations can reasonably only mean the TM with whom the PCM has an agreement.

(iv) A PCM never directly collects any collaterals from the end investors or clients of a TM. It only accepts collaterals directly from the TM. Thus, all securities accepted by the Noticee as a PCM towards collateral from TM originated from the demat account of the TM and not from the end investors or clients of the TM.

(v) Under the legal regime applicable to dematerialised shares, securities transferred to the Noticee from Anugrah's demat account are legally treated as securities owned by Anugrah and not by any other constituent.

(vi) Once shares were transferred by Anugrah's clients to Anugrah, and Anugrah transferred them to the Noticee, the end clients of Anugrah ceased to be legal or beneficial owners of those particular shares. The Noticee relied upon Section 2 and

Sections 9, 10 and 11 of the Depositories Act, 1996, in support thereof, as well as the judgments passed by the Hon'ble Bombay High Court in the matter of *JRY Investments Private Limited vs. Deccan Leafine Services Ltd.* and *Ankit Securities And Finance Co vs Birla Investment Services*.

(vii) When the markets are volatile, the mark-to-market losses of a TM can cross its permissible limits in a short span of time. In such situations, if the TM fails to bring in additional margins/mark to market losses/other obligations, the Noticee is required to liquidate the collaterals of the TM placed with it immediately to prevent a payment/settlement default which can have catastrophic effects on not just the participants involved but also the larger securities market.

(viii) The relationship between the TM and PCM is akin to the relationship between the PCM and the Clearing Corporation. Just as the PCM is wholly liable to the Clearing Corporation for all the trades cleared by it on behalf of its constituents/TMs, the TM is liable to the PCM irrespective of the trades executed by the TM are for its own proprietary account or for on behalf of its end clients.

(ix) On each of the days when the Noticee liquidated collateral placed by Anugrah, it was done so as to recover the debit balances of Anugrah. Since the Noticee had used Anugrah's collateral only to meet Anugrah's obligations and not the obligations of any other TM, the Noticee was fully compliant with obligations relating to handling of collateral under the Rules, Bye-laws and Regulations of NCL.

(x) The SCN proceeds on the basis that the Noticee is to go one level beyond their contractual counterparty (i.e. the TM) and assume responsibility for supervising the individual dealings between the TM and its end clients, which is not contemplated in either the Rules, Byelaws or Regulations of NCL or any other regulatory provision applicable to a PCM.

(xi) NCL's Circular dated May 20, 2019 is merely a reporting requirement and sets out the format in which data has to be submitted by the PCM to NCL. In the absence of real time risk monitoring of end clients of TMs, it does not impose any obligation on the PCM to ascertain whether there were any debit balances for the clients of any TMs before liquidation of securities. Therefore, the SCN goes beyond the scope of the NCL circular dated May 20, 2019.

(xii) The collateral file (as per NCL Circular dated May 20, 2019) has limited details, which inter-alia include TM name, Client UCC and the securities held under such UCC. It does not have details of the ledger balances of such clients' with the TM and hence it is not possible for the Noticee as the PCM, to ascertain the debit balances of a TM's clients based on the weekly collateral details that are submitted by the TM.

(xiii) The SEBI Circular No. MIRSD/ SE /Cir-19/2009 dated December 3, 2009 governs the manner in which a broker/TM is required to settle his end-client's account. In most cases, the broker may have a running account authorization which permits the broker/TM to carry out actual settlement of funds and securities with the client once in a calendar quarter or month, depending on the preference of the end-client. This information is also not available with the PCM.

(xiv) Information received by the PCM pursuant to the NCL circular dated May 20, 2019 is dated and can never become the basis for liquidation of collateral to meet current margin obligations. This weekly data is historic data and is to be submitted to NCL "on or before the next four trading days of subsequent week" as made clear in the circular itself. Thus, if the PCM identifies a margin shortfall on Thursday, it will only have the collateral data available as of the preceding Friday. The PCM will not have any details of changes to margin/collateral of end-clients that have taken place between Monday and Thursday. Hence, any reliance on the data furnished pursuant to the NCL circular dated May 20, 2019 would lead to liquidation of collateral on the basis of inaccurate, incomplete and dated information.

(xv) There is no provision in the Clearing Member – Trading Member Agreement dated June 24, 2016 with Anugrah ("Principal Agreement") which was supplemented by way of a Supplementary Agreement also dated June 24, 2016 ("Supplementary Agreement") that required ECSL to monitor margins or liquidate collateral based on the obligations of Anugrah's end-clients. This is made clear by a plain reading of Clauses 2(5), 2(8), 5(4) and 5(6) of the Principal Agreement.

(xvi) Inherent limitation of the existing system of collateral that involves transfer of ownership of securities from client to TM, TM to CM and CM to Clearing Corporation has been recognized by SEBI. To resolve this, SEBI issued Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020 ("Pledge/Re-pledge Circular"). This system only came into force with effect from September 1, 2020. This fundamental alteration to the eco-system of margin collection shows

that the system that existed prior to September 1, 2020 did not allow tracing of collateral/securities from the hands of the investor till the hands of the Clearing Corporation.

(xvii) The Noticee also relied upon the judgment passed by the Hon'ble SAT in the case of SMC Global Securities Ltd. vs. Securities and Exchange Board of India in respect of the importance of margin requirements.

(xviii) Any and all dealings by and between Anugrah with its end client is a bilateral matter between them and does not concern the Noticee.

(xix) The Noticee also relied on Declaration dated June 9, 2020 given by Anugrah to show that it was compliant with the SEBI's Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 relating to Enhanced Supervision.

(xx) The Noticee also relied upon a declaration and confirmation given by Anugrah at the time of the termination of its Agreement with the Noticee, that the ledger balance available with the Noticee was correct and reflected all transactions, and that Anugrah had complied with requirements relating to client collateral.

(xxi) The Noticee also contended that the issues raised in SCN were sub-judice and were also the subject matter of pending legal proceedings before the Hon'ble Bombay High Court, and the Hon'ble Metropolitan Magistrates Court, Esplanade,

Mumbai, and therefore no coercive action ought to be taken by the Committee as the same would amount to double jeopardy.

8. Findings of the Committee in respect of the Noticee's Preliminary Submissions: - The submissions of the Noticee cannot be accepted, inter alia, on the following grounds:-

(i) The Noticee's attempt to distance itself from the clients of the Trading Member is untenable. It is an admitted fact that the Noticee has been uploading to NCL on a weekly basis the client-wise and ISIN-wise details of the non – cash (securities) collateral placed by Anugrah with it. Therefore, the Noticee was fully aware that the securities being disposed of were clients' securities as this information is contained in the upload to NCL, and it is, therefore, not open to the Noticee to contend that it was not aware that the said securities were in fact belonging to the clients of Anugrah.

(ii) The Noticee's contention that it does not have the capability to validate the information at the time of sale since such information would be historical data and cannot become the basis for liquidation of collateral, is not correct. The fact is that it had the requisite information that the said securities belonged to the clients of Anugrah with full details as to which securities belonged to which clients. Therefore, the Noticee's contention that information received by the PCM pursuant to the NCL circular dated May 20, 2019 is dated and can never become the basis for liquidation of collateral to meet current margin obligations is untenable, In any event, the Noticee was duty bound to at least call upon the

Trading Member for the requisite information so as to ensure that the sale of the securities was effected only in respect of clients' who were defaulting / debit balance clients.

(iii) Moreover, it is seen that as per clause 10 of the Clearing Member – Trading Agreement, the Noticee was expressly entitled to collect information about the Trading Members constituents' position. Further, as per clause 5 (7) of the aforesaid Agreement, Anugrah was duty bound to furnish to the Noticee the client wise margin amount paid. Consequently, there was no bar whatsoever to collect such information when required, and the requirement and importance of this information was obviously even anticipated and envisaged and was accordingly expressly provided for in the said TM-CM Agreement also. Therefore, the Noticee's contentions that it was not required to and/or was not able to access the required information as regards which clients of the Trading Member were defaulting or had debit balances, and as regards which securities belonged to such clients is incorrect. Most pertinently, it is not even the case of the Noticee that it had sought the requisite details from the Anugrah and that Anugrah had failed to provide the same. It would appear from the record that the Noticee never even called upon Anugrah to provide all the required details of the debit balance clients, as no such communication was disclosed by the Noticee despite being called upon to produce all communications. On the other hand, it appears from the record that on some occasions, Anugrah itself had apparently given a list of securities to be sold and stated that the same belonged to debit balance / defaulting clients. Even then it appears that the Noticee did not call for the particulars of the same and seems to have proceeded to sell off clients' securities without any due diligence

or any care to ensure that securities of only debit balance / defaulting clients were sold off.

(iv) Clearing Members cannot be permitted to sell huge quantities of investors'/ clients' securities worth hundreds of crore of rupees without even ascertaining that the same belong to investors/ clients who have debit balances. Clearing Members cannot be permitted to sell off securities belonging to investors/ clients who have credit balances and as such had no liability.

(v) SEBI's circular dated February 25, 2020 highlights the importance of the need to ensure that there is no misuse of client securities and provides for an additional measure to mitigate the risk of misappropriation or misuse of clients' securities available with the TM / CM / DP, which is binding on all Clearing Members as well as Trading Members. These additional measures in no way absolved the Clearing Member of its responsibility to ensure that it did not sell off collateral securities of clients other than debit balance clients and that too only to the extent of their respective debit balances. This is also dealt with in Point 8 (ix).

(vi) The Noticee's contention that the reference to "clients" of a PCM would necessarily mean the TMs' and not the end investors or clients of the TM, and that the word "*constituent*" referred to in the provisions in NCLs Bye-laws and Regulations can reasonably only mean the TM with whom the PCM has an agreement is incorrect. The reasons and findings of this Committee in respect thereof are more particularly set out herein below in this order.

(vii) The Noticee's contention that a PCM never directly collects any securities from the end investors or clients of a TM and that it only accepts securities directly

from the TM which originate from the demat account of the TM and not from the end investors or clients of the TM, and that therefore the same were legally owned by Anugrah and not the clients of Anugrah, is misleading and untenable. In fact, pursuant to the regulatory directions of SEBI for segregation and protection of clients' securities, all TMs' have to hold clients' collateral shares in separate specifically designated client collateral demat accounts. Even the Noticee has admitted that it in fact received the collateral shares from the "client collateral" demat account of Anugrah as is evident from Annexure B to the Noticee's Reply. Therefore, the Noticee's references to the provisions of the Depositories Act, 1996, and the Hon'ble Bombay High Court's judgment in the matter of *JRY Investments Private Limited vs. Deccan Leafine Services Ltd.* and *Ankit Securities And Finance Co vs Birla Investment Services,* are misconceived.

(viii) Further, the Noticee's comparison of the relationship of a TM and CM with that of a CM and clearing corporation, is completely flawed and misconceived. The functions, responsibilities, obligations and applicable provisions as regards a TM or CM on the one hand and a clearing corporation on the other hand, are very different. In any event, the said contention is irrelevant in the facts of the present case.

(ix) In view of the aforesaid findings, all the aforesaid submissions are irrelevant. The Noticee's contention that it liquidated collateral placed by Anugrah only to recover the debit balances of Anugrah and not the obligations of any other TM, are irrelevant. The Noticee's contention that the SCN goes beyond the scope of the NCL circular dated May 20, 2019 and that the Noticee is not required to ensure that it only liquidates securities of debit balance clients and not credit balance

clients, is ex facie untenable. The said submission runs counter to and undermines all the efforts to safeguard clients' securities and to the fundamental principle that a clients' securities can never be permitted to be appropriated or sold off unless that client has defaulted in meeting his / her obligations in the market. Once a client has diligently met all his / her obligations of payment / delivery, such client's securities cannot be unilaterally appropriated, misused, sold off or otherwise in any manner jeopardized by any TM or CM or PCM.

The Noticee's reference to SEBI's Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/28 dated February 25, 2020 ("Pledge/Re-pledge Circular") is misconceived to contend that it is only after September 1, 2020 that one can trace collateral/securities from the hands of the investor till the hands of the Clearing Corporation is incorrect and contrary to the record since the Noticee in fact had the information pursuant to the reporting under the NCL circular dated May 20, 2019. The Noticee's reliance on the judgment passed by the Hon'ble SAT in the case of *SMC Global Securities Ltd. vs. Securities and Exchange Board of India* in respect of the importance of margin requirements is misconceived. While the said judgement highlights the importance of margin, it does not in any way hold that a PCM is entitled to sell off securities other than those of clients having debit balance / defaulting clients.

(x) The Noticee's reliance on the Declaration dated June 9, 2020 given by Anugrah and/or a declaration and confirmation given by Anugrah at the time of the termination of its Agreement with the Noticee, is irrelevant. Neither of the above can be a justification by the Noticee in its failure to discharge its obligation to ensure that securities of only debit balance / defaulting clients were sold off. The

same can also not be a justification by the Noticee in its failure to even seek the relevant information of defaulting / debit balance clients from Anugrah.

(xi) In fact, the Noticee had also obtained an undertaking dated July 30, 2019 from Anugrah with respect to the securities submitted to the Noticee as collateral. It is observed from the undertaking that Anugrah had specifically mentioned that the securities being placed by it with the Noticee were in fact securities belonging to the clients. The relevant clauses are reproduced below:

> "*1. We have the authority and power to place the securities/ funds of clients (emphasis supplied) as collaterals with clearing member ECSL for trading on Exchange.*
>
> *2. The securities/ funds are placed as collateral with ECSL is in accordance with the provisions of SEBI Circulars SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and any other circular issued by the Market Regulators from time to time.*
>
> ***3. The securities/ funds of our clients** placed as collateral with ECSL **will be utilized towards the respective client's positions** and not for other clients or for Own purpose.*
>
> *4. We have ensured clear segregation of client and Own funds/ securities, which has been placed with you as collaterals.*
>
> ***5. The securities, which are placed as collaterals are in existence, owned by the respective clients and are and shall be free from any charge, lien or encumbrance whether prior or otherwise**.*"
>
> (Emphasis Supplied)

(xii) In view of the above clauses of the undertaking, it is clear that Anugrah had represented to the Noticee that the securities being placed belong to the clients and hence, it is not open to the Noticee to contend that it was unaware of the ownership of the securities as belonging to the clients. Moreover, as mentioned in clause 3 of the said undertaking the said securities belonging to the clients were to be "utilized towards the respective client positions and not for other clients or for own purpose".

(xiii) As regards the contention that this Committee ought not to pass any orders due to the pendency of other matters before the Hon'ble High Court and the Hon'ble Magistrates Court , the Committee holds that the pendency of those proceedings cannot affect the present proceedings and do not preclude the Committee from proceeding with the present matter merely because some co-related matters may be pending in different civil or criminal proceedings before the Hon'ble Courts. It is not even the contention of the Noticee that any Court has granted any injunction or passed any order to restrain the present proceedings from being continued with. The Noticee also, vide e mail dated October 05, 2020, had raised a similar contention and also sought certain information from NCL. The present proceedings emanate out of the LPI and the documents relevant for the purpose of these proceedings have been made available to the Noticee.

9. Submissions of the Noticee regarding violation of SEBI's Circular dated April 17, 2008, and NSE's Circular dated April 21, 2008 (Misuse of Client Securities)

The Noticee has, inter alia, submitted as follows: -

(a) SEBI's Circular dated April 17, 2008 is titled "*Collateral deposited by clients with brokers"*, and the same has been reproduced in NSE's Circular dated April 21, 2008. A bare reading of these circulars makes it amply clear that it is directed at, and is required to be complied by brokers, i.e. TMs, and does not apply to PCM. It is the broker and not the PCM who is liable for the consequences of violation of the said SEBI circular.

(b) In case of any violation of the circular, it is the broker who is made liable and not the PCM. This view has been affirmed by SEBI in its order dated May 9, 2018 in the case of Dani Shares and Stocks Private Limited wherein the Adjudicating Officer held as follows: "*I also note that the SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 mandates that a Stock Broker should ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirement".*

(c) SEBI Adjudication Officers had taken a view in the matters of *M/s Monarch Networth Capital Limited and Ganganagar Commodity Limited* that the compliance of end-client level collateral requirements as per the SEBI circulars is an obligation of brokers/TMs.

(d) The Noticee relied on the definitions of "clearing member" and "stock broker" in the SEBI (Stock Brokers) Regulations, 1992 ("**SEBI (Stock Brokers) Regulations**") in this regard to show that the same were distinct functionaries under the extant legal framework.

(e) The "Client" of a PCM is the concerned TM. In the present case, the Noticee's "client" was Anugrah. In compliance with the aforesaid circular, the Noticee had ensured that all securities received as collateral from Anugrah were utilized by Noticee only to meet the margin requirements / obligations of Anugrah. The collateral was not used to meet the margin requirements of any other TM.

(f) The Noticee relied on Regulation 4.5.1 of NCL's Regulations to contend that the words "*its constituents*" must necessarily mean only the TM is the client/constituent of the PCM. The Noticee also relied upon Rules, Regulations and Byelaws of NCL viz, Chapter IX, Bye-law 1, 6 & 8 ; Chapter X -Bye-law 1; Regulation 4.5.2, 4.5.3, 8.1.3, 8.2.1, 11.3.1 and 11.3.2, to argue that the client/constituent of a PCM can only be the broker/TM and not the end-clients of the TM.

(g) The Noticee also relied on the judgments passed by the Hon'ble Supreme Court in the cases of *M/s. Hiralal Ratanlal v. STO, Union of India and Anr. v. Hansoli Devi and Ors.,* and *B. Premanand and Ors. vs. Mohan Koikal and Ors.* on the literal rule of interpretation. The Noticee also relied on the judgments passed by the Hon'ble Supreme Court in the matters of State *of Jharkhand and Ors. vs. Tata Steel Ltd. and Ors* and *Vanguard Fire and General Insurance Co. Ltd. vs. Fraser and Ross and Anr* in support of their contentions relating to purposive interpretation and that one must eschew an interpretation which creates an absurd or anomalous result.

10. Findings of the Committee in respect of the violation of SEBI's Circular dated April 17, 2008, and NSE's Circular dated April 21, 2008 (Misuse of Client Securities)

The Committee rejects the said submissions of the Noticee for the following reasons:

(i) The main issue in the present case is the misuse of clients' securities. SEBI and the market infrastructure institutions have been most concerned by the misuse of clients' securities and from time to time, various circulars have been issued to put in place systems to prevent the same. The core issue is that in terms of the 2019 SEBI Circular, no TM, CM or PCM can be allowed to misuse any investors' / clients' securities. No TM, CM or PCM can be permitted to unilaterally sell off a clients' securities other than to recover that same clients legitimate dues, and all TMs, CMs and PCMs have to ensure that securities of only debit balance / defaulting clients were sold off for recovery of their dues if and when the client defaults.

(ii) The 2008 SEBI Circular states, inter alia, as under:

"... in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that:-

4.1 Brokers should have adequate systems and procedures in place to ensure that the 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.."***

(Emphasis Supplied)

(iii) In addition, the 2008 SEBI Circular directed stock exchanges to bring the provisions of the 2008 SEBI Circular to the notice of, *inter alia*, clearing members. The 2008 SEBI Circular states, *inter alia*, as under:

> *"5. The Stock Exchanges are advised to:-*
>
> *5.1. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.*
>
> *5.2.* ***bring the provisions of this circular to the notice of the member brokers/clearing members****, depository participants and also disseminate the same on their website."*

(Emphasis Supplied)

(iv) Following the 2008 SEBI Circular, NSE had issued circular no. NSE/INSP/2008/66 dated April 21, 2008 **("the 2008 NSE Circular")** to all Clearing Members and Trading Members, drawing the attention of all members to the 2008 SEBI Circular and expressly making it clear that the 2008 SEBI Circular was being circulated for *"ready reference and compliance with the provisions thereof".*

(Emphasis Supplied)

(v) Consequently, it is untenable for the Noticee to contend that the aforesaid circulars are not applicable to clearing members. The Committee unequivocally holds that the said circulars are applicable to all Clearing Members, including the Noticee.

(vi) Moreover, the Committee also notes that the provisions of the SEBI (Stock Brokers) Regulations which are applicable to a stock broker are also made mutatis mutandis applicable to a clearing member. As per Regulation 10 F of the SEBI (Stock Brokers) Regulations, Chapters IV – General Obligations and Responsibilities; Chapter V – Procedure for Inspection and Chapter VI – Procedure for Action in case of Default, which are applicable to a stock broker are also made mutatis mutandis applicable to a clearing member.

(vii) The Committee also notes that Regulation 26 (xiii) of Chapter V of the said SEBI (Stock Brokers) Regulations states that a stock broker (and therefore a clearing member too as mentioned above), inter-alia, can be held liable for failure to segregate the securities or funds of a client or for using a client's funds or securities for the purposes of any other client.

(viii) Accordingly, the contention of the Noticee that it ensured that all securities received as collateral from Anugrah were utilised by the Noticee only to meet the margin requirements / obligations of Anugrah is irrelevant as the Noticee, in its capacity as a clearing member, is also required to ensure that securities of one client are not used for the purpose of any other client, as mentioned above.

(ix) The Noticee's contention that client/constituent of a PCM can only be the broker/TM is belied as Regulation 1.7 of the NCL F&O Segment Regulations clearly explains that as regards a Clearing Member, the terms "*Clients" / "Constituents*", include all registered constituents of trading members of Specified Exchange. Thus, it is abundantly clear that the term "clients" for a clearing member also covers the clients of trading member. Further , if this contention of the Noticee were to be accepted, it would also mean that foreign

portfolio investors and such other entities/ institutions that directly clear their trades through PCMs (such as the Noticee itself) will not be covered as constituents of such PCM. This would lead to an absurd conclusion considering the Noticee, in its capacity as a PCM not only has TMs as its clients but also many clients other than TMs. As on date, the Noticee clears and settles trades of around 60 trading members and around 150 non-trading members such as, foreign portfolio investors and such other entities/institutions.

(x) The Committee also notes some of the relevant facts of the present case/admissions by the Noticee as hereunder:-

(a) It is admitted by the Noticee that it has liquidated investor/clients' securities worth Rs 460.32 crore during the period January 2020 to June 2020.

(b) It is also not disputed by the Noticee that such liquidation / sale of securities was for recovery by the Noticee of the dues of its Trading Member Anugrah because of its increasing debit balances.

(c) It is also not disputed by the Noticee that as per the details uploaded by the Noticee itself to NCL, the securities sold by the Noticee belonged to clients of Anugrah.

(d) It is also admitted that the Noticee had not verified before selling the client securities, whether such securities were belonging to the defaulting clients or not.

(e) The sale of securities by the Noticee without verifying whether the securities belonged to the defaulting client or not, has apparently resulted in sale of clients' securities for meeting the obligation of other clients

instead of the respective client, which is prohibited by the aforesaid SEBI Circulars.

(xi) It is, therefore, clear beyond doubt that there has been a violation by the Noticee of the aforesaid prohibitions relating to misuse of clients' securities on account of the sale of client securities without verifying whether such clients are defaulting clients having debit balances or not.

(xii) Accordingly, the Noticee's contention that it had no legal obligation to wait for any communication from Anugrah to liquidate securities or try and trace the historical ownership of any securities is not sustainable in view of the aforesaid SEBI circulars and NCL Regulations which cast an obligation on all clearing members (which includes the Noticee) to ensure that there is no misuse of clients' securities.

(xiii) The Noticee has referred to the SEBI orders in the cases of Dani *Shares and Stocks Private Limited*, M*/s Monarch Networth Capital Limited and Ganganagar Commodity Limited*. These cases do not cover the issues being decided in the present proceedings and are clearly distinguishable as it is nowhere stated that a PCM is not liable to comply with the said circulars or that the same do not apply to a clearing member.

In view of the aforesaid, the Noticee's contentions relating to the NCL's Regulations that the words "*its constituents*" must necessarily mean only the TM, is specious and, therefore, rejected. It is just impossible to accept the absurd position that a PCM can with impunity sell off clients' securities even though

the clients have not defaulted and have no outstanding obligation that is due and payable. In fact, Regulation 1.7 of the NCL F&O Segment Regulations defines "Client / Constituent" to specifically include all registered constituents of TMs.

(xiv) As regards the Noticee's reliance on the judgments of the Hon'ble Supreme Court in the cases of *M/s. Hiralal Ratanlal v. STO, Union of India and Anr. v. Hansoli Devi and Ors.*, and *B. Premanand and Ors. vs. Mohan Koikal and Ors.* in respect of the literal rule of interpretation and the Noticee's reliance on the judgments of the Hon'ble Supreme Court in the matters of State *of Jharkhand and Ors. vs. Tata Steel Ltd. and Ors* and *Vanguard Fire and General Insurance Co. Ltd. vs. Fraser and Ross and Anr* in support of their contentions relating to purposive interpretation and that one must eschew an interpretation which creates an absurd or anomalous result, the Committee notes that the same in fact contradict the contentions of the Noticee. The entire object and purpose of both the said NCL Regulations and the aforesaid SEBI circulars is to prevent misuse of client securities viz preventing the use of one client's securities for meeting the obligation of another client or the broker's own trades. That is the purpose and intention. It would, therefore, be absurd and anomalous to hold that the said circulars only prohibit a TM from making such misuse of a client's securities but a PCM can do so with impunity.

(xv) The sale of securities by the Noticee without verifying whether the securities belonged to the defaulter clients' or not, has resulted in the use of clients' securities for meeting the obligations of other clients', which is prohibited by the aforesaid SEBI Circulars and NCL Regulations. The Noticee has, therefore,

failed to comply with the 2008 SEBI Circular, 2019 SEBI circular and NCL Regulations.

11. Submissions of the Noticee regarding violation of SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019

(a) The Noticee contended that the SCN does not identify which provision of the said SEBI Circular dated June 20, 2019 has allegedly been violated by them. It was contended that most of the provisions of this circular are either reiterations of earlier circulars or deal with matters which are not relevant to the facts of the present case such as pledging of securities with banks and NBFCs.

(b) It was also contended that the said Circular reiterates that *"client securities received as collateral shall be used only for meeting the respective client's margin requirement by way of depositing the same with Stock Exchange/ Clearing Corporation/ Clearing House",* and, therefore, the "client" of a PCM is the concerned TM.

(c) In the present case, the "client" was Anugrah, and in compliance with the aforesaid circular, the Noticee had ensured that all securities received as collateral from Anugrah were utilised by the Noticee only to meet the margin requirements / obligations of Anugrah. The securities were not used to meet the margin requirements of any other TM.

(d) Accordingly, the Noticee contended that they were fully compliant with the provisions of the said SEBI Circular.

12. Findings of the Committee regarding the violation of SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019

The Committee has noted the contentions raised by the Noticee are based on fallacious premises and hence rejects the same for the following reasons: -

(i) The said contentions are self -contradictory. The contention that the SCN does not identify which provision of the said SEBI Circular dated June 20, 2019 has allegedly been violated by them is contradicted by the contention that the said Circular reiterates that *"client securities received as collateral shall be used only for meeting the respective client's margin requirement by way of depositing the same with Stock Exchange/ Clearing Corporation/ Clearing House".*

(ii) The Committee has already herein above rejected the contention of the Noticee that the "client" of a PCM is only the concerned TM. The Committee reiterates that it would be absurd and anomalous to hold that the said circulars only prohibit a TM from making such misuse of a client's securities but a PCM can do so with impunity. Such a position would totally undermine the regulatory foundation of the markets built to safeguard the misuse of securities of the investors by the intermediaries.

(iii) Consequently, the Noticee's contention that the Noticee had ensured that all securities received as collateral from Anugrah were utilised by the Noticee only to meet the margin requirements / obligations of Anugrah and not any other TM is

not relevant. The Noticee was duty bound to ensure that securities of only debit balance / defaulting clients of Anugrah were sold off.

(iv) The Committee, therefore, concludes that the Noticee did violate the provisions of the said SEBI Circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019.

13. Submissions of the Noticee as to difference between "Stock Broker" And "Clearing Member" with reference to 2019 SEBI Circular

(a) The Noticee, vide its Additional Written Submissions, contended that this circular primarily relates to the cash segment involving actual delivery of securities and, therefore, this circular is not relevant for the present matter.

(b) The term "Stock Broker" does not include a "Clearing Member" and both terms are separately defined in the SEBI (Stock Broker) Regulations, which would override the circular.

(c) Only self-clearing members can fall within the purview of the said circular and not any PCM.

14. Findings of the Committee regarding Submissions of the Noticee as to the difference between "Stock Broker" and "Clearing Member" with reference to 2019 SEBI Circular

(i) The Committee finds the submissions of the Noticee in this regard are incorrect and untenable. The subject of the circular itself is *"Handling of Clients'*

Securities by Trading Members/Clearing Members", and the same is expressly also addressed to Clearing Members such as the Noticee and is accordingly applicable to utilization of client securities.

(ii) Further, the Noticee's contentions that the said circular is not applicable to the facts of the present matter is, on the face of it, contrary to para 1 of the said Circular itself which states that *"... In order to protect clients' funds and securities, The Securities Contracts (Regulation) Act, 1956 and Securities and Exchange Board of India (Stock-Brokers) Regulations, 1992 specifies that the stock broker shall segregate securities or moneys of the client or clients or shall not use the securities or moneys of a client or clients for self or for any other client…".* Further, in paragraph 2 of the 2019 SEBI Circular, it has been stated that the term stock broker in the said circular has been defined to refer to trading member/ clearing member or TM/CM. Therefore, the Committee holds that the said Circular is in fact equally applicable to the Noticee as well as to the facts of the present matter.

(iii) There is no question of the SEBI (Stock Broker) Regulations overriding the SEBI 2019 Circular relating to handling of client securities since no conflict can be attributed between them. The 2019 SEBI Circular, which is self-contained, clearly adopts its own definitions for the terms used therein and governs the use of the terms in the circular only and, therefore, no question arises of looking into any other definitions in any other circulars, rules, regulations, etc.

15. Submissions of the Noticee regarding violation of Regulation 10.2.4 of NCL Regulations

(a) As a PCM, the Noticee's obligation was to ensure that securities received as collateral from Anugrah were used for the margin obligations of Anugrah and no other TM. Since their client/constituent was Anugrah, their obligation was restricted to the TM level. The TM, in turn, was responsible for settlement and rendering accounts to its clients. Any dealings by and between Anugrah with its end clients were bilateral matters between them and did not concern the PCM.

(b) The Noticee had ensured that Anugrah's securities were not improperly used and were utilised only for meeting Anugrah's margin obligations, and therefore they were fully compliant with the applicable regulatory provisions including Regulation 10.2.4.

(c) Further, under the legal regime, applicable to dematerialised shares, securities transferred to the Noticee from Anugrah's demat account were legally treated as securities owned by Anugrah and not by any other constituent. All of the securities received by the Noticee from Anugrah towards collateral originated from the demat account of Anugrah and not from the demat account of any of Anugrah's end-clients. The Noticee had never accepted any securities from the demat accounts of the client of Anugrah. The Noticee relied upon an extract from the records of CDSL showing the demat account details of Anugrah through which securities was given by Anugrah to the Noticee.

16. Findings of the Committee regarding violation of Regulation 10.2.4 of NCL Regulations: -

i) Regulation 10.2.4 of the NCL Regulations states that: -

"No F&O Clearing Member or person associated with a F&O Clearing Member shall make improper use of constituents securities or funds."

ii) In regard to the above, it is pertinent to note that Regulation 1.7 of the NCL F&O Segment Regulations defines "Client / Constituent" as under:

"A Client / Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose, the term "Client" shall include all registered constituents of trading members of Specified Exchange.

Explanation 1: The terms 'Constituent' and 'Client' are used interchangeably in the Byelaws, Rules and Regulations ….."

(Emphasis Supplied)

Thus, as regards a Clearing Member, the terms "*Clients" / "Constituents*", include also the clients/ constituents of the Trading Members for whom the Clearing Member undertakes the clearing of trades.

iii) Therefore, indisputably, a combined perusal of the above provisions leads to the unambiguous conclusion that the term "Constituent" in Regulation 10.2.4 would include all registered clients / constituents of the trading members. Therefore, in the present case, in respect of the Noticee, the same would include the clients / constituents of Anugrah. The Committee, therefore, rejects the Noticee's aforesaid contentions.

iv) The Noticee's contention that it received the collateral securities from Anugrah's demat account; that the same were, therefore, in law owned by Anugrah and not by any other constituent or Anugrah's end-clients and the Noticee's reliance upon an extract from the records of CDSL showing the demat account details of Anugrah through which collateral was given by Anugrah to the Noticee, have already been dealt with herein above in detail. In fact, the said records of the CDSL prove that such securities were delivered from the Client Collateral Account of Anugrah and the Noticee was fully aware that the same belonged to the clients. The same was also corroborated by the information / reporting received by the Noticee pursuant to the NCL circular dated May 20, 2019.

17. Submissions of the Noticee regarding non-adherence to NCL / NSE directives vide email dated April 2, 2020 (Violation of Clause 1 And Clause 2 Read with Clause 3(1)(b) And Clause 3(1)(c) Of Chapter V of the NCL Rules)

The Noticee has submitted that: -

(a) The Noticee also ensured that all collateral belonging to Anugrah was utilised only to set off Anugrah's margin obligations. Moreover, no collateral was used to meet any of Anugrah's proprietary obligations since Anugrah had no proprietary positions. Hence, there was no violation of any directive of NSE or NCL as contained in the aforesaid email dated April 2, 2020.

(b) NCL's email dated April 2, 2020, was responded to by the Noticee, vide its email dated April 8, 2020, explaining the Noticee's position in detail. NCL did not respond or provide guidance as to how a PCM can ascertain the debit balance of

TM's end client based on the information made available to a PCM in the existing framework.

(c) After NCL issued its email on April 2, 2020, there were 14 instances on which the Noticee liquidated Anugrah's collateral to recover Anugrah's dues. Out of these 14 instances, on 11 occasions Anugrah itself provided written instructions to the Noticee for liquidation of collateral along with a list of collateral to be liquidated to set-off Anugrah's debit balance.

(d) Since a PCM is entirely reliant upon data provided by the TM, the Noticee had no option but to rely upon Anugrah's instructions and confirmations regarding debit balance of clients and liquidated collateral accordingly. The Noticee forwarded the relevant contract notes and neither Anugrah nor any of Anugrah's end-clients protested or objected.

(e) The Noticee had no legal obligation to wait for any communication from Anugrah to liquidate collateral or try and trace the historical ownership of any collateral securities. Nevertheless, the Noticee made best efforts to comply with the directions to show their bona fides, and pursuant thereto: -

(i) Between April 3, 2020 and June 2, 2020, the Noticee sold collateral worth Rs.96.34 crore. Out of this, collateral worth Rs.48.96 crore was sold pursuant to Anugrah's confirmation that it related to clients with debit balances.

(ii) For instances where no instructions/confirmations were forthcoming from Anugrah, the Noticee used the last available holding file to ascertain client holdings and last available margin file to identify clients who had open positions and was able to correlate/allocate collateral worth Rs.40.30 crore to Anugrah's clients who had open positions.

(iii) For the remainder amount of Rs.7.08 crore, it was impossible for the Noticee to do any client-wise allocation. However, Anugrah had a debit balance with the Noticee on the relevant dates and the Noticee was fully entitled to recover these dues by liquidation of the collateral available with it.

(f) Failure to sell the securities and recover their dues could have resulted in the Noticee defaulting on its onward liability to NCL, in which case NCL would liquidate collateral placed by the Noticee with NCL, including collateral of other TMs. Hence, the Noticee had clearly acted in a bona fide manner to maintain the integrity of the concept of margins and avoided a larger default.

(g) While the above process was followed based on instructions of NCL, it is neither legally mandated nor accurate and can never achieve a precise matching of collateral to be liquidated against TM clients who have debit balances with the TM. Nevertheless, the Noticee carried out this process on a best efforts basis to show their bona fides and to comply with NCL's directions to the best extent possible. Further, the system enabled a PCM to fix trading limits only on the TM and not on the clients of the TM.

(h) Anugrah had also given the Noticee declarations that it was compliant with SEBI's Circular No. SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 relating to Enhanced Supervision. From July 17, 2020 onwards, Anugrah ceased to be associated with the Noticee in NSE Futures & Option segment and shifted to another clearing member and had provided a

declaration and confirmation that the ledger balance available with the Noticee was correct and reflected all transactions, and that Anugrah had complied with requirements relating to client collateral.

(i) The PCM cannot be blamed when even exchanges and depositories could not detect Anugrah's fraud in real time.

In their Additional Written Submissions, the Noticee has stated as under:

That the NSE's said email dated April 2, 2020 did not contain any blanket prohibition against liquidation of the clients' collateral securities, nor did it require the Noticee to carry out an investigative audit.

(a) NSE's said email dated April 2, 2020 was only a mere guidance to comply with the existing regulatory provisions, and any "advisory" beyond the applicable rules, regulations and bye-laws were not binding on the Noticee.

(b) The Noticee's email in reply dated April 8, 2020 was not replied to and no guidance was given to them as to how to ascertain the clients debit balances.

18. Findings of the Committee regarding submissions of the Noticee as to the scope and nature of NSE's email dated April 2 2020

(i) The Committee has considered the aforesaid submissions and finds the same untenable. Even by the Noticee's own admission, it has stated in its said Additional Written Submissions that NSE vide its email dated April 2, 2020 ,inter alia, directed the Noticee to ***"…ensure that the client securities / collaterals are utilized only for meeting the respective clients obligations".***

Thus, the Noticee itself contradicts its own submissions that the email dated April 02, 2020 did not contain any blanket prohibition against liquidation of the client collateral securities with its own admission that the NSE's email dated April 02, 2020 was a mere guidance to comply with the existing regulatory provisions which clearly provides that the client securities should no way be misused as cited above in this para. The Committee, therefore, finds that the Noticee failed and neglected to ensure that the client securities were utilized only for meeting the respective clients' obligations.

(ii) The undisputed fact remains that the Noticee sold off clients' securities worth about Rs. 460 crores without any proper due diligence to ensure that it sold securities of only the defaulting debit balance clients to the extent of their respective defaulted obligations. There can be no justification at all for any TM, CM or PCM to sell off clients shares when client has not committed any default and has no debit balance. This fundamental principle cannot be sacrificed on the altar of convenience of the Noticee. The Noticee has not produced a single communication to show that it even asked the TM / Anugrah to furnish the required data / details to the Noticee. Therefore, even the Noticee's contentions relating to its email dated April 8, 2020 and the lack of any response to the same are not considered relevant and do not absolve the Noticee for its total disregard of even the most basic due diligence and caution while dealing with and selling off clients' securities.

(iii) The Committee also notes that the huge volume and value of securities being sold off in this manner by a PCM ex facie called for an even higher level of due diligence and caution while dealing with and selling off clients' securities. Such

large-scale disposal of clients' securities was an obvious red flag and the Noticee ought to have exercised much more caution, but it totally failed to do so while disposing of their securities.

In this context, the Noticee had also submitted that "real time data" of the clients was not available and cannot be available to the Noticee when it squares off obligations and recovers its dues by selling the securities. The Committee, however, finds that the submission is not tenable. The disposal of securities by a PCM can only happen after the default occurs and not before. Therefore, the allegation of lack of "real time data" of the clients cannot at all justify the Noticee's action of selling off clients' securities worth about Rs. 460.32 crore without any proper due diligence to ensure that it only sold securities of defaulting debit balance clients to the extent of their respective debit obligations.

19. Findings of the Committee regarding non-adherence to NCL / NSE directives vide email dated April 2, 2020 (Violation of Clause 1 And Clause 2 read with Clause 3(1)(b) and Clause 3(1)(c) of Chapter V of the NCL Rules): -

(i) The said email of NSE dated April 02, 2020 specifically instructed the Noticee as under:

"This has reference to M/s Anugrah Stock Broking Limited ('Anugrah") which is understood to be clearing its trades in derivatives segment through you i.e Edelweiss Custodial Services Ltd. It has come to the notice of the Exchange that Anugrah had significant settlement obligations/losses in recent times and consequently securities deposited by it were liquidated by you for

meeting the unpaid obligation. As per the financial ledgers submitted by you, it is observed that Anugrah has an outstanding debit of Rs. 132.75 crores as on March 31, 2020 in your books.

Further in terms of NCL circulars NCL/COMP/41068 dated May 20, 2019, NCL/COMP/41500 dated July 03, 2019 and NCL/CMPL/43201 dated January 10, 2020 and the terms & condition of the TM/CM Agreement, it is understood that you are in possession of the client wise details of the securities deposited by Anugrah with you.

In view of the above and with an objective of safeguarding the client assets, you are, in accordance with the rules & regulation of SEBI/Exchange/CC and the TM/CM Agreement, advised to perform adequate due diligence while handling client assets and ensure that client securities/collateral are utilised only for meeting the respective client's obligations."

(ii) Further, NCL had vide email dated April 02, 2020, specifically directed the Noticee to ensure that the directives as specified by NSE are complied with at all times.

(iii) NCL Rules empower it to levy penalty for Misconduct, Unbusinesslike Conduct and Un-professional conduct. These Rules include Clause 3(1)(b) And Clause 3(1)(c) Of Chapter V of the NCL Rules as reproduced below: -

"(b) Violation: If he has violated provisions of any statute governing the activities, business and operations of the Clearing Corporation, Clearing Members and securities business in general;

(c) Improper Conduct: If in the opinion of the relevant authority he is guilty of dishonourable or disgraceful or disorderly or improper conduct on the Clearing Corporation or of willfully obstructing the business of the Clearing Corporation;"

(iv) The Noticee contends that it acted bona fide, made best efforts to comply with the directives of NSE/NCL. The Noticee, however, has not produced even a single communication with Anugrah calling upon Anugrah to provide all the details of the clients ledger balances and other relevant particulars so as to identify which clients were defaulters and which were their securities which could be legitimately and correctly sold off to recover the amounts due and payable by them.

(v) In fact, clause 2 (10) of the Clearing Member-Trading Member agreement dated June 24, 2016 ("**CM-TM Agreement**"), relied on by the Noticee itself, clearly stipulates that "……*the Clearing Member shall be entitled to collect such information from the Trading Member about the Trading Members constituents as the Clearing Member may require including the information pertaining to constituents positions.*" . Therefore, even though the Noticee was contractually enabled to call for and get the details of the positions of the clients, it does not appear to have even asked for the same. The same also contradicts the Noticee's contention that despite the Noticee's email dated

April 8, 2020, NCL did not respond or provide guidance as to how a PCM can ascertain the debit balance of TM's end client based on the information made available to a PCM in the existing framework

(vi) However, admittedly there are 14 instances (dates) subsequent to the receipt of directions by NSE/NCL on April 02, 2020, where the Noticee has failed to act in accordance with the said directions and has disposed clients' securities without even calling upon Anugrah to furnish details of the clients' ledgers / positions to ascertain whether the securities being sold off belonged to defaulting clients or not. The Noticee clearly failed to carry out even the first step of due diligence prior to selling the shares.

(vii) As regards the Noticee's own contention that after NCL sent its email on April 2, 2020, there were 14 instances on which the Noticee liquidated Anugrah's collaterals to recover Anugrah's dues and that on 11 occasions Anugrah itself provided written instructions to the Noticee for liquidation of securities along with a list of collaterals to be liquidated to set-off Anugrah's debit balance, the Committee notes that it was only in 8 instances that Anugrah allegedly confirmed that such collateral pertained to end clients who had debit balances. In fact, it is the Noticee's own submission that out of the total of Rs. 460.32 crore worth of clients' shares sold off by the Noticee, it was only collaterals worth Rs.48.96 crore which was sold pursuant to Anugrah's confirmation that they related to clients with debit balances. Further, the Noticee appears to have blindly accepted the unsubstantiated words of Anugrah without any verification or due diligence and without even calling for the ledger and other relevant details of the respective clients. Further, the issuance of directions by NSE/ NCL was re-iteration of the provisions of the SEBI circulars to prevent

mis-use of client securities in order to ensure compliance with the said SEBI circulars. Therefore, it follows from this that the due diligence ought to have been done for the sale of securities both prior as well as post issuance of NCL/NSE directives contained in the email dated April 02, 2020 This is also re-affirmed in the Additional Written Submissions by the Noticee wherein the Noticee itself has admitted that NSE's e mail dated April 02, 2020 was only a mere guidance to comply with the existing regulatory provisions.

(viii) The objective of the instructions was to safeguard the client securities and, therefore, the Noticee ought to have acted with utmost due diligence while handling the client securities. The Noticee ought to have verified that the client securities being sold in fact belonged to defaulting clients, but it failed to do so.

(ix) It is the Noticee's own submission that for securities worth Rs.40.30 crore which it sold off, the Noticee merely noted that the same belonged to clients who had open positions. However, the Noticee has not even alleged that the clients had defaulted in paying any dues. If the open position of a client is adequately secured by the applicable margin, then neither the TM nor the PCM has any right to liquidate / sell off such clients' securities. In any event, the Committee notes that even the Noticee itself states that in respect of the balance securities sold off by it to the extent of Rs.7.08 crore, it could not even verify which clients the same belonged to, and yet proceeded to sell off the same.

(x) It is the Noticee's own submission in Paragraph 7.5 of the Written Submissions that it had carried out due diligence for securities worth Rs 96.34 crore sold

between April 03, 2020 and June 02, 2020. In its submission, it is also stated by the Noticee that Rs 48. 96 crore worth of securities were sold pursuant to Anugrah's confirmation which related to clients with debit balances. The particulars of this are given by the Noticee in the Written Submissions. However, on verification with the email submissions, it is observed that securities worth Rs 37.90 crore only were sold of the debit balance clients as per instructions from Anugrah. Therefore, to that extent, the submission of the Noticee that it sold securities worth Rs. 48.96 crore on the basis of Anugrah's confirmation is incorrect.

(xi) Further, with reference to the submission of the Noticee that for securities worth Rs.40.30 crore which it sold off, the Noticee had stated that the same belonged to clients who had open positions on April 03, 2020, April 09, 2020, April 13, 2020 and April 15, 2020. Out of the securities sold worth Rs 8.29 crores, on April 03, 2020 securities worth Rs 6.45 crores were allocated as liquidated after corelating with open positions and securities worth Rs 1.84 crores were considered unallocated by the Noticee. The Noticee has submitted that out of the securities worth Rs 8.91 crores liquidated on April 09, 2020, securities worth Rs 8.86 crores were allocated by the Noticee as liquidated after corelating with open positions and securities worth Rs 0.05 crores were considered unallocated by the Noticee. Further, the Noticee has submitted that out of the securities worth Rs 16.45 crores liquidated on April 13, 2020, securities worth Rs 13.57 crores were liquidated after correlating with open positions and securities worth Rs 2.89 crores were considered unallocated. Further, the Noticee has submitted that out of the securities worth Rs 15.23 crores liquidated on April 15, 2020, securities worth Rs 1.5 crores were

liquidated based on instructions from Anugrah, Rs 11.42 crores were liquidated after corelating with open positions and securities worth Rs 2.31 crores were considered unallocated..

Thus, it is observed that Rs 40.30 crores worth of securities were sold by the Noticee by merely corelating with the open positions. However, the Noticee had failed to identify whether the clients are debit balance clients (i.e., clients who have defaulted in paying any dues). Further, on comparison of liquidation of the securities with the instructions received from Anugrah where client has debit balances, it is observed that on April 03, 2020, April 09, 2020 and April 13, 2020, no instructions were received from Anugrah. The Noticee, therefore, did not attempt to check the client details and the debit balances and therefore the liquidation of these securities had been classified within the Rs 252.09 crore of securities as indicated at serial no. 1 of paragraph 3(A)(v) of this order. Further, with respect to securities liquidated on April 15, 2020 worth Rs 15.23 crores, Noticee itself has allocated securities only worth Rs 1.50 crores based on the instructions received from Anugrah who has debit balance clients. These securities were classified as a part of the securities classified within Rs. 37.90 crore at serial no. 2 of paragraph 3(A)(v) of this order and the balance was classified as securities sold without instructions at serial no. 1 of paragraph 3(A)(v) of this order. Further, as observed above, it is the Noticee's own admission that with respect of the sale of collateral to the extent of Rs.7.08 crore, it had not done any due diligence to verify whether such clients securities belonged to debit clients or not and despite the lack of such due diligence, proceeded to dispose of the same. In view of the above, the contention of the Noticee in paragraph 7.5 of the Written Submissions is

incorrect and the contents of the table at paragraph 3(A)(v) of this order are correctly classified.

(xii) Vide its email dated April 08, 2020, the Noticee had raised certain issues relating to system constraints in setting limits for end clients

It is pertinent to note here that the question involved for undertaking the due diligence as advised by NSE/NCL is that the Noticee should have verified to which clients the securities belonged to and sell to the extent of the outstanding dues of the respective clients. Such due diligence is not linked to the ability of the Noticee to set client wise limits of the Trading Member and, therefore, the issue of systemic constraints raised is totally irrelevant to the facts of the present case.

(xiii) The Committee observes that despite the directives of NCL/NSE to perform adequate due diligence while handling client securities and ensure that client securities / collaterals are utilized only for meeting the respective client obligations, the Noticee disposed of the clients' securities in gross disregard to the directives of NSE and NCL without reporting compliance to the said directives, and the same amounts to improper conduct on the part of the Noticee.

(xiv) As regards the repeated submissions relating to the declarations and confirmations furnished by Anugrah, that the ledger balance available with the Noticee was correct and reflected all transactions and that Anugrah had complied with requirements relating to client collateral, the same have already been dealt with herein above.

(xv) Moreover, it is also established that, as per the details uploaded by the Noticee itself to NCL, the securities sold by the Noticee belonged to clients of Anugrah. In the event of default by the TM, the Noticee was duty bound to seek the details of the clients having debit balances from Anugrah and liquidate securities of only those clients who had debit balances in order to ensure compliance with the provisions of the aforesaid SEBI circulars and NCL and NSE directives.

(xvi) The Committee also noted that on a similar issue of sale of securities belonging to clients, the Hon'ble Securities Appellate Tribunal ("SAT") in the case of *Axis Bank vs. Modex International Securities and others* permitted the Clearing Member in that case to dispose of the securities only to the extent of debit balance of the respective clients for the recovery of its dues and directed the release of the credit balance clients securities.

(xvii) The submission that the Noticee forwarded the relevant contract notes but neither Anugrah nor any of Anugrah's end-clients protested or objected is in a sense contradicted by the Noticee's own admissions that numerous civil and criminal proceedings have been moved by the said clients against the Noticee.

(xviii) The Noticee's contention that failure to sell the collateral and recover their dues could have resulted in the Noticee defaulting on its onward liability to NCL, in which case NCL would liquidate collateral placed by the Noticee with NCL, including collateral of other TMs and hence the Noticee avoided a larger default is merely speculative and irrelevant. Default by a TM is one of the risks that is known to all PCMs and they are fully aware that they have to

ensure that the same does not result in default by them. In any event, such a possibility of default is no justification for the violation of the aforesaid circulars and the instructions of NSE and NCL. It is untenable to contend that misuse of a clients' securities by a PCM ought to be condoned on such specious grounds.

(xix) The Committee also notes that a similar matter relating to sale of clients securities by the Noticee with respect to the Trading Member Vrise Securities Ltd, the Committee had passed an order dated February 13, 2020 against the Noticee directing the Noticee to reinstate the clients' shares or secure the value thereof. The same has been challenged, vide SAT Appeal No. 80 of 2020 by the Noticee. An interim order dated February 26, 2020 has been passed by the Hon'ble SAT staying the said Order of the Committee during the pendency of the appeal but directing the Noticee that the unutilized margin placed with NCL would be more than Rs. 24 crore (equivalent to the value of securities sold plus a mark up value of 5%) at any given point of time. The appeal is pending final hearing before the Hon'ble SAT. Yet the Noticee has once again created a similar situation by selling off clients shares without ensuring that securities of only debit balance / defaulting clients were sold off. The Noticee is, therefore, repeating a conduct which endangers the investors and the securities markets at large. One of the main functions of the regulatory system is to safeguard the interests of the investors / clients and it cannot be disputed that clients, securities cannot be forcibly sold off by any TM, CM or PCM unless the client has defaulted in payment of his / her dues. The Noticee had to ensure that securities of only debit balance / defaulting clients were sold off

to the extent of their respective liabilities but it failed to do so and sold off clients' securities without any due care or diligence.

(xx) The Noticee's contention that the PCM cannot be blamed when even exchanges and depositories could not detect Anugrah's fraud in real time is not tenable. The Noticee cannot be permitted to deflect the consequences of its failure to ensure compliance with the SEBI circulars and NCL Regulations. The entire object and purpose of the said NCL Regulations, the 2008 SEBI Circular and 2019 SEBI Circular is to prevent misuse of client securities ,viz. preventing the use of one client's securities for meeting the obligation of another client or the broker's own trades, and , accordingly, an obligation was placed on the Noticee to prevent such misuse of client securities.

(xxi) Consequently, the Committee concludes that the Noticee had not adhered to NCL / NSE directives vide email dated April 2, 2020 (Violation of Clause 1 And Clause 2 Read with Clause 3(1)(b) and Clause 3(1)(c) of Chapter V Of the NCL Rules)

20. Submissions of the Noticee that there has been no finding by any authority that there has been any wrongful sale of collaterals belonging to any credit balance end investors

(i) The Noticee has contended in its Additional Written Submissions that an investigation is yet to be carried out in respect of Anugrah's books / accounts. to determine whether any credit balance clients securities have been wrongly sold off and that the clients / investors claims have yet to be decided vide arbitration to determine whether any clients whose shares were sold off had a credit balance and the present proceedings are ,therefore, premature.

(ii) The Noticee has relied upon a Commercial Arbitration Petition filed by one Mr. Lalit Popatlal Shah (client of Anugrah) against Anugrah / Noticee before the Hon'ble Bombay High Court to contend that in that case the petitioner therein has contended ,inter alia, that he is not aware of the value of his investments and securities, that he had given Anugrah authority to trade on his behalf, and that he relies on a Holding Statement dated 10 August 2020 whereas the Noticee ceased to be the PCM of Anugrah since 17 July 2020 and is not holding any collaterals of any of Anugrah's clients thereafter.

(iii) No investor had complained about wrongful sale of securities between April to June 2020. Complaints started only after Anugrah incurred losses and the collateral was sold off by the Noticee to recoup the losses.

21. Findings of the Committee regarding submissions of the Noticee that there has been no finding by any authority that there has been any wrongful sale of collaterals belonging to any credit balance end investors

(i) The Noticee's contention that an investigation is yet to be carried out in respect of Anugrah's books / accounts ,etc. to determine whether any credit balance clients' securities have been wrongly sold off and that the clients / investors' claims have yet to be decided vide arbitration to determine whether any clients whose shares were sold off had a credit balance is not acceptable and has to be rejected. The Committee holds that ,as set out above, in fact the Noticee was obliged to ensure that it only sold off clients securities of the defaulting clients with debit balances to the extent of their debit balances and that it is for the Noticee to demonstrate before the Committee that it in fact took all the necessary

precautions and acted with care and caution in this regard. However, it has failed to do so. Therefore, it cannot be permitted to deflect the consequences of its failure and violation by contending that its culpability for the same must await investigations against Anugrah or the final outcome of arbitration proceedings between Anugrah and its clients. The said submissions are, therefore, rejected.

(ii) The requisite due diligence ought to have been carried out by the Noticee to ascertain whether the clients' securities it was unilaterally selling off in fact belonged only to defaulting clients with debit balances but it failed to even seek the minimal requisite information in this regard from Anugrah.

(iii) The Committee also notes that the present proceedings are disciplinary proceedings under Chapter V of Rules of NCL (F&O) in respect of violations observed against the Noticee in the SCN. The SCN was based on the Limited Purpose Inspection Report which was based on the inspection carried out by NCL. Therefore, no question can arise of the present proceedings being premature.

(iv) As regards the petitions pending in the Hon'ble High Court, the said proceedings do not prevent this Committee from deciding the present matter and the allegations in the SCN. The same falls within the exclusive jurisdiction of this Committee.

(v) The contention that the investors / clients had complained about wrongful sale of securities only after Anugrah incurred losses and the securities were sold off by the Noticee to recoup the losses is untenable as the same has no bearing on the facts and circumstances of the present proceedings and in any case, the Noticee

was obliged to ensure requisite due diligence. Further, had the due diligence of ascertaining debit balances of clients been undertaken by the Noticee, the possibility of complaints related to misuse of securities by "aggrieved" end clients/ investors or their resorting to seek Court's intervention could have been avoided.

22. Submissions of the Noticee that there are no grounds to impose any penalty under the Rules.

(a) The Noticee contends that the SCN does not indicate any proposed penalty or other penal action that is proposed to be taken against the Noticee. It is contended that under Rule 1 and/or Rule 2 of Chapter V of Rules of NCL (F&O), the committee's powers are restricted to passing orders to "*expel or suspend and/or fine and/or penalise under censure and/or warn and/or withdraw all or any of the membership rights of a Clearing Member*", and there is no omnibus power given to the Committee to take any other unspecified action ,such as, directing the clearing member to reinstate securities.

(b) The Noticee reiterated that its actions were bona fide and that there was no basis to impose any penalty or take any other action against them in the present matter.

23. Findings of the Committee regarding submissions of the Noticee that there are no grounds to impose any penalty under the Rules

(i) The Committee has considered the submissions of the Noticee and holds that the Rules (Rule 1 and/or Rule 2 of Chapter V of Rules of NCL (F&O) give sufficient powers to the Committee to pass appropriate orders to safeguard the investors. Among other things, the power to penalize a member would include the implicit

power to direct reinstatement of securities wrongly sold off. The Committee also has the power to direct restitution of securities which have been unlawfully sold off by a clearing member based on the established principles of restitution in the interest of justice, equity and good conscience and to protect the interest of investors and the integrity of the securities markets. Any other restricted view would render the powers of NCL under the Rules to take disciplinary action against the members otiose.

(ii) In any event, since the Noticee sold off clients' securities worth about Rs. 460.32 crores in utter disregard of the SEBI Circular and NCL Regulations and without any proper due diligence to ensure that it only sold securities of defaulting debit balance clients to the extent of their respective defaulted obligations, it is absolutely improper on its part to contend that it is not required to bring back equal numbers of the shares thus sold off. Members cannot be permitted to violate the Circulars, Rules, and Regulations, to take advantage of their own wrong deeds and then contend that they are not required to reverse the damage caused.

(iii) Further, considering the overall facts and circumstances in the present case, in view of the failure of the Noticee to comply with the provisions of the SEBI Circulars as well as NCL Regulations pertaining to misuse of client securities, the Committee is of the view that a penalty may also be levied. It is noted that presently there is no penalty matrix available in this regard and a uniform penalty structure across all the Clearing Corporations is being formulated. It is, however, noted that a penalty of Rs 1,00,000 or 1% of the amount involved whichever is higher has been prescribed by NSE, vide circular no NSE/INSP/36248 dated November 06, 2017, for use of client funds and securities/commodities for other than specified purposes / use of client funds for own purpose / for other clients.

NCL, vide Circular No. NCL/CMPL/44976 dated July 10, 2020, has prescribed similar penalty structure for pledging client/TM securities lying with CM to the Banks/NBFCs or any other persons/entities for raising funds. Therefore, the penalty to be levied at this point of time in this matter may be based on the nearest similar penalty structure available to NSE/NCL for misuse of client securities.

In this case while it has been clearly established that there has been misuse of client securities, the exact quantum of securities to be restituted is dependent on the outcome of the scrutiny being carried out by NSE. Hence, imposition of penalty at an ad-valorem rate is not feasible; therefore, the minimum penalty of Rs One Lakh (Rs 1,00,000) could be considered in addition to restitution of securities as discussed above.

DECISION

24. The Committee observed that the Noticee has failed to perform adequate due diligence while handling client securities and ensure that clients' securities were utilised only for meeting the respective clients' obligations. Further, the Committee observed that the securities have been disposed of in complete disregard before and after the express directions of NSE /NCL as well as in contravention of the SEBI circulars and NCL Regulations. It is, therefore, in contravention of Clauses 1 and 2 read with Clauses 3(1)(b) and 3(1)(c) of the NCL F&O segment Rules since the said conduct of the Noticee is not only improper but also violative of securities laws governing the activities, business and operations of the Noticee as a Clearing Member as stated above. Such a conduct is unbecoming of a Clearing Member and inconsistent with just and equitable principles. The Noticee failed to ensure that the clients' securities which were sold related only to the defaulting clients, thereby resulting in misuse of clients' securities. The Noticee, thus, clearly violated circulars/directives of SEBI/NSE and the Regulations of NCL as stated in the SCN.

25. As mentioned in the Show Cause Notice and hereinabove in this Order, out of the Rs 460. 32 crore worth of clients' securities sold by the Noticee: -

a) Rs 252.09 crore worth of clients' securities were sold without any instruction from Anugrah and, therefore, there was no due diligence whatsoever done by the Noticee;

b) Rs 37.90 crore worth of clients' securities were sold off upon instruction from Anugrah to Noticee indicating that the securities belonged to debit balance clients. Here the Noticee ought to have sought client wise details and client wise debit balances but failed to do so and merely relied on the unsubstantiated

statement of the TM / Anugrah. Hence, while the Noticee has seemingly undertaken some due diligence, this could not be considered as adequate and sufficient due diligence in the absence of client wise details of shortfalls;

c) Rs 149.26 crore worth of clients' securities were sold off on instruction of Anugrah without there being any representation or assurance that the same belonged to debit balance clients and without any due diligence being undertaken to ascertain the same; and

d) Rs 21.07 crore worth of clients' securities were sold off on the basis of instructions from Anugrah for meeting MTM obligations. Here also the sale was executed without there being any representation or assurance from Anugrah, much less any record or data, that the same belonged to clients who had failed to meet their MTM obligations.

26. Further, in response to the email dated September 16, 2020 from NCL seeking from the Noticee the details of the securities sold, the Noticee indicated its inability to fill in two columns viz. "client code" and "whether the client had debit balance and informed by Anugrah". Thus, it is clearly evident that the purported due diligence did not percolate to the level of ascertaining debit balance clients before undertaking the sale and ,therefore, no credence can be given to the due diligence as claimed to have been done by the Noticee Thus, undoubtedly, the sale of securities was carried out without identifying and establishing that the securities belonged to the debit balance clients. In view of the aforesaid violations as stated in the SCN, it is incumbent upon the Noticee to undo the improper action of disposal of the client securities done in gross disregard of the SEBI circulars and the guidance/directions/regulations of NSE and NCL. Hence, an appropriate remedial action consistent with the established principles of restitution is warranted. Therefore, in the facts and circumstances of the present case, it would be just and proper for the Noticee to reinstate the securities wrongfully disposed of as detailed in the SCN. The dealings of Anugrah are being looked into by NSE as a part of its regulatory mandate and the restitution may be dealt with in accordance with the

directions of NSE. Therefore, the actual quantum of securities to be re-instated by the Noticee will follow the receipt of instructions from NSE/NCL in this regard post detailed scrutiny of NSE

27. Accordingly, the Committee, in the interest of justice, equity and good conscience and to protect the interests of the investors and the securities markets, directs the Noticee to reinstate the securities mentioned in the table at paragraph 3(A)(v) of this order which were disposed of in contravention of the SEBI circulars and NCL Regulations within a period of fifteen (15) calendar days from the date of receipt of intimation from NSE/NCL, failing which, an amount equivalent to the value of the securities as on the 16th day (end of day / closing price on NSE, or BSE if NSE prices are not available) plus a mark-up value of 5% shall be blocked from the available collateral of the Noticee with NCL from the date of expiry of the aforesaid period of 15 days till the Noticee confirms compliance with this direction. For the purpose of this order, the term "reinstate" shall mean that the Noticee shall buy the same quantity of the same securities from the market.

28. The Noticee is further directed to credit the reinstated securities in a new identifiable beneficiary demat account of the Noticee to be dealt with appropriately for restitution to the clients in accordance with the directions of NSE. Details of such demat account shall be provided to NSE and NCL. The Noticee shall provide the demat account holding and transaction statement to NSE and NCL as and when called for by NSE / NCL. The Noticee shall not create any encumbrance on the securities held in such demat account directly or indirectly.

29. The Committee after duly considering the overall facts and circumstances of the present case reiterates that the Noticee failed to comply with the provisions of the SEBI Circulars as well as NCL Regulations pertaining to misuse of clients' securities. Such action of the Noticee runs counter to the overarching principle of maintaining the integrity of the settlement system of the capital market. Hence, a penalty of Rs. 1 Lakh (Rs. One lakh) is levied on the Noticee. This penalty shall be payable by the Noticee within a period of 15 days from the date of this order.

Sd/-	**Sd/-**	**Sd/-**	**Sd/-**
Bhagyam Ramani	**Harun R Khan**	**N K Maini**	**Vikram Kothari**
(Chairperson)	**(Committee Member)**	**(Committee Member)**	**(Committee Member)**

Due to COVID situation, the Committee has given confirmation on email instead of physical signatures

Date: October 20, 2020