WTM/SKM/EFD1-DRA-III/ 18 /2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under the provisions of Section 12A of the Securities Contracts (Regulation) Act, 1956 read with Sections 11 (1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

In Re: National Stock Exchange of India Limited.

Noticee No.	Names of the Noticees	PAN
1.	National Stock Exchange of India Ltd.	AAACN1797L
2.	Sh. Ravi Narain, Former MD and CEO of NSE	AAYPN8382Q
3.	Ms. Chitra Ramakrishna, Former MD and CEO of NSE	ABVPR7353M

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaints dated June 01, 2017 and September 07, 2017 alleging, *inter alia,* irregularities in respect of co-location facility and lapses in governance at National Stock Exchange of India Ltd. (hereinafter referred to as "**Noticee no. 1"/"NSE**"). The said complaints, *inter alia*, alleged conflict of interest in the dealings of NSE with Infotech Financial Services Pvt. Ltd. (hereinafter referred to as "**Infotech**") and Mr. Ajay Shah as well as misuse of market related confidential information and sensitive data by Mr. Ajay Shah, Ms. Susan Thomas, Ms. Sunita Thomas, and Infotech. Accordingly, based on the gravity of allegations made in the

complaints, SEBI decided to conduct an examination in the matter for the period 2009-2016. The period of the examination was extended as and where felt necessary. The first part of the examination pertained to the period before 2012 when formal agreements for sharing of data did not exist between NSE and Mr. Ajay Shah and his wife, Ms. Susan Thomas and the second part of the examination pertained to the period after 2012 when there existed formal agreements for sharing of data between NSE and Mr. Ajay Shah and Ms. Susan Thomas.

2. On completion of the examination, a common Show Cause Notice (hereinafter referred to as **"SCNs"**) dated July 03, 2018, was issued, separately, to the following persons:

(i) NSE – (hereinafter referred to as "**Noticee No.1"**);

(ii) Sh. Ravi Narain, former MD and CEO of NSE, (hereinafter referred to as "**Noticee No.2**"); and

(iii) Ms. Chitra Ramakrishna, former MD and CEO of NSE, (hereinafter referred to as "**Noticee No.3**")

These persons are hereinafter collectively referred to as "**Noticees**".

3. Before I proceed to delineate the allegations that have been levelled against the Noticees in the SCNs, it will be relevant here to briefly discuss the relationship that existed between Mr. Ajay Shah and Ms. Susan Thomas with NSE and the back ground events that are germane to the allegations levelled against the Noticees. The examination that was carried out by SEBI, pursuant to the receipt of complaints referred to above, revealed that Mr. Ajay Shah and Ms. Susan Thomas of Indira Gandhi Institute of Development Research (hereinafter referred to as "**IGIDR**") have been associated with NSE and its affiliate companies from about 1994 onwards and have been engaged by NSE and its subsidiaries such as National Securities Clearing Corporation Limited (hereinafter referred to as "**NSCCL**"), India Index Services & Product Limited (hereinafter referred to as "**IISL**") and Dotex International Limited (hereinafter referred to as **"DotEX"**) for different assignments. Mr. Ajay Shah and Ms Susan Thomas have been associated with important assignments from NSE, such as development of NIFTY Index in the year 1996, building of PRISM (Parallel Risk

Management), setting up of Clearing Corporation, setting up of NSDL, Designing Mumbai Interbank Offer Rate (NSE MIBOR) in 1998, and launch of Derivatives trading etc. Mr. Ajay Shah was also on the board of NSCCL from August 30, 1996 till August 24, 2012. Mr. Ajay Shah and Ms. Susan Thomas were part of the Index Policy committee of IISL, Risk Containment committee and Executive committee of NSCCL. Mr. Shah and Ms. Susan Thomas have received sitting fees for attending committee meetings, professional fees for conducting training, workshops, research projects, etc. from NSE and its affiliate companies. Thus, Mr. Ajay Shah and Ms. Susan Thomas were found to be having a long professional association with NSE and its affiliate companies almost since its inception, in different capacities. In the words of Mr. Ajay Shah in his statement recorded before SEBI "*My relationships at NSE began with Dr. R.H. Patil, Ravi Narain, Chitra Ramakrishna, Raghavan Putran, Ashish Chauhan. In later years I have engaged with Ravi Apte, Ravi Varanasi, J. Ravichandran, etc."*

4. From the records and from the statement of Mr. Ajay Shah given to SEBI, it is understood that he and his wife have been receiving trade data from NSE effortlessly from the very beginning of their association with NSE, for their research works. The SCN mentions that prior to the year 2012, Mr. Ajay Shah and Ms Susan Thomas used to receive data without executing any formal agreement with NSE. It is only from the year 2012 that there existed a process warranting for execution of formal agreements between NSE and Mr. Ajay Shah & Ms. Suzan Thomas. This is corroborated by Mr. Ajay Shah in his statement wherein he has stated that *"In case of NSE, in roughly 2012, a data use contract was established. Prior to 2012, there was data flow from NSE to us without a data use contract. The data use contract has Ajay Shah and Susan Thomas as signatories. Prior to data use contract also, the data flow was to Ajay Shah and Susan Thomas*."

5. In the aforesaid context, SEBI's examination revealed that around the year 2009-10, NSE engaged Infotech for a project about computing of Liquidity Index (hereinafter referred to as "**LIX**") which involved certain inherent conflict of interest both at the level of Mr. Ajay Shah and at the level of officials of NSE. Ms. Sunita Thomas, who is the director of Infotech, is the wife of Mr. Suprabhat Lala, Assistant Vice President (AVP) of Trading Operations of NSE. Further, Ms. Sunita Thomas was

found to be the sister of Ms. Susan Thomas, wife of Mr. Ajay Shah who was officially occupying the post of a Board Member NSCCL, the clearing & settlement arm of NSE. Infotech is a profit making financial technology firm engaged in providing trading software products in the securities market and in the past, has been associated with the projects of NSE through IGIDR, Mr. Ajay Shah and Ms. Susan Thomas.

6. It was also noticed that the LIX project was given by NSE to Infotech by overlooking its own subsidiary, viz. IISL which was also engaged in such specialized activities. It was found that neither Mr. Ajay Shah who was on the board of NSCCL at the relevant point of time, has disclosed his conflict of interest nor did any other Noticees (NSE and its officials) verify the conflict of interest involved in awarding the LIX project to Infotech. Further, after analyzing certain email conversations between Mr. Ajay Shah and Ms. Sunita Thomas of Infotech, between Mr. Suprabhat Lala and his wife Ms. Sunita Thomas and various other attendant facts, the examination conducted by SEBI revealed that the trading data that was received by Infotech from NSE for the LIX project was being misused for developing algorithm trading products for the securities market participants. One such vital email conversation dated February 22, 2009 addressed by Mr. Ajay Shah to his sister-in-law, Ms. Sunita Thomas (Director of Infotech) which has been strongly relied upon in the SCN read as follows :

> "… *on day 1 Anupam is a finance guy. He is not a programmer. So drive him appropriately. He can go into all your existing projects-but in a domain knowledge roll e.g. he can start working on trading strategies which can go into all algorithm trading work. (But you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given anyone else this data.)"* (emphasis supplied to underlined words)

Thus, from the aforesaid conversation and the conduct of the connected parties, viz: Mr. Ajay Shah, Infotech, Ms Sunita Thomas and Mr. Krishna Dagli (the other director of Infotech) and Mr. Suprabhat Lala, as revealed from various other evidences it has been alleged that these persons, with active support of the Noticees, have misused the confidential and sensitive data provided by NSE for the LIX project, for developing

algorithmic trading software for sale in the securities market, thereby compromising the integrity of securities market.

7. It has been further alleged in the SCN that NSE and its senior officials, viz: Mr. Ravi Narain (Noticee No.2) and Chitra Ramakrishna (Noticee No.3) who were managing the affairs of NSE at the relevant point of time, have ignored issues of conflict of interest and awarded the LIX project to Infotech when they had an existing subsidiary company (IISL) already engaged in such specialized activities. Further, they also failed to do due diligence to ensure fairness and transparency while awarding the contract to Infotech thereby compromising on exchange governance. Therefore by such action and inactions, due to which the data transferred under the LIX project was fraudulently misused, they were also alleged to be a part of the overall scheme/device through which Mr. Ajay Shah and his related persons/entities used the confidential and sensitive data of NSE for developing and selling commercial products in the securities markets.

8. It was noted during the examination that in the post-2012 period, NSE had given two data research projects to Ms. Susan Thomas of IGIDR, first in the year 2013 and then in the year 2017. Both the projects were approved internally by the management of NSE. The 2013 data research project was titled as "Research Contract for Intra Day Trading Research" and the 2017 research agreement was titled as "NSE-IGIDR Research Contract". SEBI's examination of these two data research agreements revealed a number of discrepancies and irregularities in the execution of these contracts. It was found that the agreements have not been properly signed, do not have dates, do not bear any cross reference to the undertaking provided by IGIDR, have discrepancies in the date of contract, date of undertaking and date of internal approvals, etc. While the projects were officially awarded to IGIDR, it is seen that Mr. Ajay Shah who was a professor at NIPFP and not officially associated with IGIDR, had also signed the undertaking dated December 03, 2012, *inter-alia,* to the effect that the researchers (viz: Mr. Ajay Shah and Ms. Susan Thomas) irrevocably and unconditionally agree to abide by and be bound by the terms and conditions of the undertaking, that they shall keep the data obtained from NSE confidential and shall not divulge to any person. Thus, the examination by SEBI pointed out various infirmities in the agreements which have been detailed out at para 17 of the SCNs, to

susbtantiate the allegation that the NSE failed to ensure due diligence with respect to execution of agreements with the above named two researchers and has also failed in ensuring fair dealing, thereby compromising the integrity in the functioning of the exchange which has resulted in non-compliance of the conditions of grant of recognition to NSE.

9. Based on the aforesaid factual observations made by SEBI during the examination, various allegations levelled in the SCNs, against the Noticees are stated as under:

(i) That Noticee no. 1 and its officials i.e. Noticee no. 2 and 3, who were in-charge of affairs of Noticee no. 1 at the relevant time, ignored all the issues of conflicts of interest and have awarded a contract for development of LIX to Infotech. Thus, Noticee no. 2 and 3 were also a part of the overall scheme/device/artifice through which Mr. Ajay Shah, Infotech and its directors viz., Ms. Sunita Thomas & Mr. Krishna Dagli received and used confidential and sensitive data of Noticee no. 1 for the purpose of developing algorithmic trading software and selling the same to market participants to deal in securities market.

(ii) That Noticee no. 2 and Noticee no. 3 by sharing confidential data of Noticee no. 1 with Mr. Ajay Shah and Ms. Susan Thomas without any agreement, had put confidential data of the Noticee no. 1 vulnerable to misuse, and thereby compromised on the exchange governance and thus have failed to do proper due diligence, ensure fairness and transparency and to avoid conflict of interest.

(iii) That by virtue of aforesaid conduct of the Noticees, integrity of the securities market was compromised.

(iv) That Noticee no. 1 failed to ensure due-diligence and failed to ensure fair dealing with respect to execution of agreements with the researchers viz., IGIDR/Ms. Susan Thomas/Mr. Ajay Shah, hence has compromised on the integrity in the functioning of Noticee no. 1 resulting in non-compliance of the conditions of grant of recognition as stock exchange, to Noticee no. 1.

10. In view of the aforesaid allegations, the Noticees have been alleged to have committed the following violations:

(i) **Noticee no. 1** - Regulations 3 (c) and 3 (d) read with 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**") and Section 4 (1) (a) of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as "**SCR Act, 1956**").

(ii) **Noticee no. 2** - Regulations 3 (c) and 3 (d) read with 4 (1) of PFUTP Regulations, 2003 and Sections 3(2) (b) and 4 (1) (a) of SCR Act, 1956.

(iii) **Noticee no. 3** - Regulations 3 (c) and 3 (d) read with 4 (1) of PFUTP Regulations, 2003 and Sections 3(2) (b) and 4 (1) (a) of SCR Act, 1956.

Inspection of documents, filing of replies and personal hearings:

11. After the issuance of the SCNs, Noticees sought inspection of documents. Accordingly, in compliance with the principles of natural justice, inspection of documents was provided to the Noticees and copies of the relevant documents, as desired by them, were furnished to them. In response to the SCNs, all the Noticees have filed their replies as under:

S. No.	Reply filed by	Date of Reply
1.	Noticee no. 1	February 20, 2019
2.	Noticee no. 2	February 16, 2019
3.	Noticee no. 3	February 20, 2019

12. Opportunity of personal hearing was granted to the Noticees on February 12, 2019 and February 20, 2019. Noticees and their Authorized Representatives made their submissions and presented their case before me. After the conclusion of hearings, as per their requests, Noticees were granted time to file written submissions. The Noticees have filed their written submissions as under:

S. No.	Written Submissions filed by	Date of Written Submissions
1.	Noticee no. 1	March 05, 2019
2.	Noticee no. 2	March 15, 2019
3.	Noticee no. 3	Undated (received vide email dated March 14, 2019)

Consideration of issues and findings thereon:

13. The replies and submissions of the Noticees have been carefully perused and their explanations and arguments have been analyzed. Before I proceed to deal with individual submissions of the Noticees, a factual appreciation of the entire matter is necessary at this stage**.**

14. As discussed above, the first critical issue brought out in the SCNs is that Mr. Ajay Shah, Ms. Susan Thomas, Ms. Sunita Thomas, Mr. Suprabhat Lala and Infotech were closely connected to each other. Mr. Ajay Shah and his wife Ms. Susan Thomas were actively associated with NSE and its subsidiary companies since 1994 onwards. Their association with NSE had apparently transcended beyond the institutional framework as he had personal relationship with most of the senior management personnel. In his statement before SEBI, dated April 03, 2018, Mr. Ajay Shah has stated that "My relationships *at NSE began with Dr. R.H. Patil, Ravi Narain, Chitra Ramakrishna, Raghavan Putran, Ashish Chauhan. In later years I have engaged with Ravi Apte, Ravi Varanasi, J. Ravichandran, etc."* Noticee no. 2, in his statement recorded before SEBI has also referred to Mr. Ajay Shah "*as one of the very few such economists known in capital markets who write policy papers based on data analytics*."

15. The implicit personal influence that Mr. Ajay Shah was exerting on NSE becomes clear when one goes through the statement of Mr. Ajay Shah, as recorded by SEBI on April 3, 2018 in which Mr. Ajay Shah has narrated his association with NSE in various initiatives and has also stated that *"his relationship with NSE was at*

its peak till 2001" when he moved to New Delhi to work for Ministry of Finance. Mr. Ajay Shah has also stated that he and his wife Ms. Susan Thomas had been utilizing data from NSE for their research work for many years. Prior to 2012, they used to get data from NSE without any contract and after 2012, it was he and his wife received data from NSE by signing data use contracts with NSE.

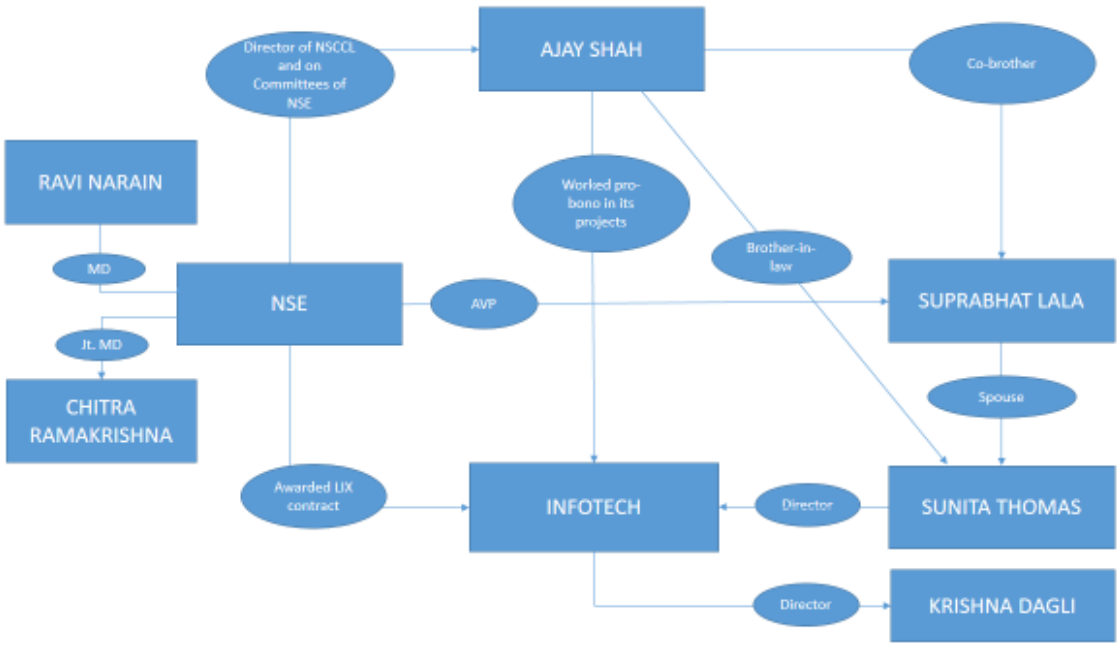
16. Talking about his association with Infotech, Mr. Ajay Shah has mentioned in his statement that he has associated her sister-in-law and her company in some of his projects including the PRISM project with NSE for which Infotech was assigned to do the work of implementation. With respect to the LIX project that was assigned to Infotech by NSE, I find that the idea about the project was also first mooted by Mr. Shah and his wife Ms. Susan Thomas and he was instrumental in Infotech being awarded the LIX project by NSE. This can be observed from his response to Question no. 13 of his statement referred to above wherein he states that *"Susan Thomas and I imagined two new information systems, LIX and VIX. We discussed these with NSE. The plan was that we would work on these pro bono. We required software development to go with this. Through discussions with the NSE top management, it was agreed that NSE would contract with Infotech financials, through which they would be the software development team that would support the research that would lead up to LIX. Through the contract with NSE, the presence of data at Infotech financials and their use of it for software development" (emphasis supplied).* Thus, I can notice that the LIX project was undertaken by NSE with the recommendation of Mr. Shah and his wife in which both of them agreed to work *pro bono.* NSE agreed to award software implementation part of the project to Infotech on the suggestion of Mr. Shah and his wife. From the above facts one can appreciate the goodwill and influence that Mr. Ajay Shah was enjoying in NSE due to his long professional engagement with NSE and their personal rapport with its senior officials.

17. With respect to the business activities of Infotech, from the perusal of the statement recorded by Ms. Sunita Thomas before SEBI on July 26, 2017, it is noted that Infotech was incorporated in the year 1999 and has been in the business of software development primarily for capital market. Its clients largely comprised stock brokers, financial institutions, mutual funds, etc., to whom it supplied customized solutions and products. From 2006 onwards, Infotech has been providing its

Chanakya product to its customers which is an algorithmic trading platform to cater to enable its customers, to have their algo softwares customised for trading in securities market. One of the source of the revenue for Infotech was through profit sharing agreement with its customers who used its algo trading platform and software.

18. In the context of the aforesaid factual position, the agreement dated January 19, 2009 was entered between NSE and Infotech with regard to the development of software for the project called 'LIX'. For this purpose, NSE provided sensitive and confidential trade data to Infotech. It is alleged that this data was misused for the purpose of developing of algorithmic trading products by Infotech which were then sold to market participants to deal in securities market.

19. As pointed out earlier, the SCNs highlight the inherent conflict of interest in awarding the LIX project to Infotech. For the sake of clarity, the apparent conflict of interest allegedly emerging out of the contract between NSE and Infotech is diagrammatically presented below:



20. As stated by Mr. Ajay Shah, he and his wife, Ms. Susan Thomas who were instrumental in getting the LIX project for Infotech, were working *pro-bono* on the said project. Curiously enough, NSE and its officials (Noticee No.2 & 3) ignored the

aforesaid family ties existing amongst Mr. Ajay Shah, Ms. Susan Thomas, Ms. Sunita Thomas and Mr. Suprabhat Lala while awarding the contract to Infotech and overlooked the issues of conflict of interest arising out of such relationships. The Noticees also allegedly ignored the fact that Infotech was itself in the business of developing and selling of algorithmic software to market participants for dealing in securities market. Overlooking all these aspects, NSE awarded the LIX project contract to Infotech instead of awarding it to its own subsidiary i.e. IISL which was also engaged in such specialized activities. The SCNs further note that Mr. Ajay Shah has misused his position by virtue of being on the Board of NSSCL and his influence in NSE to procure the contract from NSE for his related entity i.e. Infotech. It is also alleged that Mr. Ajay Shah and Infotech and its directors have ultimately misused the data of NSE received through LIX project for their commercial interest thereby compromising the integrity of the securities market.

21. Similarly, on the basis of glaring infirmities, deficiencies and irregularities found in the execution of the two data use contracts by NSE in 2013 and 2017, that have been highlighted in the SCNs and discussed earlier, it emerged that there was no serious attempt by NSE and its officials to bind the researchers to various terms and conditions with respect to confidentiality, third party sharing, etc., that have been stipulated in these agreements. From the long list of omissions and errors that have been pointed out in the SCN, it appears that while executing the agreements, NSE and its officials have shown a lackadaisical approach, overlooking the legal sanctity of the agreements that suggests that they were not sincere enough to enforce these agreements in the event any action was necessitated against the researchers for violation of terms and conditions of the agreement in future.

22. In the context of the aforesaid factual appreciation of the subject matter of the SCN, it would be pertinent at this stage to understand the legal provisions which are alleged to have been violated by the Noticees. These provisions are reproduced hereunder:

Relevant extract of provisions of SCR Act, 1956:

"Application for recognition of stock exchanges.

3. (1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular, to—

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c)…….

(d)……...

Grant of recognition to stock exchanges.

4. (1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors"

Relevant extract of PFUTP Regulations, 2003:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a)…….

(b)……

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2)……..”

23. In the aforesaid backdrop, I proceed to deal with the submissions of each of the Noticees.

Submissions of Noticee no. 1 and consideration thereof:

24. Noticee no. 1 has raised a preliminary issue that it has not been afforded a fair opportunity of inspecting documents. Certain portion of Investigation Report has been redacted including 'Violations' and 'Recommendations' with respect to other Noticees. It has been further submitted that material shared during inspection has to include not only the material that will help support the charges but also include material that would undermine the charges levelled i.e., all material that is "relevant" (whether to SEBI or to the Noticee or otherwise) and not just all material "relied upon" by SEBI. In this regard, I note that all the Noticees in the matter as well as Infotech, Mr. Ajay Shah, Ms. Sunita Thomas, Mr. Krishna Dagli and Mr. Suprabhat Lala (the noticees in another SCN) were given personal hearing and all of them have made their submissions covering all the allegations made against them in the SCN. I also understand that all the Noticees have exchanged their replies and written submissions with each other thereby making themselves aware of the allegations levelled against and the explanations offered by each of the Noticees. Under the

circumstances, in my view there remains nothing unknown or hidden to any of the Noticees on any aspect of the matter. In view of these facts, I find that the prejudice, if any, which would have been caused to the Noticee because of redacted documents or non-inspection of any particular document with respect to other Noticees, has been taken care of. As such, these contentions do not survive now.

25. Another submission by Noticee no. 1 is that the SCN does not indicate the actions proposed against it and the specific measures proposed to be taken or specific directions sought to be issued against it. In view of the same, it is not possible for the Noticee to provide a suitable defense against the SCN served upon it. The Noticee has relied upon the judgment of the Supreme Court in the case of ***Gorkha Security Services Vs. Govt. of NCT of Delhi &Ors. (2014) 9 SCC 105*** to contend that in the absence of any specific directions proposed to be taken against the Noticees, proceedings are liable to be quashed. On perusal of the said judgment, I find that above mentioned case law cited by the Noticee is factually distinguishable and is not applicable in the present proceedings, for the following reasons:

a. In Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts, thus violating the fundamental rights of such person.

b. In Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas the present SCN has been issued for violation of statutory provisions.

c. In Gorkha Security case, blacklisting was imposed by way of penalty whereas in the instant proceedings, the purpose of issuing directions, if found necessary, are preventive and remedial in nature.

d. In Gorkha Security Case, blacklisting of the contractor was provided in the contract as a penalty to be imposed in case of breach of terms of contract, whereas in the present matter, provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it may deem fit in the interest of investors and securities market.

26. In view of the above, reliance placed on Gorkha Security matter is not correct. In this regard, it is further noted that the measures prescribed in sub-section (2) of section 11 read with 11(4) and 11B of SEBI Act, 1992 are merely illustrative of various measures that may be taken by the Board in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). The Board has such powers and is duty bound to take measures in any manner as it may deem fit to prohibit, unearth and to deal with fraudulent and manipulative acts in securities markets to protect the interests of investors and for the development of the securities market. The SCNs issued to the Noticees have spelt out the provisions under which the desired preventive/remedial measures would be taken. The SCNs also clearly indicates the specific nature of violations that have been alleged against the respective Noticees in terms of different provisions of SCR Act, 1956 and PFUTP Regulations, 2003 which, if found to be breached, require issuance of possible directions under specific provisions as mentioned under the SCNs.

27. It is therefore incumbent on the part of the Noticees to explain their position with support of relevant evidence in response to various allegations made against them in the SCNs. Only after examining and considering the explanation offered by the Noticees to the allegations levelled under the SCN, it would be imperative for the competent authority to determine as to if and what direction is required to be issued against the Noticee, depending on the extent of the gravity of violation committed by the Noticee. It is to be noted here that the provision of Sections 11, 11B of the SEBI Act, 1992 and Section 12A of the SCR Act, 1956 vest in the quasi-judicial authority a wide plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be predicted before-hand without considering the explanations of the Noticees. Therefore, it is not correct to contend that the SCN should specify the exact nature of direction that may be issued to the Noticees without taking into the consideration, the explanation and evidence that may be produced by the Noticees to prove their innocence. Under the circumstances the objection raised by the Noticee no. 1 on the issue highlighted above are not maintainable under law and hence, rejected.

28. Noticee no. 1 has further contended that under the Companies Act, 2013 as well as SEBI's own Master Circular of 2010, there is no prohibition against entering

into a transaction with a person/entity in which, a director or functionary is interested. The only precaution required to be taken in order to avoid a conflict of interest, is that a director or a functionary or shareholder must not participate in any discussion or decision in respect of any matter in which he or she is in any way, directly or indirectly, concerned or interested. It has been submitted that the above principles have been followed by the Noticee in awarding contracts to Infotech as Mr. Ajay Shah, Ms. Susan Thomas and Mr. Suprabhat Lala were not involved in the process for entering into the Infotech Agreement nor were part of the standing committee which decided the contract. Therefore, the allegation in the SCN regarding ignoring all issues of conflict of interest, is erroneous.

29. I have considered the aforesaid argument advanced by the Noticee. It has already been pointed out earlier that Mr. Ajay Shah and his wife Ms. Susan Thomas were having very close connection with Noticee no. 1 which is clearly borne out of the facts of the matter and also from the statements of Mr. Ajay Shah recorded before SEBI officials, the details of which have already been narrated in the beginning of this order. It has already been noted from his statement how the idea of LIX project originated from Mr. Ajay Shah and his wife and how Infotech was awarded the contract for LIX by Noticee no. 1 on the recommendation of Mr. Ajay Shah and Ms. Susan Thomas. It has also been seen earlier that Ms. Sunita Thomas, sister of Ms. Susan Thomas who is wife of Mr. Ajay Shah, was a director of Infotech. Further, Mr. Suprabhat Lala, husband of Ms. Sunita Thomas, was Assistant Vice President, Trading operations of Noticee no. 1. Under the circumstances, the dealing of Noticee no. 1 with Infotech was having several conflict of interests, which should have been addressed with due diligence by the Noticee no. 1. As a first level regulator in the securities market and as a Market Infrastructure Institution (hereinafter referred to as **"MII")**, it was incumbent upon Noticee no. 1 to ensure that all its acts are guided by fairness, transparency and reasonableness. In the present case, a director on the board of an entity (NSCCL) which was a wholly owned subsidiary of NSE and was performing the essential function of clearing and settlement function of Noticee no. 1, procured with his personal influence a contract for Infotech, a company wherein he was personally interested. Further, the allegation of misuse of confidential data of Noticee no. 1, received by Infotech under the said contract for preparing algo trading software for commercial gain, which is strongly supported by the personal

communication between Mr. Ajay Shah and Ms. Sunita Thomas, as cited earlier in this order, shows that the said award of contract to Infotech was part of a premeditated scheme. This was rendered possible because of lack of due diligence and lack of proper mechanism to address conflict of interest at the end of Noticee no. 1. Therefore, the argument advance by the Noticee no. 1 that there was no law prohibiting awarding contract to related party provided precaution regarding non-involvement in the decision making by the interested director is ensured, appears to be an evasive response without appreciating the fact that due diligence extends much beyond the token compliance of non involvement by the interested persons in the decision making process.

30. The other submissions of the Noticee in response to various allegations made in the SCN are briefly summarised below:

30.1. The fact that Mr. Ajay Shah was a member of the board of NSCCL, a wholly owned subsidiary of the Noticee no. 1, bears no nexus to the award of contract to Infotech. NSCCL is a clearing corporation and therefore is involved in post-trading clearing and settlement of trades. This is a distinct company removed from the stock exchange by regulatory design. At NSCCL, Mr. Ajay Shah was a director and would therefore only have insight into NSCCL's functioning through board processes at NSCCL, none of which has any nexus or link to the decision taken by the Noticee with respect to the Infotech Agreement.

30.2. The subsidiary of Noticee, IISL did not have in-house expertise to develop LIX which developed the requisite capacity and expertise at a much later stage. Therefore, the contract was awarded to Infotech.

30.3. The sharing of data with Infotech was under the Infotech Agreement and the sharing of data with Dr. Ajay Shah and Dr. Susan Thomas for research purposes was on account of the Noticee's understanding of the benefits of sharing exchange data with researchers on market microeconomics.

30.4. Clause 4(b) of the Infotech Agreement provides that "*Infotech agrees that it shall not use the proprietary information of NSEIL except to evaluate such information for the sole limited business purpose of NSEIL*". The above clause

therefore, protects the proprietary information of the Noticee and limits the use of such information for the sole limited business purpose of NSEIL.

30.5. By way of the above clause, the parties had undertaken to maintain utmost confidentiality regarding information provided under the Infotech Agreement. The Noticee no. 1 cannot be held liable for any alleged misuse of such data, as it had fulfilled its duty by imposing contractual obligations on Infotech to maintain confidentiality of the data and use the data for the sole purpose as envisaged in the contract.

30.6. There is no material on record to even suggest that the Noticee was aware of any alleged misuse, or that it 'colluded' with Infotech and others to provide data to Infotech only so that such data could be misused.

30.7. The data which was being provided to Infotech for development of LIX, was otherwise being made available to all persons, either free of cost for research organizations or for some cost for commercial purposes. There was nothing unique about this data, and the data did not give the recipient any edge over others.

30.8. As per the understanding of the Noticee, algo trading requires real-time data, and not historical data. The SCN does not show how historic trade data (which was available to all persons) could give the recipient an edge in developing algorithmic trading software. Infotech, has stated in its reply to SCN that the historical data provided to them for the LIX project could not be used to develop Infotech's algorithmic trading software.

30.9. As regards the 2017 agreement, the Noticee further entered into the agreement dated July 27, 2017 with IGIDR which, under clause 2.6, provided for holding all data as confidential and imposed restrictions on divulging such data to any person.

30.10. Considering the past research work done by IGIDR in the area of capital markets, the Noticee entered into two research contracts with IGIDR. The contracts with IGIDR were approved internally by the management of the Noticee no. 1, which is evident from the approval notes dated November 12,

2012 and September19, 2016 for the contracts with IGIDR signed in 2013 and 2017, respectively. The approval note dated November 12, 2012 inadvertently states that the 2013 agreement between IGIDR and the Noticee is 'signed' when this was not the case. The 2013 agreement was executed only after the approval for the same was given by the internal management of the Noticee no. 1. Further, this approval note also identifies the researchers for the project as Dr. Ajay Shah and Dr. Susan Thomas.

30.11. Section 4(1) (a) of the SCRA does not apply to the present case, as the same lays down conditions for recognition of stock exchanges. As such, this section does not have any bearing on the facts and circumstances of the instant case. The SCN does not specify as to which conditions of the grant of recognition to the Noticee is violated. Further, th e procedural lacunae, in the making and execution of agreements for engagement with IGIDR, relate to unsustainable allegations and such allegations do not warrant measures envisaged under Sections 11 and 11B of the SEBI Act, which are intended to protect the market.

30.12. There is no requirement under law for an agreement to be dated or to have been signed / initialled on each page, and nor has any such requirement been alleged or demonstrated in the SCN. As regards the allegation pertaining to absence of cross-referencing between the undertaking dated December 2, 2012 and the 2013 agreement,it is submitted that the same was inadvertently left out.

31. The aforesaid points of explanations and arguments of the Noticee no. 1 have been considered and my point wise observations on the aforesaid arguments of Noticee are as below:

31.1 On the submission of Noticee no. 1 with respect to Mr. Ajay Shah being on the Board of NSCCL which was a separate corporate entity, it is to be noted that during the relevant period of time, NSCCL was a separate subsidiary entity of NSE but it was not performing any separate business from NSE. During the relevant period, clearing and settlement (a function performed by the NSCCL) was an essential and integral part of the business of a stock

exchange which was being carried out by the stock exchanges either through an in-house clearing house or through a subsidiary company (as in the present case). During the relevant period of time, all the persons working with NSCCL were on deputation from NSE (as per annual report of 2010-11). Moreover, it was only in the year 2012, with the coming into force of SECC Regulations, 2012 that clearing corporations were given recognition as separate entities for regulatory purposes. Thus, prior to the year 2012, NSCCL was performing an essential and integral function of a stock exchange i.e. NSCCL and was an integral part of NSE for regulatory purposes. Therefore, governance norms including the Code of Conduct, as applicable to directors and functionaries of the stock exchanges at that point of time, were equally applicable to the directors and functionaries of its subsidiary performing clearing & settlement functions, (in the present case NSCCL).

31.2 If the interpretation offered by the Noticee no. 1 that Mr. Ajay Shah does not have to abide by the Code of Conduct prescribed for the stock exchanges as because he was on the Board of the subsidiary entity (NSCCL) and not on Board of NSE is to be accepted, then the very objective of having a separate regulatory Code of Conduct for the stock exchanges which perform a critical function in the securities market would be defeated. The findings from the examination such as, Mr. Ajay Shah failed to disclose his interest in Infotech and used his position to procure the LIX contract for Infotech, and connived with the directors of Infotech to fraudulently use confidential data of NSE for developing and selling of algo trading software in securities market, have rendered the aforesaid contention of Noticee no. 1 as not maintainable. Hence, the Code of Conduct prescribed by SEBI for adherence by the directors on the Board of stock exchanges was very much applicable to Mr. Ajay Shah which have been violated by the acts attributed to him. Therefore, the Noticee no.1 cannot segregate the interest of Mr. Ajay Shah in the LIX project awarded to Infotech by it from his role on the board of NSCCL and the code of conduct attached to his position as a director on the said board.

31.3 The Noticee no. 1 claims that they did not have in- house expertise to develop the said software at that point in time, however, the Noticee no. 1 has not

elaborate how they could evaluate and arrive at conclusion that Infotech had the requisite expertise to develop the index and not Noticee's own subsidiary i.e. IISL. It is an admitted position that LIX was ultimately developed and put on live during 2012-2013 by the Noticee's in-house resource at IISL. I find that the Noticee has not provided any specific reasons detailing as to why the LIX project was developed only in the year 2012-13 and put to live by its own in-house resource i.e. IISL when the agreement was entered in the year 2009 with Infotech, based on their so called expertise to develop the LIX. Thus, Noticee no. 1 has not been able to substantiate the preference shown to Infotech and has failed to maintain fair dealing with regard to its activities in securities market while awarding LIX contract to Infotech.

31.4 There is an inherent contradiction in the submission of the Noticee no. 1 with respect to confidentiality and quality of data being provided to Infotech under the LIX project. While it has claimed that the Infotech contract (Professional Service Agreement) contained adequate safeguards against misuse of data by inserting therein clause 4, clause 10 (k) and clause 7 (d), etc., in the same submission it has been contended that the data provided to Infotech was historical, non-confidential and such data was available to others as well. According to the Noticee no. 1, agreements of the commercial nature generally contains standard confidential clauses. Thus the Noticee's response is replete with contradiction and ambiguities. In this regard, it is relevant here to refer to an email dated November 9, 2009 addressed by Mr. Ajay Shah to Ms. Sunita Thomas and Mr. Krishna Dagli of Infotech (enclosed with Mr. Ajay Shah to his reply dated February 11, 2019) in which it is clearly indicated that the data so provided by NSE to Infotech was exclusive and was not meant to be shared with anyone else except for Mr. Ajay Shah and his team. The relevant extract of the email is reproduced as below:

> "*Before going anywhere with this data, a lot of experimentation is required to verify that it makes basic sense.**NSE has never produced this data before and we are their only users.**"*

Given the aforesaid admitted position about the exclusivity and confidentiality of the data that was provided to Infotech, the Noticee's contention is ambiguous and inconsistent and not maintainable on facts.

31.5 Moreover, from the submissions of the Noticee no. 1, it is not clear as to whether the data which the Noticee has shared with other research entities and data vendors such as Thomson Reuters and Bloomberg, etc., have the same attributes and granularity and in the same specific format as provided to Infotech. The Noticee no. 1 has made this claim only to trivialize the importance of the data and to divert attention from the confidentiality and sensitive nature of data that was provided by it to Infotech.

31.6 With regard to its contention that algo trading software requires real-time data and not historical data, the Noticee no. 1 has not put forth any supporting evidence to justify this claim. Even if it is assumed that algo trading software requires real time data, it cannot be denied that development of such algo trading software would require historical data to back test and validate the software so developed. The submission made by Noticee cannot be taken at face value since there is tangible & material evidence in the form of email of Mr. Ajay Shah to Ms Sunita Thomas to clearly suggest that the data was being misused for the purpose of developing algo trading software for sale to market participants.

31.7 Moreover, it is a common knowledge that the stock exchange is well aware of the algo software being used by the stock brokers for trading on its platform. The exchange is also aware of the algo software products and its vendors. In this case, it can be presumed that Noticee no. 1 having already dealt with Infotech in the past was well aware of the fact that Infotech was commercially engaged in development and sale of algo trading softwares in the securities market. Therefore, Noticee no. 1 cannot claim ignorance of the business of algorithmic trading software of Infotech while granting it LIX contract in the year 2009 or the fact that awarding the LIX contract to them may lead to inherent conflict as well as possibility of their data being misused by Infotech for their business purposes which may be detrimental to the interest of securities market.

31.8 With regard to alleged misuse of data by Infotech, the Noticee no. 1, while denying the alleged misuse has stated that the alleged misuse of data by Infotech would be at best called a matter of contractual breach by Infotech and the Noticee no. 1 cannot be held liable for such misuse by Infotech. I agree with the contention of the Noticee no. 1 that the misuse of data by Infotech has amounted to breach of contract with the Noticee no. 1. However, I also note that till date, the Noticee has not taken any action against either Infotech or Mr. Ajay Shah for the misuse of data despite there being a prima facie case of breach of contract from the SCNs. Instead, the Noticee continues to defend Infotech and Mr. Ajay Shah and their actions in a manner to suggest that the Noticee no. 1 is not perturbed by the fact that there has been a violation, of the confidentiality clause of the LIX agreement.

31.9 Section 4(1)(a) of the SCRA provides that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors (emphasis supplied). The condition for recognition is required to be adhered to at all points not in time. These are conditions for continuous compliance. Stock exchanges are MIIs which have been equated to public utilities and categorized as infrastructure institutions as the name suggests hence, higher standards have been cast on them. So, it is not correct to state that lapses in due diligence do not warrant measures contemplated by SEBI.

31.10 With respect to the explanations of the Noticee no. 1 on various procedural lacunae and irregularities observed in entering into research agreement with Mr. Ajay Shah and Ms. Susan Thomas, it is difficult to appreciate as to how so many mistakes can happen 'inadvertently', as explained by the Noticee no. 1. Both the agreements (of 2013 and 2017) are replete with crucial omissions and significant mistakes as well as unacceptable discrepancies because of which the agreements signed with Mr. Ajay Shah and Ms. Susan Thomas are grossly falling short of being called valid enforceable agreements. All these point out to the lack of seriousness and lack of basic due diligence as well as due process on the part of the Noticee no. 1 and such lapses do not behove of a frontline regulator and a MII, that is expected to adopt higher standards of

self-regulation and self-governance while dealing with outside entities / persons especially those dealings which involve sharing of confidential trading data with them. So it is not correct to state that such lapses in due diligence do not warrant measures contemplated by SEBI.

Submissions of Noticee no. 2 (Mr. Ravi Narain) and consideration thereof:

32. The submissions made by the Noticee no. 2 are as follows:

32.1. In the year 2000, he was appointed as the MD and CEO and in 2009, he informed the Board of directors his desire to retire, however, at the insistence of the Board, he continued further and retired on March 31, 2013. After 2009, the day to day management rested with the then Joint MD, Ms. Chitra Ramakrishna till he retired in March, 2013. During this period he was travelling extensively overseas to build overseas presence of NSE and to explore possibility of setting up of stock exchanges in other European countries and Australia. He was on the board of Directors of World Federation of Exchanges and was involved in framing global policies on various issues of securities market. After 2013, he was appointed as the Non-Executive director till June 2017, after which he has no involvement with NSE. Further, even as MD & CEO, it was impossible for him to be constantly involved with every detail of every department.

32.2. SEBI has not provided him unfettered access to all documents, material and information available with SEBI including copies of written replies and statements given by other Noticees.

32.3. SEBI has not provided opportunity to cross examine the persons whose statements have been relied upon and also the persons who have prepared the reports relied upon by SEBI.

32.4. The SCN is silent on the nature of action proposed to be taken against Noticee and not in conformity with the ruling of Hon'ble Supreme Court in *Gorkha Securities Services vs. Govt. of NCT of Delhi and Ors.*

32.5. The allegations in the SCNs are vague and SEBI ought to disclose all material to the Noticee for effective defense. The SCNs do not indicate the actions proposed to be taken against the Noticee. SCN is based on false presumptions and incorrect facts.

32.6. Further, fictitious complaints should not be given credence and should not form basis of any investigation.

32.7. All matters are assigned and looked into by persons/committees who had the core expertise to deal with it at NSE and the concerned personnel followed due process while awarding the alleged contracts.

32.8. There is no allegation that he personally had any conflict of interest and further, he was not aware of any alleged conflict of interest at the relevant time. He was not even aware at the relevant time that Ms. Sunita Thomas was wife of Mr. Suprabhat Lala.

32.9. The contracts were not awarded unilaterally by him and all requisite due diligence was followed and to his best knowledge, Mr. Lala and Mr. Shah had no role to play in awarding the contracts.

32.10. The allegation in the SCN that Mr. Shah was a member of the Board of NSCCL is irrelevant as NSCCL is a distinct legal entity and had no role to play in the awarding of the alleged contracts by NSE.

32.11. Further, the SCN does not identify the specific violations of the SEBI Master Circular dated December 31, 2010. The requirements of Companies Act as well as the Master Circular have been duly complied with as there was no conflict of interest.

32.12. The data shared was historical data and not confidential, as was available to all persons and even the website of NSE now states the same along with the cost thereof. Further, such data was also being given to Bloomberg, etc.

32.13. He is not aware that Infotech used the data to make algo trading software and considering the generic nature of the data, it is unlikely that Infotech used it to make any algo trading software.

32.14. In any case, alleged violation of the terms of the contract by Infotech cannot amount to violation by him.

32.15. Since 2009, the day to day management of NSE was with the then Joint MD, and he retired from the post of MD and CEO in March 2013, hence has nothing to do with the contracts in 2017. With regards to the contracts in 2013, the SCNs do not allege any conflict of interest or that IGIDR was not competent to perform the contract or that the value of the contract was excessive or that there was collusion between NSE and IGIDR. Therefore, allegations that the agreement was not properly dated or did not have signatures on all pages do not affect the validity of the agreement.

32.16. He also did not have the expertise to scrutinize the agreements and NSE had followed the due process for awarding the said contracts and he was party to the approval and sanction of the budget / cost for the same. Further, any such alleged technical lapses cannot amount to failure to exercise due diligence or non-compliance with SCRA.

32.17. The SCN does not specify the alleged scheme to defraud or contrivance in connection with dealing in securities.

33. The submissions and explanations of the Noticee no. 2 have been examined and considered. With regard to the technical and legal preliminary contentions raised by the Noticee no. 2, I find from records that these objections are vague, ambiguous and are not maintainable. With respect to access of documents, I find that the Noticee no. 2 has been given adequate access to inspect all the documents that have been referred to and relied upon in the SCNs and has been provided with the copies of all the documents as desired by him. Further, it is noted that all the Noticees are aware of the case of each other. Thus, Noticee no. 2 has in his possession all the relevant materials and also the explanations offered by other Noticees in their defense, so as to be able to furnishes explanation in response to the SCNs. The case laws cited by the Noticee in his written submission do not support his contention. The contention raised by Noticee no. 2 has not been convincing as to which document or which specific material has been denied to him because of which he is not able explain his case. As regards cross examination, I find the Noticee's demand for cross

examination is of a very general nature and he is not sure as to whom he wants to cross examine and for what purpose. He has not specified as to how his interest stands prejudiced by the statements of various persons that have been recorded by SEBI when no third party statement has been used in SCNs to level any specific allegation against the Noticee. Therefore, the Noticee's complaint about not getting any opportunity of cross examination is found to be a general statement without any basis. On the issue of specific directions not contemplated in the SCNs as required by the ruling in the case of *Gorkha Securities Services*, this issue has been dealt with earlier in this order while dealing with the contention raised by the Noticee no. 1, in this regard and in the light of that discussion, I reject the contention of the Noticee no. 2 that the SCN should invariably specify the measures proposed to be taken against the Noticee.

34. The Noticee's contention that the SCN is vague without any specific charge against him is also not supported by the facts of the case. I find there are *prima facie* material grounds on the basis of which specific charges have been levelled against the Noticee no. 2 for lack of due diligence and lack of governance by him as the Head of the exchange in the matter of awarding LIX project to Infotech and the fact that appropriate directions, under relevant provisions of law, can be issued against him, have also been indicated to him in the SCN.

35. I find the contentions of the Noticee no. 2 on various other issues pertaining to the contract awarded to Infotech such as conflict of interest, confidentiality of the data, misuse of data by Infotech and also on the irregularities and procedural lapses with respect to the research agreements signed with IGIDR, are similar to the contentions raised by Noticee no. 1 which have been referred to and discussed earlier in this order while dealing with the submissions of Noticee no. 1. I have already expressed my observations on those issues in the relevant paragraphs of this order while dealing with the explanation of Noticee no. 1 which I maintain as far as the submissions of the Noticee no. 2 on those issues are concerned. Therefore, for the reasons recorded and observations made by me on these issues while dealing with the submissions of Noticee no. 1, I find the explanation of Noticee no. 2, on the aforesaid issues pertaining to Infotech contract and the agreement signed with IGIDR, as not sustainable. Noticee no. 2 cannot escape from his accountability as the MD &

CEO of the Noticee no. 1, not adhere to the principles of fairness and reasonableness and not enforcing high standards of due diligence in the matter of awarding contracts or signing agreements with outside agencies/entities.

36. I also find the submissions of the Noticee no. 2 suffer from some contradictions. On the one hand he is arguing that agreement in question was technical in nature and he did not has the expertise to verify the technical and legal aspects of the agreement, on the other hand he has argued that the data shared with Infotech was of historical value and were not confidential in nature. At the same time he also takes the defense that from 2009 onwards, he was practically not looking after day-to-day management and it was joint MD (Ms. Chitra Ramakrishna, Noticee no. 3) who was looking after the day-to-day matters of the exchange. Also in the same breath the Noticee has denied Infotech has misused the data received by it under the contract. Thus, the stand taken by the Noticee no. 2 has been fluctuating and inconsistent, as is discernable from his submissions. Moreover, the Noticee no. 2's explanation has not been convincing with respect to the lack of due diligence and poor corporate governance displayed in the action of the Noticee no. 1 which was being managed by him during the relevant period of time when the irregularities with respect to awarding LIX project and other research projects were being committed.

Submissions of Noticee no. 3 and consideration thereof:

37. The submissions made by the Noticee no. 3 are as follows :

37.1 The Noticee no. 3 was not granted complete inspection of records. The Noticee had sought some documents and cross-examination of some persons which is pending and the investigation report provided to the Noticee is redacted.

37.2 SCN does not specify the measures which are contemplated against the Noticee.

37.3 SEBI has issued two separate SCNs on the same set of facts and not provided copy of the other SCN, such parallel enquiries would prejudice the interests of the Noticee and the SCNs have been issued selectively only to some persons.

37.4 Further, the complaints which triggered the present proceedings are motivated and cannot be the basis for any investigation.

37.5 Awarding of contracts is a decision driven by the respective functional heads and then approvals of MD or JMD is taken and in the past, NSE has contracted work to third parties despite having own specialized subsidiaries. NSE had contracted out many assignments, both on technology and IT including to companies like Cognizant, TCS etc., therefore, Infotech was not the only private contractor engaged by NSE for any project assignment.

37.6 The concerned departments would have examined the issue of conflict of interest and the Noticee has not been informed of any issue of conflict of interest. There is no material to show that Mr. Suprabhat Lala was connected with the decision making process by NSE for awarding the contract to Infotech or he influenced the decision making process or that Infotech was not competent to be awarded the contract.

37.7 The concerned persons have not been questioned if they had disclosed their relationship to NSE or Noticee no. 3. NSE had a standard policy for disclosure of interest in-line with the prevailing corporate laws and it is the duty of the functional heads who were handling the day to day operations at NSE to ensure that employees complied with the internal policies.

37.8 Further, it should be demonstrated that there was a conflict of interest and the same was ignored. The SCNs have also not discussed as to how the Noticee had knowledge of or was aware of this purported conflict at all.

37.9 The transfer of data by NSE to Infotech was governed by an agreement dated 2009 and any breach of the terms of the contract would result in legal consequences as available to NSE.

37.10 The data provided to IGIDR in 2003 through letters contained confidentiality clause and the said practice was prevalent in NSE much prior to Noticee being appointed as Joint MD. The allegation of sharing of confidential data without any agreement and putting the said data vulnerable to misuse is

elusive and abstract and in any case, there was nothing confidential about the data in question.

37.11 All the instances of data sharing highlighted in the SCN are covered by agreements which expressly protect the data and restrain misuse, hence, the allegation of sharing confidential data without agreement is erroneous. Further, any alleged misuse of data does not impute any knowledge to Noticee about the misuse.

37.12 Noticee's tenure ended in 2016, hence, she cannot comment on the execution of the 2017 agreement with IGIDR except for the approval note dated September 19, 2016. Further, all research projects as a matter of routine and in-line with NSE's internal policy were approved by the internal management of NSE.

37.13 The completion of execution of formalities of the 2013 agreement with IGIDR was the sole responsibility of the legal department and the concerned functional head and in any case, the said agreement will not be rendered invalid because it is undated or not initialed on every page.

37.14 There is no material on record to indicate that the Noticee no. 3 was aware of any of the alleged actions or omissions or procured any benefit there from and it appears that SCNs have been issued on selective basis and the Noticee no. 3 is being targeted. Further, in a vast organization like NSE it is impossible for the MD or JMD or CEO to oversee every activity.

37.15 A serious allegation of fraud cannot be made as a matter of course and it is necessary to identify the fraudulent act specifically attributable to the Noticee no. 3 and the serious allegations have been made on mere conjectures, without satisfying the basic test of fraud.

38. The explanations offered by the Noticee no. 3 have been carefully perused and considered. On the issue of inspection of records, I find that the Noticee has made certain general and vague grievances for having not been granted inspection of records. I find that the Noticee had requested for all the research papers presented by Mr. Ajay Shah and Ms. Susan Thomas at various research conference organized by

SEBI between January, 2009 and December, 2015 and her request was rejected. The Noticee has not made out the case as to how such research papers are of any help to her to defend her case more so when there is not a shred of reference to any of these research papers in the SCN. I also note that the above referred documents were not collected during the course of examination. Neither were they referred and/or relied upon in the SCN to substantiate the allegation and thus do not form part of the record of the present proceedings. Therefore, the contention of the Noticee is not tenable. Further, at paragraph 10 of her written submission, the Noticee no. 3 has admitted that she has received the additional documents from other Noticees which they had received from SEBI and she has also received the written replies of other Noticees in the course of her personal hearing. After receiving copies of all the desired documents, copies of written submission of other Noticees, and after having inspected all the materials that have been relied upon in the SCN, none of the grievances of the Noticee with respect to inspection of documents survives. Similarly, the Noticee has not come out clean on her request of cross examination as to whom exactly she wants to cross examine and for what purpose and she has not clarified as to how exactly her interest is prejudiced in defending her case by not cross examining any person. Thus, the grievance on account of cross examination is general, ambiguous and is devoid of merit.

39. The Noticee no. 3's contention that SCNs do not specify the measures contemplated therein, has already been dealt with by me while discussing similar grievances of other Noticees in the context of applying the ruling of Hon'ble Supreme Court in the case of *Gorkha Securities Services (Supra)* and I have already observed that the ruling in the said case is not applicable to the facts of the present proceedings and as far as the present proceedings are concerned.

40. The Noticee no. 3 has also argued that the SCNs cannot hold her vicariously liable for the acts committed by NSE and its employees. In this regard, she has relied upon her own statement recorded before SEBI on April 12, 2018, wherein she has stated that her role was a *'top management'* role with policy and strategic direction for the company and the key heads of different functions were reporting to her post April, 2013 after she became MD & CEO. Further, she has relied upon the judgment, information and advice of the functional head and had no reason to suspect the

integrity and competency of these persons. I find the explanation of the Noticee no. 3 as evasive and not acceptable. Earlier, I had discussed that Noticee no. 2 in his submission has clearly stated that from 2009 onwards till 2013, the Noticee no. 3, as the Joint Managing Director was looking after the day-to-day management of the exchange as he was preoccupied with his overseas assignments. Further, he has also stated in his submission that in the year of 2009 *"Ms. Chitra Ramakrishna was elevated as Joint Managing Director so that her position was equivalent to the Noticee's and she could start taking over all his functions"*. Thus from the explanation from Noticee no. 2 himself, it is clear that from the year 2009 onwards, Noticee no. 3 was practically in complete command and control of NSE (Noticee no. 1), first as Joint MD till 2013 and then as MD & CEO from 2013 till she resigned in December, 2016. Therefore, any act of negligence, lack of due diligence or any actions or inactions on the part of Noticee no. 1 reflecting on its poor governance shall automatically reflect on the performance of the Noticee. As the executive head of the organization, as the Key Management Personnel and as a Whole Time Director on the Board, the Noticee no. 3 is answerable for all the actions, performance or lack of performance by her functional heads which could have a bearing on the governance of the exchange. The Noticee no. 3 cannot take shelter under the plea that her role was top management role and she was not responsible for the functions and performance of her functional heads. Therefore, all the arguments advanced by the Noticee no. 3 with a view to escape from her responsibility and accountability to maintain high standards of Corporate Governance, due diligence and adoption of fair, equitable and transparent policy towards the market participants in the interest of securities market, are not maintainable. Therefore, the Noticee's contention that she was not aware about any arrangement of sharing data with Mr. Ajay Shah or about the conflict of interest involved in the Infotech agreement and it were the functional heads who may be knowing the details of such transactions, are elusive and give an impression as if she was not at all involved in day-to-day operations of the exchange which were left to the discretion of the respective functional heads. Such an explanation is nothing but an attempt to escape from her liability as the executive head of the exchange.

41. The explanation of the Noticee no.3 on other aspect of allegations pertaining to the conflict of interest, confidentiality of data and misuse of data by Infotech for commercial gains are on the same lines as the explanations offered by other Noticees

(Noticee no. 1 and Noticee no. 2) as discussed above. Similarly, the Noticee has offered similar views in respect of the agreements signed by Noticee no. 1 with Ms. Susan Thomas of IGIDR and Mr. Ajay Shah by stating that there is no allegation in the SCNs that she was responsible for irregularities in these agreements. To sum up, the Noticee no. 3 in her entire submission has vehemently made attempts to hide behind the plea that she was not involved in the day-to-day operations which were being managed by the functional heads and she was not aware of the details of any of the transactions such as LIX contract with Infotech or agreements/undertaking with Mr. Ajay Shah and Ms. Susan Thomas, hence, she does not have any liability as a Director of the exchange. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Ors. (2005) 8 SCC 89***, wherein the Hon'ble Supreme Court examined the liability of an MD of a company, in a proceeding under the Negotiable Instruments Act, 1881. In the said judgment, Hon'ble Supreme Court has held as under:

> *" ….the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company….."*

42. The said judgment pertains to the liability for prosecuting MD/JMD of a company under the Negotiable Instruments Act, 1881 which requires much higher degree of proof than the present proceedings which are only of civil in nature. Thus, the liability and accountability of a MD who also happens to be CEO of a company are onerous in nature and it is not open to the MD and CEO of a company to escape from his/her responsibility and accountability that has been entrusted upon him/her in view of the immense power that is vested in him/her under the law, therefore, I note that these observations by Hon'ble Supreme Court applies with more force and vigour, in case of MD of stock exchanges which are MIIs. In view of the aforesaid observations of the Hon'ble Supreme Court, the contentions raised in this regard by the Noticee no. 3 deserves rejection.

43. I note that Noticee has placed reliance on ***In re Denham & Co. 1883 LR 25 Ch. D, 752*** *and* ***Dovey and the Metropolitan Bank (of England and Wales) Ltd. Vs. John Cory 1901 A.C. 477*** regarding legal position on liability of directors. However, such judgments have only a persuasive value when there is no Indian case law specifically dealing with the issue dealt therein. On the other hand, in the case of ***N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152****,* Hon'ble Supreme Court has specifically dealt with the role of the director in the context of the Indian securities market and have made observations as under:

> *"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

44. The Noticee has further placed reliance on the judgment of the Hon'ble Supreme Court in **Chintalapati Srinivasa Raju & Ors. Vs. SEBI (2018) 7 SCC 443** to contend that the decision in Dovey case (supra) has been followed in the case. In this regard, it is noted that the Hon'ble Supreme Court was examining the liability of a non-executive director of the company while referring to Dovey case. However, in the instant case, the Noticee was not a non-executive director but was the MD and CEO of NSE at the relevant time. Therefore, the judicial decisions relied upon by Noticee in her defence do not cover the facts on the basis of which the SCN has been issued to her.

45. Being MD and CEO of NSE, the Noticee was completely in command and control of the exchange during the relevant period of time. Since, responsibility is always co-terminus with power, the MD & CEO at all points of time has to be responsible for all the decisions and acts of omissions and commissions by the

exchange or any of its employees. Under the circumstances, the contentions of the Noticee that she does not owe any liability towards the data misuse under the LIX project, is not sustainable.

Conclusion:

46. I have carefully considered the allegations made in the SCNs and the responses including written submission made by the Noticees on those allegations. There is no denying the fact that Mr. Ajay Shah and his wife Ms. Susan Thomas have been closely connected with NSE, its affiliate companies and its top management by virtue of their active professional engagement with NSE over more than last two decades. Mr. Ajay Shah has already mentioned in his statement about his personal rapport with the senior officials of NSE including Noticee no. 2 and Noticee no. 3. Mr. Ravi Narain (Noticee no. 2) has gone on record to appreciate Mr. Ajay Shah as *"one of the few economist known in capital market who write policy paper based on data analytics".*

47. It is also evident from the records and statement of Mr. Ajay Shah that the LIX project was his brainchild and he was instrumental in getting the LIX project awarded to Infotech in which he and his wife had vested interest. It is also established from the evidences available in the form of emails addressed by Mr. Ajay Shah to Ms. Sunita Thomas that the data that was being made available by NSE to Infotech was confidential and exclusive in nature. The email also contained a confession by Mr. Ajay Shah that the data so received from NSE was being misused for the purpose of developing algo based trading software for their commercial gains. It is also found from the record that the LIX project was ultimately developed and implemented by subsidiary arm of NSE i.e. IISL the own subsidiary of NSE. It appears that LIX project was never a priority for Infotech who had their greater interest in obtaining data from Noticee no. 1 under the garb of the said project so that the said data can be put to use for their commercial gains. All the aforesaid facts are strongly supported by evidence gathered during the course of examination and establish the fact that Mr. Ajay Shah in collusion with Infotech and its two directors had pre-planned a scheme in the form of LIX project which was utilized by them for enjoying seamless data transmission in the name of developing LIX whereas the data was meant to be

misused by them for their commercial gains by developing algo trading products for sale in securities market.

48. As regards the accountability of Noticees are concerned, they cannot get away from the fact that they were in the management position during the relevant point of time and by awarding the contract to Infotech without checking their antecedents and without any due diligence, they have not only overlooked the conflict of interest involved in awarding of this contract to Infotech but also have put the confidential data of the exchange vulnerable to misuse and thereby have compromised on the exchange governance. While Mr. Ravi Narain (Noticee no. 2) was the MD &CEO of the exchange during the relevant period, Ms. Chitra Ramakrishna (Noticee no. 3) was the Joint MD and was supposed to be on an equivalent position as that of the MD, practically looking after all the functions of a MD. Moreover, even after having a *prima facie* case of misuse of data by Infotech before them after being served with the SCNs, Noticee no. 1 has not made any attempt even to ask for an explanation from Mr. Ajay Shah or Infotech, let alone taking any legal measures against them. The Noticees by not acting upon the allegations of misuse of data by Infotech made in the SCNs, have overtly tried to ignore or reject the allegation of misuse of data by Infotech in spite of the fact that the allegation is built upon evidence found from the email addressed by Mr. Ajay Shah to his sister-in-law Ms. Sunita Thomas. Such attitude on the part of the Noticees, smacks of deliberate negligence, unwillingness to recognize evidence, and an overzealous attitude to protect the interest of Mr. Ajay Shah and Infotech for reasons best known to the Noticees. Under the circumstances Noticee no. 1, Noticee No. 2 and, Noticee no. 3, are liable to be held responsible and accountable for failure to do proper due diligence, ensure fairness and transparency and avoid conflict of interest as specified in the Master Circular No. CIR/MRD/DSA/SE/43/2010 dated December 31, 2010.

49. Similarly, for the reasons recorded in the SCNs, glaring negligence and irregularities as well as procedural lapses have been committed by the Noticees while executing data use agreements with Mr. Ajay Shah and Ms. Susan Thomas of IGIDR in a manner rendering the agreements practically infructuous and unenforceable. Moreover, Noticees have not furnished any documents to show the execution of

similar agreement having been executed with any institution/organization. It is also evident that till the year 2012 i.e. for about 18 years of its existence, the Noticee no. 1 did not have any policy with regard to sharing of data with researchers/ research organizations. None of the Noticees have come forward with any explanation as to why they did not have any policy with respect to data sharing nor have they explained as to why Mr. Ajay Shah and Ms. Susan Thomas were being provided with data so generously over the years without signing any agreement with the exchange. This fact itself reflects very poorly on the governance of exchange. Moreover, when the policy on data sharing by way of executing agreement was commenced in 2012, as evident from the two agreements signed in the year 2013 & 2017, the policy was implemented in a slip-shod and casual manner so much so that the agreements were full of infirmities and procedural lapses embedded into it. I also note that the two agreements entered into with IGIDR and the undertaking executed by Mr. Ajay Shah and Ms. Susan Thomas have no relation as far as the projects for which the agreements were executed as there was no cross reference to the undertaking furnished by Mr. Ajay Shah and Ms. Susan Thomas for those agreements. The undertaking of Mr. Ajay Shah and Ms. Susan Thomas does not mention any specificity as to the data and purpose of making such data available to them by the Noticees. Keeping the aforesaid in consideration, I am of the view that the allegation in the SCNs that NSE has failed to ensure proper due diligence with respect to execution of agreements and to ensure fair dealing while executing these agreements and thereby have compromised on the integrity of the securities market stands vindicated by the aforesaid observations.

50. As regards the allegations made against the Noticees in terms of Section 12 A (b) and 12 A (c) of SEBI Act read with Regulations 3(c) & (d) and 4(1) of PFUTP Regulations, 2003, I am of the view that although Mr. Ajay Shah, Infotech and its directors fraudulently utilized the LIX project as a device/scheme/artifice to defraud the Noticee no. 1 so as to obtain data for misusing the same for their commercial use as brought out from the record and evidences discussed above, no concrete evidence so as to establish any collusion by the three Noticees in this proceedings appeared to have been adduced in the SCNs against them. Material on records do not suggest that the Noticees have connived with or have deliberately extended any help to Mr. Ajay Shah or Infotech in their plan to misuse the data that was provided to them

through the LIX project. I find it is Mr. Ajay Shah, Infotech and its directors who have pre-planned their scheme to obtain data from NSE for which the LIX project was itself conceived by Mr. Ajay Shah to which NSE and its senior officials agreed because of the implicit advantages of having a LIX on the exchange platform. Similarly, it was Mr. Ajay Shah who was instrumental in getting the LIX project awarded to Infotech. As far as Noticee no. 1, 2 and 3 are concerned, there is no evidence found from the records to suggest that they were aware about the hidden agenda of Mr. Ajay Shah and his intentions behind the LIX project although all the three Noticees are certainly liable for not taking any precaution or checking the antecedents of Infotech as algo software vendor in the securities market and thereby have not ensured any fairness and transparency nor have they looked at the possible conflict of interest at the time of awarding the contract. Therefore, while I have no adverse finding against the Noticees in respect of their culpability in terms of Section 12 A (b) and 12 A (c) of SEBI Act read with Regulations 3(c) & (d) and 4(1) of PFUTP Regulations, 2003 as have been alleged in the SCNs, I hold the three Noticees accountable and liable for violations of SEBI Master Circular dated December 31, 2010. Further, on perusal of Sections 3(2) (b) of SCR Act, 1956, it has found that the said provision refers to documents to be furnished by a stock exchange while making application for recognition as stock exchange and hence, is not violated in the present case.

Directions:

51. In view of the aforesaid violations committed by the Noticees, I, in exercise of the powers conferred by Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and Section 12A of the SCR Act, 1956 read with Section 19 and 11(2)(j) of the SEBI Act, 1992, issue the following directions to the Noticees:

(i) Noticee no. 1 (NSE) is directed to take necessary legal actions against Mr. Ajay Shah, Infotech Financial Services Pvt. Ltd., Ms. Sunita Thomas and Mr. Krishna Dagli (Directors of Infotech Financial Services Pvt. Ltd.) for violating the provisions of the "Professional Service Agreement" signed with Infotech in connection with LIX project and for misusing the data made available to them by Noticee no. 1 as per the findings made in this order. Noticee no. 1 is further directed to submit an action taken report in

this regard along with the observation of its Governing Board to SEBI, within three months from date of this order.

(ii) Noticee no. 1 (NSE) is directed to review all the third party agreements having a data sharing component/provision therein signed by it from year 2009 onwards and take necessary legal actions against the parties with whom such agreements were signed wherever any actions of irregularity, breach of terms and conditions and other provisions of such agreements are observed. Noticee no. 1 is further directed to submit an action taken report in this regard along with the observation of its Governing Board to SEBI, within three months from date of this order.

(iii) Noticee no. 1 (NSE) is directed to prepare a detailed documented policy with respected to data usage and data sharing with external persons/entities in a fair & transparent manner, including data sharing with any researchers, commercial entities, overseas entities, etc., with due provisions for processes to be followed and disclosures of conflict of interest to be made at the level of any employee of NSE. The policy shall be comprehensive with proper maker and checker system with provision for periodic review to ensure prevention of misuse of the data/information. Noticee no. 1 is further directed to submit an action taken report in this regard along with the observation of its Governing Board to SEBI, within three months from date of this order.

(iv) It is further directed that the aforementioned data usage and data sharing policy shall be implemented after approval of the same by the Governing Board of Noticee no. 1 and shall be disseminated through a circular and also be displayed on the website of Noticee no. 1.

(v) Noticee no. 2 (Shri Ravi Narain) and Noticee No.3 (Ms. Chitra Ramakrishna) are hereby directed not to hold, any position in the management and/or in the Board of any Stock Exchange and/or Clearing Corporation, recognized by SEBI or any related entity of any recognized stock exchange and/or clearing corporation, or be associated in any manner, directly or indirectly, with any intermediary registered with SEBI or

their related entity and/or with any company having its securities listed on any Stock Exchanges recognized by SEBI, for a period of 3 years.

-Sd/-

S.K. MOHANTY

DATE: April 30, 2019 **WHOLE TIME MEMBER**

PLACE: MUMBAI **SECURITIES AND EXCHANGE BOARD OF INDIA**