BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/SM/2021-22/11348)

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

PRB Securities Private Limited
Registration No. – INZ000225631
In the matter of NSE Co-Location

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter be referred to as, the **SEBI**), had received multiple complaints pertaining to allegations of malpractices with respect to the co-location facility being provided by the National Stock Exchange of India Ltd. (NSE). In the wake of allegations of preferential access to Tick-by-Tick (TBT) data feed given by NSE to certain trading members (TMs), the matter was taken up for investigation by SEBI. PRB Securities Limited (hereinafter referred to as **Noticee/PRB/ You**) was one of the trading members identified for comprehensive investigation (including forensic audit) for primary and secondary server connects. Deloitte Touche Tohmatsu India LLP (hereinafter referred to as **Deloitte**) was entrusted with the comprehensive investigation (including forensic audit) of Noticee, which submitted the final report to SEBI - Deloitte report - September, 2019.

2. SEBI initiated adjudication proceedings under sections 15HA and 15HB of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) read with (r/w) regulations 26(xvi) and 26(xx) of SEBI (Stock

Brokers) Regulations, 1992 (hereinafter referred to as **Stock Broker Regulations, 1992**) against the Noticee. Adjudication proceedings have been initiated against the Noticee for the alleged violation of provisions of point 2(a) of Chapter V of NSE bye-laws r/w clauses A(2) and A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations, 2003**) and sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Ms. Sangeeta Rathod as an Adjudicating Officer (AO), under section 15-I of the SEBI Act, 1992 r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (herein after referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under sections 15HA and 15HB of the SEBI Act, 1992, the alleged violations of point 2(a) of Chapter V of NSE bye-laws r/w clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 and sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992. Ms. Sangeeta Rathod was appointed as AO vide communique dated July 21, 2020. Subsequently, the matter was transferred to me and I was appointed as the Adjudicating Officer by the Competent Authority vide communique dated October 28, 2020.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice having reference no. SEBI/EAD-8/PM/SM/OW/19642/2020 dated November 18, 2020 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held

against it and why penalties, if any, should not be imposed on them under the provision of sections 15HA and 15HB of the SEBI Act, 1992. The allegations in the SCN are as follows:

I. *The investigation period covers from the time of introduction of TBT data dissemination through TCP/IP till the date of introduction of MTBT by NSE in the respective segment. The period for the investigation with respect to the various segments are given below:*

Sl. No.	***Segment***	***Period***
1	*Futures and Options (F&O) Segment*	*June 12, 2010 to April 06, 2014*
2	*Cash Market (CM) Segment*	*October 15, 2010 to November 10, 2014*
3	*Currency Derivatives (CD) Segment*	*January 02, 2012 to April 06, 2014*

II. *NSE vide its email dated December 04, 2019 provided the co-location facilities to the Noticee and the details are given below:*

Rack allocation

Type of Rack (Full/Half)	***Rack No***	***Date of Allotment***	***Date Of Surrender***	***Current Rack Status***
Half Rack	*K19*	*15-Jun-2010*	*19-Jul-2013*	*Surrender*
Full Rack	*B12*	*08-Jul-2013*	*-*	*Active*

IP allocation

Tap IP	***Allotment Date***	***Termination Date***	***Status***
10.230.18.144	*12-09-13*	*07-01-15*	*Surrender*
10.230.18.143	*11-05-12*	*07-01-15*	*Surrender*
10.230.18.142	*12-03-12*	*07-01-15*	*Surrender*
10.230.18.141	*12-03-12*	*07-01-15*	*Surrender*
10.230.18.140	*07-02-11*	*07-01-15*	*Surrender*
10.230.18.145	*11-09-14*	*07-01-15*	*Surrender*

III. *Deloitte has made the following findings/ observations with respect to the Noticee:*

A.Issues pertaining to connecting to secondary server

Based on the discussions with representatives of the Noticee, Prem Ratan Bahety (Director), Lakshman Chandra Saha (Employee of the Noticee) and Ajit Kumar Khaware (IT Manager) on May 02, 2019 and review of emails provided by the Noticee, it appears that NSE COLO Support, vide email dated August 30, 2012 had forwarded document, "NSE Colocation Guideline Ver_1.2, vide email dated July 08, 2013, NSE forwarded "NSE Colocation Guideline Ver_2.1" to the Noticee, vide email dated December 02, 2011, NSE COLO Support, inter alia, informed that the member should intimate NSE before connecting to the secondary server. During discussions, it was gathered that Ajit Kumar Khaware would carry out the Beginning of Day (BoD) activity and management of servers in the form of changing TBT parameters provided by NSE.

(a) CM Segment: *During review of emails, discussions and submissions made by the Noticee, it was observed that several emails from the NSE COLO Support team asking the Noticee to connect to the prescribed primary server instead of the secondary server in the CM segment. In an email dated May 18, 2012, NSE COLO Support wrote to support@prbsecurities.com, "backoffice@prbsecurities.com", "sePRBb@hotmail.com" and "lcsaha@prbsecurities.com" about TBT TCP IP "10.230.8.200", which was connected to the secondary server in the CM segment and asked them to connect to the primary server instead. Vide email dated May 21, 2012, Ajit Kumar Khaware responded that Noticee wanted to continue using the secondary server for CM segment, as they were unable to connect to the primary server. Vide an email dated May 22, 2012, NSE COLO Support replied to Ajit Kumar Khaware stating that Noticee was unable to connect to the primary server as they were attempting to connect to the wrong port. The email also stated that Noticee could connect to the secondary server only after any intimation by NSE. On analysis of the data for connections made to the*

secondary server, it is observed that Noticee did not connect the aforementioned IP to the secondary server post May 22, 2012.

Vide email dated May 22, 2014, NSE COLO Support wrote to "support@prbsecurities.com" and "sePRBb@hotmail.com" about multiple TCP connection attempts from TBT TCP IP "10.230.18.144" to the primary as well as secondary server in the CM segment. However, no response to these emails from the Noticee were found. Further, in another email dated May 22, 2014, NSE COLO Support wrote to the Noticee about multiple TCP connection attempts from TBT TCP IP "10.230.18.142" to the secondary server in the CM segment. Ajit Kumar Khaware replied through an email on the same day that they would shift back to primary server aftermarket hours. Ajit Kumar Khaware then sent an email to Prakash Payer of Greeksoft to change the TBT TCP IP parameter from secondary to primary server. Prakash Payer confirmed with an email on the same day that the necessary changes were made.

(b) ***F&O Segment:*** *During review of emails, discussions and submissions made by the Noticee thereon, it was noted that there were several emails from the NSE COLO Support team asking Noticee to connect to the prescribed primary server instead of the secondary server in the F&O segment. In an email dated July 24, 2013, Ajit Kumar Khaware wrote to NSE COLO Support mentioning that they were unable to connect to the primary server for F&O bucket with the TBT TCP IP "10.230.18.140" and therefore were connecting to the secondary server. NSE COLO Support replied through an email on the same day indicating that voluntary disconnection by the trading member from the primary server is the only reason for such an issue.*

Further, during discussion with representatives of Greeksoft, Ajit Hakani and Vivek Sheth, on May 31, 2019, with regards to the login process followed by Greeksoft's users, they stated that, "the client would have to insert details such as segment, user ID, connection to be made to NSE's TCP IP TBT server IP address (either primary or secondary), port, details of offline IP address and port."

B. Issues pertaining to first connect

Based on the discussions with representatives of Noticee dated May 02, 2019, it is gathered that Ajit Kumar Khaware would manually log on to the NSE servers around 8 am every day. The data for first connects made by the Noticee in all the three segments are given below:

Segment	Period	Server	Number of First Connected
CM	2012	TBTCOLO11	3
		TBTCOLO17	1
	2013	TBTCOLO11	1
		TBTCOLO13	2
	2014	TBTCOLO17	2
CD	2012	TBTLV15	4
		TBTCOLO11	1
		TBTCOLO13	27

IV. *Submission of Noticee on secondary server access are as follows:*

(a) *In a query to statement dated May 02, 2019, on understanding of Primary and Secondary Server, Shri Ajit Kumar Khaware (IT Manager, Noticee), stated as follows:*

" ….Primary and Secondary IPs were provided by NSE to us. We are supposed to connect to the Primary Server and only in case of failure on primary server I will connect to the Secondary Server. According to my recollections we only faced disconnection on Primary server once during the period of review (2010-2014) and we had connected to the secondary Serve only once.

An email dated April 17, 2012 from NSE to PRB securities, wherein we were requested to connect to the secondary fallback server 172.28.124.17 by NSE (CM&CD segment). On the subsequent day, we were requested to connect back to the primary Server.

An email dated May 18, 2012 from NSE to secorb@hotmail.com, support@prbsecurities.com, backoffice@prbsec.com and Icsaha@prbsecurities.com requesting PRB to connect to the primary servers in the CM segment and not to connect to the fallback server without intimation from NSE."

(b) *Subsequently, Shri Ajit Kumar Khaware, was informed that Noticee connected*

to secondary Server for approximately 232 days in CM segment, 189 days in FO segment and 7 days in CD segment during the investigation period to which Shri Ajit Kumar Khaware replied that he did not recall these instances.

(c) *Shri. Ajit Kumar Khaware, in response to a query regarding steps taken by him in case of a downtime at Colocation, stated that …."We used to contact the Colo support Board number and they used to resolve our queries immediately. In certain cases we used to email performance related issues to the cola support ID. We were never provided a complaint number for the same."*

V. *Observations and Findings of investigation are as follows:*

Secondary Server:

(a) NSE vide email dated May 24, 2018, provided following details regarding secondary servers:

Server	***Segment***	***Time For Which Server was Secondary***	***Remarks***
TBTLV9	*F & O*	*Jun 2010-Dec 2010*	*No Designated Secondary Server Between Jan To Oct 2011 in F & O*
TBTLV17	*F & O*	*Oct 2011-Jan 2012*	
TBTCOLO27	*F & O*	*Feb 2012-02 Dec 2016*	
TBTLV6	*CM*	*Jun 2010-Sept 2011*	
TBTLV18	*CM*	*Oct 2011-Jan 2012*	
TBTCOLO17	*CM*	*Feb 2012-Dec 2016*	
TBTLV6	*CD*	*May 2011-Sept 2011*	
TBTLV18	*CD*	*29 Sept 2011-Jan 2012*	
TBTCOLO17	*CD*	*Feb 2012-Dec 2016*	

(b) NSE issued colocation guidelines. In terms of point 2 of the colocation guidelines from NSE (Document no NSEIL/ITSM/INT/072, last revised on April 16, 2012) reads as "…….in case of non-availability of data from TBT primary source they can move to secondary source". NSE vide its email dated June 20, 2018, has inter alia clarified that the Colocation Guidelines was sent as a welcome email to all new Members in Colocation. The said guidelines were never issued as a circular.

(c) NSE COLO Support provided the documents "NSE Colocation Guidelines Ver_1.2" and "NSE Colocation Guideline Ver_2.1" to the Noticee wherein, inter alia, stated, "Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source." Apart from the above emails, NSE COLO Support had also sent an email dated December 02, 2011, inter alia, stating that the member should intimate NSE before connecting to the secondary server.

(d) From the above, it is observed that secondary server was provided by NSE in order to enable members to connect to the same in the event of disconnection / failure to connect to primary server. Thus, suspicion arises only when brokers repeatedly connect to secondary server without justifiable cause. The secondary server connection analysis of the Noticee are given below:

Segment	***Year***	***No of Days***	***Trading days***	***% of connection to secondary server to total no. of trading days***
FO	*2011**	*9*	*247*	*4%*
	2014	*36*	*66*	*55%*
	Total	***45***		
CM	*2011*	*1*	*247*	*0%*
	2012	*36*	*252*	*14%*
	2013	*3*	*250*	*1%*
	2014	*175*	*206*	*85%*
	Total	***215***		
CD	*2012*	***6***	***243***	*2%*

**No Designated Secondary Server Between Jan To Oct 2011 in FO*

(e) CD Segment: From the above table, in the CD segment, it is observed that Noticee connected to the secondary server 6 days during the period April 23, 2012 to May 3, 2012. It is observed that, as per information received from NSE, during the aforesaid period, no complaint was made to NSE by Noticee for issues regarding disconnection in primary server in the CD segment.

(f) F&O Segment: From the above table, in the F&O segment, it is observed observed that Noticee connected to the secondary server for 36 days during

the period February 12, 2014 to April 5, 2014. It is observed that, as per the information received from NSE, during the aforesaid period, no complaint was made to NSE by Noticee for issues regarding disconnection in primary server in the F & O segment.

(g) CM Segment: From the above table, in the CM segment, it is observed observed from the above table that Noticeehad significant numbers of connections to the secondary server in the CM segment, especially during calendar year 2014.

(h) During the period FY 2012 and January 1, 2014 to November 9, 2014 (as Multicast was implemented by NSE on November 10, 2014), in the CM segment, Noticee connected to secondary server on 36 and 175 days respectively, which works out to 14% and 85% of the total trading days. It is observed that starting from February 12, 2014 to November 9, 2014, Noticee was continuously connected to secondary server.

(i) Further, in an email dated December 02, 2011 from NSE COLO Support to the Noticee, it was stated that the member should intimate NSE before connecting to the secondary server. It may be mentioned that, NSE had sent an email dated May 18, 2012 to Noticee, inter alia, advising them, "Request you to connect to primary Server with the given TBT parameters. Also, requesting you, not to connect on Fallback server without exchange intimation."

(j) Investigation observed from the complaints log data that Noticee has raised complaints with respect to TBT connection only on 4 days i.e. August 05, 2011, November 02, 2011, May 22, 2012 and July 04, 2014. It is observed that Noticee had raised a complaint to NSE through an email dated May 21, 2012 (Annexure-9), inter alia, stating that they were unable to connect to the primary server and wanted to continue using the secondary server. In this regard, NSE, vide email dated May 22, 2012 informed to the Noticee that they attempting to connect to the wrong port and also reiterated that the Noticee could connect secondary server only after any intimation by NSE. Subsequent to this, Noticee stopped connecting to secondary server and the next connection to secondary server took place on September 17, 2013. During the period September 17,

2013 to February 11, 2014, Noticee connected to secondary server only on 4 days.

(k) Investigation observed that in the email dated May 22, 2014 received by Noticee from NSE, it was, inter alia, stated that multiple TCP connection attempts from IP 10.230.18.144 to primary and secondary servers in CM segment were made. On examination of connections logs for May 22, 2014, no connection was found to the secondary server from IP 10.230.18.144. Further, on May 22, 2014, another email was sent from NSE to Noticee stating that multiple TCP connection attempts from TBT-TCP/IP 10.230.18.142 to secondary server in CM segment were made. From the connection logs, it is found that Noticee did connect to the secondary server through the above mentioned IP. Subsequently, Noticee started connecting to primary server through the same IP from next day onwards. It is, however, observed that Noticee was still connecting to secondary server through other multiple IPs (10.230.18.140 & 10.230.18.143) for 111 days (from May 22, 2014 to November 07, 2014) in the CM segment. From the above, it is observed that Noticee continued to connect to secondary server despite of NSE advising Noticee not to connect to the same.

(l) NSE had forwarded the Colo Guidelines to Noticee wherein, it was, inter alia, mentioned that in case of non-availability of primary source, Members can move to secondary source. Further, vide an email dated December 2, 2011, from NSE Colo Support to Noticee, it was stated that Member should intimate NSE before connecting to secondary server. From the above, it is clear that Noticee was well aware regarding when to connect to secondary server. However, Noticee continued to connect to secondary server, despite of the above Colo guidelines and the emails dated May 22, 2014 sent by NSE to Noticee.

(m) The colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: "Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary

source." Point 2(a) of Chapter V of the Exchange's Byelaws, inter alia provides that "Trading member shall adhere to the Bye Laws, Rules and Regulations of the Exchange and shall comply with such operational parameters, rulings, notices, guidelines and instructions of the relevant authority as may be applicable."

(n) In view of the above, it is alleged that that Noticee continuously logged in to secondary server in CD, CM and F&O segment during the investigation period without any sufficient reason and has thereby violated the NSE Colocation Guidelines read with point 2(a) of Chapter V of NSE bye-laws r/w clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of Stock-Broker Regulations, 1992. Noticee has also not exercised due skill, care and diligence while accessing secondary server of NSE colocation in line with the instruction of the NSE as contained in the NSE Colocation Guidelines and therefore violated the clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock-Broker Regulations, 1992. Further, as Noticee connected to the secondary server repeatedly without valid reason, it has indulged in unfair trade practices and therefore, it is alleged that the Noticee violated the provisions of regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 and sections 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992.

5. The aforesaid SCN was sent through speed post acknowledgement due and the same was delivered to the Noticee. Noticee vide its letter dated November 27, 2020 requested for inspection of various documents/informations such as copy of investigation report, date on which the findings of investigation put up to Whole Time Member (WTM) of SEBI, copies and details of material placed before WTM, date on which investigation report approved by WTM and instant proceedings approval, copy of minutes of the committee of Inter Division Chief etc. Vide e-mail dated December 23, 2020, it was informed to the Noticee that all the relevant documents that have been relied in the instant adjudication proceedings have been provided to the Noticee during the issuance of the SCN. Noticee was advised

to reply to the SCN by January 04, 2021. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on January 07, 2021. Noticee vide its e-mail dated January 04, 2021 requested for additional time to submit reply to the SCN. Acceding to the request of the Noticee, vide e-mail dated January 05, 2021, Noticee was given time till January 18, 2021 to submit its reply to SCN and an opportunity of hearing was granted on January 20, 2021. Noticee submitted its reply to the SCN vide letter dated January 17, 2021. In its reply letter, Noticee requested for various documents in the instant matter. Vide e-mail dated January 20, 2021, Noticee submitted additional reply to the SCN. On behalf of the Noticee, the Authorized Representatives (ARs) attended the hearing on the scheduled date i.e. January 20, 2021 and reiterated the submissions made by the Noticee vide its letter dated January 17, 2021. During the hearing proceedings, w.r.t the documents sought by the Noticee in its reply, it was informed to the ARs that the relied upon documents have been provided along with the SCN. The ARs sought additional time of seven days to make fresh submissions which was acceded to. Noticee submitted its reply vide letter dated January 27, 2021. Further, Noticee submitted additional reply vide letters dated March 02, 2021 and April 09, 2021.

6. Replies of the Noticee vide its letters and e-mails dated January 17, 2021, January 20, 2021, January 27, 2021, March 02, 2021 and April 09, 2021 are as under:

   a) *The NSE Co-location ("Colo" or "NSE Colo") service is a legal, paid premium services to get tick by tick data faster and any broker / Trading Member (TM) who has availed the Colo facility has an advantage over those who have not availed the Colo facility. The entire purpose of availing the Colo facility is high speed connectivity. Different data dissemination infrastructure speed is approved by SEBI and it is not required that different market participants need to have equal access to data dissemination speeds.*

   b) *Further, NSE's Circular dated August 31, 2009 (Ref: NSE/MEM/12985) in respect of Colo facility contained no restriction on the usage of secondary server access. Till date, this is the only circular issued by NSE on colocation facility and the same merely informs the members of the introduction of the colocation services at the NSE premises. It only provides information as to the*

facilities that will be available at the colocation and the process for member applications.

c) *NSE Colocation Guidelines Document No. NSEIL/ITSM/INT/072 dated August 8, 2011 ("Colocation Guidelines") contained no reference at all as regards the utilization of the Secondary Server.*

d) *The updated Colocation Guidelines dated April 16, 2012 contained one of the 'processes' with regards to the Secondary Server and stated that "Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source". Thus, the updated 2012 Colocation Guidelines, that contained these 'processes' for improving the experience to TMs on the Colocation platform were only in the form of guidelines / tips provided by NSE and were not binding upon the TMs. It only advised the TMs to connect to the Secondary Server for smooth functioning and did not bar the same as mentioned in the SCN. Also, the only way to check whether the TBT parameters were working fine with the application was by initiating a secondary server login and staying connected to it. We submit that such guidelines were not available in public domain due to which the Noticee was unaware of the same.*

e) *In the absence of any regulation or norm in relation to the usage of the secondary server, there cannot be any allegation or questioning around the manner of connecting to the Secondary Server for reprimanding or punishing a TM accessing the Secondary Server.*

f) *The SCN states that an e-mail dated December 02, 2011 from NSE Colo stated that "the members should intimate the exchange before connecting to secondary sever". In this regard, we would like to refer to NSE's submissions made in the proceedings before the Whole Time Member, in the case of NSE Co-location that the secondary server was always in 'active mode' and that the TMs were free to connect to the secondary server at all times, based on such TM's considerations. It was even clarified that NSE advised the TMs to stay connected to both primary and secondary servers to avoid suffering due to server failure [Reference - Para 8.2.16.3. of Order no. WTM/GM/EFD/03/2018-19 dated April 30, 2019 passed by Hon'ble Shri G. Mahalingam, Whole Time Member- In the matter of NSE Co-location ("WTM Order").*

g) *SEBI had issued Show Cause Notices in the NSE Colo matter to many other entities on similar lines as the Noticee. During the course of such proceedings, a report, commissioned by Accel Trading and conducted by Indian Institute of Technology Madras professor Ramakrishna Pasumarthy, was submitted to SEBI which counters the findings of separate investigations into this matter that SEBI had conducted over three years. This report establishes that brokers*

were far from benefitting from alleged preferential access or secondary connections. Thus, as per this report, the Noticee is not in any position of advantage and also did not make any unfair gains.

h) *SEBI has itself admitted that there was no restriction, regulation or conditions regarding the usage and connection of the secondary server and that NSE had left the usage thereof to the discretion of the Trading Members (Reference - WTM Order in the matter of NSE Colocation order).*

i) *Large number of TMs, almost all on colocation, were connecting to the secondary server constantly. Had there been any restriction or regulation or rules setting out the conditions for secondary server access, none of the TMs would be connecting to the secondary server as frequently. For the same reason, NSE maintained no policing system, and therefore NSE never 'warned' or 'reprimanded' any TM for connecting to secondary server for the larger period of the TCP-IP regime, despite the fact that most of the Secondary Server connections were established by the TMs before the market opening hours.*

Various tests/reports have proved that there wasn't any speed advantage enjoyed by any Trading Member using secondary server as compared to using primary server

Several TMs had continuously raised complaints with NSE regarding disconnections, invariable latency and even receipt of incorrect data, even till 2014. For instance, email dated September 23, 2015 from VR Narasimhan of NSE to Vikas Komera of SEBI, (Annexure I to CFT Report) states as under:
"Point 5 -'Details of Complaints received w.r.t. colo from members: All tickets relating to TBT "250+ (nearly every day) complaints raised by various members over 357 days period of alleged violation recorded on telephone at NSE Colo Support helpdesk related to issues with the primary infrastructure during the period of alleged violations. (Dec '12 - May' 14)"

Colo is a legitimate paid facility to allow faster access to data w.r.t. those who are not in Colo. Therefore, the question of preferential data cannot be applied w.r.t. any non Colo access. Besides the Colo facility was available only for Algo trading, and as such no "Investor" was accessing the Colo facility, but rather algorithmic traders. Irrespective of whether a member accessed the primary or secondary server, by virtue of being in Colo, he had faster access to data than anyone who was not in Colo (i.e. "Investors"). Thus, there cannot be case that "Investors" were put at a disadvantage on

account of secondary server login, or that they suffered any loss on this count.

NSE's instruction to use of secondary server in case of failure of primary server seems ambiguous. What does "failure" mean in this context? Failure to provide all the packets of data while charging a premium price for Colo also comprises failure. The Noticee logged on to the secondary server only because neither the primary nor the secondary servers by themselves provided consecutive packets of data. We could make a more accurate order book only by combining the 2 server packets. Therefore, the paying a premium price, we are entitled to accurate data without the same our Algo can't function and will fail.

j) SEBI has relied on several documents / statements in order to allege the charges against us in the SCN. In this regard, we would like to submit that Inspection of Documents / Cross examination is an essential part of all legal proceedings and a fundamental principle of Natural Justice. In this regard, we request SEBI to grant inspection / cross examination of the following documents-

i. As per para 8A(b) of the instant SCN it has been vaguely alleged that "There were several emails from NSE COLO support team asking Noticee to connect to the prescribed primary server instead of the secondary server in the F&O Segment." Similar observations have been made with regard to the CM Segment in para 8(A)(a) of the instant SCN. It may kindly be noted that such correspondences had not been provided to the Noticee. Therefore, it is requested that inspection of these documents be provided to the Noticee. Further, we would also like to cross examine the NSE Colo Support staff who claims to have forwarded such e-mail to us.

ii. As per para 10(k) of the instant SCN, it has been alleged that Noticee continued to connect to the secondary server despite of NSE advising not to connect to the same. In connection to this a reference has been given to NSE's email dated May 22, 2014 wherein NSE informed the Noticee that, TBT IP 10.230.18.142 was connected to secondary server. However, from the Noticee's secondary server data provided by NSE it can clearly be observed that Noticee's TBT IP 10.230.18.143 was also connected to secondary server on the same day (i.e., May 22, 2014). However, surprisingly no email was sent by NSE with reference to TBT IP 10.230.18.143. In this regard, we request inspection of the e-mails and cross examination of the NSE Colo Support team in order to determine the correctness of by SEBI.

iii. *Para 10 (c) of the instant SCN states that "Apart from the above e-mails, NSE Colo Support had also sent an e-mail dated December 02, 2011, inter-alia, stating that the member should intimate NSE before connecting to the secondary server." In this regard, we would like to request cross examination of the NSE Colo Support team in order to determine the correctness of such statement made by SEBI.*

iv. *Para 10 (e) of the instant SCN states that, "As per information received from NSE, during the aforesaid period, no complaint was made to NSE by Noticee for issues regarding disconnection in primary server in the CD segment". Similar observation has been made with regard to the F&O segment in para 10(f) of the instant SCN. Kindly provide us an opportunity to inspect such documentary evidence provided by NSE and also give us an opportunity to cross examine the NSE official who has provided such information to SEBI.*

v. *Para 10 (h) states that "Starting from February 12, 2014 and November 9, 2014, Noticee was continuously connected to the NSE Server." In this regard, please provide us with an opportunity to inspect the document from which SEBI has reached such a conclusion.*

vi. *The purpose of inspection is to give the Noticee a fair chance to verify the correctness and the validity of the evidence that is relied on by the quasi-judicial authority. Therefore, in addition to the aforementioned documents, we request SEBI to kindly provide us with an opportunity to inspect all original documents annexed to the Show Cause Notice. It may kindly be noted that till we are not allowed to verify the above documents with the original documents, the existence of these documents will continue to be in question.*

k) *Further, it may kindly be noted that, the Noticee had made necessary changes in TBT 10.230.18.142 soon after being intimated by NSE, which has been duly acknowledged in the instant SCN. However, no advise/intimation was given by NSE in respect of TBT 10.230.18.143, hence it continued to be connected to secondary server. Therefore, this is clearly a shortcoming on the part of NSE monitoring the connections to secondary server.*

l) *We bring to your kind notice that, the Noticee received an email from NSE on April 17, 2012 informing the Noticee to connect to fallback server instead of connecting to primary IP for CM & CD segments. It may also be noted that, the secondary IP were intimated by NSE itself.*

m) *It has been alleged in the instant Show Cause Notice that the Noticee was aware of the potential advantages of connecting to the secondary server as well as that of early logins. In respect of which it is submitted that, the Noticee had NO knowledge of any such potential advantages. In fact, there was no mechanism/device to know which server is less crowded. Had it been the case,*

the Noticee would have connected all the servers with secondary parameters, but not all the IPs were connected to secondary server on any given day. Please note that, the Noticee had 6 servers in the year 2013 and 8 servers in the year 2014 at their Colocation.

n) *In connection to the above, the Noticee would also like to bring to your notice that, NO advantage of connecting to secondary IP could be noted as the Noticee's turnover was almost identical in all the servers (i.e., those connected to primary server vis-a-vis those alleged to be connected to secondary server).*

o) *Further, we would like to draw your kind attention the following findings in the similar decided matters of NSE Co-location:*

   i. *In reference to the Order bearing no. WTM/GM/EFD/02/2019–20, in the matter of OPG Securities Pvt Ltd dated April 30, 2019; the Noticee was charged for the violation of provisions of Regulation 4(1) of the PFUTP Regulations 2003 and Clauses A(1), (2) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations. In addition to the same, OPG Securities has also been charged for the unlawful gains made from Secondary POP server connections. Further, OPG Securities did not receive any warnings from NSE for connecting to the Secondary Servers.*
   ii. *In addition to above, the Noticee was also alleged for first connect/early logins, alike in the instant case. In observation of the same the Adjudicating Officer in the matter of OPG Securities Pvt Ltd stated that "I nonetheless cannot find myself in agreement with the allegation of 'first connect/early login' resulting in unfair advantage to OPG Securities as made out in the SCNs since other TMs who were allocated to Port 1 of any POP Server would also gain an advantage over OPG Securities and other TMs. "*
   iii. *Without prejudice to the above, we have been alleged to have violated the PFUTP Regulations, but it may kindly be noted that, we have not obtained any unlawful gains in the due course, unlike OPG Securities.*
   iv. *In reference to the Adjudication Order bearing no.: ORDER/SS/SK/2019-20/4608 dated September 25, 2019, in the matter of SMC Global Securities Ltd, the Noticee wherein had connected to the secondary server / fall-back server on 146 days in F&O segment and 603 days in cash segment during the review period. Thus, they have been charged only for not following the Guidelines dated April 16, 2012 of NSE thereby violating Clause A(2) of the Code of Conduct as specified in Schedule II of Regulation 9 read with Regulation 26 (xvi) of the SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992.*

v. *Although, the facts of the above matter are significantly similar to ours, despite the same we have been alleged to have violated the PFUTP Regulations. Whereas, SMC Global had made several more connections to the Secondary POP server, the SEBI did not levy the charge of violation of PFUTP Regulations on them. Please also note that SMC was reprimanded 4 times and the notice was not reprimanded per se or even warned even once. Notably, we have connected to the secondary server on 36 days in F&O segment and 215 days in CM segment, which proportionately less than that of SMC Global. It may kindly be noted that, the AO has supported this decision by stating that "any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investor/s complaints on record arising out of such defaults."*

vi. *There are other cases where brokers have been charged for connecting to Secondary Server and thereby committing a fraud. However, the findings and allegations in the other cases were that, "repeatedly connecting to the Secondary POP Server almost on a daily basis without valid reasons and ignoring NSE's warning /advisories, for the for the purpose of gaining an unfair advantage over the other TMs" In these cases the TMs can be liable to have indulged in 'unfair trade practice' in securities, which is prohibited under regulation 4(1) of PFUTP Regulations, 2003". However the difference is that in these matters SEBI has not only alleged unfair advantage but has also given evidence and come to a finding of an unlawful gain.*

vii. *In the present matter there is no dimension/ allegation of unfair advantage or undue gains (finding in the matter of SMC Global), without which such alleged violation cannot be considered as a fraud and hence the Noticee is not liable to punished under PFUTP regulation. The mere fact of secondary connection does not necessarily mean unfair advantage or unlawful gain. The Noticee has been alleged to have violated the PFUTP Regulations, but it may kindly be noted that there is no charge against us of getting undue advantage or unlawful gain or of avoiding any loss unlawfully. This is in contrast to other matters decided by SEBI. In addition to the same, the Noticee was not reprimanded for the secondary server connections by NSE.*

viii. *We refer to the Adjudication Order bearing no. ORDER/MC/DS/2020-21/9097 dated September 22, 2020 in the matter of Advent Stock Broking Private Limited, wherein the Noticee was alleged for connection to the secondary server and early logins in variance to the NSE Colo guidelines. They were alleged for the violation of of clause 2(a) of chapter V of NSE byelaws read with Clause A(2) and A(5) of code of conduct specified under*

schedule II read with Regulation 9(f) of SEBI (stock brokers and sub-brokers) Regulations 1992 and Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Section 12A(a), 12A(b) and 12A(c) of SEBI act 1992.

ix. *As it can be noted that the alleged violation is similar as in the instant case, Advent Stock Broking Pvt Limited was charged for the violation of bye-laws and code of conduct and not for the PFUTP Regulations as the material on record could not establish any unfair gain or advantage which may have accrued to the Noticee as a result of connecting first to the secondary server.*

x. *In reference to the Adjudication Order bearing no. ORDER/AP/SK/2020-21/9661 dated November 25, 2020 in the matter of Crosseas Capital Services Pvt Ltd wherein the Noticee was alleged to make connection to the secondary server repeatedly without making complaint/reference to NSE. In connection to this the Hon'ble Adjudicating Officer observed that "that the charge against the Noticee is only the non-adherence to the Code of Conduct and there is no allegation of any market misconduct or abuse of the system so as to have any adverse impact on the integrity of the Noticee. Further, there is no allegation on the Noticee having gained any advantage over other trading members by connecting to the secondary server as found in this case."*

xi. *Therefore, we submit that the above case is similar to the instant case and as cited in the above case there has been no malice intention involved in the alleged connections/trade done.*

xii. *In the light of the above we submit that, there is no allegation of unfair advantage accrued/loss suffered by investors, in our instant matter. Also, there are no investor/s complaints against us.*

xiii. *Further, in respect of the orders in the matter of SMC Global, OPG Securities and Advent Stock Broking, referred by us in the preceding paragraphs, SEBI must apply the doctrine of 'Stare Decisis' which obligates courts / quasi-judicial bodies to look to precedents when making their decisions. This is a set legal principle and even the Hon'ble Securities Appellate Tribunal has acknowledged this in numerous cases. One such order of Hon'ble SAT is the matter of RM Shares Trading Private Limited vs. SEBI dated August 7, 2014. Further, Your Honor's attention is also drawn to order dated April 20, 2016 of Hon'ble SAT in the matter of Krishna Enterprises v SEBI, wherein it was held that passing conflicting orders would not promote the development of securities market and would not be in the interest of the securities market.*

xiv. *Therefore, it is understood that in adjudicating proceedings, if a party relies on any adjudication order passed in another case, then judicial discipline demands that the Adjudicating Officer passes an order in lines with what was already decided in previous similar case.*

xv. *Further, we would like to draw your kind attention to Section 15 (I) (3) of the SEBI Act, 1992 which states that –*

"[3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier."

xvi. *It may kindly be noted that none of these orders have been considered for review by the SEBI Board. It is therefore the above three orders stand valid and binding on SEBI for all similar cases.*

xvii. *It is not only important for your Honour to follow judicial precedents but it is also important that your Honour appreciates and considers that SEBI itself, who is a party in these cases, has also accepted these orders since no review has been initiated in these matters and this makes it more necessary for your honour to follow these orders when deciding these matters.*

Reply dated January 20, 2021

Noticee referred other AO orders such as of Advent Stock Broking Private Limited, SMC Global Securities Ltd. and submitted the following:

(a) *The no. of days on which the connection to the Secondary Server was made is notably more in the decided cases- as cited above, as that in the instant case. Therefore keeping in view the penalty levied in the aforementioned two precedents, and as per the Doctrine of Proportionality the penalty in the instant case has to be much lesser than that in the case of Advents and SMC Global, respectively. (Without prejudice to the fact, that on merit of the instant case, no penalty should be levied.)*

(b) *The penalty u/s 15HB in the case of Advents was levied of ₹100,000 only. Therefore, in the light of the same the penalty in the instant case is prayed to be lesser than the aforesaid.*

(c) *In the case of SMC Global, even though the number of Secondary Connections made is more than that in the instant case, SEBI consciously decided not to charge the Noticee for the violation of PFUTP Regulations. On the same grounds, the instant Noticee prays that no penalty be levied for the alleged violation of PFUTP Regulations.*

(d) *Further it may kindly be noted that, in the case of SMC Global (reference to para 5 of the order), the exchange had reprimanded SMC on 4 occasions, whereas in the instant case, NSE did not reprimand / warn us even once for our connection to secondary server.*

(e) *Please refer to para 9 (j) of the instant SCN, inter alia the Noticee was facing difficulty in connecting to primary server. 4 complaints were made by the Noticee on 5th August, 2011, 2nd November, 2011, May 22, 2011 and July 4 2014. On 21st May, 2012 the Noticee informed NSE that they wanted to connect to secondary server since they were unable to connect to primary server- this was as per direction in NSEs email dated 2nd December 2011. On 22nd May, 2011 NSE informed the Noticee that they were connecting to the wrong port after which the Noticee did not connect to secondary server for more than a year till 17th Sept, 2013.*

(f) *It may kindly be noted that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the alleged violations.*

Reply dated January 27, 2021

(a) We have already brought to your kind attention the absolute lack of any coherent norms as regards whether there was any bar in respect of connecting to secondary server.

(b) We have already submitted in detail the fact that NSE itself wanted brokers to be continuously connected to both primary and secondary server.

(c) Furthermore, such statement as regards the norms related to connection to secondary servers are highlighted in the two forensic audit report relied upon by SEBI and also in the order passed by Hon'ble WTM in the matter of OPG Securities (Order No. WTM/GM/EFD/02/2019-20 dated April 30, 2019).

(d) Almost all Colo brokers were connecting to secondary servers in view of what is stated above and this includes Advent Stock Broking Private Limited (Adjudication Order bearing no. ORDER/MC/DS/2020-21/9097 dated September 22, 2020), Crosseas Capital Private Limited (Adjudication Order no. ORDER/AP/SK/2020-21/9661 dated November 25, 2020), SMC Global Securities Ltd (Adjudication Order bearing no. ORDER/SS/SK/2019-20/4608 dated September 25, 2019) and the Noticee.

(e) We reiterate that as per para 10(k) of the instant SCN, it has been alleged that Noticee continued to connect to the secondary server despite of NSE advising not to connect to the same. In connection to this a reference has been given to NSE's email dated May 22, 2014 wherein NSE informed the Noticee that TBT IP 10.230.18.142 was connected to secondary server.

However, from the Noticee's secondary server data provided by NSE it can clearly be observed that Noticee's TBT IP 10.230.18.143 was also connected to secondary server on the same day (i.e., May 22). However, surprisingly, no email was sent by NSE with reference to TBT IP 10.230.18.143. Kindly note that there was no intimation from NSE with regard to this connection in any manner.

(f) In light of the above submissions made by us, for the sake of brevity, we reiterate that-

a. The Noticee has not got any unfair advantage, in terms of speed, by using the NSE Co-lo facility;

b. No reprimand / warning was given to the Noticee for its connection to TBT IP 10.230.18.143 and 10.230.18.140 on or after 22nd May, 2014;

c. No investors were prejudiced by the Noticee's connection to secondary server;

d. There were no unfair gains / advantage to the Noticee by connecting to secondary server. This is not even an allegation.

Reply dated March 02, 2021

(a) Noticee referred the Adjudicating Orders in the matters of Advent Stock Broking Private Limited (Adjudication Order bearing no. ORDER/MC/DS/2020-21/9097 dated September 22, 2020), and SMC Global Securities Ltd (Adjudication Order bearing no. ORDER/SS/SK/2019-20/4608 dated September 25, 2019) are similar to our matter on all relevant facts and grounds.

(b) The decisions taken by the Adjudicating Officers in these matters have been accepted by the SEBI Board, without any reservations. The Board has not ordered review of these orders under Section 15-I (3) of the SEBI Act, 1992, which clearly indicates that SEBI has accepted the findings and decision taken in these orders and hence the same is binding on all other authorities dealing with similar matters.

(c) Therefore request your honour to kindly consider the above and take any decision in the matter after considering decisions already taken in these similar cases we are relying on.

Reply dated April 09, 2021

a) Referring the earlier submissions in this matter, Noticee submitted that SEBI has accepted the findings and decisions taken in other similar cases

of Advent, Crosseas, and SMC, and therefore the same is binding on all other authorities dealing with similar matters. Kindly note that in Crosseas and SMC, on exactly same facts, FRAUD was not even alleged.

b) *There are other cases where brokers have been charged for connecting to Secondary Server and thereby committing a fraud, and those charges are entirely different than that in instant case. For instance the matter of OPG Securities Limited (Order No. WTM/GM/EFD/02/ 2019-20 dated April 30, 2019) and also the AO order in that matter. The allegation levelled on OPG securities, which was that, "repeatedly connecting to the Secondary POP Server almost on a daily basis without valid reasons and ignoring NSE's warning/advisories, for the purpose of gaining an unfair advantage over the other TMs,…….can be stated to have indulged in 'unfair trade practice' in securities, which is prohibited under Regulation 4(1) of the PFUTP Regulations 2003.". In this matter SEBI has not only alleged and given finding of unfair advantage over other trading members but has also alleged unlawful gains made by OPG Securities. Also considering the seriousness of allegations, WTM proceedings were initiated under section 11/11B, which is not there in instant case.*

c) *In the present matter with respect to the charge of violation of PFUTP regulation levelled by your honour, is very different and states that "10(n)..... Further as the Noticee connected to the secondary server repeatedly without valid reason, it has indulge in unfair trade practices and therefore it is alleged that the Noticee has violated the provisions of Regulation 3(b), 3(c) 3(d) in 4(1) of PFUTP Regulations 2013 and section 12A (a), 12A(b), 12A(c) of the SEBI Act, 1992." There is neither a dimension of unfair advantage over other TMs as brought out in the matter of OPG Securities nor a dimension of any undue gains made. Same was the case before Honble Maninder Cheema in Advent. In that case also there was no charge of taking "unfair advantage over other trading members" and no charge of any ill gotten gains, as is our case.*

d) *Noticee has been alleged to have violated the PFUTP Regulations, but it may kindly be noted that there is no charge against the Noticee of getting undue advantage over other TMs or having made any unlawful gain or of avoiding any loss unlawfully. Therefore, present case can't be compared with the case of OPG, where separate 11/11B proceedings were also initiated. While not admitting to any violation, if at all it is held against the Noticee, then it is pertinent to note that no unfair gain or advantage is even*

alleged. Therefore request your honour to kindly consider the above and take any decision in the matter after considering decisions already taken in the similar cases namely, Advent..

CONSIDERATION OF ISSUES AND FINDINGS:

7. I have carefully perused the charges levelled against the Noticee, reply of the Noticee and the documents available on record. The issues that arise for consideration in the present case are:

Issue (a): Whether Noticee is in violation of point 2(a) of Chapter V of NSE bye-laws r/w clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992, clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 r/w sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992 as alleged in the SCN?

Issue (b): If yes, whether the failure, on the part of the Noticee would attract monetary penalty under sections 15HA and 15HB of the SEBI Act, 1992?

Issue (c): If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

8. Before adverting to the merits of the case, I find it proper to deal with the issues raised by the Noticee regarding non furnishing of documents /informations such as copy of investigation report, date on which the findings of investigation put up to Whole Time Member (WTM) of SEBI, copies and details of material placed before WTM, date on which investigation report approved by WTM and instant proceedings approval, copy of minutes of the committee of Inter Division Chief etc. causing breach of Principle of Natural Justice and prejudice to it. In this respect,

it is noted that documents which have been relied upon in the SCN to make allegations against the Noticee, have been provided to the Noticee as annexures to the SCN. Also, the same was informed to the ARs who attended the hearing on behalf of the Noticee on the scheduled date i.e. January 20, 2021. It is noted that the law on the issue of not giving the copy of the investigation report, information w.r.t the date of initiation of the proceedings, date of approval etc. are well settled to the effect that providing of documents which have been relied upon in the SCN to frame allegations/charges are treated as sufficient compliance of the principles governing the Natural Justice. In this connection, your attention is drawn to the observations of the Hon'ble SAT in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012), wherein SAT observed that:*".....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*

Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed

that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that: *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".*

In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided in the SCN, the principles of natural justice have been duly complied with, in the instant proceedings and that the interest of the Noticee has not been prejudiced in any manner.

9. Before moving forward, the relevant provisions of aforesaid Act, Regulations, allegedly violated by the Noticee and as mentioned in the SCN are reproduced as under:-

The SEBI Act, 1992

CHAPTER VA

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(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 thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

Stock Brokers Regulations, 1992

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

(2) Exercise of due skill and care: *A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

(5) Compliance with statutory requirements: *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

10. Now I deal with the issues on merit in the matter.

Issue (a): Whether Noticee is in violation of point 2(a) of Chapter V of NSE bye-laws r/w clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992, clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 r/w sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992 as alleged in the SCN?

(a) The charge against the Noticee continuously logged in to secondary server in CD, CM and FO segment during the investigation period without any sufficient reason during the period of investigation. Noticee connected on to the secondary server for 215 trading days in CM, 45 trading days in F&O segment and 6 trading days in CD segment during the relevant period. In the CM segment, Noticee connected to secondary server on 36 and 175 days respectively during the year 2012 and 2014, which works out to 14% and 85% of the total trading days.

(b) The Noticee has not disputed the aforesaid facts and has admitted that it connected to the secondary server on 45 days in FO segment, 215 days in CM segment and 6 days in CD segment.

(c) The relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: *"Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source*

they can move to secondary source." The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. The facts show that during the relevant period Noticee connected to the secondary server 45 days in F&O segment, 215 days in CM segment and 6 days in CD segment. Further, it is noted that Noticee frequently connected to the server in the CM segment and F&O segment during the year 2014. The Noticee connected to the secondary server on 175 days out of 206 trading days comprising of 85% of the total trading days in the year 2014. Further in the FO segment, out of 66 trading days, the Noticee connected to the secondary server in 36 days which is 55% of the total trading days in the same year. Further, it is seen from the available record that NSE advised the Noticee not to connect secondary server through Colo guidelines and e-mails to the Noticee. However, Noticee continued to connect the secondary server despite of the Colo guidelines and NSE e-mails to the Noticee. In other words, the Noticee connected frequently to the secondary server is in violation of the NSE colocation guidelines, thereby also failing to exercise due skill care and diligence in conducting its trading operations.

(d) Noticee has made a contention that the Colo facility had no restrictions on the usage of the secondary server access and absence regulation or norm in relation to the usage of the secondary server cannot be allegation of the manner of connecting the secondary server. This contention cannot be accepted as the Colo guidelines specifically states that the trading member move to the secondary server in case of non-availability of primary server. Further, NSE it its e-mail advised the Noticee not to connect secondary server without exchange intimation. It is evident from the e-mail correspondences between the Noticee and the NSE that Noticee connected to the secondary server in multiple IPs. The said correspondences indicate the concerns of NSE and the requirements that the Noticee had to follow i.e. connecting to secondary server can be done only if it is unable to connect to the primary

server. The language and the tenor of the said email demonstrate the intent of the NSE to convey its concern /objection to the Noticee's connecting to the secondary server and expectation of positive compliance by the Noticee. The reasonable and legitimate expectation from the Noticee would be that it will adhere to all such rules and procedures as required by NSE from time to time in writing or otherwise. In this case, it is established that the Noticee had connected to the secondary server on several occasions and the same was not disputed by the Noticee.

(e) Point 2(a) of Chapter V of the Exchange's Byelaws, *inter alia* provides that "*Trading member shall adhere to the Bye Laws, Rules and Regulations of the Exchange and shall comply with such operational parameters, rulings, notices, guidelines and instructions of the relevant authority as may be applicable."* By not adhering to the guidelines of NSE, it is established that the Noticee violated point 2(a) of Chapter V of NSE bye-laws r/w clauses A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992.

(f) Noticee is also alleged to have indulged in unfair trade practice by repeatedly connecting to the secondary server. In this regard, Noticee has placed reliance to the Adjudication Orders in the matter of SMC Global Securities Ltd (SMC), Advent Stock Broking Private Limited and Crosseas Capital Private Limited. Noticee has contended that the facts of the said cases are significantly similar to it, despite the same it has been charged for "Fraud" without any additional evidence. Noticee has also stated that there is no allegation of unfair advantage accrued/ loss suffered by investors nor any investor complaints against it.

(g) In this regard, I note that the material on record does not establish any unfair gain or advantage which may have accrued to the Noticee as a result of

connecting to the secondary server. I also note that the Noticee was not reprimanded by NSE for the secondary server connections unlike some other brokers. The material on record establishes that Noticee connected to secondary server, but does not state whether these were early connections vis-à-vis other brokers. There is also no material to say that the said connection could have benefitted the Noticee in any manner.

(h) In view of the above, it cannot be said that the Noticee employeed a device, artifice or scheme which would operate as a fraud upon investors. Thus it cannot be held that the Noticee violated provisions of regulations 3(b), 3(c), and 3(d) of PFUTP Regulations, 2003 r/w sections 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992.

(i) Regulation 4(1) of PFUTP Regulations states that "*Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities."* While unfair trade practice is not defined in the PFUTP Regulations, Hon'ble Supreme Court in the case of *SEBI vs. Rakhi Trading Private Limited (2018) 13 SCC 753*, observed that: "*Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."* In this context, the practice of routinely connecting to the secondary server against the clear guidance given by NSE amounts to an unfair trade practice. The secondary server was meant for use in case of non-availability of data from the primary source. By circumventing the primary source on a regular basis, the Noticee engaged in conduct which undermined the trading system set up to provide fair and equitable access to all brokers who connected to it. Hence, the Noticee, by such conduct, engaged in unfair trade practice in violation of Regulation 4(1) of the PFUTP Regulations.

(j) From the foregoing paragraphs, it is conclusively established that the Noticee has failed to comply with aforesaid guidelines and therefore, I conclude that the Noticee has violated the provisions of point 2(a) of Chapter V of NSE bye-laws r/w clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992, clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulation 4(1) of the PFUTP Regulations, 2003.

Issue (b): If yes, whether the failure, on the part of the Noticee would attract monetary penalty under sections 15HA and 15HB of the SEBI Act, 1992?
Issue (c): If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

(a) As it is established that Noticee is in violation of point 2(a) of Chapter V of NSE bye-laws r/w clause A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992, clause A(2) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulation 4(1) of the PFUTP Regulations, 2003, I am of the view that it warrants imposition of monetary penalty under sections 15HB and 15HA of the SEBI Act, 1992 on the Noticee, text of which is reproduced as under:

The SEBI Act, 1992
Penalty for fraudulent and unfair trade practices.
15HA*. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*
Penalty for contravention where no separate penalty has been provided.
15HB*. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

(b) While determining the quantum of penalty under sections 15HA and 15HB the SEBI Act, 1992, the following factors stipulated in section 15J of the SEBI Act, 1992, have to be given due regard:

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

(c) I note that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the aforesaid violation. The Noticee has connected to the secondary server for 215 days in the CM segment during the relevant period. The secondary server connections in the F&O and CD segments are only on 45 days and 6 days respectively in the relevant period. I also note that the Noticee was not reprimanded by NSE for the violations, unlike some other brokers who had more frequent secondary server connections. However, it is established that the Noticee has failed to comply with aforesaid guidelines and hence violated the aforesaid provisions of Code of Conduct specified under Stock Broker Regulations, 1992 and PFUTP Regulations, 2003.

ORDER

11. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1992, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Three Lakh only) under section 15HA of the SEBI Act, 1992 and Rs. 1,00,000/- (Rupees One Lakh only) under section 15HB of the SEBI Act, 1992, i.e. penalty totalling Rs. 6,00,000/- (Rupees Six lakh only) upon the Noticee for the failure to comply with the relevant provisions of the law.

12. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

13. The Noticee shall forward the said Demand Draft or the details/confirmation of penalty so paid to the payment to the Division Chief, Enforcement Department-I, DRA-5, SEBI. Noticee shall provide the following details while forwarding DD/payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

14. In terms of the provision of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **PRASANTA MAHAPATRA**

Date: April 16, 2021 **ADJUDICATING OFFICER**